

## **Disrupting the Foster Care to TPR Pipeline: Making the Case for Kinship Guardianship as the Next Best Alternative for Children Who Can't Be Reunified with their Parents**

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(4,973 words)

The Adoption and Safe Families Act of 1997 (ASFA) staked out a policy position on the termination of parental (TPR) rights, which remains controversial to this day. The law shortened the period for holding a permanency (dispositional) hearing from eighteen to twelve months after the child enters foster care. It further stipulated that a state shall file a petition to terminate the rights of all parents of a child who had been in state custody for fifteen of the most recent twenty-two months. It permitted states to apply the accelerated timetable even if there were no identified homes available to adopt the child.

Critics of ASFA alleged that the changes stacked the deck against family reunification by setting unrealistic time frames for parents to resolve the problems that prompted their child's removal from the home. Speeding up the foster care to TPR pipeline before finding a home willing to adopt, they warned, risked adding to the number of adolescents who age out of foster care without any lawful ties to parents, siblings, and grandparents.

Champions of ASFA countered that the risks were a tolerable trade-off compared to the harms of retaining children in long-term foster care. Freeing children quickly for adoption, especially infants, while simultaneously abolishing the traditional practice of matching caregivers to children based on their race, color, or national origin (which in the distant past both enforced prohibitions against transracial adoptions and helped shroud same-race adoptions in secrecy), would enable states to tap into the presumably large reservoir of families willing to welcome a racially diverse group of dependent and neglected children permanently into their homes.

Looking back, the best available evidence indicates that the permanency designs of ASFA were mostly realized. A majority of states doubled the number of adoptions from foster care over their

respective baseline (1995-1997) in at least one of the years between 1998 and 2002<sup>1</sup>. The number of children in foster care for longer than three years declined 65% from 182,600 in 1998 before plateauing at an average of 63,600 children between 2014 and 2019<sup>2</sup>. In spite of these accomplishments, most states still struggled to clear their waiting lists of children “freed” for adoption. Nationally, the number of children waiting for adoption whose ties to all living parents were legally severed never dipped below 58,000 and in recent years has climbed back up from 58,240 children in 2012 to 71,335 children in 2019.<sup>3</sup>

The rise in the number of so-called “legal orphans” was foreseeable at the time of AFSA’s passage, but alternative solutions were largely overlooked.<sup>4</sup> In framing the issue narrowly as a binary choice between reunification or adoption, both critics and champions of ASFA deflected attention away from an alternative permanency option that did not require TPR and was more in keeping with traditional multifamilial identities than formal adoption.<sup>5</sup> The option was kinship guardianship.

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<sup>1</sup> Fostering Results. *Nation’s Child Welfare System Doubles Number of Adoptions from Foster Care*.

<http://pew.org/2yHIO9u>. Accessed 30 Aug. 2021.

<sup>2</sup> U.S. Children’s Bureau. *The AFCARS Report, Final Estimates for FY 1998 through FY 2002 (12)*. U.S. Department of Health and Human Services. AFCARS Report #27.

<sup>3</sup> *Id.* AFCARS Report #27.

<sup>4</sup> Martin Guggenheim forewarned of the potential risks before ASFA was passed based on trends he observed in Michigan and New York. See Guggenheim, Martin. “The Effects of Recent Trends to Accelerate the Termination of Parental Rights to Children in Foster Care - An Empirical Analysis in Two States.” *Family Law Quarterly*, vol. 29, no. 1, 1996 1995, pp. 121–40.

<sup>5</sup> Robert B. Hill. *Informal Adoption among Black Families*. National Urban League, Research Department, 1977.

## **KINSHIP GUARDIANSHIP**

ASFA reaffirmed legal guardianship as a permanency goal, which it defines as “a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control, custody of the person, and decisionmaking”<sup>6</sup> Even though ASFA widened the pathway to *family unification*, which like reunification preserves both parental and extended family ties, it left the option financially unaffordable for most kinship caregivers by restricting federal permanency assistance to adoption alone. The law appropriately excused placements with kin from the accelerated TPR timetable, but this exemption conveyed the misleading impression to the field that there was little urgency to addressing the permanency needs of the thousands of children languishing in long-term, kinship foster care.

The U.S. Congress sought to rectify some of ASFA’s permanency deficiencies by creating the Guardianship Assistance Program (GAP) in 2008. GAP offers federal permanency stipends to relatives without requiring the severance of parental ties and recasting of extended family identities in the nuclear family mold of parent and child. The widening of the pathway to family unification, however, was cut short by the law’s also requiring that guardianship assistance be offered only after the state determined that being adopted was not an appropriate permanency option for the child. The rationale for the law’s ranking of preferences was that adoption was “more permanent” than guardianship.<sup>7</sup>

The purpose of this paper is to assess the rationale for and empirical adequacy of the federal preference for adoption over guardianship where a relative is the intended guardian. It cites research showing that subsidized legal guardianship is just as lasting as subsidized adoption when kinship guardianships are appropriately compared to what might have happened if subsidized legal guardianship were unavailable as a permanency option. In light of the absence of meaningful differences between

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<sup>6</sup> 42 U.S.C. § 675(7)

<sup>7</sup> 42 U.S.C. § 675(1)(F)(v).

guardianship and adoption for a child’s sense of belonging and continuity of care, it is untenable to retain the requirement that a state determine that adoption is not an appropriate permanency option as an eligibility condition for receiving GAP payments.

## **DEMOTION OF KINSHIP GUARDIANSHIP AS A PERMANENCY GOAL**

Prior to ASFA, many practitioners and scholars accepted kinship guardianship as the next best alternative to reunification with parents.<sup>8</sup> The child psychiatrist, Marilyn Benoit, noted that: “In such a setting, the children will best experience a sense of belonging (by reason of kinship) and permanence rather than a feeling of expendability.”<sup>9</sup> The U.S. Children's Bureau later departed from this viewpoint. It maintained that child welfare agencies must first determine that adoption is either inappropriate for, or unavailable to, the child before deciding that guardianship is the appropriate plan of choice for a child.

A slightly more stringent “adoption rule-out” version became the boiler-plate requirement of the IV-E waivers that HHS granted states between 1996 and 2008 to test the impact of subsidized legal guardianship.<sup>10</sup> The language was subsequently softened for the GAP legislation. It stipulated that states must first determine that adoption is not an appropriate permanency option for the child. The rationale for the Children’s Bureau’s preference for adoption over guardianship was foreshadowed in the 2000 *Report*

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<sup>8</sup> Leashore, Bogart R. “Demystifying Legal Guardianship: An Unexplored Option for Dependent Children Legal Essay.” *Journal of Family Law*, vol. 23, no. 3, 1985 1984, pp. 391–400.

<sup>9</sup> Marilyn B. Benoit. “The Quality—Not the Category—of Care.” *When Drug Addicts Have Children*, edited by Douglas J. Besharov, Child Welfare League of America and American Enterprise Institute, 1994, p. 246.

<sup>10</sup> In Illinois, the stipulation was that subsidized guardianship will be offered “only when other permanency goals, including returning home and adoption, have been ruled out as acceptable alternatives.” See Section 2: Implementation, 2.0, U.S. Children’s Bureau, *Waiver Authority, State: Illinois*, 1997.

*to Congress on Kinship Foster Care* that ASFA instructed the U.S. Secretary of Health and Human Services to prepare.<sup>11</sup> It acknowledged that legal guardianship enables kin to assume permanent care of the child, but inserted the following qualification: “However, guardianship does not provide the same protections against later, unexpected changes in custody that adoption does and may be seen as less than a total commitment to permanency.”<sup>12</sup>

In previous writings, I have characterized the reordering of permanency preferences as shifting the meaning of permanence from its original child-based definition of “lasting,” i.e. an enduring relationship that arises out of feelings of belongingness, to a newer caregiver-based definition of “binding,” i.e. an enduring commitment that is legally enforceable.<sup>13</sup> The original definition, as disseminated through the pioneering work of Victor Pike and his colleagues on the Oregon Freeing Children for Permanent Placement Demonstration, emphasized four qualities of permanence: continuity of relationship across space and time, belongingness rooted in familiarity and cultural identity, respected social status for both the child and the family, and the intent for the relationship to last indefinitely.<sup>14</sup>

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<sup>11</sup> ASFA mandated the Secretary to prepare the report to Congress based on the comments submitted by an advisory panel established by the Secretary in consultation with the chairs of the House Committee on Ways and Means and the Senate Committee on Finance. I was one of the members of the 26-person advisory panel.

<sup>12</sup> U.S. Department of Health and Human Services. *Report to Congress on Kinship Foster Care*. U.S. Department of Health and Human Services, 2000, p. 50.

<sup>13</sup> Testa, Mark F. “The Quality of Permanence-Lasting or Binding? Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption.” *Virginia Journal of Social Policy & the Law*, vol. 12, no. 3, 2005, pp. 499–534.

<sup>14</sup> Pike, Victor, et al. *Permanent Planning for Children in Foster Care : A Handbook for Social Workers*. Washington : Dept. of Health, Education, and Welfare, Office of Human Development Services, Administration for Children, Youth and Families, Children’s Bureau, 1977.

When the National Council of Juvenile and Family Court Judges (NCJFCJ) issued its best practice guidelines in 2000, it added a fifth quality: “a legal relationship that is binding on the adults awarded care, custody and control of the child.”<sup>15</sup> Even though NCJFCJ’s addition can be interpreted as augmenting rather than displacing the other four qualities, the experiences of professionals responsible for implementing the rule-out provision suggest that the provision has sometimes been misused to manipulate family choice. As recounted by Leslie Cohen, who monitored implementation of the IV-E waiver demonstration in Illinois, caseworkers, who refrained from disclosing the full range of permanency alternatives, contended that the waiver’s rule-out provision required that “each goal be presented in a sequential fashion and that they cannot discuss guardianship until they are absolutely confident the family will not accept adoption.”<sup>16</sup> Further muddying the waters were accusations that caseworkers, who did engage in full disclosure, were coaching kin in how to circumvent adoption rule-out provisions: “Some officers of the court felt that preserving family relations was too flimsy a justification and blocked efforts to achieve permanency through guardianship. They felt that adoption was still possible, if not with the current family then with other families, including non-relatives, who should be approached about their interest in adoption.”<sup>17</sup>

## **THE RE-FORMALIZATION OF PERMANENCY PLANNING PRACTICE AND POLICY**

There are several plausible explanations for the shift in the meaning of permanence from a lasting relationship to a binding commitment. The most straightforward is that it was an outgrowth of the *re-*

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<sup>15</sup> National Council of Juvenile and Family Court Judges. *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. 2000 at 14.

<sup>16</sup> Leslie Cohen. “Rule Out.” *Using Subsidized Guardianship to Improve Outcomes for Children: Key Questions to Consider*, edited by Mary Bissell and Jennifer L. Miller, Cornerstone and Children’s Defense Fund, 2004, pp. 19–25 at 21.

<sup>17</sup> *Id* at 21-22.

*formalization* of permanency planning in terms that are more reliably communicable to judges than the concepts of psychological attachment and relational continuity upon which the original meaning of permanence was built.

Prior to the passage of the Adoption Assistance and Children Welfare Act (AACWA) of 1980, the NCJFCJ guidelines noted, court involvement in child welfare cases was often just a “rubber stamp” for plans and recommendations made by social workers and psychologists. Assessing and making predictions about the continuity, respect, belongingness, and intent of family relationships was very much in their bailiwick. With the implementation of AACWA, however, juvenile and family court judges became accountable for the *collective agency* of all professionals involved in the permanency planning process.<sup>18</sup> The formality of clearly defined timetables, sequential rule-out procedures, timely filing of

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<sup>18</sup> The concept of collective agency draws from the writings of the psychologist, Albert Bandura, who specifies three levels of human agency: personal, proxy, and collective. Applied to child welfare, minor children lack the personal agency to act independently and to make their own free choices. Therefore, they must rely on the proxy agency of parents, extended kin, and other community members to act in their best interests. If these informal agents lack the material resources or parenting competencies that the community deems appropriate for raising a child to adulthood, community members can call on the collective agency of the state to intervene. Whenever possible, formal intervention begins with supplementing the home with needed resources and social supports, but it may escalate to reassigning proxy agency temporarily to relatives, foster families, and child-care institutions if adverse conditions in the home remain unchanged. As a last resort, proxy agency may be reassigned permanently to legal guardians or adoptive parents if the children cannot be reunited with their birth families. From an agentic perspective, the child welfare department is accountable for the oversight of proxy agency relationships on the child’s behalf and the juvenile or family court is accountable for the coordination of collective agency interventions that support, supplement, or substitute for those relationships. See Bandura, Albert.

TPR petitions, and impartial review of the grounds for terminating parental rights were in keeping with the court's obligation to ensure that agency recommendations and plans were set apart from the personal feelings, subjective biases, and power imbalances of everyday life. Based on the formal criteria of adequacy and communicability, guardianship indeed sounds "less permanent" in the sense that it is more easily vacated and more vulnerable to subsequent legal challenges than TPR and adoption. But with respect to the criterion of improvability, the question that needs answering is whether TPR and adoption in fact improve upon the less formal and less restrictive practice of kinship guardianship.<sup>19</sup>

### **IS ADOPTION BY RELATIVES TRULY MORE PERMANENT THAN GUARDIANSHIP?**

Answering this question requires an act of imagination that is difficult to approximate in actual practice. Called "counterfactual reasoning," it involves imagining the difference in permanency outcomes for a child whose relative caregivers are offered the choice of subsidized legal guardianship compared to what might have happened if that same family were offered only adoption assistance or remaining in long-term foster care. This imaginary scenario is, of course, impossible to implement in the real world. The same child and their caregivers cannot simultaneously be observed under both intervention and comparison conditions. However, it is possible to approximate the desired experiment at the aggregate level by randomly assigning a large number of families to the two conditions and then tracking their individual-level outcomes over time. In the absence of randomization, comparing the outcomes for a group of

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"Social Cognitive Theory: An Agentic Perspective." *Annual Review of Psychology*, vol. 52, no. 1, Annual Reviews, Feb. 2001, pp. 1–26.

<sup>19</sup> The sociologist, Arthur Stinchcombe, defines a practice as formal to the extent that it is cognitively adequate to the situations it governs (adequacy), it is communicable to the agents who must act in those situations (communicability), and it is improvable and in fact improving upon alternative or less formal practices (improvability). See Stinchcombe, Arthur L. *When Formality Works : Authority and Abstraction in Law and Organizations*. Chicago : University of Chicago Press, 2001.

adopted children to a group of guardianship children can be misleading. It is likely that the adopted group differ in important ways from the guardianship group. For example, adopted children are younger, on average, than children taken into legal guardianship. If it were later learned that a greater percentage of the children discharged to guardianship had exited their homes a year later than the adopted group, it would be imprudent to infer that the primary reason for the difference is that adoption is “more permanent” than guardianship. Instead, the fact that older children are generally more difficult than younger children to control, more likely to run away, and more liable to get in trouble with the law would first need to be taken into account before concluding that adoption is superior to guardianship in ensuring family permanence.

Randomized controlled trials (RCTs) help avoid some of the pitfalls of uncontrolled observational studies by increasing the likelihood that the intervention and comparison groups are statistically similar within the bounds of chance error. Not only does randomization help ensure that the groups are similar on readily recordable measures such as age at removal and genealogical relationship to the caregiver but also on less quantifiable characteristics such as affection for the caregiver and early childhood trauma.

Randomization is the method that was used to evaluate the IV-E waiver demonstrations in the states of Illinois, Tennessee, and Wisconsin. The central finding was that the offer of subsidized guardianship boosted the percentage of children discharged to permanent homes over what could have been expected if their options were limited to reunification, adoption, or staying in foster care. In Wisconsin, the boost translated into a 20%-point higher rate of overall permanence, 15%-points higher in Tennessee, and 6% points higher in Illinois.

In the states of Illinois and Tennessee, proportionately fewer children in the intervention group were discharged to adoptive homes (60% and 32%, respectively) compared to the comparison group (75% and 56% respectively). In Wisconsin, there were no significant differences in adoptions between the intervention and comparison groups (31% versus 29%, respectively). Considering that in both Illinois and Tennessee, a significantly lesser proportion of children in the intervention group were adopted than in the

comparison group, the expectation is that family relationships would last longer in the comparison group if adoption were indeed more permanent than guardianship.

After two years of follow-up in Tennessee, there was no significant difference in the percentage of children who were not residing in the home in which they were living at the time of random assignment: 11% in the intervention group (N= 264) versus 14% in the comparison group (N= 227). Similarly in Illinois, after 10 years of follow-up, there was no significant difference: 30% in the intervention group (N = 1,197) versus 32% in the comparison group (N= 1,228). Follow-up interviews in Illinois with children aged nine and older showed that the lower rate of adoption in the intervention group did not result in their feeling any less part of the family. In the intervention group, 90.3% of the youth (N = 489) answered that they felt like they were part of the family either most of the time or all of the time compared to 90.5% (N = 501) in the comparison group—about as close to perfect agreement as you can expect in a statistical sample.

The above results suggest that the particular type of legal permanence may be less consequential for lasting family relationships than some caseworkers and judges typically believe. An observational study conducted by Nancy Rolock and Kevin White helps shed light on the possible reasons for the perception of adoption as being more lasting than guardianship contrary to the best available evidence.<sup>20</sup> Their study compared a sample of subsidized adoption cases to a sample of subsidized guardianship cases. They tracked the two samples for a minimum of 10 years and recorded if the children re-entered foster care or stopped receiving a subsidy payment. Payments stop if a child leaves the home for another reason besides re-entering care. Whereas 6% of the adopted sample re-entered foster care or stopped receiving payments, 11% of the guardianship sample experienced an interruption of care or cancellation of payment. Clearly, the adoption sample experienced fewer interruptions than the guardianship sample. But as noted above, this raw comparison doesn't take into account other potentially confounding factors

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<sup>20</sup> Rolock, Nancy, and Kevin R. White. "Continuity for Children after Guardianship versus Adoption with Kin: Approximating the Right Counterfactual." *Child Abuse & Neglect*, vol. 72, Oct. 2017, pp. 32–44.

such as age differences. In fact, the adoption sample profiled 1.4 years younger, on average, than the guardianship sample. Another complicating factor is that a large fraction of the guardianship cases would not have been adopted and instead would have stayed in long-term kinship care. Omitting them from the comparison and ignoring their placement interruptions in kinship foster care understates the discontinuity of care that they would have endured. Matching guardianship cases to the combined samples of adopted children and kinship foster care cases helps balance the groups on age, race, and other characteristics and better approximates the right counterfactual of how the guardianship cases would have fared if adoption and long-term foster care were their only alternatives. After matching the samples, Rolock and White found no difference in discontinuities of care between the groups. The result replicates the findings from the more rigorous RCTs conducted in the waiver sites. Because people can't make the sorts of statistical adjustments in their heads that researchers can make on their computers, the day-to-day experiences of caseworkers and judges reinforce the belief that adoption is more permanent than guardianship in spite of scientific evidence to the contrary.

### **A MULTIFAMILIAL CONCEPT OF PERMANENCE**

RCTs are useful for generating statistical inferences about the causal impact of a promising intervention, like subsidized guardianship, but they provide only partial insight into the qualities of permanence that matter most to children— Am I loved here? Will these relationships last? Are my family circumstances respected by others? Will there always be space for me if I need to return home? To understand these qualities more fully, it is helpful to ask open-ended questions of youth and analyze their responses using an interpretative framework. Gina Samuels conducted such a study in 2008 using a convenience sample of 29 youth, aged 17 to 26 years old, who had transitioned from foster care without establishing a permanent family relationship authorized by the court. Even though the number of participants is small, the composition of the sample is well suited for the purpose of examining the case for kinship guardianship. The participants plausibly represent the kinds of youth in the comparison group who might reject adoption but agree to legal guardianship if it were available to them and their families at the time.

Samuels reported that 20 of the 29 youth (69%) stated they had not wanted to be adopted. Some of the youth felt that being adopted was a symbolic betrayal of their families of origin and could cause them to permanently lose this family identity. One of the youth explained their rejection of adoption because it would rearrange personal allegiances and make it impossible to belong to more than one parent and family system at a time. Samuels interpreted these and other rejections of adoption as a response to the child welfare system's portrayal of adoptive parents as a potential replacement family rather than as an added resource to a child's existing family ties. Even when birth parents cannot function as the day-to-day parent, they can provide emotional support and a sense of relational continuity. Kinship guardianship allows youth to retain a "multifamilial identity"—one that acknowledges "varied levels of family identity and membership (i.e., legal biological, relational) within more than one family unit."<sup>21</sup>

## CONCLUDING REMARKS

Both the quantitative and qualitative evidence presented above suggest that there is little to be gained from formalizing the preference for TPR and adoption over kinship guardianship. There may still be a case for retaining the requirement for non-relatives because adoption is the accepted means of establishing a kinship relationship in the absence of blood ties. However, because GAP applies only to pre-existing kinship relationships, the formal preference for TPR and adoption should be stricken from the law. Instead, the choice should be left to the *proxy agency* of adult family members and the *personal agency* of children according to their age and maturity.<sup>22</sup> As I have written previously, family members "are in the best position to assess whether adoption or guardianship best fits their cultural norms of family belonging, respects their sense of social identity, and gives legal authority to their existing family

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<sup>21</sup>Samuels, Gina Miranda. "Ambiguous Loss of Home: The Experience of Familial (Im)Permanence among Young Adults with Foster Care Backgrounds." *Children and Youth Services Review*, vol. 31, no. 12, Elsevier Science, Dec. 2009, p. 1229.

<sup>22</sup> See supra note 18 for definitions of the italicized words.

commitments.”<sup>23</sup> At a minimum, the law should be value-neutral about the choices that relatives make. At the same time, recognizing the entrenched beliefs about the improbability of kinship relationships through TPR and adoption and the greater restrictiveness they impose on family ties, it may be worth considering whether the formal hierarchy of preferences should revert back to the more traditional acceptance of kinship guardianship as the next best alternative for children who can’t be reunified with their parents. Where a relative is the intended permanent caregiver, the default would be kinship guardianship unless the relative expressed a preference for TPR or termination was necessary to ensure the safety of the child. The precise language would need to be crafted by legislators, but in general it could instruct the child welfare agency to describe the reasons for the relative’s preferences for termination of parental rights and adoption as the more appropriate permanency alternative for them.

Even though it is often assumed that relatives will be “soft” on their close kin, research shows that most relatives choose adoption on their own when fully informed of their choices.<sup>24</sup> Placing faith in the competency and wisdom of kinship caregivers to make a responsible and informed choice—most of whom have already been caring for the child for months or even years—is a constructive step that child welfare systems can take to restore the community trust that has been eroded by historic injustices and current disparities in the outcomes experienced by oppressed and marginalized communities.

As I write these remarks, I am mindful that there is little that is groundbreaking or new in the recommendations offered in this paper. Bogart Leashore articulated the case for legal guardianship as a child welfare resource over three decades ago and Josh Gupta-Kagan several years back called for eliminating the hierarchy of the preferences that favored TPR and adoption.<sup>25</sup> Nonetheless, the findings

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<sup>23</sup> Testa, *supra* note 7, at 534.

<sup>24</sup> Testa MF, et al. “Permanency Planning Options for Children in Formal Kinship Care.” *Child Welfare*, vol. 75, no. 5, Child Welfare League of America, Oct. 1996, pp. 451–70.

<sup>25</sup> Leashore, Bogart R. “Demystifying Legal Guardianship: An Unexplored Option for Dependent Children Legal Essay.” *Journal of Family Law*, vol. 23, no. 3, 1985 1984, pp. 391–400. Gupta-Kagan,

from the IV-E waiver experiments bear repeating as well as the call for a multifamilial concept of permanence. The latest data show that GAP continues to fall short of expectations. The U.S. Administration for Children and Youth sought to bolster optimism by noting that GAP growth resembled the early years of the IV-E adoption assistance program.<sup>26</sup> The latest numbers for 2017, however, show GAP continues to lag behind adoption assistance. Whereas in the 8<sup>th</sup> year of the program's operation (FY 1988) states were paying adoption subsidies on behalf of a monthly average of 34, 841 children, in the 8<sup>th</sup> year of GAP (FY 2017) states were paying guardianship subsidies on behalf of a monthly average of 27,955 children. If GAP growth had kept pace with the early growth in adoption assistance, states would now be paying guardianship subsidies on behalf of 75,300 children instead of the 45,800 children that the Office of Management and Budget (OMB) estimates will be served in FY 2022.<sup>27</sup> This represents a decrease from the average of 46,300 per month, which OMB projected for FY 2021.

In order for subsidized kinship guardianship to replicate the results from the IV-E waiver experiments, it will be necessary to rid GAP of the eligibility restrictions that weren't part of the original terms and conditions of the waivers. GAP restricts subsidies to only kinship homes that meet foster home licensing standards. This restriction cuts-off too many safe and stable kinship placements from receiving guardianship assistance because of the limited availability of bedroom space, the arrest histories of household members, and other standards that disproportionately disqualify low-income families from being licensed by the state. Because licensing is not a requirement for placing children with kin, the law

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Josh. "The New Permanency." *UC Davis Journal of Juvenile Law and Policy*, vol. 19, no. 1, 2015, pp. 1–83.

<sup>26</sup> Administration for Children and Families. Title IV-E GAP Programs: A Work in Progress. U.S. Department of Health and Human Services, 2018, [https://aspe.hhs.gov/sites/default/files/migrated\\_legacy\\_files//179696/GuardianshipBrief.pdf](https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//179696/GuardianshipBrief.pdf).

<sup>27</sup> Office of Management and Budget. *Appendix, Budget of the U.S. Government, Fiscal Year 2022*. The White House, 2021.

permits, intentionally or not, the build-up of children in unlicensed kinship care that supports homes at only a fraction of the cost of maintaining them in licensed foster care. Not only does kinship foster care deprive relatives of the personal and proxy agency to make their own free choices, it also holds over their heads the constant threat of separation if a caregiver or parent violates any number of bureaucratic restrictions, such as limits on parental visits, unauthorized travel out-of-state, and sleepovers at a neighbor's home that was not previously subjected to a criminal background check. As long as a relative has safely and stably cared for the child for at least six months or longer while under the supervision of the child welfare agency, the family should qualify for GAP regardless of the home's licensing status. Eliminating the adoption rule-out provision and opening up the foster care to guardianship pipeline to children in safe and stable, unlicensed kinship foster homes should go a long way towards bringing the benefits of an inclusive form of family permanence to thousands more children for whom kinship guardianship is the more appropriate permanency alternative than TPR and adoption.