



Enabling Kin caregivers to Raise Children

**New York State Kin care Coalition
and
AARP New York**

June 2005

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AARP is a nonprofit, nonpartisan membership organization that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. We produce AARP The Magazine, published bimonthly; *AARP Bulletin*, our monthly newspaper; *AARP Segunda Juventud*, our bimonthly magazine in Spanish and English; *NRTA Live & Learn*, our quarterly newsletter for 50+ educators; and our website, www.aarp.org. AARP Foundation is an affiliated charity that provides security, protection, and empowerment to older persons in need with support from thousands of volunteers, donors, and sponsors. We have staffed offices in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

The purpose of the New York State KinCare Coalition is to support kinship caregivers and the children in their care by providing a networking forum for organizations and individual advocates. The forum also serves as a means to create policies, coordinate services, to advocate for comprehensive solutions, and to educate both consumers, policy makers, and advocates. The NYS KinCare Coalition strives to embody the principle that the sum is larger than the parts by offering a venue to bring together diverse, multi purpose organizations, systems, providers, and consumers for the common goal of helping kin care for children.

**“CHILDREN FROM BROKEN FAMILIES
DON'T HAVE TO LEAD BROKEN LIVES”**

Albany Times Union, Op-Ed Column, April 1, 2001

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ACKNOWLEDGMENTS

This report is the result of the efforts of many individuals and organizations that share a common interest in the successful raising of children by New York's kinccaregivers. AARP New York (AARP NY) provided the leadership and resources for the overall effort. New York Life Foundation, in response to a request by AARP NY, provided financial assistance to ensure the project's success. The New York State Kinccare Coalition, representing over forty organizations throughout New York State, provided the cumulative expertise gained through numerous years of service to New York's kinccaregivers. Using committees, conference calls, and bi-monthly meetings, the Coalition collected and refined its descriptions of the barriers facing kinccaregivers and then developed solutions to these problems.

Many individuals volunteered their time and energy. AARP NY staff was especially generous. Beth Finkel, AARP NY Manager of State Operations, chaired the year-long effort and consistently invigorated everyone with her genuine interest. Staff at the New York State Office for the Aging, the New York State Office of Children and Family Services, and the New York State Office of Temporary and Disability Assistance offered valuable suggestions and comments. Individuals from various other public agencies offered helpful advice regarding the interaction between kinccaregivers and service providers.

Student interns Jenna Duwenhoegger and Rebecca Hansen were especially diligent in completing their research and keeping the project on course. Student intern Jody Chin and AARP NY Associate State Director Chaunda Cunningham aided in formatting and editing, and helped to see this report to its completion. Rose Mary Bailly, Esq. provided editorial assistance.

Finally, the kinccaregivers themselves must be recognized. It is their work with children that is the rationale for this paper. They are the only large-scale resource able and willing to lovingly care for "at risk" children. They deserve enactment of a comprehensive agenda that fully empowers them.

EXECUTIVE SUMMARY

Nationally, about 500,000 children are in foster care. About 131,000 of these children live with relatives who are foster parents in kinship foster care. However, these figures are dwarfed by the nearly five million children who live with their grandparents or other relatives outside the foster care system.

New York's statistics mirror the national picture. While fewer than 10,000 of the approximately 40,000 children in state care live with foster care relatives, close to 500,000 children are cared for privately by grandparents and other relatives. In fact, grandparents and relative caregivers are America's and New York's "other" child welfare system.

Across the nation, states have responded unevenly to the needs of these new families, and no state has comprehensively addressed the range of needs – recognition, authority, rights, and assistance. The lack of law in these areas is due to the traditional focus on the powers of parents and the state. Parents and the state derive their authority from the common law, statutes, and the substantive due process protections of federal constitutional law. Parents are the accepted natural guardians of their children and are protected from unwarranted state interference. The state itself, via its *parens patriae* power, has the authority and duty to care for children when parents cannot. Nowhere in our legal traditions does the moral value of family, meaning grandparents and relatives, translate into a consistently identifiable legal value. With children increasingly being raised by non-parent family members, new law is necessary to address the needs of these new families.

During the Pataki Administration, especially during the last four years, much progress has been made towards this goal; in particular, the "Grandparent Caregivers' Rights Act," the "Parental Designation Act," and the "Help for Caretaker Relatives" program. These legislative initiatives were in response to the efforts of AARP NY, the National Committee of Grandparents for Children's Rights, and more recently the New York State Kincare Coalition.

Building on these successes, New York law makers are in reach of accomplishing a comprehensive package of statutes and regulations in support of this emerging class of caregivers. New York's response will not only enable kincaregivers in this state, but can set standards for action in other states.

To begin addressing this issue, the New York State Kincare Coalition and AARP NY initiated a year-long analysis of the barriers to kincare in the Public Assistance (TANF "Child-Only" Grants), Health, Education, Legal and Judicial, and Child Welfare systems. The study's goals were to identify barriers, analyze their significance, and offer potential solutions. The investigation, funded by the New York Life Foundation, began in January 2004.

As part of the Coalition's efforts, AARP's researchers distributed a 20 page survey to 187 organizations to confirm the accuracy of already identified barriers, identify additional barriers, confirm the validity of suggested solutions, and identify other solutions. The survey results are published in AARP's "New York Report on Barriers to Successful Kin Caregiving of Children."

The combined efforts of AARP NY and the Coalition culminated in a "summit" convened in Albany, New York, in November 2004 at which over 100 policy makers, law makers, advocates, kincaregivers, and Coalition members reviewed the research and made final recommendations for legislative and regulatory action. The inescapable conclusion of these deliberations was that New York needs to address a range of issues burdening caregivers, thereby acknowledging that kin, especially grandparents, are an underappreciated resource who lack the legal authority, security, financial assistance and other resources necessary to parent effectively.

RECOMMENDATIONS

The Kincare Summit produced four overarching Final Recommendations, which reflect best practices already established in New York or in other states. The remaining Recommendations address specific needs for training, statutory changes, and funding in the public assistance, health, education, legal, judicial, and child welfare systems.

OVERARCHING RECOMMENDATIONS

Recommendation One: Create a statewide "Kincare Information Program."

Recommendation Two: Restore funding for the "Help for Caretaker Relative Programs."

Recommendation Three: Create a subsidized "Guardianship Program."

Recommendation Four: Create a state-level "Task Force on Kincare."

TRAINING RECOMMENDATIONS

Public Assistance System

Recommendation Five: Publish a guide to applying for "Child-Only" grants.

Recommendation Six: Train staff of departments of Social Services.

Education System

Recommendation Seven: Train school-district personnel.

Legal and Judicial System

Recommendation Eight: Train court personnel.

STATUTORY RECOMMENDATIONS

Public Assistance

Recommendation Nine: Amend Social Services Law to create a "Good Cause" exemption from kin caregivers' cooperating in enforcement of support orders.

Educational System

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

Health Care System

Recommendation Eleven: Amend Public Health Law definition of "Person In Parental Relation."

Legal and Judicial System

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

Recommendation Thirteen: Amend Social Services Law to ensure placement of the optimum number of children with kin caregivers.

FUNDING RECOMMENDATIONS

Public Assistance System

Recommendation Fourteen: Increase "Child-Only" grants.

Health Care System

Recommendation Fifteen: Mandate research of health care needs of kin caregivers and best practices.

Legal and Judicial System

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

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

I. GROWTH OF KINCAREGIVERS

Since the 1970's, the number of relatives, especially grandparents, caring for children has grown substantially,¹ and the growth is likely to continue as many in the baby boomer generation become grandparents. According to the 2000 U.S. Census, more than 6 million children currently live with grandparents or other relatives.² Next to parents, grandparents are by far the single largest source of private caregiving. The 2000 U.S. Census showed that 4.5 million children are being raised by 2.4 million grandparents. A 1998 AARP survey showed that about 11 percent of "mature" grandparents already were caregivers.³

Over one-half of all grandparents provide some child-care assistance,⁴ and more than one in ten grandparents will raise a grandchild for six months or more.⁵ 38 1/2 percent of grandparent caregivers are responsible for a grandchild for five or more years.

25 1/2 percent of grandparent caregivers are over 60, with a median age of 57, and a median family income of \$31,700.⁶

In 2002, there were 186,435 non-parent custodial arrangements for New York's children.⁷ Approximately 70 percent of these arrangements involved grandparents.⁸ The

1 From 1970 to 1997, there was a 78% increase in the number of children living in grandparent headed households, to 3.9 million. Caspare, Lynne M. & Bryson, Kenneth R., Co-resident Grandparents and their Grandchildren: Grandparent Maintained Families, U.S. Bureau of the Census, March 1998.

2 Fact Sheet, Grandparents and Other Relatives Raising Children: Challenges of Caring for the Second Family 1(Generations United)(citing U.S. Census 2000 SF1, table P28, Relationship by Household Type for Population 18 and younger), available at http://www.gu.org/Files/ChallengesSheetfinal10_02.pdf.

3 Denholtz, Elaine, "The Extra Parent," p. 3, Universe 2003.

4 Guzman, Lina, "Grandma and Grandpa Taking Care of the Kids: Patterns of Involvement." ChildTrends, 2004.

5 "Grandparents and other relative caregivers often face a bewildering set of legal issues." Minkler, Meredith, "Grandparents & Other Relatives Raising Children: Characteristics, Needs, Best Practices, & Implications for the Aging Network. AOA, 2001.

6 Brabazon, Kevin, "Grandparents Living with Grandchildren and Grandparents Responsible for Grandchildren. Generations United, 2002. The years between 1970 and 1997 experienced a 78% increase in the number of children living in grandparent headed households. Caspare, Lynne M. & Bryson, Kenneth R., Co-resident Grandparents and their Grandchildren: Grandparent Maintained Families, U. S. Bureau of the Census, March 1998.

7 Safir, Adam & Leibovitz, Harold, State Profile of New York, 2002 National Survey of America's Families, Urban Institute & United Hospital Fund. Over 23,000 children in these non-parent families do not have health insurance. *Id.*

8 Over 412,000 grandparents resided with their grandchildren in 2000. 2000 U.S. Census.

2000 Census figures show over 143,000 grandparents are solely responsible for one or more grandchildren.⁹ More than 55,000 children live with a grandparent for more than five years. Grandparent kincaregivers are split almost evenly between the greater New York City area and the rest of the state.¹⁰

With a growth rate of 30 percent per decade, the number of grandparent caregivers may approach 165,000 by 2010. By adding in the estimated 30 percent of kincaregivers who are non-grandparents the total number of New York kincaregivers is likely over 200,000.

Describing these relationships with a commonly-used definition is a daunting task because no uniform description exists in the law or in literature on the subject.¹¹ This report uses the term "kincaregivers" to include grandparents, relatives, at any degree of consanguinity, and non-blood caregivers, such as step-parents, step-grandparents or family friends, who have assumed the primary care and control of children regardless of their legal status as legal custodians, legal guardians, or informal caregivers.¹²

II. THE SPECIAL ROLE OF GRANDPARENT CAREGIVERS

An Albany County grandmother is asked by social services to take care of her

⁹ See Appendix A, Statistics of New York grandparent caregivers by county.

¹⁰ *Id.*

¹¹ Kincare was the subject of hearings and reports by the United States Congress as early as 1992. See *Grandparents: New Roles and Responsibilities*, A Briefing by the Chairman of the Subcommittee on Human Services of the Select Committee on Aging, House of Representatives, One Hundred and Second Congress, June 8, 1992, Comm. Pub. No. 102-876; *Grandparents Rights: A Resource Manual*, A Report by the Chairman of the Subcommittee on Aging, House of Representatives, One Hundred and Second Congress, December 1992, Comm. Pub. No. 102-898. In 1992, the Child Welfare League also began focusing on this issue and has continued since then to support research and advocacy. By 1995, the White House Conference on Aging made recommendations regarding "kinship care." However, as yet no single term describing non-parental care has gained universal acceptance. A recent federal bill, co-sponsored by Senators Clinton, Snowe, and Daschle uses "kinship caregivers." See S. 985 introduced on May 10, 2005. Commonly used terms include: De Facto Custodian, Grandparent Caregiver, Formal Custody, Formal Kinship Care or Formal Care, Informal Custody, Informal Kinship Caregivers, Kincaregivers, Kinship Caregiver, Kinship Foster Care, Private Kinship Care, and Public Kinship Care. New York statutes also describe these relationships in various ways. See, e.g., N.Y. Ins. Law §§ 4235(f), 4305(c), 321(c), 3216(c)(4)(A) ("a person upon whom a child is dependent"); N.Y. Pub. Health Law §§ 2164, 2504a ("person in parental relation"); N.Y. Edu. Law §§ 2, 3212, et seq. ("person in parental relation"). A list of definitions of various terms used to describe kincaregivers is attached as Appendix B. For a discussion of the different formal and informal relationships of kincaregivers, see Appendix C, "Rights, Authority & Assistance: Informal Custody, Legal Custody, Guardianship, Foster Care and Adoption."

¹² Unless stated, the term "kincaregivers" does not include kinship foster parents, who are agents of the child-welfare system and subject to significantly different laws and regulations.

newborn grandchild. She immediately rushes to the hospital and takes the infant home. Unable to continue to work while caring for the child, four months later she has lost her job, is being evicted, and cannot locate her mentally ill daughter because her phone service has been turned off. Still, she continues to care for her grandchild.

Our society's traditions place special value on grandparents¹³ but our laws have been slow to acknowledge that value.¹⁴ Hence, the special value of grandparents has not translated into a legal "right to care." For over 50 years, grandparents have been advocating for rights and, over time, "grandparents' rights" have evolved into two separate meanings. The earlier and more common expression of "grandparents' rights" is the right to visit with their grandchildren.¹⁵ The more recently evolved meaning refers to grandparents' rights with respect to grandchildren with whom they are residing, for whom they are the primary caregivers, or for whom they wish to care. In this context, grandparents rights are intended to replicate parental rights in circumstances when parents cannot parent, i.e., grandparents are the natural substitute guardians of their grandchildren. Such rights, either especially identifying grandparents or applying to all kin-caregivers, are developing in New York, albeit slowly. In 2003 New York enacted its "Grandparent Caregivers' Rights Act"¹⁶ and in 2005 New York enacted legislation

13 The role of grandparents is especially important in the African American community. *See Moore v. City of East Cleveland Ohio*, 97 S. Ct. 1932, 431 U.S. 494, 52 L.Ed. 2d 531 (1977) As noted in *Moore*, approximately 44% of all African Americans live in extended families, whereas only 11% of whites reflect a similar structure. Within the extended African American family, grandparents are most likely to shoulder the responsibility of raising children. *Id.*

14 *Moore v. City of East Cleveland Ohio*, 97 S. Ct. 1932, 431 U.S. 494, 52 L.Ed. 2d 531 (1977) (a grandmother custodian was afforded the same protections from state interference that parents receive); I.R.S. Schedule EIC (Form 1040A) (grandparents can use the Earned Income Tax Credit when children are in their home for less than one year). In New York, see N.Y. Dom. Rel. § 72 (in expanding the opportunity for grandparents to seek visitation, the 1976 New York legislature took note of the special role that grandparents play in monitoring the well-being of their grandchildren. Leon E. Giuffreda, Senator's Memoranda on Grandparents, Visitations Right S.613-A, 1975 New York State Legislative Annual, pp. 50, 51); N.Y. Surr. Proc. Act § 1707 (Grandparents must receive notification when parents are dead or missing.); 42 U. S. C. § 216 (Grandparents may seek dependent benefits for un-adopted children in their care when the parents are dead or disabled); and C. 657 of the 2003 Laws of New York (grandparents afforded special rights in private custody disputes and notification about removals of children from parental homes by local departments of social services). *See also Matter of the Appointment of a Guardian for Baby K*, 188 Misc.2d 228, 727 N.Y.S.2d 283 (Broome Co. Surr. Ct. 2001) (a Surrogate's Court approving grandparent's guardianship of an unborn child).

15 Although controversial in its own right, the right of grandparent visitation has gained widespread acceptance. In the mid-1960s, New York enacted section 72 of the Domestic Relations Law, one of the first grandparent visitation statutes in the nation. *See* L. 1966, c. 631, codified at N.Y. Dom. Rel. § 72. In the mid-seventies, this statute was expanded to include any circumstance where "equity would see fit to intervene." L. 1975, c. 43, codified at N.Y. Dom. Rel. § 72(1). The subject of grandparent visitation is beyond the scope of this paper.

permitting parents to designate certain authority to kincaregivers.¹⁷

III. OVERVIEW OF LEGAL BARRIERS AND OBSTACLES

A Nassau County grandmother applies for a "Child-Only" grant of public assistance. She is told that she cannot make out the application unless she is the child's legal custodian or guardian. She chooses not to apply. And consequently does not have the resources to raise the child.

Kincaregivers, particularly grandparents, are shouldering unanticipated burdens when they undertake the task of raising children. These kincaregivers may work or live on fixed incomes such as Social Security or pensions, they may live in restricted housing for the elderly, and they may be advanced in age. Most have experienced debilitating family tragedies because of the substance abuse, disability, death or incarceration of the child's parents. In addition to these private burdens, kincaregivers are confronted daily with the unintended effects of laws and regulations not designed to accommodate kincaregivers. Although the advocacy of the past fifteen years has brought much attention to the problems, and New York has taken encouraging first steps with its Grandparents Caregivers Rights Act and Parental Designation Statute, much more remains to be done about the hardships facing kincaregiving families.

In January 2004, the New York State Kincare Coalition¹⁸ and AARP NY initiated a year-long analysis of the barriers to kincaregiving in New York. The goals of the study were to identify barriers in the public assistance, health, education, legal and judicial, and child welfare systems, analyze their significance, and offer recommendations for change.¹⁹ The investigation was funded by the New York Life Foundation.

As part of the Coalition's efforts, AARP's researchers distributed a 20-page

16 L.2003, c. 657 (noting that "The legislature hereby finds that, with 413,000 children living in grandparent-headed households in New York state, grandparents play a special role in the lives of their grandchildren and are increasingly functioning as care givers in their grandchildren's lives. In recognition of this critical role that many grandparents play in the lives of their grandchildren, the legislature finds it necessary to provide guidance regarding the ability of grandparents to obtain standing in custody proceedings involving their grandchildren."). Currently this law is the most expansive statutory grant of rights to grandparent caregivers in any state. *See Tolbert v. Scott*, 790 N.Y.S.2d 495 (2d Dep't 2005).

17 S. 6818 repealed and replaced in June 2005, with a chapter amendment that enacts a parental-designation power by adding Title 15-1 to the General Obligations Law.

18 For information on the author and editor, *see* Appendix D.

19 The work of the New York State Kincare Coalition builds on the advocacy efforts of many other organizations and individuals over the last fifteen years. The history of recent advocacy and policy for kincaregiving rights in New York is set out in Appendix E.

survey to 187 organizations. The survey asked respondents to identify and prioritize the barriers in the 5 systems, and list recommendations to eliminate the barriers. 67 respondents returned the surveys. Of these, 43 were agencies actively providing services to kin caregivers. The responding agency personnel included social workers, nurses, attorneys or other community-based professionals. The results of the survey are reported in "AARP New York Report on Barriers to Successful Kin Caregiving of Children."²⁰

The combined efforts of AARP NY and the KinCare Coalition culminated in a Summit convened in Albany, New York during November 2004. The Summit brought together over 100 policy makers, law makers, advocates, kin caregivers, and Coalition members to review the research and make final recommendations for legislative and regulatory action.²¹ Summit participants identified critical caregiver needs that are illustrated in more detail below.

A. Need for Legal Information and Legal Services

A Monroe County grandmother cares for her grandson for over two years. Family Court orders the child back into the home of the father without a best interests analysis, as required by law. The grandmother cannot challenge the court's ruling because the grandmother cannot afford legal representation.

The 1995 White House Conference on Aging reported that one of the most pressing needs for grandparents and other kin raising children was legal information and legal services. A report to the Administration on Aging states that "Grandparents and other relative caregivers often face a bewildering set of legal issues,"²² a finding reinforced by the reports of state taskforces in Tennessee, California, Ohio, New Jersey, Washington State, and elsewhere.²³

Both New York's State Office for Aging (SOFA) and New York's 18 "Help for

20 The Report is available from AARP at <http://research.aarp.org>. Any barrier or solution that received a rating higher than 40% is identified in this discussion.

21 The attendees included agency personnel from the Office of Temporary and Disability Assistance (TADA), the Office of Children and Family Services (OCFS), and the Office for the Aging (SOFA). A copy of the agenda is attached as Appendix F.

22 Minkler, M., "Grandparents & Other Relatives Raising Children: Characteristics, Needs, Best Practices, & Implications For The Aging Network." Washington, DC: Lewin Group & U. S. Administration on Aging, 2001.

23 Recommendations of the 1995 White House Conference on Aging; Minor & Wallace, "The Dilemma of Kinship Care: Grandparents as Guardians, Custodians and Caregivers," (Government Law Center, Albany Law School 1998); Child Welfare League: 1996 California Policy Summit on Kinship Care; 2001 Florida Summit on Kinship Care; Ohio 2002 Report on Kinship Care. A legal assistance model project was a high priority of the recommendations of the 2002 Report to the Washington State Legislature.

Relative Caregivers" programs have reached the same conclusion. In the mid-90s, SOFA's Targeted Caregivers Initiative identified the prevalence of this need. In 2003, the 18 "Help for Relative Caregivers" programs unanimously indicated a need for legal services among caregivers on a range of topics including custody rights, Department of Social Services (DSS) benefits, housing, and school placements.²⁴

The Kincare Coalition studied how other states disseminate information to kincaregivers and identified several noteworthy programs, specifically Florida, New Jersey, and Ohio. Among the most promising models are statewide "Navigator Programs" designed to get information and services to kincaregivers by using toll-free "hot lines" or help desks. The types of services available through "Navigator Programs" range from information and referral to case management, and financial assistance. Other kincaregiver information programs include local assistance programs that tailor services to kinship caregivers and multi-county projects whose goals are to institute statewide programs targeting kinship caregivers.

Summit participants agreed that the availability of information on legal rights and legal assistance is essential to kincaregivers who face formidable obstacles as they navigate the public assistance, health care, education, court (family and juvenile proceedings), and child welfare systems. Private partnerships, especially Hunter College's Grandparent Caregiver Law Center, which is now defunct for lack of funds, and the National Committee of Grandparents for Children's Rights (NCGCR), have been models of how to provide legal information using toll free numbers. The participants regarded these programs as successful but viewed the need as far greater than existing resources.

B. Access to Public Assistance System -- Temporary Assistance to Needy Families (TANF "Child-Only" Grants)

A grandmother took her daughter's two young girls into her home. Later, the grandmother became their legal custodian. Neither the child welfare system, the courts, nor the local department of social services informed her about "Child-Only" TANF grants. For two years she suffered severe financial hardships until by chance she learned of these grants.

Financial support for kincaregivers is generally limited to federally-funded TANF

24 NYS Office of Children and Family Services, "Help for Caretaker Relatives Program, Interim Program Report – 2003."

"Child-Only" grants. "Child-Only" grants are based exclusively on the income and resources of the child. The caregiver's income is not considered.²⁶ The grant provides limited payments to kincaregivers for the care and boarding of a child. Nationally, only 6 percent of children in private kinship care eligible for TANF "Child-Only" payments receive them.²⁷

AARP survey results demonstrate that key barriers for kincaregivers regarding TANF "Child-Only" grants are inadequate knowledge about the grants, the complex application process, and inadequate financial assistance.²⁸

Kincaregivers often do not realize the children are eligible for assistance. Kincaregivers with eligible children may have raised them for years without assistance because they were never informed of the availability of grants. 79 percent of respondents indicated that the DSS workers should do more outreach to kincaregivers and 77 percent responded that information on TANF "Child-Only" application procedures should be distributed to kincaregivers.

Many kincaregivers find the application process confusing. 72 percent of respondents suggested that support in filing applications should be increased.

The Summit participants suggested that staff may be unfamiliar with the process. They related anecdotes in which frontline workers in some counties seemed suspicious of applicants, demanded unnecessary documentation (like proof of legal custody or guardianship), insisted that kincaregivers participate in work-related activities, sometimes erroneously declared applicants ineligible. 81 percent of respondents recommended training of DSS workers on TANF "Child-Only" grants. 70 percent of respondents recommended that a memorandum establishing uniform criteria for applicants should be distributed around the state.

Even the name(s) for these grants is unknown or not uniformly used within counties. Grants are sometimes referred to as a non-dependent grant (NDG's) or room and board rate. 67 percent of survey respondents indicated that a statewide uniform nomenclature should be established.

The "Child-Only" grant was considered inadequate by 67 percent of respondents. Consistent with other forms of public assistance, grants range from approximately \$300 to \$450, depending upon the county.²⁹ For a second or third child, the grants are approximately \$100 to \$150 per child. No additional funds are received for children with special or exceptional needs.³⁰ Thus, a kincaregiver with three grandchildren would

26 Greenberg, Mark H., et al., *The 1996 Welfare Law: Key Elements and Reauthorization Issues Affecting Children*, 12 *Children and Welfare Reform* 9 (Winter/Spring 2002), available at http://www.futureofchildren.org/pubs-info2825/pubs-info.htm?doc_id=102547.

27 Murray, Julie, et al., "Estimating Financial Support for Kinship Caregivers." Urban Institute, 2004.

28 AARP New York Report on Barriers to Successful Kin Caregiving of Children, available at <http://research.aarp.org>.

29 See Appendix G for a Comparison of "Child-Only" Grants and Foster Care Payments.

30 *Id.*

receive approximately \$650 to \$700 per month.³¹ 74 percent of survey respondents suggested that the amount of the grants be increased so that they are on a par with foster care grants. The direct payment to a foster family ranges from approximately \$400 to \$500 per child per month, depending upon the county; with grant increases of up to \$1300 for foster children with "special" or "exceptional" needs. For a second child and third child in foster care, unlike those receiving "Child-Only" grants, the rates double and triple. Since most kin caregivers have more than one child, the monetary differences between the "Child-Only" grants and foster care payments are substantially more dramatic when comparing multiple households.³²

In evaluating the overall cost of these two types of programs, consideration should be also given to indirect costs. For foster children, these costs include: overhead of child welfare personnel, court proceedings, assigned counsel fees, reunification efforts, terminations proceedings, and adoptions subsidies. For "Child-Only" grantees, the state has far less overhead.

Apart from "Child-Only" grants, little or no assistance is specifically targeted for kin caregivers. Some local offices on aging³³ and departments of social services have limited programs offering support groups or respite, but the state itself does not offer any special services. 67 percent of respondents suggested that child care stipends should be provided and 63 percent indicated transportation stipends should be provided.

63 percent of respondents suggested that TANF administration funding be expanded and 54 percent recommended that a Caregiver Services Coordination Agency be created.

Summit participants confirmed these findings and agreed that solutions should include child care funding, increased "Child-Only" payments, training for staff on the purpose of "Child-Only" grants, eligibility and assistance to kin caregivers, and creation of a common nomenclature and common qualifications. Some of their recommendations could be accomplished administratively by local departments of Social Services, such as conducting outreach to kin caregivers. They also suggested that as part of an examination of whether funding for "Child-Only" grants can be increased, a comparison of the actual cost/benefits of both programs should be done. This analysis might in turn serve as a basis for increasing TANF assistance to kin caregivers.

C. Access to the Health Care System

31 See Appendix G for a Comparison of "Child-Only" Grants and Foster Care Payments.

32 *Id.*

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

A grandmother was refused medical services for her grandson at a local pediatric office. She had been the informal custodian of the child for some time and was known to the medical staff. However, when the staff realized that she was not the legal guardian of the child, they felt compelled to deny routine care.

AARP's survey results identified a kincaregiver's lack of medical authority as a complicating factor in obtaining medical and mental health care and medical records. The survey results also showed that kincaregivers face problems in obtaining private health insurance and, for eligible children, Medicaid.

65 percent of respondents indicated that kincaregivers' authority was inadequate. New York's legal custodians³⁴ as well as many informal kincaregivers lack the necessary statutory authority to make medical decisions. By necessity, medical providers and schools often ignore this lack of authority but the uncertainty of the kincaregivers' authority makes their situation precarious. 58 percent of respondents indicated that this lack of authority also makes it difficult for kincaregivers to access health records.

Health insurance carriers may refuse to reimburse for a child's medical care unless the kincaregiver obtains guardianship over the child, a step the kincaregiver may be reluctant to take for fear of disturbing the relationship with the child's parent. 61 percent of respondents acknowledged that kincaregivers have difficulty in adding a child to a private plan and 56 percent indicated that kincaregivers are unable to obtain health care insurance. 61 percent of respondents suggested that the Child Health Plus Program should do more outreach to kincaregivers and 58 percent suggested that help is needed in completing the Child Health Plus application.

Many of the children may be eligible for Medicaid but the application is not drafted

34 See, e.g., N.Y. Public Health Law § 2504 (permitting parents, guardians, and "*persons in parental relation*" to make medical decisions for minors.)(emphasis added); N.Y. Public Health Law § 2164 (for immunizations, a "person in parental relation to a child" shall mean and include his father or mother, by birth or adoption, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of a child if he has assumed the charge and care of the child because the parents or legally appointed guardian of the minor have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such child or are living outside the state or their whereabouts are unknown, *or have designated the person pursuant to title 15-a of the general obligations law as a person in parental relation*")(emphasis added). See also N.Y. Educ. Law § 2 & 3212(1) (Persons in Parental Relationship). ("A person in parental relation to another shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown, *including persons who have been designated pursuant to title 15-a of the general obligations law as person in parental relation to the child*)(emphasis added).

with kincaregivers in mind.³⁵ 61 percent of respondents indicated that the complexity of the application process may thwart persons otherwise eligible for this benefit. 72 percent suggested that DSS staff should receive training on eligibility criteria for children in kincare and 63 percent suggested that DSS should do more outreach regarding Medicaid.

Summit participants confirmed that the survey results accurately described the experiences of kincaregivers. Participants expressed concern that the health care needs of the kincaregivers and the children in their care are under-identified and under-served. Many of the kincaregivers are elderly and suffer from health problems that are exacerbated by the stress of caregiving. They may also suffer from mental health problems brought on by stress. The children often have significant mental health issues because they are not living with their parents. The adolescent years can be particularly difficult for both the caregiver and the teen.

D. Access to the Educational System

An Orange County grandfather becomes the caregiver for three children two weeks before the start of the school year when his daughter left the children with him and disappeared. He tries to enroll the children in school and is told by the school district that he must first become their legal custodian. Four months later, the children are still not in school because of bureaucratic red tape and an inability to locate the daughter for service of process.

Survey results showed barriers for kincaregivers attempting to meet the educational needs of children include lack of knowledge among school staff about kincaregivers' needs, inadequate support for kincaregivers in advocating for their children, and inadequate authority to make decisions and access school records. The lack of authority with respect to enrollment and inconsistent policies about enrollment across the state are also barriers.

Teachers and administrators may be unfamiliar with a kincare arrangement and thus reluctant to engage the kincaregiver as the family partner or share other information about the child. 77 percent of respondents said the school administration officials, parent coordinators, and teachers lacked an understanding of kincaregivers' needs and that administrators and staff should receive training. 67 percent of respondents said that kincaregivers had inadequate authority to make educational decisions and that this lack of clear authority made advocating for services difficult. 67 percent said that this lack of authority made it difficult to obtain records and other information.

Even enrolling a child in school can be complicated for kincaregivers. 58 percent of respondents viewed kincaregivers' authority to enroll children in school as inadequate. Under New York's Education Law, residency in a school district is necessary in order to qualify for tuition-free enrollment.³⁶ The statute requires proof of other residency to overcome the presumption that children reside with their parents. Although the law provides that residency

35 A child with a "Child-Only" grant is eligible for Medicaid.

36 N.Y. Edu. Law § 3202.

can be proven by a totality of the circumstances,³⁷ many school districts demand that the kincaregiver have legal custody or guardianship. Without legal custody or guardianship, the kincaregiver faces tuition payments, thus, in many cases, straining their already limited income.

Kincaregivers may experience difficulty in assisting the children with their lessons. Learning theories may have changed, and some subjects may present challenges to the kincaregiver as well as the child. 74 percent of respondents said that there were inadequate support services and 70 percent said that kincaregiver knowledge of available assistance was inadequate.

Summit participants agreed that the barriers in the survey accurately described problems confronting kincaregivers. Among their recommendations, they indicated that school districts administratively should develop outreach programs for kincaregivers on educational resources, including individualized education plans ("IEP's"), access to parent coordinators, and their educational rights and responsibilities.

E. Access to the Legal and Judicial System

A grandmother cares for her grandchild for over two years, with the assistance of the mother. The absent father returns and claims in court that he has kept up contact with his children. The child's mother who is eligible for assigned counsel has disappeared. The grandparent caregivers are not parties to the dispute and cannot afford counsel. The child is returned to the father.

AARP survey results showed that barriers in the legal/judicial system include the cost of legal services, inadequate funding for legal services programs, inadequate access to legal records, and inadequate respect by the courts for kincaregivers.

Kincaregivers are frequently at a disadvantage in legal battles because they may lack the necessary information to make informed decisions about how to proceed and they may lack the necessary funds to hire a lawyer. 88 percent of respondents identified cost of legal proceedings as a major barrier for kincaregivers. 84 percent said that funding for legal services programs was inadequate, making it difficult for such programs to take kincaregiver cases. 84 percent of respondents said that kincaregivers lacked knowledge of what services are available. 67 percent stated that they had inadequate assistance in completing court documents. 61 percent expressed the view that the court staff lacked an adequate understanding of the issues facing kincaregivers. As a consequence of these problems, kincaregivers have difficulty navigating the legal system.

65 percent also stated that kincaregivers did not have adequate access to court documents and legal records. 47 percent stated that kincaregivers had insufficient access to law guardians in court proceedings.

The survey also indicated that kincaregivers and professionals assisting them are convinced that kincaregivers are disadvantaged in court proceedings regarding children. 67 percent of respondents stated that kincaregivers lacked rights in legal proceedings. 65

³⁷ See generally *Catlin v. Sobol* 77 N.Y. 2d 552, 569 N.Y.S.2d 353 (1991); *Matter of Moncrieffe*, 121 Misc. 2d 395, 467 N.Y.S.2d 812 (Surr. Ct. Nassau Co. 1983).

percent said that the courts did not respect the rights that kincaregivers do have.

Although a kincaregiver with legal custody has some security that a parent cannot remove a child at will, a strong preference for parental reunification still places children in legal custody at a disadvantage. A kincaregiver without legal custody is in a more precarious position. Parents have primacy under the law. Thus, under New York law, in a third party custody proceeding, one between a parent and a non-parent, the court must find that "extraordinary circumstances" exist before the court will consider what custody arrangement is in the child's best interests.³⁸ "Extraordinary circumstances" are circumstances such as parental unfitness or "an extended disruption of custody."³⁹

Some states provide that a parent's voluntary placement of the child with another full time non-parent caregiver for a statutorily defined extended period of time is a sufficient reason to consider granting custody to the non-parent caregiver. New York recently adopted similar protection for grandparents by enacting legislation which provides that if a child resides with a grandparent for at least 24 continuous months, the court should consider that period of time an extended disruption of the parent's custody.⁴⁰ The legislation does not extend to children who reside with non-grandparent primary caregivers.⁴¹

Summit participants emphasized the inadequacy of kincaregivers' legal rights and the inadequacy of legal representation for those unable to afford an attorney. Family Court Act Section 262 provides for the appointment of counsel to indigent respondents in custody proceeding; grandparent caregiver petitioners do not qualify for assigned counsel. Yet, like a custodial respondent, the kincaregiver's custodial care of a child is threatened by the absent parent.

Kin seeking to become foster parents or to intervene in proceedings after placement with non-kin foster parents also lack the assistance of counsel and often are faced with hostile courts and social services staff.

Participants offered a range of solutions including funding for legal representation, access to legal information and legal forms via a Navigator Program, a "de facto custody" law,

38 See, e.g., *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976); see also *Guinta v. Doxtator*, 2005 WL 1000173 (N.Y.A.D. 4 Dept.).

39 *Id.*; see also N.Y. Dom. Rel § 72.

40 L.2003, c. 657, codified at N.Y. Dom. Rel §72 (the statute further provides that the court may find that extraordinary circumstances exist should the prolonged separation have lasted for "less than 24 months.").

41 Compare *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976) with "de facto" custody laws in Kentucky, KRS 403.270 (1998) (allowing a court to declare a relative or non-relative caretaker a child's custodian if it is in the child's best interests; Indiana, IC 31-14-13-2 (1999), allowing a primary caretaker of a child for a minimum period of time to apply for custody if a judge deems that to be in the best interests of the child; Minnesota, MS § 257C (2002), allowing a relative or non-relative "interested" third party to petition the court for custody of a child under their care by showing clear and convincing evidence that the parent has disregarded or abandoned the child and that placement with them is in the best interests of the child; Oklahoma, 10 Okl. St. 21.2 (2002), defining abandonment for children placed with relatives with same time periods as other three states: six month/one year time period dependent on age of child.

preference for kin in custodial proceedings, more protections for kin caregivers from child removal, and training for law guardians and judges. They also suggested that on an administrative level the Office of Court Administration should develop a method for distributing information to kin caregivers regarding services and benefits. Too often kin are awarded custody or guardianship and leave court unaware of government assistance, thereby potentially defeating the purposes of a court's final decision.

F. The Child Welfare System's Response to Caregiver Needs

A Brooklyn grandmother confronts her son in a crack house and demands that he give her grandson to her. She later realizes that her teacher's pension is not enough to cover the costs of raising a three-year old with developmental disabilities. She applies to become a foster parent and the Administration of Children's Services tells her that she cannot qualify because the child is no longer at risk.

The survey results showed that the barriers for kin caregivers include kin caregivers' and child welfare staff's inadequate knowledge about foster care and subsidized adoption, inadequate training of child welfare staff, inadequate child welfare funding, and the complexity of the foster care certification process.

72 percent of respondents identified both kin caregivers' and staff's lack of knowledge of the options of foster care and subsidized adoption as a major barrier. 63 percent of respondents viewed the complexity of the certification process as a barrier.

61 percent of respondents viewed kin caregivers' access to kinship foster care as inadequate. 56 percent thought a DSS preference for non-kin foster care is a barrier.

Summit participants agreed that the survey identified most of their concerns. They indicated that while kin are recognized as a resource for abused and neglected children, some local departments of social services prolong the foster care certification process, thus dissuading kin caregivers from entering the kinship foster care system.⁴²

In interstate placements, kin seeking to bring a child into this state from another state's child welfare system face additional problems caused by bureaucratic delays in processing a child's transfer out of state through the Interstate Compact on Children.

Participants expressed concerns about New York's failure to seek a federal waiver for a statewide subsidized guardianship program recommended by its own feasibility study⁴³

42 The 1997 Federal Adoption and Safe Families Act (ASFA) increased state interest in kinship foster care but also inadvertently created disincentives for such care by encouraging rapid adoptions. States prefer foster parents as adoptive parents rather than kin who may ask to become caregivers after the child has been placed with a non-kin foster family. The goal of "permanency" through adoption can outweigh the interests of families who wish to become kin caregivers.

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

because of a belief that a statewide program could quickly prove financial unfeasible. A subsidized guardianship program would assist kin who will not adopt because they do not wish to terminate parents' rights.⁴⁴ Subsidized guardianship provides permanency for children in a kinship arrangement without requiring kin to adopt.⁴⁵ It offers privacy and flexibility because the child is not a ward of the state.⁴⁶ It also provides financial support to assist the care and support of the child. Over 30 states now offer subsidies to kinship foster parents who are willing to become the "permanent" guardian.⁴⁷ States typically link the subsidy amount to the foster care board and maintenance rate, the adoption assistance payment, the TANF grant, or some combination of these payment levels. In states that use the board and maintenance payment as the standard, the subsidy may be a fixed percentage of, or equal to, the foster care rate.⁴⁸ Funding sources for subsidized guardianship include Federal IV-E Waivers, TANF funding, other federal funds, and in some states, a combination of state and local funds.⁴⁹

In addition to recommending subsidized guardianship, Summit participants suggested actions that DSS could accomplish administratively, such as monitoring the search for relatives,⁵⁰ mandating written notice to all grandparents and to other suitable relatives of their rights,⁵¹ creating mandatory procedures for search for grandparents and other suitable

44 Many of these kin are forced to leave the child welfare system and become either legal custodians or legal guardians, usually with "Child-Only" TANF grants, SSI or no financial assistance. Brooks, 2001.

45 Bissell, Mary & Miller, Jennifer L., Using Subsidized Guardianship to Improve Outcomes for Children 1 (Children's Defense Fund 2004).

46 *Id.*

47 See, e.g., Children's Defense Fund, States' Subsidized Guardianship Programs at a Glance (October 2004), available at www.childrensdefense.org/childwelfare/kinshipcare/guardianship_laws.pdf Some states, such as New Jersey and Florida, have special court procedures which permit a qualified kinship caregiver to receive higher payments if they are caring for children for reasons similar to those that would cause children to enter foster care. Mullen, F. & Einhorn, M. (2000, November). *The Effect Of State TANF Choices On Grandparent-Headed Households*. Washington, DC: Public Policy Institute. In New Jersey the process is similar to a guardianship proceeding. State navigators advise a kinship caregiver about the procedure and facilitate legal representation. In Florida, a special adjudication makes a finding that the child would be in foster care but for the intervention of the extended family. Adjudicated kinship caregivers can receive a stipend halfway between foster care payments and a "Child-Only" grant. *Id.*

48 Wulczyn, Fred at 4-5.

49 Bissell & Miller at 10.

50 The New York State Office of Children and Family Services should track implementation of Chapter Law 657 of the 2003 Laws of New York to track extent of search for relatives and placement with relatives.

51 The notice is pursuant to Chapter Law 657 of the 2003 Laws of New York (Family Court Act § 1017(1) and Social Services Law § 384-a(1a). Notice could contain information about "Child-Only"

relatives,⁵² ensuring a streamlined qualification process for kinship foster parent, and conducting a feasibility study to determine cost-effectiveness of kinship foster care payments.

IV. KINCARE SUMMIT RECOMMENDATIONS

The Kincare Summit produced four overarching Final Recommendations. The remaining Recommendations address specific needs for training, statutory changes, and funding in the public assistance, health, education, legal judicial, and child welfare systems.

OVERARCHING RECOMMENDATIONS

Recommendation One: Create a statewide "Kincare Information Program."

A statewide information and referral program or warm line would provide information about legal rights, legal services such as law school clinical programs, legal service providers, state, county and local bar association's pro bono programs, and other services. Assistance via an 800 number and a website would alleviate much of the confusion caused by misinformation about and misapplication of existing laws.

As part of the creation of the "Navigator" Program, one-stop shopping programs for kincaregivers should be created and implemented statewide. Local departments of social services already providing most services from a central location can accomplish a simplified one-stop shopping using a dedicated intake person and limited case management. Nassau County has already begun an ambitious project to provide one-stop shopping for all its residents. Fulton County has a successful program for close to 20 years. In other states, kincaregiver projects have already successfully created similar programs for kincaregivers. Colorado's program in El Paso County, for example, has been identified as a national model.⁵³

Recommendation Two: Restore funding for the "Help for Caretaker Relative." programs.

From 2002 to 2004, the New York State Office of Children and Family Services

grants, EITC, other benefit programs, legal custody, legal guardianship, adoption, and subsidized adoption. See NYC ACS form in Appendix H for example of a written notice currently in use.

⁵² These procedures would expedite kin placements by describing the method for and the scope of the search and should include procedure to identify and expedite placements interstate via the Interstate Compact on Children.

(OCFS) administered grants to 18 programs across New York State especially tailored to serve the needs of kin caregivers. According to OCFS's assessment, these 18 programs were highly successful. However, funding ceased during 2004.

Recommendation Three: Create a subsidized "Guardianship Program."

New York can still seek a waiver from the federal government in order to implement a federally funded statewide subsidized guardianship program.⁵³ Such a program could provide permanency for children in kin care while not requiring kin caregivers to seek termination of parental rights through adoption. Subsidized guardianship could provide financial assistance with payments that are higher than "Child-Only" grants, although not as high as foster care. Subsidies could be expanded to include kin caregiver guardians who never were foster parents.

Recommendation Four: Create a state-level "Taskforce on Kin care."

Kin caregivers must successfully interact with the public assistance, educational, health care, legal/judicial and child welfare systems. Their needs must be met by a coordinated state effort to understand and address unique circumstances. A state-level taskforce would provide the forum to continue the identification of barriers and to implement solutions to individual cases. Similar efforts should be encouraged at the county and municipal levels. Task forces should include grandparents and other kin caregiver advocates.

TRAINING RECOMMENDATIONS⁵⁴

Public Assistance System

Recommendation Five: Publish a guide to applying for "Child-Only" grants.

The state social services universal application form for public assistance was not designed for use by kin caregivers seeking "Child-Only" grants and Medicaid for eligible children. Publication of a **guide to applying for "Child-Only" grants** would eliminate much of the confusion for both applicants and intake staff. This guide should be available at local social services offices and on-line.

Recommendation Six: Train staff of departments of social services.

Local DSS staff should understand eligibility requirements of "Child-Only" grants, and be able to help kin caregivers maximize benefits, obtain access to child care, and understand the options of foster care and adoption. Staff should also understand the health

⁵³ See Wulczyn, Fred et al., *Relative Caregivers, Kinship Foster Care, and Subsidized Guardianship: Policy and Programmatic Options*. Report to the Governor and Legislature, February 2003 (in 2005 it is possible for New York State to apply for federal assistance to fund a subsidy program).

⁵⁴ In 1999, NYSOFA with the NYS Developmental Disabilities Planning Council published a workshop series for grandparents raising children with disabilities. Other workshops, including the NYC Department for the Aging and Cornell University's Cooperative Extension PASTA series, also exist. Minimal funding is necessary to update these publications and to assist support groups in offering workshops.

care needs of the children in kincaregiver families and be able to correctly provide kincaregivers with information about existing services, including Medicaid and Child Health Plus.

Education System

Recommendation Seven: Train school-district personnel.

School personnel, including administrators, teachers, and staff should understand the legal rights of kincaregivers and work to address the problems that kincaregivers often face in attempting to enroll a child in school and/or in advocating for the children in their care.

Legal and Judicial System

Recommendation Eight: Train court personnel.

Law guardians, judges, attorneys, and court staff should understand the legal rights of kincaregivers, and work to address the problems that kincaregivers face in attempting to advocate for the children in their care.

STATUTORY RECOMMENDATIONS

Public Assistance

Recommendation Nine: Amend Social Services law to create a "Good Cause" exemption from kincaregivers' cooperating in enforcement of support order.

Currently parents have certain "good cause" exceptions from cooperating in the enforcement of support orders. Kincaregivers who reasonably fear that absent parents will remove children from their care should likewise have a "good cause" exception from cooperation when they can show that court orders are insufficient safeguards against removal of the child in their care.

Educational System

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

While legal custody and/or legal guardianship are evidence of residency, neither is legally required for school enrollment. The Education Law should clearly state that evidence of residency to rebut the presumption that children are currently residing with their parents is a totality of the circumstances, not limited to legal custody or guardianship. Proof of residency could be established by a sworn affidavit, similar to kincaregiver affidavits used by the City of New York and Rochester's educational authorities. The law should also clarify the rights of kincaregivers in the education system.

Health Care System

Recommendation Eleven: Amend Public Health Law definition of "Person In Parental Relation."

The Public Health Law permits "persons in parental relation" to consent to immunization of children and to most medical, dental, health, and hospital services, yet the definition omits legal custodians and kincaregivers who can locate the parents but cannot get them to sign a designation. The definition should include legal custodians and these kincaregivers.

Legal and Judicial System

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

A "de facto" custody statute in which a defined period of time during which a child had lived with a kin caregiver other than a grandparent creates an "extraordinary circumstance" that would mandate a "best interests" analysis. Requiring this analysis would avoid unreasonable removals of children from their homes.⁵⁵

Recommendation Thirteen: Amend Social Services Law to ensure placement of the optimum number of children with kin caregivers.

Ensure that family members are notified of removals and of their custodial and financial options and that local departments of social services place children with kin immediately after removal, pending the kin caregiver's qualification as a foster parent. In the alternative, ensure that family court judges place children in the care and custody of suitable relatives who do not seek to become foster parents pending the final custodial decision.

Create a preference for placement with grandparents or other kin in custodial disputes arising after children are placed in foster care. The preference would mandate some "special weight" be given to familial custody, for example, a rebuttable presumption that placement with grandparents or other kin during the first twelve months of foster care is in the best interests of children.⁵⁶

Create a legal procedure allowing kin caregivers to petition to become foster parents within a limited time after they privately assume caregiving. The kin caregivers would have to demonstrate that *but for* their intervention, children would have been placed in foster care.

FUNDING RECOMMENDATIONS

Public Assistance System

Recommendation Fourteen: Increase "Child-Only" grants.

Increasing "Child-Only" grants would enable more kin to become caregivers, with direct benefits to the foster care system, and indirectly to the courts, the criminal justice system, and the mental-health systems. Models for increase include those in New Jersey and

55 In *Alison D. v. Virginia M.*, 77 NY2d 651 (1991), the Court of Appeals declined to read "de facto" parent into the definition of parent in Domestic Relations Law § 70. In her dissent, Chief Judge Kaye declared that she would define "parent" so to include a "de facto" parent.

56 Aside from *Moore v. City of East Cleveland*, justification for special legal treatment of grandparents can also be found in *Troxel v. Granville*, 530 U.S. 57 (2000). The decision was widely portrayed as a blow to "grandparent rights." But while the decision did declare Washington State's visitation statute unconstitutional, a closer reading showed widespread support for the constitutionality of grandparent visitation statutes. The Court decided that "normally" the state cannot interfere with fit parents but that, in this instance, interference *could* occur so long as some "special weight" was given to the parent's decision about visitation (in this particular case, the Supreme Court found that no "special weight" was applied by the trial court). *Troxel v. Granville* reaffirms that grandparents have a special legal recognition in family law.

Florida which have special court procedures which permit a qualified kincaregiver to receive higher payments if they are caring for children for reasons similar to those that would cause children to enter foster care.

Health Care System

Recommendation Fifteen: Mandate research of health care needs of kincaregivers and "Best Practices."

The causes of many health care problems among kincaregivers and their family members are under-identified and their needs are under-served. The Department of Health should undertake a study to identify the causes of health problems in these families and best practices for meeting their physical and mental-health needs. This study should lead in turn to the development of programs to help kincaregiver families such as mental health programs and support programs for adolescents.

Legal and Judicial System

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

Currently, Family Court Act § 262 assigns counsel only to respondents in custody proceedings. Many grandparents forced to petition for custody after caring for children cannot afford representation and often must permit absent parents to regain custody despite the desire of grandparents and the children to remain together. Unlike a petitioning parent who is seeking custody from the respondent custodial parent, a petitioning grandparent is seeking to remain the custodial caregiver and is actually similarly situated to a respondent custodial parent.

Many courts will not accept private adoptions without an attorney of record. While uncontested adoptions are relatively simple clerical procedures, the inability to pay attorney fees frequently dissuades kincaregivers from proceeding with the adoption.

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

The Office of Court Administration, which already collects statistics on Family Court proceedings, should begin collection of data on third-party custody and guardianship proceedings, including petitions where local departments of social services are a party in order to ascertain the number and outcomes at the trial level.

V. CONCLUSION

The overwhelming conclusion of the work of the KinCare Coalition and AARP NY is that New York can enable kin to become successful caregivers by granting them appropriate rights and authority, and insuring that kin caregivers have access to public assistance "Child-Only" grants and other services for which they are eligible.

This goal can be achieved by implementing the recommendations in this report. Most of the solutions have minor fiscal impact and are almost *de minimis* when compared with the potential societal consequences resulting from children who grow up in unstable and unloving homes.

New York has already taken significant steps towards answering the needs of these new families. It is hoped that this report will help move New York closer to providing a comprehensive package of rights, authority, and assistance.

As Denyse Variano, R.N., M.S.W, of Cornell University Cooperative Extension – Orange County, recently said. "anyone who works with these grandparents cannot forget them. Once you know them, you're hooked." Over the past 15 years, many individuals and organizations have become hooked, becoming passionate advocates for kin caregiving. All are united in their appreciation of the grandparents and other relatives who care so unselfishly for New York's children. All hope that New York will provide these caregivers with the recognition and support that they rightly deserve.

APPENDIX A

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

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

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

APPENDIX B

- *De Facto Custodian*: A legal term, defined in a few state statutes as a person who has assumed primary care and control of a child for a statutorily defined period of time.
- *Grandparent Caregiver*: Grandparents provide over seventy-five percent of all the non-parent care of children. Grandparents may have some special legal rights regarding their grandchildren.
- *Formal Custody*: Legal shorthand for any caregiver who has court orders, i.e., legal custody, legal guardianship, or adoption.
- *Formal Kinship Care or Formal Care*: Refers to the child welfare system, which is commonly referred to as the "system." Means the same as "kinship Foster care" or "public kinship care."
- *Informal Custody*: Legal shorthand for any caregiver who does not have court orders, i.e., legal custody, legal guardianship, or adoption.
- *Informal Kinship Caregivers*: Refers to all kin who are not part of the "formal" system. The formal system refers to the child welfare system, i.e., foster care.
- *Kincaregivers*: The term used in this report. It means all kin, biological or functional, who are caring for children. It does not include kinship foster caregivers.
- *Kinship Caregiver*: The common term for all non-parent caregivers, including grandparents, and may include kinship foster caregivers. Sometimes it includes non-biological caregivers.
- *Kinship Foster Care*: Kin who are certified or qualified to be foster parents. Legal responsibility for the care and control of children remains with the state actor.
- *Private Kinship Care*: The term adopted in the 2000 Report to Congress on Kinship Care to identify any caregiver who is not part of the "formal" system.
- *Public Kinship Care*: The term adopted in the 2000 Report to Congress on Kinship Care to identify kinship foster care (formal care).

APPENDIX C

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

Informal Custody

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

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

Authority – New York gives limited authority to informal caregivers. As of May 2005, designated informal caregivers can make decisions regarding medical care and schooling.³ In addressing this issue, New York joined other states that permit parents to delegate responsibility for medical and school-related decisions, albeit for limited periods of time. Absent parental delegations, a handful of states permit certain relatives to possess such authority through self-proving affidavits declaring that the relative caregivers cannot locate the parent(s). At present, New York only indirectly recognizes such affidavits.⁴ The

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

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

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

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

construction of the power for "personal relationships and affairs," under New York's power of attorney statute does not include the power to make medical decisions or other routine caregiver decisions.⁵

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

Security – Informal custodians have little or no security that children will remain in their homes. Since parents retain the right to care for their children, they can remove them from caregivers' homes at will. Moreover, in many instances, the parents use this insecurity to coerce kincaregivers to refrain from seeking public assistance or applying for the earned income credit. Even when one custodial parent places a child in the home of a relative, the other parent can still demand custody of the child.⁸ In one case, a young mother separated from her husband was killed in a car accident caused by a drunken driver. The mother's five-year-old son was also injured in the accident. He and his deceased mother had lived with the grandmother for almost all of his life. Five days after the young mother's burial, the grandmother was served with a subpoena ordering her to appear in court on the next day. The absentee father, who had spent less than 25 hours with the child in the last five years and had never provided support, demanded custody of the child. In court, the judge found the father to be a fit parent and immediately placed the child in the father's custody. Since the

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

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

⁷ *Catlin v. Sobol*, 77 N.Y.2d 552.

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

enactment of the "Grandparent Caregivers' Rights Act" such a result is precluded for children living with a grandparent for two or more years because now courts must analyze best interests before determining custody. No such protection exists, however, for non-grandparent kin-caregivers, except for judicial determinations using case law, which do not define any minimal period of caregiving as mandating best interests analysis. The lack of certainty regarding security is a constant anxiety for both kin-caregivers and children.

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

Non-parent caregivers should be able to contribute income to a child for purposes not covered by the public assistance grant without their contribution being counted as income to the child.¹³ When a non-legally responsible relative claims a child as a dependant, then refuses to contribute (to covered contributions), only the actual contribution can be budgeted.¹⁴ But, until recently, when a non-legally responsible relative claims a child as a dependant on their income tax return (often for purposes of qualifying for the Earned Income Tax Credit), fair-hearing decisions permitted social services districts to assume 51 percent.¹⁵ As of August 2002, the 51-percent rule has been repealed and "Child-Only" grants may no longer be reduced by deeming the income of a relative caregiver, who claims the child as a dependant, to be available to the child.¹⁶ In a number of other circumstances, incorrectly filling out the application form can still lead to decreased payments.

9 18 NYCRR 352.321(a)(2).

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

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

12 18 NYCRR 347.2©.

13 18 NYCRR 352.16(a).

14 PA Source Book XVI-H.

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

16 18 NYCRR 352.31(b).

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

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

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

Resources – In general, supportive services are very limited, and many caregivers may not know they exist or where to apply for them. Child care may be provided, but long waiting periods make it practically unavailable.²² Respite services for caregivers are virtually nonexistent. Counseling services for caregivers or the children are equally difficult to obtain. Legal services to indigent caregivers are invariably scarce.²³ Although some states use TANF funds for kin caregivers, New York, like most states, has yet to enact TANF-based legislation that comprehensively targets the needs of kinship caregivers.²⁴ Unlike most

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

18 18 NYCRR 415.9.

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

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

21 7 CFR 273.1(c)(6).

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

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

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

states, New York has only one dedicated program, through the aging network, and that program only targets aging kin caregivers.²⁵

Legal Custody

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

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

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

Security – Legal custody provides the security that a parent cannot remove a child at will, but a strong preference for parental reunification still places children in legal custody at great disadvantage. A custody proceeding between a parent and non-parent, called a third-party custody dispute, requires that the court find "extraordinary circumstances," such as parental unfitness or "an extended disruption of custody" before analyzing the child's best interests. The law presumes that parents act in their children's best interests. In a few states, statutory or case law provides that a parent's voluntary placement of the child with another full-time primary caregiver for an extended period of time is sufficient reason to consider granting custody to non-parent caregivers. New York's statutes provide this protection to grandparents, using residency rather than the

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

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

27 N.Y. Educ. Law § 3212(1) (Persons in Parental Relationship). "A person in parental relation to another shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown, *including persons who have been designated pursuant to title 15-a of the general obligations law as person in parental relation to the child*(emphasis added)." A similar definition applies to immunization powers, but does not include step-parents. N.Y. Public Health Law § 2164. (Immunizations). And N.Y. Public Health Law § 2504 permits parents, guardians, and parental designees to make medical decisions for minors.

narrower primary caregiver standard.²⁸ For non-grandparent caregivers there is no statutorily defined time period.

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

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

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

Guardianship

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

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

Financial Assistance and Resources – In New York, both legal guardians and legal custodians generally can get "Child-Only" grants. In over 30 states, subsidized

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

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

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

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

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

guardianship is now offered to kinship foster parents who are leaving foster care.³³ In January 2004, New York declined to seek a waiver from the federal government that would have funded a statewide subsidized guardianship program, despite the recommendations of its own feasibility study.³⁴ A few states offer increased subsidies to non-foster kinship caregivers. New Jersey permits non-foster kinship caregivers to become kinship guardians with increased TANF-funded payments.

Kinship Foster Care

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

Nationally, about 131,000 children are currently in kinship foster care.³⁵ In New York, in 2002, 8,671 children were in kinship foster care.³⁶ Nationally, over 22 billion dollars was spent on child welfare in 2002.³⁷ In New York, close to two billion was spent in 2002.

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

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

Security – In all situations where the state retains custody and guardianship of

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

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

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

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

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

children, kin are at higher risk of losing children than are parents because they are not afforded the same rights and protections afforded to parents.

Financial Assistance – The same level of financial assistance is available to both kin and non-kin foster parents. However, often kin cannot qualify to become foster parents. If a child is rescued from an abusive or neglectful home by a relative, the kincaregiver no longer has the chance to become a foster parent once the child is in a safe, stable home. Illustrative of this "Catch 22" is the case of a seventy-three year old grandmother who confronted the residents of a crack house and pressured them into giving her three-year-old grandson to her. She brought the toddler home, knowing that her pension income would not support her new family. The local department of social services would not help, even though in the past she was certified as a foster care parent for another child. The state reasoned that it did not have to intervene because this child was no longer abused or neglected. Financial assistance for kinship foster parents who are assuming permanent care of a child through adoption is the same as foster care payments. Over 30 states now offer subsidies to kinship foster parents who are willing to become the "permanent" guardian. In New York, without subsidized guardianship, kin who will not adopt are forced to leave the child welfare system and become either legal custodians or legal guardians, usually with "Child-Only" TANF grants, SSI or no financial assistance.³⁸

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

Adoption

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

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

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

38 Brooks, 2001.

39 Malm *et al.*, 2001.

40 Mullin & Einhorn, 2000.

Appendix D

About the author:

Gerard Wallace is an attorney practicing in the Hudson River Valley. For the last nine years he has focused on the legal issues related to kinship care. He has written over twenty articles on this subject, including articles for Westlaw, the New York State Bar, the Sadin Law Institute's *Senior Rights Report*, and the *Journal of Gerontological Social Work*. In June 2004, the Washington Post published an op-ed column by Mr. Wallace on the "other child-welfare system."

Mr. Wallace graduated *Magna cum laude* from Albany Law School in 1997. As an ALS Government Law Center Sandman fellow, he co-authored an eighty-page report recommending legislative action to assist kinship caregivers. From 1999 to January 2005 Mr. Wallace was program director of the Grandparent Caregiver Law Center at the Brookdale Center on Aging of Hunter College. In the U. S. Supreme Court grandparent visitation case *Troxel v. Granville*, he authored an *amicus curiae* brief that was featured in the Congressional *Digest's Supreme Court Debates*. He organized the first statewide conference on grandparent issues in 2001. He is a co-founder of the National Committee of Grandparents for Children's Rights, which has become the largest national grandparents organization with members in every state.

Mr. Wallace was legal commentator for a national PBS special on grandparent caregiver issues and has presented at numerous events including conferences and media briefings both in New York and across the nation. He has assisted the New York State Legislature as well other state law makers in drafting laws related to de facto custody and parental delegations of authority. Since 1996, he has interviewed over five thousand New York kincaregivers. Currently, he is a consultant to AARP NY and counsel to the National Committee of Grandparents for Children's Rights.

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Rose Mary Bailly, Esq. is Special Counsel to the Aging Law & Policy Program of the Government Law Center of Albany Law School. The Aging Law & Policy Program conducts research on critical issues affecting the elderly and holds conferences and other forums to providing policymakers and advocates for the elderly with information to spark reform on these issues. The GLC maintains an interest in the issues facing kincaregivers. In 1995, it hosted a White House Mini-Conference on Kinship Care: *Grandparents as Caregivers: The Legal, Economic, Social and Policy Issues of Kinship Care*. In 1998, it published a report on kincaregiving entitled, *The Dilemma of Kinship Care: Grandparents as Guardians, Custodians and Caregivers*, by Gerard Wallace and Meghan Miner -- the first comprehensive set of recommendations for policies and practices related to the "dilemmas" facing kincaregivers. In 2001, the GLC hosted a conference entitled *Kinship Care: Solving the Legal Issues* -- the first statewide conference on the subject of kincare.

Ms. Bailly is an Adjunct Professor of Law at Albany Law School where she teaches Guardianship Practice and co-teaches Elder Law. She has lectured and written extensively on guardianship and elder abuse. She writes the *West's Practice Commentaries to Article 81, Mental Hygiene Law*, and is an Associate Editor of, and

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Ms. Bailly is a member of the American Bar Association, Real Property and Probate Section, the New York State Bar Association's Elder Law Section, and the Committee on Issues for People with Disabilities. She is a member of board of editors of the *New York State Bar Journal* and the Associate Editor of the *Government Journal of Law & Policy*.

Ms. Bailly is a Fellow of the Brookdale Center on Aging. She is a graduate of Fordham University School of Law where she was a member of the *Fordham Law Review*, and a Commentary Editor of the *Review*.

APPENDIX E

Recent Kin caregiver Advocacy and Policy

Advocacy

In the early 1990s, New York City's Department for the Aging started its Grandparent Resource Center, a nationally recognized model for assistance to kin caregivers. New York City's aging services community, taking notice of the growing number of elderly caregivers of children, together with Hunter College's Brookdale Center on Aging, helped start the NYC Kin care Task Force. Together this public/private endeavor published some of the first information and referral resources for kin caregivers, as well as advocating for legislation that would create a parental power of attorney.

The NYC Department for the Aging has kept up its interests in kin care issues. Under the leadership of its director, Rolanda Pyle, the Grandparent Resource Center continues to provide information, workshops, and trainings for kin caregivers and professionals. In 2003, the Department funded the Family Center in an effort to provide case-management services to the five boroughs.

The New York State Office for the Aging (NYSOFA) also became involved early on. Its Targeted Caregiver Initiative (TCI) began funding support groups for local area offices on aging in 1995. This program then expanded into other areas, including trainings, a newsletter, and collaborations until 2003. During its tenure, TCI established the only state-coordinated collaboration on kin care issues. Among its many achievements, most importantly, TCI and the leadership at NYSOFA succeeded in inserting a 10 percent allocation of funds for aging kin caregivers into the Administration on Aging's National Caregivers Support Program. The Office for the Aging continues to support a website dedicated to kin care and to provide technical and program-development assistance.

During the 90s, as the number of kin caregivers grew, communities outside of New York City responded. Family Services of Westchester, in conjunction with the Brookdale Center on Aging and Gerard Wallace, published the first county resource guide. NYSOFA recognized the importance of this resource and actively assisted other counties in producing similar guides. Currently over 20 counties have resource guides. Cornell University Cooperative Extension – Broome County, with funding from NYSOFA, published a workshop series on raising children with disabilities. Albany Law School's Government Law Center (GLC) hosted a White House Mini-Conference on Kinship Care in prelude to the 1995 White House Conference on Aging. Two years later, the GLC published the first comprehensive set of recommendations for policies and practices related to the dilemmas facing kin caregivers.

Private organizations, especially Mildred Horn's Long Island-based Grandparents Reaching Out (GRO) and New York City's Grandparent Empowerment Movement (GEM) trained advocates. Later on, the Ad Hoc Committee of Grandparents for Children's Rights launched its state-wide campaign to raise awareness. Led by a grandmother, Brigitte Castellano, the Committee grew to become a national organization, the National Committee of Grandparents for Children's Rights (NCGCR). Other grandparents -- Doris Williams, Maria Lemons, Barbara Eskridge, Maggie Lee, Ellen

Anadio, Gloria Woods, Cindy Fountain, and Linda James, to name just a few -- have been involved as advocates.

Upstate, Catholic Charities and Cornell Cooperative Extension led efforts to serve communities from Rochester to Albany to Middletown. Rochester's Catholic Family Center has now hosted four regional conferences dedicated to kinship care. New York City also has held numerous conferences. Since 2003 Syracuse has become a focal point of collaboration and advocacy. The first state-wide conference was hosted by Albany Law School in 2001.

In 2003, AARP NY joined with the NCGCRs, the Federation of Protestant Welfare Agencies, State-Wide Senior Action Council, the Brookdale Center on Aging, and other organizations, to persuade New York to enact the "Grandparent Caregiver Rights Act."¹ This act bolstered the legal recognition of the role of grandparents in families at risk. In October 2003, AARP, the Children's Defense Fund, the Child Welfare League, the NCGCRs, and Generations United co-sponsored the first national "GrandRally" in Washington, D.C.² In 2005, the concerted efforts of many New York State advocates finally paid off with the enactment of a parental designation law.

Many other organizations have devoted resources to this issue. Notably, Presbyterian Senior Services (which is building a 50-unit housing complex for kincaregivers in the Bronx), Cornell University Cooperative Extension (which recently received a national award for its kincare workshop series and which has programs in 18 counties including its premier program in Orange County), the Council on Adoptable Children (which published a policy paper last year), the Brookdale Foundation (which continues to fund support groups), Fordham University (through its Grandparent Empowerment Training), the State University of New York Stony Brook School of Social Welfare, and other advocacy organizations, including the state chapters of the Children's Defense Fund and the Child Welfare League of America. However, at the time of this report's publication, a number of award-winning programs have scaled back or eliminated services, including Catholic Charities in Rochester, Albany, and Brooklyn, the Brookdale Center on Aging's Grandparent Caregiver Law Center, and Orange County's Cooperative Extension program.

In 2004, advocates from across the state organized the New York State Kincare Coalition, the first state-wide effort by professionals who serve kincaregivers. At its meetings in Albany, the Kincare Coalition offered state agencies and lawmakers the chance to work directly with the community of kincaregivers and their advocates. This

1 In 2003, New York did begin to address the need for rights and authority by enacting the "Grandparent Caregivers' Rights Act." Chapter 657 of the 2003 Laws of New York. The law provides that when children reside with their grandparents for two or more years, then it is mandatory that custodial disputes with absent parents be decided via best interests analysis, and the law also mandates notification to all grandparents when children are removed from parental care, and that any contacted relative be informed that they could qualify as a foster parent.

2 Cooper, Cynthia. "A Theory of Relativity," Equal Justice, pp. 24-31, Winter 2004, Vol.3 No.1.

report is the direct result of the KinCare Coalition's dedication to helping kin caregivers successfully raise children.

Many individuals and organizations, too numerous to mention individually, have become passionate advocates for kin caregiving. All are united in their appreciation of the grandparents and other relatives who care so unselfishly for New York's children.

Policy

Since 2000, New York State has made progress in enacting laws that address the needs of kin caregivers. New York has enacted a parental power of attorney, specific rights for grandparents, an expansive "standby guardian" statute, and use of TANF dollars to fund 18 kin caregiver programs through 2004. However, more remains to be done in order for kin to be fully utilized as a resource for children.

Aside from these enactments, policy attention has focused mainly on utilizing kin as *foster* parents. Successful examples of such policies include both New York City's Administration for Children Services and the City of Buffalo Social Services, where concerted efforts have led to increased placements with kin. Yet, despite the fact that since passage of both the 1996 Personal Responsibility and Work Opportunity Reconciliation Act and the 1997 Adoption and Safe Families Act (ASFA),³ kin are to be the preferred placement when children enter the child welfare system,⁴ across most of New York State kin are still encouraged to care for children independently.⁵ And in some instances, kin are actively resisted by social services when they seek to become caregivers.⁶

Part of the justification for this de facto practice comes from the misconception that kin are not good caregivers. Until recently this idea remained tenable because there was little research proving the benefits of kin care.

Research now appears to prove conclusively that kin are successful caregivers. In 2001, the keynote speaker Dr. Glen Saltzman, at Albany Law School's Kinship Caregivers Conference, described statistical evidence from a 50,000 family national health study, that showed the behavioral outcomes for children cared for by their grandparents are as good, or better, than outcomes for children raised by their parents. A November 2004 Cornell University study of "Child-Only" grantees (children receiving public assistance who are being raised by kin caregivers), commissioned by New York's

3 Starting with the 1974 Child Abuse and Prevention Act, a series of federal acts have heavily influenced state child welfare programs. See the Indian Child Welfare Act of 1978 and the Adoption Assistance and Child Welfare Act of 1980 and subsequent legislation.

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

5 In 2002, 21% of all children living in foster care were placed with New York's kin – 8,671 children; Child Welfare League of America, 2002.

6 Wallace, Gerard, "Grandparent Caregiving," Brookdale Senior Rights Report, Sadin Law Institute, November-December 2002.

Office of Temporary and Disability Assistance, states that "these results lend support to the possibility that non-parent family arrangements may provide the child with a positive, stable family life, perhaps better than with their troubled parents."² The June 2000 Report to Congress on Kinship Care reached the same conclusion.³ Many other reports and studies now confirm the advantages of kincaregiving.⁴

Sometimes by choice and often because of a lack of knowledge of choices, these informal kincaregivers are not part of the federally funded child-welfare system. Informed choices are often not possible because the local departments of social services do not pursue kin as foster parents. Yet full implementation of the current legal preference for kin as foster parents would not completely solve the wide range of issues facing kincaregivers. Most of these caregivers are not foster parents and would not choose to become foster parents. Estimates place the number of non-foster kincaregivers as ten to fifteen times larger than those who are foster parents.⁵

While since 2000, policy and law-makers have increasingly focused their attention upon these "informal" kincaregivers, numerous reasons have made it difficult to craft a comprehensive response to "informal" kincaregiving. The nature of kincaregiving — a hybrid of foster care and biological parenting — makes it difficult to fit kincaregivers into existing systems. Another disadvantage is the inability of the health, education, judicial, public assistance, and child welfare systems to comprehend the realities facing these new families. Indeed the inherent marginalization of kincaregivers, exacerbated by the consuming task of child rearing and by the ill fit between kincaregivers and the law, continues to inhibit kincaregivers from accessing existing services and from advocating for change.

Programs for "informal" kincaregivers remain under-funded. Foster parents are eligible for an adoption subsidy similar to foster payments. The subsidy is available to any foster family who adopts a hard-to-place or special-needs child. But kin who are foster parents may be reluctant to adopt, and there is no subsidized guardianship alternative in New York. Federal funding for non-foster kincaregivers aged 60 and over

2 Rachel Dunifon et al, "An Examination of Child-Only Temporary Assistance for Needy Families (TANF) Cases in New York State," College of Human Ecology, Cornell University, (November 2004) p. iv.

3 "Children in kinship care appear to have significantly higher well-being than children in non-kin foster care." U. S. Department of Health and Human Services Administration for Children and Families, Administration on Children, Youth and Families Children's Bureau, Report To The Congress On Kinship Foster Care, p. 38, June 2000.

4 Ehrle, Jennifer, Rob Geen, and Rebecca Clark. "Children Cared for by Relatives: Who Are They and How Are They Faring?", New Federalism, National Survey of America's Families, An Urban Institute, Series B, No. B-28, February 2001, citing Dubowitz, Howard, Susan Feigelman, Donna Harrington, Raymond Starr, Susan Zuravin, and Richard Sawyer, 1994, "Children in Kinship Care: How Do They Fare?" Children and Youth Services Review 16(1-2): 85-106. Also, Kendra Hurley and Lisa Michener, "Forging Connections: Challenges and Opportunities for Older Caregivers Raising Children." New York Council on Adoptable Children 2004.

5 Less than 10,000 kinship foster parent families, close to 200,000 non-foster kincaregivers.

is currently limited to a discretionary 10 percent under the Administration on Aging "National Family Caregiver Support Program" (2001). In 2002, New York State allocated 1.4 million TANF dollars for 18 "Help for Caretaker Relatives" programs via the NYS Office of Children's Services. However, due to limited state resources, despite their successes, funding ended in 2004.

State laws, which should enable kincaregivers, still do not address many of their needs. In a sense, it is necessary to enact a body of law similar to the laws governing parental care: a kincaregiver package of rights, authority, and recognition plus programs that target their unique needs.

APPENDIX F

October 20, 2004

The New York State Kincare Coalition together with AARP New York cordially invites you to join us at the NYS Kincare Summit to be held November 16, 2004, at the Crowne Plaza in Albany. You have been identified as a key stakeholder whose participation in this invitation only Summit is invaluable. Invitees include service providers, social workers, attorneys, academics, and grandparent caregivers, as well as representatives of the executive, legislative, judicial branches, public agencies, and advocacy organizations.

The Summit will act as a forum for meaningful planning and policy recommendations regarding the education, health, legal, public assistance, and child welfare systems. The goals of the Summit are to assess the barriers that kin caregivers face, draft preliminary recommendations, and increase stakeholders' awareness of the issues and solutions. The end product of this Summit will be a White Paper that will provide a blueprint for future initiatives in New York State.

In addition we will be releasing the findings of the NYS Kincare Survey: This twelve page survey polled professionals who are providing services to kin caregivers in order to identify:

- **barriers and obstacles that kin caregivers face, including education, health, legal, public assistance, and child welfare issues**
- **policy, regulatory, statutory, administrative, and training strategies in response to the identified barriers and obstacles**

The Summit will convene at 8:30am and end at 4:30pm. Breakfast and lunch will be served. The fee is \$35.00 for the day (a limited number of underwritten spaces are available). We have enclosed a response form and a preaddressed envelope for your convenience. Also, we have reserved a block of rooms at the Crowne Plaza for anyone who wishes to arrive the day before. Please call reservations at the hotel and ask for the AARP reservations for November 15. Please inform them of your payment method. If you need additional information, please call our Summit Coordinator Jenna Duwenhoegger at (212) 407-3736 or email at jduwenhoegger@aarp.org.

In order to help the half million New York children living with kin, it is absolutely necessary that we recognize the correct issues and devise comprehensive solutions. *Only with your involvement* can this Summit move New York closer to easing the burden facing grandparents and other kin caregivers.

Sincerely,



Lois Aronstein
AARP NYS Director

APPENDIX G

**PUBLIC ASSISTANCE
"CHILD-ONLY" GRANTS**

ONE CHILD	NYC	Erie	Onon- daga	Ulster
Total Needs	414	400	401	455
Room and Board plus PNA (maximum)	397	351	385	445

**CHILD WELFARE
FOSTER CARE RATES**

ONE CHILD	NYC	Erie	Onon- daga	Ulster
Basic Rate	532	438	449	487
Special Rate	990	658	700	973
Exceptional Rate	1499	877	1358	1473

TWO CHILDREN

Total Needs	501	486	507	578
Room and Board plus PNA (maximum)	558	509	543	613

TWO CHILDREN

Basic	1064	876	896	974
Special	1980	1316	1400	1946
Exceptional	2998	1754	2716	2946

THREE CHILDREN

Total Needs	691	646	648	697
Room and Board plus PNA (maximum)	712	641	696	776

THREE CHILDREN

Basic	1596	1514	1347	1461
Special	2970	1974	2100	2919
Exceptional	4497	2631	3074	4419

Public Assistance Grants

The "Child-Only" tables above represent two different budgeting scenarios for three different case sizes (varying number of children) in four different social services districts in New York State. The first scenario (Total Needs) occurs when needs are based on the actual expenses of the grantee and the amounts equate to the maximum grant available to the "child-only" case. The second scenario (room-and-board plus PNA) occurs when the grantee chooses to charge room and board, and the grant equals a capped room-and-board rate plus a personal needs allowance (PNA) of \$45 per child. For "Child Only" grants there are no grant increases for children with special or exceptional needs.

If heat is not included in the rent and the caretaker relative has a heating bill in their name and they are the tenant of record, the grant will also include a fuel allowance. The grant in NYC usually does not include a heating allowance since rent generally includes heat. However, a fuel

allowance is provided if the caretaker is the tenant and customer of record. In Erie, Onondaga and Ulster, the typical grant includes a heating allowance (usually natural gas). For this table the heating allowance is included for all districts, but NYC.

Child Welfare Foster Care Rates

The Child Welfare Foster Care Rates are for children with basic needs, special needs, and exceptional needs. The figures for two and three children represent families with two or three children all having basic or special or exceptional needs. Families with multiple children are more likely to be composed of a mix – all basic, two basic and one special, etc.

Public Assistance grant information is current for 2005 and was provided by the NYS Office of Temporary and Disability Assistance. Foster care rates are for 2003, available from NYS Citizens' Coalition for Children.

Appendix H



ADMINISTRATION FOR CHILDREN'S SERVICES
150 WILLIAM STREET
NEW YORK, NY 10038

WILLIAM C. BELL
Commissioner

NOTICE

IMPORTANT INFORMATION FOR RELATIVES AND ALL GRANDPARENTS OF CHILDREN IN ACS CUSTODY OR BEING PLACED THROUGH A VOLUNTARY PLACEMENT AGREEMENT

Child's Name: _____ DOB: _____

ACS Case Number: _____ ACS Case Name: _____

Mother's Name: _____ Father's Name: _____

Your grandchild, or a child who is your relative, is being placed into foster care with the New York City Administration for Children's Services ("ACS") as a result of a Child Protective Proceeding [Family Court Act Article 10], or is being placed through a Voluntary Placement Agreement [Social Services Law Sections 358-a and 384-a]. As the child's relative, you have the right to be aware of the following court proceedings or administrative procedures that affect the child's care and custody, and of the opportunity to seek custody and care of the child:

ACS Protective Custody/Court-Ordered Placement

Date of Removal/Protective Custody _____

Family Court Docket Number _____

Next Article 10 Hearing Date _____

Voluntary Placement Agreement

Date of Critical Case Conference _____

Date Voluntary Placement Agreement signed _____

Date of Family Court 358-a Hearing _____

You have an opportunity to become the child's foster parent or take responsibility for the care and custody of the child without foster care payment or supervision, upon meeting certain legal requirements, and, in court-ordered placements, with the approval of the Family Court.

Foster parents are certified or approved by ACS and foster care contract agencies. They receive a monthly stipend to cover the cost of caring for the child and must meet initial requirements and ongoing training and standards on caring for a foster child. Procedures for approving relatives as kinship foster parents are similar to those for certifying non-relative foster homes. Kinship foster parents must also be fingerprinted, undergo a State Central Register on Child Abuse and Maltreatment clearance, and provide references and other relevant documents. Further information on how to become a foster parent is available from the ACS staff listed below.

The Adoption Safe Families Act passed by Congress in 1997 and enacted in New York State in 1999 requires ACS to make "reasonable efforts" to reunify a child and parent. This means that ACS or one of its contract foster care agencies must offer services designed to assist the parent in addressing the problems that led to the child's placement, unless aggravating circumstances such as severe or repeated abuse of the child are present or it is unsafe to do so.

In addition, ACS or the foster agency arranges parent-child visits, keeps parents informed and involved in planning for the care and custody of the child, and keeps the child in close contact with his or her siblings, and relatives. If the child is in foster care for 15 of the most recent 22 months, the foster care agency may be required by law to file a petition to terminate parental rights and to free the child for adoption. (In some cases, the petition may be filed before the end of the 15 month period.) The child may be adopted by foster parents if attempts at reunification with the birth parent are not required or are unsuccessful.

If you have any questions about how to become a foster parent or wish to take responsibility for the care or custody of the child without foster care payment or supervision, or require any further information, the ACS caseworker or supervisor listed below will assist you.

ACS Caseworker's Name: _____ Unit Number: _____

Address: _____

Telephone Number: _____ Fax: _____

ACS Supervisor's Name: _____

Telephone Number: _____

This Notice was hand delivered or mailed to the child's:

Name: Relative: _____ Grandparent _____

Date Notice mailed or provided to Relative or Grandparent _____

A copy of the Notice mailed or provided to the Relative or Grandparent must be filed in the case record.

Eff. 1/07/04

APPENDIX I

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