Protecting the Ties that Bind: Kinship Relative Care in Florida

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I. BACKGROUND

In the past two years a proliferation of grandparent support groups, loosely called the "Grandparents Raising Grandchildren Coalition,"1 has sprung up across Florida. They receive support from national organizations such as the AARP Grandparent Information Center in Washington, D.C. and the Grandparent Caregiver Law Center in New York City. Their mission is fueled by a common plight, i.e., the unexpected and often burdensome responsibility of raising yet another generation of children.2 Theirs is a common agenda: the desire to do more for these grandchildren so that they will escape the dangers of drug abuse, teenage pregnancy, HIV/AIDS, and

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Acknowledgment is made of the financial support of the Joseph P. and Florence A. Roblee Foundation and the Florida Bar Foundation and of the research assistance of Temple Fett, Michael Cosculuella, and Joel Comerford.


criminal involvement that beset the children’s parents. Estimates are that nearly four million children nationally, 231,000 in Florida, live with their grandparents. High poverty rates, a retirement population, and ethnic cultural values that put a premium on keeping children with kin make Florida a hot spot for the “grandparents raising grandchildren” phenomenon. Forty-four percent of these relative caretakers are raising children due to parental drug abuse, twenty-eight percent due to child abuse or abandonment, and twenty-eight percent due to teen pregnancy. Many live on fixed incomes and suffer extreme financial hardship in meeting the needs of these children. Some are at the brink of relinquishing them to state custody.

Among these grandparents is Eartha Walker of Miami, who is raising a family of fourteen children (down from sixteen a year ago) from three sets of families. Two of the children are Ms. Walker’s great-grandchildren, the children of her incarcerated granddaughter. Four are the children of her deceased daughter, the victim of a drug deal gone bad. One of the grandchildren has emotional problems and has attempted suicide four times. Another is mentally handicapped. “Walker raises them on a combination of Social Security, WAGES benefits, and food stamps — not enough to make ends meet. She gets subsidized child care, but transportation to and from the childcare center costs [her] $120 a month.” The $800 she spends each month on groceries is $230 more than her monthly food stamp allotment. Ms. Walker says she used to go out into the fields to

6. Id.
8. Zawisza, supra note 5, at 9A.
9. Id.
10. Id.
11. Id.
12. Id.
13. Zawisza, supra note 5, at 9A.
14. Id.
15. Id.
16. Id.
pick vegetables, but her health will no longer allow her to do so.17 She must rely on food pantries and free food distribution centers to feed her family.18 She negotiates extended payment plans for her telephone and electric bills, and yet somehow she copes.19

The unexpected and rapid growth of the population of relative care givers, exemplified by Ms. Walker, has created a huge new client base of heads of households needing expert legal advice and assistance in order to maneuver a myriad of legal custodial options, sources of financial assistance, and eligibility for support services.20 Yet because this population group has crept up on the Florida Legislature, straight paths to each family’s receipt of assistance are elusive. Florida has a hodge podge of legal provisions favoring grandparents and other relatives. Most recent of these is the 1998 legislation, which created a funded Relative Caregiver Program for children temporarily placed with relatives through the juvenile courts.21 But Florida lacks a cohesive and continuous framework of laws related to relative care givers and a consistent set of principles guiding policy.

This article will discuss the child welfare framework in which the “Granny as Nanny” phenomenon has arisen, both through social policy and the law. The goals of protection, family preservation and support, and permanence guiding these policies will be emphasized. Next, this article will explore beneficial ways in which other state laws have responded to assist relative care givers. Finally, it will analyze Florida law and suggest needed improvements to provide the necessary consistent framework.

II. THE PLACE OF KINSHIP CARE IN CHILD WELFARE POLICY

Kinship care is defined as “[a]ny form of residential caregiving provided to children by kin, whether full-time or part-time, temporary or permanent, and whether initiated by private family agreement or under the custodial supervision of a state child welfare agency.”22 “Relatives have no legal obligation to become children’s care-givers,” but choose to do so either voluntarily or at the request of the state child welfare agency or juvenile court.23 A 1998 Florida study revealed that approximately 8126 children under the protective supervision of Florida’s child welfare agency, the

17. Id.
18. Zawisza, supra note 5, at 9A.
19. Id.
20. Hanson & Opsahl, supra note 3, at 486–501.
23. Berrick, supra note 2, at 73.
Department of Children and Families, were living with a relative. Unknown numbers live with relatives under informal arrangements.

In the past ten years, child welfare systems have increasingly come to depend on the placement of dependent children with relatives because of the inability of the public systems to absorb the numbers of children needing care outside the home of their birth parents. This toll on the child welfare system comes both from a shrinking supply of foster homes and an escalating demand for out-of-home care. Factors such as the growth of single parent households, the number of women employed outside the home, increasing divorce rates, and the rising costs of child rearing, contribute to the decline of available foster homes. At the same time, the entrance of more infants and young children into the foster care system, due to factors such as crack cocaine and other substance abuse, HIV/AIDS, homicide related to domestic violence, incarceration of one or both parents, or mental illness has swollen its ranks.

The child welfare system has three major goals: protection for children, family preservation and support, and assuring permanent homes for children. Kinship care is being used around the country as a means to achieve each of these goals, with varying degrees of success.

The primary goal of the child welfare system is to “protect children from harm at the hands of their parents or other caregivers.” This goal allows a state to intervene in family life and remove children from their homes despite the parents’ right to family integrity. For years, child welfare workers and judges have been ambivalent about achieving the goal of child protection by placing children with relatives. They believed that these relatives would simply perpetuate the maltreatment that the parent

25. In Florida, dependent children are defined as those who have been found by the court to be abused, abandoned, or neglected. Fla. Stat. § 39.01(11)(a) (1997).
27. Berrick, supra note 2, at 74.
28. Id.
30. Berrick, supra note 2, at 73.
31. Id. at 73. See Mark E. Courtney, Kinship Foster Care and Children’s Welfare: The California Experience (unpublished manuscript, on file with the Nova Law Review); see also Marla Gottlieb Zwas, Note, Kinship Foster Care: A Relatively Permanent Solution, 20 Fordham Urb. L.J. 343 (1993).
32. Berrick, supra note 2, at 77.
Zawisza grew up with, fostering a cycle of dependency.\textsuperscript{34} This thinking, however, has been replaced in recent years by a recognition that these extended families are a way to “protect the ties that bind.”\textsuperscript{35} An increased focus on family strengths rather than deficits through improved, family centered, community based service technology that has demonstrated results is largely responsible for this shift in attitude.\textsuperscript{36}

Recent research studies have demonstrated that relatives typically do provide safe and nurturing environments for children equal to those provided by licensed, non-kin foster homes.\textsuperscript{37} Relatives, however, need supports, resources, and training to be able to successfully care for these children.\textsuperscript{38} The emotional rewards experienced by relatives caring for children are “accompanied by personal sacrifice, concern about safety of the neighborhoods,” and “competing demands of other family members.”\textsuperscript{39} They need services such as child care, respite care, parenting programs, financial assistance, legal counseling, job counseling, drug addiction education, and health care.\textsuperscript{40} Most relatives find the availability of such services to be inadequate.\textsuperscript{41}

The second goal of the child welfare system, family preservation and support, also appears to be enhanced through relative care giving. Historically, both in this country and around the world, extended families have served as a resource during times of family distress.\textsuperscript{42} This has been particularly true in the African-American, Hispanic, and Haitian communities which are so heavily represented in Florida.\textsuperscript{43} Kinship foster care “provides continuity, lessens the trauma of [family] separation, preserves family ties, and offers growth and development within the context of a child’s culture and community.”\textsuperscript{44} Again, however, improvement is needed in the types of services and supports that help make kinship care a positive experience for the child, the care giver, and the other family members.\textsuperscript{45}

\begin{thebibliography}{9}
\bibitem{34} Berrick, \textit{supra} note 2, at 77.
\bibitem{35} \textit{Id.} at 80.
\bibitem{36} \textit{Id.}
\bibitem{37} \textit{Id.} at 79–80.
\bibitem{38} \textit{Id.}
\bibitem{39} Yorker, \textit{supra} note 29, at 15, 17.
\bibitem{40} \textit{Id.}
\bibitem{41} \textit{Id.}
\bibitem{42} See \textit{id.}
\bibitem{43} Barry, \textit{supra} note 7, at 1A.
\bibitem{44} Charlene Ingram, \textit{Kinship Care: From Last Resort to First Choice}, 75 \textit{Child Welfare} 550, 552 (1996).
\end{thebibliography}
The third goal of the child welfare system is permanence for the child. Movement from placement to placement is unsettling to children. Multiple placements are associated with disruptive behavior in children and with poor life outcomes. Research has shown that children in kinship care have more stable placements and are reunited with their natural families just as frequently as children placed in regular foster care. But while children’s personal relationships with relative care givers are fairly secure, their legal relationships are not. They are more likely to grow up in informal custody relationships or temporary custody than in legal guardian or adoptive relationships, the preferred permanency options. This is due primarily to public policy decisions, federal and state, which encourage financial assistance in temporary situations but not in more permanent arrangements. The tension between a child welfare policy that favors permanency, and a fiscal policy that favors short-term, low level support, creates the greatest ambivalence in kinship care policy to date.

III. THE EFFECT OF FEDERAL SUBSTANTIVE LAW IN PROMOTING KINSHIP RELATIVE CARE

The child welfare system goals of protection for children, family preservation and support, and permanence have been fostered by federal legislation. The first federal law to endorse the family preservation and support goal of the child welfare system was the 1978 Indian Child Welfare Act, which requires that Native American children be placed in the least restrictive setting within reasonable proximity to their homes, taking into account their special needs. This law also mandates that preference be given to extended family members when securing a placement for a Native American child in foster care or a preadoption. The Indian Child Welfare Act is limited to a specific population of children. The Adoption Assistance and Child Welfare Act of 1980 (“AACWA”), the federal blueprint for today’s child welfare system,

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46. Berrick, supra note 2, at 72, 81.
47. Id.
48. Id. at 82.
49. Id. at 81–84.
50. Id.; see Courtney, supra note 31, at 46.
52. Id. § 1915(b).
53. Id.
applies to all children and supplies the details for implementing the goals of protection, family preservation and support, and permanence. Under the AACWA, the protection goal is to be achieved by creating, in each state, a continuum of child welfare and foster care services and by requiring case plans and case reviews for all dependent children. Permanence is to be achieved by requiring case reviews by a judge or administrative body to take place no less frequently than once every six months. These mechanisms are used to determine the continued necessity for, and appropriateness of, out-of-home placement and the extent to which circumstances requiring out-of-home care are alleviated. The law also requires dispositional hearings no later than eighteen months after placement, and provides funds for adoption assistance.

The family preservation and support goal is to be achieved through the case plan and case review procedures cited above which provide services to families to correct their identified deficiencies. It is also achieved by requiring that children removed from birth families be "placed in the least restrictive[,] most family like... setting available in close proximity to the parents' home, consistent with the best interests and special needs of the child." The original AACWA does not specifically mention kinship relative placements in carrying out these goals.

It has been argued that the AACWA's emphasis on providing substantial federal dollars for foster care maintenance through Title IV-E of the Act served as a disincentive to preserve and support families. In 1993 the Act was amended to intensify the family preservation and support goal. Congress appropriated one billion dollars to states through a grant program to encourage the development of family centered, community based services to support and preserve families. These services include: 1) programs designed to return children to their natural families or to be placed for adoption; 2) preplacement preventative services such as intensive

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56. Id. §§ 625, 671-72, 675.
57. Id. § 675(5).
58. Id.
59. Id.
60. 42 U.S.C. § 673.
61. Id. § 675(5)(a).
64. Id.
family preservation; 3) follow up care to a family to whom a child has been returned; 4) respite care to provide temporary relief for care givers; 5) services designed to improve parenting skills; and 6) community based services to promote child well being. There is no restriction on the availability of these services to relative care givers.

In 1996, the United States Congress for the first time made explicit a recognition that kinship care serves both permanence and family preservation and support goals. To be eligible for federal Title IV-E foster care maintenance funds, Congress ordered states to consider giving preference to an adult relative over a nonrelative care giver. Still assuring the child protection goal, the 1996 amendment requires the relative to meet all relevant state child protection standards.

The AACWA was again amended in 1997 through the Adoption and Safe Families Act to strengthen the goals of protection, family preservation and support, and permanence. Now, in order to implement the protection goal, the child’s health and safety is to take precedence over family reunification. But the family preservation and support program is extended with additional appropriations for five more years. Permanence is to be achieved by requiring a dispositional hearing within twelve months rather than the previous eighteen, by prescribing certain conditions under which termination of parental rights petitions must be filed, and by creating additional adoption incentives. These incentives include payment of adoption expenses and monthly adoption subsidies. The 1997 amendments do not change the preference for relative placements, nor preclude relatives from taking advantage of the adoption incentives. On the other hand, no explicit financial incentives are provided to relatives to encourage them to assume the care of dependent children, contrary to the result were they to adopt.

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67. Id.
68. Id.
70. Id.
71. Id.
72. Id.
73. Id. §§ 671, 673.
74. Berrick, supra note 2, at 82. In certain ethnic communities, there is a cultural norm that does not favor adoption because it goes against the grain of “being there” for the extended family members. Id.
IV. THE EFFECT OF FEDERAL FISCAL LAW IN PROMOTING KINSHIP RELATIVE CARE

The two main sources of federal maintenance support for relatives caring for dependent children have been Aid to Families with Dependent Children ("AFDC") and foster care maintenance payments under Title IV-E. Prior to 1996, AFDC provided a monthly stipend to any relative home (within certain required degrees of consanguinity) in which a parent was absent or had abandoned the child. Both the care giver and the dependent child were considered members of the AFDC assistance unit and received financial assistance. The relative could alternatively apply for a maintenance payment through Title IV-E, which required foster care licensing.

Landmark welfare reform legislation enacted in 1996 changed the ability of the care giver to be included in the AFDC grant, ended any entitlement to services, and imposed a host of new hurdles to overcome. AFDC was replaced with Temporary Assistance to Needy Families ("TANF") under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). Time limits and work requirements were imposed upon any adult who wished to accept welfare assistance. The only alternative for relative care givers now is a "child-only" category of assistance, at a substantially reduced benefit level. This supports children in assistance units in which the care giver is ineligible for benefits or chooses not to request them. Under TANF, the only alternative for relative care givers now is a "child-only" category of assistance, at a substantially reduced benefit level. The child-only category supports children in assistance units in which the care giver is ineligible for benefits or chooses not to request them. Because many already poor care giver relatives are unable to partake of work requirements due to age, health, or the number of children in their care, their households have suffered a substantial loss of monthly income. The ill-fitting TANF requirements were

75. Other sources include Medicaid, which provides health insurance for very low income children, and Supplemental Security Income (SSI), which provides additional support for children who are disabled or medically impaired.
77. Id.
80. Id. § 601.
81. Id. § 615.
82. Id.
83. 42 U.S.C. §§ 607, 608 (1991) (stating that child only cases in Florida are limited to a maximum of $180 per month in assistance).
never designed for the vast cadre of impoverished grandparents caring for
another generation of children. Fiscal policy under TANF does not
consider the critical role relative care givers have assumed in caring for
children who would otherwise end up in foster care and thus discourages
relative care giving. Thus, fiscal policy under TANF conflicts with the
provisions of the AACWA.

Currently, the only other major source of financial assistance for
relative care givers is foster care maintenance payments under Title IV-E. Under PRWORA, the child’s eligibility for such assistance is based on 1996
AFDC eligibility rules: 1) the child was eligible for AFDC benefits before
placement into foster care; 2) a state or county agency has placement
responsibility for the child; and 3) the foster home meets state licensing
standards.

In 1979, the United States Supreme Court ruled in Miller v. Youakim that the State of Illinois could not exclude relative care givers from foster care maintenance stipends. The Court held that Congress never meant to
differentiate among neglected children based on their relationship to their
foster parents and noted that an exclusionary policy against relatives
conflicted with congressional intent to provide the best available care to
children. Some relatives have chosen to become licensed foster parents to
take advantage of Miller. Many others, however, have custody through
informal arrangements not involving the state child welfare agency. Many
cannot meet the stringent space requirements necessary for state licensing, or
are unable or unwilling to participate in intensive foster parent training not
designed to address issues pertaining to kin. Thus for them, foster parent
licensing, in order to obtain the financial assistance necessary to sustain
these children’s needs, is not a viable option.

Unlike AFDC, Title IV-E’s foster care maintenance program survived
1996 federal welfare reform intact as an uncapped federal entitlement. That occurrence provided states with incentives to shift expenditures for
relative custodians from AFDC to Title IV-E at a higher federal
reimbursement rate, particularly where states had created funded kinship
relative care giving programs. Not coincidentally, the 1996 amendments to
the AACWA requiring states to give preference to an adult relative over a

84. Mullen, supra note 4, at 511–12.
86. Id. § 608(a).
88. Id. at 146.
89. Id. at 138–39.
92. Id.
nonrelative when determining a placement for a child, were contained within the same congressional act, PRWORA. This enables an interpretation that Congress intended Title IV-E funds to be used to enforce the relative preference. Legal disincentives to making such a shift, however, include the requirement of foster care licensing, the need for child welfare agency oversight in each case, and state matching dollar mandates.

Some states, however, have found their way around these impediments through creative applications for federal waivers of regulatory requirements. In June of 1996, the Children's Bureau of the Administration for Children, Youth and Families in the Department of Health and Human Services, granted ten waivers to states to conduct demonstration projects to test out innovations in service delivery and financing strategies using Title IV-E dollars. Several states have used their waivers to support relative care givers. California, for example, subsidizes relatives who are willing to assume legal guardianship for children over thirteen who are in stable placements, and for whom reunification or adoption is not feasible. They receive payments up to the foster care basic payment rate. Delaware does the same, without an age requirement. Maryland serves this population without regard to age but limits benefits to $300 per month. Illinois provides payments ranging from $343 to $415 per month, regardless of age.

These innovative state projects are certainly laudable. However, the best means at the federal level to assure the goals of protection, family preservation and support, and permanence, while recognizing the vastly


94. Id. at 4-5. It has been estimated that Florida stands to gain an increase of $195 per month per child if this shift were made. The shift, however, requires the appropriation of general revenue matching dollars that are not already committed to match another federal program. Id. at 6. Title IV-E provides to Florida approximately 57% of foster care room and board costs, 50% for DCF staff and administrative costs, and 75% for training foster and adoptive parents. UNITED STATES HOUSE OF REPRESENTATIVES, COMMITTEE ON WAYS AND MEANS, OVERVIEW OF ENTITLEMENT PROGRAMS: GREEN BOOK, 454-55 (1996).

95. Lorrie L. Lutz, An Overview of the Title IV-E Waivers, 1 CHILDREN'S VANGUARD (Child Welfare League of America, Gettysburg, Pa.) Feb., 1998 at 1 (stating that the states are: California, Delaware, Illinois, Indiana, Maryland, Michigan, New York, North Carolina, Ohio, and Oregon).

96. Id.
97. Id. at 3-5.
98. Id. at 3.
99. Id.
100. Lutz, supra note 95, at 4.
101. Id.
changed composition of households in which dependent children are successfully being raised, is for Congress to enforce the relative placement preference with specific authorization to the states to use Title IV-E funds to establish relative care giver financial assistance programs. The prohibitive restrictions regarding foster care licensing and case specific child welfare agency oversight would also have to be eased to make this a viable option for relatives.

V. WAYS OTHER STATES SUPPORT KINSHIP RELATIVE CARE GIVERS

Supporting kinship relative care givers through the use of Title IV-E waivers is a relatively new policy development. Some states have operated kinship relative care giver programs by statute for years, most through qualifying relatives as licensed foster parents. In New York, prompted by litigation in *Eugene F. v. Gross*, 102 relative care givers receive the same financial assistance and services as foster parents, but children remain in the legal custody of the child welfare agency. 103 Foster care licensing requirements have been reduced for these care givers, and they do not need to meet the same physical space and size requirements pertaining to foster parents. 104 In addition, relatives can receive emergency approval within twenty-four hours to receive a child, thus avoiding the child's trauma of removal to the home of strangers. 105

In the wake of *Miller*, Illinois extended full foster care benefits to relative care givers regardless of their licensing status or Title IV-E eligibility in the early 1980's. 106 But in the early 1990's, faced by the largest increase in foster care caseloads in the country, Illinois sought to reduce its administrative costs for operating these programs. 107 By administrative rule, Illinois created a new permanency option called Delegated Relative Authority ("DRA") in 1995. 108 A child with DRA status continues in the legal custody of the child welfare agency and retains eligibility for medical care and foster care board payments, but casework services and administration are reduced to the minimum necessary to maintain Title IV-E eligibility. 109 Illinois also succeeded in encouraging twenty-one percent of

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103. *Zwas, supra note 31, at 357.*
104. *Id.*
105. *Id.*
107. *Id.*
109. *Id.* at 459.
its relative care givers to adopt the children in their custody through the subsidized adoption program.\textsuperscript{116} 

Dissatisfied that its relative care giver program did not yet sufficiently address the permanency goal of the child welfare system,\textsuperscript{111} Illinois further refined the program through its federal waiver application in 1996.\textsuperscript{112} It created a subsidized guardianship option which terminates state custody for children who have been in care for at least two years, have been in their current home for at least one year, and for whom adoption or reunification with parents within one year is unlikely.\textsuperscript{113} By statute, also in 1996, Illinois' child welfare agency was authorized to create an informational pamphlet for relative care givers to inform them about their legal options, benefits and services available, and the location of support groups and resources.\textsuperscript{114}

California, with the largest substitute care population of any state, has adopted legislation to promote greater permanency for children placed with relatives by establishing year long-term kinship care pilot projects in five counties.\textsuperscript{115} Children in these pilots receive the same monthly foster care board rate as other children, but their dependency cases in juvenile court are dismissed, and they are freed from ongoing court hearings and supervision by the child welfare agency.\textsuperscript{116}

Following the example of large states such as New York, Illinois, and California, other states have added funded kinship relative care programs to their arsenal of permanency options for foster children. In 1995, Arkansas created a funded kinship foster care program which provides the full foster care board rate to relatives who have successfully completed an investigation to ascertain criminal history and personal qualifications.\textsuperscript{117} Arkansas does not require relatives to meet foster care licensing requirements, but maintains the child in the custody of its child welfare agency.\textsuperscript{118} Oklahoma adopted identical statutory language in 1996.\textsuperscript{119} Nebraska, in contrast, bypassed state custody and passed legislation in 1997 which provided funds to guardians for maintenance costs, medical and surgical expenses, and other

\textsuperscript{110.} \textit{Id.} at 462.
\textsuperscript{111.} \textit{Id.} at 468.
\textsuperscript{113.} \textit{Id.}
\textsuperscript{114.} 20 ILL. COMP. STAT. 505/34.11 (West 1996).
\textsuperscript{115.} \textit{CAL. WELF. & INST. CODE} § 11465.5 (Deering 1994 & Supp. 1997).
\textsuperscript{116.} \textit{Id.}
\textsuperscript{117.} ARK. CODE ANN. § 9-28-501 (Michie 1998).
\textsuperscript{118.} \textit{Id.} § 9-28-503.
\textsuperscript{119.} OKLA. STAT. ANN. tit. 10, § 7004-1.5 (West 1996).
incidentals for any child who has been a ward of the state and for whom the guardianship would not be possible without financial aid.\textsuperscript{120}

Missouri created a "Grandparents as Foster Parents Program" in 1997 for grandparents who are fifty-five years of age or older, the legal guardian of a grandchild placed in the grandparent’s custody, and who participate in parent skills training, foster parent training, childhood immunizations, and other health screenings.\textsuperscript{121} Missouri grandparents must meet a needs test in order to receive reimbursement at the current foster care rate.\textsuperscript{122} Minnesota has established a somewhat limited program. It authorizes placement of a child in the permanent physical custody of the relative and provides a monthly relative custody assistance payment for relatives whose incomes do not exceed 200% of the poverty level, as long as the child is either a member of a sibling group placed together or has a physical, mental, emotional, or behavioral disability that requires financial support.\textsuperscript{123}

Wisconsin has taken a different approach to supporting kinship relative care givers, recognizing that relatives who raise children under informal arrangements are often just as needy of services and financial assistance as are relatives who raise children under child welfare agency supervision.\textsuperscript{124} In 1995, Wisconsin created a kinship care program that provides payments of $215 per month to relatives who apply through the child welfare agency, regardless of legal status.\textsuperscript{125} The agency is required to determine that: 1) there is a need for the child to be placed with the kinship care relative; 2) it is in the best interest of the child to be so placed; 3) the child meets dependency criteria or is at risk of meeting dependency criteria; and 4) the relative passes criminal background checks.\textsuperscript{126} Strikingly, the child need only be at risk of dependency, but does not have to be under any juvenile court scrutiny.\textsuperscript{127} The child welfare agency must review the child’s placement at least once a year to determine whether the above conditions still exist.\textsuperscript{128}

In 1997, Wisconsin enhanced its permanency options by creating the Long-Term Kinship Care Program,\textsuperscript{129} which reduced its administrative costs.\textsuperscript{130} For relatives who obtain legal guardianship of a child, payments of

\textsuperscript{122.} Id.
\textsuperscript{125.} Id. § 48.57(3m)(am).
\textsuperscript{126.} Id. § 48.57(3m)(am)1,2,4,4m.
\textsuperscript{127.} Id. § 48.57(3m)(am)2.
\textsuperscript{128.} Id. § 48.57(d).
\textsuperscript{129.} Wis. Stat. § 48.57(3n) (West 1998).
\textsuperscript{130.} Id.
$215 per month continue, but the child welfare agency is no longer required to conduct an annual review of the child's circumstances, other than to assure that the child is still living in the home, has not yet turned eighteen, the guardianship has not terminated, or similar factors.\footnote{131}

In addition to supporting relatives through financial assistance and concrete services, some states have provided special supports to encourage relatives in thinking through various legal options and connecting with community support services. Such efforts further reduce state expenditures on caseworkers, court time, supervision, financial disbursement, reporting functions, and overhead. Oregon operates Project Connect, which advises relatives about permanency options, assists in family decision making, provides ambivalence counseling to encourage guardianship or adoption, and expands support services for care givers.\footnote{132} The Pennsylvania Department of Public Welfare together with the Philadelphia Society for Services to Children operates the “Kids 'n' Kin” Program.\footnote{133} This program assists family members to access necessary services and entitlements and to make decisions about permanent custody or adoption through the provision of home-based social work intervention services, home-based family therapy, and legal advocacy and representation.\footnote{134} In 1997, the Philadelphia program diverted ninety-four percent of its clients from the foster care system, secured a permanent plan for eighty-eight percent of the children living with relative care givers, returned six percent of children to biological parents, and closed seventy-seven percent of the children's child welfare agency cases.\footnote{135}

The efforts of these states illustrate a growing national recognition that the phenomenon of children being raised by relatives is here to stay and that public policy must respond. Although there are advantages and disadvantages to the various state options chosen, all have in common a recognition that financial assistance and support services provided to relatives are essential to forestall greater numbers of children entering the foster care system. Some states now have sufficient experience to know that legal custody retained in the public agency thwarts the goal of permanence. These states secure greater permanence through creative encouragement of guardianships or adoptions, thus benefiting the child while also saving public dollars.

\footnote{131}{Id. § 48.57(5r)-(6).}
\footnote{132}{Oregon's State Office for Services to Children and Families, \textit{Kinship Care} (last modified May 1998) <http://www.scfhr.state.or.us/kinshipcare.htm>.
\footnote{134}{Id.
\footnote{135}{Id.}
VI. FLORIDA'S CHOICES TO SUPPORT KINSHIP RELATIVE CARE

Florida law supporting kinship relative care has developed piecemeal beginning in 1978, and does not exhibit a cohesive policy framework. Whether the legislature, prior to 1998, was cognizant of this new phenomenon of "grandparents raising grandchildren" or that kinship relative care giver placements meet the child welfare system's goals of child protection, family preservation and support, and permanence is not ascertainable through legislative intent language.

The first major effort to address kinship care giver custody occurred in 1993 when the legislature gave the circuit court general jurisdiction to award temporary legal custody to an extended family member. This statute applies only when the child's parents consent. If a relative wishes to claim that the parent is unfit, the case must be resolved in juvenile court. This statute recognizes that many children are well cared for by extended family members. But these relatives need a legal document that explains and defines their relationship to the child, to consent to care provided to the child by third parties, and to obtain the child's medical, educational, and other records. No financial support, however, is available to relatives who hold custody of a child under these provisions.

Apart from the above circuit court family law procedures, a more common venue for relative care givers to obtain custody of a child is through

136. The first prominent legislative effort to respond to the growing grandparent movement occurred in 1990 and addressed kinship care in the context of visitation rights. FLA. STAT. § 752.01 (Supp. 1990). It established the right of grandparents to petition for visitation of children when their parents were deceased, when the parents divorced, when the child was deserted by the parent, or when the child was born out of wedlock. Id. This statute was amended in 1993 to include situations where the natural parents are married to each other but have used their parental authority to prohibit a relationship between the child and the grandparents. FLA. STAT. § 752.01(1)(e) (1993).

137. JUNE M. MICKENS & DEBRA R. BAKER, ABA CENTER ON CHILDREN AND THE LAW, MAKING GOOD DECISIONS ABOUT KINSHIP CARE 2 (1997). The general hierarchy of permanency options recognized in the literature in order of least to most permanent are: 1) informal arrangements with no custodial provision; 2) informal arrangements with power of attorney; 3) informal arrangements with permission to consent to medical treatment; 4) court ordered emergency placement in the home of a relative under protective supervision; 5) court ordered temporary legal custody to a relative; 6) long-term relative custody; 7) legal guardianship; and 8) adoption. Id.

138. FLA. STAT. §§ 751.01(1)-(2) (1997).
139. Id. § 751.03(8).
140. Id. § 751.05(3).
141. Id. § 751.01(3).
142. Id. §§ 751.01(1)-(3).
Florida’s dependency statute, chapter 39 of the Florida Statutes. Since 1978, chapter 39 has expressed a preference for relative placements over nonrelatives and has authorized the juvenile judge to release a child to a responsible adult relative upon taking an alleged dependent child into custody. This forestalls the child’s placement in shelter care.

Chapter 39 further provides that after a child has been adjudicated dependent, the court can place the child in the home of a relative with or without the protective supervision of the Department of Children and Families. Protective supervision may be terminated by the court whenever the court determines the child’s placement is stable or that supervision is no longer needed. Alternatively, the juvenile judge may choose to place the child in the temporary legal custody of the relative. There are no legislative guidelines as to when the court should choose one disposition over another. Regardless of either status, the law requires that case plans be developed and services provided by the Department of Children and Families, and regular judicial reviews held to determine whether the child should be reunited with the natural parent or moved on to a more permanent legal option. These other options include adoption, long-term foster care, independent living, custody to a relative on a permanent basis with or without legal guardianship, or custody to a foster parent with or without legal guardianship.

Creating even greater confusion for relatives, the 1994 Florida Legislature established another permanency option for dependent children, long-term relative custody. This option applies when the child’s parents have failed to comply with a case plan and the court determines that neither reunification, termination of parental rights, or adoption are in the best interest of the child. It also provides that the court may relieve the Department of Children and Families from protective supervision if the court determines that the placement is stable and that such supervision is no longer needed. In that case the court must set forth the powers of the custodian, which ordinarily include the powers of the guardian of the person of the

144. Id.
145. Id. § 39.401(2)(a). However, the law does not provide guidelines as to when either of these dispositions should be used. See id.
146. Id. § 39.41(2)(a)3.
147. FLA. STAT. § 39.41(2)(a)3.
148. Id. § 39.41(2)(a)4.
149. Id. § 39.45(2).
150. Id.
151. FLA. STAT § 39.41(2)(a)5.a (Supp. 1994).
152. Id.
153. Id. § 39.41(2)(a)5.b.
minor unless otherwise specified.\textsuperscript{154} No financial supports accompany the status of long-term relative custodian, although the Department is instructed to provide services to ensure the long-term stability of the relationship.\textsuperscript{155}

In 1994, the legislature also materially strengthened this state’s focus on family preservation by requiring the child welfare agency to diligently search for relatives with whom the child might be placed.\textsuperscript{156} The court was instructed to affirmatively indicate in each disposition order why the child was not placed with a relative.\textsuperscript{157}

Totally apart from juvenile dependency and family court custody processes, however, the legislature in 1990 completely revamped Florida’s guardianship law and established proceedings for individuals, including relatives, to petition to establish guardianship of a minor.\textsuperscript{158} This legislation forced relatives who received custody of a child through juvenile dependency proceedings to file a separate petition for guardianship in yet another court, the probate court, at considerable legal costs and time delays.\textsuperscript{159}

In 1998, the legislature partially corrected this situation by authorizing the juvenile court to exercise general and equitable jurisdiction over guardianship proceedings pursuant to chapter 744 as well as over proceedings for temporary custody of minor children by extended family members under chapter 751.\textsuperscript{160} The relative, however, is still required to file a petition for guardianship and follow the requirements of these chapters.\textsuperscript{161} The legal guardian in Florida, unlike in other states, is not eligible for financial assistance.\textsuperscript{162}

Florida has long operated a subsidized adoption program, which makes financial aid available to potential adoptive families in which a child has: 1) established significant emotional ties with a foster parent; or 2) is not likely to be adopted because she or he is eight years of age or older, mentally retarded, physically or emotionally handicapped, or a member of a sibling group.\textsuperscript{163} This law, however, establishes that adoption without subsidy is the placement of choice.\textsuperscript{164} State regulations require a series of medical, mental

\textsuperscript{154} Id.
\textsuperscript{155} Id. § 39.41(2)(a)5.a.
\textsuperscript{156} FLA. STAT. § 39.41(4)(a) (Supp. 1994).
\textsuperscript{157} Id.
\textsuperscript{158} FLA. STAT. § 744.3021 (Supp. 1990).
\textsuperscript{159} Id.
\textsuperscript{160} FLA. STAT. § 39.013(3) (Supp. 1998) (defines, for the first time, legal guardianship in the context of juvenile dependency law).
\textsuperscript{161} Id. § 39.013.
\textsuperscript{162} FLA. STAT. § 409.166 (1997).
\textsuperscript{163} Id.
\textsuperscript{164} Id. § 409.166(1).
health, and other professional evaluations prior to adoptive placement in order to determine if the statutory conditions are met. The amount of adoption subsidy is to be determined through negotiations with the prospective adoptive family. A basic subsidy is calculated based on the family’s income. This is supplemented by a subsidy based on family size and another subsidy based on the age of the child. In addition, a family may receive a supplemental maintenance payment up to the amount the child would have received in foster care if there are documented mental, physical, emotional, or behavioral conditions which require extraordinary care, supervision, or structure. Subsidies must be redetermined annually. This complicated formula results in a payment as low as $154 per month and as high as $425 per month, with the average payment being $267 per month.

The 1998 Florida Legislature presented relatives with a new opportunity when it created a funded Relative Caregiver Program within the Department of Children and Families. This law provides financial assistance to relatives within the fifth degree of relationship to a parent or stepparent of the child who are caring full-time for a child in the role of substitute parent. The child must have been abused, neglected, or abandoned, and placed with the relative under chapter 39. The law also allows relatives to receive family preservation and support services, flexible funds, subsidized child care, and Medicaid coverage. Unfortunately, financial assistance is limited to placements under court ordered temporary legal custody to the relative under section 39.508(9) of the Florida Statutes or court ordered placement in the home of a relative under protective supervision of the Department under section 39.508(9). Children in more permanent kinship arrangements, such as long-term relative placement or legal guardianship, will not benefit from this legislation. Relatives must also participate in the case planning process and periodic judicial reviews, presumably until the child reaches eighteen, even after protective supervision is terminated.

166. Id. r. 65C-16.013(4)(a), (b), (c) (1997).
167. Id. r. 65C-16.013(5) (1997).
168. Id. r. 65C-16.013(10) (1997).
171. Id.
172. Id. § 409.165.
173. Id. § 39.5085(2)(f).
174. Id. § 39.5085(2).
Relatives who qualify for the Relative Caregiver Program are not required to meet foster licensing standards, but a home study must be completed. The home study must ascertain that the relative is capable of providing a physically safe environment and a stable, supportive home for the children and must assure that the child's well-being is met, including, but not limited to the provision of immunizations, education, and mental health services.

The benefit amount is to be set by the Department of Children and Families and is to be based on the child's age, subject to available funding. The amount of funding available for the relative care giver program is not to exceed eighty-two percent of the statewide average foster care rate, nor may the cost of providing such benefits exceed the cost of providing out-of-home care in emergency or shelter care. As a result, the Department of Children and Families has decided upon a rate this year of seventy percent of the average statewide foster care rate. This will result in the following payment levels: $242 per month for a child zero to five; $249 per month for a child six to twelve; $298 per month for a child thirteen to eighteen.

Funding of approximately twenty-six million dollars to establish the Relative Caregiver Program was obtained by allocating unencumbered TANF block grant funds, not through Title IV-E, the funding source in most other states. The effect of this funding source, according to the Department of Children and Families, is to subject relatives not only to the provisions of chapter 39 but also to the requirements of the Work and Gain Economic Self-sufficiency ("WAGES") law. WAGES requires semiannual eligibility redeterminations and sanctions which amount to loss of the monthly payment if the child has sufficient unexcused absences so as

176. *Id.* §39.5085(2)(c).
177. *Id.* §39.5085(2)(b).
178. *Id.* The 1998 law also mandates a home study for any out-of-home placement for a child under chapter 39. *Id.* §39.508(2)(q). The home study must include: 1) criminal background checks; 2) an assessment of the physical environment of the home; 3) a determination of the financial security of the caregivers; and 4) a determination that suitable child care arrangements are available for a caregiver employed outside the home. *Fla. Stat.* §39.508(3)(a) (Supp. 1998).
179. *Id.* §39.5085(2)(d).
180. *Id.* The 1998 Legislature increased the foster care board rate for licensed foster parents to levels that range from $345-$425 per month. Telephone Interview with Carolyn Glynn, Foster Care Specialist, Florida Department of Children and Families (Sept. 16, 1998).
not to make satisfactory school progress. No other state imposes such harsh penalties on kinship families. Taking away a dependent child’s monthly subsistence benefit for failure to attend school is a questionable method to achieve the child welfare system’s protection and permanence goals. Although a blessing for many relatives caring for dependent children, the burdens of home studies, eligibility redeterminations, sanctions, case plans, and court hearings may deter many needy kinship family units from taking advantage of this new program.

VII. OPPORTUNITIES FOR FLORIDA TO IMPROVE ITS SUPPORT FOR KINSHIP RELATIVE CARE

It is time for Florida to revisit and revamp its policy for kinship relative care givers. Public policy needs to encourage the most stable of custody arrangements, i.e., legal guardianship or adoption, through financial assistance, not the least permanent, i.e., temporary custody or protective supervision. The complexity, inconsistency, redundancy, and lack of goals in Florida law bedevils the most skillful advocate, not to mention the struggling grandparent.

Now is the time for Florida to establish a cohesive kinship relative care giver framework based on the following principles: 1) Consistency; 2) Simplicity; 3) Goal orientation: child protection, family preservation and support, and permanence for the child; 4) Experience: Florida’s history as well as the experience of other states; and 5) Maximization of federal funding opportunities.

Florida can address these principles while giving long awaited recognition of recognizing its social and fiscal dependence upon relative care givers to raise the next generation of Floridians by taking the following steps:

1. TRIAGE FISCAL POLICY. Recognize that there are two types of relative care givers: those who are financially able to support children on their own and those who are struggling on the margins of basic subsistence. Leave the financially able to raise their kin alone, unencumbered by unnecessary government oversight. Support those financially unable in the least intrusive, least administratively costly method available. Always ask: Is it more cost beneficial to support this relative or to maintain this child in the foster care system? Provide the same level of support for relatives regardless of legal status by equalizing the Relative Caregiver benefit and

183. Id. § 414.125(7).
the adoption subsidy. Appropriate sufficient general revenue to enable Florida to apply for a federal Title IV-E waiver to finance this legislative scheme.

2. TRIAGE CHILD WELFARE POLICY. Recognize that there are several types of relative caregivers. There are those who are caring temporarily for children who ultimately can be successfully reunited with their natural families. For these relatives, financial assistance coupled with temporary legal custody under protective supervision of the child welfare agency and the courts, while parents are working on case plans for reunification, makes sense. Next, there are those small numbers of relatives for whom reunification of children with the natural parent is not an option, yet the relative’s history or circumstances is such that there are some questions about the safety or stability of the arrangement. These relatives need financial assistance and also need temporary custody and child welfare agency and court supervision to protect the children. Third, there are relatives caring for children for whom reunification is not an option, who provide safe and stable homes, who have cultural or family values opposed to adoption, but who need financial assistance in order to provide for the child’s needs. They do not need agency and court oversight. Legal guardianship is an appropriate option for them. Finally, there are relatives who would adopt were it not for the financial inability to make ends meet. Subsidizing adoptions at the same rate as the Relative Caregiver Program will eliminate any bartering among these options based on financial levels.

3. SIMPLIFY THE STATUTES. The current multiplicity of placement options is not necessary and causes confusion. Florida should enact only four options: 1) permanent custody with an extended family member without subsidy; 2) temporary custody under protective supervision with subsidy and court oversight; 3) legal guardianship with subsidy; or 4) subsidized adoption at the same rate as legal guardianship.

4. PILOT KIN SUPPORT PROGRAMS. Establish pilot programs modeled after those of Oregon and Philadelphia to assist relatives financially, legally, and socially so that more Florida relative caregivers can

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185. Both relative caregivers and adoptive parents should be eligible for a supplemental maintenance payment for children with specialized physical, emotional, mental, or behavioral needs.

186. Wisconsin’s legislative scheme comes closest to these recommendations. Wis. Stat. § 48.57(3m) (1998).

187. This can be accomplished either in circuit court or juvenile court, although centralizing all children’s cases in one court has merit.

188. This would best be accomplished if legal guardianship were a dispositional option in dependency proceedings, not requiring the filing of a separate petition, and if guardianship procedures were simplified and customized to address the specific needs of the dependency population.
move to the ranks of unsubsidized legal guardians or adoptees through maximization of community resources including mortgage assistance, medical insurance, and other means of family support.

All of these proposals will better address the desired child welfare system goals of assuring that children are protected, that their families are preserved and supported, and that they are in permanent homes, at the same time freeing court and administrative resources to serve more pressing needs.

VIII. CONCLUSION

Eartha Walker and thousands of relatives like her have experienced a slight ease in their child-caring burden through the Florida Legislature’s creation in 1998 of the Relative Caregiver Program. But to take advantage of this Program they must forego a permanent legal relationship with the child and subject themselves to layers of supervision, reporting, assessment, documentation, and possible sanctions by the child welfare agency and the juvenile court. Such hurdles make no policy sense.

If the Florida Legislature is sincere in its desire to protect children, assure them permanence, and foster family preservation and support, it will look to other states’ experiences and dramatically simplify its statutory scheme. Through appropriating general revenue funds to match federal Title IV-E funds, extending the Relative Caregiver Program to legal guardianship, promoting adoption subsidies at the same dollar level, and piloting relative support initiatives, the Florida Legislature can truly “protect the ties that bind,” while still protecting its coffers.