

# **LEGAL OPTIONS FOR CARING FOR THE CHILDREN OF OTHERS**

Prepared by  
**JACKSONVILLE AREA LEGAL AID, INC.**  
A UNITED WAY AGENCY

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**THE FLORIDA DEPT. OF ELDER AFFAIRS**

**JACKSONVILLE AREA LEGAL AID, INC.**  
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The information provided in this brochure is not a substitute for legal advice. The laws described here may change without notice.

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## **INTRODUCTION**

Many children are cared for by their extended families, godparents, or family friends. Questions often arise for these caregivers who are providing for children who are not their own:

- ! What legal documents are required to care for the children?
- ! What legal rights do caregivers have if the parents come to take the children?

**! What benefits are the caregivers eligible to receive for the children?**

### **WHAT ARE MY LEGAL OPTIONS?**

The chart inside summarizes the legal options available to caregivers and the benefits they may receive with each. A general description of each option also follows:

#### **Consent to Medical Treatment without Legal Documents**

Florida law (' 743.0645, Fla. Stat.) allows the following relatives to consent to the routine medical and dental care of children when their parents cannot be located to provide the consent:

- ! child-s grandparents**
- ! child-s adult brother or sister**
- ! child-s adult aunt or uncle**

Only routine medical and dental care is covered by this law. Surgery, general anesthesia, psychotropic drugs, or other extraordinary treatment is not covered. Of course, health professionals may still treat a child when there is an emergency endangering the child-s health, even when the parents cannot be located (' 743.064(1), Fla. Stat.).

#### **Power of Attorney Documents**

Florida law (' 743.0645, Fla. Stat.) allows *any person* with a valid Power of Attorney executed by a child-s parents to consent to routine medical and dental care when the parents cannot be located. The Power of Attorney also gives the caregiver the right to consent to necessary surgery and general anesthesia, unless specifically excluded. Other rights may also be included in the document. The Power-of-Attorney is valid until it expires, is destroyed, or is revoked.

#### **Temporary Custody Orders for Extended Family Members**

Florida law (Ch. 751, Fla. Stat.) allows a child-s grandparents, great grandparents, great great grandparents, aunts and uncles, great aunts and great uncles, first cousins, adult siblings, or step-parents (if still happily married to the parents) to file for a court order granting them temporary custody of the child in their care. The parents must either consent, fail to object, or be proved unfit. The order allows the caregiver to consent to medical treatment, enroll the child in school, and qualify for other benefits. The order is valid until the child-s parents request the court to dissolve the order, and prove they are now able to take care of their child.

#### **Guardianship**

Florida law (Ch. 744, Fla. Stat.) allows *any person*, unless convicted of a felony, to file to become legal guardian of a child. The parents must either consent, fail to object, or be proved unable to care for their child. Guardianship is valid until the child-s parents request the court to dissolve the order. A guardian may have to attend a class and file annual reports with the court unless the court agrees to waive these requirements. The law is geared to caregivers providing for children with assets to be managed. It is also used by caretakers who do not meet the extended family requirement for a temporary custody order.

### Adoption

Florida law (Ch. 63, Fla. Stat.) allows *any heterosexual person* to adopt a child. This legal procedure completely terminates the parents' rights and responsibilities concerning the child. It gives the caregiver full parental rights as if the child was born to the caregiver. The parents must consent, not object, or be proved to have abused or abandoned the child. Non-relative applicants must be reviewed by the Florida Department of Children & Families, unless the court waives this requirement. An adoption order is permanent.

### Dependency Action

Florida law (Ch. 39, Fla. Stat.) protects children who have been abandoned, abused, or neglected. The State, after a call to the abuse hotline (1-800-96-ABUSE), or *any person* may file a dependency case to remove a child from one or both parents until the parents are no longer a danger to their child. While the child is out of the home, if the other parent is not a safe choice, the child's other family members will be given preference for placement, although there is no guarantee. Also, they may be eligible for relative caregiver financial benefits. If no family member or other adult comes forward, the child is placed in shelter or Foster Care.

#### SUMMARY OF CAREGIVER'S LEGAL OPTIONS AND BENEFITS AVAILABLE

CHARACTERISTICS	MEDICAL CONSENT (NO DOC.)	POWER OF ATTORNEY	TEMPORARY RELATIVE CUST. ORDER	GUARDIANSHIP ORDER	ADOPTION ORDER	DEPENDENCY ORDER
LEGAL DOCUMENT REQUIRED	NO	YES	YES	YES	YES	YES
REQUIRES A COURT PROCEDURE	NO	NO	YES	YES	YES	YES
FLEXIBILITY FOR THE PARENT(S)	VERY FLEXIBLE	VERY FLEXIBLE	MODIFIABLE BY COURT	MODIFIABLE BY COURT	NONE	MODIFIABLE BY COURT
SECURITY FOR CAREGIVER	NONE	NONE	STABLE	STABLE	PERMANENT	SUBJECT TO DCF APPROVAL
PARENT(S) MUST BE NOTIFIED OR CONSENT	NO, EXCEPT IF SURGERY REQUIRED	YES	YES	YES	YES, AND RIGHTS MUST BE TERMINATED	YES
CHILD MUST CONSENT	NO	NO	NO	NO	YES, IF 12 YEARS OR OLDER	NO
CAREGIVERS COVERED BY LEGAL OPTION	GRAND PARENT, AUNT, UNCLE, ADULT BROTHER OR SISTER	ANYONE - RELATIVE OR NON-RELATIVE	ONLY GRAND-PARENT, AUNT, UNCLE, ADULT BROTHER OR SISTER, FIRST COUSIN, STEP-PARENT	ANYONE - RELATIVE OR NON-RELATIVE WITHOUT FELONY CONVICTION	ANYONE - NON-RELATIVES HAVE MORE REQUIREMENTS - (HOMOSEXUALS CURRENTLY EXCLUDED)	ANYONE SUBJECT TO DCF AND COURT APPROVAL
TEMPORARILY PREVENTS PARENT(S) FROM TAKING CHILD(REN) FROM CAREGIVER	NO	NO	YES	YES	YES, PERMANENTLY	YES

TANF (FORMERLY AFDC)	YES, WITHIN 5TH DEGREE KINSHIP	YES, WITHIN 5TH DEGREE KINSHIP	YES	YES	YES	YES
FOODSTAMPS	YES	YES, BUT NOT NECESSARY	YES, BUT NOT NECESSARY	YES, BUT NOT NECESSARY	YES, BUT NOT NECESSARY	YES, BUT NOT NECESSARY
HUD HOUSING	SOMETIMES	SOMETIMES	YES	YES	YES	YES
HABITAT HOUSING	SOMETIMES	SOMETIMES	YES	YES	YES	YES
PRIVATE INSURANCE COVERAGE	NO	SOMETIMES, BUT UNLIKELY	SOMETIMES	SOMETIMES	YES	SOMETIMES
SOCIAL SECURITY BENEFITS FOR CHILD(REN) ON CAREGIVER'S CHECK (A) IF STEP-PARENT, GRANDPARENT OR STEP-GRANDPARENT (B) IF OTHER RELATIVE OR NON-RELATIVE	(A) YES, IF SPECIFIC REQUIREMENTS ARE MET  (B) NO	(A) YES, IF SPECIFIC REQUIREMENTS ARE MET  (B) NO	(A) YES, IF SPECIFIC REQUIREMENTS ARE MET  (B) NO	(A) YES, IF SPECIFIC REQUIREMENTS ARE MET  (B) NO	(A) YES  (B) YES	(A) YES, IF SPECIFIC REQUIREMENTS ARE MET  (B) NO
PAYEE ON CHILD(REN)'S SOCIAL SECURITY CHECK	YES, WITH PARENT COOPERATION	YES, IF WRITTEN IN DOCUMENT	YES	YES	YES	YES
ENROLL CHILD IN SCHOOL, REVIEW RECORDS AND CONSENT TO PROGRAMMING	NO	MAYBE, IF WRITTEN IN DOCUMENT	YES	YES	YES	YES
ALLOWS PARENT(S) TO JOIN THE ARMED FORCES	NO	NO	YES	YES	YES	YES

**RESOURCES**

**JACKSONVILLE BAR ASSOCIATION**

Lawyer Referral Service  
(904) 399-5780

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