

# Relative Placement in Child Protection Cases: A Judicial Perspective

By Judge Leonard Edwards (ret.)

## I. INTRODUCTION

Child welfare agencies and courts place thousands of children in out-of-home care every year.<sup>1</sup> This paper examines whether the state should give relatives preference over non-relatives when placing children—and, if so, how to accomplish that goal. In the 1980s, state and federal government policies shifted toward favoring relatives (so-called “kinship care”), but significant problems arise when delays occur in implementing these policies. For example, relatives do not always know that child protection proceedings are pending, and delays in the child protection and court systems often exclude them from consideration for placement even when they have notice. When relatives request placement long after a child has entered foster care, child welfare agencies and courts struggle with the competing placement interests of relatives, foster parents, and the child. To implement relative preference policies effectively, child protection agencies and courts must modify their practices and procedures. The stakes are high because placement will have a lifelong impact on the families involved and, most significantly, on the child.

Section II briefly describes child placement history in the United States. The third section addresses the emergence of relative preference as a goal within the child protection system. This discussion includes reasons why policy makers prefer relative placements to non-relative placements, and when and why states and the federal government began passing legislation reinforcing this preference. The fourth section examines the

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<sup>1</sup> As of November 2008, there were 508,446 children in out-of-home care according to the Children’s Defense Fund, *Children in the United States* (2009).

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unique characteristics of Native American relative placement law and practice, and highlights that these practices provide a useful model for the federal and state governments to emulate. It also includes reference to the importance of the extended family for African-American children.

Section V discusses how changes in the child protection system could engage relatives in the court processes. It reviews the trend toward relative placement preference by specifically discussing the importance of engaging fathers, the need to notice and engage relatives, the effectiveness of group decision-making models, and the emerging best practices of family finding and kinship navigator programs. The sixth section examines the need for timely placement decisions. Because children sense the passage of time differently than adults,<sup>2</sup> modifying the court system to meet their developmental needs is critical as the child protection system attempts to engage relatives. The longer courts take to make placement decisions, the more trauma the child likely suffers. This section also reviews appellate case law in which foster parents and relatives compete for custody of children and explains why delays often result in placement with foster parents than with relatives.

Section VII discusses several additional procedural barriers facing relatives who seek placement including placement assessments, criminal records checks, and home studies. The eighth section addresses how judges can take the lead to change procedures and practices in order to engage relatives meaningfully at the earliest possible time and to give them a fair chance for involvement in a child's life.

## II. THE OUT-OF-HOME PLACEMENT OF CHILDREN: SOME HISTORY

Throughout our nation's history, situations have arisen where children cannot live with their parents and must live elsewhere, temporarily or until they reach majority. Sometimes the child's parents have placed the child with family members informally, without state involvement.<sup>3</sup> Often poverty and homelessness have led parents to abandon their children, sometimes just leaving them on a doorstep. State governments and private organizations have intervened to assist some of these children, but the concept of child protection has become a significant government policy only in the last fifty years. Now when allegations of child abuse or neglect come to the attention of state authorities, child protection agencies intervene in the family to protect the child, sometimes resulting in legal proceedings and in court-ordered out-of-home placement.<sup>4</sup>

2 J. GOLDSTEIN, A. FREUD, & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (The Free Press, 1973) at 40-42.

3 R. Hegar, *The Cultural Roots of Kinship Care*, in *KINSHIP FOSTER CARE: POLICY, PRACTICE AND RESEARCH* (R. Hegar & M. Scannapieco eds., Oxford U. Press, 1999) at 17-27.

4 R. Geen, *Kinship Foster Care: An Ongoing, Yet Largely Uninformed Debate*, in *KINSHIP CARE: MAKING THE MOST OF A VALUABLE RESOURCE* (Urban Institute Press, 2003) at 2 [hereinafter *Kinship Care*].

State policy and practice have changed significantly since the 17th and 18th centuries when almshouses, poor houses, orphanages,<sup>5</sup> refuge houses,<sup>6</sup> or, in the case of infants, foundling homes provided care for homeless and destitute children.<sup>7</sup> State governments showed little interest in the well-being of children, even those abused or neglected by their parents.<sup>8</sup> States generally left control of children entirely up to the parents. What little intervention states provided was in the nature of social control of vagrant, homeless, and poor children, many of whom lived on the streets of large cities.<sup>9</sup>

Throughout the 19th century, very few child abuse cases received public attention. As a result of some of the most egregious cases, however, private organizations intervened to meet the needs of these children. State authorities took action on behalf of the child in a few cases, the most famous of which is the case of *Mary Ellen*.<sup>10</sup> Shortly after that case, Elbridge Thomas Gerry founded the New York Society for the Prevention of Cruelty to Children, the first American organization devoted to the protection of children.<sup>11</sup>

The nation's first juvenile court, created in Illinois in 1899, did not result in greater attention to the plight of abused and neglected children. The text of the Illinois legislation included language that described these children,<sup>12</sup> but in practice the early juvenile courts (in Illinois and elsewhere) centered on children who committed lesser crimes, homeless youth, and children who were beyond their parents' control.<sup>13</sup> The treatment options for the juvenile court included either assisting the family in controlling their child or removing the child and placing him in a reform school or similar institution.

In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, policy makers debated whether to place dependent children in large congregate care institutions or with individual families.<sup>14</sup> Orphanages and similar institutions housed the vast majority of children placed out-of-home in the early 20th century, but several states worked with private organizations to place children with foster families.<sup>15</sup> Critics pointed out that the poor living

5 To this day the debate about orphanages has not ended. R. McKenzie, *The Best Thing About Orphanages*, THE WALL STREET JOURNAL, Jan. 14, 2010; National Coalition for Child Protection Reform, *Just Say NO to the Orphanage*, Issue Paper 15, Dec. 13, 2009, available at [www.nccpr.org/reports/15Orphanage.pdf](http://www.nccpr.org/reports/15Orphanage.pdf).

6 S. Pfohl, *The "Discovery" of Child Abuse*, 24 SOCIAL PROBLEMS at 431-433.

7 J. E. B. MYERS, A HISTORY OF CHILD PROTECTION IN AMERICA (Xlibris, 2004) at 43-44.

8 *Id.* at 35-37.

9 *Id.* The concepts of abused or neglected children did not exist in the law. L. Ashby, ENDANGERED CHILDREN: DEPENDENCY, NEGLECT, AND ABUSE IN AMERICAN HISTORY (Twayne Publishers, 1997) at 7 [hereinafter ENDANGERED CHILDREN].

10 MYERS, *op.cit.* note 7 at 24-26. For the full history of the *Mary Ellen* case, see the Ventrell article below. As Ventrell points out, the *Mary Ellen* case was not the first child abuse and neglect case to appear in the state courts. M. Ventrell, *Evolution of the Dependency Component of the Juvenile Court*, 49 JUVENILE AND FAMILY COURT JOURNAL, Fall 1998, at 17, 26-27.

11 ENDANGERED CHILDREN, *op.cit.* note 9 at 59.

12 "An act to regulate the treatment and control of dependent, neglected and delinquent children." State of Illinois General Assembly, April 21, 1899.

13 Ventrell, *op.cit.* note 10.

14 MYERS, *op.cit.* note 7 at 78. Professor Myers estimates there were more than 1,000 orphanages and children's homes in the United States in 1904. Another author estimates that there were 111,514 children living in orphanages in 1906. ENDANGERED CHILDREN, *op.cit.* note 9 at 90.

15 MYERS, *op.cit.* note 7 at 78-82.

conditions in orphanages were unhealthy for children, and that the family setting rather than large congregate institutional life was the preferred way to rear children in American culture.<sup>16</sup> Charles Loring Brace, the leader of the Children's Aid Society in New York, argued that children belonged in families and not in institutions. He believed that the open air of life on a family farm along with discipline and religion provided the best home for a child.<sup>17</sup> To implement these beliefs, the Society sponsored Orphan Trains, which sent about a quarter of a million children from New York and other eastern cities to midwestern and western states to live on ranches and farms between 1854 and 1929.<sup>18</sup> The Orphan Trains were the nation's first sustained experiment with foster care, though without legal regulation or control at either the sending or receiving ends.

The placement policy debate between institutions and families reached a climax at the 1909 White House Conference on the Care of Dependent Children where delegates concluded that it was preferable to place dependent children with their own families, if possible, but otherwise with other families.<sup>19</sup> One development inspired by this conference was the creation of "mothers' pensions," state subsidies that enabled needy and "fit" widows to care for their children at home.<sup>20</sup>

Throughout the 20th century, states and the federal government slowly reached the conclusion that placement in a family setting was the best policy for children who were homeless or who had to be removed from their families because of abuse or neglect. During this period, foster care programs spread throughout the United States.<sup>21</sup> In 1961, Congress passed legislation which required states to provide foster care as part of their Aid to Families With Dependent Children (AFDC) programs. As foster care expanded, the federal and state governments began to provide financial support to these families.<sup>22</sup> If foster care was not available or if the court or government deemed children unamenable to family life, courts placed them in congregate care settings, such as institutions, orphanages, or group homes.<sup>23</sup>

Government attention to the plight of abused and neglected children increased significantly in the late 20th century. Medical studies revealed that some parents

16 ENDANGERED CHILDREN, *op.cit.* note 9 at 18.

17 MYERS, *op.cit.* note 7 at 57-60; ENDANGERED CHILDREN, *op.cit.* note 9 at 35-54.

18 N. Patrick, *Orphan Train Family*, THE MORNING SUN, Jan. 25, 2010, at <http://www.morningsun.net/featured/x1090820457/ORPHAN-TRAIN-FAMILY>.

19 *Proceedings of the Conference on the Care of Dependent Children: Held at Washington, D.C., January 25-26, 1909*. Senate Documents, 60<sup>th</sup> Congress, 2<sup>nd</sup> Session. Vol. 13, Doc. 721, (1909) at 10. Professor Myers points out that the idea of placing dependent children with families was accepted as a best practice long before the 1909 White House Conference, and that this policy was re-affirmed at the White House Conference of 1930. MYERS, *op.cit.* note 7 at 118-119.

20 ENDANGERED CHILDREN, *op.cit.* note 9 at 79. The legislation mandated that the mother be "worthy" which meant she not be "inefficient" or "immoral" (at 96).

21 Foster care is "a form of substitute care, usually in a home licensed by a public agency, for children whose welfare requires that they be removed from their homes." Missouri Dept. of Social Services, at [www.dss.mo.gov/cd/info/cwmanual/section7/glossary/f.htm](http://www.dss.mo.gov/cd/info/cwmanual/section7/glossary/f.htm).

22 For example, the Social Security Act of 1935 authorized the first federal grants for child welfare services and also created the Aid to Dependent Children program (renamed Aid to Families with Dependent Children in 1962 and again renamed Temporary Assistance to Needy Families [TANF] in 1996).

23 MYERS, *op.cit.* note 7 at 81-82.

seriously abused and even killed their children by shaking and physically abusing them.<sup>24</sup> State legislators quickly passed mandatory reporting laws which required medical, educational, law enforcement, and specified other professionals who regularly came in contact with children to report suspected cases of child abuse.<sup>25</sup> These laws, now required by the federal Child Abuse Prevention and Treatment Act of 1974 as amended, resulted in an enormous increase in reports of child abuse and neglect, more cases filed in juvenile court, greater numbers of children needing out-of-home placement, and a corresponding need for more placement options for children who could not be safely returned to their parents.<sup>26</sup>

Foster care provided a home for children, but also created new problems.<sup>27</sup> Some foster children languished in care. Many drifted from foster home to foster home, and never developed a significant relationship with any caretaker. Foster homes rarely provided a permanent placement for children except infants who were often adopted by the foster parents or others.<sup>28</sup> Foster youth who aged out of the foster care system fared poorly and were more likely than non-foster youth to become homeless, unemployed, or imprisoned for criminal behavior.<sup>29</sup> Policy makers and child advocates debated the best placement for children who were removed from parental care, but surprisingly almost no discussion about another alternative placement—relatives—occurred before 1980.<sup>30</sup> State and federal governments did not develop policies favoring placement with relatives until the late 20th century.

### III. PLACEMENT WITH RELATIVES

At the beginning of the 21<sup>st</sup> century, approximately 500,000 abused or neglected children lived in out-of-home care.<sup>31</sup> Combined with a decrease in foster homes, which until recently were the mainstay of the nation's out-of-home care system,<sup>32</sup> the placement

24 I. SAGATUN & L. EDWARDS, *CHILD ABUSE AND THE LEGAL SYSTEM* (Wadsworth, 1995) at 8-10.

25 *Id.* at 10; ENDANGERED CHILDREN, *op.cit.* note 9, at 134.

26 For the federal fiscal year of 2007, there were approximately 3.2 million child abuse and neglect referrals involving the maltreatment of approximately 5.8 million children. In approximately 25% of the referrals, the child was found to have been abused or neglected. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILDREN'S BUREAU, *CHILD MALTREATMENT: 2007*, at xii.

27 ENDANGERED CHILDREN, *op.cit.* note 9 at 140.

28 H. MAAS & R. ENGLER, *CHILDREN IN NEED OF PARENTS* (Columbia U. Press, 1959).

29 CURRENT CONTROVERSIES: ISSUES IN ADOPTION (W. Dudley ed., Greenhaven Press, 2004); M. Courtney, A. Dworsky, J. Lee, & M. Raap, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Ages 23-24* (Chapin Hall at the University of Chicago, 2010); E. Eckholm, *Study Finds More Woes Following Foster Care*, THE NEW YORK TIMES, National Edition, April 7, 2010, A17.

30 "Throughout the early development of the Federal foster care system, child welfare policies ignored the role of kin caregivers." *Report to the Congress on Kinship Foster Care*, The Urban League, U.S. Department of Health and Human Services, Children's Bureau, 2000, at 16 [hereinafter *Report to the Congress*].

31 *Children in the United States*, *op.cit.* note 1.

32 KINSHIP CARE: A NATURAL BRIDGE (Child Welfare League of America, Washington, DC, 1994) at 17 [hereinafter *KINSHIP CARE: A NATURAL BRIDGE*]; P. Chamberlain, S. Moreland, & K. Reid, *Enhanced Services and Stipends for Foster Parents: Effects on Retention Rates and Outcomes for Children*, 71 *CHILD WELFARE*

issue has become increasingly important for these children. For a number of reasons, states and the federal government have embraced a new formal placement option—relatives.<sup>33</sup> The reduction of available number of foster homes, the growing numbers of children needing out-of-home care, changing attitudes toward relative caretakers, and litigation have resulted in a dramatic and sudden shift in state policies and a significant increase in relative placements.<sup>34</sup> As one welfare director stated, “[t]he use of kinship care has risen so rapidly that child welfare agencies have been forced to make policy, program, and practice decisions without the benefit of a substantive knowledge base of best practice experience.”<sup>35</sup>

Apparently advocacy from relatives led to many of the legislative changes. For example, in 1986, at the urging of several relative advocacy organizations, a California state legislator sponsored a bill (AB 2645) to give relative caregivers a preference when a child was removed from parental care.<sup>36</sup> The author argued that these children ended up in receiving homes or foster homes without giving adequate consideration to available, fit relatives. The author and the sponsors believed it was in the child’s best interests to remain within the family network, rather than be subjected to the trauma of placement with strangers.<sup>37</sup> The author further pointed out that former foster children “evidence severe emotional and behavioral problems” and concluded that “foster care is often more harmful than the original home situation.” At the time of the legislation, approximately 9%-15% of all children removed from parental custody in California were being placed with relatives.<sup>38</sup> The legislation received strong support and intense lobbying from relative advocacy groups<sup>39</sup> and was enacted without great opposition.

The term “relative” has no precise meaning, and each state defines the term somewhat differently. Many states adopt a broad definition of relative care and “usually the definition includes relatives through blood, marriage, or adoption from the first to the fifth degree.”<sup>40</sup> Statistically, maternal grandmothers provide the highest percentage of

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(Sept-Oct 1992) at 387-401, 387; J. D. BERRICK, TAKE ME HOME: PROTECTING AMERICA’S VULNERABLE CHILDREN AND FAMILIES (Oxford U. Press, 2009) at 67 [hereinafter TAKE ME HOME].

33 “[C]hild welfare agencies’ reliance on kin to act as foster parents is relatively new.” *Report to the Congress*, *op.cit.* note 30. The term “kin” is often used in discussions about placement. Kin includes significant others in the child’s life such as godparents, teachers, mentors, and others.

34 *Report to the Congress*, *op.cit.* note 30 at 9.

35 *Report to the Congress*, *op.cit.* note 30 at 11-12.

36 AB 2645 (On file in the California State Archives’ Senate Judiciary Committee Bill File (1986) (MF6:1(75))).

37 *Id.* at 155.

38 *Id.* at 119.

39 The extensive legislative history contains many of their letters of support. *Id.* at 79-120.

40 *Placement of Children With Relatives: Summary of State Laws* (Child Welfare Information Gateway, U.S. Department of Health and Human Services, Children’s Bureau, 2008), at www.childwelfare.gov, at 2; J. Gleeson & L. Craig, *Kinship Care in Child Welfare: An Analysis of States’ Policies*, 16 CHILD AND YOUTH SERVICES REVIEW, 7-31 (1994) at 15-16. The trend toward a broad definition of “relative” and “kin” has continued with 30 states now reporting an expanded definition; T. Allen, K. DeVoght, & R. Geen, *Findings from the 2007 Casey Kinship Foster Care Policy Survey*, CHILD TRENDS (Casey Family Programs, 2008) at 7. Some states include neighbors, godparents, and other significant adults in the definition of kin. *Report to the Congress*, *op.cit.* note 30 at 18.

placements, but other relatives also play an important part in these children's lives.<sup>41</sup> Some states enacted special legislation for Native American children, which requires the court to consider members of their tribes as extended family members for placement purposes.<sup>42</sup>

The federal Indian Child Welfare Act (ICWA) of 1978 favors relative placement of Indian children and preempts state legislation.<sup>43</sup> Shortly after its passage, a few state legislatures wrote laws declaring a preference for relatives for all children who are removed from parental care.<sup>44</sup> Prior to 1980, states rarely placed children with relatives,<sup>45</sup> but now almost all states have enacted relative preference provisions in their child welfare law.<sup>46</sup>

The federal government was slower to acknowledge relative preference as a policy goal for children other than under the Indian Child Welfare Act. The Adoption Assistance and Child Welfare Act of 1980 required that when children are separated from their parents and placed in the custody of a public child welfare agency, the state must place them in the "least restrictive alternative available."<sup>47</sup> Some commentators interpreted this to include relatives, but it was not until June of 1987 that the federal Administration for Children, Youth and Families issued Policy Announcement ACYF-PA-8702 that the federal regulations included the term "relative foster homes."<sup>48</sup> The Adoption and Safe

41 L. Ehrle & R. Geen, *Kin and Non-kin Foster Care: Findings from a National Survey*, 24 CHILDREN AND YOUTH SERVICES REVIEW (2002) at 15-35.

42 *Placement of Children With Relatives; Summary of State Laws*, *op.cit.* note 40; Six states (Minnesota, Nebraska, New Mexico, Oregon, Utah, and Washington) allow members of the child's tribe to be considered "extended family members" for placement purposes.

43 Indian Child Welfare Act of 1978, 25 U.S.C. 1901-1963. Section 1903 defines extended family. Section 1915 (b) states:

Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within a reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of cause to the contrary, to a placement with—

- i. a member of the Indian child's extended family;
- ii. a foster home licensed, approved, or specified by the Indian child's tribe;
- iii. an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- iv. an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

44 The first states to pass relative preference statutes were West Virginia (W.VA. CODE § 49-6-6(c), 49-6-9(e) (1980); South Carolina (S.C. CODE ANN. § 20-7-600(d) (Law. Co-op Supp. 1981); Utah (UTAH CODE ANN. § 78-3a-39 [Supp. 1981]); and New Jersey (N.J. STAT. ANN. §§ 9:6-8:31(d), 9:6-8.54 (West 1976 & Supp. 1982)). Before state statutes, some states used administrative regulations to describe relative placement issues. See Gleeson & Craig, *op.cit.* note 40 at 12-13.

45 Prior to 1980, "it was very rare for a child's relative to act as a foster parent." *Report to the Congress*, *op.cit.* note 30 at 5; *Kinship Care*, *op.cit.* note 4 at 25. The exception to this seems to be the state of Minnesota where the Supreme Court declared a preference for relative placement in the 1923 case of *State ex rel. Waldron v. Bieneke*, 155 Minn 313, 193 N.W. 452, 452-3.

46 *Report to the Congress*, *id.*; Allen et al., *op.cit.* note 40 at 5.

47 P.L. 96-272, 42 U.S.C. § 675 (5)(A). See L. Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, 45 JUVENILE AND FAMILY COURT JOURNAL, Summer 1994, 1-28, at 4-6 [hereinafter *Improving Implementation*].

48 Policy Announcement ACYF-PA-8702 states that foster care arrangements under 96-272 include "family foster homes, group homes, and child care institutions, as well as pre-adoptive homes and relative foster homes, regardless of whether foster care payments are made by the State and local

Families Act of 1997 (ASFA) further emphasized relatives as placement options. It declared that placement with relatives qualifies as a permanent placement plan with a “fit and willing relative” without adoption or guardianship, and it authorized financial benefits to some relative placements.<sup>49</sup>

The first federal law to assert a *preference* for relatives within the state court systems was the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996”<sup>50</sup> which declared that “the State shall consider giving preference to an adult relative over a non-relative caregiver when determining a placement for a child, providing that the relative caregiver meets all relevant State child protection standards.”<sup>51</sup>

Successful placement with relatives often relies heavily on strong federal financial support. Many states provide a lower level of financial support for relatives as compared to non-relative foster parents<sup>52</sup> on the ground that family members should be caring for their children out of love rather than by state assignment.<sup>53</sup> In *Miller v. Youakim* (1979), the United States Supreme Court held that relatives are entitled to the same federal foster care benefits received by non-relative foster parents if the placement is eligible for federal reimbursement under the AFDC-Foster Care Program (title IV-E-eligible children). Additional financial issues faced relatives assuming care, and these will be discussed in Section VI *infra*.

The relative-placement policy appears to reflect the actions of American families without formal state intervention—placing their children with relatives.<sup>54</sup> When parents find themselves unable or unwilling to rear their children, most frequently they turn to relatives for assistance. Many grandparents, and maternal grandmothers in particular,<sup>55</sup> care for their grandchildren when parents cannot. Currently grandparents provide primary care for approximately 2,500,000 of their grandchildren in the United States, the great majority in informal or private arrangements.<sup>56</sup> In recent years the number of

agency. . . . [T]he circumstances of placement . . . or the existence of a blood relationship between the foster parent and the child will not be reasons for excluding affected children from the [protections and requirements of P.L. 96-272].”

49 P.L. 105-89, 42 U.S.C. §§ 621 et. seq; *Kinship Care, op.cit.* note 4 at 10. Some states choose not to use relative care as a permanency option, perhaps believing that this option reduces the incentive for relatives to select a more permanent plan such as adoption or guardianship.

50 P.L. 104-193, 42 U.S.C. §§ 621 et. seq.

51 *Id.*

52 *Placement of Children With Relatives, op.cit.* note 40.

53 *Extended Families Help Children Avoid Foster Care, But States Offer Limited Assistance to Kids and Kin*, CHILD TRENDS E-NEWSLETTER, Feb. 24, 2009, at [http://www.childtrends.org/\\_docdisp\\_page.cfm?LID=780937E3-156E-4A03-A8DAB4CB5A515E06](http://www.childtrends.org/_docdisp_page.cfm?LID=780937E3-156E-4A03-A8DAB4CB5A515E06). The report indicated that relatives often receive less financial support than non-relatives even when they become foster parents.

54 The vast majority of children outside of parental care reside with relatives on an informal basis. U.S. Census Bureau, 2007. Anthropologists have documented the extent to which extended family members have cared for children around the world. A. Jantz, R. Geen., R., Bess, C. Andrews, & V. Russell, *The Continuing Evolution of State Kinship Care Policies* (The Urban Institute, Washington, DC, 2002).

55 TAKE ME HOME, *op.cit.* note 32 at 69.

56 U.S. Census, 2000; *Grandfacts, A State Fact Sheet for Grandparents and Other Relatives Raising Children*, at <http://www.Grandfactsheets.org/doc/National%202007%20New%20Template.pdf>. Other estimates place the number much higher. A. Kornhaber, *Grandparents Raising Grandchildren, The Grandparent Guide*, at <http://www.grandparenting.org/Grandparents%20Raising%20Grandchildren.htm>; T. Lugaila & J. Overturf, *Children and the Households They Live In: 2000–Census 2000 Special Reports* (U.S. Census Bureau, Washington, DC, 2004); *Grandparents Raising Grandchildren: Census Bureau Facts*, Ohio State University Extension, Senior Series, at <http://ohioline.osu.edu/ss-fact/pdf/0158.pdf>.

children placed with relatives in the child welfare system has grown so dramatically that relatives currently provide for more children than do foster parents in some states.<sup>57</sup>

As of 2009, policy shifts nationally and in most states favored relative placement over traditional foster care.<sup>58</sup> Furthermore, the relative preference policy has gained significant momentum over the past decade. A 2000 Department of Health and Human Services report to Congress concluded that “[r]elatives should be viewed as potential resources in achieving safety, permanence, and well-being for children.”<sup>59</sup> The Fostering Connections to Success and Increasing Adoptions Act of 2008<sup>60</sup> emphasizes the identification and engagement of extended families when children are removed from parental care.<sup>61</sup> Additionally, the Child and Family Service Reviews (CFSRs), federal reviews of state child welfare practices, focus attention on the engagement of families in child protection.<sup>62</sup>

### What Caused the Reluctance of Child Welfare Agencies and Legislatures to Place with Families?

Several explanations exist as to why state and federal government policy disfavored placement with relatives before the 1980s. Some policy makers believed the old adage that “the apple does not fall far from the tree,” meaning that when parents neglect and abuse a particular child, the extended family must also have significant problems that would prevent it from providing safe and nurturing care.<sup>63</sup> Some policy makers believed that the extended family must have known about the parental abuse or neglect yet did little or nothing about it. Others asked whether the state could entrust care to a family that produced the abusive and neglectful parents.<sup>64</sup> Moreover, many believed that, at least

57 J. D. Berrick, B. Needell, & R. Barth, *Kin as a Family and Child Welfare Resource*, in KINSHIP FOSTER CARE: POLICY, PRACTICE AND RESEARCH (R. Hegar & M. Scannapieco eds., Oxford U. Press, 1999) at 179-192, 179; Gleeson & Craig, *op.cit.* note 40, at 7; *Assessing the New Federalism: Children in Kinship Care*, The Urban Institute, at <http://www.urban.org/uploadedpdf/900661.pdf>.

58 Most states require only that the relative be “fit and willing.” A typical relative preference statute reads in part as follows: “In any case in which a child is removed from the physical custody of his or her parents . . . preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.” CAL. WELF. & INST. CODE § 361.3(a); “‘Preferential consideration’ means that the relative seeking shall be the first placement to be considered and investigated.” CAL. WELF. & INST. CODE § 361.1(c)(1).

59 *Report to the Congress*, *op.cit.* note 30, Part II, at 7.

60 Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351 (2008) [hereinafter *The Fostering Connections Act* or *The Act*].

61 *Id.* at section 102.

62 For almost a decade the Children’s Bureau has been conducting reviews of child welfare services in the United States. These reviews examine 45 items relating to the care of children placed in out-of-home care. Several of the items examine whether the state is engaging relatives in the child welfare process, in particular, items 8, 14, 15, 18, and 29.

63 J. D. Berrick, *When Children Cannot Remain Home: Foster Family Care and Kinship Care*, 8 THE FUTURE OF CHILDREN: PROTECTING CHILDREN FROM ABUSE AND NEGLECT, Spring 1998, 72-87, at 74; *Report to the Congress*, *op.cit.* note 30 at 17.

64 TAKE ME HOME, *op.cit.* note 32 at 68.

in theory, foster care was superior to placement with relatives because social service departments carefully screen foster parents, train them, support them after placement, and ensure maximum available financial support. Furthermore, some policy makers distrusted family members to protect the child. They suspected that the relatives would not believe reports about the parents' abusive or neglectful behaviors and might give the parents unauthorized post-placement contact with the children. Additionally, the parents may be hostile toward the relatives who may have placed the original call to the child protection authorities about the abuse or neglect.<sup>65</sup> Finally, early studies revealed that relative placement often meant that children lived with older caretakers with lower incomes and poorer health than children placed with non-relative foster parents.<sup>66</sup> Studies showed that relative caretakers typically have less training to deal with traumatized children and have less access to support services that might help them care for these children.<sup>67</sup> From these studies it appeared that relatives were often less prepared than foster parents to accept children in their homes.<sup>68</sup>

Despite these factors, substantial research over the past 20 years demonstrates that children fare as well or better in relative care than in foster care. Studies have led to a consensus that relative preference is a wise policy, one that should be implemented by children's services agencies across the country. The reasons relative preference has become the policy of choice include the following:

1. Children in relative care<sup>69</sup> tend to be just as safe, or safer, than children placed in foster care.<sup>70</sup>
2. Policy makers find that "[e]very child's family, however family is defined . . . is unique and has value, worth, integrity, and dignity."<sup>71</sup>
3. Generally, relative placements provide more stability than placements with foster families,<sup>72</sup> and, if the child has to move, it is likely he or she will move from the home of one relative to another.<sup>73</sup>

65 A. FIELD, PENNSYLVANIA JUDICIAL DESKBOOK, 4TH ED. (Juvenile Law Center, Philadelphia, PA, 2004) at 167.

66 R. Geen, *The Evolution of Kinship Care Policy and Practice*, 14 THE FUTURE OF CHILDREN 131-149 (Winter 2004) at 131-136; *Report to the Congress*, *op.cit.* note 30 at 35, 37-38.

67 *Id.* at 139; *Kinship Care*, *op.cit.* note 4, at 6-8; *Report to the Congress*, *op.cit.* note 30 at 42, 51.

68 TAKE ME HOME, *op.cit.* note 32 at 68; *Report to the Congress*, *op.cit.* note 30 at 39.

69 The term "relative care" is sometimes referred to as "relative foster care" or "kinship foster care." "Relative care" will be used throughout the article.

70 A. Shalonsky & J. D. Berrick, *Assessing and Promoting Quality in Kin and Non-Kin Foster Care*, 75 SOCIAL SERVICE REVIEW (2001) at 60-83.

71 KINSHIP CARE: A NATURAL BRIDGE, *op.cit.* note 32, at 41.

72 "I think that I like to consider relative placements really seriously because of watching so many kids fail in foster care." *Kinship Care*, *op.cit.* note 4, at 36; J. D. Berrick, R. P. Barth, & J. McFadden, *A Comparison of Kinship Foster Homes and Foster Family Homes: Implications for Kinship Foster Care as Family Preservation*, (Child Welfare League of America, North America Kinship Care Policy and Practice Committee, Washington, DC, 1992); M. Courtney & B. Needell, *Outcomes of Kinship Care: Lessons from California*, CHILD WELFARE RESEARCH REVIEW, VOL. 2, (R. Barth, J. D. Berrick, & N. Gilbert eds, Columbia U. Press, New York, 1997) at 130-149; J. D. Berrick, *When Children Cannot Remain Home: Foster Family Care and Kinship Care*, 8 PROTECTING CHILDREN FROM ABUSE AND NEGLECT (1998) at 72-87; Chamberlain et.al., *Who Disrupts from Placement in Foster and Kinship Care?*, 30 CHILD ABUSE & NEGLECT (2006) at 409.

73 TAKE ME HOME, *op.cit.* note 32 at 70.

4. Siblings more often remain together in relative care,<sup>74</sup> and are more likely to visit one another even if they reside in separate relative homes.<sup>75</sup>
5. Relative caregivers are more likely to continue the ties with the child's birth family.<sup>76</sup>
6. Children in relative care are more likely to remain connected to their community, including their school.<sup>77</sup>
7. Relatives express a willingness to adopt or become permanent guardians when children cannot be returned to their parents, but usually require some financial incentives.<sup>78</sup> However, many relatives, particularly maternal grandmothers, are reluctant to adopt.<sup>79</sup>
8. Relative caretakers facilitate parent-child visitation more easily since the caregivers will likely favor reunification and will be less likely than foster parents to compete with the parents for permanent custody of the child.<sup>80</sup> Furthermore, when the court concludes that the relatives can be trusted, authorities or even the relatives themselves can supervise parent-child visitation, usually in the relative's home.
9. Relatives are more likely to invest time and care for a child who shares a blood tie. This includes a willingness to care for the child for as long as needed.<sup>81</sup> Some researchers posit that the level of favorable treatment from a relative will depend on the degree of relatedness between the relative caregiver and the child.<sup>82</sup> The closer the relationship, the greater the willingness to invest time, energy, and love.
10. Placement with relatives will generally be less traumatic than placement in an unfamiliar home because children will be living with someone they know and

74 A. Shlonsky, D. Webster, & B. Needell, *The Ties That Bind: A Cross-Sectional Analysis of Siblings in Foster Care*, 39 JOURNAL OF SOCIAL SERVICE RESEARCH 27-52 (2003); Ehrle & Geen, *op.cit.* note 41.

75 TAKE ME HOME, *op.cit.* note 32 at 70.

76 Ehrle & Geen, *op.cit.* note 41.

77 KINSHIP CARE: A NATURAL BRIDGE, *op.cit.* note 32.

78 See *Time for Reform: Support Relatives in Providing Foster Care and Permanent Families for Children*. Kids are Waiting and Generations United (2007), Retrieved Nov. 25, 2007, at [http://www.gu.org/documents/A0/Time\\_for\\_Reform.pdf](http://www.gu.org/documents/A0/Time_for_Reform.pdf); TAKE ME HOME, *op.cit.* note 32 at 71; M. Testa et al., *Permanency Planning Options for Children in Formal Kinship Care*, 75 JOURNAL OF THE CHILD WELFARE LEAGUE OF AMERICA, INC. (1996), 451, 453.

79 T. W. Lorkovich, T. Piccola, V. Groza, M. E. Brindo, & J. Marks, *Kinship Care and Permanence: Guiding Principles for Policy and Practice*, 85 FAMILIES IN SOCIETY (2004), at 159-164.

80 B. Needell & N. Gilbert, *Child Welfare and the Extended Family*, in CHILD WELFARE RESEARCH REVIEW, VOL. 2, (R. Barth, J. D. Berrick, & N. Gilbert eds., Columbia U. Press, New York, 1997) at 85-97, 92.

81 Recognizing that those near of kin will be disposed to do more for its welfare and to advance its interests than those who lack the prompting of kinship, preference is given to near blood relatives, unless the situation disclosed that it may be of advantage to the child to be placed in other hands.

*State ex. rel. Waldron v Blenke*, 193 N.W. 452, 155 Minn. 313 (1923) at 452-3; M. Scannapieco, R. Hegar, & C. Alpine, *Kinship Care and Foster Care: A Comparison of Characteristics and Outcomes*, 78 FAMILIES IN SOCIETY (1997) at 480-489.

82 D. Herring, *Kinship Foster Care: Implications of Behavioral Biology Research*, 56 BUFFALO LAW REVIEW, at 495-556, 519; *Symposium: The State Construction of Families: Foster Care, Termination of Parental Rights, and Adoption: The Quality of Permanence—Lasting or Binding? Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption*, 12 VIRGINIA JOURNAL OF SOCIAL POLICY AND LAW, 499, 523-524.

- trust,<sup>83</sup> particularly if the non-relative differs racially or ethnically from the child.
11. Relative placement affirms the value of family connections.<sup>84</sup>
  12. Placement with relatives supports the transmission of a child's family identity, culture, and ethnicity.<sup>85</sup>
  13. Placement with relatives eliminates the unfortunate stigma that many foster children experience.<sup>86</sup>
  14. Children placed with relatives are more likely than children placed with non-relatives to indicate that they were satisfied with their placement.<sup>87</sup> Children who are verbal usually express a desire to return home.<sup>88</sup>
  15. Fewer children in relative care report changing schools (63%) than do children in non-relative foster care (80%) or group home care (93%).<sup>89</sup>
  16. Placement with relatives reinforces the child's sense of identity and self-esteem, "which flows from knowing their family history and culture."<sup>90</sup>
  17. Foster care placement can be traumatic<sup>91</sup> and developmentally damaging for children.<sup>92</sup> Some foster children report that they are treated differently than the foster parents' biological children.
  18. Children fare better in relative care than in foster care along numerous axes.<sup>93</sup>
  19. The child placed with relatives knows his or her own family, sees family resemblances, and understands how he or she fits into it. Many foster and adopted children search for their families—often spending a lifetime trying to find out

83 "[Respondents] noted how traumatic foster care can be for a child and how much placement with a relative can mitigate this trauma." *Kinship Care*, *op.cit.* note 4 at 30; S. S. Chipungu, *A Value-Based Policy Framework*, in *CHILD WELFARE: AN AFRICENTRIC PERSPECTIVE* (J. E. Everett, S. S. Chipungu, & B. R. Leashore eds., Rutgers U. Press, New Brunswick, NJ, 1991) at 290-305.

84 D. B. Wilson, *Kinship Care in Family-Serving Agencies*, in *KINSHIP FOSTER CARE: POLICY, PRACTICE AND RESEARCH* (R. Hegar & M. Scannapieco eds., Oxford U. Press, 1999) at 84-92.

85 S. Jackson, *Paradigm Shift*, in *KINSHIP FOSTER CARE: POLICY, PRACTICE AND RESEARCH* (R. Hegar & M. Scannapieco eds., Oxford U. Press, 1999) at 93-111, 102; ". . . [D]ue regard should be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." *The Convention on the Rights of the Child*, United Nations, Article 20 (3), 1989.

86 *Paradigm Shift*, *id.*; "Misinformation and ignorance have led to negative stereotypes about foster kids, foster parents and the foster care system." Foster Kids Are Our Kids, at <http://www.fosterkidsareourkids.org/stigma>.

87 J. D. Berrick, *When Children Cannot Remain Home: Foster Family Care and Kinship Care*, 8 *PROTECTING CHILDREN FROM ABUSE AND NEGLECT* (1998) at 72-87.

88 TAKE ME HOME, *op.cit.* note 32 at 92; *Also see* A. BRIDGE, *HOPE'S BOY: A MEMOIR*, (Hyperion, New York, 2008).

89 *National Survey of Child and Adolescent Well-Being (NSCAW) CPS Sample Component Wave 1 Data Analysis Report*, April 2005. (U.S. Department of Health and Human Services, ACF, Washington, DC, 2005).

90 *KINSHIP CARE: A NATURAL BRIDGE*, *op.cit.* note 32, at 13.

91 *Report to the Congress*, *op.cit.* note 30 at 43.

92 "Stranger foster care is developmentally damaging. This proposition is beyond controversy. It gets worse and worse over time as child moves from caretaker to caretaker. The bond the child makes is broken; you are training them not to trust." *Kinship Care*, *op.cit.* note 4 at 30.

93 R. Gordon, *Drifting Through Byzantium: The Promise and Failure of the Adoption and Safe Families Act of 1997*, 83 *MINNESOTA LAW REVIEW* (1999) at 637.

where they came from.<sup>94</sup> In addition to adoptees, many people, including foster children, spend time, energy, and resources trying to find relatives and tracing their heritage.<sup>95</sup> The search for birth parents pits adoptees and birth parents in a nationwide legal struggle, the adoptees demand to learn the identity of their birthparents, while the birth parents assert their right to remain confidential.<sup>96</sup> Placement with relatives makes such searches unnecessary.

#### IV. EXTENDED FAMILY IN NATIVE AMERICAN AND AFRICAN-AMERICAN CULTURES

Many cultures in the United States rely extensively upon extended family members in child rearing. Their reliance upon the extended family can be instructive when discussing the role of relatives when children cannot live with their biological parents. This paper will address Native American and African-American practice in part because of their over-representation in the foster care system.

##### A. Native American Practice

Native American culture and traditions offer examples of how extended family members support children who must be removed from parental care. Indian historians affirm that “the responsibility to assume care of relatives’ children is both implied and expressly stated in the oral traditions and spiritual teachings of most tribes.”<sup>97</sup> Native American cultures believe that “the care of their brothers’ and sisters’ children was their responsibility should the parents be unable to provide care.”<sup>98</sup> As a result, extended family members usually assume care of a child in need. This approach contrasts sharply with the dominant European culture in the United States where the obligation to care for one’s relatives has been weaker. In the dominant culture this resulted in the creation of foster care, orphanages, and other institutions for children.

As the dominant culture and its state child welfare agencies interacted with tribal nations in the 19th and early 20th centuries, state authorities had little respect for the ways

94 J. STRAUSS, *BIRTHRIGHT: THE GUIDE TO SEARCH AND REUNION FOR ADOPTEES, BIRTHPARENTS, AND ADOPTIVE PARENTS* (Penguin, New York, 1994); K. MOORE, *GATHERING THE MISSING PIECES IN AN ADOPTED LIFE* (Broadman and Holman, Nashville, TN, 1995); B. J. LIFTON, *TWICE BORN: MEMOIRS OF AN ADOPTED DAUGHTER* (McGraw-Hill, New York, 1975); B. J. LIFTON, *JOURNEY OF THE ADOPTED SELF: A QUEST FOR WHOLENESS* (Basic Books, New York, 1994); B. J. LIFTON, *LOST AND FOUND: THE ADOPTION EXPERIENCE* (Harper & Row, New York, 1979).

95 For a list of some of the many search engines devoted to finding relatives, see <http://www.cyndislist.com/>.

96 E. W. CARP, *ADOPTION POLITICS: BASTARD NATION & BALLOT INITIATIVE 58* (Univ. Press of Kansas, Lawrence, KS, 2004); J. Bael, *The History and Consequences of Sealing Adoption Records*, *BASTARD QUARTERLY* (Winter 1998); ENDANGERED CHILDREN, *op.cit.* note 9 at 144-5; STRAUSS, *op.cit.* note 94.

97 *Heritage & Helping: A Model Curriculum for Indian Child Welfare Practice* (National Indian Child Welfare Association, Module III, 2d. ed., Portland, 1995) at 10 [hereinafter *Heritage & Helping*].

98 *Id.* at 10.

in which Indian families cared for their children.<sup>99</sup> During this period, state child welfare authorities removed great numbers of Indian children from their families and usually placed them in foster care with families of the dominant culture for little or no reason other than racism.<sup>100</sup> When intervening in Native American families, the dominant culture was either not aware of or did not respect the informal family strengths of those families, and thus resorted to out-of-home foster and institutional care. Many families adopting Indian children made no effort to acquaint them with Native American culture.<sup>101</sup> Prior to the passage of the Indian Child Welfare Act (ICWA), the removal rate for Native American children was 18 times higher than that for other children,<sup>102</sup> and 85% of the children placed in foster care were placed in non-Indian homes or institutions.<sup>103</sup>

The ICWA responded to the destruction of Native American families from this alarmingly high removal rate of Indian children. This act preempted any state laws that conflicted with its provisions and eliminated state practices that removed Indian children from their homes and placed them in non-Indian homes. The law's purpose was to preserve the ethnic heritage of Native American foster children through a variety of protections including a placement preference for extended family members. The act attempted to eliminate state practices that resulted in the removal of large numbers of Native American children from their homes without an appreciation of the "unique values of Indian culture."<sup>104</sup>

State child welfare agencies can learn much from Native American culture, particularly how the extended family can support its children. In fact, the ICWA may have influenced the development of a preference for relative care.<sup>105</sup> According to the ICWA, an Indian child shall be placed in preferential order with

1. A member of the Indian child's extended family.
2. A foster home licensed, approved, or specified by the Indian child's tribe.
3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.<sup>106</sup>

The ICWA defines "Extended family member"

as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's

99 ENDANGERED CHILDREN, *op.cit.* note 9 at 12.

100 "The policies of the federal and state governments towards Indians had long been shameful." ENDANGERED CHILDREN, *op.cit.* note 9 at 142.

101 ENDANGERED CHILDREN, *op.cit.* note 9 at 143.

102 THE DESTRUCTION OF AMERICAN INDIAN FAMILIES (S. Unger ed., Association on American Indian Affairs, New York, 1977).

103 *Id.*

104 P.L. 95-608, codified at 25 U.S.C. § 1902.

105 P.L. 95-608, codified at 25 U.S.C. §§ 1901-63 (1978), at §§ 1915 a and b.

106 *Id.* at § 1915(b).

grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.<sup>107</sup>

But “extended family” reaches beyond the extended family units as commonly used in Western society. Traditional European family networks are usually limited to three generations. “American Indian family networks, however, are more structurally open” and include “several households representing significant relatives along both vertical and horizontal lines, thus assuming village-type characteristics.”<sup>108</sup>

The ICWA seeks to “promote the stability and security of Indian tribes and families” by establishing minimum standards for removal of Indian children as well as placement standards which will reflect the values of Indian culture. The placement preferences listed above reflect the power that the ICWA gives to the tribe to determine Indian child placements. Native American cultural traditions resemble many “best practices” that the dominant society now seeks to emulate. These include the following:

- The extended family provides the primary support network for most Indian people.
- Extended families cultivate their own rules, norms, values, and traditions which govern how they help and care for their members. These should be respected.
- The creation and implementation of a plan must include extended families so that parents, extended family, and the agency can work as a team.
- Extended family members deserve enough information about the situation in order to prepare them for any problems in the child’s behavior and to understand their role.
- Extended family members need to know the financial assistance available to them from the government and receive help in obtaining that assistance.
- Extended family members need the assistance of the worker in gaining access to the resources necessary to help children with special emotional, physical, or mental needs.
- Supportive casework services can aid the extended family in coping with problems that arise from the placement.
- Intertribal or interracial marriages may present unique problems regarding differing values or traditions.<sup>109</sup>

The ICWA did much more to protect the Native American family. The law declared that before the state could seek involuntary foster care or termination of parental rights, it must satisfy the court that “active efforts” have been made to provide that remedial services and rehabilitative programs to prevent the breakup of the Indian family

107 *Id.* at § 1903(2); *See also Family Life*, White Earth Tribal & Community College, at [http://www.wetcc.org/ailos/family\\_life.html](http://www.wetcc.org/ailos/family_life.html).

108 H. Light & R. Martin, *American Indian Families*, 25 JOURNAL OF AMERICAN INDIAN EDUCATION, October 1996, at 1, at <http://jaie.asu.edu/v26/V26S1ame.htm>.

109 *Heritage and Helping*, *op.cit.* note 97 at 27.

have been unsuccessful.<sup>110</sup> Active efforts set a higher standard than “reasonable efforts” required by the Adoption Assistance and Child Welfare Act of 1980.<sup>111</sup> Some state statutes extend the federal active efforts provision to require the court to consider the prevailing social and cultural standards of the child’s tribe, including the tribe’s family organization and child-rearing practices.

Active efforts shall utilize the available resources of the Indian child’s extended family, tribe, tribal and other Indian social services agencies, and the individual Indian care giver service providers.<sup>112</sup>

This requirement applies whether or not the child’s tribe has intervened in the proceeding.<sup>113</sup>

Additionally, in a termination of parental rights proceeding, the ICWA requires the state to produce evidence to demonstrate beyond a reasonable doubt that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.<sup>114</sup> That proof must include the testimony of a qualified expert witness.<sup>115</sup>

Native American traditions highly value the family and its ability to overcome adversity. As a result, problems such as crowded or inadequate housing, community or family poverty, alcohol abuse, or non-conforming social behavior do “not constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child.”<sup>116</sup> In other words, Indian child welfare authorities are likely to permit Indian children to remain with an Indian family even where hardships would disqualify a family placement pursuant to state foster care regulations.

Since the extended family provides the primary support network for most Indian people, Indian practice emphasizes the importance of engaging family members when child placement issues arise. Indian social worker practice reflects the importance of engaging the extended family at a time of crisis by: (1) gathering the members of the kinship network; (2) discussing the needs of the child; (3) determining who in the system can do what tasks to support care; (4) assigning and recording the assumed roles; and (5) monitoring and supporting the system of care.<sup>117</sup> This problem-solving approach approximates the “best practices” now being introduced in foster care proceedings generally (see section VI C *infra*).

With the passage of the ICWA, Congress intended to prevent the wholesale removal of Indian children by the dominant culture. The law favors Indian cultural and

110 25 U.S.C. § 1912(d).

111 42 U.S.C. § 671(a)(15); See *Improving Implementation*, *op.cit.* note 47 at 5.

112 CAL. WELF. & INST. CODE § 361.7. The California Rule of Court 5.484 mandates that “all available resources should be used, including the extended family, the child’s tribe, Indian social services and Indian caregivers. See also *Guidelines for State Courts; Indian Child Custody Proceedings*, 44 Fed. Reg. 67584 (Nov, 26, 1979), § D.2.

113 *In re Jonathon S.*, (2005) 129 C.A.4<sup>th</sup> 334, 339, 28 Cal.Rptr.495.

114 25 U.S.C. § 1912(f).

115 *Id.*

116 BIA Guidelines, D.3(c).

117 *Heritage & Helping*, *op.cit.* note 97 at 28.

family values over the standards of the dominant society. Ironically, in recent years state child welfare agencies seem to recognize that Native American practices have value for the states. The Indian approach to the resolution of family problems, including serious issues relating to child safety, offers a template that the dominant culture is starting to recognize as an effective means of protecting children and providing the best long-term solution for the child by turning to the extended family when a crisis arises.

## B. African-American Practice

The African-American culture offers another example of a high level of extended family involvement in the lives of children who cannot remain with their parents. Slavery had an enormous impact on the African-American family. Fathers, mothers, children, and relatives were bought and sold, separated from each other, and often never saw each other again. After the end of slavery, the combined impact of segregation, poverty, and racism made it more likely that African-American children would be removed from parental care. Current statistics reveal that African-American children are disproportionately placed in foster care.<sup>118</sup>

Extended family support has been particularly important for African-American children who because of these factors (segregation, poverty, and racism) have been denied access to both state and private child-caring services and institutions.<sup>119</sup> For example, in the 19th century, while child care institutions for white children were limited, they were non-existent for African-American children.<sup>120</sup> One African-American response has been to resort to the extended family, including friends and neighbors, to take responsibility for caring for children. These fictive kin, including non-blood friends, would be accorded the status of blood relations.<sup>121</sup>

African traditions may have provided the basis for the involvement of the extended family.<sup>122</sup> Researchers have traced the role of the extended family to West African practices.<sup>123</sup> The research identifies significant components of African-American communities regarding child rearing including “fostering of children with kin and non-kin households, expanding the family through fictive kin, and sharing parenting and child-rearing responsibilities for the betterment of children.”<sup>124</sup>

118 More than twice the percentage of African-American children are placed in foster care than the percentage of African-American children in the general population would indicate. *African American Children in Foster Care*, (GAO, July 2007) at 8, 73; *Grandparents Raising Grandchildren* (National Adoption Center, June 11, 2009), at <http://nationaladoptioncenter.blogspot.com/2009/06/grandparents-raising-grandchildren.html>.

119 ENDANGERED CHILDREN, *op.cit.* note 9 at 32-33.

120 *Id.*

121 *African American Culture*, *Wikipedia*, 16, at [http://en.wikipedia.org/wiki/African\\_American\\_culture](http://en.wikipedia.org/wiki/African_American_culture).

122 “[A]s historical trends suggest that these communities are far more reliant on kin care than are other ethnic groups.” TAKE ME HOME, *op.cit.* note 32 at 113.

123 G. Holmes, *The Extended Family System in the Black Community: A Child-Centered Model for Adoption Policy*, 68 *TEMPLE LAW REVIEW* (1995) 1649, 1658-1668.

124 *Id.*; “Blacks had relied traditionally on neighbors and extended families to house orphans and needy children.” ENDANGERED CHILDREN, *op.cit.* note 9 at 84.

The extended African-American family has been a critical component to the survival of their cultural heritage. For example, in recent years African-American grandmothers provide care for more children than any other relative, just as they care for more grandchildren than any other racial or cultural group.<sup>125</sup> Moreover, African-American children placed with relatives remain in placement twice as long as other foster children.<sup>126</sup> Child welfare placement policy and practice must acknowledge and work with the extended African-American family to preserve these connections.

## V. TRENDS TOWARD RELATIVE PREFERENCE

States continue to adopt legislation declaring relative preference for children removed from parental care. For example, in 2008 the Hawai'i legislature rewrote their state statute to reflect relative placement in foster care cases.<sup>127</sup> In 2009, the Vermont legislature enacted a "relative preference" statute so long as the relative was "suitable."<sup>128</sup> With passage of The Fostering Connections Act of 2008 (the Act), the trend will accelerate. Child advocacy groups worked with Congress to incorporate many of the best practices used by child protection agencies and courts across the country. Significantly, the Act identifies and supports a number of policies and practices that lead to placement with family members. In Section 101, the Act provides financial support for relatives who become legal guardians. In Section 102, the legislation identifies family finding and kinship navigator programs as practices that states should pursue to identify and locate relatives and offers federal grants to encourage the growth of these practices throughout the country. The same section singles out group decision-making processes intended to bring families together to problem solve when children have been removed from parental care.<sup>129</sup> The Act authorizes federal grants to initiate and support group decision-making processes in the states.<sup>130</sup> These processes often lead to placement with relatives as the first choice of family members.<sup>131</sup> The Act also instructs states to notify relatives when children are removed from parental

125 There is a higher percentage (31%) of African-American grandmother-run households raising their grandchildren than any other culture. Latino grandmothers (16%) are second. K. Bryson & L. Casper, *Coresident Grandparents and Grandchildren, Current Population Reports, Special Studies*, (U.S. Dept. of Commerce, Bureau of the Census, Washington, DC, May 1999).

126 TAKE ME HOME, *op.cit.* note 32 at 70.

127 Chapter 587, HAW. REV. STAT., 2008. (S.B. No. 2730, A Bill for an Act Relating to Child Protection).

128 33 V.S.A. § 5308(b); For a summary of what other states have done to promote placement of children with relatives, see *Highlights of Recent Kinship Care State Legislative Enactments*, Go 16371, National Conference of State Legislatures (February 2008), at <http://www.ncsl.org/default.aspx?tabid=16371/>.

129 The Fostering Connections Act, *op.cit.* note 60, § 102.

130 *Id.*

131 See generally L. Edwards & I. Sagatun-Edwards, *The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families*, 58 JUVENILE AND FAMILY COURT JOURNAL, Winter 2007, at 1-16 [hereinafter *Group Decision Making*].

care<sup>132</sup> and permits experimentation with licensing standards for relatives that differ from those for foster parents.<sup>133</sup>

The federal Child and Family Service Review (CFSR) process also focuses upon extended family involvement in the child protection process. The CFSRs examine and evaluate each state's child welfare practices on a number of measures in an effort to evaluate and improve their quality. The Children's Bureau has conducted CFSRs since 2001. By 2010, each state has had one review and most states have completed a second round of reviews. No state has yet passed—that is no state has achieved the scores set by the Children's Bureau as the pass rate, perhaps because of the high levels the Bureau set. The CFSR process has identified a number of critical measures in evaluating the success of a state child welfare system. Included in those measures are two that focus upon family involvement:

1. The continuity of family relationships and connections is preserved for families.
2. Families have enhanced capacities to provide for their children's needs.

In order to pass the review, a state must demonstrate that its children's services agency has promoted these goals (along with many others) in serving abused and neglected children and their families. These trends (state and federal laws, the CFSR process) mean little, however, if implementation does not result in more relative involvement in the placement process.

## VI. CHANGING THE CHILD PROTECTION SYSTEM TO ACCOMMODATE RELATIVES

Since relative preference policies have changed only recently, it becomes important to examine how child welfare and court systems can change to implement these policies and ensure that relatives are fully involved in the placement process. Some of the most important implementation issues are addressed in this section.

### A. Families Include Fathers

Remarkably, fathers are often not a significant part of the child protection process.<sup>134</sup> State laws and child welfare and court practice make it difficult for many fathers to engage in the child protection process.<sup>135</sup> State laws often make it difficult for

<sup>132</sup> The Fostering Connections Act, *op.cit.* note 60, § 103.

<sup>133</sup> The Fostering Connections Act, *op.cit.* note 60, § 104.

<sup>134</sup> L. Edwards, *Engaging Fathers in the Child Protection Process: The Judicial Role*, 60 JUVENILE AND FAMILY COURT JOURNAL, Spring 2009, at 1-29 [hereinafter *Engaging Fathers*]; J. Kendall, K. Kessen, & J. Reynolds, *Engaging Dads in Child Welfare Cases*, 26 CHILD LAW PRACTICE, Sept. 2007, at 108-110.

<sup>135</sup> *Engaging Fathers, id.*; "There was also, until recently, a distaste for absent fathers." "[We have] a lot of moms that try to keep dad out of the kids' lives." "The county does a horrendous job of finding fathers." *Kinship Care, op.cit.* note 4 at 28-30.

unmarried fathers, and thus their relatives, to learn of child protection proceedings.<sup>136</sup> Only one state, Minnesota, has enacted legislation that requires that a search for relatives must include both maternal and paternal relatives, although this requirement does not preclude other states from including both sides of the family in their searches.<sup>137</sup> Moreover, the Fostering Connections Act does not mention identifying, locating, or engaging fathers or searching for their relatives. As a result, fathers, particularly unmarried fathers, often do not appear in court and are rarely considered for placement.<sup>138</sup>

This failure to engage fathers does not serve children well because fathers can be a positive force in their children's lives. In addition to offering a possible placement, they also bring added resources to the child's life. Fathers may be able to provide child support and other financial resources such as Social Security benefits and insurance.<sup>139</sup> Significantly, fathers connect the child to one-half of his or her relatives. Failing to identify and engage the father means that his relatives will not participate in the child's life or become a placement or support for the child, and the potential impact of the relative preference policy will be significantly reduced.

To engage fathers, child protection agencies and courts must overcome a number of barriers that prevent their full participation. Fathers face a myriad of hurdles including some state laws that make it difficult for the father to learn about legal proceedings involving his child,<sup>140</sup> some mothers who are reluctant to identify the father,<sup>141</sup> and some social workers who prefer not to work with fathers. This ambivalence sends a powerful message to the father that he is not wanted in the court process.<sup>142</sup> Moreover, in some courts the judge may make it difficult for the father, first, by not insisting that the social worker conduct a rigorous search for him; second, by not ordering timely paternity testing; third, by failing to review the paternity issue at every hearing; and fourth, by not providing him legal assistance.<sup>143</sup> These and similar barriers mean that many fathers and their relatives will never participate in the court case or the placement determination.

Judges can take the lead to engage fathers. In an effort to implement relative preference policies, the judge's first set of tasks is to identify, locate, and engage the child's father. While primarily the social worker's responsibility, the judge and the attorneys can be of great assistance.<sup>144</sup> Engaging the father will maximize the number of relatives available to the child and expand the relative placement possibilities. (See Appendix A for a step-by-step process to maximize the chances that a father will participate in the legal proceedings.)

Engaging fathers, at least in the court process, serves the child's best interests even if the father is violent or abusive, is in prison, or is the reason why the case comes before

136 *Engaging Fathers*, *id.* at 10.

137 *Statutory Preferences for Relative Placement*, at <http://www.abanet.org/child/summary-memo.pdf>.

138 Kendall et al., *op.cit.* note 134.

139 *Engaging Fathers*, *op.cit.* note 134 at 15, 18-19.

140 *Id.* at 5-6.

141 *Id.* at 6-8; and see *In re the Adoption of A.A.T.*, 287 Kan. 590, 196 P.3d 1180 (2008).

142 *Id.* at 3.

143 *Id.* at 3-4.

144 *Id.* at 13-18.

the court.<sup>145</sup> In addition to the father's legal right to participate in these proceedings, the child has a right to know who his or her father is and to know who all of his relatives are. If necessary, the judge can enter protective orders to protect the child and/or mother from the father. In most cases, the addition of the father's family will serve the child well.<sup>146</sup>

## B. Identifying, Noticing, and Engaging Relatives

Legislation varies concerning how states identify, notice, and engage relatives when considering removing children from parental care.<sup>147</sup> What is clear is that the relative preference statutes are insufficient without effective implementation.<sup>148</sup> Relatives will not know about the child protection proceedings unless they receive notice.<sup>149</sup> Even if they know about the legal proceedings, many relatives may be unaware of the option to participate, come to court, or offer their homes for placement. For relatives to engage in the proceedings, they must be given notice and encouragement. They must know that the social worker and the court welcome their involvement, that they will be treated with respect, and that their input is important for the court process as well as for the child.

Engaging relatives presents challenges for social workers. Often parents are reluctant to assist social workers in identifying and locating relatives. Strained relations between the parents and relatives may exist.<sup>150</sup> The relatives may have reported the parental abuse or neglect.<sup>151</sup> The social worker and the judge must inquire about relatives and persuade the parents to cooperate in their identification and engagement. Social workers must also assess any proposed relative caretaker for issues of child maltreatment, criminal history, and domestic violence as well as their willingness to work with the court and social worker regarding the placement of the child (see Section VIII B *infra*).

The federal Fostering Connections Act of 2008 contains several provisions that promote relative engagement. Child welfare agencies must exercise due diligence to identify and notify all the child's adult relatives within 30 days of the child's removal and inform them of their option to become a placement resource for the child.<sup>152</sup> As mentioned above in Section V, the Act also provides grants designed to develop Family

<sup>145</sup> *Id.* at 2, 17, 27-28; and see EFFECTIVE INTERVENTION IN DOMESTIC VIOLENCE & CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE (National Council of Juvenile and Family Court Judges, Reno, NV, 1999) at 23.

<sup>146</sup> *Id.* at 27-28.

<sup>147</sup> *Report to the Congress, op.cit.* note 30 at 18.

<sup>148</sup> *Report to the Congress, op.cit.* note 30 at 18-19.

<sup>149</sup> For example, see *Hootstein v Collins*, \_\_\_ F.Supp.2d \_\_\_ 2010 WL 143753 (2010). For a powerful dramatization of the importance of notifying and engaging relatives, see the movie *Antwone Fisher* or read the book *Finding Fish* by Antwone Fisher, HarperCollins, 2001.

<sup>150</sup> *Kinsship Care, op.cit.* note 4 at 25.

<sup>151</sup> "Sometimes people do not want relatives involved because of shame." *Heritage & Helping, op.cit.* note 97 at 36.

<sup>152</sup> 42 U.S.C. § 471(a)(29).

Finding and Kinship Navigator projects. These projects help identify relatives and assist relative caregivers to understand and navigate the system of care for children in out-of-home care, and reduce barriers faced by kinship caregivers when accessing services.<sup>153</sup>

Some states have enacted legislation mandating notice to relatives during the initial stages of child protection proceedings. For example, a 2009 California relative notification statute requires that when a child is removed from parental care, social workers must conduct an investigation within 30 days of a child's removal to identify and locate all grandparents, adult siblings, and other adult relatives of the child. The social workers must provide those persons with specified information including notice that the child has been removed from the custody of his or her parents, an explanation of various options to participate in the care and placement of the child, and report to the court at the initial petition hearing regarding that effort.<sup>154</sup> The statute excludes some relatives from notice and involvement based on their criminal or child abuse records.

New Jersey has also enacted a relative search statute. The statute states that the search shall be commenced within 30 days of the Department's acceptance of the child into care, but must be completed within 45 days.<sup>155</sup> Connecticut and New York laws also require notification of relatives when a child needs to be placed.<sup>156</sup> Because of the mandate contained in the federal Act, other state legislatures will likely pass similar legislation.

### C. Group Decision Making

Group decision-making processes bring families and significant persons together to address the issues that brought the child and family to the attention of the child protection authorities.<sup>157</sup> These processes include family group conferences,<sup>158</sup> team decision making, family team meetings, and court-based mediation.<sup>159</sup> Participation in group decision making enables relatives to engage fully in the child protection process. Unlike the courtroom where rules of evidence, legal procedures, and time constraints apply, group decision-making processes enable family members to discuss matters fully, exchange ideas, and develop a plan for the child, which often includes participation with

<sup>153</sup> Fostering Connections Act, *op.cit.* note 60, § 102; and see, *Kinship Navigator Pilot Project Replication Manual* (Casey Family Programs Triwest Group, December 2005, at <http://www.dshs.wa.gov/pdf/ea/kinship/KinshipNavigatorReplicationManual.pdf>).

<sup>154</sup> AB 938, Chapter 261, modifying CAL. WELF. & INST. CODE §§ 309 and 628; All County Letter No. 09-86, RE: Notification of Relatives, Department of Social Services, Sacramento, 12-29-09.

<sup>155</sup> N.J. STAT. ANN., Title 30: Chapter 4C-12.1.

<sup>156</sup> *Highlights of Recent Kinship Care State Legislative Enactments* (National Conference of State Legislatures, February 2008).

<sup>157</sup> *Group Decision Making*, *op.cit.* note 131 at 10.

<sup>158</sup> J. Ernst, *Whanau Knows Best* in *KINSHIP FOSTER CARE: POLICY, PRACTICE AND RESEARCH* (R. Hegar & M. Scannapieco eds., Oxford U. Press, 1999) at 112-138.

<sup>159</sup> *Id.*; L. Edwards, *Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process*, 58 JUVENILE AND FAMILY COURT JOURNAL, Spring 2007, at 12-14 [hereinafter *Achieving Timely Permanency*].

many if not all family members. Families can cultivate plans to prevent removal from parental care<sup>160</sup> or identify family members who are best prepared to accept placement of the child.

Group decision making has developed, in part, because of the recognition that families have the greatest interest in protecting and caring for their own, and that families recognize their strengths and weaknesses best. The federal Act acknowledges the effectiveness of group decision making by including grants for the development of Family Group Decision-Making demonstration projects. This acknowledgement by Congress comes years after many child protection agencies began using group decision-making practices.<sup>161</sup>

To maximize their effectiveness and ensure permanent planning decisions are timely, group decision-making meetings should be held as early as possible in a child welfare case.<sup>162</sup> Models such as Family Team Meetings, settlement conferences, pre-removal conferences, and second shelter hearings all join the parties and relatives early in the case, thus engaging family members as early as possible in the legal process. Children's services agencies should not hold group decision-making meetings if anyone would be endangered in the process. By using trained personnel and employing safety protocols, agencies can ensure the safety of all parties.<sup>163</sup>

#### D. Mediation

In addition to the group decision-making models practiced by child welfare agencies, another alternative dispute resolution process within the court system exists. Many years ago, juvenile dependency courts adopted the use of court-based mediation<sup>164</sup> which provides an informal mechanism for parties, attorneys, and significant others, usually relatives, to discuss the legal and social issues surrounding a child protection proceeding. The discussions remain confidential (except for reports of new abuse or threats of abuse), and trained mediators facilitate. Mediation can occur at any time in the case process and, similar to other group decision-making processes, permits the participants to express their views fully and participate in problem-solving exchanges. Extended family members and other important people in the child's life regularly join in the mediation and often provide resources and solutions to the issues facing the child and the parents. Many courts have adopted mediation because of the high percentage of

<sup>160</sup> TAKE ME HOME, *op.cit.* note 32 at 110.

<sup>161</sup> For example, Santa Clara County, California, has been using all of the group decision-making models described in this article for years. See *Group Decision Making*, *op.cit.* note 131.

<sup>162</sup> *Id.*; *Achieving Timely Permanency*, *op.cit.* note 159, at 12-14. In Iowa, this early meeting is called a pre-removal conference.

<sup>163</sup> EFFECTIVE INTERVENTION, *op.cit.* note 145 at 66, 101-102, 111.

<sup>164</sup> See N. Theonnes, *An Evaluation of Child Protection Mediation in Five California Counties*, 35 FAMILY AND CONCILIATION COURTS REVIEW, April 1997, at 186-195; L. Edwards, *Child Protection Mediation: A 25-Year Perspective*, 49 FAMILY COURT REVIEW (2009) at 69-80; L. Edwards, *The Mediation Miracle*, CALIFORNIA COURTS REVIEW (Administrative Office of the Courts, San Francisco, Spring 2006) at 16-21.

resolutions it produces<sup>165</sup> and the satisfaction expressed by participants in the mediation process.<sup>166</sup>

Domestic violence protocols developed over the past 20 years address concerns that intra-family violence or intimidation might jeopardize the group decision-making process.<sup>167</sup> In all of the decision-making processes discussed above, a number of local agencies and courts have promulgated protocols that ensure the safety and protection of all participants during the group process.<sup>168</sup>

At least one state legislature recognizes the value of convening extended family members at the outset of a child protection case. The Kansas legislature recently passed a law that authorizes the children's services agency to convene a conference of extended family members before the state agency places a child outside of parental care. The agency must give the family members the information needed to understand why the child was in danger and then ask them to make a placement recommendation. Unless the social worker finds good cause not to place with the relative recommended by the relatives, the child shall be placed according to that recommendation.<sup>169</sup> This approach to child protection cases closely resembles the legal system established more than 20 years ago in New Zealand where Family Group Conferences meet before any adjudicative hearing.<sup>170</sup> At least two other states and the District of Columbia use this practice as well as several counties around the country.<sup>171</sup>

The Kansas legislature subsequently repealed the statute, but the practice continues. Although Kansas privatized social services, each contract with service providers requires the inclusion of family conferencing practice as a part of the services provided. Each contract requires that the child welfare service providers conduct a meeting with parents and extended family within 24 hours of the referral. Service providers must include all children in state custody for out-of-home placement in this process.<sup>172</sup>

165 In the Santa Clara County mediation program, evaluations over the past 20 years reveal that in 80% of the cases referred to mediation all issues were resolved, in 10% some of the issues were resolved, and in 10% there was no resolution. L. Edwards, *Mediation in Child Protection Cases*, 5 JOURNAL OF THE CENTER FOR FAMILIES, CHILDREN & THE COURTS, (California Administrative Office of the Courts, San Francisco, 2004) at 57-69, 60.

166 *Trust and Confidence in the California Courts: A Survey of Public and Attorneys*, 5 National Center for State Courts, Sept. 2005; J. Kelly, *Family Mediation Research: Is There Empirical Support for the Field*, 22 CONFLICT RESOLUTION QUARTERLY, Fall-Winter 2004, at 28.

167 For example, see CAL. RULES CT. 5.518(d), 5210(f), (g), CAL. R. CT. 5.215(f), and CAL. FAM. CODE §§ 3181 and 6303, West 2009; and see the discussion in *Group Decision Making*, *op.cit.* note 131 at 5-6.

168 See, for example, EFFECTIVE INTERVENTION *op.cit.* note 145, Recommendation 48 at 101 for an example of how mediation can be used even when there has been domestic violence between the parties. For a more comprehensive discussion regarding protocols used in mediation see *Achieving Timely Permanency*, *op.cit.* note 159 at 12-13. Contact the author for copies of protocols relating to other group decision-making processes.

169 KAN. STAT. ANN. § 38-1559(a).

170 Section 18(1), and sections 19-26, Children, Young Persons and Their Families Act 1989, (1989 No 24), Laws of New Zealand, Wellington, N.Z. (2005).

171 See Jantz et al., *op.cit.* note 54 at 9; see also the discussion concerning Family Team Meetings in *Achieving Timely Permanency*, *op.cit.* note 159 at 13-14.

172 E-mail to the author from Sue McKenna, Assistant Director, Children and Family Service Division, Kansas, dated Jan. 12, 2010 (on file with the author).

### E. Family Finding and Kinship Navigator Programs

Convening a group of relatives for a problem-solving meeting requires that the social worker identify, locate, and notice the family members. One technique for accomplishing these goals is family finding. Developed by social worker Kevin Campbell, family finding involves the use of computers and search engines to identify and locate extended family members.<sup>173</sup> Within hours this process identifies contact information for scores of extended family members, often including names and locations unknown to the parents and children. Children's services agencies find this a valuable tool for maximizing the size of the group that may participate in problem solving and for enlarging the possible relative placement options. The Act identifies family finding as a best practice and offers grants to help states start to use family finding or expand their current family finding programs.<sup>174</sup>

A few states established Kinship Navigator programs which link kinship caregivers to benefits and services by providing information, referral, and follow-up services. These programs also promote partnerships between public and private agencies "to increase their knowledge of the needs of kinship care families to promote better services for those families."<sup>175</sup> Kinship Navigator programs provide staff (called Navigators) who assist relative caregivers in understanding the system and access services. Navigators educate caregivers, make referrals to services, help establish relationships between caregivers and service providers, and advocate for services and resources that will assist caregivers.

Several states encouraged the use of Kinship Navigator programs including Indiana, Washington, Connecticut, New York, Delaware, Ohio, New Jersey, and Kentucky.<sup>176</sup> The Act also identifies Kinship Navigator programs as a best practice and offers grants to state and local entities to support Kinship Navigator programs.<sup>177</sup> The state of Washington combined family finding and Kinship Navigator programs and significantly increased the number of children placed with relatives. Starting in 1998, the Washington state legislature passed a number of bills implementing family finding and kinship support programs which doubled the numbers of children placed with relatives.<sup>178</sup>

### F. Informal Placements and Financial Support

The increasing numbers of children who come to the attention of child protection authorities, combined with the shrinking numbers of foster homes and rising social worker caseloads, resulted in the social worker practice of placing children with relatives

<sup>173</sup> M. Shirk, *Hunting for Grandma*, YOUTH TODAY, Feb. 1, 2006; K. Campbell, S. Castro, N. Houston, D. Koenig, J. Rose, & M. Smith, *Lighting the Fire of Urgency . . . Families Lost and Found in America's Child Welfare System*, at <http://www.cyp.org/Files/Lighting%20the%20Fire%20of%20Urgency.doc>.

<sup>174</sup> Fostering Connections Act, *op.cit.* note 60, § 102.

<sup>175</sup> P.L. 110-351

<sup>176</sup> *Highlights of Recent Kinship Care*, *op.cit.* note 128.

<sup>177</sup> *Id.*

<sup>178</sup> The Washington State Department of Social and Health Services Kinship Care Web page, (<http://www1.dshs.wa.gov/kinshipcare/>) provides access to resource and service information; *Report to the Washington Legislature Regarding Kinship Caregiver Support Act* (Olympia, WA, 2004).

without resorting to the court process.<sup>179</sup> Typically, the social worker concludes that removal is necessary for child safety, and that a relative would be able to care for the child safely. The social worker then informs the relative of the child protection issues, perhaps suggests that the children may be placed in state custody if they decline placement, warns them about unsupervised contact with the parent or parents, and disposes of the case informally.

This approach results in much less work for the social worker, who will not have to become involved in the court process, but it also raises several issues. What type of assessment of the relatives and their home should the social worker conduct? Should the social worker provide services to the relatives? Should the social worker monitor the child's situation in the relative home? What kind of legal authority should that relative have over the child's health, welfare, and schooling? What authority do the relatives have to prevent the parents from removing the children from their care? Should relatives receive the same financial support as that given to foster parents? If relatives are to receive federal or state financial support, must they be licensed, and if so, should the same licensing standards as foster parents be used?

With regard to financial aid to relative caretakers, a number of potential sources for financial assistance exist: (1) Temporary Assistance for Needy Families (TANF); (2) foster care payments; (3) adoption assistance payments; (4) subsidized guardianships; and (5) child support benefits.<sup>180</sup> Different requirements and levels of aid exist for each of these funding sources. For example, adoption assistance or guardian subsidies require that the relative take the legal steps to adopt or become the legal guardian. With regard to foster care payments, state practice varies widely. In the 1980s, Illinois state policy was to deny all relatives foster care benefits even if they qualified as foster parents based in part on the idea that relatives should "care for their own." Yet research demonstrates that relatives often have fewer resources than foster parents and many of these children have special needs.<sup>181</sup> Moreover, in the case of *Miller v Youakim*<sup>182</sup> the United States Supreme Court ruled the Illinois practice unconstitutional and mandated that states provide federal foster care benefits to children placed in foster care with a relative. After the *Youakim* decision, a number of courts across the country issued similar rulings.<sup>183</sup>

State funding for relative caretakers varies greatly. Fourteen states have established programs that provide relatives with benefits to help offset the cost of caring for a placed child.<sup>184</sup> Nine state statutes permit relatives to receive full foster care benefits, but only

179 CHILD TRENDS, *op.cit.* note 53.

180 *Financial Assistance for Grandparents and Other Relatives Raising Children*, ABA Center on Children and the Law, Washington, DC, 2004, at <http://www.abanet.org/child/kinshipcare.shtml>.

181 KINSHIP CARE: A NATURAL BRIDGE, *op.cit.* note 32 at 54.

182 440 U.S. 125 (1979).

183 *Lipscomb v Simmons*, 962 F.2d 1374 (Ninth Circuit, 1992); *King v McMabon*, 230 Cal. Rptr. 911 (1986); *Engene F. v. Gross*, No. 1125/86 (N.Y. Sup Ct., filed 1986); *L.J. v Massinga*, 838 F.2d 118 (4<sup>th</sup> Cir. 1988).

184 *Placement of Children with Relatives: State Statute Series* (U. S. Department of Health and Human Services, Child Welfare Information Gateway, 2008) at [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/placement.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/placement.cfm).

if they qualify as foster parents.<sup>185</sup> Some states deny any support to relatives caring for placed children.<sup>186</sup> Many states permit temporary placement with some benefits after a preliminary assessment, but with the understanding that the relatives will complete the licensing process while caring for the child. If they fail the federal licensing standard, they are ineligible for foster care payments but may be eligible for welfare (TANF) payments, depending on their income.

As a practical matter, relatives prefer to receive the higher foster care rate without the licensing process, while the state favors the licensing process because many relatives do not pass the federal standards. Most recently, the Act provides for federal funding to support relatives who have become legal guardians of children removed from parental care.<sup>187</sup> Several states recognized the benefits of this policy years before enactment of the federal law and provided financial support for relatives who obtained legal guardianships.<sup>188</sup>

In summary, it makes sense to place children with relatives and avoid the court process. However, the child protection agency must assess the home for safety purposes, carefully explain the restrictions concerning parental contact with the children, monitor the child's progress in the home, and provide appropriate services to support the child. State laws must give those relatives decision-making authority over the children's school and health issues.<sup>189</sup> In addition, relatives must receive financial aid from the government, whether federal or state, in order to meet the child's needs in their home.

## VII. TIMELINESS

The court process takes time. Delay prevents children from achieving timely permanency<sup>190</sup> and can also slow or prevent the placement of children with relatives. Even in the most efficient legal systems, by the time the system identifies and clears relatives for potential placement, the child may form a connection with the current caretaker, usually a foster home, and a change in placement may result in some trauma. Several different situations typically arise.

### A. The Father's Late Appearance

On occasion, the mother refuses to identify the child's father for reasons such as past abuse toward her, a new boyfriend, or fear that the court might grant him custody.

<sup>185</sup> *Id.*

<sup>186</sup> KINSHIP CARE: A NATURAL BRIDGE, *op.cit.* note 32 at 56.

<sup>187</sup> Fostering Connections Act, *op.cit.* note 60, § 101.

<sup>188</sup> See CAL. WELF. & INST. CODE § 11362 et seq; for a summary of other state activities to enact subsidized guardianships for relatives, see *Highlights of Recent Kinship Care*, *op.cit.* note 128.

<sup>189</sup> Some states have taken action to address this issue. See *Highlights of Recent Kinship Care*, *id.*

<sup>190</sup> *Achieving Timely Permanency*, *op.cit.* note 159.

This failure to name the father promptly may result in further delay. For example, the father may appear in court long after commencement of the case, either while the mother is receiving reunification services or after services have ended, and the child is about to be adopted. The father may be entitled to receive reunification services, even at this late stage, which may delay the permanent placement for the child, or the father may receive no services at all. The former fact pattern occurred in the case of *In re Baby Boy V.*<sup>191</sup> where the mother refused to identify the father. Months later the alleged father learned of the baby's existence and approached the social worker, stating his desire to care for the child. The court denied his request for a paternity test and terminated parental rights as recommended by the social worker. The appellate court reversed the termination stating that the father did everything he could to gain custody as soon as he learned about the child. The appellate court ordered the case returned to the trial court to give the father an opportunity to participate fully in the proceedings.<sup>192</sup>

Similarly, in the case of *In re J.L.* the biological father knew of the child's birth, but was prevented from participating in the child's life because the mother found a new boyfriend who threatened the father. After the child was removed from the mother's care, the father came before the court and asked to be recognized as the presumed father and also asked that the court reject the boyfriend's efforts to be named the presumed father. The trial court agreed with the father and named him the presumed father while rejecting the boyfriend's claim. The appellate court affirmed on the ground that when threats prevent the father from participating in the child's life, he will be not be denied his status as a presumed father.<sup>193</sup>

The late-arriving father does not always prevail. For example, if the biological father finds out about the child after the reunification period has run, it may be too late for him to receive reunification services. With the passage of time, his right to participate in the proceedings diminishes, and he will not receive services unless the court finds that services would be in the best interests of the child.<sup>194</sup> In the case of *In re Vincent M.*,<sup>195</sup> the non-offending biological father learned of the child after the period for reunification was over because the mother failed to inform him of the child's birth. The trial court denied his motion to receive reunification services even though the record was clear that the father would have taken the child into his home and held him out as his own child. The trial court concluded that after seven months the father had arrived too late. The appellate court affirmed, but one appellate justice filed a dissent, indicating that the father should have prevailed in these circumstances because "[a]ppellant also has the fundamental right to parent his child."<sup>196</sup>

191 140 Cal.App.4th 1108 (2006).

192 *Id.*

193 *In re J.L.* 159 Cal.App.4th 1010 (2008); accord, *In re Petition of John Doe*, 638 N.E.2d 181 (1994, Ill.); *In the Interest of B.G.C.*, 496 N.W.2d 239 (Iowa, 1992).

194 *In re Vincent M.*, 161 Cal.App.4th 943; 74 Cal. Rptr. 3d (2008).

195 *Id.*

196 *Id.* at 969; see also *In re the Adoption of Baby E.A.W.*, 658 So.2d 961 (1995).

In order to implement the relative preference policy effectively, judges and social workers must identify, locate, and engage fathers as soon as possible. Delay only increases the possibility that the child will not be placed with a non-offending father or with his relatives.

## B. Relatives and the Placement Process

A second recurring problem involves the late arrival of relatives. That arises where the social worker places the child in a foster home at the outset of the case, only to learn that a relative requests placement at the time of the permanency decision. The relative explains that no one informed her or her family of the proceedings, and that she would have appeared before the court at the outset of the case if social services had told her. Now, at this late date, the child exhibits a significant connection to the foster parents, and the court must choose between the foster family and the relatives who are related by blood to the child and who would keep the child connected to his or her relatives. This situation also arises during the adoptive placement decision.

An example of this situation arose in the California case of *Lauren R. v Amanda C.* when Lauren, a 10-year-old child, and her foster mother appealed a juvenile court decision to place her for adoption with her maternal aunt in Oregon.<sup>197</sup> California, like most states, is a “relative preference” state which means that when a child is removed from parental care, social services and the court must consider relatives for placement before non-relative foster parents.<sup>198</sup> The relative preference statute, however, applies only when a placement needs to be made, usually at the outset of a case. If the relative appears later in the case, the preference disappears and the test becomes whether placement with the relative would serve the child’s best interests. California has two caretaker preference statutes, one of which states that the court “may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process.”<sup>199</sup>

The second caretaker preference statute states that the caretaker’s application for adoption shall be given preference if the agency determines that the child has “substantial emotional ties” to the caretaker and that “removal . . . would be seriously detrimental to the child’s emotional well-being.”<sup>200</sup> The caretaker preference statutes reflect the legislature’s interest in protecting the child from the trauma of removal from caretakers after a significant relationship has been formed. These three relative preference and caretaker preference statutes demonstrate the competing interests reflected by the interests of relatives and caretakers in child protection proceedings.

In *Lauren R.*, the child became a dependent child of the Orange County Juvenile Court because of parental substance abuse and domestic violence as well as parental

197 *In re Lauren R.*, 148 Cal.App.4th 841; 56 Cal.Rptr. 151 (2007).

198 CAL. WELF. & INST. CODE § 361.3, West 2009.

199 CAL. WELF. & INST. CODE § 366.26(n)(1).

200 CAL. WELF. & INST. CODE § 366.26(k).

failure to protect her from sexual abuse. The social worker placed her with Amanda C., a non-relative extended family member (NREFM)<sup>201</sup> who knew Lauren as a babysitter and as a Sunday school teacher. In July 2006, Lauren's maternal aunt, Velda C., told the social worker that she wanted Lauren placed with her. Because the aunt lived in Oregon, social services initiated paperwork required by the Interstate Compact for the Placement of Children (ICPC).<sup>202</sup> Lauren visited her aunt in Oregon in August, but by September stated that she no longer wanted to live with her. In October, Lauren's therapist indicated that moving to Oregon would be detrimental because she had become attached to her current caretaker and her community (school and church).

In January 2007, Oregon approved the aunt's home for placement. Lauren insisted that she wanted to be adopted by Amanda, not by Aunt Velda. The social worker recommended placement with her aunt because the social worker thought that she appeared to feel safe and comfortable with her. The social worker pointed out in her report to the court that Lauren feared that, while nice now, her aunt would eventually turn out like her sister (Lauren's abusive mother). Moreover, she worried that she would have to see her mother if she lived with her aunt, and she feared her mother.

The trial court ruled that Lauren should be placed with her aunt, partly because Amanda failed to complete the adoption paperwork and had not ensured Lauren's regular attendance at school. The court further found that Aunt Velda was a close relative with the maturity to follow through with meeting Lauren's needs. The appellate court issued a writ of *supersedeas*, which ordered Lauren to remain in California pending its ruling. The appellate court reversed the trial court finding that the caretaker preference statute should control over the relative preference statute. The court stated that the relative preference statute did not apply since no new placement was necessary because the placement with Amanda was not temporary. Further, the court stated that there was no relative placement preference for adoption.

In her appeal, the aunt argued that she had requested relative preference early in the proceedings, but that the paperwork from Oregon social services was not completed for months due to delays in the ICPC process. She asserted the inherent unfairness to out-of-state relatives if the relative preference can be lost by the passage of time. In response, the court reasoned that the overriding concern of dependency proceedings is the best interest of the child, and stated that the court will uphold a foster care placement over a relative where a bond has taken place. "The passage of time is a significant factor in a child's life; the longer a successful placement continues, the more important the child's need for continuity becomes in the evaluation of her best interests."<sup>203</sup> The appellate court reversed the trial court's orders and remanded the case for reconsideration of the placement order based on the appellate court's findings.

Similarly, the court in *In re Ray M.*<sup>204</sup> placed the child with the foster parent with whom the child had been living for some time instead of the proposed relative caretakers.

201 "[A]ny adult caregiver who has an established familial or mentoring relationship with the child . . ." CAL. WELF. & INST. CODE § 362.7, West 2009.

202 CAL. FAM. CODE § 7900 et.seq, West 2009.

203 *Id.* at 319.

204 *In re Ray M.*, 2003 WL 1950373 (Cal. App. 4th District—unpublished in the official reporter).

Because of social worker delay in locating and assessing the relative, the court learned of the possibility of the relative placement some seven months after placement with the foster family. Finding that the best interests of the child controlled, the court affirmed placement with the foster family with whom the child had “bonded.”<sup>205</sup>

The Ohio Supreme Court reached the same result in *In re Schaefer*.<sup>206</sup> Social services removed the child at birth because of maternal substance abuse and placed the child with a foster family. The paternal grandfather and his wife learned of the removal six months after the birth, and promptly requested contact with the child and visited regularly. When the court awarded the agency permanent custody, both the foster parents and the grandfather sought to adopt the child. The trial court awarded custody to the foster parents. The appellate court reversed because the trial court had failed to consider the grandfather. The appellate court explained that the grandfather entered the case late through no fault of his own and therefore had limited contact with the child. The Ohio Supreme Court reversed the appellate court and upheld the trial court finding that no policy preferring relatives existed under the facts of the case. The trial court and the Supreme Court both relied on the “strong bond” between the foster parents and the child.

A commentator criticized the result as ignoring 43 U.S.C. section 671 (a) (19) of ASFA which states that “[t]he State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.”<sup>207</sup> The critic pointed out that under the Ohio Supreme Court’s interpretation a foster care placement will always prevail over a suitable relative so long as a time lapse occurs, resulting in the formation of a strong relationship between the foster parents and child.

The “natural and inevitable bond” that forms between young children and foster parents was also the decisive factor in the case of *In re Stephanie M.*<sup>208</sup> The department placed the child with foster parents at the outset of the case. One year later, the grandmother came forward and requested custody. The trial court concluded that the child, a Mexican national, should remain with the foster parent in California instead of with the maternal grandmother who resided in Mexico. The intermediate appellate court disagreed and determined that the child should live with her grandmother in Mexico, despite the long period she had spent in foster care in California. The court concluded:

While we cannot minimize the importance of Stephanie’s bonding to her loving foster parents, we are loathe to place this newly created relationship above the interests of loving grandparents who have consistently shown an interest in the child, and whose supposed deficits have, upon examination, been found not to be substantial or determinative.<sup>209</sup>

<sup>205</sup> In a similar case the trial and appellate court approved placement with non-relatives over the claims of a relative, citing the child’s strong emotional attachment to them. *In re Sarah H.*, 43 Cal.App.4th 274, 50 Cal.Rptr.2d 503 (1996).

<sup>206</sup> 111 Ohio St. 3d 149; 2006 Ohio 5513; 857 N.E.2d 532; 2006 Ohio LEXIS 3065 (2006).

<sup>207</sup> E. Smith, *Relative Placement Preference Under ASFA*, at 2, at [www.eriksmith.org](http://www.eriksmith.org).

<sup>208</sup> 21 Cal.App.4th 1363.

<sup>209</sup> *Id.* at 1398.

However, the California Supreme Court reversed the Court of Appeals and affirmed the trial court,<sup>210</sup> finding that after such a significant period of time, the test became whether the change in placement would be in the best interests of the child. The Supreme Court upheld the trial court's determination that the child should remain with the foster parents, placing special emphasis on the child's need for stability.<sup>211</sup> The Supreme Court explained that at this late stage in the proceedings, the relative placement preference no longer applied—rather the best interest of the minor controlled.

Both Colorado and Utah courts have made similar rulings favoring foster placement, finding that the connection with foster parents, combined with the trauma a child would suffer if removed from their care to a relative, precluded relative placement. In the Colorado case, reunification efforts with the children's father necessitated a placement close to the father's residence. Because the grandparents lived in Texas, the child was placed with a local Colorado foster family. By the time reunification efforts failed, the child's connection with the foster parents was so strong that the court concluded that it was in the child's best interest to remain with them.<sup>212</sup> In the Utah case, the Court of Appeals held that the relative preference statute does not apply in adoption proceedings. The child had been placed in foster care for over a year, and a bonding study indicated a strong connection between the child and the foster family.<sup>213</sup>

Several decisions have upheld a relative preference policy at the time of an adoption. In the case of *In the Matter of the Welfare of MM*,<sup>214</sup> the Minnesota Supreme Court reversed a trial court decision placing the child with a non-relative and ordering placement of the child with the maternal grandmother. The Supreme Court noted that Minnesota had a long-standing policy of favoring relative placements,<sup>215</sup> as well as several recent statutes declaring a preference for placement with relatives.<sup>216</sup> The Supreme Court found that to overcome the statutory preference, it was necessary to find that it would be detrimental to place the child with the grandmother. The court held that the evidence was insufficient to support a finding of detriment. In a later case the Minnesota Supreme Court affirmed the relative placement policy,<sup>217</sup> and stated that "a strong family preference exists for *all* child placements without regard to race or ethnic heritage"<sup>218</sup> [emphasis in the original]. The Supreme Court of Appeals of West Virginia similarly has ruled that at the time of an adoption, placement with relatives is presumptively in the best interests of a child.<sup>219</sup>

210 *In re Stephanie M.* (1994), 7 Cal.4th 295; 867 P.2d 706; 27 Cal. Rptr. 595.

211 *Id.* at 319.

212 *In the Interest of E.C. and A.C.*, 47 P.3d 707 (2002).

213 *In re D.N. and D.C.v State of Utah*, 76 P.3d 194 (2003).

214 452 N.W.2d 236 (1990).

215 The court cited the early case of *State ex rel. Waldron v Bieneke*, 155 Minn. 313, 193 N.W. 452, 452-453 (1923).

216 MINN. STAT. § 257.02, § 256E.01, and § 260.001, subd. 2(a) (1988).

217 *In the Matter of the Welfare of D.L.*, 486 N.W.2d 375 (1992) where the Supreme Court stated, "... we hold today that adoptive placement with relatives is presumptively in a child's best interests, unless good cause to the contrary or detriment to the child are shown" at 377.

218 *Id.* at 378.

219 *Napoleon S. v Walker*, 217 W.Va 254, 617 S.E.2d 801 (2005).

To implement an effective relative preference placement policy, some states have created policies and procedures that require careful evaluation of any relatives seeking placement. Some appellate courts in these states opined that prior to making the placement decision, the social worker must conduct a complete assessment of a relative seeking placement, and that failure to do so would result in a reversal of the placement order. For example, in the case of *In re H.G.*,<sup>220</sup> the department removed the child from parental care and placed the child with the paternal grandparents who wished to adopt. Subsequently the department removed the child because the grandfather spanked the child and allowed the father to have unauthorized visitation. The court terminated parental rights, and a non-family member adoption of the child was pending. The parents and grandfather appealed the termination stating that the court did not use the correct criteria in evaluating the grandfather's home. The appellate court agreed, set aside the termination, and returned the case to the trial court with instructions to follow the statutory guidelines for assessing a relative's home as detailed in Welfare and Institutions Code section 361.3.<sup>221</sup>

In *Cesar V. v The Superior Court of Orange County*, the appellate court also enforced strict compliance with the statutory mandate for relative preference.<sup>222</sup> The children's father waived family reunification services, and the paternal grandmother requested placement, while the foster family caring for the children did not seek permanent placement. The social worker submitted a report which rejected the grandmother as a placement and recommended that the child be placed for adoption with a non-relative family. The trial judge followed that recommendation. The appellate court reversed the trial court stating that the social worker had failed to perform a thorough investigation, that the relative placement statute (W & I section 361.3) demanded a much more comprehensive investigation, and directed the trial judge to exercise discretion in reviewing the social worker's recommendation. The appellate court also found that the grandmother had standing to appeal the placement determination even though she was not a party to the litigation.<sup>223</sup>

In summary, a meaningful and effective relative placement policy requires that the department identify, locate, and engage relatives as soon as possible. Case law suggests that late arrival of relatives into the court process circumvents their efforts for placement consideration. Additionally, courts must ensure that social worker assessments of possible relative caretakers follow statutory guidelines.

### C. The Interstate Compact on the Placement of Children

As indicated in *Lauren R.* above, the Interstate Compact on the Placement of Children (ICPC) created an extreme set of problems that has resulted in delay and

<sup>220</sup> 1146 Cal.App.4th 1 (2007).

<sup>221</sup> *Id.* This statute requires the social worker consider eight different factors, including one factor with eight sub-categories.

<sup>222</sup> *Cesar V. v The Superior Court of Orange County*, 91 Cal.App.4th 1023, 111 Cal.Rptr.2d 243 (2001).

<sup>223</sup> *Id.*

frustration for relatives seeking placement. When a relative lives in a different state than the child, the local (sending) child welfare agency must work with the child welfare agency in the second (receiving) state to determine the appropriateness of the placement. The assessment process involves a complex set of procedures between the two states and multiple persons in each state. The process encompasses a great deal of paperwork, a home study, and a careful examination of the relative's home and the people living in it.

This cumbersome and often slow process frequently results in excluding relatives as placements.<sup>224</sup> In addition to *Lauren R. v Amanda C.*, discussed above, the case of *In re Lauren Z.*<sup>225</sup> presents an example of how the ICPC hinders efforts to place a child with a relative. In *Lauren Z.*, after a child was removed from parental care in California, a relative in Florida indicated her interest in placement. The ICPC process delayed the relative's efforts to secure a foster care license for almost a year. In the meantime, the child had "bonded" to the foster parents. This delay proved too great for both the trial and appellate courts, each of which ruled that the child must remain with the foster parents. One of the appellate court justices dissented stating:

The majority's approach gives far too much weight to the amount of time that a child resides with a foster parent, gives inadequate weight to facts that warranted placement of Lauren with her aunt's family, and ignores the insidious effects on the child welfare system of using the failure of the system itself as a justification for the termination of parental rights.<sup>226</sup>

The ICPC process can thwart a relative's efforts to have the child placed with them. As one commentator noted: "Many times, the approval process is long and arduous, and may frustrate even the most diligent attempts to move children to permanency quickly. Mistakes in processing information can further cause delay and keep children from moving into more appropriate placements."<sup>227</sup>

For example, in *In re Breanna N.*, the Maine child welfare department delayed completion of the home study of the grandfather's home, clearly because of DHS ineptitude. The delay negatively affected the grandfather's reunification with the child because the department credited the child's attachment to her foster family during that year as a reason to remain in foster care. The court affirmed placement with the foster parents with one judge concurring. In the trial the caseworker testified: "It's a very lengthy process. It's a lot of paperwork. It's a lot of shuffling. And *there is no other excuse*, other than it's a long lengthy process"<sup>228</sup> [emphasis in the original].

224 Most juvenile and family court judges who have tried to make interstate placements will agree that the ICPC does not work well, that it delays a child's placement by months (often longer than a year), and that many placements cannot be accomplished because of the time lost and the child's need to have a timely placement.

225 *In re Lauren Z.*, 158 Cal.App.4th 1102, 70 Cal.Rptr.3d 583 (2008).

226 *Id.* at 1113.

227 C. Fiermonte, *Interstate Placements: Applying the ICPC*, 21 CHILD LAW PRACTICE (July 2002) at 65; see also, *Understanding Delays in the Interstate Home Study Process* (American Public Human Services Association, Washington, DC, September 2002).

228 *In re Breanna N.*, 742 A.2d 911, 918 (Me, 1999).

In response to these facts a concurring justice wrote: “I write separately, however, to address the egregious delays that occurred during this troubling process. The system failed this little girl and her family. Because of this failure, Breana will be deprived of a life with the family that wanted her. This simply should not have occurred.”<sup>229</sup>

Several California appellate courts echo this sentiment. In one case, the appellate justice wrote “[b]ut for delays in completing the home study and interstate compact, Paul would have been with the relative’s home months ago.”<sup>230</sup>

ICPC implementation can result in inordinate delays. Children wait while social workers follow ICPC protocols and rules and grind out their paperwork. Some believe that ICPC implementation is an institutionalized form of child abuse. Absent significant changes in the ICPC law and practice, out-of-state relative placements will continue to be time-consuming and difficult, and children will continue to wait for permanency. The comments from a retired judge very familiar with the vagaries of the ICPC best summarize the situation.

Since my retirement from the bench 5 years ago, I have devoted a great deal of time working with the ICPC and trying to improve how it works. This has been frustrating for me as it is a very complex statute to implement. Frankly, courts and child welfare agencies have not done a good job working with one another within the dictates of the ICPC, and children have suffered. There has got to be a better way.<sup>231</sup>

#### D. Can the Court/Department Trust Relatives?

Another problem that potential relative caretakers face concerns agency fears that they will permit contact between the parents and the child.<sup>232</sup> In *In re the Adoption of F.C.*,<sup>233</sup> the Missouri court placed the children with foster parents instead of with the grandparents, both of whom sought to adopt the children. While acknowledging a biological connection between the grandparents and the children, the court reasoned that “the future contact with biological parents’ factor weigh[ed] heavily against the

<sup>229</sup> *Id.* at 917.

<sup>230</sup> *L.A. County Dept. of Children’s & Family Services v Superior Court of Los Angeles*, 62 Cal.App.4th 1, 72 Cal.Rptr.2d 369 (1998) at 8. *And see also, In re Jasmon O.*, 8 C.4th 398, 33 Cal.Rptr.2d 85, 878 P.2d 1297 (1994).

<sup>231</sup> E-mail from Judge Stephen W. Rideout (ret.) to the author, dated Jan. 29, 2010 (copy on file with author). Another experienced juvenile court judge, now a law professor, wrote of the ICPC similarly: As a long time judge and now a law professor, I have studied researched, published and trained judges in several states on the Interstate Compact on the Placement of Children (ICPC) for over 30 years. I have concluded that this law simply does not work as it was intended. Children are left *in limbo* waiting for the ICPC to approve the transfer to another state from the home state, resulting in prolonged delays. Attempts to improve the ICPC and streamline the process have not resulted in reducing the delays which thwart permanent placement for children. I have concluded from comments made to me by the judiciary that judges are very frustrated by the implementation of the ICPC and are currently trying to avoid using the ICPC whenever possible.

Judge Thomas Hornsby (ret.) in an e-mail to the author dated Feb. 3, 2010 (copy on file with author).

<sup>232</sup> “We want to make sure relatives will protect the child and keep them safe, and don’t tell the child that nothing happened.” *Kinslip Care, op.cit.* note 4 at 51.

<sup>233</sup> 274 S.W.3d 478 (Mo., 2008).

grandfather and favorably to the foster parents.”<sup>234</sup> Other courts issued similar rulings when the relative offers a placement after the passage of substantial time.<sup>235</sup>

On occasion the relatives can successfully obtain a placement with them by assuring the court that they will comply with the social worker’s restrictions. In the case of *In re Antonio G.*, the court removed two children from the mother’s care and placed them with the grandmother. The department removed the children from the grandmother’s care because she permitted the mother to visit the children without court approval. The trial court found that this presented a safety issue for the children. The grandmother returned to court and explained that she did not know the “rules,” but would abide by them in the future.<sup>236</sup> The court then re-placed the children with her. This case illustrates that the social worker and the court play an important role in explaining to relative caretakers what restrictions apply regarding parental contact with the children in their care.

### E. Sibling Considerations

An additional placement issue that can hinder placement with relatives involves the separation of siblings. Some states have enacted legislation which favors placing siblings together, if possible.<sup>237</sup> The Fostering Connections Act mandates that social workers make reasonable efforts to keep siblings together or to maintain connections between them unless it would be contrary to their safety or well-being.<sup>238</sup> Even without statutory guidance, most social workers and judges consider sibling relationships when making placement orders. Several factual situations arise that create challenges to maintaining sibling contact. If a non-relative adopts one sibling, does the non-adopted sibling have a right to continuing contact in the new home? When siblings are not placed together, does a right for siblings to visit one another exist? What about a situation where a relative seeks placement of only one sibling, while a foster home agrees to accept both siblings? How should the placements be made?

For example, in the case of *In re Joseph T.*,<sup>239</sup> the court chose placement of both children in a foster care home over separation when the relative wanted only one of the children. The relative refused to have both children because she believed they fought too much. In the case of *In re Clifton B.*, the appellate court reversed a sibling visitation order so that each sibling could have different counsel. One sibling opposed the termination of parental rights of his parents because he was concerned he would lose contact with his sibling once the adoption was completed.<sup>240</sup>

234 *Id.* at 484.

235 *Guardian ad Litem Program v R.A.*, 995 So. 2d 1083 (Florida, 2008).

236 *In re Antonio G.* (2007) 159 Cal.App.4th 369.

237 For example, see W. VA. CODE § 49-2-14(e) (1995). CAL. WELF. & INST. CODE § 16004(a) states: “The Legislature finds and declares that there is an urgent need to develop placement resources to permit sibling groups to remain together in out-of-home care when removed from the custody of their parents due to child abuse or neglect.”

238 Fostering Connections Act, *op.cit.* note 60, § 206.

239 163 Cal.App.4th 787; 77 Cal.Rptr. 3d 806 (2008).

240 81 Cal.App.4th 415, 96 Cal.Rptr2d 778 (2000).

Children care dearly about their siblings. Preserving sibling relationships remains a high priority for youth advocates and will likely result in more legislative initiatives.<sup>241</sup> Maintaining and supporting sibling relationships presents a number of challenges particularly when siblings reside with multiple caretakers. Placing siblings with family members may best ensure that they will stay in contact through the years.

## F. Family Reunification, Stability, and Child Trauma

In many of the cases reviewed *infra*, appellate courts have ruled that the child should remain in the home of the caretaker with whom he or she has “bonded.” But a strong connection with a caretaker and an avoidance of the trauma of removal will not override a decision to return a child to a fit parent. For example, when a parent loses custody because of abuse or neglect, in most cases the law requires the court to order the parent to participate in services to make the necessary changes to regain custody of the child. With social worker assistance, the parent will attempt to rehabilitate, often struggling with issues involving substance abuse, mental health, housing, and domestic violence. During that time, the child, and particularly an infant, frequently becomes strongly connected to the caretaker, whether a foster parent or a relative. That is the “natural and expected relationship” between a young child and a caretaker.<sup>242</sup> If the parent successfully completes the services offered and can provide a safe home, the court will return the child to the parent even though doing so will break the child’s connection to the foster parent. The child welfare law anticipates that removing the child from the caretaker will inflict trauma on the child by breaking the foster parent-child connection.

The reason for this result is that the Constitution protects the parent-child relationship.<sup>243</sup> The law recognizes parenting as a constitutional right, a right more important than the child’s interest in stability and the avoidance of trauma.<sup>244</sup> As one court concluded: “A finding of detriment, however, cannot depend solely on the potential loss of attachment to foster parents otherwise in the case of a very young child . . . the court would merely pay lip service to the concept of parenting as a fundamental constitutional right.”<sup>245</sup>

While no similar constitutional right exists for grandparents or other relatives to obtain custody of children within the family, federal courts acknowledge that “there is substantial authority for the proposition that due process places a limit on the state’s ability to interfere with certain extant relationships among family members.”<sup>246</sup> A strong

241 CAL. WELF. & INST. CODE §§ 362.1, 366.21, 16002, and 16004.

242 “. . . [H]er bonding was a natural and inevitable phenomenon.” *In re Venita L.*, (1987) 191 Cal.App.3d 1229; 236 Cal.Rptr.859, at 1241.

243 *Meyer v Nebraska*, 262 U.S. 390, 399, 401 (1923); *Pierce v Society of Sisters*, 268 U.S. 510, 534-535 (1925); *Prince v Massachusetts*, 321 U.S. 158 (1944); *Wisconsin v Yoder*, 406 U.S. 205, 232 (1972); *Quilloin v Walcott*, 434 U.S. 246, 255.

244 *In re Venita L.*, *op.cit.* note 242 at 1240.

245 *In re Rodrigo S.*, 225 Cal.App.3d 1179; 276 Cal.Rptr.183 (1990) citing, in part, *In re Venita L.*, *id.*

246 *Lipscomb v Simmons*, 962 F.2d 1374, (1992), at 1378.

argument can be made that foster children have a right to live with extended family members. As outlined in Section III above, there is great value in maintaining connections with the biological family even if that policy results in some disruption in the child's stability. Perhaps state legislatures should set a time period of six, nine, or twelve months before ending relative preference placement possibilities even in situations where a strong connection exists between the non-relative caretaker and the child.

### G. Summary

In all of the situations raised by these cases (late arriving fathers or relatives, delays because of the ICPC), the child has suffered regardless of whether the court decides to maintain placement with the foster parents or place with the relatives. She has either been forced to leave the only home she has known, one she is significantly connected to (the foster home), or she has lost her last connection to her biological family, including any siblings. Time is the critical factor that determines the extent of any trauma the child will suffer.<sup>247</sup> The more quickly that placement decisions can be made, the less the child will suffer.

## VIII. OTHER SYSTEMIC ISSUES

A number of other barriers exist for relatives seeking placement during court proceedings. Each of these legal requirements often results in bureaucratic inertia, delays, and findings of unfitness for placement.

### A. Licensing of Relatives for Placement

Many states require relatives to obtain foster care licensing before being considered for placement.<sup>248</sup> Licensing procedure complexities frequently result in long delays before completion which, in turn, lead to delays in permanency for children. For example, licensure includes a home study, often a very time-consuming and complex process, and some states require the completion of a parenting class, usually 10-12 classes over a 2- to 4-month period of time.

Different licensing standards for relatives than for foster parents should result in more relative placements. Currently approximately two-thirds of the states permit relatives to care for children in state custody without meeting all the licensing standards required of foster parents.<sup>249</sup> Without sacrificing safety, a more flexible standard would permit children to share rooms or live in so-called sub-standard housing, acknowledging

247 GOLDSTEIN ET AL., *op.cit.* note 2 at 42-45.

248 M. Scannapieco & R. Hegar, *Kinship Foster Care in Context*, in *KINSHIP FOSTER CARE: POLICY, PRACTICE AND RESEARCH* (R. Hegar & M. Scannapieco eds., Oxford U. Press, 1999) at 6.

249 *Findings from the 2007 Casey Kinship Foster Care Policy Survey*, *op.cit.* note 40, at 4.

that issues related to poverty should not disqualify a relative.<sup>250</sup> The Fostering Connections Act suggests an answer to this issue when it amended the law to permit the agency to waive on a case-by-case basis a non-safety licensing standard for a relative foster family home.<sup>251</sup> In this respect, the Act acknowledges the importance of maintaining family ties.

## B. Screening Relatives for Placement

Federal and state laws restrict placement of foster children with persons (including relatives) who have criminal and/or child abuse histories. The law applies to caretakers and extends to anyone living in the home where the child may be placed. Thus social workers must assess relative caregivers for any history of criminal behavior, child maltreatment, and domestic violence.<sup>252</sup> This legal prohibition often disqualifies relative placements.<sup>253</sup> The law usually delineates specific crimes which disqualify a relative, and offers the opportunity for an appeal in cases involving minor crimes or when the crime occurred long ago. The appellate exemption process involves an administrative review within the child welfare agency which the court cannot overrule.<sup>254</sup>

Most state laws preclude juvenile court review of the screening decision.<sup>255</sup> If the court places the child in a home where caretakers have not been cleared, the family would be ineligible for federal and state funding. On occasion appellate court rulings have ordered trial courts to set such a placement aside.<sup>256</sup> On the other hand, the trial courts generally possess greater expertise than the agency in the interpretation of criminal records. After all, it is the court system that has created those records, not the children's services agency. It would be reasonable for the court to be given authority to review the agency's decision to disqualify a relative placement based on past criminal or child abuse records. This authority is similar to the court's role in probate guardianship cases where the court reviews criminal and child abuse records before making the final placement determination. Similarly, the court also reviews criminal and child abuse records when

250 The Child Welfare League of America took a similar position years ago: "Child welfare agencies should require approval/licensing of kinship parents. Child welfare agencies should allow flexibility in determining appropriateness of the kinship home, focusing on the protection of the child, the ability of the kinship parent(s) to provide for the child's needs, and the overall livability of the home." KINSHIP CARE: A NATURAL BRIDGE, *op.cit.* note 32 at 47-48.

251 42 U.S.C. § 471(a)(10).

252 EFFECTIVE INTERVENTION, *op.cit.* note 145 at 67, 102.

253 *In re Adoption of J.L.S.*, 2009 WL 2014088.

254 *In re Sencere P.*, 140 Cal.App.4th 65, 43 Cal.Rptr.3d 897 (2006), *In re S.W.*, 131 Cal.App.4th 838, 32 Cal.Rptr.3d 192 (2005).

255 "The process for the granting or denial of criminal records exemptions is an executive function that is not subject to review by the juvenile court, but rather subject to administrative review." G. Seiser & K. Kumli, *California Juvenile Court* (2006 ed.) section 2.127[3] at 2-224; *In re Esperanza C.*, 165 Cal.App.4th 1042 (2008).

256 That occurred in the case of *Los Angeles County Department of Children and Family Services v The Superior Court of Los Angeles County*, 87 Cal. App.4th 1161, 105 Cal. Rptr.2d 254 (2001) where the trial court placed the child in a relative's home and ordered the relative with a criminal record to leave the home. The appellate court ruled that this arrangement was "unworkable" and ordered the trial court to set aside the placement and to make a different placement.

making placement decisions in those states where guardianship is possible in the juvenile court if the parents waive family reunification services.<sup>257</sup>

### C. Housing

Social service law also restricts placements of children in homes that fail to meet legal standards of fitness. According to most state regulations, a house must have sufficient bedrooms, beds, toilets, and other characteristics deemed essential for basic living. For example, in *Ray M. v Superior Court*,<sup>258</sup> the appellate court noted that two uncles and an aunt requested placement of the children, but the department rejected the application because of a lack of bedroom space and the fact that the children would have to share a bedroom.<sup>259</sup>

Restrictions such as these significantly impact the poor. They also impact large sibling groups who would often prefer to remain together, but whose size frequently impairs the ability of the relative's homes to meet legal standards. Resolution of these issues demands creativity by social workers.<sup>260</sup> Few would argue that a clean room with a bed to oneself in a foster home is better than a messy room with three siblings in an irregular sleeping arrangement. Legislators and social service workers should place greater weight on the sibling connections and less to the formalities of so-called proper living arrangements and statutory mandates. In some situations, a group decision-making process may assist in the creation of a plan that better serves the children involved.

### D. Non-Related Extended Family Members (NREFM)

Other important people care for and are loved by children. The child welfare field often refers to these people as non-related extended family members, or NREFM. These people include neighbors, coaches, teachers, god-fathers and -mothers, and many others connected to the child and family and who play an important part in the child's life.<sup>261</sup> Many child welfare systems turn to NREFMs when placement issues arise and include them in group decision-making processes. Courts also permit them to participate in child protection court proceedings. In some state statutes, these extended family members are referred to as kin.<sup>262</sup>

<sup>257</sup> See *In re Summer H.*, (2006) 139 Cal.App.4<sup>th</sup> 1315. In this case the agency's refusal to waive a criminal record did not prevent the court from exercising its discretion to appoint a legal guardian.

<sup>258</sup> 2003 WL 1950373 (2003).

<sup>259</sup> *Id.*

<sup>260</sup> "Don't look at finances; poverty should not be a factor." Indiana court contact, found in *Kinship Care*, *op.cit.* note 4 at 52.

<sup>261</sup> California law defines NREFM as an adult caregiver who has an established familial or mentoring relationship with the child that has been verified by the social service agency. CAL. WELF. & INST. CODE § 362.7.

<sup>262</sup> The term "kin" can include any relative, by blood or marriage, or any person with close family ties to another. M. Takas, *Kinship Care and Family Preservation: A Guide for States in Legal and Policy Development*, Unpublished manuscript (ABA Center on Children and the Law, Washington, DC).

In 2006, South Carolina passed a statute which allowed the family court to order custody of a child to the child's de facto custodian (defined in the statute). A 2004 Idaho statute outlined who qualifies as "de facto" custodians and can initiate proceedings for guardianship.<sup>263</sup> California has recognized "de facto" parents in child protection proceedings for years.<sup>264</sup> These state laws acknowledge that connections in a person's life are critical to well-being, and that foster youth need connections perhaps more than anyone else.

### E. Summary

As state laws and practices embrace relative preference, legislatures, child welfare agencies, and courts must examine all rules and regulations that impede implementation. Relatives are not traditional foster parents. Their special relationship with children makes it critical to encourage and facilitate their connections with children and remove the barriers established for the foster parents and the foster care system and not for relatives.

## IX. THE ROLE OF JUDGES IN PROMOTING RELATIVE ENGAGEMENT

Judges play a significant role in engagement of relatives in the child protection process. First of all, the judge must ensure that the social worker performs the work necessary to identify, locate, and engage the father. Appendix A describes the most important steps the judge should take to accomplish this critical task. Identification of the father allows a greatly expanded search for relatives.

Simultaneously, the judge must insist that the social worker conduct an ongoing, comprehensive search for relatives which utilizes the best technology available to the children's services agency. If agency social workers are unacquainted with family finding and engagement protocols, Kinship Navigators, or group decision-making models, the judge can suggest that they familiarize themselves with them.<sup>265</sup> The judge can insist on including relative search information in reports that the social worker submits to the court starting with the initial or shelter care hearing. Additionally, the judge should question the parents under oath concerning the identity and location of relatives. This enquiry may be difficult in situations where the parents are estranged from their parents or other relatives, but judges using the power and prestige of their judicial authority often can obtain information that the parents will not reveal to the social worker.

The judge also possesses the unique ability to order that relatives receive notice of the court hearings, that relatives be informed that they are welcome to attend those hearings, that the department and the court will consider them for placement, that a preference for placement with relatives over non-relatives exists, and that any group

<sup>263</sup> *Highlights of Recent Kinship Care, op.cit.* note 128.

<sup>264</sup> California Rules of Court 5.502 & 5.534(d), West 2010.

<sup>265</sup> The judge might refer the social worker to the Fostering Connections Act, *op.cit.* note 60.

decision-making process will include them. The judge should provide relatives with the opportunity to speak with the judge at some point in the proceedings if they come to the courthouse for a hearing. The judge should consider implementing court-based mediation so that family members can meet in the context of court proceedings to discuss plans for the child. Additionally, the judge can and must make an independent decision concerning the suitability of the relative's home, rather than just reviewing and adopting the agency's recommendation.

The judge can improve the timeliness of proceedings by appointing attorneys for the parents as well as appointing a Guardian *ad Litem* for the child before the initial hearing. Additionally, the judge can insist that the attorneys receive all paperwork regarding the case from the agency before the initial hearing which allows the parties to address substantive issues with the court fully informed.<sup>266</sup> The judge can recommend to the agency that it hold a Family Team Meeting before the shelter care hearing, and the court can implement a settlement conference or a second shelter care hearing as a part of the case process.<sup>267</sup> Many of these systemic changes can be accomplished if the judge convenes regular administrative meetings that include representatives from all participants in the court system.<sup>268</sup> These meetings provide a forum for discussing structural changes to court operations and provide the most effective means of addressing court improvement issues. Finally, if the agency unreasonably delays its search for the father or relatives or begins consideration of other placements without first fully evaluating relatives,<sup>269</sup> the court can use the "no reasonable efforts" finding in order to move the process along.<sup>270</sup> Appendix B contains a list of the actions a judge can take to ensure relative engagement.

## X. CONCLUSION

Relatives are important to children. When parents fail to provide safe homes for their children, relatives should be the first people the court and department should turn to for assistance. Families have placed their children with relatives informally for centuries, but state and federal policy and legislation have only recently identified relatives as the first choice for placement. Now that the relative preference placement policy is in place, practitioners, particularly social workers and judges, must implement it effectively. The child protection system must identify and engage relatives immediately in order for the relative preference policy to be successfully implemented. Judges have the statutory duty to oversee social service operations, and through the use of their judicial powers judges can make relative preference a reality. The principal beneficiaries will be the abused and neglected children who appear in our courts.

266 Many of these suggestions are contained in *Achieving Timely Permanency*, *op.cit.* note 159.

267 For a description of Family Team Meetings, settlement conferences, and second shelter care hearings, see *Achieving Timely Permanency*, *id.* at 13-15.

268 *Improving Implementation*, *op.cit.* note 47 at 6-17.

269 See *Cesar V v Superior Court*, 91 Cal. App. 4th 1023, 111 Cal.Rptr.2d 243 (2001).

270 *Id.* at 1033-4.

## APPENDIX A

### Judicial Checklist Regarding Engaging Fathers

1. Identify all potential fathers as soon as possible.
2. Question the mother under oath regarding the identity of the father.
3. Determine where the father or potential fathers can be located.
4. Order the caseworker to follow-up on information gained from the court hearing.
5. Order the caseworker to personally serve each possible father with notice of the legal proceedings.
6. Order the caseworker to obtain the child's birth certificate and to check to see if the father signed a paternity declaration at the hospital.
7. Insist that caseworkers use good faith efforts to identify, locate, and support the father throughout the child protection process. Use the "no reasonable efforts" finding if necessary and appropriate.
8. Revisit the question of identity and location of the father at all subsequent court hearings.
9. When a potential father comes to court, let him know that the court is pleased that he has appeared because he is an important person in the child's life. Let him know that once his paternity is established, he will be treated as a parent in all subsequent court proceedings. Order visitation to begin as soon as possible with supervision or other protective measures, if necessary.
10. Complete the testing for paternity as soon as possible at state expense with the possibility of reimbursement from the father.
11. Appoint counsel for the father at least as soon as paternity has been established, with the possibility of reimbursement.
12. Inform the father that he may be a placement possibility for the child.
13. Identify the father's extended family and ensure that they know about the legal proceedings and know that they will be considered as possible placements if placement is necessary.
14. Permit the extended family to participate in group decision-making processes, visitation, and court hearings.
15. Determine if the father is a danger to the mother or to the child and make appropriate protective orders.
16. Encourage the development in the community of services that will meet the needs of fathers. These can include parenting classes for fathers, parent coaching, fathers mentoring fathers, and other gender-based programs.

## APPENDIX B

### Engaging Relatives Checklist

1. Identify, locate, and give notice to each child's father.
2. Refer to Appendix A for steps to take to engage the father in the proceedings.
3. Identify all relatives, locate, and provide them notice of the proceedings.
4. Enquire of each parent about the identification and location of their relatives.
5. Ask the children about the identification and location of their relatives.
6. Encourage the agency to use Family Finding and Engagement protocols.
7. Encourage the agency to use group decision-making practices in order to convene the family and empower them to propose solutions for the child's current situation.
8. Implement court-based mediation as a practice that will convene family members in order to discuss plans for the child.
9. Appoint attorneys before the initial hearing.
10. Insist that attorneys receive the paperwork involving the child before the initial hearing so that they can meet their client and be prepared for that hearing.
11. Encourage a meeting among family members, attorneys, and social workers before the initial hearing. If the agency is unable to provide for a meeting, create a pre-shelter care hearing involving all parties, attorneys, and relatives.
12. Encourage relatives to attend court hearings.
13. Encourage relatives to visit the child, with protective measures, if necessary.
14. Use alternative dispute resolution protocols to help family members overcome past quarrels and grievances.
15. Inform the relatives that they will be considered for placement before any non-relatives.