

2008 REPORT

# KINSHIP CARE IN NEW YORK

A FIVE-YEAR FRAMEWORK FOR ACTION



**New York State KinCare Coalition  
April 2008**

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## ACKNOWLEDGMENTS

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The 2008 Kincare Coalition Report is based upon the suggestions of participants at the second annual Kincare Summit held in Albany, New York in November 2007. The 153 conferees included Coalition members, government representatives and experts from other states. The Summit and this report were the culmination of a three-year Coalition effort, funded by the New York Life Foundation and AARP Foundation and supported by AARP New York, to bring attention to challenges faced by kinship families.

The contributions of the Summit participants<sup>1</sup> and the Summit's guest speakers shaped many of the report's recommendations. AARP New York contributed generously both to the Summit and to this report. Beth Finkel, AARP New York Manager of State Programs and Services, chaired the three-year effort and consistently invigorated everyone with her genuine interest and her skills at facilitation. William Ferris, AARP New York State Legislative Representative, provided valuable direction and insight on kincare issues. Chaunda Ball, Associate State Director, aided in formatting and editing the report. Gabrielle Grenchus, Consultant to AARP, managed production and Merissa Gremminger, MSW intern, organized meetings and kept production of the report on course.

Rose Mary Bailly, Esq., Special Counsel to the Government Law Center of Albany Law School, provided editorial assistance. Information on kinship laws and policies was provided by the Government Law Center's Kincare Support Project at Albany Law School. The photos of caregivers and children featured in this report were generously provided by various Kinship Programs funded by the New York State Office of Children and Family Services.

Finally, kinship caregivers provided the inspiration. Their determination to love children inspires everyone in the Coalition to work harder.

Thank you to everyone for making the Summit and the 2008 Report possible.

Gerard Wallace, Esq., Editor  
Director  
NYS Kinship Navigator  
Kincare Support Project

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<sup>1</sup> A panel of Summit participants reviewed the recommendations. They are listed in Appendix A along with the guest speakers.



## EXECUTIVE SUMMARY

**K**incare, more commonly called kinship care, refers to the more than 400,000 New York children being raised by grandparents and other relatives. This informal system operates as a natural complement to the formal foster care system. Most children in kincare are there for the same reasons that children are in foster care. Children live with kincaregivers because their parents abused, neglected or abandoned them, or their parents are alcohol and/or substance abusers, are deceased, mentally ill or unable or unwilling to parent. However, kincare does not receive the same level of attention given to children in the “formal” system, nor do the families have access to the same services and financial resources.

In recognition of kincare needs, the New York State Kincare Coalition held its second statewide summit, “Kinship Care in New York: A Five-Year Framework for Action,” in November 2007. The Summit brought together experts from New York State and across the country. The recommendations in this 2008 Report are based upon the Summit participants’ suggestions, the speakers’ presentations and upon an emerging consensus - shared by both policy makers and advocates - that kincare is an effective informal complement to the child welfare system.<sup>2</sup>

Summit participants agreed that assistance to kincaregivers is a means to an end – ensuring that children have stable and productive home lives. They also agreed that despite this worthy goal, laws and policies still do not adequately support kincare families.

This 2008 Report<sup>3</sup> makes 19 recommendations focused on supporting the strengths of kinship families. The recommendations are coded to indicate type of action and a suggested time frame.<sup>4</sup>

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<sup>2</sup> See Appendix B for note on the Benefits of Kinship Care.

<sup>3</sup> The recommendations draw upon numerous sources, including the Federal Kinship Caregiver Support Act (S.661; H.R. 2188) (See appendix C for excerpted description of kinship programming from the kinship caregiver support bill), current research, model practices and the 2007 Kincare Summit work groups.

<sup>4</sup> Each recommendation is followed by a letter and two numbers. The letter indicates the action ([A]gency, [L]aw, [R]egulation). The first number indicates priority (1, 2, 3), the second number indicates number of years to accomplish (1 thru 5). For example, A-1-2 indicates an agency action that has a high priority and should occur within two years. The recommendations incorporate and build upon the 2005 Summit Report, “Enabling Kincaregivers to Raise Children,” available at <http://www.nysnavigator.org>. For a list of the 2005 Report recommendations, See Appendix D.



## **Recommendations**

- Recommendation 1:** Strengthen coordination of kincare services offered by OCFS, OFA and OTDA (A-1-2)
- Recommendation 2:** Develop an inventory of general services and use a uniform common protocol for state and local agencies to identify and assess the needs of kincare families (A-2-4)
- Recommendation 3:** Provide training on kincare issues and cultural diversity to staff of government services programs (A-1-4)
- Recommendation 4:** Eliminate agency barriers to foster care for kincaregivers (A, L, R-1-5)
- Recommendation 5:** Make services similar to foster families available to non-foster kincare families (L-2-5)
- Recommendation 6:** Increase funding for short and long term child care (A, L, R-3-4)
- Recommendation 7:** Expand OCFS Kinship Programs to serve kincare families across New York State and to include model practices (A, L-2-5)
- Recommendation 8:** Expand OFA kinship programming by establishing regional caregiver centers and moving towards all AAAs using Title III-E Caregiver Support funds for kincare services (A, L-2-5)
- Recommendation 9:** Fund data collection and analysis of data to permit development of evidence based state and local agency policies (A, L, R-1-5)
- Recommendation 10:** Create permanent subsidized guardianship as a legal option (L-2 -4)
- Recommendation 11:** Provide procedural protections for “N Docket” custodians (L-2-4)
- Recommendation 12:** Mandate an OCFS review of all Family Court Act Article Ten issues involving the use of kin as caregivers (A, L, R-1-5)

- Recommendation 13:** Create a statutory period for “de facto” custody and mandate age appropriate consultations in custody proceedings (L-2-3)
- Recommendation 14:** Include kin care circumstances in public assistance “good cause” exceptions (L-1-3)
- Recommendation 15:** Change public assistance budgeting rules to maximize benefits available to kin care providers (L, R-1-2)
- Recommendation 16:** Allow children with different parents to constitute separate filing units to obtain public assistance (R-1-2)
- Recommendation 17:** Allow parental designations to be granted for one-year periods (L-1-2)
- Recommendation 18:** Create a statewide legal assistance network by enhancing current kin care legal resources and expanding other legal programs to include kin care representation through funding and other assistance of the Office of Court Administration (A, L, R-1-3)
- Recommendation 19:** Mandate assigned counsel to kinship caregivers in Family Court Act 262 (L-3-4)



## INTRODUCTION

The New York State KinCare Coalition supports kinship families by focusing on strategies to help them raise children successfully. The Coalition is comprised of over 90 members including individual kincaregivers and represents over 60 organizations including kinship programs administered by the New York State Office of Children and Family Services (OCFS), area agencies on aging (AAAs) and independently funded kinship programs, as well as many other public and private organizations. The Coalition works to identify barriers and challenges to kincare, devise strategies to remove them and advocate for implementation of the recommended strategies. It also provides a forum for networking and education by and for its members.

Kincare, more commonly called kinship care, refers to the more than 400,000 New York children being raised by their grandparents and other relatives.<sup>5</sup> Children come to live with relative caregivers because their parents abused, neglected or abandoned them, or their parents are alcohol and/or substance abusers, are deceased, mentally ill or unable or unwilling to parent.<sup>6</sup> Many kinship children face special challenges including higher rates of developmental disabilities,<sup>7</sup> emotional problems,<sup>8</sup> physical and learning disabilities,<sup>9</sup> bereavement issues, attachment disorders and parental alienation.<sup>10</sup>

Although the causes leading to kincare are similar to the causes that place children in foster care, most of the caregivers are not foster parents and therefore do not receive the services that a “formal” foster family would receive. This informal system complements the formal foster care system, yet receives a fraction of the attention afforded the public system.<sup>11</sup>

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<sup>5</sup> Census 2000 <http://www.census.gov/prod/2003pubs/c2kbr-31.pdf> and American Community Survey [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en). See Appendix E for 2000 Census New York county grandparent data.

<sup>6</sup> Smithgall, C., Mason, S., Michels, S., LiCalsi, C., & Goerge, R. (2006). *Caring for their children's children: Assessing the mental health needs and service experiences of grandparent caregiver families*. Chapin Hall, University of Chicago.

<sup>7</sup> Kinney, J., McGrew, K., Nelson, I. (2003). *Grandparent Caregivers to Children with Developmental Disabilities: Added Challenges*. New York: Springer Publishing Company.

<sup>8</sup> Smithgall, C., Mason, S., Michels, L., LiCalsi, C., & Goerge, R. (2006). *Caring for their Children's Children Assessing the Mental Health Needs and Service Experiences of Grandparent Caregiver Families* Chapin Hall Center for Children: Summary Sheet 103.

<sup>9</sup> A study conducted in 1994 found that 70 percent of grandparents reported caring for a child with one or more medical, psychological or behavioral problems. Lai, D. & Yuan, S. (1994). *Grandparenting in Cuyahoga County: A report of survey findings*. Cleveland, OH: Cuyahoga County Community Office of Aging.

<sup>10</sup> “Over a quarter of the caregivers (27.5%) indicated that the child had a disability.” Gleeson et al. (2008). *Individual and social protective factors for children in informal kinship care*. Jane Addams College of Social Work, University of Illinois at Chicago.

<sup>11</sup> In 2006, upstate counties averaged 4.4 percent children in kinship foster care; NYC averaged 28 percent. See Office of Court Administration's “The Child in Child Welfare” for county percentages of children in foster care in Appendix F and in graphs of p.12. The 2008-09 Executive Budget increases general funding for child welfare by \$153.7 million to 619.3 million. Gross program costs for preventive services alone in 2008-09 will exceed \$1 billion. FY 2008-09 Budget Highlights, NYSOCFS, Jan. 21, 2008.

Kinship families also confront special circumstances. Kin caregivers are often older, disabled, living on fixed incomes or they may be suddenly confronted with the need to leave the work force to care for children. The children's parents frequently remain involved either directly or peripherally with the children, although not in a parental role. The children themselves face extraordinary psychological, social and physical barriers. These special challenges need special solutions. However, kinship families across the state often face a range of problems obtaining services to meet their challenges and needs.

The Coalition held its first Kin care Summit in November 2004. Drawing upon the results of the Summit, the expertise of Coalition members and an AARP Foundation survey of New York State kinship programs, the Coalition published a 2005 white paper, "Enabling Kin caregivers to Raise Children" (2005 Report). The 2005 Report recommended 17 actions to achieve better outcomes for kinship children. Ten of these recommendations led to new laws, changes in state policies and new Coalition initiatives.<sup>12</sup>

The Coalition's second summit took place in November 2007. "Kinship Care in New York: A Five-Year Framework for Action" brought together experts from New York State and across the country. During the Summit, a consensus emerged, one which is shared by policy maker and advocates alike, that kinship care is an effective informal complement to the child welfare system. This conclusion derives from two facts: children raised in kinship families generally have better outcomes than children in foster care<sup>13</sup> and kinship families provide care outside the formal system of foster care.

Kin care does not receive the same level of attention given to children in the "formal" system, nor do the families have access to the same services and financial resources. Drawing upon this consensus, and the recommendations of the 2005 Report, Summit participants developed recommendations contained in this report.<sup>14</sup> The remainder of this report discusses the recommendations formulated for each of the following areas.

- I. Special Challenges – Special Services**
- II. Creating a Statewide Kin care Service Network**
- III. Uniform Data Collection, Measurable Outcomes and Research**
- IV. Statutory and Regulatory Changes**
- V. Legal Assistance**

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<sup>12</sup> See Appendix D for a list of 2005 Report recommendations and subsequent accomplishments.

<sup>13</sup> See Appendix B for Benefits of Kinship Care.

<sup>14</sup> The 2008 recommendation incorporate and build upon the 2005 Summit Report, "Enabling Kin caregivers to Raise Children," available at <http://www.nysnavigator.org>. See a list of 2005 Report recommendations in Appendix D.



## I. SPECIAL CHALLENGES – SPECIAL SERVICES

**K**incare families generally interact with three service systems: general public services, child welfare services and special kinship services.

### A. General Services

General services refer to programs administered by state and local government agencies which are generally available to the public.<sup>15</sup> These services can address many concerns of kinship families such as: aging caregivers; children’s educational needs, including special education; children’s developmental disabilities; traumatic brain injury; mental health issues; drug and alcohol abuse in families; juvenile justice and public assistance;<sup>16</sup> as well as other issues such as transportation, immigration, poverty, incarceration, homelessness and domestic violence.

Like all families, kinship families must first identify their needs, seek the appropriate service agency, apply for services, then obtain assistance. In this arena, kinship families, as well as many other families, are often challenged by uninformed frontline workers, misunderstandings about needs, misapplication of eligibility criteria, under-inclusive policies and practices and bureaucratic shortcomings.<sup>17</sup>

Summit participants concluded that a number of steps should be taken to address these challenges:

1. Create an inventory of general services.
2. Use a uniform screening tool for all agencies to identify and assess the needs of the family, such as kinship care status, desire for reunification, and other needs.

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<sup>15</sup> The state agencies that provide such services are listed in Appendix G.

<sup>16</sup> In 2006, approximately 40% of all public assistance cases were non-parent “child-only” grants.

<sup>17</sup> 2004 “AARP New York Report on Barriers to Successful Kin Caregiving of Children,” available at [http://assets.aarp.org/rgcenter/il/ny\\_caregiving.pdf](http://assets.aarp.org/rgcenter/il/ny_caregiving.pdf).

3. Use a uniform referral protocol to link children and caregivers with needed services. To be successful, agencies would need to partner with other service providers and know about available local resources for kinship care children and how to connect children to them.

4. Provide training on kinship care issues across agencies to create knowledgeable staff and include education on cultural competency to address problems immigrant kinship caregivers often face with frontline staff.

Summit participants recognized the educational system as a frontline component in addressing the learning and emotional needs of children in kinship care.<sup>18</sup> The need identified was for kinship care service providers and school districts to work together to create a better understanding of the challenges of kinship care and to create policies and programs that ensure educational success. One similar successful program, specifically for divorcing parents, is “Banana Splits” which helps children cope with divorce.

Participants wanted kinship programs where children could express their feelings in a safe and caring environment under the supervision of professional school staff.

Additionally, informal practices that encourage kinship youth to communicate their emotions and to succeed in school would help them overcome their special challenges and improve their relationships with kinship caregivers, parents and other adults. Youth Bureaus and school districts, including BOCES, are seen as potential resources for offering these services by providing outreach to kinship care families and teens, and offering social events, after school programs and career planning targeted at kinship care teens.

As with services generally, Summit participants viewed an inventory of available services, better screening tools, referral protocols and better staff training and cross-training as critical needs.

## **B. Child Welfare Services**

Foster care is one of the programs available in the child welfare system. A range of services is available to families in the state/county foster care system. These services often include:

- Case management
- Reunification services
- Preventive services
- Education
- Special needs services
- Supervised visitation
- Independent living preparation
- Adoption subsidies
- Respite

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<sup>18</sup> Summit participants also viewed early intervention for children in at-risk families as a way to avert crises. Just as early intervention services are provided for children at risk for mental or emotional disabilities, so should early intervention services be available in instances when the probability of placement in kinship care is high.

- Child care
- Transportation costs

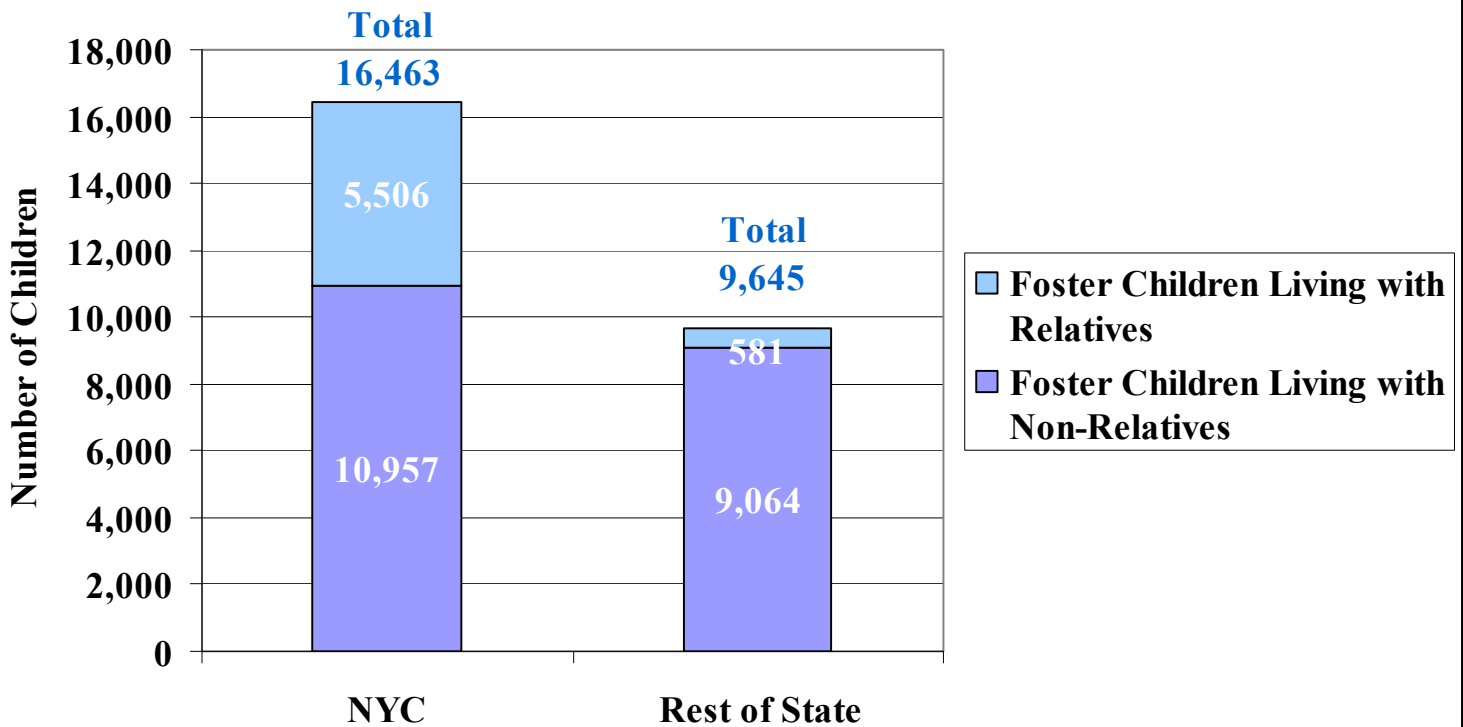
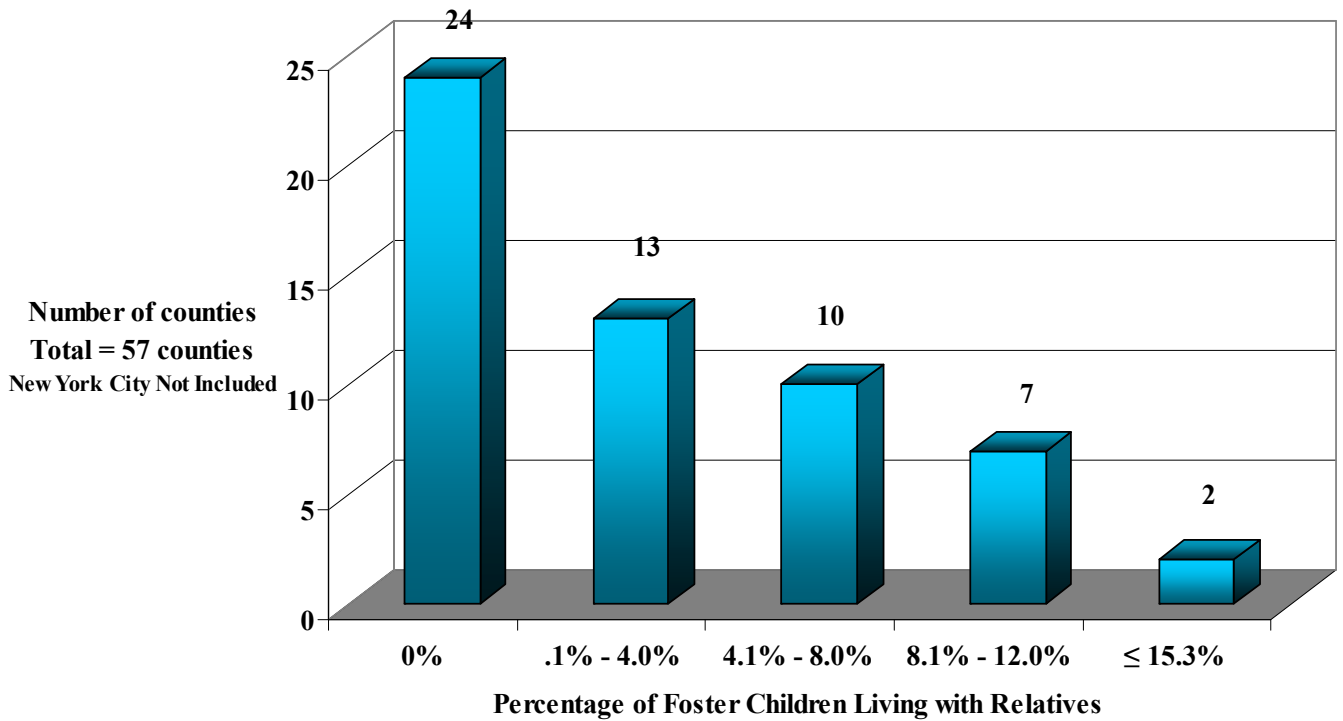
While federal and state laws contain preferences for relatives to become caregivers for abused and neglected children, many kincare families do not have the opportunity to become foster parents, others fail to avail themselves of the opportunity, some cannot qualify, and local departments of social services (LDSSs) may have difficulty locating relatives who are willing to undertake the responsibilities,<sup>19</sup> or courts and LDSSs may otherwise limit access to foster care.<sup>20</sup> The result is that although children frequently enter kinship care for the same reasons they would enter foster care, foster care services are not provided to most kincare families.

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<sup>19</sup> Christina Binkley, *Foster Kinds' Last Resort: Finding Lost Relatives*, Wall Street J. August 23, 2007, at A1.

<sup>20</sup> Child welfare issues and recommendations are described in the Statutory and Regulatory Changes section and in Appendix H.

2004 Foster Children Living with Relatives Outside of New York City



Source: New York State Court and Child Welfare 2006 Data Book: New York State Permanent Judicial Commission on Justice for Children

In the past five years, LDSSs have sought to address this lack of services by providing a special kinship custodial arrangement as an alternative to both foster care and private care. This alternative, called “direct,” “temporary,” “1017” or “N docket” custody is available when children are the subject of a Family Court Act (FCA) Article Ten proceeding (a neglect/abuse proceeding). This alternative can be useful in instances where kin cannot qualify as foster parents or where kin do not wish to become foster parents but desire assistance with reunification.

However, the services offered by this alternative are limited to preventive and reunification services. They do not include foster care payments, adoption subsidies or many other foster care services, and Summit participants did not view it as a generally adequate replacement for kinship foster care.

Summit participants indicated that LDSSs need to do more to insure that “suitable relatives”<sup>21</sup> become foster parents and that non-foster kinship families receive more child welfare services.<sup>22</sup>

### **C. Kinship Programs**

New York’s network of special kinship programs includes fewer than 40 programs. Fewer than 20 of them provide a significant range of special kinship services and serve more than 100 families per year.<sup>23</sup> Depending upon the level of funding, kinship programs provide services based on model practices which address the child’s mental health, caregiver well-being, parent incarceration, parent reunification, kinship family advocacy and an adolescent’s opportunity for higher education.<sup>24</sup>

These major programs include the 13 kinship programs sponsored by the New York Office of Children and Family Services (OCFS),<sup>25</sup> New York City’s Department for the

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<sup>21</sup> “When the court determines that a child must be removed from his or her home..., the court shall direct the local commissioner of social services to conduct an immediate investigation to locate any non-respondent parent of the child and any relatives of the child, including all of the child’s grandparents, all suitable relatives identified by any respondent parent or any non-respondent parent and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life, and inform them of the pendency of the proceeding and of the opportunity for becoming foster parents or for seeking custody or care of the child, and that the child may be adopted by foster parents if attempts at reunification with the birth parent are no required or are unsuccessful.” Family Court Act § 1017(1).

<sup>22</sup> In the Statewide Kincare Service Network section, this report makes recommendations regarding access and a system of services; in the Uniform Data Collection, Measurable Outcomes And Research section, this report makes recommendations regarding research and outcome based measurements; in the Statutory and Regulatory Changes section, this report makes recommendations regarding child welfare practices.

<sup>23</sup> Most other kincare programs offer more limited services to a smaller number of kincare families. The Kinship Navigator, a state wide information and referral program does not provide direct services

<sup>24</sup> Examples are the nationally award winning work shop series, “Parenting a Second Time Around” (PASTA), Family Resource Center’s SKIP generations grandparent mentoring program and Phoenix House’s The Ties That Bind. More detailed information about these programs and about specific practices are contained in Appendix I.

<sup>25</sup> See Appendix J for a description of these programs.

Aging Grandparent Information Center, the Jewish Board of Family and Children Services, and Family Service Society of Yonkers. These programs serve:

- Kincare families by offering case management and advocacy
- Kincare children by offering special counseling, recreation, educational assistance, therapy and collaborations with other agencies
- Kincaregivers by offering parenting skills, respite, emergency assistance, counseling, advocacy, housing, limited legal assistance and collaborations with other service providers
- Parents by offering parenting skills, rehabilitative services, counseling and collaborations with other service providers.

Summit participants identified case management services as vital to successful kinship programs. Case management offers a single point of entry to the family by providing an individual or agency that coordinates services. Since kinship families generally have multiple service needs, case management ensures they have access to, and take advantage of, as many services as possible.

#### **D. Child Care**

Kincaregivers are often thrust into the role of caretaker with little or no warning. When that happens, they are often unaware of the resources that serve children. For caregivers with jobs, the need for child care is immediate and the inability to find affordable child care may jeopardize their employment. For children in kincare, who are likely to already be in crisis, stable quality child care is essential. Because child care funding is based upon a capped appropriation, many eligible families are denied a child care subsidy because an LDSS has already spent its allocated funding at the time of their requests.

Insufficient funding is dedicated to child care in New York State. Funding for child care subsidies in New York State has decreased from a high of \$929 million in 2004-05 to \$879 million, a decrease of \$50 million. In 2006, child care block grant funding supported a monthly average of approximately 70,000 families with an unduplicated count of approximately 120,000 children under the age of five receiving subsidized child care. This is a substantial drop from those served in 2003 and 2004.<sup>26</sup>

Sporadic or short term care is also scarce. Many kincaregivers regularly need time to attend court hearings, school meetings, apply and appeal for services and deal with a range of problems coordinating assistance for children.

New York State needs to provide state funding to supplement the child care block grant so that more eligible families obtain the care they need. New funding of \$140 million would restore the 14,000 slots that have been lost over the last four years and add an additional 14,000 subsidized slots.

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<sup>26</sup> [http://www.winningbeginningny.org/advocacy/documents/200207\\_childcare\\_funding.pdf](http://www.winningbeginningny.org/advocacy/documents/200207_childcare_funding.pdf).



Federal regulations require that children with special needs be given priority in the distribution of child care subsidies.<sup>27</sup> States have wide discretion in defining special needs. The only guidance to New York's LDSSs regarding special needs relates to additional staffing or equipment costs.<sup>28</sup> Children needing special care that does not involve equipment or increased staff ratios, such as children in kincare who have been harmed emotionally by their parents, are not addressed in New York State's policy.

The 2008 Summit offered six recommendations regarding special services.

- Recommendation 1:** Strengthen coordination of kincare services offered by NYS Office of Children and Family Services, Office for the Aging and Office of Temporary and Disability Assistance (A-1-2)<sup>29</sup> 14
- Recommendation 2:** Develop an inventory of general services and use a uniform common protocol for state and local agencies to identify and assess the needs of kincare families (A-2-4)<sup>30</sup>
- Recommendation 3:** Provide training on kincare issues and cultural diversity to staff of government services programs (A-1-4)
- Recommendation 4:** Eliminate agency barriers to foster care for kincaregivers (A, L, R-1-5)
- Recommendation 5:** Make services similar to foster families available to non-foster kincare families (L-2-5)
- Recommendation 6:** Increase funding for short and long term child care (A, L, R-3-4)

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<sup>27</sup> CFR 98.44.

<sup>28</sup> 91 ADM-34.

<sup>29</sup> See 2005 Summit Report Recommendation 4: Create A State-Level Task Force On Kincare.

<sup>30</sup> For an example of inter-agency coordination, see Georgia [www.dhr.georgia.gov/grg](http://www.dhr.georgia.gov/grg).





## II. STATEWIDE KINCARE SERVICE NETWORK

**K**incare programs face several challenges in attempting to make their services available to New York's kincare families and to offer the necessary range of services. The current system is a patchwork of programs offering different services, some expansive and others more limited.

However, this patchwork is only available to a fraction of the kincare community. A statewide network of comprehensive services is necessary to meet the needs of an increasingly large number of kincare families.

The only statewide program dedicated to kincare families is the NYS Kinship Navigator, funded by OCFS. The Navigator is not a direct service provider, rather a statewide information and referral resource.<sup>31</sup> It offers information and referrals to kincaregivers and professionals about general services, child welfare services and existing kincare programs through a toll-free telephone line and web site.<sup>32</sup> However, its ability to make appropriate referrals to kincare programs is limited by the current patchwork of programs. Some offer a substantial range of services, while other programs offer more a restrictive menu of services in the same geographic area. In addition, there are a few other limited programs.<sup>33</sup> In the areas where services are available, demand exceeds the programs ability to meet need. In many counties, no direct kinship services are available.

OCFS and the New York State Office for the Aging (OFA) oversee most of the kinship programming in the state.

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<sup>31</sup> The NYS Kinship Navigator is operated by Catholic Family Center in Rochester and administered by OCFS. *See* OCFS Listing of thirteen kinship programs in Appendix J.

<sup>32</sup> The Navigator can also provide education for front line staff, networking for local community collaborations, data collection, and advice to committees, task forces and networking.

<sup>33</sup> A variety of smaller kincare programs, operated by local area agencies on aging, LDSSs, Catholic Charities, Cooperative Extensions, and other organizations, offer more modest services, usually support groups and some programmatic activities. *See* NYS Kinship Navigator Survey of all kinship programs across New York State in Appendix L.

### **A. New York State Office of Children and Family Services<sup>34</sup>**

The 13 programs funded by OCFS are the only state funded programs providing a wide range of services, including case management in many instances.<sup>35</sup> These programs are available in New York City and in 20 other counties. Many of the programs are at capacity and require increased funding to serve additional kinship families in their current service areas. Approximately 37 counties, including Westchester, Onondaga (Syracuse) and Oneida (Utica), lack an OCFS kinship program.

The Summit participants concluded that more programs are needed across the state and in New York City to meet the escalating number of kinship families.<sup>36</sup> They also suggested that the current gap should be partially filled by funding an expansion of existing OCFS kinship programs to serve contiguous counties. For instance, the Catholic Charities Caregivers Support Services in Albany County has recently sought to expand into Schenectady County, but cannot provide the full range of services (especially case management) offered in Albany because it lacks funds to hire additional staff. Similarly, the Monroe County program is attempting to expand into neighboring Ontario County with a one-year federal grant. However, those funds will not sustain the continuation of services beyond the grant period.

Summit participants drew upon the core services provided by the OCFS programs to suggest that an ideal comprehensive statewide system of kinship services should include:

- Outreach
- Information and referral
- Advocacy<sup>37</sup>
- Special services targeting specific challenges, such as incarcerated parents, at-risk youth and special education
- Case management
- Counseling
- Financial assistance
- Emergency grants
- Health insurance<sup>38</sup>
- Support groups
- Respite

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<sup>34</sup> Summit participants recommended that relative placements continue to be considered a strategy among many used by OCFS to promote permanency. Relative placements can be a key tool for strengthening continuity of family relationships and community connections. As a result, federal or statewide planning and assessment tools such as the Child and Family Services Review (CFSR) can provide an opportunity for OCFS to examine how relative placements impact on policies and practices related to permanency planning, kinship foster care, and reunification.

<sup>35</sup> See map of OCFS kinship programs in Appendix K. NYC Department for the Aging's Grandparent Resource Center is mainly an information and referral service; The Family Center also receives over \$400,000 a year from the NYC Department for the Aging.

<sup>36</sup> See U. S. Census 2000 chart in Appendix E.

<sup>37</sup> In the pursuit of access and availability to general services, kinship programs often focus on establishing connections with local agencies.

<sup>38</sup> See Appendix I for a description of model practices and programs.

- Housing
- Transportation in rural areas
- Educational assistance
- Children and youth programming
- Research and data collection
- Legal assistance (ex. guardianship, custody, adoption)
- Local networks and community collaborations

### **B. New York State Office for the Aging Programs**

OFA has served older kincaregivers for over a decade. In 1996, OFA received a grant from the Brookdale Foundation to coordinate kinship programming across the state. With additional seed grants from the Brookdale Foundation, at least five county area agencies on aging (AAAs) initiated Relatives as Parents Programs (RAPP).<sup>39</sup> Currently, fewer than twenty AAAs provide services to kinship families. Most of the AAAs use Title III-E Elder Care Support Funds, and many of these programs overlap geographically with the OCFS programs.

Under the Title III-E Elder Caregiver Support Program, up to 10 percent of funds can be used to support grandparents and other older caregivers caring for children.<sup>40</sup> OFA will continue to encourage AAAs to support to kincare families and coordinate with existing kincare programs.<sup>41</sup> OFA also plans to fund regional caregiver centers for excellence to support caregiving programs across the state, including some kincaregiving programs. OFA is currently conducting a survey to find out how to provide better support and services for the 2 million caregivers in New York State.

Summit participants offered two recommendations for the Statewide Network.

**Recommendation 7:** Expand OCFS Kinship Programs to serve kincare families across New York State and to include model practices (A, L-2-5)

**Recommendation 8:** Expand OFA kinship programming by establishing regional caregiver centers and moving towards all AAAs using Title III-E Caregiver Support funds for kincare services (A, L-2-5)

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<sup>39</sup> Since 1996, the Brookdale Foundation has provided seed money to start 25 support groups in New York. Currently, more than twenty of these programs are operating. Programs started by Brookdale are called Relative As Parents Programs (RAPP).

<sup>40</sup> The National Family Caregiver Support Program, part of the renewal of the Older Americans Act, provides funds for relative caregivers of children. P.L. 106-501 Part E, Sec. 373(a)(2) (2000), amending 42 U.S.C. §3030s-1. Fewer than 20 counties have used the discretionary funding (renewed in 2006).

<sup>41</sup> At least one state, Georgia, has required its local programs to spend the ten percent on kinship programming.





### III. DATA COLLECTION, MEASURABLE OUTCOMES & RESEARCH

At present there is no statewide data and research that profiles kinship care families.<sup>42</sup> While some data on New York’s kinship care families has been collected by the United States Census, Cornell University and various service programs across the state, it does not provide sufficient information to reach conclusions about the circumstances of families and the outcomes for children, nor the effectiveness of programs and policies, nor does it facilitate evidence based programmatic planning. For example, OCFS’s measurement of permanency provides justification for policies in support of its kinship programs. However, an ongoing debate regarding what outcomes are the best indicators of “permanency” points to the need for more exacting outcome standards.<sup>43</sup> Moreover, because these families tend to stay with kinship programs until children “age out,” the needs of kinship families change over time, especially the indicators of “permanency,” so data should be collected over an extended period with outcomes measured repeatedly during the minority of children.

Once data is collected, it still needs to be analyzed. The NYS Kinship Navigator could serve as a central repository for data collection, making it available to professional researchers for analysis of complex questions about family stability, outcomes for children and youths and the impact of “permanency.”

Summit participants also emphasized that kinship program funding should include specific allocations for data collection, as well as for analysis and evaluation of data. Participants identified numerous service areas where data regarding kinship care could be collected.

Summit participants offered one recommendation for Data Collection, Measurable Outcomes and Research.<sup>44</sup>

**Recommendation 9:** Fund data collection and analysis of data to permit development

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<sup>42</sup> A review of research by AARP NY concludes that statewide data on kinship care is only available from the NYS Kinship Navigator and the thirteen regional programs.

<sup>43</sup> Quality of life may more substantively contribute to permanency than guardianship or adoption. Testa, M. F. (2005a). The quality of permanence—Lasting or binding? Subsidized guardianship and kinship foster care as alternatives to adoption. *Virginia Journal of Social Policy and Law*, 12(3), 499-534.

<sup>44</sup> More specific recommendations on data collection are listed in Appendix M.

of evidence based state and local agency policies (A, L, R-1-5)







## IV. STATUTORY AND REGULATORY CHANGES

Although the 2005 Report’s recommendations resulted in new laws and regulations that addressed barriers related to utilizing kin as foster parents, achieving “security” in custody and guardianship, and obtaining public assistance,<sup>45</sup> 2007 Summit participants agreed that additional legislation and regulatory action are needed.

### A. Utilizing Kin in Foster Care

New York needs to pursue “subsidized guardianship” as a “permanent” outcome for kinship children.<sup>46</sup> Subsidized guardianship programs provide a subsidy to kinship families who choose not to adopt. Close to 40 states now have such programs.<sup>47</sup> Most programs are available only to children leaving foster care, but some states offer subsidies to all kinship families.

New York failed to pursue a federal waiver for subsidized guardianship when it was available. Yet, the need is greater than ever, both for children leaving foster care and those living with kincare families. A special “permanent” guardianship could also protect kincaregivers who have established that the child’s permanent placement in their home is in the child’s best interest from continued efforts by parents to claim custody or visitation.

In recent years, LDSSs have increasingly used temporary custody placements, commonly called “N Docket” or “direct” placements, as an alternative to foster care or private custody. Under these placements, kin have custody pursuant to Article Ten but do not receive foster care payments. “N Docket” custody allows parental reunification efforts to continue indefinitely. “N Docket” should afford protections similar to those available to Article Six custodians and foster parents.<sup>48</sup>

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<sup>45</sup> See Appendix D for a list of 2005 Report Recommendations.

<sup>46</sup> States’ Subsidized Guardianship at a Glance 1 (Children’s Defense Fund October 2004).

<sup>47</sup> See Appendix N for a list of state subsidized guardianship programs; see also April 2008 issue brief on subsidized guardianship at <http://kidsarewaiting.org/tools/reports/files/0017.pdf>.

<sup>48</sup> A listing of issues and solutions related to the use of kin in neglect proceedings is found in Appendix H. Currently, the OCFS has initiated a review of Article Ten and is considering changes that would mandate written information to relatives about placement alternatives and allow a concurrent petition to be filed under Family Court Act (FCA) Article 6 seeking custody or guardianship for a child who is the subject of a pending Article 10 child abuse or neglect proceeding or who is placed in foster care under Article Ten.

Since the 1980's, federal and state reviews have recognized that New York underutilizes relatives as a resource in placements of abused and neglected children.<sup>49</sup> Current law has added to this underutilization by limiting conversion of a neglect proceeding into private custody proceedings.<sup>50</sup> A consensus has recently emerged that the use of kin in neglect proceedings should be subject to a comprehensive review. Recently, OCFS has created a review process for kin and neglect proceedings. This report recommends that this review process include all Article Ten issues involving the use of kin as caregivers.

### **B. Security in Custody and Guardianship**

New York's version of a "de facto" custody law provides that children residing in their grandparents homes for a two-year period creates an extraordinary circumstance which requires courts to consider the best interests of the child in deciding custody. This statute does not provide a defined period of time for other kincaregivers who act as parents for a similar period of time. A statute that extends the "extraordinary circumstances" to primary caregivers would provide increased stability for kincare families.<sup>51</sup>

Hearing from children in custody proceedings would give judges a better understanding of what kincare children think about their care. Following a national trend, New York recently enacted a statute that requires "age-appropriate consultation" with a child in a neglect proceeding.<sup>52</sup> The law should also provide for such consultations in private custody proceedings.

### **C. Obtaining Public Assistance**

As a general rule, relative caregivers can receive public assistance for the children in their care in the form of "child-only" grants. These grants are calculated without any reference to the income of the adult relative caregiver. Caregivers who receive public assistance for their own needs are treated differently than other caregivers. They are not allowed to receive a "child-only" grant for relative children in their care. They must include their relative children in their public assistance unit. This means that they receive a small increase in the household public assistance, but a much smaller amount of public assistance received by other caregivers who receive "child-only" grants.

State regulations require that where the parent of a child on public assistance lives outside of the household, the relative caregiver must cooperate in pursuing child support for the child.<sup>53</sup> The only exception to this rule is if the relative caregiver establishes good cause,

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<sup>49</sup> New York State Office of the Comptroller, Division of Management Audit, *Department of Social Services Kinship Foster Care Report 95-S-106* (Nov. 1996); Megan and Wallace, "The Dilemma of Kinship Care: Grandparents as Guardians, Custodians and Caregivers," Govt. Law Center, Albany Law School 1998.

<sup>50</sup> *Felicity v. Lance RR.*, 27 A.D.3d 790, 811 N.Y.S.2d 465, 2006 N.Y. Slip Op. 01417. The use of Article Six (private custodies) is inappropriate in neglect proceedings where reasonable efforts towards parental reunification are ongoing.

<sup>51</sup> See 2005 Report Recommendation 12: Amend Domestic Relations Law To Create a Statutory Period for "De Facto" Custody.

<sup>52</sup> Chapter Law 327 of the 2007 Laws of New York. Judges must now interview children "in an age appropriate manner" at permanency hearings.

<sup>53</sup> 18 NYCRR 352.14(a)(1).

meaning physical or emotional harm “of a serious nature” would occur to the child or caretaker relative.<sup>54</sup> The exception does not take into account that as a practical matter, relative caregivers often walk a tightrope between meeting the physical and emotional needs of the children in their care and not exacerbating the relationship with the biological parent. Filing a support petition can result in emotional distress to the children and their caregiver when angry parents retaliate by demanding the return of their children. OTDA should amend its regulations at 18 NYCRR 369.2(b)(4) to create a good cause exception for relative caregivers from the child support cooperation requirement.<sup>55</sup>

Public assistance overpayments can result for many reasons including advances made by social services districts to pay for utilities and heating costs that exceed the public assistance allowances. 18 NYCRR 352.31(d)(1)(iii) requires a local social services district to reduce the child-only grant of a child in the care of a relative by ten percent to recoup overpayment of public assistance to a parent if the child was in the parent’s household at the time the overpayment was incurred. A repeal of this regulation would ensure that recoupments follow parents, but not their children.

Under Social Services Law §131-c, when a child receives child support or an absent parent’s Social Security Disability or Survivor’s benefits, that income reduces the public assistance paid to any other children in that household. That law should be amended to allow children in kinship care who have different parents to constitute a separate filing unit. One child’s support payments should not reduce payments to other children in the same household who have different fathers.

#### **D. Parental Designations**

General Obligations Law 1550 ff permits parents to designate another person to make educational and medical decisions for periods of time for up to six months. These designations avoid unnecessary court procedures. However, the six month renewal period can create unnecessary hardships. Frequently, kin caregivers are unable to obtain a second designation because the parent is unavailable. An increase from six months to one year would assist these kin caregivers.<sup>56</sup>

- Recommendations 10:** Create permanent subsidized guardianship as a legal option (L-2-4)
- Recommendation 11:** Provide procedural protections for “N Docket” custodians (L-2-4)

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<sup>54</sup> 18 NYCRR 369.2(b)(4)(iv),(v).

<sup>55</sup> A social services official is not required to secure support for any child where such actions would be “detrimental to the best interests of the child.” Social Services Law §111-c(3); Social Services Law §349-b(1)(b). *See* 2005 Report Recommendation Nine: Amend Social Services Law to Create a “Good Cause” Exemption from Kin Caregivers’ Cooperating in Enforcement of Support Order.

<sup>56</sup> Most states have parental powers of attorney that are legally enforceable for one year.

- Recommendation 12:** Mandate an OCFS review of all Family Court Act Article Ten issues involving the use of kin as caregivers (A, L, R-1-5)
- Recommendation 13:** Mandate age appropriate consultations in custody proceedings (L-2-3)
- Recommendation 14:** Include kincare circumstances in public assistance “good cause” exceptions (L-1-3)
- Recommendation 15:** Change public assistance budgeting rules to maximize benefits available to kincare providers (L, R-1-2)
- Recommendation 16:** Allow children with different parents to constitute separate filing units to obtain public assistance (R-1-2)
- Recommendation 17:** Allow parental designations to be granted for one year periods (L-1-2)



## V. LEGAL ASSISTANCE

**K**inship families' access to many general services and child welfare programs is often hampered by misunderstandings about applicable laws and a lack of uniform application of existing statutes, regulations and case law.<sup>57</sup> Although a number of legal projects have been providing legal counsel and assistance to kincare families, and legal information is available from a variety of other sources,<sup>58</sup> Summit participants agreed that a broader range of legal resources should be available across the state.

A statewide system of legal assistance can begin with the Kinship Navigator and existing kinship legal programs, which can screen kincaregivers and make appropriate referrals to local legal services and pro bono projects. These resources could be enhanced by training OFA's legal service providers on kincare legal issues related to aging, and expanding the staff of OCFS kinship programs and other major programs to include attorneys.

The Office of Court Administration, through its Equal Access to Justice Initiative, can provide assistance in numerous ways, including encouraging its recent pro bono project to "adopt" kinship legal issues, posting legal kincare fact sheets on its web site, and funding legal assistance projects or funding a kincare specialist at interested law school clinics.

The Permanent Commission on Justice for Children could assist courts in addressing special issues, such as incarcerated parents, parents' frivolous petitions, caregivers with disabilities and reunification.<sup>59</sup> In addition, interest only legal account (IOLA) funds could be made available to kincare legal services projects, LDSSs should provide written information to kincargivers about custodial arrangements in Article Ten proceedings, and Court Appointed Special Advocates (CASA) programs should be given responsibility to

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<sup>57</sup> These gaps are documented in the AARP NY survey and the Kincare Coalition's 2005 Report and many other surveys and reports.

<sup>58</sup> Current legal resources include: legal fact sheets (NYS Kinship Navigator); consultations (NYC Department for the Aging and some kinship programs); Seminars (Albany Law School program and MFY Legal Services); Pro bono programs (MFY Legal Services is model, need replication); legal assistance programs (a few programs focused on kin); Kinship Program legal assistance (OCFS programs); and LIFT (attorney information centers in NYC family courthouses).

<sup>59</sup> Currently, the Permanent Commission on Justice for Children has commissioned 18 studies on foster care but none on kinship care.

inform relatives about kinship services after judges have issued final orders regarding custody/guardianship.

Assigned counsel programs routinely represent parents in “third party” custody disputes, including guardianship and adoption. However, kincaregivers do not receive legal representation despite the fact they are seeking court orders to insure stability and permanency for children already in their care. Assigned counsel should be available to kinship caregivers who cannot afford legal representation.<sup>60</sup>

**Recommendation 18:** Create a statewide legal assistance network by enhancing current kincare legal resources and expanding other legal programs to include kincare representation through funding and other assistance of the Office of Court Administration (A, L, R-1-3)

**Recommendation 19:** Mandate assigned counsel to kinship caregivers in Family Court Act §262 (L-3-4)<sup>27</sup>

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<sup>60</sup> Counsel should be assigned to grandparents seeking to keep children in their homes pursuant to Domestic Relations Law §72(2) and relatives seeking to become foster parents pursuant to Family Court Act Section 1028-a. DRL §72(2) permits grandparents to petition for custody when children reside with them for two or more years; FCA §1028-a permits relatives to seek to become foster parents of children in non-relative foster care.



Photo Credit: David Feiden

## SUMMIT: FIVE-YEAR FRAMEWORK

Children in kinship care face extraordinary challenges. Every year that they can remain in stable, productive homes increases their chances of living stable and productive lives. Yet, despite the best efforts of lawmakers and agencies to enact laws, provide full access and establish special services, addressing the issues described in this report will require a focused effort for at least another five years.

To frame this effort, each recommendation has suggested actions, priority and timelines. Each recommendation is followed by a letter and two numbers. The letter indicates the action ([A]gency, [L]aw, [R]egulation). The numbers indicate priority and years to accomplish. For example, A-1-2 indicates an agency action that has a high priority and should occur within two years.

As a first step, agencies should increase efforts to coordinate inter-agency collaborations and the legislature should enact core recommendations. The most important new laws would be “de facto” custody, “permanent” guardianship, and changes to public assistance rules.

In parallel, agencies and courts can begin to collect data, train personnel, increase inter-agency referrals, decrease barriers to kinship foster care and encourage legal programs to focus resources on kinship care.

Next year, the Legislature should increase funding for the OCFS programming and add more programs to provide services across the state. OFA should move towards every AAA having a kinship program. If the Kinship Caregiver Support Act becomes federal law in 2009, these efforts could be expanded with federal assistance and a subsidized guardianship program would then become feasible.

Within three or four years, OCFS should establish a comprehensive solution to the disparities in Family Court Act Article Ten. Along this timeline, other agencies should continue to change policies and practices.



Within five years all of the recommendations in this 2008 Report should become part of the State's comprehensive response.

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The Kincare Coalition's 2008 Report aims to create a comprehensive and integrated response supportive of kincare families. Accomplishing this goal asks for the commitment of lawmakers, senior agency staff and kincare advocates. Together, they can build a better future for countless kincare families in New York State.

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Appendix A: Reviewers and Speakers

Appendix B: Benefits of Kinship Care

Appendix C: S.661/Hr1128 – Kinship Programming

Appendix D: 2005 Report Recommendations

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Appendix F: Children in Foster Care by County

Appendix G: NYS Agencies Serving Kincare Families

Appendix H: Child Welfare Issues and Solutions

Appendix I: Model Practices and Programs

Appendix J: OCFS Kinship Programs

Appendix K: NYS Map of OCFS Kinship Programs

Appendix L: Kinship Navigator Survey – NYS Kinship Programs

Appendix M: Data Collection

Appendix N: States with Subsidized Guardianship Programs

Appendix O: Service Network

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Appendix Q: Selected Bibliography



## **Appendix A: Reviewers and Speakers**

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### **Speakers at the 2007 Summit**

James Gleeson, Ph. D., MSW, Associate Professor, Jane Addams College of Social Work and Principal Investigator, Kinship Care Practice Project; Anne Strozier, Ph.D., MSW, Director, Florida Kinship Center at the University of South Florida School of Social Work; Hilari Hauptman, MSW, Washington State's Kinship Caregiver Program Manager; Sharon Durken, MS, Executive Director of Minnesota Kinship Caregiver's Association.



## Appendix B: Benefits of Kinship Care

- Forthcoming data to be released in Archives of Pediatrics & Adolescent Medicine in June of 2008 will demonstrate for the first time on a nationally representative sample of children from the National Survey of Child & Adolescent Well-Being that children in kinship care are not only more likely to attain early stability in out-of-home care than children in general foster care, but are also less likely to have behavioral problems than children in foster care three years later. Nevertheless, while children in kinship care had fewer behavioral problems than children in foster care, their problems still exceeded the rates described for other children living in poverty.

Such work provides compelling evidence to support prompt access of children to kin-when appropriate and available- following entry into out-of-home care. This would require systems to be aggressive in their identification of appropriate kin who have a relationship with the child, and should encourage a reconsideration of licensing requirements for kinship parents to ensure that their inherent availability to improve outcomes for children entering the system is taken advantage of. At the same time, the significant behavioral needs of these children will require systems to provide access to needed services for kinship families, by promoting better guardianship options, as well as access to the navigator programs that will help link them to services, particularly after they depart the system.

### Reference:

Rubin DM, Downes KJ, O'Reilly A, Mekonnen R, Luan X, Localio AR (in press, 2008). The impact of kinship care on behavioral well-being for children in out-of-home care, Archives of Pediatrics & Adolescent Medicine.

- “When it is necessary to remove a child from his or her family because of abuse or neglect, research shows foster placements with relatives are good for children. They are less likely to change schools and more likely to be placed with their other siblings”

### Reference:

Kids Are Waiting: Fix Foster Care Now. (2008, April). *Strengthening families through guardianship*. (Issue Brief). Washington, DC: Author.



## Appendix C: S.661/HR1128 – Kinship Programming

### Sec. 107. Use of Grant Funds.

- A. In General- An entity that receives a grant under this title may use the funds made available through the grant directly, or through grants or contracts with other public or private not-for-profit agencies, including community-based or faith-based agencies, that have experience in connecting kinship caregivers with appropriate services and assistance.
- B. Use of Funds- An entity that receives a grant under this title may use the funds made available through the grant for activities that help to connect kinship caregivers with the services and assistance required to meet the needs of the children the caregivers are raising and their own needs, such as--
1. establishing and maintaining information and referral systems that--
    - a. assist, through toll free access that includes access to a live operator, kinship caregivers, kinship care service providers, kinship care support group facilitators, and others to learn about and link to--
      - I. local kinship care service providers, support groups, respite care programs, and special services for incarcerated parents;
      - II. eligibility and enrollment information for Federal, State, and local benefits, such as--
        - i. education (including preschool, elementary, secondary, postsecondary, and special education);
        - ii. family support services, early intervention services, mental health services, substance abuse prevention and treatment services, services to address domestic violence problems, services to address HIV or AIDS, legal services, child support, housing assistance, and child care;
        - iii. the disability insurance benefits program established under title II of the Social Security Act (42 U.S.C. 401 et seq.);
        - iv. the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);
        - v. the supplemental security income program established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.);
        - vi. the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);
        - vii. the State children's health insurance program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.);
          - i. the program of Federal payments for foster care and adoption assistance established under part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.), including the program of kinship guardianship assistance payments for children established under section 472A of that Act; and
          - ii. the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);



- viii. relevant training to assist kinship caregivers in obtaining benefits and services and performing their caregiving activities; and
      - ix. relevant legal assistance and help in obtaining access to legal services, including access to legal aid service providers and statewide elder law hotlines;
    - III. provide outreach to kinship care families, in collaboration with schools, pediatric care clinics, kinship care organizations, senior citizen centers, agencies with jurisdiction over child welfare or human services, and others to link the families to the kinship navigator program and to services and assistance; and
    - IV. establish, distribute, and regularly update kinship care resource guides, websites, or other relevant outreach materials;
  - b. promoting partnerships between public and private not-for-profit agencies, including community-based and faith-based agencies--
    - I. to help the agencies described in this paragraph more effectively and efficiently meet the needs of kinship care families; and
    - II. to familiarize the agencies about the special needs of kinship care families, policies that affect their eligibility for a range of education, health, mental health, social, child care, and child welfare services, income-based financial assistance, legal assistance, and other services and benefits, and the means for making policies more supportive of kinship care families;
  - c. establishing and supporting a kinship care ombudsman who has the authority to actively intervene with State agency staff or service providers with which the State agency contracts to help ensure, through various appropriate means including working with individual families in an ongoing manner, that kinship caregivers get the services they need and for which they are eligible; and
  - d. supporting other activities that are designed to assist kinship caregivers in obtaining benefits, services, and activities designed to improve their caregiving.
2. Limitation- Except as provided in subsection (b)(4), the entity may not use any of the funds made available through the grant for direct services to children in kinship care families or to kinship caregivers.

## Appendix D: 2005 Report Recommendations

### Enabling Kincaregivers to Raise Children (June 2005)

*The November 2004 Kincares Summit produced four overarching final recommendations, which reflect best practices already established in New York or in other states. The remaining 13 recommendations address specific needs for training, statutory changes, and funding in the public assistance, health, education, legal, judicial and child welfare systems.*

*Since publication, a number of the recommendations have been completely or partially accomplished. The asterisk code indicates post June 2005 actions:*

- \* = Done
- \*\* = Partially Done
- \*\*\* = Not Done

#### Overarching Recommendations

**Recommendation One:** Create a statewide “Kincares Information Program”\*

**Recommendation Two:** Restore funding for the “Help for Caretaker Relative Programs”\*

**Recommendation Three:** Create a subsidized “Guardianship Program”\*\*\*

**Recommendation Four:** Create a state-level “Task Force on Kincares”\*\*

#### Training Recommendations

##### *Public Assistance System*

**Recommendation Five:** Publish a guide to applying for “Child-Only” grants\*

**Recommendation Six:** Train staff of departments of Social Services\*\*

##### *Education System*

**Recommendation Seven:** Train school-district personnel\*\*

##### *Legal and Judicial System*

**Recommendation Eight:** Train court personnel\*\*

#### Statutory Recommendations

##### *Public Assistance*

**Recommendation Nine:** Amend Social Services Law to create a “Good Cause” exemption from kincaregivers’ cooperating in enforcement of support orders\*\*\*

*Educational System*

**Recommendation Ten:** Amend Education Law as it relates to enrollment criteria, rights of legal custodians, responsibility of legal custodians for school-related activities, and the definition of “Person In Parental Relation”\*

*Health Care System*

**Recommendation Eleven:** Amend Public Health Law definition of “Person In Parental Relation”\*

*Legal and Judicial System*

**Recommendation Twelve:** Amend Domestic Relations Law to create a statutory period for "de facto" custody.\*\*\*

**Recommendation Thirteen:** Amend Social Services Law to ensure placement of the optimum number of children with kincaregivers.\*\*

**Funding Recommendations**

*Public Assistance System*

**Recommendation Fourteen:** Increase “Child-Only” grants.\*\*\*

*Health Care System*

**Recommendation Fifteen:** Mandate research of health care needs of kincaregivers and best practices.\*\*\*

*Legal and Judicial System*

**Recommendation Sixteen:** Provide legal representation for grandparents seeking custody based on “extended disruption of custody” under Domestic Relations Law § 72 and for kin in private adoptions.\*\*\*

**Recommendation Seventeen:** Collect and maintain statistics on third-party custody disputes.\*\*\*

## Appendix E: 2000 Census Grandparent Caregivers by County

### Grandparent Caregivers and Children: Statistics by County (2000 U. S. Census)

County	# of children living in grandparent-headed household	# of grandparents responsible for their grandchildren	% of grandparents providing long-term care for grandchildren
Albany	3,407	292	60.0%
Alleghany	526	266	47.7%
Broome	2,226	1,221	58.8%
Cattaraugus	1,088	576	50.2%
Cayuga	959	359	59.3%
Chautauqua	1,629	840	47.9%
Chemung	1,323	712	54.5%
Chenango	612	314	52.2%
Clinton	797	452	42.7%
Columbia	788	313	46.0%
Cortland	522	229	49.8%
Delaware	508	207	61.8%
Dutchess	4,029	1,505	60.7%
Erie	12,886	5,049	49.2%
Essex	379	201	67.7%
Franklin	473	206	67.5%
Fulton	758	308	29.9%
Genesee	769	360	53.3%
Greene	532	235	62.6%
Hamilton	47	28	82.1%
Herkimer	724	381	45.1%
Jefferson	1,152	623	46.2%
Lewis	246	126	37.3%
Livingston	643	245	53.1%
Madison	728	340	55.0%
Monroe	11,551	4,963	51.4%
Montgomery	595	265	57.0%
Nassau	26,600	6,776	61.7%
Niagara	2,924	1,216	46.5%
Oneida	2,794	1,251	46.0%
Onondaga	6,444	2,829	46.5%
Ontario	1,128	376	57.7%
Orange	5,933	1,904	56.9%

County	# of children living in grandparent-headed household	# of grandparents responsible for their grandchildren	% of grandparents providing long-term care for grandchildren
Orleans	751	260	44.2%
Oswego	1,492	736	50.7%
Otsego	620	257	42.4%
Putnam	1,200	334	58.7%
Rensselaer	1,858	768	40.2%
Rockland	4,834	1,174	58.9%
Saratoga	1,099	720	44.4%
Schenectady	1,943	716	36.9%
Schoharie	1,665	726	59.8%
Schuyler	359	195	62.6%
Seneca	277	211	46.9%
St. Lawrence	401	128	42.2%
Steuben	1,244	563	46.2%
Suffolk	29,591	7,777	54.3%
Sullivan	1,222	482	60.4%
Tioga	631	394	45.9%
Tompkins	707	276	39.9%
Ulster	2,443	1,147	56.0%
Warren	640	209	65.1%
Washington	882	414	50.7%
Wayne	1,287	539	53.2%
Westchester	15,138	4,709	53.3%
Wyoming	394	212	38.2%
Yates	298	153	36.6%
NY City	242,349	83,946	58.6%
Bronx	52,150	18,970	57.5%
Kings	84,248	29,286	58.3%
New York	34,842	12,451	59.6%
Queens	63,404	20,986	59.3%
Richmond	7,705	2,254	58.4%
<b>NYS Total</b>	<b>409,045</b>	<b>143,014</b>	<b>56.3%</b>

Appendix F: Children in Foster Care by County (OCA 2006 Data Book)

**Foster Care – Children In Care by Placement Type – Relative and Other Care**  
 number and percent of children/youth in foster care

	Relative Care				Other Care			
	2000 Number	Percent	2004 Number	Percent	2000 Number	Percent	2004 Number	Percent
New York State	9,871	21.8	6,087	19.2	2,296	5.1	1,840	5.8
New York City	9,313	28.5	5,506	27.1	1,740	5.3	1,475	7.3
Bronx	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Kings	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
New York	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Queens	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Richmond	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Rest of State	558	4.4	581	5.1	556	4.4	365	3.2
Albany	0	0.0	4	1.1	25	4.2	25	6.7
Allegany	2	2.0	0	0.0	6	6.1	5	7.0
Broome	4	1.1	7	2.1	14	4.0	12	3.6
Cattaraugus	3	2.6	4	3.4	0	0.0	0	0.0
Cayuga	4	3.1	6	6.3	1	0.8	1	1.0
Chautauqua	13	6.8	2	1.4	1	0.5	0	0.0
Chemung	16	7.4	10	5.5	14	6.5	15	8.2
Chenango	0	0.0	0	0.0	6	10.0	4	7.0
Clinton	2	2.9	0	0.0	4	5.9	0	0.0
Columbia	4	3.5	12	7.0	2	1.8	9	5.2
Cortland	0	0.0	0	0.0	4	3.9	6	6.5
Delaware	0	0.0	4	5.6	2	4.8	5	6.9
Dutchess	11	3.9	33	10.4	13	4.6	5	1.6
Erie	139	8.0	69	5.1	152	8.8	10	0.7
Essex	1	5.0	2	9.1	0	0.0	0	0.0
Franklin	10	10.1	12	13.0	2	2.0	1	1.1
Fulton	1	1.1	1	1.6	6	6.9	1	1.6
Genesee	7	7.4	0	0.0	6	6.3	1	1.6
Greene	6	7.8	2	2.9	5	6.5	4	5.7
Hamilton	N/A	N/A	0	0.0	N/A	N/A	0	0.0
Herkimer	7	6.6	9	8.5	3	2.8	5	4.7
Jefferson	3	1.8	5	3.5	2	1.2	4	2.8
Lewis	0	0.0	0	0.0	4	12.9	1	8.3
Livingston	0	0.0	0	0.0	0	0.0	1	2.6
Madison	7	6.3	2	3.1	3	2.7	0	0.0
Monroe	1	0.1	5	0.5	62	5.3	48	4.3
Montgomery	3	4.6	0	0.0	2	3.1	2	4.0
Nassau	83	13.8	49	10.3	1	0.2	4	0.8
Niagara	8	3.2	9	4.0	3	1.2	3	1.3
Oneida	21	5.5	36	7.5	18	4.7	8	1.7
Onondaga	5	1.4	5	1.0	27	7.3	42	8.6
Ontario	0	0.0	0	0.0	0	0.0	1	1.5
Orange	48	9.2	78	15.3	26	5.0	21	4.1
Orleans	2	6.1	2	5.1	0	0.0	0	0.0
Oswego	0	0.0	0	0.0	7	3.1	3	2.0
Otsego	0	0.0	0	0.0	2	2.1	5	7.7
Putnam	0	0.0	2	6.5	2	8.7	1	3.2
Rensselaer	5	2.5	0	0.0	2	1.0	1	0.5
Rockland	19	9.3	19	11.7	8	3.9	3	1.9
St. Lawrence	8	6.7	2	2.0	5	4.2	5	5.0
Saratoga	0	0.0	0	0.0	5	4.1	2	1.8
Schenectady	11	3.3	16	5.6	13	3.8	5	1.7
Schoharie	2	2.8	1	2.0	2	2.8	1	2.0
Schuyler	0	0.0	0	0.0	0	0.0	1	10.0
Seneca	0	0.0	0	0.0	0	0.0	0	0.0
Steuben	6	3.8	4	2.3	4	2.5	10	5.7
Suffolk	33	3.1	101	9.5	33	3.1	27	2.5
Sullivan	0	0.0	0	0.0	11	11.6	10	18.2
Tioga	0	0.0	0	0.0	4	6.9	4	11.4
Tompkins	12	9.9	0	0.0	3	2.5	2	2.2
Ulster	14	6.4	16	8.2	8	3.7	7	3.6
Warren	0	0.0	0	0.0	3	4.3	2	2.0
Washington	0	0.0	0	0.0	3	5.2	4	8.0
Wayne	0	0.0	0	0.0	1	1.3	2	2.9
Westchester	37	4.6	52	6.7	24	3.0	26	3.4
Wyoming	0	0.0	0	0.0	1	1.7	0	0.0
Yates	0	0.0	0	0.0	1	3.3	0	0.0



## **Appendix G: New York State Agencies Serving Kinicare Families**

- Office for the Aging
- Office of Temporary and Disability Assistance (OTDA)
- Office of Children and Family Services (OCFS)
- Local departments of social services which administer public assistance benefits (LDSSs)
- Area Agencies on Aging (AAAs)
- Office of Mental Health
- Office of Mental Retardation and Developmental Disabilities (OMRDD)
- Office for Alcohol and Substance Abuse Services (OASAS)
- Department of Health
- Department of Housing
- State Education Department
- Board of Cooperative Educational Services
- Youth Bureaus
- Office of Juvenile Justice and Delinquency Prevention
- Department of Corrections





## Appendix H: Child Welfare Issues and Solutions

### Family Court Act – Article Ten

Article Ten of the Family Court Act governs proceedings when children are placed in state care via removals. Section 1017 describes what relatives can get notice and how they may become caregivers. How child welfare authorities and courts put children in the care of relatives presents numerous problems.

Relatives need a uniform opportunity to become caregivers throughout the state. The general idea is to establish what kin may become caregivers, what supervision may occur, how they may become foster parents, how custody fits into Article Ten, and how to insure that kin have a reasonable chance of becoming foster parents.

Below are brief suggestions for changes to Article Ten regarding the use of kin.

#### 1. Child to Caregiver Before Removals (no statute and no procedure):

<i>Issue:</i>	<i>Solution:</i>
Independent of parental agreement.....	Need procedure
With parental agreement.....	Caregivers need chance to become foster parent (amend 1028-a); Need information; DSS must report reason for informal placement

#### 2. FCA Section 1017 (hearing) see also FCA 1055)

<i>Issue:</i>	<i>Solution:</i>
No guidance on which relatives.....	Limit relatives; include grandparents, relative custodians, and those identified by parent and child
How much effort by DSS?.....	Describe limits of search
Paternal grandparents with no proof of Paternity.....	Expressly declare procedure to prove paternity
Need parent agreement to contact?.....	Clarify no consent necessary for grandparents
Appearing relatives have no counsel.....	Appoint counsel
Relative must appear?.....	Must appear
Court must explain options.....	Must explain
Check prints & SCR before placing.....	Must check fingerprints & registry (unless Court has prior knowledge)
Article 6 placements.....	Can have supervision (but not reunification)

Direct placements.....	Need supervision & reunification & protections
Placements (while certifying).....	Can place and must provide expedited certification process.
Art. 6 must show ex. circumstances.....	Finding of abuse or neglect in Art. 10 sufficient to show ext. circ. for Art. 6

*3. FCA Section 1035(f) (parental consent to relative interventions)*

<i>Issue:</i>	<i>Solution:</i>
What relatives can intervene?.....	Any relative (3 <sup>rd</sup> degree) with consent plus any relative who is “direct” custodian

*4. FCA Section 1057 (Supervision)*

<i>Issue:</i>	<i>Solution:</i>
No mention of non-respondents (including relatives who become custodians).....	Include supervision of all custodians

*5. FCA Section 1089 (Permanency Hearing)*

<i>Issue:</i>	<i>Solution:</i>
No mention of Article 6.....	Expressly declare that Art. 6 is permanency option (with or without supervision and no efforts at reunification)

*6. SSL 384-a (Voluntary Placements)*

<i>Issue:</i>	<i>Solution:</i>
Not available to Art. 6 relative caregivers.....	Permit Art. 6 relatives to use voluntary placements; permit DSS to place children with relatives via agreements

\*\*\*

## Appendix I: Model Practices and Programs

New York's kinship service providers have developed nationally recognized programs, such as Cornell Cooperative's Parenting a Second Time Around (PASTA) program, Fordham's grandparent empowerment program, Phoenix House's The Ties That Bind Program and the Family Resource Center's SKIP Generation Mentoring program. Similarly, other states have developed model practices. For instance navigator programs in Florida, Georgia, and Washington State offer divergent models for delivery of services, and the Mentoring Children of Prisoners (originally at Muncy State Prison in Pennsylvania) offers a unique program aimed at preventing kinship children from becoming "legacy kids."

As much as possible, model programs should be available to all kinship families. Many of these programs can be integrated into general, child welfare and special kinship programs. These services must be easily accessible, comprehensive, cohesive and culturally sensitive. Targeted services should address:

- Child's mental health
- Caregiver well-being
- Parent incarceration
- Parent reunification
- Kinship family advocacy
- Adolescent's opportunity for higher education

These programs should be integrated into a comprehensive system that includes:

- **Navigator:**
  - Information about laws, financial assistance, and resources; ombudsman
  - Education of caregivers and professionals
  - Advisory role to state and local networks
- **Private Agencies - Special Services (OCFS and OFA administered):**
  - Regional programs focus on provision of direct services, including:
    - Education of caregivers
    - Assistance in applying for services
    - Support groups
    - Case management
    - Counseling
    - Respite
    - Childcare
    - Emergency funds
    - Targeted services to subsets (incarcerated parents, adolescents, etc.)
    - Education of local service providers and public agency personnel
    - Referrals, advocacy, and linkages with local agencies.
- **Public Agencies - Focus on Kinship Caregiver Access to Existing Assistance:**
  - Non-parent grants (OTDA)
  - Access to Foster Care
  - Foster Care Payments (OCFS)
  - Subsidies (Adoption and Guardianship) (OCFS)

Elderly caregivers (OFA)  
Health Care Programs  
Federal Benefits (Social Security Admin.)  
Departments of Education, Health, Corrections, etc.  
Judiciary (legal assistance).

Summit participants identified three areas where assistance was vital:

### **Increased Funding for Respite Care**

New York State has a limited number of agencies that provide respite services. Kinship caregivers regularly need time to attend court hearings, school meetings, apply and appeal for services and to deal with a range of problems coordinating assistance for children. Kin caregivers are placed under great demands. Many find that their energy level has diminished. Respite care is the most frequently requested family support service. It provides family caregivers with relief necessary to maintain their own health, bolster family stability, keep marriages intact, and avoid or delay out-of-home placements. Respite, however, is in short supply.

A model exists for providing respite services across all ages and all disabilities. These programs are called Lifespan Respite Systems and they are located in Oregon, Nebraska, Wisconsin and Oklahoma. These systems provide easy access to an array of affordable, quality respite services; ensure flexibility to meet diverse needs; and assist with locating, training, and paying respite providers.

To help states establish respite programs the federal Lifespan Respite Care Act authorizes competitive grants for quality respite available to family caregivers, regardless of age, disability, or family situation. Yet, *PL109-442* is not yet funded.

### **Affordable Housing in Public Housing, Subsidized Housing, NORC's, and Planned Communities**

Safe, affordable housing is a priority for all kinship families. Many caregivers are forced to move from their current homes when adding relative children to their household, because they currently live in a one bedroom home or senior housing. In the Bronx, Presbyterian Senior Services has built a 50 unit apartment building exclusively for kin care families. This project provides a wide range of services to kin caregivers and to their children in its GrandApartments. In Rochester, Providence Housing Development Corporation and the Kinship Care Resource Network (KCRN) have developed a partnership to designate 16 town homes or single family homes for kinship families where at least one member has a disability. These brand new, energy efficient town homes and single family homes offer income eligible families an affordable home in a revitalized neighborhood, with easy access to transportation and community resources. KCRN provides support as needed for the 16 families, as well as offering support groups, intergenerational activities, legal clinics and workshops for any kinship family living in the neighborhood. Across the state, OFA has helped develop Naturally Occurring Retirement Communities (NORC's) where aging New Yorkers have affordable housing

which enables them to remain in their communities. Funding from federal, state, and local municipalities facilitates all of these efforts.

Housing projects like these, many with service support from the The Brookdale Foundation, provide a mutually beneficial community for kincare families and help to reduce the isolation of the kincaregivers and increase family stability.

A variety of funding sources can assist housing efforts. Examples are Low Income Housing Tax Credits, low interest permanent financing from the NYS Housing Trust Fund, Section 8 Vouchers. Local government, Federal Home Loan Bank money, private construction loans and local housing agencies are also key resources.

The federal government has legislated assistance to “intergenerational” families in the LEGACY Act of 2003. As a result, HUD and the U.S. Census Bureau co-authored a study entitled Intergenerational Housing Needs and HUD Program Options: Report to Congress. The study further explores how the major assisted housing programs of the Department of Housing and Urban Development, including the supportive housing for the elderly program under Section 202 of the Housing Act of 1959, can be used, amended, or altered to meet the affordable housing needs of eligible intergenerational families, [www.huduser.org/publications/affhsg/int\\_genrtnl.html](http://www.huduser.org/publications/affhsg/int_genrtnl.html).

### **Special Focus on Mental Health, Disabilities and Substance Abuse in Kincare Families**

Data show that kincare children have a disproportionately high rate of these challenges largely due to the circumstances that lead children to being separated from their biological parents.

A nurturing, stable environment during the early years of life are critical for a child's brain development. Comprehensive pediatric assessments are recommended to establish a child's level of functioning, but because of the informal way that kin families take on the responsibility of caregiving, there is no systematic method of tracking that documents the greater level of needs for these children. It is known, however, that relative families are assuming the parental role for children with many needs. Many of the caregivers are unaware of these needs when they take on this role and may not understand the potential difficulties of caring for these children.

Summit participants identified several mental health strategies:

- Clinical service links be made available for comprehensive assessments. Once assessments are complete, educational programs or materials could be available to address specific findings. Parenting skills, treatment and behavior modification plans can be advised and modeled.
- More collaboration with the mental hygiene service areas, including access to parent or family advocates, and wrap around services and respite care for children with special needs.

- Greater inclusion of relative caregivers as part of the feedback for mental hygiene programs and how to access them should be a part of the policy making process.

### **Permanency and Stability for Children.**

Best outcomes for child development are achieved when a healthy, respectful and long-lasting “parenting” relationship is achieved with the child. This manner of relating leads children toward a healthier sense of self-esteem and self-worth. Children who do not have regular attention to their needs, such as needs for physical care, nourishment, comfort, affection and stimulation are at great risk for not forming healthy attachments to anyone. Additional emotional trauma is inflicted when a child experiences multiple placements or disruptions.

- Strategies addressing this issue reinforce the need for a “de facto” custody law and a permanent guardianship.

It is critical that the state support policies, structures and procedures to limit unnecessary shifting of a child’s home with a dedicated relative caregiver if an absent parent should suddenly wish to reassert their role. Relative caregivers need to feel confident that courts will hear their situations.

If the true goals of this society are to perpetuate a healthy next generation then we must work to protect children from disruption and to ensure that they have as many of the basic needs met as possible during their developing years.

One way to support relative caregivers with programs to help them successfully maintain the children at home, as this report is recommending. Funding of the expansion of existing programs and supporting new programs in areas where none exist is the first step.

In addition, the support the biological parents should be supported to help keep nuclear families intact or to achieve successful reunification. Parents should be given reasonable assistance and opportunity to maintain their family, while the present and future best interests of the child should determine what is appropriate. There are best practice programs funded through NYS Office of Mental Health like the Invisible Children’s Program in Orange County that serves this purpose for parents with psychiatric disabilities.

**Appendix J: OCFS Kinship Programs**

<p><b>Organization/Agency</b></p>	<p><b>Program Name</b> Location/Counties Served</p>
<p><b>Catholic Charities of Buffalo</b></p>	<p><b>Catholic Charities of Buffalo Kinship Caregiver Program</b></p> <p>Located in Erie County</p> <p>Also serves Niagara, Allegany and Cattaraugus Counties</p>
<p><b>Catholic Charities of Diocese of Rochester, Inc</b>  <b>(Catholic Family Center)</b></p>	<p><b>Kinship Caregiver Resource Network</b></p> <p>Located in Monroe County</p>
<p><b>Catholic Charities Support Services</b></p>	<p><b>Kinship Care</b></p> <p>Located in Albany County Also serves Rensselaer County</p>
<p><b>Child Care Coordinating Council</b></p>	<p>Located in Clinton County Also serves Franklin County</p>
<p><b>Cornell Cooperative Extension of Orange Co. Community Campus</b></p>	<p><b>Hudson Valley Regional RAPP Program</b></p> <p>Located in Orange County Located in Dutchess County Located in Sullivan County</p>

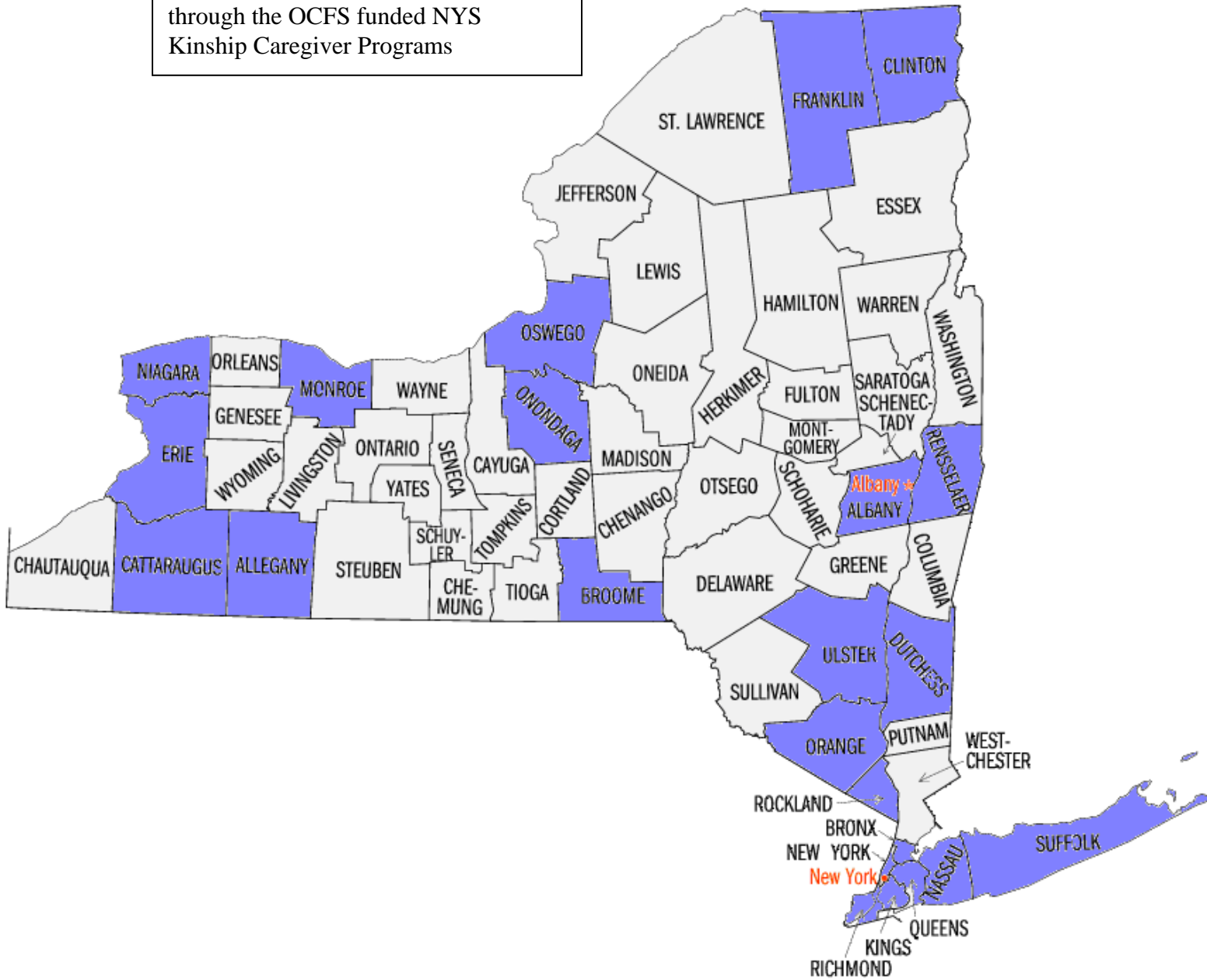


<b>Organization/Agency</b>	<b>Program Name</b> Location/Counties Served
<b>Family Enrichment Network</b>	<b>Kinship Caregiver Program</b>  Located in Broome County
<b>Liberty Resources, Inc.</b>	<b>Kinship Caregiver Program</b>  Located in Onondaga County but serving Oswego County
<b>Mid-Erie Counseling &amp; Treatment Services</b>	<b>NYS Kinship Caregiver Program</b>  Located in Erie County
<b>National Committee of Grandparents for Children's Rights</b>	<b>Long Island Kincare Connection</b>  Located in Suffolk County Also serves Nassau County
<b>NY Council on Adoptable Children, Inc. (COAC)</b>	<b>Kinship Connections</b>  Located in New York City Serves all Five Boroughs
<b>Presbyterian Senior Services</b>	<b>PSS Kinship Caregivers Program</b>  Located in New York City Serves the Bronx and Manhattan
<b>Volunteer Counseling Services of Rockland</b>	<b>Enhanced Relatives as Parents Program</b>  Located in Rockland County

## Appendix K: NYS Map of OCFS Kinship Programs

OCFS Kinship Care Counties 2008

Blue shaded areas are counties served through the OCFS funded NYS Kinship Caregiver Programs





### Appendix L: Kinship Navigator Survey – NYS Kinship Programs

County	Program Name	Response	Counties Served	Funding Source	Caregiver	Children
All served	NYS Kinship Navigator *	4/10/08	All counties	OCFS \$250,000	843	1,500
Albany	Catholic Charities Support Services	11/9/07	Albany and Rensselaer	OCFS \$158,000	100	150
Allegany	Catholic Charities of Buffalo	11/6/07	Erie, Niagara, Cattaraugus, Allegany, Chautauqua	OCFS \$158,000	120	240
Allegany	Accord Corporation	3/3/08	Allegany	N/A	Does not serve caregivers	600
Broome	Family Enrichment Network	11/7/07	Broome, Tioga	OCFS \$158,000	149	134
Broome	Family and Children's Society	July 2008	Broome	N/A	N/A	N/A
Chautauqua	Chautauqua Child Care Council	3/17/08	Chautauqua	N/A	Referral only	Referral only
Chautauqua	Kinship Success Program	8/27/08	Chautauqua	N/A	60	80
Clinton	Child Care Coordinating Council	3/4/08	Franklin and Clinton	OCFS \$105,000	150	130
Cortland	Office of the Aging	3/11/08	Cortland	Unknown	13	Not Applicable
Dutchess	Cornell Cooperative Extension	11/6/07	Dutchess	Brookdale Grant \$10,000, Dutchess County Youth Bureau \$1,000	112	153
Erie	Mid-Erie Counseling and Treatment Services	11/13/07	Erie	OCFS \$150,000	280	415
Erie	Gateway-Longview, Inc.	11/8/07	Erie	LDSS \$115,000	N/A	N/A
Fulton	Office of the Aging	11/7/07	Fulton	Unknown	5	4
Madison	Office of the Aging	11/6/07	Madison	Unknown	7-10 weekly	12 weekly
Monroe	Catholic Family Center	11/5/07	Monroe	OCFS \$162,000, RAPP \$4,000	331	483
Montgomery	Office for the Aging	3/11/08	Montgomery	Unknown	16	Does not serve children
Nassau	Long Island Kinship Connection	11/6/07	Suffolk and Nassau	OCFS \$154,000, grants and legislation \$50,000	168	220
Onondaga	Department of Aging and Youth	11/7/07	Onandaga	NYSOFA and the Administration on Aging under Title III-E	N/A	N/A
Ontario	Cornell Cooperative Extension	11/6/07	Ontario	Spring Hill Foundation \$9,975	18-25	16-20

County	Program Name	Response	Counties Served	Funding Source	Caregiver	Children
Orange	Cornell Cooperative Extension	11/6/07	Orange, Dutchess, Ulster	OCFS \$161,507, Title III-E \$17,702, Youth Bureau \$19,980	270	350
Oswego	Liberty Resources, Inc.	3/11/08	Oswego	OCFS \$145,000	37	51
Oswego	The Kinship Support Project	11/6/07	Oswego	LDSS	46	61
Oswego	Grandparents Raising Grandchildren	11/6/07	Oswego	OMH \$500	N/A	N/A
Putnam	RAPP Relatives as Parents Program	11/9/07	Putnam	No current funding	18	22
Rockland	Enhanced Relatives As Parents Program	11/8/07	Rockland	OCFS \$152,000	125	150
Stueben	Office for the Aging	3/3/08	Steuben	Title III-E amount unknown	20	30
Suffolk	Grandparents Parents Raising Children Support Group	3/5/08	Suffolk and Nassau	Town of East Hampton	5	6
Suffolk	Southampton Dept. of Social Services	July 2008	Suffolk	N/A	N/A	N/A
Tioga	Cornell Cooperative Extension	July 2008	Tioga	RAPP	N/A	N/A
Tioga	Southern Tier Library System	July 2008	Tioga	N/A	N/A	N/A
Ulster	Ulster County RAPP	July 2008	Ulster	RAPP	N/A	N/A
Westchester	Family Service Society of Yonkers	11/13/07	Westchester, primarily Yonkers	\$90,000 (\$30,000 public, \$60,000 private)	125	100
Westchester	Family Ties	3/11/08	Westchester	\$10,000	50	Unknown
NYC	Brooklyn Grandparent's Coalition	3/3/08	Kings	Grant from Brooklyn Borough President's Office	500	100
NYC	Fort Green S.N.A.P	July 2008	All 5 boroughs	N/A	N/A	N/A
NYC	Lincoln Square Neighborhood Center	July 2008	All 5 boroughs	N/A	N/A	N/A
NYC	Grandparents Empowerment Movement	July 2008	All 5 boroughs	N/A	N/A	N/A

NYC	Co-op City Grandparent Movement	September 2008	Bronx	N/A	N/A	N/A
NYC	Jewish Board of Family and Children's Services	3/3/08	Kings	Philanthropic foundations	125	25
NYC	Children of Alcoholics Foundation	September 2008	NYC	N/A	N/A	N/A
NYC	The Family Center	3/6/08	5 counties of NYC	Dept. for Aging \$408,000, OCFS \$162,000, AIA \$100,000	215	440
NYC	Council on Adoptable Children	3/12/08	5 counties of NYC	OCFS \$158,000	51	67
Bronx	Presbyterian Senior Services	11/7/07	Bronx	OCFS \$158,000	74	125
NYC	Department for the Aging	11/8/07	5 counties of NYC	Unknown	Unknown	Unknown
NYC	MFY Legal Services	4/1/08	5 counties of NYC	Equal Justice Works \$37,000, OCA \$141,750, Private Foundations \$110,000	370	550
<b>Total</b>	<b>46</b>		<b>34</b>	<b>\$3,514,414</b>	<b>4,735*</b>	<b>6,643*</b>

\* Total Counties Served does not include the NYS Kinship Navigator. Totals for Funding, Caregivers Served, and Children Served include only reported numbers.



## Appendix M: Data Collection

Kinship programs have many resources needed to implement data collection. Resources include:

- Thirteen OCFS kinship programs covering more than 20 counties
- The NYS Kinship Navigator, a NYSOCFS program administered by Catholic Family Center in Rochester. CFC has experience via its Eldersource program with Peer Place (a local web based interagency database that facilitates one stop shopping for the elderly)
- OFA aging network, with access to their client-based database and NY Connects (NY Connects is a long term care single point of entry warm line)
- NYC Department for the Aging's Grandparent Resource Center
- Kincare Coalition members who operate kinship programs
- NYC Kinship Caregiver Task Force
- Brookdale Foundation's RAPP Network (independently funded support groups)
- Cornell University
- Brookdale Center on Aging
- Other university and research projects, including SUNY Albany and SUNY Stony Brook schools of social work

Summit participants identified necessary elements for data collection, measurement of outcomes and research:

- **Collection of Kincare Data by State Agencies**

A profile of kinship families from the perspective of diverse service systems would offer information about many kincare family challenges. General service agencies and child welfare agencies should seek to uncover such data. Courts, corrections, public assistance, child welfare, aging, mental health, alcohol and substance abuse and other agencies can access data related to kinship issues. For instance, the Office of Court Administration can authorize surveys of custodial and guardianship proceedings involving non-parents.

This data should be made available to researchers who are funded as part of a state effort to profile kinship families. The analysis and evaluation of collected data should also be funded.

- **Continued Focus on Permanency as a Core Outcome**

Continued Focus on Permanency should remain a core outcome. Relative placement should continue to be considered a strategy, among many, used by OCFS to promote permanency. Relative placements can be a key tool for strengthening the continuity of family relationships and community connections. As a result, federal or statewide planning and assessment tools such as the Child and Family Services Review (CFSR) can provide an opportunity for OCFS to examine how relative placements impact policies and practices related to permanency planning, kinship foster care and reunification.



- **Collection of Intra and Inter Agency Data Coordinated by OCFS, OTDA and OFA**

The OCFS as well as OFA programs, OTDA, already gather data on kinship care. These core systems should coordinate access to data and increase their efforts to collect and analyze data.

- **Uniform Data Collection for OCFS Kinship Programs**

The OCFS kinship programs should implement a common assessment tool, intake form and database. Currently, many of the OCFS kinship programs use the Family Resource Scale. Building upon a common assessment, uniform data collection, along with clearly defined efforts and outcome measurements would provide valuable information profiling kinship families. Such information is necessary to document program accountability. For instance, currently there is no data on the number of kincaregivers who must leave their jobs or who are disabled, and no system for tracking the success of efforts at increased permanency and stability. In a common data collection system, the NYS Kinship Navigator could serve as a central repository for collected data and for research and analysis.

Uniform data collection would take kincare services a step closer towards a comprehensive kinship service network, with all providers using a common assessment and common database, thus increasing collaborations and the opportunity for eventual implementation of a single point of entry.

- **Core Uniform Data from All Kinship Programs**

Building upon the uniform data collection initiated by the OCFS kinship programs, funding should be provided to all kinship programs for a common assessment tool and uniform data collection.

The assessment tool should identify special challenges, with attention to quality of life, educational success, potential for parental reunification, success of interventions and permanency.

- **Training for Intake Personnel in Data Collection Techniques**

Training is necessary in order to develop the relational skills of personnel for intake. Both public and private agencies should provide training on intakes and pursue common data.

- **Collection of Data Regarding Regions, Demographics, Economic Conditions, Causes, Loss of Jobs, Incarceration and Other Characteristics**

New York's kincare families live in every community and represent every socio-economic strata and ethnicity. The collected data should capture commonalities and distinctions. Important distinctions are rural versus urban, ethnicity, disabilities, age, education, family composition, number of placements and exposure to loss and trauma. It is especially important to focus on children and youths, not just kincaregivers.

- **Targeted Funding for Program Outreach to Kinicare Families**

Successful outreach is fundamental to successful data collection. Funding should specifically budget for outreach efforts. An added benefit is that outreach to caregivers and children results in kin caregiver awareness of, and access to, services and programs.

- **Review of Mandated Outcomes**

OCFS's measurement of permanency provides justification for policies in support of its kinship programs. However, an ongoing debate regarding what outcomes are the best indicators of "permanency" points to the need for a review of current outcome standards. Standards should be reviewed in order to identify data collection that will more accurately measure "permanency." For instance, program outcomes could focus more on education and quality of life for children and youths in kinship families.

- **Tracking of Outcomes for Extended Periods**

The needs of kinship families change, especially the indicators of "permanency." Outcomes should be measured repeatedly over extended periods of time during the minority of kinship children. Programs must revisit intake and track families longitudinally in order to determine success in meeting performance targets and outcomes. Based on the results of this tracking, additional interventions may be necessary. Tracking should include quarterly updates on program participants, with the removal of inactive and discharged cases.

- **Measuring School Success**

Publicly funded kinship programs should go beyond permanent legal arrangements and address quality of care and success in education. School success is crucial to these programs achieving positive results and should be a core objective for all kinship programs.

- **Analysis of Collected Data**

OCFS kinship programs and other programs can offer a wealth of information that should be "mined" by professional researchers. Research is needed to analyze complex and unique questions about family stability, outcomes for children and youths and the impact of "permanency." Funding for analysis and evaluation of data should be included in all efforts to implement uniform data collection.



## Appendix N: States with Subsidized Guardianship Programs

Thirty-eight states and the District of Columbia have some form of subsidized guardianship:

- |                         |                                  |
|-------------------------|----------------------------------|
| 1. Alaska               | 21. Minnesota                    |
| 2. Arizona              | 22. Missouri                     |
| 3. Arkansas             | 23. Montana                      |
| 4. California           | 24. Nebraska                     |
| 5. Colorado             | 25. Nevada*                      |
| 6. Connecticut          | 26. New Jersey*                  |
| 7. Delaware             | 27. New Mexico*                  |
| 8. District of Columbia | 28. North Dakota                 |
| 9. Florida              | 29. Oklahoma                     |
| 10. Georgia             | 30. Oregon                       |
| 11. Hawaii              | 31. Pennsylvania                 |
| 12. Idaho               | 32. Rhode Island (non-relatives) |
| 13. Illinois            | 33. South Dakota                 |
| 14. Indiana             | 34. Tennessee                    |
| 15. Iowa                | 35. Utah                         |
| 16. Kansas              | 36. Virginia                     |
| 17. Kentucky*           | 37. West Virginia                |
| 18. Louisiana*          | 38. Wisconsin                    |
| 19. Maine               | 39. Wyoming                      |
| 20. Massachusetts       |                                  |

Source of information regarding subsidized guardianship is available at the Generation United state fact sheet website: [www.grandfamilies.org](http://www.grandfamilies.org).

\* Indicates states that offer subsidized guardianship to non-foster kinship families.



## **Appendix O: Service Network**

Summit participants identified a number of core strategies towards a statewide system of services:

- **State and Local Committees, Task Forces and Networks**

Participants at the 2007 Summit expanded the original 2005 recommendation that state agencies establish a “task force,” to include a recommendation for intra-agency, regional and local “task forces” (*See Appendix D 2005 Summit Report Recommendation 4: Create a State-Level Task Force on Kincare*). State and local agencies should begin to address kinship family issues by intra-agency efforts, inter-agency task forces, and communications aimed at increasing collaborations with non-profit kinship programs.

At the state level, two agencies (OCFS and OFA) provide most kinship services and OTDA provides public assistance (via child-only grants). All three agencies have recently established intra and inter agency committees. This focus should be increased and formalized. All agencies should also formally engage members of the NYS Kincare Coalition to advise on kinship policies.

In addition, other government funded councils and commissions should focus on kincare issues. For instance, the newly formed New York State Family Caregiver Council provides another strong voice for kinship families. The Council includes four Kincare Coalition members with two additional Coalition members appointed as advisors to the Council. Also, the Governor’s Children’s Cabinet, the Council on Children and Families, and the Permanent Commission on Justice for Children should increase their focus on kincare issues.

At the regional, county and municipal level, similar committees and task forces could help to establish the connectivity needed to get services to kinship families.

- **Training for Government Staff on Kinship Laws**

The 2005 Report is based on a 2004 AARP Foundation survey, “Barriers to Successful Kinship Caregiving.” The survey identified a need for training of local social service district workers, child welfare workers, and personnel within the courts and education department and other government systems. Similarly, a recent Albany Law School Government Law Center survey examined local area agencies on aging and departments of social services responses to inquiries about kinship services. The core findings re-emphasize the need for training. The upcoming New York City Kinship Task Force survey also hypothesizes significant gaps in services. The OCFS kinship programs and the Kinship Navigator could provide training assistance to local, regional and state personnel in these and other systems.



## Appendix P: Reprinted from Appendix C in 2005 Report

### Rights, Authority & Assistance: Informal Custody, Legal Custody, Guardianship, Foster Care, Adoption

#### Informal Custody

Informal custody is a relationship in which relative caregivers who do not have court orders governing the care of children are considered "informal caregivers" or "informal custodians." These informal caregivers have the greatest difficulty obtaining recognition, authority, security, financial assistance, or resources of any kind.

*Recognition* – For informal caregivers, the lack of recognition means the absence of a statutory definition of their status as caregivers. Existing statutes are often under-inclusive or non-supportive of kin caregivers. For instance, many legal or administrative provisions exclude caregivers who are either co-parenting with the parent(s) or who can locate the parent(s). Until recently, the term "person in parental relation" did not include a caregiver who had written designation from a parent.<sup>1</sup> The term still does not include the common situation where kin caregivers can locate the absent parents but cannot get them to designate authority, and it does not include legal custodians.<sup>2</sup>

*Authority* – New York gives limited authority to informal caregivers. As of May 2005, designated informal caregivers can make decisions regarding medical care and schooling.<sup>3</sup> In addressing this issue, New York joined other states that permit parents to delegate responsibility for medical and school-related decisions, albeit for limited periods of time. Absent parental delegations, a handful of states permit certain relatives to possess such authority through self-proving affidavits declaring that the relative caregivers cannot locate

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1 S. 6818 repealed and replaced with a chapter amendment that enacts a parental designation power by adding Title 15-1 to the General Obligations Law.

2 Wallace and Miner, "The Dilemma of Kinship Care," (Government Law Center, Albany Law School 1998). This report analyzes parental powers of attorney, legal custody and guardianship, and offers options for legislative action.

3 N.Y. Public Health Law § 2504 (parents and guardians and parental designees can make medical decisions for minors); N.Y. Public Health Law § 2164. (Immunizations); N.Y. Educ. Law § 3212(2) (Persons in Parental Relationship). *See also*: N.Y. Educ. Law § 4111 (Indian child truant returned to person in parental relation; schooling record, issuance, person in parental relation); N.Y. Educ. Law § 3222 (school records); N.Y. Educ. Law § 4402 (Committee on Special Education can deal with person in parental relationship); N.Y. Educ. Law § 4107 (person in parental relation to an Indian child can be held criminally responsible for attendance); N.Y. Educ. Law § 4106 (duties of person in parental relation to Indian Children). *See also* Individual Education Plans (IEPs), 34 U.S.C. § 300.20(a). But parents and guardians retain exclusive powers for some school situations. Only parents and guardians can consent to school drug testing, N.Y. Educ. Law § 912-a; receive tuition reimbursement, N.Y. Educ. Law § 562; consent for employment certificate, N.Y. Educ. Law § 3217, N.Y. Educ. Law § 2119 and farm work permits, N.Y. Educ. Law § 3226; and in attendance conflicts with religion of parent or guardian, can be absent from education, N.Y. Educ. Law § 3204.



the parent(s). At present, New York only indirectly recognizes such affidavits.<sup>4</sup> The construction of the power for "personal relationships and affairs," under New York's power of attorney statute does not include the power to make medical decisions or other routine caregiver decisions.<sup>5</sup>

Enrolling the child in school can be especially complicated. Under New York's Education Law, residency in a school district is necessary in order to qualify for tuition-free enrollment. The statute requires proof of other residency to overcome the presumption that the children reside with their parents. Although the law provides that residency can be proven by a totality of the circumstances,<sup>6</sup> many school districts demand that the kincaregiver has legal custody or guardianship. Without legal custody, the kincaregiver will have to pay tuition even though no other school district is providing the education. For example, two retired grandparents, unwilling to seek legal custody because the procedure might destabilize their mentally ill son, paid for nine years of private schooling for their grandchild. The school district refused to enroll their granddaughter because the grandparents were not the legal custodians or guardians. As another example, when a parent left children with kin just weeks before the start of the school year, the school authorities refused to enroll the children until the kincaregiver obtained legal custody or guardianship. Applying for legal custody can take time but the school district refused to allow the child to attend school while the application was pending. Such local practices are not only unreasonable, they also have no legal basis and lead to unnecessary court proceedings.<sup>7</sup>

*Security* – Informal custodians have little or no security that children will remain in their homes. Since parents retain the right to care for their children, they can remove them from caregivers' homes at will. Moreover, in many instances, the parents use this insecurity to coerce kincaregivers to refrain from seeking public assistance or applying for the earned income credit. Even when one custodial parent places a child in the home of a relative, the other parent can still demand custody of the child.<sup>8</sup> In one case, a young mother separated from her husband was killed in a car accident caused by a drunken driver. The mother's five-

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4 For example, in New York City and Rochester, school districts permit kincaregivers to attest to their assumption of informal custody.

5 N.Y. Gen. Oblig. Law § 5-1502I "Personal Relationships and Affairs" provides that the agent may be appointed: "to do any other act or acts, which the principal can do through an agency, for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends and organizations." While it can be argued that this authority includes education and medical, in practice it has been used exclusively for financial needs. This subdivision specifically refers to real and personal property. N.Y. Gen. Oblig. Law § 5-1502I(14).

6 See generally *Catlin v. Sobol* 77 N.Y. 2d 552, 569 N.Y.S.2d 353 (1991); *Matter of Moncrieffe*, 121 Misc. 2d 395, 467 N.Y.S.2d 812 (Surr. Ct. Nassau Co. 1983).

7 *Catlin v. Sobol*, 77 N.Y.2d 552.

8 Wallace, Gerard, *The Big Legal Picture: Grandparents Parenting Grandchildren: A New Family Paradigm*. *Elder Law Attorney*, New York State Bar Association, Special Issue on Grandparents Rights, 10(3) pp.10-22. Summer 2000.

year-old son was also injured in the accident. He and his deceased mother had lived with the grandmother for almost all of his life. Five days after the young mother's burial, the grandmother was served with a subpoena ordering her to appear in court on the next day. The absentee father, who had spent less than 25 hours with the child in the last five years and had never provided support, demanded custody of the child. In court, the judge found the father to be a fit parent and immediately placed the child in the father's custody. Since the enactment of the "Grandparent Caregivers' Rights Act" such a result is precluded for children living with a grandparent for two or more years because now courts must analyze best interests before determining custody. No such protection exists, however, for non-grandparent kin-caregivers, except for judicial determinations using case law, which do not define any minimal period of caregiving as mandating best interests analysis. The lack of certainty regarding security is a constant anxiety for both kin-caregivers and children.

*Financial Assistance* – Financial support is limited to federally funded Temporary Assistance to Needy Families (TANF) "child-only" grants. "Child-only" grants are based exclusively on the income of the child, without considering the caregiving relative's income and provide limited payments to relative caregivers for the care and boarding of a child. When children are living with non-parents, the caregiver may apply on behalf of the child for a "child-only" grant. Only a "legally responsible relative's" income can be part of the eligibility calculation.<sup>9</sup> "Legally responsible" means financial responsibility.<sup>10</sup> This is a distinct legal responsibility in addition to the legal responsibility to provide adequate care for children under abuse and neglect laws. While parents are legally responsible for their children, no other caregiver has this legal responsibility unless the court orders granting legal custody or guardianships indicate that the caregiver has assumed the responsibility.<sup>11</sup> In effect, only parents, spouses, and stepparents are legally responsible to support their children.<sup>12</sup> Therefore, other caregiver's income is not considered available to a child in deciding eligibility for public assistance.

Non-parent caregivers should be able to contribute income to a child for purposes not covered by the public assistance grant without their contribution being counted as income to the child.<sup>13</sup> When a non-legally responsible relative claims a child as a dependant, then refuses to contribute (to covered contributions), only the actual contribution can be budgeted.<sup>14</sup> But, until recently, when a non-legally responsible relative claims a child as a dependant on their income tax return (often for purposes of qualifying for the Earned Income

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9 18 NYCRR 352.321(a)(2).

10 A Source Book, glossary p.iii-12.1.

11 Memo from DSS, January 1994, Asst. Counsel Philip Nostramo.

12 18 NYCRR 347.2©.

13 18 NYCRR 352.16(a).

14 PA Source Book XVI-H.

Tax Credit), fair-hearing decisions permitted social services districts to assume 51 percent.<sup>15</sup> As of August 2002, the 51-percent rule has been repealed and "Child-Only" grants may no longer be reduced by deeming the income of a relative caregiver, who claims the child as a dependant, to be available to the child.<sup>16</sup> In a number of other circumstances, incorrectly filling out the application form can still lead to decreased payments.

When a child is the recipient of a "child-only" grant, caregivers are not automatically eligible for child care.<sup>17</sup> Such caregivers, if under the 200 percent of the state income standard (up to 275 percent in some counties), may be "income eligible" under the low-income child-care program. In this program, those over the poverty level are assessed a co-payment based on a complicated schedule. Under either program the caregiver may choose the provider, and the county is responsible for payment up to the "market rate."<sup>18</sup> Often, despite eligibility, kin caregivers are not able to get child care because the county lacks resources or funding.

As a general rule, if a person applying for assistance is over 60 or disabled, and buys and cooks meals apart from persons for whom they are not legally responsible, the elderly or disabled persons can apply for food stamps as a separate household.<sup>19</sup> However, children under 18 who are "under the parental control" of someone in the household, cannot be a separate household.<sup>20</sup> But for kinship foster parents, children may be excluded from the household unit for purposes of estimating food stamps budgets.<sup>21</sup>

"Child-Only" grants can be difficult to get, both because of bureaucratic roadblocks and cumbersome application procedures, and because silent policies discourage applications for public assistance. One story illustrates the obstacles to financial assistance. A grandmother takes her daughter's two young girls into her home. Later, the grandmother becomes their legal custodian. Neither the child welfare system, the courts, nor the local department of social services informs her about "child-only" TANF grants. For two years she suffers severe financial hardships. Only then, by chance, does she learn of these grants.

*Resources* – In general, supportive services are very limited, and many caregivers may not know they exist or where to apply for them. Child care may be provided, but long waiting

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15 *Matter of Lucille F.*, fh #2613524Z (3/14/97); *Matter of Anonymous*, fh # 2565638Q (10/18/96); *Matter of Latoya E.*, fh # 249227Q & 2532265R (9/23/96).

16 18 NYCRR 352.31(b).

17 *Matter of A.C.*, 3/31/92.

18 18 NYCRR 415.9.

19 7 CFR 273.1(a)(2)(I)(c).

20 7 CFR 273.1(a)(2)(I)(B).

21 7 CFR 273,1(c)(6).

periods make it practically unavailable.<sup>22</sup> Respite services for caregivers are virtually nonexistent. Counseling services for caregivers or the children are equally difficult to obtain. Legal services to indigent caregivers are invariably scarce.<sup>23</sup> Although some states use TANF funds for kincaregivers, New York, like most states, has yet to enact TANF-based legislation that comprehensively targets the needs of kinship caregivers.<sup>24</sup> Unlike most states, New York has only one dedicated program, through the aging network, and that program only targets aging kincaregivers.<sup>25</sup>

## **Legal Custody**

Legal custodians are caregivers who are awarded legal custody of children by a court with competent jurisdiction. Often informal caregivers will say that they have "custody" of a child. In the common sense meaning of the word "custody" this is true, but it is not true in its legal meaning. Only a court can award "legal custody."

*Recognition* – In New York, most kincaregivers are legal custodians. Courts have traditionally preferred awarding custody, rather than guardianship, to non-parent relatives. But New York's statutes do not provide legal custodians with the same recognition conferred on legal guardians. Procedures and powers for legal guardianship and legal custody are governed by different statutes.<sup>26</sup>

*Authority* – New York's legal custodians do not have the necessary statutory authority to make medical and school-related decisions.<sup>27</sup> By necessity, medical providers and schools often disregard this inadequacy.

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22 Giannarelli, L. & Barsimantov, J. (2000, December). *Child Care Expenses Of America's Families*. Washington, DC: The Urban Institute.

23 McCallion, P., Janicki, M., Grant-Griffin, L., & Kolomer, S. (2000). Grandparent Carers II: Service Needs And Service Provisions Issues. *Journal of Gerontological Social Work*, 33(3), pp. 57-84.

24 Geen, R., Holcomb, P., Jantz, A., Koralek, R., Leos-Urbel, J., & Malm, K. (2001). *On their own terms: Supporting kinship care outside of tanf and foster care*. Washington, DC: The Urban Institute.

25 National Family Caregiver Support Program, part of the renewal of the Older Americans Act, provides funds for relative caregivers of children. P.L. 106-501 Part E, Sec. 373(a)(2) (2000), amending 42 U.S.C. § 3030s-1.

26 See Article Seventeen of the Surrogate's Court Procedure Act and Article Six of the Family Court Act.

27 N.Y. Educ. Law § 3212(1) (Persons in Parental Relationship). "A person in parental relation to another shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown, *including persons*

*Security* – Legal custody provides the security that a parent cannot remove a child at will, but a strong preference for parental reunification still places children in legal custody at great disadvantage. A custody proceeding between a parent and non-parent, called a third-party custody dispute, requires that the court find "extraordinary circumstances," such as parental unfitness or "an extended disruption of custody" before analyzing the child's best interests. The law presumes that parents act in their children's best interests. In a few states, statutory or case law provides that a parent's voluntary placement of the child with another full-time primary caregiver for an extended period of time is sufficient reason to consider granting custody to non-parent caregivers. New York's statutes provide this protection to grandparents, using residency rather than the narrower primary caregiver standard.<sup>28</sup> For non-grandparent caregivers there is no statutorily defined time period.

A 2001 New York Family Court decision, *Webster v. Ryan*,<sup>29</sup> declared that all children have a constitutionally protected liberty interest in maintaining "parent-like" relationships, but widespread judicial acceptance of such a right still has a long road to travel.

*Financial Assistance* – Legal custodians and legal guardians have access to financial assistance via TANF "Child-Only" grants. In a few states, like New Jersey and Florida, special court procedures permit a qualified kinship caregiver to receive higher payments if they are caring for children for reasons similar to those that would cause children to enter foster care.<sup>30</sup>

*Resources* – Aside from "Child-Only" grants, New York offers little or no assistance to kinship caregivers. Some local area offices on aging and departments of social services have limited programs that offer support groups or respite, but these programs are not widespread.

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*who have been designated pursuant to title 15-a of the general obligations law as person in parental relation to the child*(emphasis added)." A similar definition applies to immunization powers, but does not include step-parents. N.Y. Public Health Law § 2164. (Immunizations). And N.Y. Public Health Law § 2504 permits parents, guardians, and parental designees to make medical decisions for minors.

28 Chapter 657 of the 2003 Laws of New York amended Domestic Relations Law § 72 by adding a new "extraordinary circumstance," defined as an "extended disruption of custody." The definition applies to grandchildren who "resided in the household of the petitioner grandparent or grandparents." Dom. Rel. L. 72(2)(b).

29 *Webster v. Ryan*, 187 Misc.2d 127; 720 N.Y.S.2d 750 (Fam. Ct. 2001).

30 Mullen, F. & Einhorn, M. (2000, November). *The Effect Of State Tanf Choices On Grandparent-Headed Households*. Washington, DC: Public Policy Institute.

## **Guardianship**

In general, guardians are the legal substitutes for parents who are deceased, disabled, or deemed to be permanently unsuitable caregivers. New York's Surrogate's Courts can appoint legal guardians under the Surrogate's Court Procedure Act.<sup>31</sup> Family Courts have the authority to award either legal guardianship of the person or legal custody.

*Security* – In New York, since guardianship does not terminate parental rights, parents may still challenge awards whenever there is a sufficient favorable change in their circumstances, or when they decide to withdraw their consent. Like custody proceedings, there is no limit on the number or frequency of petitions by parents. Many states, including New York, have statutes that permit legal guardians to name a successor. In this regard, New York's law is unique because it permits legal custodians to designate a successor guardian.<sup>32</sup> Only New York also permits informal caregivers who can show that the parent(s) cannot be found, to name a standby guardian.

*Financial Assistance and Resources* – In New York, both legal guardians and legal custodians generally can get "Child-Only" grants. In over 30 states, subsidized guardianship is now offered to kinship foster parents who are leaving foster care.<sup>33</sup> In January 2004, New York declined to seek a waiver from the federal government that would have funded a statewide subsidized guardianship program, despite the recommendations of its own feasibility study.<sup>34</sup> A few states offer increased subsidies to non-foster kinship caregivers. New Jersey permits non-foster kinship caregivers to become kinship guardians with increased TANF-funded payments.

## **Kinship Foster Care**

Kinship foster care, more recently termed public kinship care, refers to the care of children who are placed in foster care with a relative caregiver serving as the foster parent, generally because of abuse, neglect, abandonment or voluntary surrender of the children by their parents.

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31 N.Y. Surr. Ct. Proc. Act §1700 et seq.

32 N.Y. Surrogate's Court Procedure Act § 1726.

33 Brooks, S. L., The Case For Adoption Alternatives. *Family Court Review*, 39(1), pp. 43-57, January 2001.

34 Wulczyn, Fred et al., "Relative Caregivers, Kinship Foster Care, and Subsidized Guardianship: Policy and Programmatic Option." Report to the Governor and Legislature, February 2003. Prepared for the NYS Office of Children and Family Services by Chapin Hall Center for Children, University of Chicago.

Nationally, about 131,000 children are currently in kinship foster care.<sup>35</sup> In New York, in 2002, 8,671 children were in kinship foster care.<sup>36</sup> Nationally, over 22 billion dollars was spent on child welfare in 2002.<sup>37</sup> In New York, close to two billion was spent in 2002.

*Recognition* – Kin are recognized as a resource for children who are abused or neglected. New York provides foster parent certification for kin. However, Coalition members reported some local departments of social services dissuade kin from becoming foster parents by prolonging the certification process. Thus, the chance to enter the kinship foster care system may not actually be offered to kin. Also, until recently, many counties deliberately did not inform kin about the availability of kinship foster care. For example, a mentally ill woman gives birth. Child Protective Services calls the grandmother who takes the baby home from the hospital. No mention is made of the chance to become a foster parent or of the availability of "Child-Only" grants. The grandmother loses her job and is subsequently evicted. The extent to which this "don't tell" practice continues is not known.

*Authority* – The legal responsibility for the children remains with the state. Kin foster parents must follow decisions made by the foster care system and are not free to make parental decisions on their own.

*Security* – In all situations where the state retains custody and guardianship of children, kin are at higher risk of losing children than are parents because they are not afforded the same rights and protections afforded to parents.

*Financial Assistance* – The same level of financial assistance is available to both kin and non-kin foster parents. However, often kin cannot qualify to become foster parents. If a child is rescued from an abusive or neglectful home by a relative, the kincaregiver no longer has the chance to become a foster parent once the child is in a safe, stable home. Illustrative of this "Catch 22" is the case of a seventy-three year old grandmother who confronted the residents of a crack house and pressured them into giving her three-year-old grandson to her. She brought the toddler home, knowing that her pension income would not support her new family. The local department of social services would not help, even though in the past she was certified as a foster care parent for another child. The state reasoned that it did not have to intervene because this child was no longer abused or neglected. Financial assistance for kinship foster parents who are assuming permanent care of a child through adoption is the same as foster care payments. Over 30 states now offer subsidies to kinship foster parents who are willing to become the

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35 Ehrle, Jennifer et al. Snapshots of America's Families. Urban Institute, 2002.

36 Child Welfare League of America, 2002, cited in Forging Connections, NYS Council on Adoptable Children, 2004.

37 Bess, Roseana and Cynthia Andrews Scarcella, "Child Welfare Spending During a Time of Fiscal Stress." Urban Institute, 2004.

"permanent" guardian. In New York, without subsidized guardianship, kin who will not adopt are forced to leave the child welfare system and become either legal custodians or legal guardians, usually with "Child-Only" TANF grants, SSI or no financial assistance.<sup>38</sup>

*Resources* – Kinship foster families are eligible for considerably more services than privately arranged kinship care, but services may still be inadequate to address the unique obstacles accompanying unanticipated caregiving by relatives.<sup>39</sup>

## **Adoption**

In adoption, the natural parent is completely replaced by the adoptive parent. Recognition, authority, security, financial assistance, and resources are the same for adoptive parents as for natural parents.

*Financial Assistance* – Although adoption may be most advantageous in terms of recognition, authority and security, adoption may be detrimental to the financial stability of the family since the income of the adoptive parents will be deemed available for the support of the child, thereby eliminating the chance to receive a "Child-Only" TANF assistance grant. Adoptive parents, like natural parents, are eligible for public assistance only if their total family income falls below 185 percent of the poverty level.<sup>40</sup>

As for the opportunity to adopt, courts require legal representation for adoption proceedings, and many kincaregivers, even when they have the consent of the parent(s), cannot afford to pay attorney fees.

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38 Brooks, 2001.

39 Malm *et al.*, 2001.

40 Mullin & Einhorn, 2000.





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