The idea of family members assisting and supporting each other is not new. This is a traditional practice in most cultures. The foster care system is starting to incorporate kinship care as a permanency option for children. Efforts are underway to remove barriers to kinship placements, including removing bureaucratic processes and streamlining legal proceedings to allow relatives to safely care for children and maintain important family connections. Efforts are also beginning to examine foster care licensing requirements, supports, and services for kin, and approaches to complex family dynamics that affect kin and their ability to care for children.

Kinship Care Overview
A total of 7.8 million children live with a relative who is the head of the household.1 More than 2.5 million of these children are raised by kin without a birth parent in the home.2 However, only roughly 120,000 (about 5%) of these children are living with kin who are foster parents.3 States are realizing the value of kinship caregivers, as the number of children entering care increases and the number of licensed nonrelated foster homes decreases as evidenced by the increase in the percentage of children in foster care with kin from 24% in 2008 to 29% in 2014.4 The current system is poised but not yet designed to take the unique challenges of placing children with kin into account.

Both child welfare law and policy prioritize placing children with grandparents, relatives, or close family friends, known as kinship care. Pursuant to 42 U.S.C. 671, states must “consider giving preference to an adult relative over a nonrelated caregiver when determining placement for a child, provided that the relative caregiver meets all relevant state child protection standards.” Most state laws and policies also support a priority for placement with a relative. Additionally, the federal Fostering Connections Act to Success and Increasing Adoptions Act of 2008 acknowledges the important role relatives play in the life of a child and encourages states to connect foster children with their relatives.

Benefits of Kinship Care
Research shows that living with relatives is better for children and benefits them in several ways.

Minimizes trauma. Placement with kin caregivers when children cannot live safely with their parents can minimize the trauma of removal. When children are removed they often lose everything they know—their parents, their home, their siblings, friends, school, pets, etc. Placing a child with family diminishes this loss. Additionally, relatives often are willing to take large sibling groups, live in the same neighborhood therefore allowing for continuity of school and community.

(Cont’d on p. 77)
and provide the comfort of living with someone the child knows and shares a relationship with.

Improves children’s well-being. Research confirms that compared to children in nonrelative care, children in kinship homes fare better, as measured by several child well-being factors. Children in the care of relatives experience increased stability, with fewer placement changes, decreased likelihood of disruption and not as many school changes. Relatives are more likely than nonrelatives to support the child through difficult times and less likely to request removal of problematic children to whom they are related. The children themselves generally express more positive feelings about their placements and are less likely to run away.

Increases permanency for children. Kin caregivers also provide higher levels of permanency and children experience less reentry into foster care when living with kin. Relatives are more likely to provide a permanent home through guardianship, custody or adoption. Currently about 32% of children adopted from foster care are adopted by relatives. Another 9% exit foster care to some form of guardianship with kin. Under the Fostering Connections Act, 33 states, the District of Columbia, and six tribes have taken the option to operate federally funded Guardianship Assistance Programs designed for children and youth who have been in foster care with a relative for at least six months. This subsidized permanency option allows existing kin caregivers to become legal guardians of children with much-needed financial assistance and without the need to remain in the foster care system.

Improves behavioral and mental health outcomes. Children in kinship homes have better behavioral and mental health outcomes. One study showed children in kinship care had fewer behavioral problems three years after placement than children placed into traditional foster care. This study also found children who moved to kinship care after a significant time in foster care were more likely to have behavioral problems than children in kinship care from the outset. The long-term effects of these relationships was also studied and the formation of a close relationship with an adult, such as a kinship caregiver, was found to predict more positive mental health as an adult.

Promotes sibling ties. One important benefit of kinship care is the increased likelihood of living with or staying connected to siblings. Data from the Illinois Survey of Child and Adolescent Well-Being (ISCAW), a statewide study of well-being and service delivery for children involved in substantiated child maltreatment investigations, showed that in 2013, 80% of children with one or two siblings in care were placed together as compared to 66.9% for children placed in traditional foster homes. For children with three or more siblings in care the disparity is even greater with 53.5% of siblings placed together in kinship homes and only 1.8% placed together in traditional foster homes.

Provides a bridge for older youth. The connection to family or another supportive adult is critical for older youth. Research shows it is key for youth to have permanent, emotionally sustaining and committed relationships to reach self-sufficiency and to reduce the risk of negative outcomes such as homelessness and criminal involvement. A key recommendation...
School District Must Allow Transgender Student to Use Bathroom of Identified Gender

Whitaker v. Kenosha Unified School District, 2017 WL 2331751 (7th Cir.).

The Seventh Circuit confirmed a lower court’s preliminary injunction after concluding a transgender student who had been denied use of the boys’ restroom was likely to suffer irreparable harm without the preliminary injunction and was likely to succeed on a Title IX sex discrimination claim and an equal protection violation. The court determined the student would likely succeed on the Title IX sex discrimination claim based on a theory of sex-stereotyping. The court also determined heightened scrutiny, not rational basis, would apply to the student’s equal protection claim.

Ash, a senior in the Kenosha Unified School District, has a birth certificate designating him as female. However, Ash began openly identifying as a boy his freshman year of high school. His sophomore year he told his teachers and classmates to refer to him as Ash/Ash-ton and to use male pronouns. Ash also began seeing a therapist who diagnosed him with gender dysphoria and he began hormone replacement therapy. During his sophomore year Ash asked to use the boys’ restroom and was told he could only use the girls’ restroom or a gender-neutral restroom in the school’s main office, to which only he would have access. His junior year, after using the boys’ restroom for six months without incident, Ash was the only student required to use gender-neutral restrooms located on the opposite side of campus from his classrooms.

Ash felt these bathroom restrictions undermined his transition. The restrictions also caused him anxiety and fear of punishment if he used the boys’ restroom; therefore, Ash restricted his water intake to avoid using the restroom. This plan was problematic because he had been diagnosed with vasovagal syncope requiring him to drink six to seven bottles of water a day to avoid dehydration, resulting in fainting and/or seizures. Ash suffered from migraines, anxiety, depression, suicidal ideation, and fainting due to the restroom issue.

Ash met with the school several times to resolve the issue. He was told in order to use the boys’ restroom his gender in the school’s official records needed to be changed by providing unspecified legal or medical documentation. Ash submitted two letters from doctors documenting his gender dysphoria. The school then required Ash to have proof of surgical transition, which is prohibited for someone under 18 years old. The school district never provided Ash with written details about the bathroom policy.

During the summer between his junior and senior year Ash filed a complaint alleging the treatment he had received violated Title IX and the Equal Protection Clause of the Fourteenth Amendment. The district court enjoined the school district from denying Ash access to the boys’ restroom, enforcing a policy preventing his restroom use, disciplining Ash for his restroom use, or monitoring his restroom use. The school district appealed.

The U.S. Court of Appeals for the Seventh Circuit upheld the preliminary injunction after applying a two-part test. First, Ash was required to show he would suffer irreparable harm, he had inadequate remedies at law, and his case had a reasonable likelihood of success on the merits. Second, the court had to balance Ash’s harms with the harms of the school district or public.

The court found Ash demonstrated irreparable harm and would have no adequate remedies at law. Harm is considered irreparable if it “cannot be prevented or fully rectified by the final judgment after trial.” Experts testified Ash’s use of the boys’ restroom was integral to his transition and emotional well-being and the school district’s actions directly caused significant psychological distress, placing him at risk for life-long diminished well-being and life-functioning. This life-long distress and diminished well-being also demonstrated a monetary remedy would not be adequate.

The Seventh Circuit held Ash would likely succeed on a Title IX claim based on a sex-stereotyping theory. The court likened the claim to the U.S. Supreme Court Title VII decision in Price Waterhouse v. Hopkins (490 U.S. 228 1989). In that case, the Supreme Court found an employer had violated Title VII after discriminating against a female employee for being too masculine. The Court interpreted Title VII broadly to mean Congress “intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.” The Seventh Circuit extended this logic to school districts and said a policy requiring someone to use a bathroom that does not conform with their gender identity punished them for their gender nonconformance, violating Title IX.

The court determined heightened scrutiny applies to Ash’s equal protection claim because the school district made a sex-based classification that treats transgender students differently. Therefore, the school district had to have a justification that was “exceedingly persuasive” serving important governmental objectives and discriminatory action substantially related to achieving those objectives. This justification could not be based on overbroad generalizations about sex or sex-based stereotypes.

The school district argued it needed to protect the privacy rights of all students because the presence of a transgender student in the bathroom infringed on the privacy rights of other students who did not share biological anatomy. The Seventh Circuit disagreed because it was based on “sheer conjecture and abstraction.” The court noted Ash had used the bathroom for six months without incident and likened a transgender student’s presence in the bathroom to being no different than an overly curious student of the same biological sex or pre-/post-pubescent children who differ anatomically.

After determining Ash would succeed on the merits, demonstrated irreparable harm, and had no adequate remedy at law, the Seventh Circuit then had to balance Ash’s harms with the possibility of harm to the school district or public as a whole. The school district argued the harm impacted all 22,160 students in the district. The court found the harm was speculative because Ash used the boys’ bathroom without incident for six months and no students had complained.
STATE CASES

Alaska

LIABILITY, NEGLIGENT SUPERVISION

Alleged victim of sexual abuse by foster brother brought action against child welfare agency, claiming negligence in investigating reports of harm while agency had legal custody of her, supervising and monitoring her foster home, and failing to investigate reports after she was adopted by foster parents. Trial court erred in granting summary judgment to agency because genuine issue of fact about when victim discovered agency may have played role in allowing abuse and whether victim’s foster parents completed required training.

Arkansas


State supreme court held trial court failed to establish father’s status as “parent” and thus could not terminate his parental rights. At time of termination hearing, father had not been found to be “parent,” trial court did not recognize him as biological father and continued to treat him as putative father, and statutory grounds for termination included requirement that father be found to be “parent.”

California

In re J.S., 217 Cal. Rptr.3d 91 (Ct. App. 2017). DEPENDENCY, DUE PROCESS

Appellate court found mother’s due process rights were violated when juvenile court prevented her from testifying about minor son’s relationship with sibling to support sibling exception to termination of parental rights. Statute lists strong relationship with sibling as exception to termination, and mother would have testified to strong sibling bond between older child and younger son. Without testimony, mother had no other evidence of siblings’ relationship.

In re Priscilla A., 217 Cal. Rptr.3d 657 (Ct. App.). DEPENDENCY, JURISDICTION

Appellate court found juvenile court erred in removing minor from father’s custody because evidence did not support finding that father was unfit or neglectful and child was not in category dependency system is intended to protect. Child threatened to hurt herself if returned to live with father and stepmother but evidence did not show daughter’s risk of harm was result of failure or inability by father.

Connecticut

In re Natalie S., 2017 WL 2367429 (Conn.). DEPENDENCY, REUNIFICATION

Connecticut Supreme Court held child welfare agency had no obligation to continue reunification efforts for mother in neglect proceeding after father was awarded temporary custody and guardianship of child. Plain language of governing statute required agency to make reasonable efforts to unify “a parent” with child, and once case entered disposition phase, focus was on best interests of child.

Delaware

Div. of Fam. Servs. v. O’Bryan, 2017 WL 2376401 (Del.). CUSTODY, SEX OFFENDER REGISTRATION

State supreme court held child welfare agency lacked authority to require father, who was a registered sex offender, to leave family home under Child Protection from Sex Offenders Act. Act’s presumption against custody, residency, and unsupervised visitation only applies in custody proceedings. Agency admitted children experienced no alleged abuse or neglect other than witnessing domestic violence between parents, for which wife was arrested.

Florida

B.R.C.M. v. Dep’t of Children & Fam., 2017 WL 1709786 (Fla.). DEPENDENCY, IMMIGRATION

Minor from Guatemala filed for dependency to obtain legal residency in United States. Florida Supreme Court found proper adjudication of dependency required court to make individualized factual findings and apply law to facts even if minor was seeking dependency ruling for sole purpose of obtaining legal residency. Minor’s motivation was irrelevant.

Georgia

Jones v. State, 2017 WL 1548564 (Ga.). ABUSE, NEW TRIAL

Georgia Supreme Court held defendant convicted of felony murder based on cruelty to children is not entitled to new trial if sufficient evidence supported conviction based on at least one of two underlying offenses. Evidence was sufficient to support conviction for first degree cruelty to child. Medical examiner testified child’s death was caused by traumatic head injuries not roughhousing with other children. On cross-examination, defendant admitted he lied about not hitting child.

Idaho


Mother appealed termination of her parental rights, arguing impossibility to comply with case plan due to mental health issues, child welfare agency’s failure to show she could not carry out her parental responsibilities, and termination was not in child’s best interest. State supreme court found evidence was sufficient to terminate mother’s parental rights. Mother’s noncompliance was intentional and not caused by mental health, and agency did not intend to show she could not carry out parental responsibilities but rather that she did not do so.

Iowa


Juvenile defendant appealed lifetime special sentence of parole and lifetime sex offender registry 2,000-foot rule, arguing that sentence was cruel and unusual punishment for juvenile. State supreme court found sentence was not cruel and unusual because juvenile offender could petition for early discharge from both sentences, with discretion by parole board. Iowa case law already held such sentences were not excessively punitive and defendant failed to identify any injury to him by 2,000-foot rule.

Maine

In re Ashlyn L., 2017 WL 1739445 (Maine). TERMINATION OF PARENTAL RIGHTS, MENTAL HEALTH

Mother appealed termination of her parental rights to 13-month-old child, who lived in foster care with maternal grandparents and older sister since two days of age. Evidence was sufficient to show mother was unwilling or unable to protect child and circumstances were unlikely to change, could not take responsibility of child within reasonable time, and failed to make good faith effort to rehabilitate and
reunify with child. Mother had significant, untreated mental health issues and refused to get help. She rejected parenting advice, and parental coaching and therapy were discontinued due to her failure to cooperate or engage.

In re Daniel H., 2017 WL 1882608 (Maine). TERMINATION OF PARENTAL RIGHTS, FITNESS Father appealed termination of parental rights, arguing child welfare agency failed to provide referrals for all services. Evidence sufficiently showed agency made numerous mental health and substance abuse referrals but father failed to engage. Court also acknowledged compliance was only one factor to consider for termination and other factors (his violent history, unemployment, pending criminal charges limiting contact with child) outweighed agency’s failure to make all referrals.

In re Jesse B., 2017 WL 1900339 (Maine). TERMINATION PARENTAL RIGHTS, MEDICAL CARE Supreme court upheld termination of mother and father’s parental rights based on unfitness to address child’s medical conditions. Child had chronic, severe medical conditions including developmental delays, needed unusually high degree of care, and parents missed over half of child’s medical appointments. Parents used marijuana daily, had no intention to modify their behavior, and had not completed therapy or substance abuse treatment.

Nevada
A.J. v. Eighth Jud. Dist. Ct., 2017 WL 2399370 (Nev.). DELINQUENCY, SEXUAL ABUSE Juvenile was arrested for soliciting prostitution but was adjudicated delinquent for obstructing officer and violating probation. State supreme court vacated delinquency order and applied statute placing child who has engaged in prostitution or its solicitation under supervision of juvenile court without formal adjudication of delinquency. Arresting juvenile for prostitution triggers statute, so prosecutor cannot avoid its provisions by alleging fictitious conduct.

Matter of M.M.L., JR v. Nev. Dep’t. of Fam. Servs., 393 P.3d 1079 (Nev. 2017). TERMINATION OF PARENTAL RIGHTS, MENTAL INCAPACITY Mother, previously ruled incompetent due to schizoaffective bipolar disorder, appealed termination of parental rights on grounds court erred in holding termination hearing before she was ruled competent to stand in own defense. State supreme court found no statutory obligation to wait for mother to regain competence before proceeding, only that guardian ad litem (GAL) must be appointed for incompetent parties. GAL was appointed and trial court granted number of continuances before reluctantly proceeding.

New York
In re Nataylia B., 2017 WL 1842428 (N.Y. App. Div.). DEPENDENCY, CHILD WITNESSES In case alleging mother neglected daughter and derivatively neglected son, evidence indicated mother inflicted excessive corporal punishment on daughter, causing child to sustain bruises all over her body. Child’s out-of-court statements were sufficiently corroborated by agency case-worker and hospital staff’s observations of bruises on child, photographs of injuries, and medical records. Child’s repetition of same allegations did not provide corroboration for out-of-court statements, but consistency of child’s reported statements enhanced her credibility.

In re Nataylia C.B., 2017 WL 1822484 (N.Y. App. Div.). TERMINATION OF PARENTAL RIGHTS, LEGAL REPRESENTATION Incarcerated father who admitted to permanent neglect of child was not denied effective assistance of counsel in termination of parental rights proceeding. Father’s decision to admit to allegations of permanent neglect was matter of strategy, and counsel cannot be deemed ineffective merely because attorney counseled parent to admit allegations in petition to terminate parental rights.

People v. Flores-Extrada, 51 N.Y.S.3d 863 (Sup. Ct. 2017). ABUSE, SHAKEN BABY SYNDROME Defendant babysitter was indicted for reckless assault and endangerment of baby whose injuries were consistent with non-accidental trauma and rapid acceleration/deceleration. Defendant sought to preclude prosecution’s expert testimony on shaken baby syndrome/abusive head trauma (SBS/AHT), or alternatively for Frye hearing to determine whether such testimony remained generally accepted within scientific community. Trial court ruled issue whether scientific evidence of SBS/AHT was admissible as generally accepted as reliable was for jury and defendant could cross-examine prosecution witnesses and call her own experts.

Rhode Island
State v. Thibedau, 157 A.3d 1063 (R.I. 2017). ABUSE, WITNESSES Stepfather was convicted of child molestation. Victim’s aunt was not listed as witness in prosecution’s response to discovery and no summary of her testimony was provided, but trial court did not err in permitting her to testify. Because nondisclosure was unintentional, defendant had burden to demonstrate procedural prejudice, which he failed to meet. Defendant was given “ample information with which to prepare for cross-examination.” Also, victim’s testimony defendant sexually assaulted her over 100 times was admissible as other crimes evidence.

South Carolina
In re Justin B., 2017 WL 1717228 (S.C.). DELINQUENCY, SEX OFFENDER REGISTRATION Juvenile appealed trial court’s mandatory lifetime sex offender registration requirements with lifetime electronic monitoring for committing first-degree criminal sexual conduct with minor, challenging its unconstitutional. Appellate court found no error because requirement was not punitive measure, correlated with legislature’s purpose in Sex Offender Registry Act, and was therefore constitutional.

South Dakota
In re A.O., 2017 WL 2290151 (S.D.). TERMINATION OF PARENTAL RIGHTS, ICWA Trial court in dependency proceeding denied motions to transfer jurisdiction of case to Indian tribe and mother appealed. State supreme court found trial court was required by the Indian Child Welfare Act to conduct evidentiary hearing on Indian tribe’s petition to transfer dependency case to the tribe. Court was also required to consider all circumstances of case before determining whether petition was timely, and evidence and argument was necessary before determination could be made whether transfer was in child’s best interest.
from the Evan B. Donaldson Adoption Institute report Never Too Old: Achieving Permanency and Sustaining Connections for Older Youth in Foster Care was to increase efforts to recruit, support and utilize relatives by promoting kinship adoption and subsidized guardianship, and explore subsidized guardianship and adoption. However, the report also stressed the need to provide enhanced supports for relatives who foster or adopt as kin caregivers who typically have far lower incomes than other adoptive or foster parents. One study showed the value of mentoring relationships, a role often fulfilled by a close relative. A successful mentoring relationship was found to contribute to: socio-emotional development, problem-solving, and identity development. This was especially valuable to youth during vulnerable periods like transitions into and out of care.

Preserves children’s cultural identity and community connections. Kinship care also helps to preserve children’s cultural identity and relationship to their community. Children in kinship homes are more likely to stay connected to their extended family and maintain their cultures and customs. Overall, research shows that family connections are critical to healthy child development and a sense of belonging.

Children in kinship homes are more likely to stay connected to their extended family.

Kinship care allows for maintaining these critical family connections. The foster care system must consider and address the needs of kinship caregivers to help children achieve stability and permanency with families.

This CLP issue focuses on the role of kin and relatives as permanency resources for children in the child welfare system. The articles share practical information and best practices to guide child law practitioners when working on cases involving kinship issues.

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Endnotes
5. Research citations can be found in the following document: Generations United. Children Thrive in Grandfamilies, 2016. <www.grandfamilies.org>
7. Evan B. Donaldson Adoption Institute. Never Too Old: Achieving Permanency and Sustaining Connections for Older Youth in Foster Care, July 2011

Grandfamilies.org—the online resource for kinship care

Grandfamilies.org has relaunched. Visit this national legal resource in support of Grandfamilies within and outside the child welfare system.

The online resource provides:
- Resources, publications, and professional kinship network information
- Easy-to-use searchable database of kinship laws and legislation
- Analysis and comparison of kinship topics with practical implementation, advocacy ideas, and personal stories

Grandfamilies.org is a collaboration between the ABA Center on Children and the Law, Generations United, and Casey Family Programs

http://grandfamilies.org/
Creating a Kin-First Culture in Child Welfare

by Jennifer Miller

When children can’t live safely with their parents and must enter foster care, child welfare policy prioritizes placement with relatives or close family friends, also known as kinship foster care. Research confirms that children do best in kinship foster care and that family connections are critical to healthy child development and a sense of belonging. Kinship care also helps to preserve children’s cultural identity and relationship to their community.

Child welfare systems across the country are redoubling their efforts to identify and engage kin as foster parents. These efforts are influenced by several factors:

- Research repeatedly shows placing a child within their own family reduces the trauma of removal from a child’s home, is less likely to result in placement disruptions, and enhances prospects for finding a permanent family if the child cannot return home.
- There is growing national consensus that institutional care does not benefit children except in time-limited therapeutic settings to meet specific treatment needs.
- A shortage of foster parents exists in most communities.

Despite the strong value of kinship foster care, many child welfare systems face barriers to finding, approving and supporting kinship families and seek strategies to create a culture that truly values kin families. This article summarizes seven steps to create a kin-first culture—one in which child welfare stakeholders consistently promote kinship placement, help children in foster care maintain connections with their families, and tailor services and supports to the needs of kinship foster families. Lawyers and judges can play a meaningful role in creating a kin-first culture by promoting each of the steps in their daily practice, supporting agency leaders and staff striving to create kin-first cultures, and reflecting on ways they can help advance the seven steps. These seven steps are adapted from a consensus document by the ABA Center on Children and the Law, Generations United, and ChildFocus, drawing on the experiences of several jurisdictions on the forefront of creating child welfare cultures that truly value kin.

Step 1: Lead with a kin-first philosophy.

Leadership is key to creating a kin-first culture. Child welfare leaders, including judges and attorneys, can promote the belief that children belong with family. By using their position and authority, leaders can send a message that placement with kin should always be the first priority.

* In Connecticut, the Commissioner of the Department of Children and Families issued an all staff memo at the beginning of her tenure laying out her expectations that all children be placed with kin whenever possible, and that placement in non-kin care should be the exception. The Commissioner also set a target for all regions to aspire to: 40% of overall placements with kin.

To fully live out a kin-first philosophy, leaders must align their resources, staffing, tools and training to reflect the underlying values of a kin-first culture. For judges and attorneys, this means consistently asking about and reinforcing the importance of family connections when cases are heard in court and in representation of children and parents. At the agency level, a kin-first philosophy can be supported by staffing teams to identify kinship families when children first enter care, assess kin families for their capacity to provide safe and nurturing care for children, and support kinship families who step in, often with no preparation for their caregiving role. It also means fully advocating for resources to support kin caregivers through training, tailored and accessible services, case management, and more.

Finally, leaders can demand that everyone is held accountable for living out the kin-first philosophy. This requires judges to hold agencies accountable for searching for and engaging kin, and for agencies to understand the roadblocks to kinship placements. It also means holding all levels of staff accountable for playing their part in the kin-first culture.

Step 2: Develop written policies and protocols that reflect equity for children living with kin and recognize their unique circumstances.

Children in kinship foster care deserve the same attention as children placed with non-kin. Yet too often, child welfare policy and protocol is developed with non-kin foster families in mind and fails to recognize the unique experiences of kin families. Foster families who are not related to the child make a conscious decision to become foster parents and prepare for having children placed in their homes. Kin families, on the other hand, often step in with little preparation before having the child placed in their home and face
a different emotional connection to the situation given their relationship to the child.

Child welfare systems must have a unique perspective when working with kin families and adopt policies that reflect an understanding of the different ways kin and non-kin become involved in the process. Kin-first systems take time to review their policies and practices to ensure they clearly outline how relative caregivers will be notified and engaged when children first enter care, the issues caseworkers should be attuned to in assessing kin families, and how all stakeholders, including the legal community, can advocate for the full range of support kin families need to meet the children’s needs.

While the experiences of kin families may differ from those of non-kin, the supports they need to care for children who have experienced trauma are the same. This means kin families should receive the same financial supports and services to support the children as all other foster families. Kin families may need extra support since many step in without warning and may have immediate needs, such as filling out required paperwork, navigating the licensing process, obtaining car seats and cribs, etc.

Policies that are unique for kin first-systems include:

- Diligent search—steps to identify, notify, and engage kin throughout the child welfare continuum.
- Emergency placement protocols—steps to make the first placement a kin placement when children face immediate removal from parents.
- Licensing policies—recognizing that some nonsafety licensing standards for foster parents may need to be more flexible for kinship families.
- Training—providing initial and ongoing education for kin that recognizes their existing connection to the child and family.
- Permanency options—recognizing that legal options for kin may differ than those for non-kin.

- Full disclosure—ensuring kin families understand the full range of legal options available to them.
- Financial supports—ensuring kin families have the same financial supports as other foster families, including permanency supports.

*Several states have aligned their policies with their kinship philosophy as part of broader efforts to increase the percentage of children first placed with kin. The District of Columbia, Tennessee, and Westmoreland County, PA all revised policies to reflect a kin-first philosophy. These efforts ensure staff are clear on the expectations for their contributions to the kin-first culture and policies guide decisions when working with kinship families. These policies also help ensure the philosophy of kinship care doesn’t compromise the overall focus on safety for all children and youth in foster care.

3. Identify and engage kin for children at every step.

Kin-first states begin identifying a child’s extended family network from the moment the child comes to the attention of the child welfare system. When agencies first begin working with families, kin can help prevent removing the child from his or her family by playing a supportive role with parents in crisis. By identifying and engaging supportive family networks early in a family’s involvement with the child welfare system, child welfare stakeholders can better assess viable placement options if removal becomes necessary later.

*Pennsylvania state law requires family finding, a strategy to locate and engage kin for children at risk of or already in foster care. Under Pennsylvania law, the county must begin family finding in every case at the time of referral to the child welfare agency, and the court must inquire at each hearing whether the agency has complied with family-finding requirements.

Technology as a tool to help child welfare agencies locate kin is promising, particularly for older youth who have been in foster care for a long time and may lack strong family connections. Yet strategies to locate and engage family connections should always begin by engaging parents and children to identify their own family networks. Parents may hesitate initially to name family members who can step in, but may be more supportive over time when they understand the alternative is having the child live with a stranger.

Traditionally, child welfare systems have focused on family networks on the maternal side, but there is strong consensus in the field about the importance of fully engaging fathers and paternal relatives so children have every opportunity to connect to both sides of their family tree. Some child welfare agencies find using genograms with family members can help identify maternal and paternal family connections.

While placement with kin is a high priority, not all kin are in a position to have children placed in their home. They can, however, support children wherever they are placed by providing transportation to visitation, visiting with the children, and helping parents make progress on their treatment plans. Kin can also stay connected to children while in residential treatment programs and support families once children return home.

*Agencies that routinely hold family team meetings and encourage parents to bring family and community supports create environments that allow for stronger engagement of kin connections. In Hawaii, Epic O’Hana is a nonprofit organization that uses O’Hana meetings to help children stay safe and connected to family. O’Hana meetings are facilitated by agency staff and grounded
in the philosophy about the importance of family connections for children involved in the child welfare system.

**Step 4: Create a sense of urgency for making the first placement a kin placement**

Research shows kinship foster care is more stable than non-kin care and can help prevent disruptions that harm a child’s well-being. Kin-first systems invest necessary resources into making the child’s first placement a kin placement whenever possible. First placement with kin is key to reducing the trauma of being placed with someone the child doesn’t know, and it also helps ensure non-kin foster parents are available for children who don’t have viable extended family options for placement.

Unfortunately, child welfare systems are not always structured in a way that makes first placement with kin possible. Strategies that help create this sense of urgency include:

- **Kinship firewall**—requiring a supervisor, program manager, or director to approve all non-kin placements. Firewalls help ensure caseworkers do not bypass considering family connections and notifying and engaging all known family members before placing children outside their family network. A firewall makes it harder, not easier, to place with non-kin foster parents. Judges and attorneys can also ask whether family connections have been fully explored when presented with children and youth in non-kin placements.

*Tennessee developed a Kinship Exception Request form that case managers must complete and submit for approval before making a non-kin placement. Several regions have kinship coordinators responsible for ensuring all efforts are made to locate kin and support caseworkers in their efforts to engage and assess prospective kin foster parents.

- **Teamwork across units**—in many jurisdictions, child protective workers, who are responsible for investigating reports of abuse and neglect and, when necessary, removing children from their parents, must also complete all steps to identify and assess kinship options. Emergency placement with kin is labor-intensive, and child protection staff need support from others in the child welfare agency who can search for family connections, complete criminal and child protection background checks, help child protection workers make quality decisions about placement, make an initial visit to the family to assess for safety and suitability, and more.

- **Initial home checks**—initial checks of the kinship home can be conducted by staff who have strong skills engaging and assess-
ing kinship families for safety, understand licensing requirements, and can inform kinship families of their options and the steps moving forward. Too often, child protection staff are overwhelmed with the investigation and removal and may not have the time or background to do the initial engagement with kin.

- **Family team meetings**—family team meetings held before a removal occurs are ideal times to bring in extended family networks who can help parents develop a plan for safe care for a child at imminent risk of removal. Those same family members may be viable placement options if a plan for keeping the child at home can’t be developed.

- **Removing barriers to timely background checks**—many jurisdictions experience serious lag times getting the results of background checks to determine suitability of a kinship placement. Local leaders should work with law enforcement to remove barriers to timely access to criminal background checks and ensure results of child protection background checks are available to inform placement decisions. Delays in receiving fingerprinting results can also hamper placement decisions. Several agencies have purchased Live Scan technology to make fingerprinting easier and faster for prospective foster parents.

### 5. Make Licensing a Priority

Most state licensing standards for foster parents were developed years ago, before the child welfare field prioritized kinship care as the best option for children in foster care. As a result, they were created to ensure safety for children living with someone they did not know, making many licensing standards irrelevant for children living with a grandparent, aunt, uncle, or close family friend. Most licensing standards have also become outdated in general and challenging for the average foster parent to meet. A review of state licensing standards by Generations United and the ABA Center on Children and the Law found many foster parent licensing standards, such as income requirements, age limitations, and space considerations discriminate against many of the families who are most likely to step forward to care for children in custody, including kinship caregivers.

The barriers to licensing kin as foster parents has resulted in preventing many kinship families caring for children from becoming licensed. Families that haven’t been licensed are not eligible for foster parent subsidies and lack some protections that licensed families enjoy. It also presents a risk to the state if something happens to the child and the state cannot prove it has done everything to verify the kin foster parent has the capacity to care for the child.

States can overcome many licensing barriers by establishing clear guidelines for requesting and granting waivers for nonsafety licensing standards. Waivers are allowable under federal law and can be granted when waiving the standard does not compromise safety. Examples include training requirements, space requirements, and requirements for the number of children sleeping in a room. Caseworkers can also educate kin on the option to become licensed and the benefits to doing so. Judges can also probe further when kinship families are not licensed and promote flexibility in the licensing process when safety is not a factor.

*A District of Columbia policy called “Temporary Licensing of Foster Home for Kin” includes a “List of Potentially Waivable Requirements.” Caseworkers must complete a Request for Waiver of Licensing Requirements for Temporary Licensing in DC explaining why the waiver will not impact safety for the child. Connecticut also requires a placement waiver request form for every waiver granted to kin and non-kin foster parents. The form provides guidance on which entities must approve the waiver before it can be granted, with criminal and child protection background waivers requiring a higher level of approval than other types of waivers.*

When licensing kinship caregivers as foster parents, caseworkers should examine the suitability of each caregiver in relation to the individual child, not just whether the caregiver can be licensed according to state or tribal licensing standards. Ensuring kin caregivers have the capacity to provide safe, nurturing care to a specific child in custody is not always consistent with what is needed to pass the licensing process, especially when the caregiver already knows the child.

### 6. Support permanent families for children

The ultimate goal for children in foster care is to safely return home to their parents. Kin should receive encouragement to support the goal of a safe return home, but be prepared to consider providing a permanent home if reunification isn’t possible. Kin-first child welfare systems take the time to understand the unique relationships and dynamics of each family and support problem solving centered on the best possible decision about the most appropriate permanent families for children.

Strategies that promote permanency for children in kinship include:

- Ensuring a full range of permanency options, including reunification, subsidized adoption, subsidized guardianship, and tribal customary adoption. Guardianship and tribal customary adoption are options that are important to kin families that do not want to terminate parental rights, which is required for adoption.

- When children cannot return
home, clearly explaining the options for legal permanence and helping families choose the option that works best for them.

- Providing post-reunification, adoption, and guardianship services to ensure families have help to prevent disruptions as children and youth continue to deal with the trauma associated with the initial removal from their home and other childhood traumas.

Several states use a chart of permanency options to help families understand the legal options available and what each option means from a financial and legal perspective. These charts help ensure caseworkers are providing accurate information about subsidies, medical assistance, access to government benefits and community supports, the legal process for establishing permanency, and the nature of the legal relationship between the children and their kin. Permanency charts also help child welfare systems clearly delineate for families the assistance available for relatives with a blood relationship as compared to those not related by blood, marriage or, adoption. Judges and attorneys also play a central role educating family members about the permanency options available and what they mean for the entire kinship triad.

7. Create a Strong Community Network to Support Kin Families

Community-based organizations, other public systems, and the legal community are often a child welfare agency’s best allies in achieving positive outcomes for children in kinship care. Community partnerships can ensure kin access tailored services and supports they need for the child, and can promote culturally responsive services that honor each family’s unique ethnic and cultural heritage. It is often easier for families to build trust with organizations in the community than with public child welfare agencies that have a long history of mistrust.

Legal systems are also critical, and courts, attorneys, and court-appointed special advocates (CASAs) can reinforce the importance of kinship placement and family connections for children in foster care. Judges can routinely ask caseworkers what steps they have taken to identify extended family networks and ask older youth if there are family connections that are important to them. Attorneys and CASAs can also advocate for more consistent engagement of kin throughout a child’s involvement with the child welfare system.

Strong community networks also engage other public systems to build awareness about the needs of children in kinship care. Schools, early childhood, economic security, housing and aging services are just some public systems that should be aware of the role of kinship foster parents and help them access services and supports for the children.

*Washington State has a strong infrastructure of support for kinship families at the state and local levels. A legislatively mandated kinship care oversight committee coordinates resources across departments, while a kinship workgroup of public agency staff works to remove barriers to supporting kin. The state’s navigator program also helps caregivers navigate services and supports at the local level.

Creating a kin-first culture doesn’t happen overnight. It requires constant attention, oversight, and refinement to ensure all staff honor and value family connection for children in foster care and live that value in their engagement with families every day. Kin-first systems must also balance the importance of helping children stay connected to kin with the unfortunate reality that not all kin connections are appropriate placements, and that first and foremost, the mission of the child welfare agency is ensuring child safety. The child welfare field has gradually come to understand that even when children can’t live with their extended families, it is critical to their well-being that they remain connected and receive support to navigate and maintain family relationships.

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Endnotes


2. Ibid.

3. Ibid.

Ensuring quality caregiving for children; and

Forging strong relationships between agencies and foster families; and

Finding and keeping more amazing caregivers.

What Kinship Foster Families Need to Help Children Thrive
To accomplish these goals, reforms must be grounded first and foremost in what children need. Based on this principle, robust kinship foster parent-agency partnerships are already coming alive in many communities. These partnerships will require a fundamental shift in the culture of child welfare agencies to elevate the role of foster parents. This is critical for kinship care families, who have traditionally been denied the same financial and other related supports as their nonrelative counterparts.

Based on interviews the Casey Foundation conducted over six months in 2016, the following considerations were identified by kinship foster families as fundamental to feeling supported by child welfare systems and providing the best possible care.

In many states, current licensing requirements, such as those addressing square footage and unnecessary educational requirements (e.g., requiring a high school diploma), are aimed almost exclusively at nonrelative foster care placements. State child welfare agencies must carefully review and amend their current standards to eliminate unnecessary barriers that keep quality and caring relatives from becoming licensed foster families.
Developing a Strong Support Network
As is true for all foster parents, kinship foster families make it clear that to adequately care for their children, they need a complete range of supports, including dedicated support staff, peer support from other kinship families, grief and loss counseling, help in making decisions about adoption and guardianship, and respite care.

Ensuring Adequate Financial and Other Resources to Meet Children’s Needs
Traditionally, relative caregivers have not received the same financial and other supports as their nonrelated foster family peers. Kin foster parents deserve access to equitable financial support, basic services (such as mental health counseling), funding for unexpected expenses, information about tax benefits and access to liability insurance, among other resources and help.

Engaging Kinship Foster Parents as Full Agency Partners
As daily decision makers for the children in their care, kinship foster parents should be treated as the child welfare agency’s most valued frontline practitioners. Agencies must expand their efforts to include relatives in critical decisions by helping ensure their voices are heard in the children’s court proceedings, engaging foster families in shaping agency policies and making sure kinship foster family needs are reflected in all aspects of agency leadership and funding decisions.

Improving the Recruitment and Retention of Kinship Foster Families
Once relatives become licensed foster families, they still need wraparound services to support and sustain them over the long-term. Successful approaches include providing opportunities for caregivers to mentor other kinship families and acknowledging and celebrating foster family roles with appreciation events.

How Lawyers Can Support Kinship Foster Families
Lawyers and judges who handle cases involving children and families in the child welfare system can benefit from understanding the needs and challenges of relatives who care for children. Legal advocates can support efforts to recruit and retain quality relative caregivers to promote permanency for children and families. They can also advocate for relative caregivers and the children in their care, ensuring the agency has provided them all benefits and supports to which they are entitled.

Questions to ask at case planning meetings and court hearings include:
- Has the agency made efforts to identify, communicate with, and engage relatives early in the process?
- Has the agency clearly informed relatives of the pros and cons of different caregiving choices to allow families to make the best possible decisions?
- Does training provided to kin caregivers address their unique circumstances and needs?
- Do the agency’s foster care licensing requirements prevent relative caregivers from stepping up to care for children? What efforts is the agency making to address the unique circumstances of kin caregivers in foster care licensing requirements?
- What supports does the agency provide for relative caregivers to ensure a positive caregiving experience (dedicated support staff, peer support from other kinship families, grief and loss counseling)?
- What financial and other resources does the relative receive to adequately meet the child’s needs?
- How does the agency engage relative caregivers as partners and ensure their voices are heard in judicial and policy decisions that affect kin?

To support kinship foster families, child welfare agencies must follow the lead of several emerging efforts across the country to engage caregivers as full partners in a child’s well-being and future success. One example is the SOS Project (Securing our Stability) in Adams County, PA. This initiative connects a clinician to every foster family who conducts assessments with the child and the foster family to identify challenges and stressors, and prevent disruptions in the placement by fully engaging the foster parent as a partner. Interventions are designed specifically around the challenges identified and are provided in a manner to stabilize foster placements by building adult capacity, thus improving child well-being.

While there is no universal recipe for success, the Casey Foundation hopes the key ingredients identified by kin families will help agencies and communities find the best possible path forward to support children and their families.

Parts of this article were excerpted from A Movement to Transform Foster Parenting (The Annie E. Casey Foundation, 2016) available at http://www.aecf.org/resources/a-movement-to-transform-foster-parenting.

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Providing relative caregivers the same financial benefits and supports as nonrelative foster caregivers is the focus of ongoing federal litigation. The litigation addresses the equitable treatment of relatives who care for children in the child welfare system. Most children in foster care are placed with nonrelatives under licensing standards and policies developed to ensure the safety of nonrelated caregivers (see sidebar on the Model Foster Family Home Licensing Standards).

Relatives often have problems qualifying for foster home licenses for reasons such as limited physical space within the home or inadequate sleeping space. Thus, many states will place the child in the’s home but not pay the relative. For the first time, a federal court is examining whether it is legal to distinguish payment of a home based solely on the relationship of the caregiver to the child.

Kentucky Court Action
In 2013, two children were placed by a Kentucky family court in the home of their great aunt. The children were transferred from a nonrelative foster home to the great aunt’s care. However, the aunt was not given the same financial benefits, supports, and services to care for the children as the nonrelative caregivers.

The aunt brought an action in state court against the Secretary for Kentucky’s Cabinet for Health and Family Services. She alleged (1) the federal Adoption Assistance and Child Welfare Act of 1980 (CWA) required the state to provide maintenance payments to her on behalf of the two children, and (2) failure to do so violated the Fourteenth Amendment Equal Protection and Due Process Clauses.

Federal Court Action
The case was removed from state court to the District Court for the Eastern District of Kentucky. The Secretary moved for summary judgment, arguing that CWA does not give plaintiffs a private right of enforcement under § 1983 and that the distinction between relative and nonrelative caregivers has a rational basis. The district court granted the motion and the plaintiffs appealed.

Enforceable Right under CWA
The Sixth Circuit, in D.O. v. Glisson, reversed and remanded. The Sixth Circuit held that CWA does give foster care providers a privately enforceable right under § 1983. The court reasoned that (1) the Act uses mandatory language and focuses on individual recipients, thereby evidencing congressional intent to confer a benefit on plaintiffs; (2) it contains sufficiently clear legal standards that courts can apply without making political judgments; and (3) it unambiguously imposes a binding obligation on states. The court further reasoned that Congress neither explicitly nor implicitly foreclosed enforcement of the right to maintenance payments.

Legality of Relative Caregiver Distinction
The Sixth Circuit also addressed whether a relative caregiver is entitled to a § 1983 right under the CWA. The Sixth Circuit held that under the meaning of the CWA the great aunt provided the plaintiff children an approved foster family home, and that caregiver categorical distinctions based on the relationship to the child were impermissible under federal law.

Before placement with their aunt, Kentucky’s Cabinet for Health and Family Services (the agency) conducted a standard home evaluation and criminal background check. Plaintiffs argued that because the agency took those measures before placing the children with their aunt, the aunt was considered an “approved foster care provider” under CWA. The court held that “[t]o the extent the Cabinet’s failure to make maintenance payments turns on the distinction between relative and nonrelative foster care providers, it plainly violates federal law.” The court reasoned that CWA contemplates payment for two categories of foster families:

1. Licensed foster families—includes those (usually nonrelative) caregivers that satisfy all state licensing standards, and
2. Approved foster families—includes relative caregivers approved through a modified process that allows states to waive nonsafety standards case-by-case for children in relative foster family homes.

The Sixth Circuit concluded the aunt is entitled to foster payments even though she was not fully licensed because of the safety assessment conducted before placement. The Sixth Circuit remanded to the district court to determine whether Kentucky’s Cabinet for Health and Family Services maintains responsibility for the children’s placement and care. If so, then the district court would need to award foster care maintenance payments to the aunt.

Eighth Circuit Case
In contrast to the Sixth Circuit’s
that favored finding an individual right
Circuit gave greater weight to the in
adopting a narrower focus, the Sixth
sections should be interpreted within
largely rejects the argument that the
language within each provision and
opinion gives more attention to the
act grants caregivers a right.
it easier to dismiss the claim that the
caregivers within the CW A and makes
minimizes any reference to individual
funds. This framing of the analysis
meet to qualify for federal matching
requirements states must
Clause legislation, that it focuses on
federalism shows the court’s reluctance to
find a federal right enforceable against
a state actor under § 1983, absent a
clear congressional articulation of
such a possibility. The court felt a less
stringent application of the Blessing
test would amount to an unconstitu-
tional infringement on states’ rights by
federal courts without first providing
the states sufficient notice of potential
liability. The Sixth Circuit did not
mention federalism principles.

Federalism principles
First, the Eighth Circuit invoked federa-
lism principles. The reliance on federa-
lism shows the court’s reluctance to
find a federal right enforceable against
a state actor under § 1983, absent a
clear congressional articulation of
such a possibility. The court felt a less
stringent application of the Blessing
test would amount to an unconstitu-
tional infringement on states’ rights by
federal courts without first providing
the states sufficient notice of potential
liability. The Sixth Circuit did not
mention federalism principles.

Purpose of CWA
Second, the Eighth Circuit relied ex-
tensively on the purposes of CWA as
a whole to inform its interpretation of
the specific sections alleged to give
rise to a § 1983 private right of en-
forcement. The Eighth Circuit referred
often to the fact that CWA is Spending
Clause legislation, that it focuses on
states as the subject, and that it sets
minimum requirements states must
meet to qualify for federal matching
funds. This framing of the analysis
minimizes any reference to individual
caregivers within the CWA and makes
it easier to dismiss the claim that the
act grants caregivers a right.

Conversely, the Sixth Circuit
opinion gives more attention to the
language within each provision and
largely rejects the argument that the
sections should be interpreted within
the context of the overall Act. By
adopting a narrower focus, the Sixth
Circuit gave greater weight to the in-
dividual caregivers and other language
that favored finding an individual right
enforceable under § 1983.

Model Foster Family Home Licensing Standards

Until recently, the federal requirement under the Social Security Act, 42
U.S.C. § 671(a)(10)(A), that foster home licensing standards be “reason-
ably in accord with recommended standards of national organizations” was
difficult to achieve as no such standards existed. In 2014, the ABA Center
on Children and the Law, Generations United, the National Association
for Regulatory Administration (NARA) and the Annie E. Casey Founda-
tion, created the first set of comprehensive Model Foster Family Home
or. The standards help ensure children in foster care are safe and establish
a reasonable, common-sense path to enable more relatives and nonrelated
caregivers to become licensed foster parents. The partners are working to
encourage states to assess and possibly align their own family foster
home licensing standards with the Model Standards.

Gonzaga Case
Third, the Sixth and Eighth Circuits
cite Gonzaga Univ. v. Doe, to support
their conclusions. However, the Eighth
Circuit relied less on the specific facts
of Gonzaga and more on the factors
the court applied in its reasoning.
Whereas the Sixth Circuit relied more
heavily on the facts of Gonzaga and
distinguished them from the facts of
D.O.

Conclusion
The District Court for the Eastern
District of Kentucky has not heard this
case and Kentucky is considering fil-
ing a petition for writ of certiorari to
the U.S. Supreme Court. The impact
of this case may be far-reaching for
thousands of unpaid kinship caregiv-
ers. To have a U.S. Supreme Court rul-
ing that kinship caregivers are entitled
to this benefit and that they cannot
be treated differently based on their
previous relationship to the child is
significant.

About half of the states currently
do not allow unlicensed caregivers to
care for children in their custody, but
states that allow this practice would have to pay these caregivers under the
ruling. There are concerns that states
will respond by diverting children to
the care of kin outside the child wel-
fare system or not place children with
kin at all. We will have to wait and see
what the court rules.

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Endnotes
1. 847 F.3d 374 (6th Cir. 2017).
3. Ibid., 382-383.
4. Ibid., 376.
5. 712 F.3d 1190 (8th Cir. 2013).
Educational Rights and Privacy Act does
nenot grant students a privacy right in their
educational records).
Promising Practices When Working with Immigrant Kinship Caregivers
By Elizabeth Christy and Cristina Ritchie Cooper

Relatives and kin of children often play a critical role when a family is involved in a child welfare case, whether as a placement resource for the child, supervising visitation, or otherwise supporting the child and parent. As placement resources, relatives can provide a setting familiar to a child experiencing the trauma or disruption of removal from the home and can preserve existing positive relationships with the child (and, ideally, the parent).

Additionally, relative caregivers may create stability and comfort for the child by maintaining shared cultural practices and speaking the child’s primary language. Immigrant relatives, in particular, can support this cultural continuity for children, in addition to other aspects of a safe and stable placement. But immigrant caregivers without legal status in the U.S. —that is, “undocumented” immigrants—face unique challenges to caring for children who have been removed from their parents’ care.

These challenges may impact many families. In 2015, 30% of children in foster care were placed in relative foster homes. That same year, almost 18 million children, more than a quarter of the demographic, had at least one foreign-born parent. While data on the number of immigrant children in foster care is limited, it is clear that a substantial portion of the population may be impacted by laws and policies that directly or indirectly affect immigrant caregivers’ ability to participate with the child welfare system.

Attorneys, caseworkers, and other advocates can help overcome these obstacles and eliminate barriers. In addition to discussing the legal implications of immigration status on foster placements, this article provides promising practices and other tools for those who work closely with immigrant caregivers in the child welfare system.

Placing Children with Immigrant Families
Both relative and nonrelative foster parents seeking to care for children in the custody of child welfare agencies must meet eligibility requirements to become licensed providers. While federal law provides some guidance, licensing standards are largely determined by state law, and thus, may vary significantly across jurisdictions.

Guided by federal law, most states prioritize placing foster children with relatives or fictive kin over nonrelatives. To facilitate these placements, most of these states offer a modified approval process for kinship caregivers, such as unlicensed provider options, or waivers of nonsafety related licensing standards. However, in many cases, failure to obtain full licensure may disadvantage caregivers by, for example, precluding receipt of full foster care maintenance payments. Understanding how federal and state laws regulate foster placements with immigrant caregivers helps guide advocacy when working with immigrant caregivers.

Federal Law and Policy Relating to Immigrant Caregivers
Federal law recognizes the critical role relatives and kin can play in child welfare cases, and encourages them to participate. For example, under the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act), child welfare agencies that receive federal funding must notify all adult relatives when a child is removed from care of the parent within 30 days of the removal, exercising due diligence to identify and locate all adult relatives of the child. The law does not provide an exception to this requirement for relatives who live outside the United States or who are otherwise not U.S. citizens.

In addition to notification requirements, the Fostering Connections Act also prioritizes placing children with relative caregivers. This priority advances multiple important policies, including increasing stability and permanency for children. Nothing in federal law precludes placing foster children with relatives who are not U.S. citizens, regardless of whether they have a documented or undocumented immigration status. And undocumented caregivers can receive federally-reimbursable foster care maintenance payments if the child is eligible under Title IV-E of the Social Security Act.

State Foster Care Licensing Standards
Although federal law does not preclude placing foster children with noncitizen kinship caregivers, some states have implemented standards that create direct or indirect barriers to licensure for immigrant relatives.

Explicit Citizenship or Immigration Foster Licensing Requirements
Twenty states have explicit foster licensing standards that require U.S. citizenship or some form of documented immigration status. The phrasing, scope, and context of these requirements varies from state to state. Most of these states require either U.S. citizenship or any form of documented immigration status. Arizona accepts all applicants who are “lawfully present,” but it requires that those with
“temporary authorization to be present in the United States . . . provide documentation indicating that the authorization is valid for a minimum of one year or that the applicant has already taken steps to obtain authorization to remain for at least one year.” Massachusetts narrows its standard to include only U.S. citizens or immigrants with “legal permanent resident status, asylum, refugee, or other indefinite legal status.” Georgia, Maryland, New Mexico, North Carolina, and Tennessee require either citizenship or lawful permanent resident status (i.e., a “green card”), which is a specific form of immigration status.

**Other Potential Barriers to Full Foster Licensure**
In some states, while there are no explicit citizenship and immigration status licensing standards, there are other requirements that may create challenges for immigrant kinship caregivers, especially those with undocumented status.

**Background checks.** All states require that caregivers, whether licensed or unlicensed, undergo background checks. In addition to concerns by undocumented immigrants about interacting with law enforcement and other government entities, background checks typically require providing some form of government-issued identification, such as a state-issued driver’s license or a social security number. For undocumented immigrants, these accepted forms of identification are not always available. At least two states have established official methods of processing background checks that accommodate undocumented immigrants. However, most states are silent on the issue.

Another element of background checks that may pose challenges to undocumented potential caregivers is fingerprinting. Though fingerprinting for foster care placement purposes was rarely an obstacle to otherwise eligible caregivers in recent years, the Trump Administration’s interest in information-sharing among agencies for purposes of immigration enforcement heightens the risk that identifying information about undocumented kinship caregivers could reach the Department of Homeland Security.

**Language, residency, home study, and education requirements.** Other foster licensing standards that may create barriers to or prevent licensing immigrant kinship caregivers include: (1) specific language or communication requirements; (2) state residency requirements; (3) requests for immigration-related information on foster care licensing applications or during home studies; and (4) education-related standards that may require academic credentials obtained in the United States. While none of these standards are specific to immigrant caregivers, these regulations and policies may create a chilling effect or extra hurdles for immigrant caregivers. These standards may also indicate that, in practice, the state does not license undocumented caregivers.

**Engaging Immigrant Families**
Aside from specific legal requirements when placing foster children with their immigrant relatives or kin, there are some promising practices that child welfare agencies, courts, and others who work with caregivers may adopt. When implemented, these policies and practices may increase immigrant relative involvement with the child welfare agency and the number of kinship placements. Stakeholders should be aware of the following recommended practices and opportunities for advocacy.

**Making Child Welfare Agencies More Accessible**
Child welfare agencies and other state entities that provide services to immigrant caregivers should take steps to ensure accessibility for non-U.S. citizens. Accessibility in this context includes both access to the standard information and services available to all foster families and specific services for immigrant families. In a 2015 Information Memorandum, the U.S. Department of Health and Human Services’ (HHS) Children’s Bureau provides, among other guidance, a list of best practices for child welfare agencies to adopt. While the Information Memorandum focuses on working with immigrant parents, many of the suggestions can also improve collaboration with relative caregivers. The suggestions include:

- Use partnerships with immigrant-serving organizations to recruit foster and kinship care providers, remove systemic barriers that prevent immigrant relatives from becoming kinship caregivers, and promote foster family resources;
- Translate written materials and use interpreters;
- Use culturally competent assessments, engagement, and intervention;
- Engage community/ethnic-based organizations to coordinate services for families and children that cannot be met through usual channels; and
- Train caseworkers on challenges in immigration and acculturation, culturally and linguistically appropriate services, how immigration status affects families, children and youth, access to services and benefits, and the complexities of immigration enforcement.

**Using Foreign Consulates to Assist Agencies and Courts**
State and local child welfare agencies and courts can also improve engagement with immigrant families by partnering with foreign consulates. Generally, a country’s consulate offers help to citizens of that country who are traveling or living in the U.S. when those individuals need help with the U.S. legal system (and in other circumstances). Many states and local jurisdictions have entered into Memoranda of Understanding (MOUs) with foreign consulates (most commonly with that of Mexico). The MOUs are...
formal agreements designed to promote cooperation between the child welfare agency and consulate on areas including locating and providing notice to parents, engaging parents in their dependency case, facilitating service delivery, and more. Many MOUs specify the responsibilities and roles of the consulate and child welfare agency (or court, in a handful of MOUs) in a dependency matter.\(^{17}\) Such agreements can improve compliance with the 1963 Vienna Convention on Consular Relations, which requires the United States to notify a consulate when a citizen of a participating nation is in the government’s custody, including children in child welfare agency custody. Additionally, they can establish cooperation in other aspects of child welfare cases, such as locating potential kinship caregivers in the U.S. or abroad, bridging language and other communication barriers, conducting home studies for kinship placements outside the United States, and satisfying the federal requirement to notify foster children’s relatives.

One study by the HHS Office of the Assistant Secretary for Planning and Evaluation surveyed 11 Memoranda of Understanding (MOUs) between child welfare agencies with foreign consulates.\(^ {18}\) The participating state agencies reported that cases in which the consulates are involved from early in the process consistently run more smoothly and result in better representation and outcomes for families.\(^ {19}\) While negotiating and implementing these agreements required additional time and resources, the agencies interviewed said that once the MOUs were institutionalized, they required less state involvement.\(^ {20}\)

**Understand the Concerns of Immigrant Caregivers**

Immigrant families involved in the child welfare system may have distinct concerns. Immigrants with legal status in the U.S. may be reluctant to proactively engage with federal, state, or local government entities based on past harmful experiences and mistrust of governments in their native countries. Undocumented immigrants may hesitate to interact with government agencies and the courts for fear of detention, deportation, or discrimination. As a result of the federal government’s increased focus on immigration enforcement and renewed efforts to engage state and local law enforcement more in those efforts, noncitizens may also be experiencing increased anxiety and uncertainty. Additionally, states and local jurisdictions, including social services agencies, may feel pressure either to take a more aggressive approach towards certain immigrants or to share identifying information among agencies as a result of the federal government’s push for greater collaboration from states on immigration enforcement. For these and many reasons, immigrant relatives may hesitate to come forward to work with any government agency, including a child welfare agency or court.

Attorneys, social workers, and others should seek to understand the concerns of immigrant caregivers with whom they work. As a first step, advocates should determine the immigration status of all kinship care providers. When possible, it is best if this inquiry is made by someone who can maintain confidentiality or assure the caregiver that no action will be taken to involve federal immigration officials. After determining immigration status, advocates should discuss the caregiver’s immigration-related concerns, then take proactive measures to address them. At all times, advocates should be frank with immigrant caregivers about possible risks and other challenges they may face when interacting with the foster care system. This conversation should be ongoing and revisited regularly.

**Find and Use Alternative Paths to Licensure**

Despite direct and indirect barriers to full foster licensure, there are measures immigrant kinship caregivers may take to become fully licensed:

- **Kin exemptions.** Of the 20 states with explicit immigration requirements, Massachusetts and Oregon explicitly exempt kin from the immigration status licensing standard, thereby allowing eligible undocumented relatives to obtain full licensure.\(^ {21}\) Other states could include similar kin exemptions in their laws or policies.

- **Waivers and variances.** In states that have immigration-related standards and those with other requirements that create indirect barriers to full licensure for immigrant caregivers, providers may take advantage of waiver and variance provisions, where available. Federal law permits waiver of non-safety related standards for kinship caregivers,\(^ {22}\) and most states have adopted procedures for granting waivers or variances. Therefore, while requirements such as those for background checks generally cannot be waived, there are strong arguments that immigration and related standards are not safety-related and therefore may be set aside case-by-case.

- **Alternative sources of information to evaluate caregivers.** When standard checks through social security numbers or state-issued forms of identification are not available, agencies can explore other sources of background information. For example, caseworkers can investigate the caregiver’s employment history (including checking employment and other references), community engagement, and length of residence in the local area and state; assess the safety and stability of the home; consider the relationship between the caregiver and child and the child’s family; and explore any concerns voiced about the caregiver taking the child out of the U.S. or about other issues.

- **Alternative approval procedures.** Alternatively, immigrant caregivers and advocates may pursue alternative approval procedures, such as those designed specifically
Court orders for placement with specific immigrant caregiver. Attorneys for the child, parent, or even agency have the option of advocating for placement with a specific kinship caregiver in court and seeking an order to that effect from the judge presiding over the dependency case. The attorney can provide appropriate evidence of, for example, the child’s relationship with the caregiver, the caregiver’s length of time and involvement in the community, details about employment and household stability, and more.

In states where the foster licensing standards are silent about the impact of immigration status, relative caregivers and those who work with them should first identify any unofficial, practice-based barriers to full licensure for immigrants. These may directly or indirectly relate to immigration status. For example, an indirect impact may come from background check procedures that request U.S. government-issued IDs or social security numbers. In such cases, undocumented relatives and advocates should inquire whether a foreign passport or other ID may be substituted or if a name-only background check could be run.

At least two states and New York City have laws and policies that ensure immigration status does not prevent kinship foster placements.

The most comprehensive is California, which passed The Reuniting Immigrant Families Act in 2012. This statute provides that children in foster care may be placed with an approved relative, regardless of that relative’s immigration status. The law also permits relative caregivers to use identification from a foreign consulate or a foreign passport for the purposes of running background checks.

Indiana states in the Department of Child Services’ Child Welfare Manual that, “Undocumented aliens may be considered as

relative placements,” and provide alternative procedures for running background checks for both licensed and unlicensed caregivers.

New York City’s Immigration and Language Guidelines for Child Welfare Staff states, “Pursuant to Executive Order No. 41, signed by Mayor Bloomberg on September 17, 2003, [the Administration for Children’s Services] shall not inquire about a person’s immigration status, among other things, unless that inquiry is needed to determine program, service or benefit eligibility or to provide City services.” The city’s guidelines further provide, “Undocumented relatives can be considered as a resource for children.”

Advocate for Legislative and Administrative Policy Changes Advocates should also support changes to state law and policy that benefit immigrant caregivers. Action may take place at both the legislative and administrative level. Ideally, states and agencies should be encouraged to adopt measures such as California’s Reuniting Immigrant Families Act, discussed above, which takes a proactive approach to ensuring full foster parent licensure of kinship caregivers with an undocumented immigration status.

In states where similar legislation is politically infeasible, other measures may be taken. For example, in states with explicit immigration-related foster licensing standards, the provisions are set forth in either administrative code or the agency’s policy manuals. Advocates could lobby at the administrative level to remove those requirements, which may be easier than seeking legislative action. Agency action would preferably take place through regulations, but where that is not possible, agencies could revise their policy manuals to permit licensure of documented and undocumented immigrant caregivers, such as those in Indiana and New York City. Alternatively, lawmakers or agencies could establish kinship-specific, immigration-standard waiver provisions, such as those in Massachusetts and Oregon.

Conclusion
To allow immigrant children and U.S.-born children of immigrant parents to benefit from the advantages of safe and appropriate placement with relatives, child welfare practitioners should review foster parent certification requirements in their jurisdiction. Identify any barriers uniquely facing potential immigrant caregivers—especially those who are undocumented—by being attuned to how circumstances and policies at the local, state, and national level affect immigrant adults and children, and by partnering with and gaining the perspective of immigrant parents, foster parents, and service providers outside the child welfare system that are trusted by the local immigrant community. After identifying the challenges to kinship caregiving by immigrants, practitioners can explore and implement policies to overcome those barriers.

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Endnotes
5. Ibid.
Title IV-E, General IV-E Requirements, Aliens/Immigrants. Note that the immigration status of the caregiver may impact eligibility for federal reimbursement of foster care maintenance or adoption payments if the child is a “qualified alien child,” under certain circumstances.
17. For examples of consular-agency Memoranda of Understanding, see http://cimmcw.org/state-specific-resources/ and http://www.f2f.ca.gov/sampleMOUs.htm.
20. Ibid.
25. Immigration status is also precluded from serving as a sole disqualifying factor in private child custody and related matters.
27. Ibid. ch. 13, § 9.
28. Ibid. ch. 13, § 5.
30. Ibid., 7.

PRACTICE TOOLS

New Resources and Developments for Kinship Advocates
by Ana Beltran and Heidi Redlich Epstein

National organizations working on behalf of kinship families have several exciting resources to share with the field.

GrandFacts: State Fact Sheets
Working together, Generations United, The Brookdale Foundation Group, AARP, ABA Center on Children and the Law, Casey Family Programs, ChildFocus, Child Trends, and the Dave Thomas Foundation for Adoption have, as of May 2017, fully updated GrandFacts: State Fact Sheets for Grandparents and Other Relatives Raising Children.

GrandFacts are state-specific fact sheets for each state and the District of Columbia. First developed about 15 years ago, the fact sheets are useful and popular resources for kinship families and those working with them. They may be downloaded, copied and disseminated free of charge. Professionals find they are helpful tools to share with clients to inform and connect them with public benefits, tax credits, health and medical resources, and programs that provide local services such as respite care and support groups.

Child Trends Fact Sheets
Linked through each of these GrandFacts state fact sheets is another state fact sheet focusing on data for children in foster care who live with relatives. This data was compiled by Child Trends and is available directly at www.childtrends.org. Although a much smaller population than kin caring for children outside of foster care, relatives play a critical role in caring for 30 percent of all children in foster care. Exploring your own state’s data can help you understand how many children live in relative foster family placements and achieve permanency through guardianship and adoption.

Legal Impact Network for Kin (LINK)
LINK is a new resource for the field and an opportunity to be part of a broader effort to help kinship families. LINK is a network for kinship attorneys throughout the U.S. It was created in 2015 by ChildFocus, the ABA Center on Children and the Law, and Generations United, with funding from the Annie E. Casey Foundation. This network is shaped and directed by a group of geographically diverse
public interest law organizations that either provide direct services for kinship families or advocate for kinship care-related laws and policy change.

LINK has launched a peer-led network interactive discussion site, developed training materials and tools, held webinars on kinship topics, and hosted three in-person meetings and a one-day kinship care “track” at the 2015 ABA Children and the Law conference. At all those opportunities, members shared information, developed policy recommendations, and determined the network’s next steps. LINK now has over 65 member attorneys from more than 20 states, with a goal of a member in every state. To join this free resource, contact Heidi Redlich Epstein, Heidi. Epstein@americanbar.org

Grandfamilies Advocacy Network Demonstration (GrAND)
The value in connecting advocates beyond measure. A few years ago, Generations United and the Casey Family Programs kicked off the Grandfamilies Advocacy Network Demonstration (GrAND). GrAND consists of a select group of kinship caregivers from key states with wide expertise and personal experience as relatives who have raised children when their parents have been unable to raise them. GrAND members have strong voices. They inform all work done by Generations United and Casey Family Programs on behalf of kinship families. They also advocate for families at the federal and state levels, and have testified in Congress, presented at the White House, and met with many members of Congress and their staffs.

GrAND is expanding, and has current members in Arizona, California, Florida, Georgia, Kentucky, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oregon, South Carolina, Utah, Vermont, Virginia, Washington State, West Virginia, and Wyoming.

The goal is to elevate kinship caregiver voices in all 50 states. If you work with a kinship caregiver in a state not already represented and would like to join GrAND, contact Ana Beltran at abeltran@gu.org.

Child Welfare Peer Kinship Network
The Child Welfare Peer Kinship Network is another practical resource. It connects and helps state and local public child welfare agencies explore best practices in kinship foster care. The Network, funded by the Annie E. Casey Foundation and managed by staff at ChildFocus, has an interactive listserv and conducts resource-sharing webinars.

If you work in a state, county, regional or local public child welfare agency and are primarily responsible for policy and practice improvements in kinship care, please join by clicking this link: http://eepurl.com/bYJjz1, or email Tiffany Allen, tiffany@childfocuspartners.com.

www.Grandfamilies.org
More information about all these resources and networks are available at www.grandfamilies.org, a website for all things kinship. Launched 10 years ago, grandfamilies.org is a collaboration among the ABA Center on Children and the Law, Generations United, and Casey Family Programs. It contains an easy-to-use, searchable database of state laws and legislation directly impacting kinship families. It also contains explanations of 12 legal topics, practical implementation ideas, personal stories, and many other resources and publications.

Fifth National GrandRally
The resources in this article were shared with hundreds of grandparents and relative caregivers from across the country who gathered at the U.S. Capitol on May 10th for the Fifth National GrandRally. They traveled to Washington to recognize and celebrate the role kinship families play providing safe, loving, permanent families for children and to educate lawmakers about the role federal policies and programs, such as Kinship Navigator Programs and Medicaid, play in ensuring support to kinship families, and how they can be strengthened.

After the GrandRally, many participants met with their senators and representatives and staffs to share their stories and facts about children raised by relative caregivers, the permanence they provide, and the support they need to successfully help the children in their care thrive. Caregivers not able to come to Washington joined the GrandRally virtually and called their members of Congress to support the relatives raising children.

Past GrandRallies raised awareness of the strengths and needs of grandparents, and the Fifth National GrandRally is accomplishing that same objective. After a March Senate Aging Committee hearing on “Grandparents to the Rescue: Raising the Children of the Opioid Epidemic,” Senators Susan Collins (R-ME) and Bob Casey (D-PA) announced the Supporting Grandparents Raising Grandchildren Act (S.1091) at the GrandRally. That bill would establish a federal task force to support kinship caregivers. Advocates are encouraged to contact their members of Congress to support this legislation, which will help coordinate federal supports for families. Also, about a month after the GrandRally, several cost-neutral bills were introduced in Congress, including a bill (HR 2866) to reduce barriers to licensing foster parents by pointing families, programs, such as Kinship Navigator Programs and Medicaid, play in ensuring support to kinship families, and how they can be strengthened.

With many advocacy opportunities and new resources, it is an exciting and busy time for kinship families and those working on their behalf.

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Supporting Relative Caregivers in Los Angeles—
An Interview with Judge Michael Nash, Ret.

by Claire Chiamulera

Blood is thicker than water—the old adage is threaded through the career of retired Los Angeles Dependency Court Judge Michael Nash. From his early days on the bench 30 years ago, Judge Nash noticed a theme. In case after case in which parents’ rights were terminated, the child welfare agency had not fully searched for missing parents. He began pressing the agency to perform comprehensive searches. This would turn up parents—usually fathers—who often became positive forces in their children’s lives.

The experience began shaping his view of the importance of family for children in the child welfare system. “In my experience, more often than not, children have a better sense of belonging, and more stability with relatives.” This theme would carry through during his time on the bench, mirroring a cultural change in child welfare to prioritize maintaining families by engaging and supporting relatives.

Engaging Relatives: Court Innovations

Over the years, Los Angeles County dependency courts have undertaken several efforts to engage family as resources for children in the child welfare system, including:

- Years ago, a relative information form was created to give parents at the initial court hearing the opportunity to identify relative resources for children.
- A project 15 years ago identified relatives and other resources for youth at risk of aging out of the child welfare system. The approach resulted in half or more of court-involved youth forming relationships with a responsible adult who would be helpful to them whether they aged out or not.
- A pilot project 10 years ago engaged in family-finding efforts at the front-end of cases. These efforts located more relative resources for children early in the case, increased relative placements, and helped children return home faster than other children.

These efforts led to an uptick in children placed with relatives. “Here in Los Angeles, we’ve done a fair job bringing relatives into the process,” said Judge Nash. “We’ve seen 40-50% of children in out-of-home care placed with relatives, which is better than average.”

Judge’s Oversight Role

The court’s efforts have reflected shifts in law and practice in California and nationally requiring relatives to be notified and engaged in child welfare cases. This heightened focus on relatives has carved out an oversight role for judges.

“Judges are the last line of defense and certainly should be paying attention to whether or not those requirements are being complied with,” said Judge Nash. He said that continuously asking about the availability of relatives, overseeing the maintenance of and development of family connections (including sibling connections), and ensuring relatives are getting the support they need are important roles for judges.

Judge Nash offered the following questions for judges to ask all caregivers—relatives and others—and ensure are answered in every case:

- How are you doing with the child?
- Are you getting the appropriate assistance?
- Do you have all the information you need to take appropriate care of the child?

Judge Nash cited the National Council of Juvenile and Family Court Judges’ (NCJFCJ) recent Enhanced Resource Guidelines in Child Abuse and Neglect Cases as a tool for judges to ensure legal compliance with notice requirements and efforts to identify and engage relatives in all stages of a child welfare court case. “They are a great bible for judges who work in child welfare throughout the country,” said Judge Nash. The Enhanced Resource Guidelines build on NCJFCJ’s original Resource Guidelines developed in 1995 and include bench cards for each child welfare court proceeding. The bench cards specify when relatives and kin should be present and involved and strategies for engaging and supporting them.

California has shown its commitment to giving relatives the financial assistance and support they need to care for children through a new resource family approval process. Judge Nash explained that by law the agency has 90 days to approve a relative placement so the relative can get the full financial benefits afforded to foster parents. During the approval process, relatives receive an additional stipend of $400 per month for three months until the process is completed.

Judge Nash stressed the unique role of judges in offering encouragement when relative caregivers come to court. “Judges should welcome relatives and encourage the receiving of input from them,” he said. “They are taking on a big responsibility. They have the children with them every day and they know more about the child...
than anybody else at this point.” He added that social workers should work with relatives to prepare information for the court and inform them of their right to give input to the court, in writing or otherwise.

Creating a Relative-Friendly System

In his current role as executive director of the Los Angeles County Office of Child Protection, Judge Nash is leading a project he calls “a game changer.” Motivated by a shortage of foster parents in Los Angeles, the project is looking to raise relative placements by 10-20% above the current 40-50% placement rate—a rate that has held steady for the last 20 years. Drawing on his experiences on the bench, Judge Nash is bringing several of the courtroom efforts that had promise to the project. Pilot projects in two of Los Angeles’ 19 Department of Children and Family Services (DCFS) offices began nine months ago.

Finding and Prioritizing Family. The Office of Child Protection and the DCFS are working together to increase relative placements, enhance the role of relatives in the process, and begin using family-finding technology in a more consistent and comprehensive way.

The project places greater emphasis on social workers locating and attempting to place children with relatives at the front end. Social workers are given tools and resources to foster relative placements. For example, DCFS is providing resources to assist potential relative caregivers with criminal records who are eligible for exemptions so they can be considered as resources for children; with support, many can be good caregivers. Social workers also have access to family-finding technology to widen their search for potential relatives early in the process. When relatives are not immediately available, family-finding kicks in and helps place about 50% of children with relatives, said Judge Nash.

The social workers’ front-end work and a cultural change in DCFS are driving forces. “The social workers are encouraged in their offices by their supervisors and others to pay attention to and prioritize this issue,” said Judge Nash. “They’ve responded tremendously,” he said. “There’s a cultural change—a change in practice that is causing this to occur.”

Another aspect of the project is bringing as many family members together to see what they bring to the table. Often there are roles they can play outside of being a caregiver (e.g., transportation, respite care) to support the child and family.

Court Integration. The pilots do not yet engage lawyers or the courts but that will come once the project becomes universal throughout the system. Now the focus is on spreading the process throughout the agency. Once it is duplicated throughout the other DCFS offices and the project goes countywide, Judge Nash foresees sitting down with the court and all players who drive the process to discuss roles. The hope is to create an expectation that the process will occur in every court case. “If we can fix this issue at the agency level, it’s a whole lot easier for the court,” he said.

Changing Child Welfare’s Image. Judge Nash believes that doing a better job of engaging and supporting relatives will help change the face of child welfare. “I think the public perception of child welfare will change because it will begin to be viewed as a family-friendly system,” he said. A spillover effect of this change is that more people will be encouraged to become foster parents because they will see the process as friendlier. “The lack of a user-friendly process and a lack of overall support has probably been one of the main factors in the decline in people who want to be foster parents,” he said. “To the extent that we can increase the number of relative caregivers that will go a long way to addressing this foster care shortage.”

Results and Expansion. Judge Nash reported that in one office the number of new children coming into the system who have been placed with relatives during the nine-month pilot has exceeded 80%. In the other office, relative placements were over 70% during the first six months and more recently have risen to 80%. In fact, the second office had a 100% relative placement rate for children entering the system in its most recent month. “It’s clear from this project that this can be done,” said Judge Nash. “They’ve done this now consistently for over eight months.”

The project is contracting with Child Trends, a nonprofit research organization, to evaluate the pilot projects in a more systematic way. Judge Nash anticipates the evaluation will affirm the positive results the pilots have demonstrated so far and show that children and families are better off by using and engaging relatives in a more significant way.

With good results in the two pilots, the project is discussing expanding to the other 17 DCFS offices in Los Angeles. They will start slowly, said Judge Nash, expanding to a couple DCFS offices first. If the data shows positive results by the end of the year, then it will expand to the other DCFS offices on an expedited schedule.

Spreading the model statewide and expanding to other states is possible in the future. “There’s no magic to this,” said Judge Nash. “It’s really a matter of truly making this a priority,” he said. “There’s nothing about this that every agency in the country couldn’t do.”

Claire Chiamulera, legal editor at the ABA Center on Children and the Law, Washington, DC, is CLP’s editor.

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Grandparents Raising the Children of the Opioid Epidemic

by Ana Beltran

“For my 50th birthday, I got a two year old. My story isn’t unique. The [opioid] epidemic has devastated communities all over the country. It doesn’t discriminate against age, race, or gender. It affects all of us.”—Grandparent Pamela Livengood

Opioid Crisis Impacts
Relative Caregivers

After years of decline, the overall number of children in foster care is on the rise. From state to state, experts say the current opioid and heroin epidemic is the reason. With this increase, the foster care system is relying more and more on relatives like Ms. Livengood to care for children. Since 2008, the percentage of children in foster care with relatives has gone up from 24 to 30 percent.¹

Simultaneous with this increase, the number of children placed in group homes and nonrelated foster homes has gone down. Relatives are coming to the rescue and raising these children whose parents are unable to parent due to heroin and other opioid use or treatment, incarceration, or overdose death. In some parts of the country, the growing reliance on relatives is even more dramatic. In Ohio, which is one of the states hardest hit by this epidemic, the number of children in foster care placed with relatives has gone up 62 percent since 2010.²

Although the child welfare system relies heavily on relatives, there are many more children outside the foster care system in the care of relatives. In fact, for every one child in foster care with a relative, there are 20 children outside foster care in the care of relatives.³ Compelling data is lacking on how the opioid epidemic is also causing these numbers of children to increase, but anecdotally we know they are.

Policy and Practice Tips

In light of these staggering statistics, Generations United responded by releasing its 2016 State of Grandfamilies Report focused on this crisis: Raising the Children of the Opioid Epidemic: Solutions and Supports for Grandfamilies. The report addresses grandfamilies both in and outside the foster care system. It provides background on the epidemic, highlights personal stories and programs that help relatives are coming to the rescue and raising these children whose parents are unable to parent due to heroin and other opioid use or treatment, incarceration or overdose death.

Relatives are coming to the rescue and raising these children whose parents are unable to parent due to heroin and other opioid use or treatment, incarceration or overdose death.

grandfamilies, and features concrete policy and program recommendations that can be implemented to help support all grandfamilies. Recommendations include:

Provide Preventative Services
Children have been unable to be raised by their parents due to other devastating drug epidemics, including crack cocaine and methamphetamine. We must learn from those experiences and be ready to act to better support the impacted children and families. Consider what happened during the crack cocaine epidemic. At the beginning of that crisis, the number of children in foster care had increased slightly. By the time the epidemic was ending, the numbers of children in the foster care system had gone up by almost 70 percent, from 276,000 children at the end of 1985 to 468,000 in 1994. During this same time, there was a 40 percent increase in the number of children living with their grandparents or other relatives.⁴

One of the best ways to ensure large numbers of children are not removed from their parents again is by providing preventative services. This includes ensuring parents get the treatment they want, relatives get the support they need, and children are safe and stable in their own homes. One primary recommendation in the Generations United report is to reform federal child welfare financing to encourage a continuum of preventative tailored services and supports for children, parents, and caregivers in grandfamilies—services such as kinship navigator programs, substance abuse treatment and prevention services, mental health services and in-home supports. Well-supported families will prevent children from entering foster care.

Ensure Health Care Access

Additional key recommendations that will help families both inside and outside the foster care system include protecting the Social Services Block Grant (SSBG) and ensuring that Medicaid is protected as the essential health care coverage it is for many grandfamilies. Legislative efforts must do no harm to the ability of the children and caregivers in grandfamilies to access quality health care or to the ability of parents to obtain substance abuse treatment. Other essential safety net programs, such as Temporary Assistance for Needy Families (TANF), Social Security, and tax credits must be protected and improved through a number of concrete policy and program steps, including preserving the ability of grandfamilies to qualify for the Earned Income Tax Credit.
Ensure Relative Supports Are in Place
The National Family Caregiver Support Program is also an essential resource for many grandparents and other relatives age 55 and over. Although all states and Area Agencies on Aging can provide supportive services, such as respite, counseling, and support groups to these caregivers, many do not. Generations United recommends that states use the full 10 percent of their funding to serve grandfamilies.

Address Foster Care Licensing Barriers
For relatives caring for children in the foster care system, Generations United urges states to address barriers to licensing grandparents and other relatives as foster parents. Although 30 percent of children in foster care are placed with relatives, many of those relatives are not licensed and therefore are not given the financial and other supports that go to licensed foster families. Generations United recommends that states work on addressing this inequity in part by addressing licensing barriers, many of which are caused by states’ own licensing standards. Generations United, in partnership the ABA Center on Children and the Law and the National Association for Regulatory Administration, with support from the Annie E. Casey Foundation, created Model Standards to eliminate these unnecessary barriers. Generations United encourages states to adopt those standards.

Coordinate Services at the State and National Levels
All agencies serving grandfamilies—child welfare, aging, and economic security—must coordinate services and supports at both the federal and state levels so more children and caregivers can be served. For example, in Washington State, key staff from each of the state child welfare, aging and economic security agencies meet regularly to coordinate efforts on behalf of grandfamilies. That type of coordination helps agency leaders understand and address barriers across systems and improve access to services and supports for grandfamilies.

Generations United is working to help the field learn from the past and implement these recommendations to better support the children, parents, and caregivers in grandfamilies. Generations United’s report has provided the background and inspiration for a Senate Aging Committee hearing in March 2017 and motivated members of Congress and others to support the children and caregivers in these families. Working together, we can ensure the opioid epidemic does not devastate more families and communities.

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Endnotes
4. Ibid.