

# CHART

## Adoption and Transfer of Legal Custody for Children in Kinship Foster Care: Comparison Chart for Virginia

This chart is designed to help kinship foster parents compare adoption and transfer of legal custody as two options that you and the children in your care can pursue to exit foster care and create permanent families. In Virginia, children can exit foster care with their kin caregiver through adoption or transfer of legal custody. The transfer of legal custody of the child from the child welfare agency to the kin caregiver can occur instead of licensing the kin as a foster parent or can occur after licensing the kin as a foster parent. If transfer occurs after licensing, the child may be eligible for KinGAP (kinship guardianship assistance program) monthly payments.



While this chart is directed at kinship foster parents, it is also intended as a tool to help child welfare and other case workers assist kinship foster parents. Birth parents and older children may also find it helpful to review as part of their decision-making.

Generations United created this chart in collaboration with the Virginia Poverty Law Center. It is developed from Generations United’s National Comparison Chart and accompanying brief on Adoption and Guardianship for Children in Kinship Foster Care, which are available at [www.grandfamilies.org](http://www.grandfamilies.org). The content on this chart should not be considered legal advice, but rather general information to help guide your decision. Anyone considering adoption or a transfer of legal custody should consult with a local legal professional.

### RIGHTS AND RESPONSIBILITIES

#### ADOPTION

#### TRANSFER OF LEGAL CUSTODY

**What are my legal rights and responsibilities for the child?**

You will become the parent in the eyes of the law forever. You have all rights and responsibilities for the child.

You will have most of the rights and responsibilities that come with caring for a child until the child reaches adulthood or the legal custody ends.

**What are the birth parents’ rights and responsibilities for the child?**

The birth parents’ rights are forever terminated.

Birth parents keep the rights to visit the child and to consent to adoption and/or name change.

Birth parents keep the obligation to financially support the child and pay child support.

**Do I have authority to access services for the child?**

As an adoptive parent, access to services for the child is the same as for any birth parent.

As a legal custodian, access to services for the child is typically the same as for any birth parent.

# RIGHTS AND RESPONSIBILITIES

## ADOPTION

## TRANSFER OF LEGAL CUSTODY

***Can the child visit their birth parents?***

You will have the right to determine whether the child visits their birth parents. You may have an agreement in place as part of the adoption, and you should follow that. If you don't follow it, your adoption will not be invalidated but the birth parents may request a hearing in court.

The birth parents typically keep their right to visit the child. The court awarding legal custody often sets up terms for that visitation, which you must follow. You may have to supervise those visits.

***Can I change the child's last name?***

You can change the child's last name as part of the adoption process.

You cannot change the child's last name as part of the legal custody process.

***Is the child welfare agency still in our lives?***

Once you adopt, the child welfare agency will no longer be in your lives.

Once you obtain legal custody, the child welfare agency will no longer be in your lives.

If the child receives adoption assistance, you will need to complete a short annual form for the child welfare agency.

If the child receives KinGAP assistance, you will need to complete a short annual form for the child welfare agency.

***Will we continue to be involved with the court?***

The case will be finalized. You are now the parent.

There will not be any scheduled court hearings. However, the birth parents can go to court and ask to have the child returned to them.

***Can the birth parents come back to claim the child?***

Birth parents cannot come back and claim the child. Their rights and responsibilities are terminated.

Parents can seek to have the child returned to them, and their rights restored. They must prove to the judge that something has changed with them, the child or you as the caregiver.

***Can the child end up back in foster care?***

Just like any child in the United States, the child welfare agency can remove the child from you in the event of abuse or neglect. You may be able to voluntarily surrender the child back to the agency. If you are considering such a serious step, you should consult with local professionals.

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***When does the legal relationship end?***

Adoption does not end – the child is permanently part of the family.

Legal custody ends when the child reaches adulthood, which is age 18 in Virginia.

# FINANCIAL AND LEGAL ASSISTANCE

## ADOPTION

## TRANSFER OF LEGAL CUSTODY

***Is there financial assistance to help meet the needs of the child?***

All states have adoption assistance for relatives adopting children with “special needs” from foster care. “Special needs” is defined broadly and 90 percent of all children adopted from foster care are eligible for adoption assistance. Virginia has federally-funded and state-funded adoption assistance. More information can be found at: <https://www.dss.virginia.gov/family/ap/index.cgi> and <https://www.nacac.org/help/adoption-assistance/adoption-assistance-us/state-programs/virginia-adoption-assistance-program/>

Federally-funded guardianship assistance programs exist in about 40 states and 14 tribes. They are modeled on adoption assistance and work in a similar way. Virginia has federally-funded guardianship assistance, known as KinGAP (Kinship Guardianship Assistance Program). More information is available at <https://www.dss.virginia.gov/fosterVA/kinship.html>

***How much is this assistance?***

Under Virginia’s adoption assistance programs, the assistance amount cannot be more than the child received while in foster care.

Virginia has post-adoption supports available through the Virginia Department of Social Services. [https://www.dss.virginia.gov/files/division/dfs/ap/intro\\_page/pos/post-adoption-pamphlet.pdf](https://www.dss.virginia.gov/files/division/dfs/ap/intro_page/pos/post-adoption-pamphlet.pdf)

The monthly dollar amount of KinGAP assistance cannot be more than the child received while in foster care.

Virginia has post-KinGAP supports available through the Virginia Department of Social Services, including enhanced payments, known as VEMAT, to meet a child’s behavioral, emotional or physical care requirements. Contact your local department of social services.

***How long does this assistance last?***

In Virginia, adoption assistance payments last until age 18, but may be extended to age 21 if the child has a physical or mental disability that requires ongoing treatment and intervention OR if the initial adoption assistance agreement became effective on or after the child’s 16th birthday and the child is continuing their education, working, participating in an activity to promote employment, OR is unable to engage in these activities because of a medical condition. VA Code §63.2-1302(B)

In Virginia, KinGAP assistance payments last until age 18, but may be extended until age 21 if the child has a physical or mental disability that requires ongoing treatment and intervention.

***Will I be reimbursed for my expenses to obtain the permanency option?***

If you are adopting an eligible child with “special needs” from foster care under the federally- or state-funded adoption assistance program, Virginia’s Department of Social Services will reimburse you up to \$2000 in nonrecurring expenses spent in getting the adoption. These expenses include legal fees, court filing fees, and travel costs.

If you are exiting foster care with KinGAP, Virginia’s Department of Social Services will reimburse you up to \$2000 in nonrecurring expenses spent in getting legal custody. These expenses include legal fees, court filing fees, and travel costs.

## PUBLIC BENEFITS

### ADOPTION

### TRANSFER OF LEGAL CUSTODY

***Is the child eligible for free school meals?***

Children adopted from foster care during the school year will remain eligible for free school meals for the remainder of the school year.

Children who exit foster care to legal custody during the school year will remain eligible for free school meals for the remainder of the school year.

After that, your income is used to determine if the child is eligible.

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***Is the child eligible for SNAP, which used to be known as food stamps?***

Your income is used to determine the household's eligibility for SNAP. The adoptive child is now part of your household. Any adoption assistance counts as income for purposes of SNAP eligibility.

You decide whether to include the child in the household for purposes of determining SNAP eligibility. If the child is included, KinGAP assistance payments count as income for purposes of determining SNAP eligibility.

If you choose not to include the child in the household for SNAP eligibility, the KinGAP assistance will not count as income, but you will not receive SNAP for the child.

***Can the child receive welfare benefits under Temporary Assistance for Needy Families (TANF)?***

*Please note: As of July 2020, Virginia has a "[Relative Maintenance Support Payment](#)" of \$200/month in additional TANF per child if their related caregivers keep them out of foster care. The payment is also available to kinship families who are child welfare system involved, if the child's legal custody is transferred from the agency to the caregiver before the five-day removal hearing.*

The child's adoption assistance will be counted as income and that alone will likely disqualify the child from a TANF child-only grant. Furthermore, TANF child-only grants are only available to children living with parents in a few limited situations – they are mostly for children living with non-parents.

The child's KinGAP assistance payments will be counted as income and will likely disqualify the child from a TANF child-only grant.

Children whose kin obtain legal custody of them and who do not receive KinGAP assistance payments will likely qualify for a TANF child-only grant.

Whether to include the child (and the child's income) in a TANF family-grant will depend on whether that will help the family financially or not.

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***Will the child be able to get disability or survivor Social Security benefits based on my work record?***

The child may be able to get Social Security benefits based on your work record if: (1) the child is not receiving Social Security benefits from the birth parents, (2) you have already adopted the child at the time you die or become disabled, and (3) when your death or disability occurs, the child's birth parents were not living in the same household and contributing regularly to the support of the child.

It is only possible to qualify for Social Security benefits based on your work record if the child is your grandchild. There are a number of other eligibility requirements, including that the birth parents must generally be deceased or disabled. See [www.ssa.gov/people/kids/](http://www.ssa.gov/people/kids/)

The child remains eligible to receive any Social Security benefits based on the parents' work records.

## HEALTH INSURANCE

### ADOPTION

### TRANSFER OF LEGAL CUSTODY

***Can I put the child on my private health insurance?***

Your adoptive child can be put on your private health insurance just like a birth child.

Some private policies allow for the child to be included, but not all. You would need to check with your insurance carrier.

***Can the child receive Medicaid?***

The child you adopt from foster care is automatically eligible for Medicaid if the child is receiving federally-funded adoption assistance. For state-funded adoption assistance, the child will need to meet certain eligibility criteria. You should ask your Local Department of Social Services.

If you obtain KinGAP assistance, the child is categorically eligible for Medicaid and should not have to reapply.

## FEDERAL AND STATE TAX CREDITS

### ADOPTION

### TRANSFER OF LEGAL CUSTODY

***Is there a special tax credit that can help me?***

There is a federal adoption tax credit, which you can claim for up to \$14,300 per child adopted in 2020 (the rate typically increases each year). You may be eligible for the maximum amount of credit regardless of whether you had any qualifying expenses. For more information on this tax credit, visit [www.irs.gov/taxtopics/tc607.html](http://www.irs.gov/taxtopics/tc607.html) and [www.nacac.org/category/adoption-tax-credit/](http://www.nacac.org/category/adoption-tax-credit/)

There is no federal guardianship or legal custody tax credit.

Virginia does not have a state guardianship or legal custody tax credit to claim against your Virginia income tax.

Virginia does not have a state adoption tax credit to claim against your state income tax.

***Are there any other tax credits that I can claim?***

There are other tax credits that you may be able to claim, including the Earned Income Tax Credit, child tax credit, additional child tax credit, and the child and dependent care tax credit. For information, see the IRS website at [www.irs.gov](http://www.irs.gov) or the brief that accompanies this chart. Virginia does not have similar state tax credits to claim against your Virginia income tax.

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***Are these tax credits considered "income" for purposes of determining eligibility for public benefits?***

Tax credits do not count as income. This is true even if you owe no taxes and receive a refund check from the IRS.

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## CAREGIVER SUCCESSOR PLANNING AND DEATH BENEFITS FOR CHILDREN

### ADOPTION

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<i>Can I plan for the child's care if I should die?</i>	Like any parent, you can name a guardian in your will to take over your rights and responsibilities should you die. If the guardian then wishes to adopt the child, they may be able to receive the adoption assistance payments. They must apply with their local department of social services, letting the worker know the child was previously adopted and receiving adoption assistance.	You may name a successor guardian as part of your KinGAP agreement. That person will be able to step in your shoes and continue to receive the monthly financial guardianship assistance.
<i>Can the child inherit from me?</i>	As an adopted child, the child will automatically inherit from you even without a will.  The child will not automatically inherit from the birth parents. However, they can share their estate through a legal document known as a will.	The child cannot automatically inherit from you, but you can create a will and share your estate that way.  The child continues to be able to automatically inherit from birth parents.
<i>Will the child be able to get my pension or military benefits when I die?</i>	The child would be able to receive your pension and military benefits the same as a birth child.  The child will no longer be able to automatically receive pension or military benefits from birth parents.	The child would typically not be automatically able to get your pension or military benefits as they usually only pass down to a birth or adoptive child.

## COLLEGE AND INDEPENDENT LIVING

### ADOPTION

### TRANSFER OF LEGAL CUSTODY

<i>What type of independent living or education vouchers are available for an older child?</i>	The child is not eligible for independent living services or education and training vouchers (ETV) if adopted before age 16.  If the child was adopted after age 16, the child will remain eligible and can apply. See <a href="https://www.dss.virginia.gov/fmf/educational.html">https://www.dss.virginia.gov/fmf/educational.html</a> .	The child is not eligible for independent living services or ETV if the child exited foster care to KinGAP before age 16.  If the child entered into a KinGAP agreement after age 16, the child will remain eligible and can apply. See <a href="https://www.dss.virginia.gov/fmf/educational.html">https://www.dss.virginia.gov/fmf/educational.html</a> .
<i>How is my income used to determine the child's eligibility for financial aid for college?</i>	Your income is considered when determining financial aid as part of the Free Application for Federal Student Aid (FAFSA). However, the child's past foster care status may be considered when determining aid.  If the child was adopted at age 13 or older, the child is considered "independent" and your income does not count.	The legal custodian's income is not considered in determining financial aid. A child in legal custody of their kin is typically considered "independent" and the child's past foster care status may be considered when determining aid.

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## Generations United’s National Center on Grandfamilies

For over twenty years, Generations United’s National Center on Grandfamilies has been a leading voice for families headed by grandparents, other relatives, and close family friends. Through the Center, Generations United leads an advisory group of organizations, caregivers and youth that sets the national agenda to advance public will in support of these families. Center staff conduct federal advocacy, provide technical assistance to state-level practitioners and advocates, and train grandfamilies to advocate for themselves. The Center raises awareness about the strengths and needs of the families through media outreach, weekly communications and awareness-raising events. It offers a broad range of guides, fact sheets and tools for grandfamilies, which cover issues from education and health care access to financial and legal supports and can be found at [www.gu.org](http://www.gu.org) and [www.grandfamilies.org](http://www.grandfamilies.org).

## Virginia Poverty Law Center (VPLC)

VPLC is a nonprofit organization committed to breaking down systemic barriers that keep low-income Virginians in the cycle of poverty through advocacy, education, and litigation. Since 1978, they have advocated on behalf of low-income Virginians, assisting state legal aid programs with legislative proposals that impact the poor and providing training and resources in the following areas of law: consumer rights and protection, domestic and sexual violence, elder rights and resources, families, health, housing, and public benefits. Information can be found at <https://vplc.org/>.



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