

POSITION PAPER

Kinship Status and Designation

Extending the status of Kinship to Foster Parents in which the child has been placed for at least one year

ISSUE:

A minimum of 500 youth age out of foster care each year without a permanent connection; most of these youth are African American and Latinx. We would like to remedy this problem with a legislative fix that has already proved successful in Oregon and that would also potentially benefit other children in foster care as well as their biological families.

BACKGROUND

The removal of a child from their birth parent is a traumatic event for both the child and the parent. In order to provide the child with a familiar environment Kinship care allows for grandparents, other relatives, and even family friends who had a previous relationship with the child, to care for the child until they can be returned safely to their birth parents. Presently, there is a gap in the law as it relates to foster parents who cannot be designated as kin unless they had a relationship with the child before placement in foster care. This does not consider the relationship that develops post-placement between a child and their “stranger” foster parent.

ASFA (The Adoption and Safe Families Act of 1997) was put into practice so that children would spend less time in foster care. A key aspect of ASFA is concurrent planning for a foster child’s future. Guardianship is a key component towards this goal.

If it is deemed unsafe or not in a child’s best interested to be returned to their birth parents, Kinship Legal Guardianship, or KLG, is a court-ordered plan for placing a child permanently in the care of someone with close ties to his/her biological family. It supports the State’s effort to expedite permanency for children and youth for whom reunification and adoption have been ruled out.

In 2011, 18-OCFS-ADM-03 - The Kinship Guardianship Assistance Program (KinGAP) established a framework for a child’s foster parent of at least six months to be eligible for possible guardianship. This required that the perspective relative guardian be related to the child by blood, marriage or adoption.

In 2018, Chapter 384 amended the Social Services Law in relation to the eligibility of children for subsidized kinship guardianship assistance (KinGAP). The law required an amendment to the Title IV-E plan to reflect the changes to KinGAP. In particular, there were two amendments to the definition of “prospective relative guardian”. The first expanded the description to include foster parents who are related to a half-sibling of the child through blood, marriage or adoption. Secondly, for the first time it included an adult with a positive relationship with the child but not limited to, a stepparent, godparent, neighbor, or family friend. However, the law stipulated that the positive relationship must

have been established prior to the child's current foster care placement with the prospective relative guardian.

Social Services Law § 383 grants foster parents rights when they have cared for a child continuously for a period of twelve months or more. Thereby, giving the foster parent preference and first consideration by the agency to their application over all other applications for adoption placement of the child in care. The law also gives foster parents who meet these criteria the right to intervene in any proceeding involving the custody of the child after the termination of parental rights. In the Matter of Tabitha T.S.M., 159 A.D.3d 703, 71 N.Y.S.3d 619 (2d Dep't 2018); the court ruled that "in determining the best interest of the child there is no presumption that the children's best interest will be better served by a return to a family member". In the Matter of Kadi W. v ACS-Kings, 167 A.D.3d 757 N.Y.S.3d 512 (2d Dep't 2018); the court ruled it was in the child's best interest to continue his stable relationship with the foster parents, rather than be removed. In the Matter of Destiny O., 44 A.D.3d 951, 846 N.Y.S.2d 188 (2d Dep't 2007), the Appellant Court ruled that it was in a child's best interest to continue the stable relationship with the foster parent, rather than be separated from the foster parents to live with nonparent relative.

These judicial precedents show that the law already recognizes the relationship between the foster parent and child after the birth parents' rights have been terminated. Thus, extending those rights to foster parents before termination with a kinship designation is consistent with the State's efforts to obtain a stable home for the child.

LEGISLATIVE BIAS TOWARD PRE-PLACEMENT RELATIONSHIPS FAILS TO ACKNOWLEDGE THE REALITY OF OLDER YOUTH

The design of Guardianship reflects the legislature's assumption that there is something more "secure" about a pre-placement relationship. Older youth are often very disconnected from their communities of origin, so this underlying assumption denies their reality and further excludes them from permanency options. Older youth who have survived multiple placements over many years are not more likely to be connected to their neighbor from 10 years ago than their foster parent of the past 12 months. The proposed

change allows a child to become a permanent member of a new community that has already shown that they are willing to take on that responsibility.

OUR POSITION

The extension of the definition of a “prospective relative guardian” would eliminate the need for the kinship guardian to have a pre-placement relationship with the child; therefore, increasing permanency options for children in foster care and making sibling groups eligible to be placed together in KinGAP arrangements. In addition, this would give birth parents a viable option via Kinship Guardianship, thus expediting permanency for children and youth for whom reunification and adoption have been ruled out. This expansion of the definition would provide a birth parent an alternative before the court terminated their parental rights.

The law and the interpretation by the courts have recognized the bonding that occurs between the child and foster parent; after a child has been in their care for a year or more. Extending the designation of Kinship is a natural progression based on the current law.

This expansion of the law would also particularly benefit a subset set of children who presently have no obvious permanency options. An example are children whose birth parents’ rights have been terminated; however, for various reasons they are not able to be adopted. Presently, these children would have to remain in foster care until they age out of the system. There are no viable alternatives for these children who are mainly teenagers, disabled children, and children in sibling groups – where some of their younger siblings have been adopted. The current array of options is too narrow and thus prevents many youths from achieving permanency as captured in the statistics by The National Foster Youth Institution:

- More than 23,000 children will age out of the US foster care system every year
- There is a direct correlation to the age of a child who enters foster care and their likelihood of being successfully discharged to a permanent home instead of being legally emancipated.

- In the U.S. 397,122 children are living without permanent families in the foster care system.
- The number of these foster kids who are eligible for adoption, on average, every year: 101,666
- Children with a diagnosed disability of any kind, including a learning disability, are twice as likely to age out of the foster care system

Under the proposed change, these youth would be given the opportunity for another option which would allow them to achieve permanency; thus, exiting the foster care system and into families.

DISPROPORTIONALITY AND DISPARITIES IN THE ADOPTION RATE FOR MINORITY CHILDREN IN FOSTER CARE

In the 2013 report, *Recent Demographic Trends in Foster Care*, from the Adoption and Foster Care Analysis Reporting System (AFCARS), summarizes changes in the size and racial and ethnic composition of the U.S. foster care population, African American and Native American children had the highest rates of representation in child welfare, compared with Hispanic children and White children. According to ChildTrends nearly half (45 percent) of all foster children lived in the homes of non-relatives. In the article titled, Reconsidering Kinship Care by journalist Naomi Schaefer Riley who focuses on child welfare, she writes that there has been an ongoing decline in adoption rates for black children, whose parents had their parental rights terminated. According to a 2017 report by the Institute for Family Studies, the percentage of black kindergarteners who were adopted fell from 23% to 9% between 1999 and 2011, and 25% of all kindergarteners in kinship or foster care in 2011 were black.

Expanding the Guardianship categorization to foster parents who develop a relationship with the child after placement, would assist in reducing the amount of minority children who remain in foster care for an extended period. It would also reduce the number of children who age out of care without obtaining a permanent placement.

CHILDREN LINGERING IN FOSTER CARE AND THE HARMFUL AFFECT

According to studies nearly half (45 percent) of all foster children live in the homes of non-relatives. Of that population, thirty percent spent one to two years in care, 24 percent spent two to four years in care, and 4 percent spent more than five years in care.

In the data published by New York State, Office of Children and Family Services, the average time in foster care for children is 22.7 months and 30 percent of the current foster-care population has been in care for more than two years. Children who linger in foster care are often exposed to some of the worst trends in the system. Extending the kinship categorization to these foster parents would achieve the goal of limiting the time a child remains in care while also providing an alternative to birth parents who are not ready for reunification.

In reviewing the harmful impact of another planned permanent living arrangement (APPLA), a term created by the Adoption and Safe Families Act of 1997 to replace the term "long-term foster care., one only needs to review the statistics.

- After reaching the age of 18, 20% of the children who were in foster care without achieving permanency with a family will become instantly homeless
- 1 out of every 2 kids who age out of the system will develop a substance dependence
- Nearly 60% of young men who age out of the foster care system and are legally emancipated have been convicted of a crime
- About 1 in 4 kids who age out of the system will not graduate from high school or be able to pass their GED.
- In 2012, more than 58,000 children in the U.S. foster care system were placed in institutions or group homes

THE TERMINATION OF PARENTAL RIGHTS (TPR) – THE WAITING GAME

The termination of parental rights (TPR) involves the ending of the legal parent-child relationship by the state. Once the relationship has been terminated, the child is then

legally free to be placed for adoption with the goal of securing a stable, permanent family environment that can meet the child's long-term parenting needs. According to the Adoption and Safe Families Act of 1997, states are required to initiate hearings to terminate the rights of parents if a child has been in foster care for 15 of the past 22 months, unless compelling circumstances exist. However, statistics have shown that children linger in foster care well after the TPR when the state is unable to find a permanent home for the child. According to Dorothy Roberts, Professor of Law at Northwestern University, and a Faculty Fellow at its Institute for Policy Research states that the, “number of terminations far outpaces the number of adoptions, creating more foster children, especially those least likely to be adopted, namely black children.” The organization AdoptUsKids reports that of the 400,000 children in foster care, approximately 120,000 are waiting to be adopted.

In the article “Children in Out-of-Home Placements” by Jocye Lander, she states that each child who is adopted out of the foster care system spends an average of three years in public care, and about twenty percent remain in public care for five years or longer. A 1991 report on adoptions in twenty states showed that foster children for whom adoption is planned spend an average of four to six years in foster care. The same holds true for the youngest foster children, those who should theoretically be the easiest to place for adoption. In New York City, sixty percent of the infants discharged from hospitals to foster care were still in foster care three years later. Over half of these babies had been placed in more than one foster home since leaving the hospital and one out of six had been in three or more homes, according to a 1993 report by the U.S. Department of Health and Human Services. In March 1999, the mean age of all children waiting to be adopted was eight, and over a quarter of them were over the age of ten.

Lander also states that “Special needs” children are particularly difficult to place. These children are older, members of a minority or sibling group, or have a mental, emotional, or physical handicap. More and more foster children are falling into that category, educators report that increasing numbers of foster children require special education because of neurological, physical, and emotional problems. Allowing an alternative to adoption in essence would provide these children another viable opportunity to achieve permanency.

CONCLUSION

“Foster care directly affects our biggest issues in society: human trafficking, incarceration, addiction, homelessness... the list goes on. But why the correlation? Because that’s how powerful the absence of belonging is.”

Elle Flowers

The foster care system is meant as temporary solution to assist children and their families at their most vulnerable moments in life. Extending the prospective relative guardian to include this segment of foster parents would allow birth parents who are not ready for reunification another option instead of having their rights terminated. It would reduce the amount of time a child remains in foster care; which has disproportionately impacted minority children. Lastly, it is consistent with the 2018 KinGap expansion of increasing permanency options for children in foster care and making sibling groups eligible to be placed together in KinGAP arrangements.

Send questions and comments to pat@affcny.org.

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