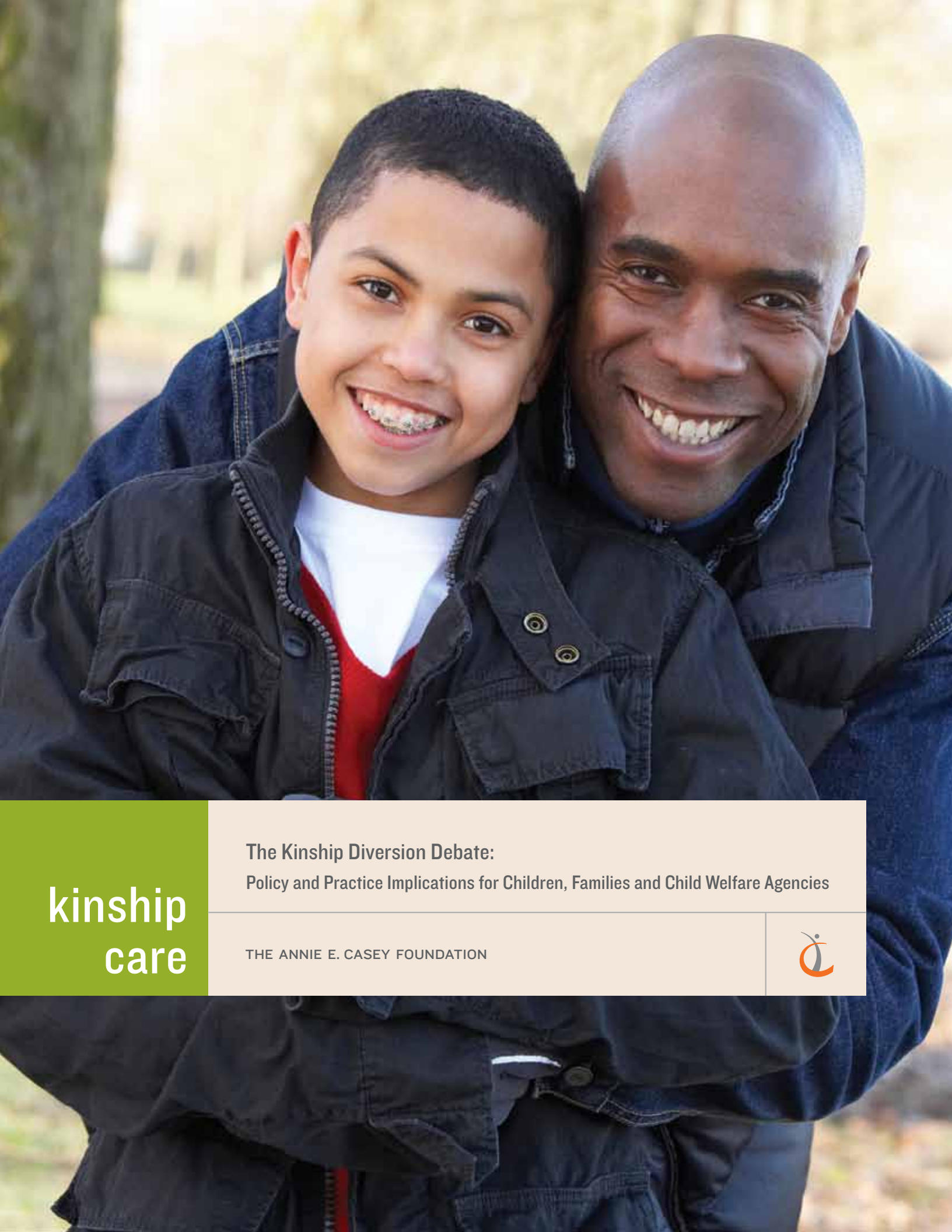

kinship care

The Kinship Diversion Debate:

Policy and Practice Implications for Children, Families and Child Welfare Agencies

THE ANNIE E. CASEY FOUNDATION

about the annie e. casey foundation

The Annie E. Casey Foundation is a private philanthropy that creates a brighter future for the nation's children by developing solutions to strengthen families, build paths to economic opportunity and transform struggling communities into safer and healthier places to live, work and grow.

Within the Foundation, the Child Welfare Strategy Group (CWSG) works with results-focused leaders throughout the United States to strengthen agency management, operations, policy and frontline practice. CWSG offers its services at no cost to agencies seeking to achieve the following goals:

- Engage families in caring for their children when and where they need support.
- Deliver on the promise of safety, well-being and permanent families for children and youth.
- Adopt and sustain cost-effective and proven strategies that prepare children and youth to reach their fullest potential.

CWSG also works to develop the capacity of child welfare leaders to become champions for improving outcomes for children in care. Additional kinship care resources and copies of this report can be found at www.aecf.org.

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contents

A Kinship Care Experience 1

Understanding the Diversion Debate 2

State Custody and Foster Care: First Line of Defense or Last Resort? 4

What Responsibility Does Government Have to Kinship Families? 6

Is There a Role for Community-Based Services? 7

Are Parents Missing Out on Appropriate In-Home Services? 8

Kinship Diversion and Permanence 9

Supported Diversion: A Middle Ground 10

Kinship Diversion: Implications for Future Policy and Practice 14

Appendix: The Pros and Cons of Kinship Diversion 15

- Concerns Raised by Some Kinship Diversion Programs 15

- Kinship Diversion: More Myth than Reality 17

the kinship diversion debate

POLICY AND PRACTICE IMPLICATIONS FOR CHILDREN, FAMILIES AND CHILD WELFARE AGENCIES

A Kinship Care Experience

Roberta Thompson[1] was leaving work when she picked up a panicked text from her daughter, Mia: Come now 4 nathan!! Even before her son was born, Roberta's daughter had struggled, first in a violent relationship and now with a growing addiction to prescription drugs. Roberta rushed across town to Mia's apartment to find a strange calm: her grandson asleep and Mia at her kitchen table talking softly to a county social worker. "Mia told me she'd only left Nathan sleeping for a few minutes," remembers the 48-year-old grandmother. "A neighbor called 911 when she heard the baby screaming." The police had arrived to find Nathan, alone and crying, in his crib. Child protective services (CPS) had waited for more than an hour for his mother to return. "Mia looked absolutely exhausted, but all I could think about was how I was going to walk out of there with my grandson."

Across the country, child welfare agencies rely on grandparents and other relatives to care for children who cannot remain safely with their parents. While some family members may offer a safe, less intrusive alternative to the bureaucratic complexities of state-supervised foster care, some child welfare experts worry that too many abused or neglected children are being inappropriately "diverted" to live with relatives without the necessary safeguards and supportive services for children, caregivers and birth parents. Critics also argue that some child welfare agencies are prematurely directing children to live with willing relatives instead of providing struggling parents intensive services needed to keep children safely at home. Some experts express growing concern that relatives may feel unfairly pressured into taking responsibility for children who cannot remain safely with their parents without being given a clear explanation of all the available placement options and supports, including licensed kinship foster care. "We say we want a child welfare system that values family decisions," explains one child protective service worker, "but once the government gets involved, relatives and parents don't always have real choices. Sometimes it's auntie or else."

On the other side of the debate are child welfare agencies and advocates that allow or encourage children to be diverted to kinship care as an alternative to bringing a child into state custody. Administrators in these jurisdictions argue that, in certain situations, kinship diversion is a preferable option for children and families. Diversion supporters maintain that families are often better able to care for children without the complications and uncertainty of government involvement as long as the

"We say we want a child welfare system that values family decisions, but once the government gets involved, relatives and parents don't always have real choices."

[1] This fictional story combines elements of child welfare cases to illustrate common kinship care situations.

WHAT IS KINSHIP DIVERSION?"

While there is no uniform definition of kinship diversion, this article uses the term to describe situations in which a child welfare agency investigates a report of child abuse or neglect, determines that a child cannot remain safely with parents/guardians, and helps to facilitate that child's care by a relative instead of bringing the child into state custody. For jurisdictions that use kinship diversion, policy and practice vary considerably. These state and county child welfare agencies have different approaches to safety assessments of the relative's home, post-diversion agency supervision and case management; the types and duration of services provided to the family; the transfer of legal custody/guardianship; and other requirements.

agency has considered in-home services, made an appropriate assessment to assure the child's safety and provided the family with appropriate services. These advocates assert that there are situations in which children are better off "outside of the system," while also acknowledging that some cases may require intensive in-home services or the removal and ongoing supervision and protection of children through state custody and licensed foster care. Just as children in state custody require different types of foster care to meet a range of individual needs (e.g., family foster homes, therapeutic foster care), supporters of diversion believe that kinship arrangements should vary to reflect the child's need, risk and family preference.

"In the real world, government is a poor surrogate for family decision making," explains one county child welfare administrator. "If the child is safe and the family agrees, why does a child need to go into state custody?" Another veteran child welfare director offers a more personal explanation: "If your cousin was struggling with her kid, are you going to tell your aunt to call child protective services? Loss of control is a high price to pay even when families could use help." While most child welfare advocates agree that kinship diversion without proper attention to safety and support hurts children and families — one advocate sardonically referred to it as "drive-by diversion" — they also assert that kinship diversion grounded in strong policy and good casework can be a critical option for some families.

Despite assertions on both sides, initial research revealed little information about the use and extent of diversion practice or existing analytical tools to support further analysis. "From our work in the states, we know that diversion is common in many jurisdictions. We also know that it's not always done well," explains Tracey Feild, director of the Annie E. Casey Foundation Child Welfare Strategy Group (CWSG). "We really felt that, with the right questions and support, child welfare agencies could take a much closer look at what's working and what's not before deciding what role, if any, diversion should play in their overall kinship care practice."

Understanding the Diversion Debate

To sort through the many different approaches to kinship diversion, including some jurisdictions' strong opposition to the practice, the Annie E. Casey

Foundation (Casey Foundation) engaged experts on both sides of the debate to learn more about the complex arguments for and against kinship diversion and the philosophies and experiences that shape them. This analysis is based on more than 50 interviews conducted with public agency administrators and supervisors; prevention, child protective service and foster care caseworkers; and clinicians, researchers, policy advocates and judicial personnel from across the country.

For the agencies that oppose kinship diversion, the Casey Foundation wanted to explore both the rationale behind their views and how these jurisdictions were meeting family needs through licensed kinship foster care and other alternatives. For the agencies that rely on some form of kinship diversion, the Casey Foundation wanted to find out if and how these jurisdictions manage the following roles:

- ensure safety, stability and permanence for diverted children and their families;
- offer services and financial support to children, birth parents and relative caregivers;
- protect birth parent rights and safely facilitate reunification whenever possible; and,
- provide families with comprehensive information about available state-supported options to support children's care.

In addition to learning more about the theoretical and practical arguments for and against kinship diversion, the Casey Foundation also asked national experts about the possibility of an acceptable "middle ground" in the diversion debate. More specifically, interviewers asked whether experts might consider sanctioning a "supported kinship diversion model." This theoretical practice approach would be limited to certain types of cases and would provide an alternative to state custody while still ensuring child safety and the needed services to get families back on track.

Despite deeply disparate viewpoints on kinship diversion, most experts interviewed agreed that no single path will meet the needs of every family or every jurisdiction. By raising a series of critical questions, the Casey Foundation hopes that it can provide child welfare agencies with the opportunity to more comprehensively examine whether diversion is ever appropriate in the context of their communities; if and how agencies currently use kinship diversion;

DIVERSION AND THE "CASES IN BETWEEN"

Even its strongest supporters argue that diversion should only be considered for what one advocate calls the "cases in between" — the narrow band of situations between cases in which intensive in-home services could be successfully provided to prevent removal and cases that are sufficiently serious to require the protection of a formal removal and the ongoing supervision of state custody. Critics argue that diversion practice is too often used as a default, even when in-home services or formal agency custody is the more appropriate option. "Kinship diversion should never be used as a path of least resistance when other options are either legally required or will achieve better outcomes for children and families," says Rob Geen, director of policy reform and advocacy at the Casey Foundation. "In that sense, the universe of cases in which diversion should be debated is a relatively small one."

diversion's long-term impact on child safety and family stability; and effective strategies for improving current policy and practice to better support children and families.

State Custody and Foster Care: First Line of Defense or Last Resort?

When it comes to balancing child safety, government responsibility and family autonomy, the child welfare field is deeply conflicted about when foster care is the best option for children who can no longer remain safely in their homes. This conflict is especially relevant when a relative with an established relationship to the child offers a safe and stable alternative to state custody. Some agency leaders and families believe strongly that, when relatives are willing and able to care for children safely, children do better without the uncertainty and potential disruption of ongoing system involvement.

Diversion critics maintain that families are best served when children are brought into state custody and their relative caregivers are licensed as foster parents.

Diversion critics also agree that children belong with families whenever possible. In order to ensure the requisite level of protection, court oversight and appropriate resources, however, they maintain that families are best served when children are brought into state custody and their relative caregivers are licensed as foster parents. A state-supervised approach, they argue, honors family connections while at the same time providing families with the guaranteed supports and protections of state custody and foster care. While this anti-diversion approach has strong theoretical support, other veteran child welfare leaders maintain that families' inconsistent, often negative, experiences with government-supervised care often outweigh the system's financial and other benefits. "Someday the foster care system may do what it's supposed to do for every family," explains a foster care supervisor, "but until that happens, we have hard decisions about what's best for kids." Diversion proponents also point to the inherent power imbalance of "system involvement" and its negative impact on some families. "When the system has the power to take away a child, a lot of families are going to choose to 'opt out'," explains one caseworker. "We focus so much on what kind of services and money that foster care provides," explains another foster care worker, "we forget that a lot of this is about who the child belongs to. Foster care means the state calls the shots."

Agency caseworkers are not the only ones with concerns about the potential downsides of state custody. Some relative caregivers also believe that diversion is preferable to "losing" a child to a government system they cannot predict or control, even if it means less access to services and financial support. "At the end of the day, that social worker could still come in and take my grandchild away," says one grandparent caregiver who went to court to get legal custody of her grandson. "I just couldn't deal with that pressure." Even in cases where state custody and licensed kinship foster care are the better choices for children and families, some frontline caseworkers argue that diverting children to live with kin may sometimes be the only practical alternative to keep children with caring relatives, especially in those cases where overly prescriptive regulations prevent an otherwise responsible family member from becoming a licensed foster parent. "What if grandma is great, but her apartment is too small? What if she's got a 25-year-old shoplifting charge?" asks one agency worker. "The child's still better off going to grandma than going into foster care with strangers." While a growing number of child

welfare advocates agree that current non-safety-related regulations should be more commonly waived — or the entire licensing system overhauled — if they prevent safe and appropriate placements, some frontline workers and foster care supervisors maintain that regulatory changes still lag behind the immediate placement needs of children and families.

In addition to supporting diversion as an option for able caregivers who cannot currently be approved as licensed foster parents, a number of jurisdictions and caseworkers are philosophically opposed to licensing kinship foster care because they believe it creates a system that "pays relatives to care for their own family members," a responsibility

WHY FOCUS ATTENTION ON KINSHIP DIVERSION?

With so many competing priorities facing child welfare agencies, why is it important to dedicate time and resources to assess the safety and impact of kinship diversion?

- **Kinship diversion policy and practice affect a significant number of children and families who come to the attention of the child welfare system.** The most recent data available found that, at a single point in time, approximately 400,000 children who came to the attention of the child welfare system were diverted from state custody to live with kin. [2]

- **Few jurisdictions systematically track and analyze the impact of diversion on children's safety, permanence and well-being.** Without an intentional approach to diversion policies and practices and appropriate data to measure their impact, child welfare agencies cannot adequately determine whether they are meeting their fundamental goals of safety, permanence and well-being for many children who come to their attention.

- **Diverting children to kin without adequate attention to their safety, stability and permanence makes child welfare agencies more vulnerable to legal challenges.** Unintended outcomes for diverted children may increase a child welfare agency's exposure to legal claims by individuals or class action lawsuits (see The Legal Implications of Kinship Diversion, pg. 8).

- **A careful assessment of kinship diversion policy and practice will help states and localities clearly define parameters for kinship diversion.** Kinship diversion advocates agree that diversion is not always appropriate when targeted in-home services can be provided to help parents keep children safely at home. At the same time, the safety considerations, economic challenges, and/or the need for intensive ongoing supervision in some cases demand the heightened protections of state custody and licensed foster care. To ensure children's safety and well-being, child welfare agencies must develop a clear point of view on those "cases in between" that may or may not be appropriate for kinship diversion (see Diversion and the Cases In Between, pg. 5).

- **States and localities must ensure that all kinship care practices appropriately protect birth parent rights and maximize the chance for successful reunification.** State custody is intended not only to ensure child safety, but also to provide certain protections for the child's family, including reasonable efforts to help birth parents reunify with their children. Child welfare agencies must pay attention to their diversion policies and practices to ensure that birth parents have a meaningful and legally protected "way back home" to resume the care of their children when it is safe to do so.

- **Understanding kinship diversion is critical in helping agencies to understand the full continuum of needed interventions and supports for kinship care families.** The question of how best to support kinship families — informal, diverted, unlicensed and licensed care — is complex. Without understanding the role kinship diversion plays in their overall approach to kinship care, child welfare agencies cannot determine whether the needs of individual children and families are appropriately met.

[2] Ehrle, J., Geen, R., & Main, R. (2003) Kinship foster care: Custody, hardships, and services. *Snapshots of America's Families III, (14)*. Washington, DC: The Urban Institute.

they believe caregivers should undertake without compensation. "Where I come from, family takes care of family," says one social worker. "Why should the government give people money to do the right thing?" While proponents of licensed kinship placements are quick to point out that the financial and other benefits that foster care provides are meant to support the child and not "pay" relatives for their caregiving, the belief in the family's fundamental moral and financial responsibility to care for children continues to play a significant role in the development and implementation of kinship diversion policies and practice.

What Responsibility Does Government Have to Kinship Families?

Despite the prevalence of kinship diversion, many experts worry about whether this widely varied and poorly regulated practice is really a good option for children and families if it comes at the price of the legal and financial protections of state-supervised foster care. More specifically, some experts argue that agencies cannot adequately ensure a child's safety, protect parental rights or provide appropriate interventions to stabilize children and families without the ongoing supervision of state custody and the financial and other supports provided by licensed foster care. While few states actually track the number, ethnicity and outcomes of children who have been diverted to live with kin, some child welfare administrators maintain that diversion disproportionately affects and disadvantages families of color, effectively denying them an opportunity to receive the higher stipends and more intensive services offered through licensed kinship foster care. Says one social worker, "Communities of color have a long

THE LEGAL IMPLICATIONS OF DIVERSION

Some critics are concerned that the use of kinship diversion unnecessarily exposes child welfare agencies to potential legal challenges. First, families who have been negatively impacted by diversion may file a class action lawsuit, similar to a recent Georgia case that alleged that the child welfare agency had been "misusing diversion, safety resources and temporary guardianships to inappropriately limit the number of children entering foster care."

While they are more difficult cases to prove, child welfare agencies are also concerned about class action suits based on "failure to protect" claims — assertions that the government has failed to adequately protect children who are diverted to kin by failing to take them into state custody and provide them with an appropriate level of supervision and care.

Finally, some legal experts have expressed concern about potential claims of individual harm based on a "state-created danger theory." These cases are based on the state's legal duty to protect a child and avoid creating a dangerous situation that could lead to a specific injury, such as inappropriately diverting a child to kin that results in direct harm to the child.

Although it is difficult to predict the future success of cases based on these three types of legal challenges, the media fallout from well-publicized lawsuits can create as much concern as the ultimate disposition of the case. Explains Anne Holton, a former dependency court judge and advisor to the Casey Foundation, "Child welfare agencies are rightly sensitive to the inherent risks of any legal exposure, especially if the child has previously come to the system's attention in some way." On a positive note, says Holton, "Recognition of these potential legal risks can motivate child welfare leaders to craft a much more deliberate and comprehensive approach to diversion when they believe the practice is appropriate for children and families."

history of family taking care of family, and sometimes we take advantage of that by not telling them what they might be missing to help support the kids they are raising."

In addition to the promise of appropriate help and safeguards, diversion critics strongly argue that government intervention in the name of child protection mandates a heightened set of legal and moral responsibilities to both the children and their families, including birth parents who deserve the opportunity to be reunited safely and successfully with their children. "We have a responsibility to do everything we can to keep children and families together safely without taking a child into custody, " says Marc Cherna, director of the Allegheny County Department of Human Services, a jurisdiction that has partnered with A Second Chance, Inc., to create a nationally-renowned support model for kinship families. "When removal is necessary, we believe that children are generally best off with kin supported by the full range of protections and family supports accessible through agency custody."

Diversion advocates argue that, in the real world, state custody is no magic bullet. Not only does foster care often fail to deliver the services and supports families need, they argue, but ongoing system involvement can leave children and families worse off than when they first came to the attention of the system. Even in jurisdictions with the most promising foster care practices, not every child placed with kin in state custody enjoys the full advantages of licensed foster care. In fact, an increasing number of children are brought into state custody and are placed with kin in unlicensed homes.

Policy and practice vary by state and locality, but many children in unlicensed care receive fewer financial and other supports than their counterparts in licensed kinship foster care. "Sometimes the only difference between diversion and unlicensed care is that the state retains legal custody," notes a CPS supervisor. "Grandma doesn't get the benefits or the control." While most diversion opponents also advocate strongly for the elimination of unlicensed foster care, many jurisdictions still routinely rely on these placements for children living with kin under state supervision.

Diversion critics are even more concerned that decisions to divert children to kin are motivated more by budget deficits and the desire to keep foster care numbers low than a desire to honor family strengths. "If an agency can keep a child safe without the high costs of court oversight and foster care, there's a pretty strong incentive to do it," says one county child welfare administrator. "I'm not saying that's the only driver, but money is definitely a factor." Says another child welfare administrator, "We are under tremendous pressure to safely keep foster care numbers down for a whole bunch of reasons. If it's done right, diverting kids to kin is one way to protect children, keep them with relatives and effectively use limited resources to support families with even greater service needs."

Is There a Role for Community-Based Services?

While diversion proponents acknowledge that federal, state and local foster care funding provides an important source of support for critical child and family services, others argue that state custody

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and the strictures of licensed foster care should not be the only gateway to targeted support for kinship care families. Community-based services, including grandparent support groups, family therapy, legal aid and other resources, should be available to all kinship families based on their level of need rather than their level of involvement with the child welfare system. Supporters of this community-based model argue that building a more consistent network of supports outside the child welfare system and better coordinating existing government supports, such as income supports, health care and nutritional assistance, will allow families to access the services they need on their own terms without government-mandated interventions. "Families should have the option to come into the system if it's needed, but we should work hard to build more organic and tailored support services outside the system as well," explains one kinship care advocate.

Are Parents Missing Out on Appropriate In-Home Services?

Among the serious challenges to child welfare agencies' use of kinship diversion are its potential implications for birth parents. More specifically, birth parent and child welfare advocates assert that when a state child welfare agency makes the decision to remove a child from his or her home, state custody is the only way to guarantee and fund the appropriate legal protections and representation and reunification services for birth parents. Even in situations where kinship diversion might provide a less complicated and more desirable option for relative caregivers, these critics argue, it rarely offers "a way back" for birth parents to safely resume the care of their children. "The child goes to live with grandma and then what?" asks one dependency court judge. "How does mom get the help she needs? How does she get her child back?"

DIVERSION AND VOLUNTARY PLACEMENT AGREEMENTS

Some experts interviewed argue that child welfare agencies should use voluntary placement agreements (VPAs) more widely in kinship diversion cases; they say that such agreements ensure that birth parents, relative caregivers and the child welfare agency have a common understanding of the plan for the child, the types of services that will be provided and the point at which the court will become involved. By entering into this type of written agreement, the parent can consent to allow the child to live temporarily with a relative under the immediate supervision of the child welfare agency without relinquishing legal custody. The situation is then revisited by the agency, the family and the court within a specified period of time.

Proponents argue that VPAs provide an incentive for child welfare agencies to get parents the help they need to sort things out in a relatively short period of time while still providing the parent with the power to revoke the agreement. The state still has the power to petition for custody if they feel the child is in danger. While some advocates argue that VPAs may increase agency accountability in providing services in a diversion scenario, others fear that, as long as parents are dealing with an agency that has the power to take away their child, VPAs and kinship diversion practice cannot ever be characterized as truly voluntary.

Critics argue that diversion is an end-run around the legal protections and benefits of foster care that child welfare agencies may use as a default when they should be providing in-home services to keep parents and children safely together. These opponents point out that it might require less effort and paperwork for a social worker to ask a relative to care for the child while the parent "works on getting themselves together" than to provide the comprehensive services and supervision the parent needs to continue to care for the child at home. In addition to more intensive staff involvement, an in-home service plan may involve greater risk if services do not sufficiently prevent further harm to the child. "On the one hand, you've got a mom who is really struggling. On the other, you've got the aunt with her act together who's ready to step in. Sometimes diversion can be used as the default," observes one caseworker, "but the easier option isn't always the better option."

Diversion proponents, however, are quick to point out that jurisdictions with strong policy and practice do not use diversion as an easy out. "Diversion is only considered as an option when removal is imminent," explains one county CPS caseworker, "and we would only consider removal when in-home services are not a potential option for the parent and the child."

Birth parent advocates also argue that once the government intervenes in the lives of families, a child's parents lose any meaningful choice regarding the child's placement. "The 'decision' parents are asked to make is not a decision at all," explains one county child welfare leader. "Parents have been told their child can't stay with them. If there isn't a relative in the picture, they know the child is headed to foster care. Do they 'choose' the relative they know or a foster home they don't?" Explains another foster care caseworker, "When the state has the power to take your child, there's always coercion. You should still ask the parents what they think is best for the child, but I think we need to be honest with families that the decision ultimately belongs to the agency."

For some critics, the characterization of diversion as a "choice" for relative caregivers is equally misleading. While the federal Fostering Connections to Success and Increasing Adoptions Act requires that child welfare agencies notify and explain all placement possibilities to all adult relatives within 30 days of a child's removal, caregivers are not always given full disclosure of their options, which includes licensed foster care. Even when they do understand what types of placements are available, many potential caregivers understand they do not always have a choice about whether or not the child welfare agency brings the child into state custody.

Kinship Diversion and Permanence

In child welfare, there are many different perspectives on whether permanence is a legal condition, an emotional one, or a combination of both. A number of experts define permanence as a "forever family" while others believe connecting youth to family members before they age out of care is sufficient. Even without a uniform definition, however, critics argue that kinship diversion without ongoing oversight, reunification services for the parents, or a concrete plan for the child does not provide the long-term permanence that children and families need to thrive.

"Families should have the option to come into the system if it's needed, but we should work hard to build more organic and tailored support services outside the system as well."

USING TEAM DECISION MAKING TO SUPPORT KINSHIP FAMILIES

Team Decision Making (TDM), like other models of family teaming, plays a critical role in improving outcomes for children and families. This approach engages families and key stakeholders in making quality decisions regarding safety, placement and accountability for achieving permanence for children in care. The effectiveness of this approach depends heavily on relationships of trust and respect, clear communication and appropriate support to family and child.

More specifically, TDM meetings emphasize the engagement of family and community members in safety and placement-related decision making. These facilitated meetings are designed to develop specific, individualized interventions for children and families regarding removal, placement changes and reunification. In particular, TDM plays a key role in bringing family to the table when an agency is initially considering removal of a child from the home. The meetings focus on whether removal is warranted and, if so, where the child will go. The process uses families' natural networks as resources for safety planning and, when necessary, placement. In this way, TDM recognizes the importance of family continuity and the key role family caregiving relationships play in mitigating the traumatic impact on children who are removed from their parents' care.

Several jurisdictions that rely on kinship diversion as an alternative to state custody believe Team Decision Making is the only way to incorporate all of the components of a supported diversion model and assure quality kinship care. In TDM, the agency, together with the family, make determinations on major aspects of case planning including: whether kinship diversion is appropriate or the caregiver will pursue legal custody of the child; what kind of in-home or out-of-home services are needed to support children, birth parents and caregivers; and how to set up a meaningful parent-child visitation schedule. The meetings provide a venue for the family to be educated on the full range of child welfare options available to them, including the possibility of becoming a licensed foster care placement with court oversight. Family members are encouraged to anticipate and consider the child's current and future needs and make informed decisions based on understanding the legal and child welfare options available to them.

"We keep talking about how safety and permanence are fundamental for kids, yet diversion only addresses safety and that's a best case scenario," argues one national child welfare advocate. "It's pretty much up to the family to decide what happens to the child next," says another caseworker, "and that situation could change again and again for the child down the road."

Diversion supporters argue that allowing families to make decisions for their children's care is precisely what makes it a powerful option. "Every day, families make difficult decisions in really bad situations," says a social worker at a community-based kinship care agency. "Those decisions aren't always perfect, but that doesn't mean the government should make the choices for them." In fact, diversion advocates argue, families often make good but impermanent decisions because they are truly best for the child. Others argue that diversion already honors family decision making under a more universal definition of permanence.

"Whether it's mom or aunt or grandma, it's family that's permanent," explains one dependency court lawyer. "I am not sure why people think kinship diversion doesn't support that."

Supported Diversion: A Middle Ground

Despite compelling arguments on all sides of the diversion debate, the majority of child welfare advocates

agree that poor kinship diversion practice hurts children and families. While some jurisdictions offer diverted families targeted services and financial resources to get back on track through prevention, in-home services and interventions by community-based organizations, other jurisdictions fail to provide even minimal supports to diverted families. "I've seen cases where the agency essentially hands the child over to grandma and gives her the phone number for the local welfare office," says a legal aid lawyer who represents birth parents. "We call it 'dumping.' No real help. No follow-up and not a lot of assurance that the child isn't going to come right back in the system."

While most child welfare advocates agree on the risks of "bad" diversion practice, there is little consensus about whether responsible or "good" diversion is even possible. To explore this controversial question, the Casey Foundation specifically asked child welfare experts whether there might be an acceptable middle ground — an approach to diversion that allows families in certain situations to avoid further child welfare system involvement while still providing appropriate help for the kinship triad. If supported diversion should be an option for children, when should it be used and what supports should be in place? As with so many aspects of the diversion debate, this question has no clear answer, and no evidence-based diversion model exists to provide a baseline for comparison.

"While several jurisdictions seem to offer promising approaches to help families navigate kinship diversion, we have not yet found a supported diversion model that's comprehensive enough to test and evaluate across multiple jurisdictions," explains Karen Angelici, the team leader for the Casey Foundation's kinship diversion inquiry. "What we have found is a growing understanding of the building blocks that all kinship families need, and how those might be used in a diversion scenario."

While interview participants also agreed that there is no evidence-based model for supported diversion, they did identify critical components for states to consider in determining whether kinship care families are getting the supports they need:

- Appropriate risk assessment. *How is the agency ensuring the safety of children who are diverted to live with kin?* As with all decisions regarding children who come to the attention of a child welfare agency, advocates agree that kinship diversion should not be an option unless the child will be safe. With any supported diversion model, states must have and enforce a clear policy outlining how to make a safety determination.

- Facilitated Team Decision Making and full disclosure of options. *Do family members have meaningful input into the diversion decision and understand the full range of placement options for the child?* While many jurisdictions use family team meetings and other opportunities to allow birth parents, relative caregivers and youth a chance to weigh in on the possibility of diversion, some families have little say in the options available to them. The use of facilitated and collaborative decision-making strategies helps agencies to ensure that families are not unduly pressured into diversion. Similarly, relatives should clearly understand the child's full range

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of placement options, including the possibility of licensed kinship foster care (see Using Team Decision Making to Support Kinship Families, pg. 2).

- Appropriate needs assessment and services for the kinship care triad. *Is the child welfare agency providing all members of the kinship triad with adequate needs assessments and the right services to address identified needs?* If a family crisis is serious enough that a child can no longer remain safely with his or her parents, even temporarily, many experts interviewed argue that the agency has a responsibility to assess carefully the needs of the birthparent, relative caregiver and child and to provide or connect them with appropriate services and supports. Supports may include financial benefits and health insurance, mental health and substance abuse treatment, family counseling and parenting classes, among others.

- A "way home" for birth parents. *How does the child welfare agency ensure that the birth parents get the support they need to resume safely caring for their child?* If a family situation justifies diversion as a temporary situation for a child, birth parents still need what one social worker describes as a "way back home" or, more specifically, the necessary help and services to resume the care of their own children. Without attention to these supports, kinship diversion could effectively deny all three members of the triad the opportunity for and benefits of reunification.

- Caregiver legal status and permanency considerations. *How will the child welfare agency assure that the caregiver has the requisite legal authority to make key decisions for the child?* Without attention to the appropriate transfer of legal authority, kinship diversion can result in "legal limbo" for a child. Without legal custody or guardianship, relative caregivers are often unable to access basic medical care, facilitate school enrollment or make daily decisions on a child's behalf. They are also unable to legally control children's access to their parents, some of whom are still struggling with the issues that precipitated their system involvement. Many supported diversion advocates argue that ensuring the appropriate transfer of a child's custody or guardianship is the only way for the diverting agency to ensure that the caregiver can adequately care for the child and lay the groundwork for future legal permanence.

- Appropriate tracking of diverted children and families. *How do child welfare agencies know if diversion has a positive impact on children and families?* Very few jurisdictions are currently tracking the numbers and outcomes of children once they are diverted from state custody. To understand if diversion is truly an appropriate option for families, child welfare agencies need to understand how many children are diverted, how they are faring and whether they are coming back into care. Without this critical data, child welfare agencies cannot determine whether "supported diversion" actually benefits children and families.

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In considering these key components, diversion critics argue that there is little substantive difference between "supported diversion" and foster care, especially unlicensed kinship foster care. "If child welfare agencies should be providing all these services to "diverted" kinship families to ensure safety and stability, why not just bring the child

into state custody?" asks one national child welfare advocate. "We have to ask ourselves if the families have similar needs, why shouldn't they receive the same amount of money as licensed foster parents to meet those child's needs?" Critics further argue that diversion only creates another separate, unequal and unnecessary "system" for at-risk families. While they agree that the current foster care system is far from perfect, they also maintain that reform efforts should focus on improving the existing framework for licensed care, not creating and supporting a watered-down version of foster care with fewer supports for kinship care families. "Diversion without support isn't good for families,

RESEARCH ON KINSHIP DIVERSION: THE MISSING PIECES

Despite its prevalence, few jurisdictions collect data on the use of kinship diversion and its impact on children and families. Given these significant gaps, the following data and research are needed to answer certain fundamental questions:

Prevalence and types of diversion

- How many jurisdictions currently allow, encourage or require kinship diversion? For which children and under what circumstances?
- How do these jurisdictions define "kinship diversion"?
- How many jurisdictions have written policies and practices regarding kinship diversion?
- How many jurisdictions require a safety assessment of the caregiver and the caregiver's home prior to diversion?
- How many jurisdictions clearly define those cases in which kinship diversion is not appropriate?

How children and families fare in kinship diversion

- How do children in kinship diversion fare in terms of safety, permanence and well-being?
- How do diverted children fare in comparison to children in licensed kinship foster care? In licensed foster care with non-relatives? In comparison to children who remain with their parents with in-home services?

Supports and services for the kinship triad

- How do jurisdictions decide what level of services and financial support to provide to diverted children, their kin and birth parents?
- How do jurisdictions ensure that birth parent rights are protected and reunification is achieved?
- What kind of services do jurisdictions provide to ensure that children achieve permanency post-diversion?

Diversion versus foster care

- What is the child's legal status once kinship diversion occurs?
- How often do children return to live with their birth parents following diversion?
- What kind of ongoing supervision do jurisdictions provide once the child is diverted?
- Who decides whether kinship diversion is appropriate?
- How many jurisdictions provide kinship families with the full range of placement choices available to them, including licensed foster care?
- How do they ensure that families understand their options?

Fiscal implications

- How can child welfare agencies accurately measure the cost of kinship diversion?
- Is kinship care diversion more or less expensive than licensed kinship foster care?

Diversion trends

- How many jurisdictions track and report the number of children who come into state custody after they are diverted?
- Are some racial/ethnic groups diverted more often than others? If so, what factors drive these racial/ethnic disparities?

and supported diversion is essentially "junior varsity" foster care — fewer supports, less oversight and less money," explains another kinship care advocate. "The state doesn't have custody, but you are still asking the state to do all these assessments and provide all these services. You're talking about a pretty high level of ongoing intervention so why not license the family and make sure they have equal access to services?"

Kinship Diversion: Implications For Future Policy and Practice

In considering the complex arguments on all sides of this contentious debate, one thing is clear: The diversion question is difficult and the stakes are high for children and families and for the agencies that serve them. Jurisdictions that believe it is never appropriate to divert a child from state custody to live with relatives struggle to translate their philosophical preference for unlicensed and licensed foster care into a strong and responsive system of family-centered frontline practice. Child welfare agencies that rely on diversion must be equally vigilant in keeping children safe and supporting families without the formal protections, ongoing supervision and more generous funding streams associated with state custody.

Even advocates who promote a more middle-of-the-road or "supported diversion" model must answer difficult questions about which cases are truly appropriate for diversion, what qualifies as a minimum level of services and how diverted children are really faring in the long term.

"For most child welfare agencies, the real challenge is what happens after they figure out the child needs to stay with a relative for a while," says Rob Geen, director of policy reform and advocacy at the Casey Foundation. "Safety is the threshold question, but what then? How does the agency ensure that parents get the help they need? And can the relatives set appropriate boundaries with the parents? Families may want out of 'the system,' but has anyone told them what they are giving up and who makes that decision? These are the hard questions."

Child welfare advocates point out that the theoretical battle lines of the kinship diversion debate are much harder to define when they are put into everyday practice. Indeed, many child welfare advocates acknowledge that, even in effective jurisdictions, there are critical gaps in aligning philosophy, agency policy and the implementation of frontline practice. "There are so many things that affect how well families do in the long term," explains one long-time child welfare administrator. "In some cases, families who are diverted with absolutely minimal services will find the support and resilience to rebound. Other kinship families don't make it even with intensive services and supervision."

Given the complex dynamics of families that are at risk and the unpredictable trajectories of even the most deliberate policies, child welfare administrators may be left wondering where the ideal balance lies when it comes to creating appropriate options for kinship care families. Thoughtful analysis of current policies and practices and the philosophies that guide them is a critical first step in improving outcomes for all children and kinship families involved with the child welfare system. With the right questions and tools, jurisdictions can maximize their opportunities to understand where they stand and explore new and more effective ways to improve their work with children and families.

Thoughtful analysis of current diversion policies and practices and the philosophies that guide them is a critical first step in improving outcomes for all children and kinship families involved with the child welfare system.

appendix

THE PROS AND CONS OF KINSHIP DIVERSION

Concerns Raised by Some Kinship Diversion Programs

John B. Mattingly, *Senior Fellow, Annie E. Casey Foundation and former Commissioner, New York City Administration for Children's Services*

When a child must be removed from her family because of abuse or neglect, there is general agreement in the child welfare field that the placement of choice is often a caring relative known to the child. There is evidence that relative placements generally produce better outcomes for foster children and help keep children in touch with their families. While concerns remain about the length of stay in temporary care of children placed with relatives, many jurisdictions have worked to increase the percentage of foster children placed in relative care, and most of us think this is a good thing.

In these cases, the child is taken into foster care with court supervision, a case plan — typically for reunification — is put in place, visits are arranged, the help needed by the child's parents to provide a safe home in the future is provided, and the family court retains oversight of the case. The relative caregiver is treated by the system as a foster family, with many jurisdictions requiring a form of licensing and foster care payments.

Kinship diversion typically involves the voluntary placement of a maltreated child with a relative, without court oversight and often without reimbursement beyond TANF child-only payments. The relative is encouraged or assisted to approach the court for temporary custody of the child. Frequently, these cases do not involve further court involvement or ongoing agency supports to the relative caregiver. Nor are the relatives licensed or provided with foster care payments. Often these practices are said to be extensions of family preservation. These latter arrangements have raised several concerns among some child welfare advocates, judges and child welfare leaders.

First, if the public agency has made a determination that a child is no longer safe with her parents, should it make a difference from the agency's perspective whether or not the caregiver is related to the child? Should the court not always be involved in a removal decision? Should not the family have the same rights (e.g., for reunification planning, visits, etc.) as they would if their child were placed with an unrelated foster family? Doesn't the child have the same rights to counsel, to timely permanence and to a certified caregiver as does a child in unrelated foster care?

Some relative diversion cases also involve safety concerns. Some jurisdictions close cases very soon after placement, thus leaving children at risk of being returned to abusive parents or moved from relative to relative depending on caregivers' circumstances. Since these cases involve little or no ongoing oversight, outcomes will remain unknown and the children's well-being may be put at ongoing risk.

Relative diversion also raises questions of equity. Isn't a relative caregiver deserving of the same financial and program support (e.g., child care) as a regular foster parent? Many relative caregivers are poor themselves and in particular need of these supports. Shouldn't the public agency provide support to them as well?

In addition, in times of great fiscal and personnel stress on public agencies, will there not be a tendency to use relative diversion as a way to keep caseloads and costs down? Such practices need not reflect formal agency policy but become a preferred option by frontline managers to keep caseloads at more reasonable levels.

In sum, relative diversion carries real risks. Perhaps particular jurisdictions have found ways to minimize the impact of these risks. But given the pressures that the country's child welfare systems are already under, one must worry that diversion may be a tempting option for particular jurisdictions under great stress. While lowering the numbers of children in foster care is a laudable goal, it may leave many children to struggle alone with the consequences of abuse or neglect.

Kinship Diversion: More Myth than Reality

Dean M. Sparks, *Executive Director, Lucas County Children Services, Toledo, Ohio*

Most child welfare professionals agree that placing children with appropriate kin is the best living situation for children whose parents aren't able to care for them safely at home. Throughout history, families have cared for relative children during times of illness, poverty, incarceration, death, violence or other family crises. Many cultures continue this practice to this day, often outside of the social service or court systems.

Many professionals have turned up their noses at kinship care, wrongly believing that kin lack the resources to provide adequate care and that the "system" can do a better job of caring for kids. That's simply untrue. There are many reasons to embrace kinship care. These placements are more stable than foster care placements, except in cases of "crossover" children, who are considered both dependent and delinquent. We also know that reunification may be more likely from a kinship placement rather than from a foster placement.

Apparently, some agencies are using kinship to divert families from the formal child welfare system. Kinship should not be a diversion, but one of many tools available to keep children safe from abuse and neglect. Agencies and kin can — and should — work together to protect children while the agency makes its best efforts to work toward reunification with their parents.

There are a couple of decision points in this relationship. First, agency professionals should never take a position that advocates "kin placement at all costs." The agency has a responsibility to find out whether the potential kin provider is appropriate to care for the child. If the kin is not suitable based on the agency's standards, the child should not be placed in that home. And, while we don't believe in the "apple doesn't fall far from the tree" philosophy, we would be foolish to ignore the possibility that relatives may share similar lifestyles that involve intergenerational abuse and neglect.

A second decision point involves figuring out who is best suited to have custody and make decisions on behalf of the child. Should parents' custody be interrupted? If so, who should hold custody — the agency or the kin? If a kinship caregiver is appropriate to care for the child, he or she should be empowered to make decisions on the child's behalf. It is very frustrating, for example, for a caregiver to have to track down a caseworker to get permission to take a child on vacation or to the doctor, or to let him or her go on school field trips.

Agencies often retain custody of a child in a kin placement simply to maintain control of the child and the situation. If child welfare agencies believe that holding custody gives us one little bit of control in a kin home, we are fooling ourselves. Kin are going to do what they need to do to take care of their family. It is our responsibility to figure out how to support them and work with them to do the right thing within the context of their family situation. Some kin do not want custody because of their relationship with the children's parents. Agencies should respect this position and not force them to take custody. In turn, custody should not determine

the level of support that a caregiver needs. Others believe diversion allows an agency to hand a child over to a caregiver, maybe hand them a voucher and walk away. Nothing could be further from the truth. Kinship care is a conscious decision to actively include people that know and care about the child in making decisions about the child's well-being.

Money is rarely the reason kin step up to care for kids. The majority of children in kinship care are eligible for a child-only TANF grant, which is not nearly as much as the stipend most foster parents receive. Many kin would prefer less financial support and less intrusion from the child welfare system. Agencies would do well to provide as much support as they can while understanding that kin may not want to attend the pre-placement training required of foster parents. They might want to let the child stay in a bedroom in a finished basement. They may not want a caseworker to visit and inspect their house every month. But if the child is safe and the family can get by, they should have the chance to jointly make those decisions with agency staff.

Of course, parents who have lost the right to care for their child also have the right to services to help them correct the conditions that caused their children to come into care. The child's placement setting and custody status have little bearing on the services agencies offer to parents. In some cases, it may be easier to engage parents in services because of the support their family members provide. However, a number of parents will not engage in services regardless of their children's placement, and the kin will be the ones who ensure that the child has a permanent home.

I believe that, in most cases, kin placements are more stable than other foster placements. The chances of family reunification are better when kin are involved, and there is no evidence that kin placements are less safe than other placements. Parents can get the services that they need regardless of the type of placement setting for their children.

This issue seems to rest on our preferences as professionals for formal or informal involvement with families that are at risk of abuse or neglect. Both sides make important points. In either case, it does not matter where the child is placed, who holds custody and how much of a stipend the caregiver gets. Simply ignoring family problems and risks will not make them go away. Active and speedy involvement in the family system wherever and however we best see fit offers the greatest potential for resolving these problems.

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