
**TESTIMONY
JOINT LEGISLATIVE HEARING
ON THE GOVERNOR'S PROPOSED HUMAN SERVICES BUDGET
JANUARY 30, 2020**

**Supporting the 190,000 Children Living with Grandparents and Other
Relatives Who are *Not* in Kinship Foster Care**

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Executive Summary

The NYS KinCare Coalition represents the kinship community in New York State. Led by the statewide Kinship Navigator, with support of over 65 member organizations, the Coalition seeks to improve supports for New York State kinship families: grandparents, other relatives, and family friends who provide care for an estimated 195,000 children not living with their parents, with less than 5,000 of these children in kinship foster care.¹

The Kinship Navigator provides information, education, and referrals via its helpline and website. It also provides leadership for the kinship community and works to establish collaborations with local departments of social services and other human services organizations to enhance services for kinship caregivers. The program is administered by the Office of Children and Family Services (OCFS) and is operated by the Catholic Family Center in Rochester, with offices in Rochester, Albany, Buffalo, and Saranac Lake. It works closely with OCFS to improve supports for kinship families and to assist the 20 local kinship programs.

The Kinship Navigator helpline² receives over 3,000 calls per year, primarily from kinship caregivers and also from professionals seeking information to assist caregivers. On its website,³ there are over 100 legal fact sheets, guides, and kinship-specific informational pamphlets, in addition to policy statements, statewide reports, and articles on various kinship legal issues.

Since 2005, the Coalition and the Kinship Navigator have co-hosted five statewide summits (2005, 2008, 2011, 2013, and 2019). The first four summits issued reports with practical recommendations to support kinship care families. Over thirty of the recommendations have been enacted, regulated, or resulted in changes, however, many critical recommendations still require action.

For this budget hearing, we are focused on our budget priorities.

Enactment of the 2018 Family First Prevention Services Act created potential matching funds for kinship navigator programs and provided for transitional payments for qualifying kinship navigators. Additionally, Congress appropriated a three year federal grant to assist states in meeting the qualifying requirements. The Governor in his State of the State proposed assistance for transition services and for a “firewall” to increase access to kinship foster care. These Congressional and state actions highlight the increasing attention to supports for kinship families, both in accessing foster and preventing children from entering foster care.

New York should decide to build on its existing services and develop a more robust system that incorporates important best practices from across the nation and can meet the requirements for the federal fifty percent match.

¹ OCFS Bureau of Research, Evaluation, and Performance Analytics data prepared on 4/30/19. There were 18,081 children in foster care, 4,505 in kinship foster homes.

² Helpline Number: 877-454-6463 operating Monday – Friday from 10am – 4pm.

³<http://www.nysnavigator.org>



A. Kinship Services - Budget Proposals:

The budget proposals focus on supports for non-foster care kinship families, and seeks to move the budget towards a more comprehensive funding, by increasing funding to \$5 million from the current \$2,559,250.

Priority 1: Fund Local Kinship Support Services at \$4 Million

For the past four years, the Governor provides only \$338,750, with the final budget at \$1.9 million. In 2020, the OCFS local kinship program contracts will end in August. OCFS has issued a new RFA before the April 1, 2020 budget deadline. However, the RFA is contingent upon the FY 2020/21 continuing the current funding provided in the state budget. The current programs each receive \$98,000 - \$103,000 per budget year. Most of the best performing programs, especially those in metropolitan areas, cannot provide adequate services to meet the demand at that amount of funding.

Programs that could comprehensively implement best practices and support more caregivers will be funded by OCFS at up to \$150,000 per program. Funding 26 programs with capabilities to serve multiple counties at \$150,000 each would cost \$4 million.

Increased funding will mean more organizations may be interested in kinship care and new organizations will seek funding. In the past, inconsistent funding opportunities have caused some excellent kinship programs to cease offering services and close their programs. Therefore, it's important that existing quality programs continue to be funded. Additionally, along with improving its current kinship services, the increased funding will enable programs to implement kinship services that may qualify for matching federal dollars.

Priority 2: Fund the NYS Kinship Navigator at \$1 Million

For the past nine years, the Governor has provided \$220,500; for the past two years, the final budget at \$320,500. In the last two years, the Kinship Navigator successfully expanded its educational services across the state and in collaboration with departments of social services. This work has been partially funded via the federal pilot project. The Navigator's core program functions, a centralized kinship information database and assistance to caregivers in accessing and obtaining benefits, has also continued to expand and the demand for its existence consistently exceeds its resources. Given the evolution of kinship services and the Navigator's key role, there are many services and collaborative efforts that the Navigator could implement with more program funding.

Enhanced funding would allow the Kinship Navigator to:

- Expand upon its successful regionalized work by hiring additional kinship experts across the state to offer specialized virtual assistance to caregivers
- Participate and advise in state and county stakeholder groups as counties implement Families First kinship-focused practices



- Increase service collaborations with local providers to expand the services available to the kinship community
- Offer region-specific localized training and education with state, county, and voluntary agencies, including for OCFS kinship champions and the Kin-First Firewall.
- Tailor its program elements to meet requirements to qualify for matching federal dollars.

The demand for the educational work of the NYS Kinship Navigator continued to rise with the increase in use of kinship caregivers as placements for children, and such activities would require a significant increase in funding. Additionally, the budget line item text should add caregiver “support services” to the operational responsibilities in order to permit development of program elements that qualify for Title IV-E funding.

For services and expenses of the Catholic Family Center in Rochester to establish and operate a statewide kinship information, education, **SUPPORT SERVICES**, and referral network.

B. Better Access to Supportive Services - Budget Proposals:

These budget proposals do not fund kinship programs but are related to: access to public assistance benefits; assigned counsel to indigent caregivers; and KinGAP subsidies. The goal is to move closer to consistent and uniform access to supportive services for all kinship families.

Priority 3: Permit Financial Supports for Families in Need

Amend SSL § 131-c to include eligibility for certain children who currently cannot receive non-parent grants (S4809A/A4256, passed 2019; Governor vetoed). The primary financial assistance available to kinship families is the public assistance non-parent grant (also called a “child only” grant). Eligibility is based solely on a child’s income when parents are not present in the home. Only 15% of all eligible families in New York receive this assistance. While outreach is sorely needed, even when caregivers apply, there are barriers to eligibility. Two such barriers are the eligibility rule that decreases the amount of the grant when a caregiver is already on public assistance or when a child applicant has a half-sibling who has income from the different parent, because that income is attributed to the child applicant. A cost analysis should be developed to determine the fiscal impact of this bill. The Governor’s veto memorandum indicated that the bill should be part of the legislative budget. The Governor also asserted that changes to the filing unit rules violates federal law. However, research by legal services provides clear arguments showing validity. Legal argument has been submitted to the bill sponsors. This bill may require a cost analysis to identify the fiscal impact.

2019/20:

S4809A A4256A	PERSAUD/HEVESI – Amends SSL § 131-c: Relates to the option for parents and non-parent caretakers to exclude a siblings from the public assistance household. Addresses eligibility rules in households with
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	multiple children with disparate incomes/resources and households with parents/caregivers on public assistance.
Senate: Passed Senate	Assembly: Passed Assembly

Priority 4: Protect Kinship Caregivers from Harmful Child Support Actions

Prohibit county social services districts from seeking to collect child support from parents when an applicant for public assistance can show good cause for exempting their cooperation with support collection. Good causes are domestic violence and harm to children and caregivers that would occur if support is pursued. Currently, even when such exemptions are proven, a county district may still seek support. Social Services Law § 349-b should be amended so that proof of good cause prohibits collection efforts. Public assistance financial benefits are mainly drawn from the Temporary Assistance to Needy Families federal block grant. This bill may require a cost analysis to identify the fiscal impact.

Priority 5: Provide Assigned Counsel to Indigent Kinship Caregivers Seeking Custody or Guardianship

This bill amends Family Court § 262 to provide assigned counsel to indigent kinship caregivers in custody and guardianship proceedings. In the last session, S.5434/A.7586 utilized the definition of kin codified in SSL § 458-a(3)(a, b, c) and the phrase “acting as a parent” codified in Domestic Relations Law § 75(a)(13) to define kinship caregivers who, if they met the standards for indigence, would be eligible for assignment of counsel when petitioning for legal custody or guardianship. Additionally, the bill added indigent respondent guardians as eligible parties.

Support for this amendment was first recommended in the 2005 Kinship Summit report, which was also based upon an AARP survey of New York caregivers. Subsequent reports reiterated the need for assigned counsel; it was also repeated as a specific recommendation in the 2008, 2011, and 2013 reports.⁴ As such, it is the only recommendation stated in all four reports that has yet to be enacted or regulated.

Court proceedings reach the best outcome for children when both parties are supported by legal counsel, but indigent caregivers are often asked to take on the responsibility of either representing themselves or finding their own legal counsel, even when the child has been placed with them by child welfare pursuant to Article 10 proceedings or via alternative living arrangements. Indigent parents are assigned counsel pursuant to FCA § 262(v); indigent non-parent caregivers may be assigned pursuant to FCA § 262(b). But many family court judges either do not know that assignment is permitted or choose not to provide counsel. We support amending FCA § 262 to provide a right of counsel for indigent kinship caregivers whose petitions show that children are already living with them for an extended period. This bill may require a cost analysis to identify the fiscal impact.

2019/20:

⁴ Reports available at http://www.nysnavigator.org/?page_id=273

S5434 A7586	SALAZAR/HEVESI – Amends FCA § 262: Relates to Family Court Act Article Six custody and guardianships and right to counsel for indigent parties under section 262. Adds indigent kinship caregiver petitioners and respondent guardians.
Senate: In Judiciary	Assembly: In Children and Family

Priority 6: Permit KinGAP Subsidy to Continue Post-Adoption

Codify the ruling that KinGAP caregivers may privately adopt without losing the support subsidy. A recent ruling made by an Administrative Law Judge in Schenectady at a Fair Hearing determined that when a caregiver who exits foster care to KinGAP as permanency, then wants to adopt the child (which would be considered a private adoption – no subsidy consideration when adopting privately), the caregiver would be able to maintain their KinGAP subsidy based on the grounds that the caregiver maintains financial responsibility for the child, despite the change from KinGAP to adoption. Codifying the ruling in an amendment to SSL § 458-b would take the guess-work away from counties as to what to do with these cases, and allow flexibility for caregivers who may want to adopt in the future, but are being ushered into KinGAP. This bill may require a cost analysis to identify the fiscal impact.

Appendix A: Non-Budget Kinship Legislative Priorities

Priority 7: Define the Term “Kinship Care”: Kinship Care is the common term for grandparents, relatives, and family friends caring for children. The term should be defined in statute to ensure uniformity of usage by amending SSL § 458-a.

The KinGAP laws in Social Services Law Title 10, entitled “KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM” (SSL 458-a ff) and OCFS kinship programs are identified by the term “kinship.” The term is also used in federal legislation, including the Fostering Connections to Success and Increasing Adoption Act of 2008 and the Families First Prevention Services Act of 2018. New York should codify the term and define who kinship caregivers are by amending SSL 458-a to include a definition. A statutory definition would ensure uniform usage of the term in law, regulation, and policy.

Priority 8: Define Alternative Living Arrangements, Require Data Collection, and Enact a Pathway into Foster Care for Safety Plan Kinship Families

Alternative living arrangements (aka “safety plans”) place children with kin via informal arrangements suggested by Child Protective Services in order to avoid formal removal proceedings. Many of these arrangements do not need the full range of child welfare supports available to kinship foster parents and kin may successfully provide care on their own. However, kin who assume care may later realize that they need foster care services. Reasons may be the need for court oversight of parents, additional financial assistance, respite, or specialized services for children with special needs. Such assistance may not be affordable for non-foster care kin. Because safety plan kinship families assume care after child welfare interventions, they should not be left on their own when they need heightened assistance. Additionally the practice is common but not



adequately monitored, with counties implementing different practices and protocols. The practice needs to be subject to scrutiny and state supervision. Adequate oversight begins with data and a statutory definition and SSL § 412 and § 424 should be amended to establish a statutory definition of alternative living arrangements, collection of data on the number of such placements and their outcomes, and a description of approved use of such arrangements. A new statute, FCA § 1028-b should be enacted to provide kin who've assume care pursuant to an alternative living arrangement with the opportunity to become foster parents.

Priority 9: Expand a Kinship Family’s Right to Petition for Custody

Amend DRL § 72(2) to empower all kinship caregivers, not just grandparents, to have legal standing in court when caring for children for an extended period of time. Currently, DRL § 72(2) provides standing in custody disputes for grandparents who are caregivers of children for twenty-four consecutive months. This bill would amend the statute to also include other relative caregivers. Relatives must be within the second degree of consanguinity or affinity to one of the minor child's parents. This provision would align the statute with the fact that more kinship care is provided by non-grandparent caregivers, but limit the class of relatives to those most likely to become caregivers. The amendment would follow the overwhelming research evidence that children do better when they can live with a relative who they have a strong relationship with, and would provide close family members caregivers with clear standards for when they can petition. The amendment would also extend the same standard to guardianship petitions and exempt parents who have suffered domestic violence from the statute.

2019/20:

S5648 A8316	MONTGOMERY/WRIGHT – Amends DRL § 72(2): Relates to changing domestic relation law regarding standing of certain relatives in custody and guardianship proceedings.
Senate: In Children and Families	Assembly: In Judiciary

Priority 10: Strengthen Legal Custody Powers for Caregivers

Amend EdL § 3212 and PHL § 2164 to authorize caregivers with an order of custody to make certain education and health decisions for children (S4475/A1121). In practice, legal custody and legal guardianship of the person (FCA part three sections 651ff. and part four sections 661ff) have been considered practically interchangeable, but important distinctions in statutory powers have existed in law. In 2019, chapter law 623 provided legal custodians with the authority to make medical decisions for children in their care. Yet the definition of person in parental relationship used in the public health law and education law still do not include legal custodians. Amendment of the definition will conform the public health law to chapter law 623’s grant of medical authority. Legal custodians already have authority to enroll children in school (FCA § 657 and DRL § 74), and by amending the education law, legal custodians will now also have responsibility for school related decisions. The amendment further aligns the statutory grant of powers with the realities of custodial care and thus improves supports for stability and permanency of kinship children.

Priority11: Investigate and Regulate “Alternative Living Arrangements”



Child Welfare placements called “Alternative Living Arrangements” (aka “safety plans”), which divert children into non-foster kinship care without an Article Ten removal proceeding are often utilized by local districts. However, county practices are largely unregulated, data is not collected, and outcomes are not monitored. Sometimes, such arrangements become long term caregiving arrangements, with no follow up from the child welfare agency that originally facilitated the child no longer living with the parent. The facilitation of children living with someone other than their parents under the threat of removal raises a number of issues, including: no parent due process or representation, lack of oversight by courts, no follow up from CPS, kinship family’s without access to services, and no pathway into foster care for kinship caregivers. The kinship community asks the legislature to engage with the Office of Children and Family Services to collect data on the use of alternative living arrangements, to evaluate the use of these placements, including their length of time, permanency outcomes, and services offered; to update its data collection system to accurately collect all incidents of Non-LDSS Custody-Relative/Resource Placements, to require county follow up and review of all alternative living arrangements made, and to report to the legislature a clear definition of the practice with suggested guidance for regulating its use.

Priority 12: Collect Court and Child Welfare Data on Kinship Families

Collect data outcomes on non-foster kinship families in family court and in social services. As stated in Priority 6, there is no data on the number of alternative living arrangements. Similarly, there is no data on conversions of FCA 1017 “direct custody” placements to Article Six custody and/or guardianship. In order to understand how kin are “used” by child welfare departments as a resource for vulnerable children but do not become foster parents, it is important to have all systems collecting and reporting relevant data on this population.

Priority 13: Include Private Kinship Care in the Implementation of the Family First Prevention Services Act and the Family First Transition and Support Act

In 2018, Congress passed the Family First Prevention Services Act, opening Title IV-E funding up to services other than Foster Care to allow states to pay for preventive and kinship services to keep children out of foster care, especially group homes. In 2019, the Family First Transition and Support Act was passed, further defining some of these services and providing support for the implementation of preventive and kinship services. Both acts implement and provide funding for programs related to kinship care. New York State is actively engaged in creating guidelines for the state’s implementation of these Acts in 2021, and it is important to ensure that kinship caregivers and kinship professionals are included in the process and that services for this community are an important part of the discussion. Issues of particular importance to the kinship community are: the definition of “imminent risk standard” and what kinship children are eligible for services, which kinship families will receive preventive services, and support for new kinship navigator services.



Appendix B: Description of Kinship Care in New York

The Kinship Navigator provides information, education, and referrals via its helpline and website. It also provides leadership for the kinship community and works to establish collaborations with local departments of social services and other human services organizations to enhance services for kinship caregivers. The program is administered by the Office of Children and Family Services (OCFS) and is operated by the Catholic Family Center in Rochester, with offices in Rochester, Albany, Buffalo, and Saranac Lake. It works closely with OCFS to improve supports for kinship families and to assist the 20 local kinship programs.

The Kinship Navigator helpline⁵ handles over 3,000 calls per year, primarily from kinship caregivers and also from professionals seeking information to assist caregivers. On its website,⁶ there are over 100 legal fact sheets, guides, and kinship-specific informational pamphlets, in addition to policy statements, statewide reports, and articles on various kinship legal issues.

It is important to recognize that most children living with kin in New York State are not in foster care. Estimates based upon 2017 U. S. Census American Community Survey (ACS) data, there are approximately **133,673 kinship households**, with **195,546 kinship children**⁷ and according to OCFS, in 2018, only 4,505 children were placed in foster care with kin⁸. According to the Federal Interagency Forum on Child and Family Statistics, America's Children: Key Indicators of Child Well-Being 2017,⁹ grandparents provide approximately 55% of kinship care, while other relatives make up 24% of kinship care, and 21% lived with nonrelatives.

Many caregivers are raising children who have been exposed to trauma and struggle to cope with their experiences. Support services for these families are vital to promote permanency and stability and to promote positive long-term physical, emotional, and behavioral health outcomes.

Kinship Care is a Women's Issue

Kinship care is a critical women's issue, as caregiving commonly involves mothers and grandmothers who must interact with the child welfare and family court systems. Children living with kin can come into care in a variety of ways, often played out in Family Court through an Article Ten abuse/neglect proceeding initiated by child welfare, but also in private arrangements and in court actions initiated through Article Six custody and guardianship hearings.

In a study conducted by the Center for Human Services Research (CHSR) during a Kinship Navigator demonstration project, 93% of kinship caregivers enrolled in the study (N=303) were women, predominantly

⁵ Helpline Number: 877-454-6463 operating Monday – Friday from 10am – 4pm.

⁶<http://www.nysnavigator.org>

⁷ Estimates made by NYS Kinship Navigator from the American Community Survey 5 year aggregated data. Estimates can be found here: http://www.nysnavigator.org/?page_id=273

⁸ OCFS Bureau of Research, Evaluation, and Performance Analytics data prepared on 4/30/19.

⁹ Report retrieved from: https://www.childstats.gov/pdf/ac2017/ac_17.pdf

grandparents (66%), but also other kin, including aunts, adult siblings, and nonrelative caregivers.¹⁰ These caregivers were disproportionately below the poverty line, with 67% having a household income of less than \$50,000.

Moreover, in 2016, 23% of all children lived with a single mother¹¹, and the number of mothers who parent without fathers in the home points out that many instances of removal or of the potential for removals involve mothers. Even when the local child welfare district is not the investigator, much of kinship care is caused by factors that put children at risk of harm, including but not limited to: parental drug and/or alcohol abuse, neglect, abandonment, incarceration, mental illness, and other unfortunate circumstances.

Kinship Care and the Opioid Epidemic

Substance abuse is a major factor in children no longer being able to remain safely at home with their parents. Nationally, of all child welfare removals, approximately 36% directly involve drug abuse.¹² Much has been written recently about the surge in kinship care homes because of the heroin/opioid crisis. Some headlines include:

NBC News: Opioid Crisis Forces Grandparents to Raise Their Grandkids¹³

The Today Show: 'Heartbreaking': Opioid crisis forces grandparents to raise their grandkids¹⁴

Vox.com: The opioid crisis is making grandparents parents again¹⁵

The Wall Street Journal: The Children of the Opioid Crisis¹⁶

The Washington Post: Grandparents raising grandkids grapple with retirement and college costs at the same time.¹⁷

Complex family interactions, the often unexpected and sudden circumstances where caregivers step in to care for children, and the trauma children experience in the home of their parents lead to increased levels of caregiver stress and a greater likelihood of experiencing poverty.¹⁸ The American Community Survey reports

¹⁰ Needs for Kinship Families in New York State, January 2016. Retrieved from: <http://www.nysnavigator.org/wp-content/uploads/2015/12/Kinship-Needs-Brief-Elee-Final.pdf>

¹¹ America's Children: Key National Indicators of Well-Being, 2017. Retrieved from: https://www.childstats.gov/pdf/ac2017/ac_17.pdf

¹² 2018 AFCARS Report #26, retrieved from: <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf>

¹³ Hannah Rappleye & Brenda Breslauer, *Opioid Crisis Forces Grandparents to Raise Their Grandkids*, ABC NEWS (Oct.20.2017 / 2:01 AM ET), <https://www.nbcnews.com/storyline/americas-heroin-epidemic/opioid-crisis-forces-grandparents-raise-their-grandkids-n808991>. See also, News 12: LI Addicted on Long Island: <http://longisland.news12.com/category/323478/addicted-on-long-island>

¹⁴ Hannah Rappleye & Brenda Breslauer, *'Heartbreaking': Opioid crisis forces grandparents to raise their grandkids*, THE TODAY SHOW (Oct.20.2017 / 4:28 AM ET) <https://www.today.com/health/opioid-crisis-forces-grandparents-become-parents-again-t117745>

¹⁵ Mac Schneider, *The opioid crisis is making grandparents parents again (Grandparents are struggling to raise grandchildren on their own)*, VOX (Oct 30, 2017, 12:30pm EDT) <https://www.vox.com/videos/2017/10/30/16562000/opioid-crisis-grandparents-raising-children>

¹⁶ Jeanne Whalen, *The Children of the Opioid Crisis, (Left behind by addict parents, tens of thousands of youngsters flood the nation's foster-care system; grandparents become moms and dads again)*, THE WALL STREET JOURNAL (Dec. 15, 2016 10:46 a.m. ET), <https://www.wsj.com/articles/the-children-of-the-opioid-crisis-1481816178>

¹⁷ Danielle Douglas-Gabriel, *Grandparents raising grandkids grapple with retirement and college costs at the same time*, THE WASHINGTON POST (October 22, 2017), https://www.washingtonpost.com/local/education/the-forgotten-parents/2017/10/22/e43a92de-adc4-11e7-a908-a3470754bbb9_story.html?noredirect=on

¹⁸ CHSR study showed that 40% of kinship caregivers in the study experience clinical levels of stress.

21.5% of grandparents raising grandchildren are below the poverty level within the last 12 months of survey.¹⁹ In the CHSR survey, over 38% of all caregivers were living in poverty.

The NYS Office of Temporary and Disability Assistance offers a public assistance non-parent (“Child Only”) grant, which averages about \$430 for the first child and \$150 for each additional child, to help alleviate some of the costs of raising children. National research indicates that in New York, about 13% of eligible children living with kin receive the grant.²⁰

- NYC non-parent Caregiver Grant Cases: 4,327 cases (5,601 children)
- Rest of State (ROS) non-parent Caregiver Grant Cases: 12,386 cases (17,918 children)²¹

These grants are available to all kinship caregivers who are not foster parents, if certain eligibility rules are met.

Non-Foster Kinship Care Custodial Arrangements

For the kinship community, non-foster legal arrangements include:

- Informal custody²²
- Direct custody²³
- Legal “permanent” custody²⁴
- Legal guardianship²⁵
- Adoption²⁶

According to NYS Kinship Navigator intakes, and reports from the OCFS-funded local kinship navigator programs documented in their data collection efforts, programs are routinely contacted by caregivers who have recently become caregivers and are seeking guidance for obtaining court orders custody or guardianship. In fact, many do not understand the difference between the two, but know that they want to pursue court orders.

Caring for children without court orders presents numerous concerns. Caregivers may have difficulties enrolling children in school, obtaining medical care and accessing health records, obtaining birth certificates, social security cards, passports, have no protection from parents resuming physical custody, and face a variety of barriers to services and resources that are otherwise available to caregivers in the foster care system or post-guardianship/adoption. Therefore, the reasons that kin seek court help are usually in order to facilitate their care, including school enrollment, medical care, access to records, and security that parents cannot remove children from the homes of kinship caregivers without going to court.

¹⁹ 2013-2017 Grandparents: American Community Survey 5-year estimates retrieved from:

https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_S1002&prodType=table

²⁰ TANF Child Only Cases, 2012: Mauldon, Speigman, Sogar, Stagner: Chapin Hall

²¹ Data provided to the Kinship Navigator by OTDA, August 2018.

²² Pursuant to the personal in parental relationship laws or the General Obligations Law 1551-55 (parental designation)

²³ Pursuant to FCA 1017 – facilitated by child welfare

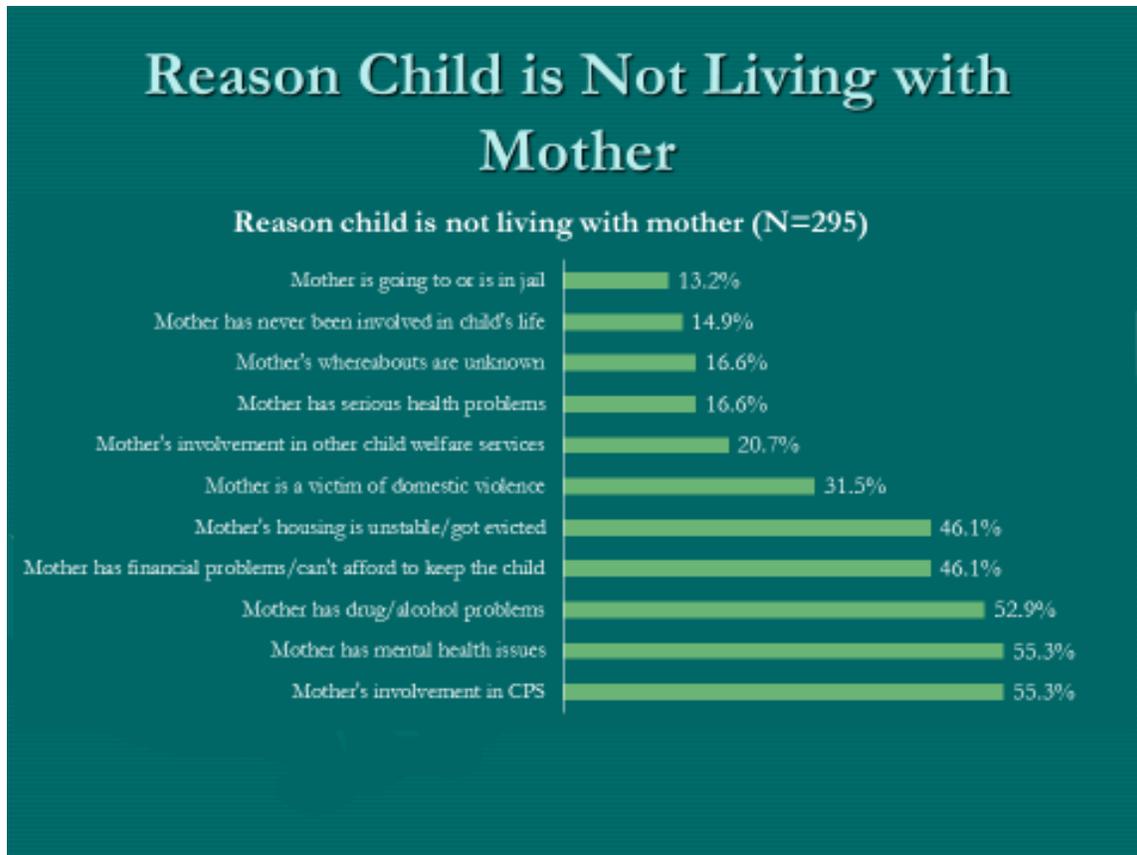
²⁴ Pursuant to Article 6 of the FCA

²⁵ Guardianship that occurs as a permanency solution through foster care with a subsidy is referred to as “KinGAP”, but KinGAP is not available to non-foster kinship caregivers. Private guardianship can be attained through Family Court apart from child welfare involvement.

²⁶ Adoption can occur with the help of the child welfare system as a permanency solution through foster care, or privately

Appendix C: Reasons Why Children Live with Kin in Private Arrangements

The below graph, developed as part of the CHSR study, identified reasons why children in the study of private kinship families were not living with their mothers.



It is noteworthy that the study chose to recount only mother's circumstances and not father's, because predominantly the accounts were mostly about mothers. The graph highlights the fact that mother's often faced involvement with child welfare which resulted in the child living with kin.

Identifying these issues and addressing them as part of the improvement of family involvement with child welfare and family courts is an important part of Legislature's interest in supporting all kinship families.

Appendix D. Discussion on the Need to Regulate the Use of “Hidden Foster Care,” Child Welfare Diversion and Alternative Living Arrangements

Safety plans are a mechanism used by child welfare districts (also referred to as Local Departments of Social Services or LDSS’s) for arranging care of children with kin when children are found by the LDSS to be at imminent risk of harm. Such placements can be (and often are) arranged without initiating a removal proceeding in family court.

Professor Gupta-Kagan’s upcoming Stanford Law Review article, “America’s Hidden Foster Care System”²⁷ describes how safety plans are regular part of a child welfare district’s engagement of kin as resources. A “suitable other” is contacted and they assume care “temporarily”, without any defined end date. Subsequent to the new arrangement, kin face all the aforementioned dilemmas and hurdles of caring for children exposed to trauma, without any formal procedure to request the LDSS to initiate removal or abuse/neglect proceedings, even though the LDSS would have had enough evidence to initiate a removal proceeding based on the safety risk assessment made by the child protective worker.

In many instances kinship caregivers are significantly disadvantaged without access to foster care due to limited resources and supports.

Safety plans are not inherently illegal nor bad policy, as they offer a mechanism for child protective workers to remove a child immediately from a dangerous home and keep the child in a familiar setting with a kinship caregiver who has a relationship with the child. OCFS has instructed Child Protective Services (CPS) workers to assess risk and develop safety plans that “effectively remove the immediate or impending danger of serious harm to the child”²⁸ that can be acted upon instead of conducting an “emergency removal” – a process requiring immediate court action and paper work.²⁹ When used appropriately, a safety plan, as a way to keep children safe and in the care of loved ones, is a good outcome, especially if the child protective services worker is then given time to file the necessary paperwork for an abuse³⁰ or neglect³¹ proceeding, with a judicial removal of custody from the parent then later initiated.

Safety plans that do not include such follow up from child welfare can become long term caregiving arrangements, leaving caregivers with limited legal authority to make caregiving decisions for children, few supports, and leaving parents without due process or legal representation.³² Some counties have reported that once a safety plan is in place, they no longer have any responsibility, because there is no grounds for a

²⁷ Article, “America’s Hidden Foster Care System” by Josh Gupta-Kagan can be retrieved from:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437849

²⁸ NYS CPS Manual 2019 page E4 found here: <https://ocfs.ny.gov/main/cps/manual/2019-CPS-Manual.pdf>

²⁹ See FCA 1024 on emergency removals with no court order and FCA 1022 on removing children before a neglect petition is filed

³⁰ FCA 1012

³¹ FCA 1031

³² See NYS Kinship Navigator Legal Fact Sheet on Custodial Arrangement Comparison Chart, which defines what decisions a person with no court order of custody or guardianship is able to make on behalf of a child in their care: <http://www.nysnavigator.org/wp-content/uploads/2016/01/Kinship-Care-Custodial-Arrangements-Comparison-Chart.pdf>

removal proceeding since the child is no longer in imminent danger now that they are not residing with a parent and are living with a “suitable other”.

The foremost problem with such logic is that the kinship caregiver is not legally responsible for a child in a safety plan, as the parent maintains legal responsibility, and could at any time demand the return of the child to their care. In these cases, some counties indicate that nothing would stop a caregiver from returning the child, and the county admits it may then be forced to conduct an official removal from the parent – but often states that in the initial safety plan the caregiver will not be a placement resource moving forward because they were willing to put the child back in harm’s way by returning the child to a dangerous parent. Such cases are real – and are the worst possible abuse of safety plans as a mechanism for keeping children safe.

Safety plans are also used as the veil under which threats of removal serve to move a child from one home to another. In the Stanford Law Review article,³³ such circumstances are referred to as “Hidden Foster Care,” because they threaten the parent with a removal proceeding, forcing a parent to make a decision to find another accommodation for their child or else have the child taken from them and they are not recorded in a data collection system. A parent may then be encouraged to call a “suitable other” – a relative or family friend – who may then be encouraged by Child Protective Services to agree to a “private arrangement” between the parents and the suitable other for the care of the child. According to the LDSS, this new caregiving arrangement ameliorates the pending harm to the child that was the basis for the CPS investigation and child protective is able to close the case because the threat of harm to the child has been eliminated, leaving the caregiver without protection or legal authority.

The use of safety plans is unregulated, whether used well or used poorly. There is no data collection when an LDSS uses a safety plan to facilitate the transfer of a child from the parent’s home to the home of a suitable other. There is also no standard in which a child protective services worker must choose to make a decision to use a safety plan, or what length of time is appropriate for a safety plan to be in place before a petition must be filed in family court for removal of the child from the parent, nor any court review of such plans. Because of the lack of regulation on the use of safety plans, we currently have no data on how often these cases happen, nor on recidivism, nor on the actual outcomes.

The evidence for the use of such practices is anecdotal, but confirmed across the state from every source of information from caregivers, from child protective workers to kinship professionals serving these families. The Kinship Navigator recently conducted an online survey³⁴ of the 20 OCFS kinship program staff around the state – 17 of which had replied before this testimony.

- 14 of the 17 responding programs reported their county used safety plans to place children with kin
- 12 of 17 programs reported that caregivers they serve often have no court orders, but CPS has been or is currently involved with their children

³³ Article, “America’s Hidden Foster Care System” by Josh Gupta-Kagan can be retrieved from:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437849

³⁴ Survey sent using survey monkey to 20 OCFS funded kinship programs on 11/18/19.

- 11 of 17 programs reported that less than half of their caregivers were told of their placement options (such as foster care or custody)
- 12 of 17 counties reported that given the choice, many of the caregivers would have chosen to become foster parents had they known they could have

The kinship community recommends that the legislature define and regulate the use of safety plans as a placement mechanism to help combat the informal placement of children with kin without offering permanency and solutions and supports achieved through judicial proceedings such as foster care or court adjudicated legal custody.

Recommendations:

1. Defining what a safety plan is in the law will ensure that the practice cannot be used without the procedural mechanisms designed to protect children, their parents, and the kinship caregivers who step in to care when called upon.
2. Regulating the practice will hold counties accountable for their decisions when utilizing the practice, ensuring time limits are in place that do not allow for safety plans to linger and encourage permanent solutions for keeping children safe.
3. Collecting data on the use of safety plans will shed light on the “Hidden Foster Care” system in our state, making us the first of 50 states to step in to protect families from malpractice, and ensure families are connected to vital services to assist in maintaining safety and stability for children who are at risk of harm.
4. Providing a procedural mechanism for kin who became caregivers pursuant to a safety plan and who need foster care services and supports to petition for foster care approval ensures that if families do fall through the cracks, they have a way to ask for needed supports.



Appendix E: Foster Care and Kinship Care - Cost Analysis and Savings

Prepared by NYS Kinship Navigator (February 18, 2019)

Finding information on the amount of money being spent on foster care in New York State is a difficult undertaking. Despite all 62 counties having child welfare divisions devoted to foster care, and hundreds of private voluntary agencies providing foster care services, our queries did not pinpoint exactly how much it costs to run foster care system. However, this paper reflects the best information gathered by the Kinship Navigator staff.

The NYS Kinship Navigator collected information from multiple source. Below is a brief overview of its findings. Each average cost is explained in further detail in the pages below, and each number found here is sourced. The Navigator asked for multiple foster care advocates to review these numbers, and much of the feedback given was that it is difficult to pin down the exact numbers because counties vary in the amount they spend in a given year.

Summary:

Totals: Estimated Total Expenditure (Federal/State/County) for Foster Care and Non-Foster Kinship Care

Total Foster Care Expenditure in NYS (2017).....	\$1,081,530,129
Total Non-Foster Kinship Care Expenditure (2018)	\$99,821,622

Averages: Yearly Cost of Foster Care and Non-Foster Kinship Care

Average cost of child in foster care (home and non-home based) per year.....	\$67,009
Average cost of child in home-based foster care per year	\$27,000
Average cost of one child served by a local kinship program plus one year of nonparent child only grant	\$5,224

Potential Savings: Children living with kin who are not foster parents

Savings per Child <i>not</i> in Foster Care Compared to All Foster Care.....	\$61,785 per child per year
Savings per Child <i>not</i> in Foster Care Compared to Home-Based Foster Care.....	\$21,776 per child per year.



Calculation of Non-Foster Kinship Care

According to 2017 American Community Survey data,³⁵ in New York an estimated 195,000³⁶ children live with relatives who are their primary caregivers, with less than 3,700 children in kinship foster care. The majority of these children live in what we call “private” kinship care arrangements. Caregivers may have a court order of custody or guardianship, or may care for children more informally. The majority of children who live with kin are there for the same reasons they might otherwise be in foster care, namely, abuse and neglect, parental substance abuse, mental health, and/or incarceration.³⁷

TANF Nonparent “Child-Only” Grants

As of August 2018, there were 16,713 TANF Nonparent Child Only Cases reported by OTDA.³⁸ These cases cover 23,519 children, an average of 1.4 children per case.

The TANF Nonparent Child Only grant³⁹ for one child is approximately \$430; for a second child approximately \$130⁴⁰. Nonparent child-only cases average 1.4 children per case, so we have calculated the average TANF cost per child = \$345. For twelve months = \$4,138 per child.⁴¹

The Nonparent child-only grant is federally TANF funded if a child is living with a relative related by blood, marriage, or adoption. It is funded by Safety Net dollars for children living with non-relative (fictive) kin.

Estimated 2018 Total Nonparent Child Only Grant Spending..... \$97,321,622

Program Supports for Kinship Families

The NYS Budget for each of the last two budget years has appropriated \$2,238,750 to fund local kinship care programs, \$338,750 from the Governor, and \$1.9 million from the legislature. OCFS funds 22 kinship care programs at an average of \$101,000 per program.

³⁵ Grandchildren Characteristics, 2017 American Community Survey 1-year Estimates

³⁶ This number is extrapolated from the American Community Survey data and achieved by taking total number of grandparents raising grandchildren who are primary caregivers, taking the number from “married grandparents” and dividing them in half (so as to not count their household twice), adding in the single grandparents to find the total grandparent households. OTDA data (see below) indicates that about 65% of all kinship households are grandparent headed households. Other national research confirms this. Adding in the non-grandparent households gives a figure close to 140,000 kinship households. OTDA data and Navigator database indicate 1.4 children per household, giving a total of 195,000 children.

³⁷ <https://www.gu.org/app/uploads/2018/09/Grandfamilies-Report-SOGF-Updated.pdf>

³⁸ See attached OTDA spread sheet

³⁹ 18 NYCRR 352.2; 352.3

⁴⁰ Estimated NY state average. County by county calculations can be found at: https://empirejustice.org/resources_post/standard-need-charts/

⁴¹ Less than 13% of non-foster kinship children receive nonparent child only grants according to a study done by Chapin Hall in 2012 (Mauldon, Speiglmann, Sogar, Stagner. 2012. TANF Child-Only Cases: Who are they? What policies effect them? What is being done?). Our comparison does not compare foster children versus the majority of non-foster kinship children who are not receiving the grant.



NYS also funds a Statewide Kinship Navigator program which does information, referral, and education: \$220,500 from the Governor, and \$100,000 from the legislature for a total of \$320,500.

The number of children served by the 22 Kinship programs for contract year 9/1/17-8/31/18 was 2,034 children. At an average of 93 children served per program, the program costs equal \$1,086 per child.

Cost of one child in local kinship program plus one year of nonparent child only grant..... \$5,224

There is not currently any requirement that when a department of social services comes in contact with a kinship family that they refer them to a kinship support program. Thousands of families are unaware of the available supports to them, as evidenced by the few number of children enrolled in TANF nonparent child only grants. There are only 22 counties that have on-the-ground services for all kinship families, and while the rest of the state is covered by the Kinship Navigator with information and referral services, outreach capabilities are limited by funding.

Calculation of Foster Care Costs

According to OCFS MAPS data, on Dec 31, 2017 there were 16,140 children in foster care.⁴² As stated above, of those, less than 3,700 (or 20%) are placed with a kinship foster parent. Foster care differs from non-foster kinship care in that it necessitates a removal by child welfare services, with county involvement in the case until permanency is reached. Foster Care costs vary widely, as children may live with in a home-based setting, or non-home based setting (congregate care, residential treatment, or others). Costs per child also can vary based on a child's level of acuity, needs, and age. Older children with high needs cost more than newborns in home-based settings.

Foster Care Funding Streams

The State appropriated \$383,526,000 toward foster care for FY 2017-18⁴³

Although capped, the current Foster Care Block Grant methodology is based on calculations of 50/50 state and local share for costs not covered by federal reimbursement.⁴⁴

The Foster Care Block Grant does not include state expenditures made on behalf of youth placed in OCFS-operated facilities.⁴⁵

The SFY 2017-18 Enacted Budget continued to appropriate \$964 million of TANF funding for the Flexible Fund for Family Services (FFFS). The FFFS provides LDSSs with the flexibility to determine local funding priorities. LDSSs can use their FFFS allocation to fund the TANF-EAF JD/PINS, TANF-EAF Tuition costs, EAF Foster Care Administration and EAF Foster Care Maintenance as well as any other eligible TANF purpose.⁴⁶

⁴² <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20State.pdf>

⁴³ <http://public.leginfo.state.ny.us/budssrch.cgi?NVBUO>

⁴⁴ Email from Sheila Harrigan, Executive Director, NYPWA: November 2018

⁴⁵ https://ocfs.ny.gov/main/policies/external/OCFS_2017/LCMs/17-OCFS-LCM-06.pdf

⁴⁶ https://ocfs.ny.gov/main/policies/external/OCFS_2017/LCMs/17-OCFS-LCM-06.pdf



In 2014, Title IV-E Foster Care spending was \$334,551,201, a decrease of 3% over two years.⁴⁷ If the trend continued to decrease by 3% every two years it would have seen a 6% decrease by 2017-18 FY. Estimated total Title IV-E Foster Care spending for FY 2017-18 would be \$314,478,129.

Congregate Care is 3-10 times more expensive than family foster care. For example in New York, one child in congregate care can cost \$134,000 a year versus \$27,000 for a family-based placement.⁴⁸

There were 2,842 children in congregate care on December 31, 2017.⁴⁹

Estimated Foster Care Spending

State Allocation for Foster Care (which is calculated to be 50% of costs not eligible for federal reimbursement).....	\$383,526,000
County Allocation for Foster Care (which is estimated at 50% of costs not eligible for federal reimbursement) ⁵⁰	\$383,526,000
Federal Title IV-E Reimbursement Estimate:	\$314,478,129
Total Estimated Foster Care Expenditure in NYS (2017):	\$1,081,530,129
Expenditure per child in foster care:	\$67,009

It should also be noted that there are other private sources of funding not included in this calculation that counties can actively draw down on to supplement their foster care costs. Many of these private funding streams make up small portions of a county’s foster care expenditure, but are difficult to track on a broad scale.

It is also relevant to note that the cost of maintaining a child in foster care includes administrative costs. In fact, most of the money to maintain a child in care are administrative, as pass through rates for foster parents for one child with average needs is around \$600 per month.

Conclusion

Kinship Care has been the de facto child welfare system since the dawn of time. It is a natural resource for children who cannot safely live with their biological parents, and is a tried and true system for keeping children safe. Currently, there is no standardized way in which the state chooses to utilize kin as a resource (whether as a private placement option, or to certify as a foster parent). Children who experience trauma are known to have better long term health outcomes when placed with kin as opposed to foster care with

⁴⁷ https://www.childtrends.org/wp-content/uploads/2016/10/New-York_12.2016.pdf

⁴⁸ <https://files.acrobat.com/a/preview/fb46da53-5e91-446f-a037-21f4b1dafeb5>

⁴⁹ <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20State.pdf>

⁵⁰ Each county’s budget will vary on the amount they spend above and beyond the state and federal amount of reimbursement. Efforts were made to find out if any one place collected this information, and it does not appear that it is. We were told that each county would have to report out how much they spent to more accurately report this number. The current estimate would imply that each county spent \$6.2 million above and beyond their state and federal allocations



strangers, or worse, congregate care.⁵¹ Keeping children with family and people they know is both best for children, and saves money. Supporting children in these families costs significantly less than having them be pulled into foster care with strangers, and can offer vital access to resources that help families maintain permanency without the need to enter foster care.

Contact Information

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⁵¹ <https://www.gu.org/app/uploads/2018/05/Grandfamilies-Report-SOGF-2017.pdf>