

Through No Fault of Their Own: Reasserting a Child's Right to Family Connectedness in the Child Welfare System

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I. Introduction

The principle of family reunification is deeply rooted in American law and tradition. While reunification with the birth family is the primary permanency¹ goal of the child welfare system, the promise has been elusive for many of the children who are taken from their homes as a result of abuse and neglect. Oftentimes, the result has proved more traumatic and more damaging than the alternative.

This essay explores the statutory and public policy frameworks that guide state intervention in the parent-child relationship, and the negative outcomes resulting from removal of the at-risk child from the family. An emerging trend from the child welfare community, which emphasizes family connectedness² through family finding³ and kinship care⁴, has pro-

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1. *Permanency* is a policy whereby every child deserves a permanent family relationship. The practice of permanency planning locates and supports a lifetime family for each and every child. *Permanence for Young People Framework*, Nat'l Resource Ctr. for Foster Care & Permanency Planning, Hunter College Sch. of Social Work, http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/permanency/Permanency_Framework.pdf (Aug. 10, 2004).

2. Family *connectedness* is the process of finding and creating a caring relationship between a youth and a member or members of his or her family in order to build societal competence and the need to contribute to society. Telephone interview with Kevin Campbell, vice president, EMQ Children and Family Serv. (Sept. 24, 2005).

3. *Family finding* reconnects children back to their biological family and speeds their recovery from emotional trauma. *Family Finding*, EQM Children & Family Serv., <http://www.emq.org/press/FamilyFinding.html> (accessed Sept. 24, 2005).

4. *Kinship care* is the full-time care, nurturing, and protection of children by relatives,

vided significant improvements in outcomes for at-risk children and the economics associated with the child welfare system. After thorough review of the positive results of this trend, this essay proposes that public policy should demand a refocus of the child welfare system on family connectedness.

II. Background

Reunification with the birth family is the primary permanency goal of the child welfare system.⁵ However, over the past eight years, the exit patterns⁶ have changed, resulting in a preference for non-family adoption and other forms of out-of-home placement over family reunification.⁷ Statistics show that 30% of the children reunified with families reenter the foster care system within ten years due to new incidents of abuse or neglect, death of elderly caretakers, and failure of the foster or adoption placements.⁸

The adult outcomes for former foster youth, attributable mainly to lack of permanence and inadequate educational foundation, are dismal. Within the first two to four years after emancipation,⁹ 51% of foster children are unemployed, 40% are on public assistance, 25% become homeless, and one in five are incarcerated.

The outcry for sweeping reform of the child welfare system in the United States has reached mass proportions. The Pew Commission on Children issued recommendations urging an overhaul of the nation's foster care system.¹⁰ The recommendations garnered resounding support from the American Bar Association, National Council of Juvenile and Family Court Judges, the Conference of Chief Justices and Conference of State Court Administrators, the Judicial Council of California, the Texas

members of their tribes, godparents, stepparents, or any adult who has a kinship bond with a child. Shay Bilchik, *Sen. Briefing on Kinship Care and the Re-introduction of Kinship Care-givers Support Act* (Child Welfare League of Am. Jan. 18, 2005), http://www.cwla.org/news_events/kinshipcare050118.htm (accessed Sept. 24, 2005).

5. Fred Wulczyn, *Family Reunification*, in 14 *THE FUTURE OF CHILDREN: CHILDREN, FAMILIES, AND FOSTER CARE* (2004), available at http://www.futureofchildren.org/information2826/information_show.htm?doc_id=209549.

6. *Exit patterns* are the various ways that children leave the child welfare system, such as family reunification, kinship placement, foster placement, adoption, and emancipation. Campbell, *supra* note 2; Wulczyn, *supra* note 5, at 101.

7. *Permanence for Young People Framework*, *supra* note 1; Wulczyn, *supra* note 5, at 95, 101-106.

8. Wulczyn, *supra* note 5, at 100.

9. Children's Law Ctr. of L.A., *Foster Care Overview*, http://www.clcla.org/facts_overview.htm. (Sept. 24, 2005).

10. Pew Commn. on Children in Foster Care, *Recommendations to Overhaul Nation's Foster Care Sys.*, <http://pewfostercare.org/docs/index.php?DocID=47> (accessed Sept. 23, 2005).

Supreme Court Task Force on Foster Care, and the National Association of Counsel for Children.¹¹

A. Statutory Framework

The child welfare system creates a tension between three competing interests: the parent's right to parent, the state's right to protect the welfare of children, and the child's right to a safe, secure, stable home. Parents in the United States enjoy a fundamental right to direct the care, custody, and control of their children.¹² These parents' rights are construed as a bundle of rights and responsibilities, including custody, medical treatment, education, religion, physical and emotional care, and financial support.¹³ Accordingly, the current child welfare models are based on a preference for the role of natural parents.¹⁴ The law presumes that parents will make decisions in their child's best interest,¹⁵ but the presumption can be rebutted by a showing of parental unfitness.¹⁶

The U.S. Supreme Court balanced the rights of parents against the State's interest to protect and promote the health and safety of children in *Santosky v. Kramer*.¹⁷ Under the due process clause of the Fourteenth Amendment, in state-initiated termination of parental rights, the state must prove unfitness by clear and convincing evidence.¹⁸ The Indian Child Welfare Act of 1978¹⁹ contains the strongest language favoring family preservation by requiring clear and convincing evidence for removal and proof beyond a reasonable doubt for termination of parental rights.²⁰

While the Court has granted latitude toward parents and the preservation of the natural family, the right has not been viewed as absolute.²¹

11. Miriam Aroni Krinsky, *NACC and ABA Join Call for Reform of Foster Care Sys.*, 27 THE GUARDIAN 3 (Summer 2005), <http://www.naccchildlaw.org/training/guardian.asp> (accessed Sept. 24, 2005) (newsltr. for Natl. Assn. of Counsel for Children).

12. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). See *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Wisconsin v. Yoder*, 406 U.S. 645, 651 (1971); *Stanley v. Illinois*, 405 U.S. 645, 651–52 (1972); *Parham v. J.R.*, 442 U.S. 584, 602 (1979); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

13. *Quilloin v. Walcott*, 434 U.S. 246, 255 (2000).

14. *Wulczyn*, *supra* note 5, at 95.

15. *Troxel*, 530 U.S. at 68; *Parham*, 442 U.S. at 602.

16. *In re Michael B.*, 80 N.Y. 2d 299, 310–11 (1992). See also *Stanley v. Illinois*, 405 U.S. at 657–58.

17. *Santosky*, 455 U.S. at 754. See also *Reno v. Flores*, 507 U.S. 292, 304 (1993).

18. *Santosky*, 455 U.S. 745 (1982).

19. INDIAN CHILD WELFARE ACT OF 1978, 25 U.S.C. §§ 1901–1951 (1978).

20. 25 U.S.C. §§ 1912 (e)–(f) (1978). See also *Wulczyn*, *supra* note 5, at 97.

21. *Santosky*, 455 U.S. at 753–54.

Even though the child has a right to remain with his or her natural family, that interest has not risen to the same level as the parental or state interests involved in a child welfare decision.²²

B. Policy Framework

Public policy has created a legal framework that favors parents' rights to raise their children. The Adoption Assistance and Child Welfare Act of 1980²³ requires states to secure a judicial determination that reasonable efforts were made to maintain children in their natural homes and, if removal is required for the child's safety, reunification must be made expeditiously.²⁴ The Act provides fiscal incentives that drive permanency planning.²⁵

The focus shifted from family preservation and reunification toward permanency and stability through adoption in the Adoption and Safe Families Act of 1997 (ASFA).²⁶ ASFA Act included funding incentives favoring time limits on reunification, and introduced the concept of concurrent planning for reunification and permanency.²⁷ It also defined "reasonable efforts" towards reunification, which has been viewed by critics as a weakening of parental rights.²⁸

III. The Need for Change

Family reunification remains the primary goal of child welfare systems, but it often falls short of the promise. Statistics for out-of-home foster placements are staggering.²⁹ As of March 2004, 518,000 children were in foster care in the United States.³⁰ Youth ages eleven years and up are least likely to be adopted successfully, yet in 2003, they accounted for 49% of the total number of children in foster care.³¹

22. *Michael B.*, 80 N.Y. at 314 (noting that if parental unfitness is found, the court looks to the best interests of the child standard, which is ambiguous and malleable, subject to the court's review of the total circumstances and discretion on a case-by-case basis).

23. ADOPTION ASSISTANCE AND CHILD WELFARE ACT of 1980, 42 U.S.C. §§ 670-676 (1980).

24. 42 U.S.C. § 671 (150) (1980). *See also* Wulczyn, *supra* note 5, at 97.

25. 45 U.S.C. § 13021(6). *See also* Wulczyn, *supra* note 5, at 97.

26. ADOPTION AND SAFE FAMILIES ACT of 1997, Pub. L. No. 105-89 (Nov. 19, 1997), 42 U.S.C § 670 (2)-(3) (1997).

27. 42 U.S.C § 673B (1997). *See also* Wulczyn, *supra* note 5, at 97-98.

28. 42 U.S.C § 671(a)(15) (1997). *See also* Wulczyn, *supra* note 5, at 98.

29. Estimates based on data submitted by states as of Sept. 14, 2005. *Trends in Foster Care and Adoption, FY 2000-2004*, Adoption & Foster Care Analysis & Rep. Sys. <http://www.acf.hhs.gov/programs/cb/stats-research/index.htm>. (accessed Sept. 23, 2005).

30. *Id.* *See also* testimony of Shay Bilchik, *Sen. Briefing on Kinship Care and the Re-introduction of Kinship Caregivers Support Act*, Child Welfare League of Am. (Nov. 21, 2005), www.naccchildlaw.org (accessed Dec. 1, 2005).

31. Adoption & Foster Care Analysis & Rep. Sys, *supra* note 29.

Reunification is often not an option because of parental unfitness. The statistics on unsuccessful family reunification and adoption are disturbing.³² For older children found not adoptable, the focus shifts to long-term foster care with multiple placements. It is not unusual for a child who has been in the foster care system for an average of ten years to experience more than a dozen placements.³³ Each new placement brings with it a broken promise and grief at a broken relationship.

The steady increase in foster care placements is troubling on a different level, because most children are deeply traumatized when they are separated from their families. Studies show that even when families become dangerous or unhealthy, the child often experiences separation from a primary caregiver as a threat to survival. The trauma a child experiences when caught up in the child welfare system can be significant, because while child welfare systems strive to provide safety and stability, they often fall short of that goal.³⁴ Experts who have studied traumatized children find that those who become well-adjusted adults have constant, caring adults in their lives.³⁵ Yet, too many foster children leave the system with no one to lean on for support and guidance, no place to go for the holidays.³⁶

The current system is creating a disenfranchised group that some call “The Lonely Ones.”³⁷ The system of broken promises has created a group of grieving, lonely children turned loose on their eighteenth birthdays with no support network and no clue of how to build a future.³⁸

IV. Growing Trend Toward Connectedness

A solution to this problem exists and can be found in a recent trend toward “family connectedness.” Studies show that family connections endure regardless of legal actions.³⁹ Increasingly, building on family strengths and making optimal use of positive connections is becoming an important part of permanency planning.⁴⁰

The Adoption & Safe Families Act reflects the widely held belief that

32. Wulczyn, *supra* note 5, at 95.

33. Campbell, *supra* note 2.

34. *Id.*

35. Campbell, *supra* note 2. See also Judge Leonard Edwards, *Too Many Kids in Foster Care, California Can Do Better*, SAN JOSE MERCURY NEWS (Aug. 1, 2005).

36. *Id.*

37. Campbell, *supra* note 2.

38. *Id.*

39. *Connectedness Mapping*, EQM Children & Family Serv., <http://www.emq.org/connect-edness.html> (accessed Sept. 24, 2005).

40. *Id.*

relative care situations are positive for youth.⁴¹ The Act provides financial incentives for adoptions, and directs states to move children through the system quickly into a permanent family setting.⁴² The recommendations specifically list placement with a “fit and willing” relative as one of the permanency options. Relative placement is an exception to the requirement to file a termination of parental rights action when the youth has been in foster care for fifteen of the most recent twenty-two months. States must give preference to a relative when they meet all the safety standards.⁴³

Benefits of relative care and/or ongoing family connectedness include:

- Connecting with a person the child knows and trusts.
- Creating a network of connected, caring support from family even if the child cannot be reunited with biological parents.
- Reinforcing the child’s personal and cultural identity.
- Encouraging families to cultivate and rely on own resources/strengths.
- Achieving the child welfare system’s permanency goal: to protect child and strengthen families.⁴⁴

A number of states, particularly Washington and California, have researched alternatives to nonrelative and congregate care placements and are reporting dramatic benefits to relative-oriented placement options.⁴⁵ For example, Washington enacted kinship care statutes in 2003 that require social workers, courts, and all professionals involved in a foster child’s life to make extensive efforts to identify and locate family members at every stage of the case planning.⁴⁶ Since enactment of the state statutes, relative placement of foster youths has increased from 19% to 37%.⁴⁷

A. Family-Finding Delivering Profound Results

One strategy employed by the states is called “family finding”⁴⁸ which

41. 42 U.S.C. § 675(1)(E) (1997).

42. ADOPTION AND SAFE FAMILIES ACT of 1997, *supra* note 26.

43. EQM Children & Family Serv., *supra* note 39. *See also* ASFA, Pub. L. 106-314(2)(4).

44. Campbell, *supra* note 2.

45. *Id.* *See Group Home StepUp Project: Moving Up & Out of Congregate Care Final Rpt.*, Alameda County Children & Family Servs. (August 2005); *Creating Fam. Connections, 3-Mth. Follow-Up Rpt.*, Orange County Children and Fam. Servs. (September 2005). Ty Phillips, *Project Finds Safety Net for Foster Kids*, SACRAMENTO BEE (May 8, 2005).

46. WASH. REV. CODE ANN. § 74.13.600 (West 2005).

47. Campbell, *supra* note 2.

48. *Id.*

entails a mixture of legislation and technology, such as inexpensive database searches of public records, which identify and engage immediate and extended family members.⁴⁹ The information gleaned from the search can be used in a variety of permanency planning options, from permanent placement to personal and telephone visitation. In some cases, even the slightest shred of information connecting a child to a family has proven positive.⁵⁰ The leaders of these projects report dramatic psychological benefits to the child and significant cost savings over time.⁵¹

In Pierce County, Washington, the first family-finding program was piloted by Catholic Community Services in 2002. The target was youth living in foster or congregate care or at imminent risk of psychiatric hospitalization. The goal was not to find permanent placements, but rather to search for information that could help establish and maximize possible family connections.⁵²

Initially, program leaders looked at the framework and technologies necessary to overcome system barriers in the child welfare that block the ability for children and adolescents in out-of-home placement from maintaining or re-establishing contact and relationships with their family members.⁵³ They also looked at family reunification frameworks from the International Red Cross project reuniting families in Rwanda after the genocide, The Church of Jesus Christ of Latter Day Saints program that traces families, the efforts of the Red Cross to reunite families after Hurricane Katrina, and the basic structure of the American family.⁵⁴

According to the leaders of this pilot program, the lessons from these historic models included:

- 1) Government interventions are temporary, limited in scope and not intended to supplant the individual or family's ability to care for them.
- 2) It is possible to respond to the immediate crisis while preserving and expanding information and connections that enable restoration of self-sufficiency.
- 3) Barriers of time and distance can be overcome with a flexible scaleable organizational design to support family reunification.

49. *Id.* (indicating that the cost of a U.S. Search is \$25 per search and the average staff time required for each family search and the subsequent screening process is forty hours).

50. *Id.*

51. Phillips, *supra* note 45; Campbell, *supra* note 2. See Kevin A. Campbell *et al.*, *Lighting the Fire of Urgency*, Catholic Community Servs. of W. Wash. <http://www.ccsww.org/preservation/article5.php>.

52. Campbell, *supra* note 51.

53. *Id.*

54. *Id.*

The end result was strong bias for family finding, a means of leveraging technology to search out and engage family members in the life of an out-of-home placed child.⁵⁵

The initial Washington family finding project, which focused on a sample of 120 children,⁵⁶ required thirty-nine staff hours for the average completed search but ranged from one hour to 400 hours. Of the initial search effort, 91% of the searches were completed within Washington State. Search efforts have been expanded. Of the first 1000 searches for family members conducted since this program began, the organization was unable to locate the parent(s) and relatives for only one child. As a follow-up to this initial pilot project, Washington legislation was enacted in 2003 designed to foster kinship placements stateside. Since this project began, the number of children in relative placement, as opposed to foster care, has nearly doubled.⁵⁷

B. Success in Human Capital

The family-finding approach has spread across California.⁵⁸ One such project was undertaken by the Alameda County Children & Family Services with assistance from Casey Family Programs and California Permanency for Youth Project.⁵⁹

In 2005, over 400 Alameda County foster youth resided in congregate care, representing 12%–15% of the total foster care population.⁶⁰ Many of these youths had spent their entire adolescent years residing in multiple group home settings with no hope of family reunification. The majority had lost family, peer, and school connections, and they were likely to emancipate from the system without any permanent, life-long connection.⁶¹

Most importantly, the adult outcomes for this population were among the worst in the system. For example, foster youths experienced higher incidents of placement disruptions, AWOL time, and school absences. Stays in psychiatric hospitals and juvenile detention were greater in num-

55. *Id.* See also Barbara Boisvert et al., *Who Am I? Why Family Really Matters*. Catholic Community Servs. of W. Wash. <http://www.ccsww.org/preservation/article6.php> (accessed Oct. 5, 2005); *FAST Program Provides Connections for Youth and Families*, Catholic Community Servs. of W. Wash., <http://www.ccsww.org/preservation/article4.php> (accessed Oct. 5, 2005).

56. Campbell, *supra* note 2.

57. *Id.*

58. *Family Finding*, EMQ Children & Family Services, http://www.emq.org/about/services/family_finding.html. (accessed Oct. 29, 2005).

59. *Group Home StepUp Project: Moving Up & Out of Congregate Care Final Report*, Alameda County Children & Family Services (August 2005).

60. *Id.* at 3.

61. *Id.* at 6.

ber.⁶² Post-emancipation outcomes were dismal. There was a higher percentage of adult criminal incarceration, homelessness, and low high-school graduation or GED passage.⁶³

Alameda County's StepUp Project had the goal of changing outcomes for this population of youth through family finding.⁶⁴ After six months, nineteen of the seventy youths assigned to the project had been transferred from group home placements to family placements. Numerous fathers, who were listed in court documents as "whereabouts unknown," were discovered.⁶⁵ Seventeen of the seventy children were slated for family placement in the subsequent one to three months. Twelve youths intentionally remained in congregate care, progressing in treatment, but in large part now supported by the (re)connected family.⁶⁶

According to the project leaders, a surprisingly high number of youth were connected with family previously unknown to the youth and were reconnected with family members estranged after many years in the system. Overall, the youths achieved higher success than anticipated, primarily due to placement with parents, relatives, and fictive kin. They also reported that many negative behaviors subsided when reconnected to the family.⁶⁷

The StepUp program leaders reported real and permanent change in 47% of the focus population's lives directly attributable to the six-month pilot project. For example, a lesbian adolescent, inveterately running away from placements and more than a casual drug user and truant, found a new relationship with her biological father, whose whereabouts had been unknown for years. The security and hope that came with the connection enabled her to get back into school and stop her "cutting" behaviors. They reported that since this reconnection this young woman has shown signs of hope and a sense of future for the first time.⁶⁸ Another example is a sixteen-year-old youth whose placement history showed movement to more restrictive residential treatment programs under heavy psychotropic medications. This child was placed closer to an adult sister to facilitate family contact. Within weeks, relatives came forward to be part of his life. An uncle who had provided respite care for the child as a toddler proved to be a strong connection. Today this youth has been placed with the uncle, his wife, and three cousins with positive results. For example, his need for medication to control angry behaviors and emo-

62. *Id.* at 7.

63. *Id.*

64. *Id.* at 28.

65. *Id.* at 29.

66. *Id.*

67. *Group Home*, *supra* note 59, at 30.

68. *Id.* at 8.

tional reactions has all but disappeared, and he is no longer headed towards the highest level of residential treatment facility.⁶⁹

The StepUp program directors also concluded that the projected long-term savings far outweigh the short-term costs of the project.⁷⁰ The county projects savings over a five-year period directly attributable to this program to be approximately \$6.672 million with respective savings of \$3.42 million and \$3.25 million associated with current placements and anticipated placements.⁷¹ These projections are based on thirty-six youth who had a change of placement in the StepUp program as of July 2005. This figure assumes a lower per monthly cost for relative/fictive kin care than non-family foster family or group home care.⁷²

In 2005, California legislators drafted a law that would have mandated that each county child-welfare agency conduct family-finding searches at every juncture of permanency case planning but the governor vetoed it on the premise that the bill presented an unfunded mandate prohibited by current state spending policies.⁷³ In spite of this setback, the family finding movement appears to be self-driven across the state. Nine counties had initiated family-finding pilots, another twelve pilots are in the planning or execution phase.⁷⁴

For example, Orange County, California, recently completed the first phase of a family-finding project and reported results similar to Alameda County.⁷⁵ Orange County Children and Family Services joined in partnership with Canyon Acres Children's Services to seek out any existing family members for youth who were previously thought to have little or no caring adults in their lives. The pilot leaders reported that possible family connections were identified for 92%, and new family connections were achieved for 70% of the youths. Of the youth for which connections were made, 62% experienced a positive difference in functioning ability, and 63% had transitioned to a lower level of care or family as a result of the project.⁷⁶

V. Focus on Kinship Care

Kinship care offers another approach to family connectedness. This

69. *Id.*

70. *Id.* at 30.

71. *Group Home, supra* note 59.

72. *Id.*

73. Calif. Assembly Bill 880, 2004 Leg. Reg. Sess. (Feb. 18, 2005).

74. Campbell, *supra* note 2.

75. *Creating Family Connections, 3-Month Follow-Up Report*, Orange County Children and Family Services (Sept., 2005).

76. *Id.* at 1.

option places the child in a home where one of the responsible caretakers is related by blood, marriage, or adoption, including siblings, grandparents, uncles, aunts, nieces, nephews, first cousins, current or former spouses of any of these people or stepparents.⁷⁷ Permanency in a relative home encompasses a variety of living arrangements, including licensed foster care, unlicensed or informal care, custody arrangements in lieu of foster care, legal guardianships (subsidized and unsubsidized) and adoption.⁷⁸

Over the past decade, kinship placement has grown in popularity and has proven beneficial to foster children. The Pew Commission report on foster care proposes shifting federal policy away from foster homes as the sole solution and encourages innovative alternatives, such as placing children with subsidized legal guardians, such as relatives.⁷⁹

According to the 2000 Census, six million children live with relatives, a 30% increase between 1990 and 2000.⁸⁰ The U.S. Children's Bureau cites several trends for this increase, specifically the number of non-kin foster parents has lagged behind the need, and courts have placed a higher value on the rights of relatives to act as foster parents.⁸¹ This kinship care provides an opportunity to keep families together through a time of crisis and allows the child to thrive and continue to grow up in a family environment, absorbed by the cultural values and affection that the family provides.⁸²

A. Kinship Caregivers Need a Lifeline

Although growing in popularity and benefit, kinship care has been hampered by systemic prejudice against family placements, stringent licensing restrictions, lack of financial subsidy for kinship placements, and budget constraints hampering search efforts.⁸³ The last census survey revealed that of the more than six million children in kinship care, approximately 4.5 million are living with aging grandparents.⁸⁴ The 2000 Census

77. Bilchik, *supra* note 4, at 1.

78. Shay Bilchik, *CWLA Comments to HHHS Regarding Proposed Rule Changes for Administrative Costs to IV-E Foster Care and Adoption Assistance*, Child Welfare League of America, (April 1, 2005). <http://www.cwla.org/newsevents/kinshipcare050118.htm> (accessed Sept. 24, 2005).

79. *Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care*, The Pew Commission on Children in Foster Care, May 18, 2004.

80. U.S. Census Bureau, Census 2000 summary file 1: Table P28, relationship by household type for population under 18 years, <http://www.census.gov/main/www/cen2000.html>.

81. *Kinship Care & Guardianship Assistance*, Child Welfare League of America, 2006 Legislative Hot Topics, <http://www.cwla.org/advocacy/2006legpriorities02.htm> (accessed Sept. 24, 2005).

82. Bilchik, *supra* note 4, at n.104.

83. *Id.*

84. U.S. Census Bureau, *supra* note 80.

reported that 27% of children living in grandparent-maintained homes live below the poverty level, compared to 19% in households maintained by parents.⁸⁵

These families are in need of assistance with most basic needs, such as day care, support groups, physical and mental health services, educational services, and legal assistance. Their requests for support are basic, such as how do I enroll the child in school, how do I access health care, or where can I find basic referral services.⁸⁶

According to Shay Bilchik, president/CEO of the Child Welfare League of America, "For many children, it [kinship care] is also a lifeline to a safe and productive future. It is, therefore, the type of care that we must nurture and promote in every possible way . . . these families are a vital support for millions of children and are a key to ensuring the safety and permanency, as well as the nurturing and well-being, of these kids."⁸⁷

The Adoption and Safe Families Act⁸⁸ in 1997, listed relative placement as a permanency option, but failed to make any funds available on a continuing basis to find these placements.⁸⁹ While Title IV-E of the Social Security Act provides federal funding to support some foster care and adoptive placements, kinship care placements are prohibited from tapping this source of funding except through a limited waiver process for kinship guardian placements.⁹⁰ The Children's Defense Fund indicates that thirty-four states and the District of Columbia have some form of subsidized guardianship program, but they use a patchwork of unstable funding sources.⁹¹ The Pew Commission on Children in Foster Care and the Fostering Results Project have recommended expansion of this federal support for kinship families.⁹²

B. Kinship Caregivers Support Act

In May 2005, Sen. Hillary Rodham Clinton and six co-sponsors introduced S. Res. 985, the Kinship Caregivers Support Act,⁹³ and Representative Danny Davis also introduced H.R. 3380, the Guardian

85. *Id.*

86. Bilchik, *supra* note 4, at n.104.

87. *Id.*

88. Adoption and Safe Families Act of 1997, 42 U.S.C § 670 (2)-(3) (1997).

89. Child Welfare League of America, *supra* note 78.

90. Bilchik, *supra* note 78, at 2.

91. *Id.* at 2. See also Mary Bissell, Jennifer L. Miller, *Subsidized Guardianships to Improve Outcomes for Children*, 9 Children's Defense Fund, <http://www.childrensdefense.org> (accessed Oct. 13, 2005).

92. Pew Commn. on Children in Foster Care, *supra* note 10.

93. S. RES. 985, 111th Cong., (May 10, 2005).

Assistant Promotion and Kinship Support Act.⁹⁴ Both bills are designed to assist relative caregivers where the parents are not able to care for the child, but both have been referred to committees with little activity since 2005.⁹⁵

Provisions of both bills include:

For the first time, states will be allowed to use federal Title IV-E foster care funds to provide subsidized guardianship assistance payments to relative caregivers, if the placement is the best permanency option for the child.⁹⁶

Financial support will be available to states and large metropolitan areas to establish kinship navigator programs, which would link relative caregivers, both inside and outside the formal child welfare system, to a broad range of services/supports. These services may include respite care programs, special services for incarcerated parents, education advocacy, family support, mental health services, substance abuse treatment, child support, housing assistance, child care, legal assistance, as well as a range of federal benefits, such as Medicaid, Temporary Aid for Families, and others.⁹⁷

States will be required to give notice to all adult grandparents and other relatives when children enter foster care, within sixty days of removal from the parents.⁹⁸

States may establish separate licensing standards for relative foster parents and nonrelative foster parents, provided both standards protect children and include criminal record checks.⁹⁹

In February 2006, the U.S. House of Representatives passed a budget reconciliation bill, which cut \$577 million in Title IV-E Foster Care assistance for abused and neglected children, particularly those living with grandparents and other relatives.¹⁰⁰ This 2006 budget reconciliation bill repealed a 2003 judicial decision handed down by the Ninth Circuit Court of Appeals,¹⁰¹ which extended Title IV-E foster care support to some abused and neglected children who live with grandparents or other rela-

94. Child Welfare League of America, *supra* note 78.

95. *Id.*

96. *Id.* S. Res. 985, 111th Cong., *supra* note 93.

97. *Id.*

98. *Id.*

99. *Id.*

100. Shay Bilchik, *Child Welfare League of America Denounces House Budget Reconciliation Bill*, Child Welfare League of America (Nov. 18, 2005), <http://www.cwla.org/newssevents/news051118budget.htm>.

101. *See* State of Cal. Dept. of Social Services v. Thompson, 321 F.3d 835, 845(1). The court held that Health and Human Services (HHS) unreasonably interpreted the Aid to Families with Dependent Children Foster Care Program (AFDC-FC) to preclude AFDC-FC payments to children who were AFDC-eligible in any relative's home at time petition removing them from

tives.¹⁰² In addition, President George Bush's budget for 2007 proposed funding cuts for the funds that states have used to support kinship and guardianship placements.¹⁰³

Removing financial support from relative caregivers jeopardizes their ability to care for children who cannot safely live with their parents.¹⁰⁴ The child welfare community swiftly denounced this fiscal action.¹⁰⁵ Ruth Massinga, president and CEO of Casey Family Programs, the nation's largest foundation focused on foster care, released the following statement:

It's shocking to think that Congress would attempt to cut foster care benefits to hundreds of thousands of abused and neglected children who are being cared for by relatives—what we call kinship care. Most of these families are already struggling to make ends meet. If we deny them federal financial support, these children are likely to end up being placed with strangers in the foster care system. It's contrary to our stated policy objectives to preserve families, and it is contrary to the safety and well being of these children. Moreover, it would increase the burden on a system that is already struggling to find suitable foster families.¹⁰⁶

While the fate of the proposed Kinship Caregivers Support Act is uncertain at this time, the weight of supporters and their veracity in forcing a discussion of kinship care at the national level is encouraging.

VI. Basic Human Right

The success of family-finding and kinship care projects, such as the ones in Western Washington and several counties in California, shatter the myth that the only alternative for the hard-to-adopt child is recruitment of nonrelative foster parents or congregate care¹⁰⁷ facilities.¹⁰⁸ The results from reconnecting families are dramatic both in terms of improved outcomes for at-risk youth but also in significant cost savings to the state.

abusive or neglectful home. Further, the interpretation was not entitled to deference; because the interpretation was inconsistent with statutory language as construed in light of precedent established by Supreme Court, it had no support in statute's legislative history, and it undermined statutory protections for foster children that Congress intended.

102. *Id.*

103. Bilchik, *supra* note 100.

104. Child Welfare League of America, *supra* note 78.

105. Bilchik, *supra* note 100.

106. *Casey Family Program Releases Statement on Proposed Cuts to Child Welfare Systems*, Casey Family Programs (Oct. 27, 2005), available at <http://www.casey.org/MediaCenter/PressReleasesAndAnnouncements/MedicaidCutsStatement.htm>.

107. *Congregate care* defines a placement of the child in a group living facility, such as a group home, orphanage, or residential treatment facility, which combines therapeutic services and education. *Family finding*, *supra* note 3.

108. *Id.* See Campbell, *supra* note 34, at n.94, n.98.

The right to family should be viewed as a child's basic human right, not just a trend toward best practices among child welfare circles. The juvenile dependency courts should refocus efforts on family connectedness by imposing a presumption of family preference in placement decisions. As a matter of public policy, state legislators should move beyond the cost-benefit analysis nature of pending legislation to mandates requiring the child welfare system to search out family connections at every phase of permanency planning. Congress should recognize that our children are best served by fostering and supporting family connectedness and implement fully funded federal assistance programs that support kinship caregivers.

Investing in the search for family and cultivating working relationships with these families is a short-term investment that has huge paybacks in terms of more successful, positive outcomes for children and economic benefit to the taxpayers.