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Your Rights as a Caregiver of a Relative's Child

With permission from, and appreciation to, Christie Marra, Esq., Virginia Poverty Law Center, who prepared the following information.

Child Protective Services (CPS) will conduct an investigation when they receive a report that a child is being neglected or abused. They will take steps to do what they think is necessary to keep the child safe. One of the things they may do, even before taking the case to court, is to try to persuade the parent to give up the care of the child to a friend or relative. That usually delays the time when the parent gets to appear before a judge to present the entire case.

If you are asked to take care of a relative - for example, a grandchild, nephew, or niece - by the child's parent, you should find out whether the parent has been advised to do so by Child Protective Services. If so, the following information is relevant to your situation.

- **If the child lives with you but you do not have an order giving you legal custody of the child:**
 - You can take care of the child without getting a custody order from court. In this case, the parent retains legal custody and will have to help you enroll the child in school and obtain medical treatment for the child. This can sometimes be accomplished by the parent giving you a special Power of Attorney (see below).
 - You may be eligible to receive some public assistance, such as Medicaid and cash assistance, called Temporary Assistance for Needy Families (TANF). These types of assistance are based only on the child's income, but a larger TANF grant may be available to you if your household income is very low. Your statement that you are the relative caretaker of the child is sufficient proof to establish eligibility. You can apply for public assistance through your local Department of Social Services (DSS). You should know, however, that if you receive public assistance the state will seek child support payments from the parents of the child

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as reimbursement. Also, if you receive TANF payments for the child in your care, that child's parents can no longer get TANF for that child.

- You will need to speak with your child's physician to find out what he or she requires in order to provide medical care for the child. Some physicians require a custody order from court.
- The child in your care has a right to attend the public school where you live.
- If you do not have a custody order from a court, the school may require you to submit the following documents in order to enroll the child:
 - An affidavit signed by you and the parent describing the kinship care arrangement and explaining why the parent cannot care for the child; and stating that one of you will notify the school within 30 days of the child going back to the parent.
 - A power of attorney giving you authority to make educational decisions for the child.
 - Something in writing from the local DSS (Child Protective Services) that suggested that you take the child, stating that it is in the best interest of the child to live with you, and that the arrangement serves a legitimate purpose.

- **If you get a court order giving you custody of the child who lives with you:**

- You can file a petition in the local Juvenile and Domestic Relations Court asking for legal custody. After you file, the court will serve a copy of the petition on both parents. A court hearing will be scheduled, and you and the parents must appear at that hearing. If you and the parents have agreed that you will take legal custody of the child, the judge will usually enter a Consent Order without taking much, if any, testimony. Once the order giving you legal custody has been signed by the judge, you should get at least two certified copies from the clerk. You can use the custody order to enroll the child in school and obtain medical treatment for the child.
- If you get an order giving you legal custody, you will be eligible to receive some public assistance, such as Medicaid and cash assistance, called Temporary Assistance for Needy Families (TANF). *See above.*
- If you file for legal custody in court, you can also file a petition asking the court to order the child's parents to pay you child support. The amount of child support you get is based on the parent's ability to pay based on his or her income.
- If you have a court order giving you custody of the child, you can use that order to enroll the child in school and get medical treatment for the child.

- **If you become an approved foster parent for the child living with you:**

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- You can ask to become approved as a foster parent. Before the state can approve you as a foster parent, you must pass certain background checks, including a criminal records check. If you become a licensed foster parent, the child will be in the legal custody of the local DSS but in your physical custody. You will have visits from the social services caseworker at least monthly, and you will be able to access services and financial support through DSS. As an approved foster parent, you will be required to attend trainings, usually put on by the local DSS. There will also be court hearings about the child every few months.
- If you become a licensed foster parent, you will be entitled to payments from DSS. These payments will include a monthly maintenance payment of the same amount each month and payments for the services that the child needs. The payments received by licensed foster parents are substantially higher than TANF payments.
- If you become an approved foster parent, the local DSS will have legal custody of the child. Because of this, the local department will be in charge of making decisions about the child. The case worker will be responsible for enrolling the child in school and obtaining medical care for the child.

THIS INFORMATION IS NOT LEGAL ADVICE. *Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.*

Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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