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## Decreasing Disproportionality Through Kinship Care.

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# COMMENTS

## Decreasing Disproportionality Through Kinship Care

Aimee Corbin\*

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## I. INTRODUCTION AND HISTORY OF THE CHILD PROTECTION SYSTEM

If one searches the internet for information regarding *problems with child protective services* the result generates over 5 million articles relating to this topic.<sup>1</sup> Conversely, if one searches *child protective services & kinship and child protective services & disproportionality* the search result produces 157,000 and 37,000 covering these subjects, respectively.<sup>2</sup> If internet search results are any indication of relevance, disproportionality and kinship care are two issues that deserve much more attention from child welfare advocates, as well as society as a whole.<sup>3</sup> The disproportionate numbers of minority children under the care of Child Protective Services (CPS) have led many to question if this issue is “a symptom of a larger social problem?”<sup>4</sup>

Disproportionality is regarded as the overrepresentation of a particular group of people in a particular group or system.<sup>5</sup> A disproportionate rate is present “for a given racial or ethnic group if it is significantly different from the rate of enforcement actions against the population as a whole, taking into account other relevant factors.”<sup>6</sup> Statistics show that nationally, CPS removes a disproportionate number of minority children compared to non-minorities.<sup>7</sup> As discussed below, CPS typically places a

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1. GOOGLE, <http://www.google.com> (last visited Mar. 6, 2015).

2. *Id.*

3. *See id.* (searching key words with Child Protection Services such as “problems, disproportionality and kinship” result in vastly different results, indicating a potential lack of awareness of the topics with fewer searches).

4. *Disproportionality in Child Protective Services System*, TEX. DEP’T OF FAM. & PROTECTIVE SERV., [https://www.dfps.state.tx.us/Child\\_Protection/Disproportionality](https://www.dfps.state.tx.us/Child_Protection/Disproportionality) (last visited Nov. 2, 2014).

5. *Id.*

6. Act of Sept. 1, 2005, 79th Leg., R.S., ch. 268, § 1.54, 2005 Tex. Sess. Law Serv. 621, 643 (to be codified at TEX. FAM. CODE § 264.2041).

7. *See generally* JOSHUA PADILLA & ALICIA SUMMERS, NAT’L COUNCIL OF JUV. & FAM. COURT JUDGES, DISPROPORTIONALITY RATES FOR CHILDREN OF COLOR IN FOSTER CARE (2011), [http://www.ncjfcj.org/sites/default/files/Disproportionality%20TAB1\\_0.pdf](http://www.ncjfcj.org/sites/default/files/Disproportionality%20TAB1_0.pdf) (examining disproportionality statistics across all fifty states).

child in substitute care when that child is removed from their home.<sup>8</sup> CPS utilizes a variety of placement options, including kinship placement, which is the care system that is the main focus of this comment. The term “kinship placement” is referred to as the process by which children are placed in the care of their relatives or close family friends.<sup>9</sup> For many years, extended families have played a key role in rearing children when parents are faced with difficult personal and financial challenges.<sup>10</sup> However, often times it is not economically feasible for extended families to support a kinship setting.<sup>11</sup> Since minority children are present in increased numbers in the CPS system and for longer periods of time,<sup>12</sup> they are at a greater disadvantage in the child welfare system than their non-minority counterparts.<sup>13</sup> This comment advocates for the proposition that disproportionality rates can be reduced if more government funding is allocated to support temporary kinship placements.

While Government funding is available to licensed foster care homes, kinship advocates argue that foster placement—the placement of a child in the care of a stranger—may not coincide with the best interests of the

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8. TEX. FAM. CODE ANN. § 262.001 (West 2014) (defining “substitute care” as “the placement of a child who is in the conservatorship of the department or an authorized agency in care outside the child’s home. The term includes foster care, institutional care, adoption, placement with a relative of the child, or commitment to the Texas Youth Commission.”).

9. *Kinship Care*, TEX. DEP’T OF FAM. & PROTECTIVE SERV., [http://www.dfps.state.tx.us/Adoption\\_and\\_Foster\\_Care/Kinship\\_Care/default.asp](http://www.dfps.state.tx.us/Adoption_and_Foster_Care/Kinship_Care/default.asp) (last visited Mar. 6, 2015).

10. *Id.*

11. See Julia Holczer, Note, *Structuring State Kinship Licensing and Payment to Fit Within the Federal Framework: Instituting Model State Case-by-Case Waiver System to Eliminate the Financial Difficulties of Applying Non-Kin Caregiver Standards to Potential Kin Caregivers*, 16 GEO. J. ON POVERTY L. & POL’Y 669, 670 (2009) (asserting kin caregivers are in greater need of financial support since they tend to have fewer resources than non-kin foster parents).

12. CASEY FAMILY PROGRAMS, BREAKTHROUGH SERIES COLLABORATIVE: REDUCING DISPROPORTIONALITY AND DISPARATE OUTCOMES FOR CHILDREN AND FAMILIES OF COLOR IN THE CHILD WELFARE SYSTEM, FRAMEWORK FOR CHANGE, at 4 (Apr. 2005), <http://www.ncdhhs.gov/mhddsas/services/serviceschildfamily/Toolbox/culturalcomp/iv-bsc-disproportionality.pdf>.

13. See generally CTR. FOR THE STUDY OF SOC. POL’Y, RACE EQUITY REVIEW: FINDINGS FROM A QUALITATIVE ANALYSIS OF RACIAL DISPROPORTIONALITY AND DISPARITY FOR AFRICAN AMERICAN CHILDREN AND FAMILIES IN MICHIGAN’S CHILD WELFARE SYSTEM (2009), <http://www.cssp.org/publications/child-welfare/top-five/race-equity-review.dfsdf-michigan-racial-disproportionality-and-disparity-report-january-2009.pdf> (exploring how African American children and families are viewed and treated in the Child Welfare System).

child.<sup>14</sup> A proposed solution to this problem is the kinship care placement option. Although kinship caregivers who assume legal guardianship qualify for full government assistance,<sup>15</sup> current legislation does not offer the equivalent government aid to temporary kinship caregivers.<sup>16</sup>

This comment narrowly focuses on the population of children under CPS conservatorship<sup>17</sup> who are temporarily placed with family members in a “formal” kinship setting.<sup>18</sup> Specifically, it supports the proposition that temporary kinship caregivers should be afforded the same financial benefits granted to licensed foster homes, without having to go through the nuances of the foster home approval process.<sup>19</sup> Through increased financial support, the number of kinship placements can increase, which will, in turn, decrease the disproportionality of minority children in non-relative foster placements. The first part of this piece defines kinship and explores the history and procedures of CPS. Next, it discusses the prevalence of disproportionality within the CPS system and why it is a problem. Section II addresses the benefits of kinship placement and the needs and potential deterrents that can cause placements to succeed or fail. Section III examines the problem of disproportionate minority representation in the CPS system and analyzes the ways disproportionality is harmful to all those touched by CPS. Finally, Section IV proposes a solution to reduce disproportionate numbers of racial minorities in foster care by highlighting the importance of expanding financial support to temporary kinship placements.

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14. See TIFFANY CONWAY & RUTLEDGE Q. HUTSON, CTR. FOR LAW AND SOC. POL’Y, *IS KINSHIP CARE GOOD FOR KIDS?* (2007), <http://www.clasp.org/resources-and-publications/files/0347.pdf> (examining critical issues involving kinship placements).

15. See generally *Fostering Connections to Success and Increasing Adoptions Act of 2008*, Pub. L. No. 110–351, 122 Stat. 3949 (2008) [hereinafter *Fostering Connections Act*] (authorizing funding to kinship guardians who obtain full legal guardianship of a child).

16. See generally *id.* (authorizing funding to kinship guardians who obtain full legal guardianship of a child).

17. See BLACK’S LAW DICTIONARY 370 (10th ed. 2014) (defining conservator as “[a] guardian, protector, or preserver. *Conservator* is the modern equivalent of the common-law *guardian*. Judicial appointment and supervision are still required, but a conservator has far more flexible authority than a guardian, including the same investment powers that a trustee enjoys.”).

18. See generally JENNIFER EHRLE MACOMBER ET AL., URBAN INST., *KINSHIP FOSTER CARE: CUSTODY, HARDSHIPS, AND SERVICES* (Snapshots III of America’s Families, 2003), [http://webarchive.urban.org/UploadedPDF/310893\\_snapshots3\\_no14.pdf](http://webarchive.urban.org/UploadedPDF/310893_snapshots3_no14.pdf) (noting that “[m]any children in kinship foster care . . . may not be receiving the services needed to ensure the safety of their placements”).

19. See *Fostering Connections Act* § 101, 122 Stat. 3949. (providing that kinship guardians can receive assistance payments for children, only if they assume legal guardianship of the child).

### A. Kinship Defined

According to the Administration of Children and Families (ACF), kinship is the “care of children by relatives or, in some jurisdictions, close family friends.”<sup>20</sup> Kinship care is a blanket term used to describe “the care of children by relatives, or, in some jurisdictions, close family friends.”<sup>21</sup> Kinship care is further categorized as formal and informal.<sup>22</sup> An informal kinship care setting does not involve CPS and encompasses various situations where parents must rely on their relatives for help as they are not equipped to fully care for their children.<sup>23</sup> As mentioned, this comment focuses on formal kinship placements, specifically those containing government involvement where the state maintains conservatorship over the child with an initial permanency plan of reunification.

Kinship placements became popular in the 1990s due to the increasing costs of foster care.<sup>24</sup> Texas CPS classifies kinship placements in two categories, verified and unverified.<sup>25</sup> A verified kinship caregiver is “licensed or verified as a foster parent to provide 24-hour residential care for a child.”<sup>26</sup> The Texas Administrative Code requires a verified kinship caregiver to successfully complete technical and physical requirements including various training classes.<sup>27</sup> These courses are similar to the courses administered to non-relative foster homes.<sup>28</sup> Evaluation factors include: the adequacy of sleeping space, a limit of no more than six children in the home, safety inspections of the home, pet vaccinations, CPR/First Aid certification, TB testing, and fulfilling twenty hours of training

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20. *Kinship Care*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/outofhome/kinship> (last visited Oct. 6, 2014).

21. *Id.*

22. *See* GERALD P. MALLON, TOOLS FOR PERMANENCY TOOL #4: KINSHIP CARE 2, <http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/tools/kinship-tool.pdf>. (indicating the involvement of a child welfare agency distinguishes a “formal” kinship placement from an informal placement).

23. *See id.* at 1 (providing examples such as a death or incapacity of a parent or situations that involve a teen parent who is not mature enough to raise a child).

24. *See generally* SHELLEY WATERS BOOTS & ROB GEEN, URBAN INST., FAMILY CARE OR FOSTER CARE? HOW STATE POLICIES AFFECT KINSHIP CAREGIVERS 1 (1999), <http://webarchive.urban.org/UploadedPDF/anf34.pdf> (describing the rise of kinship placements and the various standards of each state).

25. *Child Protective Services Handbook*, TEX. DEP’T OF FAM. & PROTECTIVE SERV., § 4512, [https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_4500.asp#CPS\\_4500](https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_4500.asp#CPS_4500) (last visited June 14, 2015).

26. *Id.*

27. 40 TEX. ADMIN. CODE § 700.1501(b) (2001).

28. *Id.*

annually.<sup>29</sup> A significant benefit of being a verified kinship caregiver is the potential eligibility for financial assistance, which is the same funding a licensed foster home receives.<sup>30</sup>

This piece focuses on the individuals who are not legally recognized as conservators, but have the same responsibility of caring for a child under kinship care. These unverified kinship caregivers “have *not* been *verified* as a foster parent . . . but *have* been formally *approved* by [Department of Family and Protective Services]. . . .”<sup>31</sup> The result is that these caregivers are not eligible for monthly assistance outside of what they qualify for in federal benefits on their own, such as Temporary Assistance for Needy Families (TANF) and food stamps.<sup>32</sup> Unverified kinship caregivers represent a large population of caregivers that desperately need additional support to ensure their continual effectiveness.<sup>33</sup>

### B. *History of the Child Protection System*

In the eighteenth and early nineteenth century, the majority of impoverished, abandoned, and neglected children were placed in orphanages or almshouses.<sup>34</sup> Reformers of that era believed the structured and stable environment offered by the orphanage system was the most effective way in reforming children to become productive citizens in the community.<sup>35</sup> However, by the turn of the century, many skeptics began questioning the efficacy of orphanages as the best solution for long-term child placement.<sup>36</sup> Specifically, Progressive Era<sup>37</sup> reformers regarded the once-applauded regimented structure developed by orphanages, as a suppressive environment affecting child development.<sup>38</sup> They argued that foster homes and alternative family placements promoted independence while

29. *Requirements for Foster/Adopt Families*, TEX. DEP'T OF FAM. & PROTECTIVE SERV., [https://www.dfps.state.tx.us/Adoption\\_and\\_Foster\\_Care/Get\\_Started/requirements.asp](https://www.dfps.state.tx.us/Adoption_and_Foster_Care/Get_Started/requirements.asp) (last visited Nov. 15, 2014).

30. *Child Protective Services Handbook*, *supra* note 25, § 4512.

31. *Id.*

32. *Id.*

33. *See id.* § 4534 (explaining how unverified family members, may be able to receive TANF); *see also id.* § 4536 (advising CPS workers to provide an unverified kinship caregiver to local resources such as food banks, churches and utility companies).

34. *See* John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 456 (2008) (detailing how in the early nineteenth century, the norm was for children to be held in institutions and not foster homes).

35. *Orphanages*, FAQs, <http://www.faqs.org/childhood/Me-Pa/Orphanages.html> (last visited Feb. 7, 2015).

36. *Id.*

37. *See id.* (defining the Progressive Era as the years from 1890–1920).

38. *See id.* (examining a 1909 White House conference attended by two-hundred social workers, and how they voiced their concern that orphanage systems eliminate child individuality).

encouraging individuality.<sup>39</sup> In response to the growing criticisms, orphanages implemented systems specifically tailored to meet the individual needs of the children.<sup>40</sup>

Some states began transitioning children from orphanages to foster homes by utilizing state-run orphanages as a holding place prior to foster homes and adoptive placements.<sup>41</sup> The legislative framework established by policy-makers in Michigan was the first to emphasize child care by implementing a policy of transitioning children to foster homes early in the placement process.<sup>42</sup> This legislative effort received praise from child advocates “as [it] being a more efficient and humane system for caring for dependent and neglected children.”<sup>43</sup> In 1912, President William Howard Taft created the Children’s Bureau, a sub-department of the Health and Human Services Administration for Children & Families.<sup>44</sup> The goal was to help improve the welfare of children and families.<sup>45</sup> Over the years, the main focus for placing children deemed unsafe to live in their homes has continued to follow the trend of placement in a foster family setting or with relatives.<sup>46</sup>

The language codified in the United States Code (the Code) explains that individual state legislatures assume the duty of addressing the prevention and reduction of child abuse and neglect.<sup>47</sup> The Code grants funds “for purposes of assisting the State[ ] in improving the child protective services system of each [ ] state.”<sup>48</sup> In Texas, the Texas Administrative Code defines CPS as the agency “responsible for providing protective

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39. *Id.*

40. *See id.* (“[Orphanages] broke the large congregate bedrooms into small units, built cottages in which small groups of children lived with a home mother, relaxed the discipline, added more recreation and enrichment programs, and cultivated children’s individual talents.”).

41. Marina E. Saksena, *Out-of-Home Placements for Abused, Neglected, and Dependent Children in Minnesota: A Historical Perspective*, 32 WM. MITCHELL L. REV. 1007, 1012 (2006).

42. *Id.*

43. *Id.*

44. *History*, CHILDREN’S BUREAU ADMIN. FOR CHILD. & FAM., <http://www.acf.hhs.gov/programs/cb/about/history> (last visited Oct. 4, 2014).

45. *See* CHILDREN’S BUREAU/ACYF, *THE STORY OF THE CHILDREN’S BUREAU: 100 YEARS OF SERVING OUR NATION’S CHILDREN AND FAMILIES* 7 (2012), [http://cb.100.acf.hhs.gov/sites/all/themes/danland/danblog/files/Story\\_of\\_CB.pdf](http://cb.100.acf.hhs.gov/sites/all/themes/danland/danblog/files/Story_of_CB.pdf) (comparing the “orphan trains” that would take children to the Midwest for work or adoption, to the modern day goal of permanency within a family setting).

46. *Foster Care*, CHILD WELFARE INFO. GATEWAY, [https://www.childwelfare.gov/outofhome/foster\\_care](https://www.childwelfare.gov/outofhome/foster_care) (last visited Oct. 6, 2014). Foster care is defined as “a temporary service provided by States for children who cannot live with their families.” *Id.*

47. 42 U.S.C. § 5106a (2012).

48. *Id.*



services to children and for providing family support and family preservation services.”<sup>49</sup> The agency’s handbook identifies its purpose and objective as protecting children by acting in their best interest.<sup>50</sup> CPS fulfills this duty by conducting investigations on alleged reports of abuse and neglect; protecting children who are victims of abuse and neglect; promoting family well-being; and finding permanent homes for children who cannot safely remain in their current environment.<sup>51</sup>

### C. *The Prevalence of Disproportionality*

As mentioned, disproportionality amongst racial minorities is prevalent in the CPS system.<sup>52</sup> According to a 2010 report, African-American children domiciled in Texas were twice as likely to be removed and placed in an alternative living environment.<sup>53</sup> Further, African-American children account for nearly 35% of all children awaiting adoption.<sup>54</sup> Even more concerning is the fact that reunification with a biological parent is significantly reduced amongst African-American children and a higher percentage spend more time in the child welfare system.<sup>55</sup> Also, on average, Hispanic children typically wait two months longer to be adopted than Anglo children.<sup>56</sup> One study reported a causal link between large populations of African-American, American-Indian, and Hispanic children under CPS care, and the length of time in which they remain in the system.<sup>57</sup>

Disproportionality in the child welfare system increases a child’s exposure to negative environmental factors during their formative years.<sup>58</sup> These negative influences can affect a child’s academic studies, spiritual health, cultural connections, and connections to families within their com-

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49. 40 TEX. ADMIN. CODE § 702.5 (2001).

50. *Child Protective Services Handbook*, *supra* note 25, § 1110.

51. TEX. DEP’T OF FAM. & PROTECTIVE SERV., ANNUAL REPORT & DATA BOOK 2013, at 15 (2013), [https://www.dfps.state.tx.us/documents/about/Data\\_Books\\_and\\_Annual\\_Reports/2013/FY2013\\_AnnualRpt\\_Databook.pdf](https://www.dfps.state.tx.us/documents/about/Data_Books_and_Annual_Reports/2013/FY2013_AnnualRpt_Databook.pdf).

52. *Stop Disproportionality in Foster/Adoptive Care*, SIMPLY LOVE ALL PEOPLE, <http://simplyloveallpeople.org/stop-disproportionality-in-fosteradoptive-care> (last visited July 7, 2015).

53. *Id.* (comparing the adoption rate between African-American children and the general population in Texas).

54. *Id.*

55. *Id.*

56. *Id.*

57. *See* CASEY FAMILY PROGRAMS, *supra* note 12, at 3 (acknowledging the percentage of children of color in the foster care system was 64% in 2000).

58. *See id.* (exploring causes of disproportionality and how long-term foster care can impact children).

munity.<sup>59</sup> When viewing the picture as a whole, racial minorities are at a greater disadvantage in the child welfare system than their non-minority counterparts.<sup>60</sup> Underrepresented groups face obstacles, including racial discrimination, that makes the challenges even more difficult for families to navigate their way through the child welfare system.<sup>61</sup> This problematic reality is the type of issue that needs to be adequately addressed and remedied by federal and state lawmakers alike.<sup>62</sup>

#### D. *Removing a Child from Their Home*

In fiscal year (FY) 2013, data indicates there were 229,334 reports of alleged child abuse or neglect.<sup>63</sup> Of those reports, 17,022 children required removal from their homes, as CPS determined removal to be in the best interest of the child for safety reasons.<sup>64</sup> The Texas Family Code authorizes CPS to remove a child from their home when “there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse and that continuation in the home would be contrary to the child’s welfare.”<sup>65</sup> CPS uses a “reasonable effort” standard that requires a caseworker to assess specific dangers including child vulnerability and the frequency of parental involvement within the household.<sup>66</sup> These factors contribute to the assessment of the overall safety of the child’s living conditions within the home.<sup>67</sup> Once these factors are assessed by the CPS worker, the CPS handbook stipulates that all alternatives to a child’s removal from their home must be exhausted before the out-of-home placement is considered.<sup>68</sup> This is largely due to the fact that the removal process can be a traumatic experi-

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59. *Id.*

60. *See generally* CTR. FOR THE STUDY OF SOC. POL’Y, *supra* note 13 (exploring how African-American children and families are viewed and treated within the Child Welfare System).

61. *See generally* U.S. GOV’T ACCOUNTABILITY OFF., GAO-07-816, AFRICAN AMERICAN CHILDREN IN FOSTER CARE: ADDITIONAL HHS ASSISTANCE NEEDED TO HELP STATES REDUCE THE PROPORTION IN CARE 4 (2007), <http://www.gao.gov/assets/590/585649.pdf> (explaining how “African American children in foster care included a higher rate of poverty challenges in accessing support services, racial biases and distrust, and difficulties finding appropriate adoptive homes”).

62. *See generally* PADILLA & SUMMERS, *supra* note 7 (examining disproportionality numbers across all fifty states).

63. TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 51, at app. 3.

64. *Id.* at app. 27.

65. TEX. FAM. CODE ANN. § 262.101 (West 2014).

66. *Child Protective Services Handbook*, *supra* note 25, § 2510.

67. *Id.*

68. *See id.* (describing how a “reasonable effort” must be made to prevent removal, and a caseworker must consider specific dangers, presence of lack of protective capacity, child vulnerability, and overall safety when determining potential risk to a child).

ence for a child.<sup>69</sup> Children report feelings of surprise, shock, chaos, and loss of control; a sense of being kidnapped, powerless and helpless; feelings of confusion and unpredictability; fears of the unknown; loss of familiarity; and loss of caregivers.<sup>70</sup> In addition, research indicates that children exposed to traumatic experiences early in life have an increased likelihood of engaging in risky behavior that can continue to develop well into adulthood.<sup>71</sup>

After the CPS worker deems a home unsafe for a child to remain in, the next step in the process requires CPS to place the child in the custody of the “best available substitute caregiver.”<sup>72</sup> Often times the “best available substitute caregiver” is a family within the foster care system, or placement with a child’s relative.<sup>73</sup> The process of placing a child in relative care helps to alleviate the traumatic removal process by fostering the child with a sense of familiarity through familial connections.<sup>74</sup> Specifically, the family environment provides the child with a presence of familial trust that has proven to ease the removal transitioning process.<sup>75</sup> The continual effort of Texas CPS to utilize kinship care could prove to be a valuable method to determine the best interests of the child,<sup>76</sup> given the advantages that stem from placement with a relative.<sup>77</sup>

#### i. Placement Options

The CPS handbook details various placement options for a child removed from parental custody.<sup>78</sup> Under limited circumstances, the state can utilize an emergency shelter as an option. This type of shelter provides temporary care to children who are at risk of immediate physical danger.<sup>79</sup> Emergency shelters serve as a temporary holding place; the

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69. CTR. FOR IMPROVEMENT OF CHILD & FAM. SERV., REDUCING THE TRAUMA OF INVESTIGATION, REMOVAL & INITIAL OUT-OF-HOME PLACEMENT 12-15 (2008-2009), <http://ocfs.ny.gov/main/cfsr/Reducing%20the%20trauma%20of%20investigation%20removal%20%20initial%20out-of-home%20placement%20in%20child%20abuse%20cases.pdf>.

70. *Id.*

71. *See id.* (explaining how these experiences affect cognitive development that leads to these behavioral problems such as drug use, teen pregnancy, and serious health problems).

72. *Child Protective Services Handbook*, *supra* note 25, § 4121.

73. *Id.*

74. MALLON, *supra* note 22, at 3.

75. *Id.*

76. *See generally* *Child Protective Services Handbook*, *supra* note 25, § 2510 (outlining a procedure that assess the child’s safety through the family preservation stage).

77. MALLON, *supra* note 22, at 3.

78. *See generally* *Child Protective Services Handbook*, *supra* note 25, § 4215 (providing emergency shelters for children who have been removed).

79. *Id.*

number of days a child can remain in this placement is strictly limited in duration.<sup>80</sup> As a result, these short-term shelters are not designed to provide the individualistic level of care usually offered by foster homes or kinship placement.<sup>81</sup>

Foster care is another type of placement utilized by CPS.<sup>82</sup> Foster care settings include family homes, family group homes, and residential group care facilities.<sup>83</sup> Although these types of placements are viewed primarily as temporary placement, foster families can assume permanent custody through formal adoption.<sup>84</sup> Financially, foster care homes receive governmental aid for child-rearing expenses that are intended to cover the child's basic needs.<sup>85</sup> This money accounts for expenses such as "housing, food, transportation, clothing, and [other] miscellaneous [costs]."<sup>86</sup>

Foster care systems often get a bad reputation as "abused or neglected children placed in foster care face lifelong challenges greater than children who remain with their families."<sup>87</sup> In 2012, around 200,000 children were placed in non-relative foster homes.<sup>88</sup> Approximately 20% of those children were subjected to multiple placements of ten or more homes throughout their adoptive process.<sup>89</sup> Further, foster children report having similar stories to one foster youth who "... lived in forty-two different foster homes from the age of eight to eighteen."<sup>90</sup> This type of instability can have long-term consequences, and some children report "never [feeling] at home."<sup>91</sup> Although foster placement provides a child with a shelter away from the dangers of their prior living environment, many of these homes lack the familial bond established by kinship placement care. Indeed, CPS identifies traditional family placements as the most desirable

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80. *See id.* (identifying that all children should stay no longer than fifteen days, but additional time may be granted under certain circumstances).

81. *See id.* (identifying "foster family homes and the homes of kinship caregivers [to] considered less restrictive and more family-like by definition").

82. *Foster Care*, TEX. DEP'T OF FAM. & PROTECTIVE SERV., [http://www.dfps.state.tx.us/Adoption\\_and\\_Foster\\_Care/About\\_Foster\\_Care](http://www.dfps.state.tx.us/Adoption_and_Foster_Care/About_Foster_Care) (last visited Mar. 6, 2015).

83. *Id.*

84. *See id.* (noting the purpose to improve the foster care system is by promoting stability through keeping children closer to home, to their family, and to their community).

85. *Child Protective Services Handbook*, *supra* note 25, § 1550.

86. 1 TEX. ADMIN. CODE § 355.7103 (2001).

87. Deb Stone, *U.S. Foster Care: A Flawed Solution That Leads to More Long-Term Problems?*, STIR J. (May 12, 2014), <http://www.stirjournal.com/2014/05/12/u-s-foster-care-a-flawed-solution-that-leads-to-more-long-term-problems>.

88. *Id.* (citing CHILDREN'S BUREAU/ACYF, CHILD WELFARE INFO. GATEWAY, FOSTER CARE STATISTICS 2012 (2013), <https://www.childwelfare.gov/pubPDFs/foster.pdf>).

89. *Id.*

90. *Id.*

91. *Id.*

and least restrictive setting for a child.<sup>92</sup> Kinship care is a unique social structure—the only structure to provide stability along with maintaining the familial bonds.

## ii. Permanency Plans and the One-Year Period

Once a child enters CPS care, a permanency plan is developed.<sup>93</sup> The ultimate goal of a permanency plan is to create a long-term solution for releasing a child from CPS care to a permanent home.<sup>94</sup> The Texas Family Code identifies four potential permanency plans for a child:

(1) the reunification of the child with a parent or other individual from whom the child was removed; (2) the termination of parental rights and adoption of the child by a relative or other suitable individual; (3) the award of permanent managing conservatorship of the child to a relative or other suitable individual; or (4) another planned, permanent living arrangement for the child.<sup>95</sup>

A “positive” permanency plan is achieved by reunification, adoption, or custody given to another individual.<sup>96</sup> The family reunification plan enables a child to return to his or her home after certain CPS requirements are satisfied by the parent.<sup>97</sup> CPS also provides supportive services to the child, their family, and the child’s temporary caregivers.<sup>98</sup> Per the Texas Family Code, CPS must evaluate certain factors “in determining whether a child’s parents are willing and able to provide a child with a safe environment.”<sup>99</sup> These factors include the degree of vulnerability of the child; the type of harm reported; the history of the family environment; substance abuse issues of the parent; and willingness for the parent to receive services.<sup>100</sup>

This comment focuses on the short-term time period of CPS’s legal guardianship over children who are placed in temporary kinship care, and whose permanency plans are family reunification. The Texas Family Code limits this type of temporary care to a maximum of one year.<sup>101</sup> The Code implements a policy that mandates that permanency plans, including parental reunification, must be achieved and approved within one

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92. *Child Protective Services Handbook*, *supra* note 25, § 4120.

93. *Id.* § 6211.

94. *Id.*

95. TEX. FAM. CODE ANN. § 263.3026 (West 2014).

96. *Child Protective Services Handbook*, *supra* note 25, § 6211.1.

97. *See id.* (explaining that certain parental requirements must be fulfilled to ensure the child is returning to a safe living environment).

98. *Id.*

99. *Id.* § 6212.52.

100. *Id.*

101. TEX. FAM. CODE ANN. § 263.401 (West 2014).

year of CPS taking temporary conservatorship.<sup>102</sup> During this one-year period, decisions such as the type of placement, have important ramifications that many times shape the long-term livelihood of a child.<sup>103</sup> If a parent is unable to achieve reunification with the one-year deadline, CPS “must be named conservator of the child”<sup>104</sup> and the child may be approved for permanent adoption.<sup>105</sup> However, if adoption is not feasible, CPS may keep conservatorship of the child or assign a relative to serve as the permanent managing conservator.<sup>106</sup> As mentioned, the physical and mental well-being of a child is compromised when they are exposed to traumatic experiences, such as removal from their home.<sup>107</sup> However, reports indicate that traumatic experiences are less frequent when a child is placed under the care of a relative, especially relatives who are interested in assuming permanent legal guardianship over the child.<sup>108</sup>

## II. IS KINSHIP BETTER THAN FOSTER CARE?

### A. *Benefits of Living with a Relative*

As explained, when there is strong evidence that a child is not safe in his or her current living environment, CPS will remove the child to ensure their well-being.<sup>109</sup> A 2012 child placement report showed that 47% of children removed from their homes were placed in foster care, while only 28% were placed under the care of a relative.<sup>110</sup> Many factors contribute to this relatively low number. Factors that are taken into consideration include the size and available living space for the child and siblings; the financial status of the caregiver; the relationship between the caregiver

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102. *See id.* (excluding trials and approved extensions).

103. CTR. FOR IMPROVEMENT OF CHILD & FAM. SERV., *supra* note 69, at 12–15.

104. § 263.401.

(a) Unless the court has commenced the trial on the merits or granted an extension under subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship . . . or requests that the department be named conservator of the child. *Id.*

105. *Child Protective Services Handbook*, *supra* note 25, § 6212.3.

106. *Id.*

107. CTR. FOR IMPROVEMENT OF CHILD & FAM. SERV., *supra* note 69, at 12–15.

108. *See id.* (comparing the behavioral effects of children placed in kinship care and children placed in foster care).

109. *See* *Child Protective Services Handbook*, *supra* note 25, § 2432 (discussing situations where removing a child from their home is warranted).

110. CHILDREN’S BUREAU/ACYF, *CHILD WELFARE INFO. GATEWAY, FOSTER CARE STATISTICS 2013*, at 2 (2013), <https://www.childwelfare.gov/pubPDFs/foster.pdf>.

and the child's parents; and caregiver's criminal history, just to name a few.<sup>111</sup>

As previously mentioned, kinship placement offers several benefits over a foster home.<sup>112</sup> In addition to living in a familiar environment, children in kinship placements experience more stability in their everyday lives.<sup>113</sup> Factors such as fewer placements and an increased likelihood of being placed with siblings contribute to this stability.<sup>114</sup> Further, statistics show that children placed in foster homes change schools more frequently than children placed in kinship care.<sup>115</sup> Reports also show that children under kinship care often times experience fewer behavioral problems by closely identifying to their cultural traditions.<sup>116</sup> In addition, only 6% of children placed with relatives reported trying to leave or run away, contrasted to 16% living with non-relatives and 27% placed in group homes.<sup>117</sup> Another significant difference between children in foster care and kinship placement involves the child's overall perception of the child care system.<sup>118</sup> Many foster children report being burdened by the social stigma attached to the term "foster care."<sup>119</sup> In contrast, one study showed that children placed in kinship care had an overall positive perception about living with relatives.<sup>120</sup> A critical, but frequently overlooked aspect entails the child's perception of their own emotional well-being. Statistics show that 94% of children placed with relatives reported they "always felt loved," compared to 82% of foster children who were asked the same question.<sup>121</sup> This result is compounded by a Texas CPS survey that examined the frequency in which children were removed from

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111. CHILDREN'S BUREAU/ACYF, CHILD WELFARE INFO. GATEWAY, WORKING WITH KINSHIP CAREGIVERS 3 (2012), <https://www.childwelfare.gov/pubs/kinship.pdf>.

112. See CONWAY & HUTSON, *supra* note 14 (summarizing the multiple benefits that children in kinship placement receive of those in foster homes).

113. *Id.* (citing NAT'L SURVEY OF CHILD AND ADOLESCENT WELL-BEING, NSCAW II WAVE 2 REPORT: CHILDREN'S SERVICES (2012), [http://www.acf.hhs.gov/sites/default/files/opre/nscaw\\_childrens\\_services\\_report\\_wave\\_2\\_june\\_2014\\_final\\_report.pdf](http://www.acf.hhs.gov/sites/default/files/opre/nscaw_childrens_services_report_wave_2_june_2014_final_report.pdf)).

114. *Id.*

115. See *id.* (finding that 63% of children placed in kinship care changed schools, while 80% of children placed in foster care changed schools).

116. *Id.*

117. *Id.*

118. JILL THERESA MESSING, NAT'L ABANDONED INFANTS ASSISTANCE RES. CTR., UNIV. OF CAL. AT BERKELEY, FROM THE CHILD'S PERSPECTIVE: A QUALITATIVE ANALYSIS OF KINSHIP CARE PLACEMENTS 14–15 (2005), [http://aia.berkeley.edu/media/pdf/kinship\\_research\\_summary.pdf](http://aia.berkeley.edu/media/pdf/kinship_research_summary.pdf).

119. *Id.*

120. See *id.* (examining children in kinship care, and recording the "knowledge, feelings and understanding of youth to create a description of their experience").

121. CONWAY & HUTSON, *supra* note 14.

their out-of-home placement as a result of behavioral issues.<sup>122</sup> The study revealed that children placed with relatives were removed from their placements less often than children in foster care.<sup>123</sup> This is evidenced by the fact that 92.4% of non-relative placements cited behavioral problems as the primary cause for removal, compared to only 7.6% of relative placements.<sup>124</sup> These numbers suggest “kinship placements may foster a better sense of commitment, both on the part of the child and the relative.”<sup>125</sup>

### B. *The Criticisms of Kinship Care*

Child welfare system officials have not always regarded kinship placement as a serious alternative option to formal out-of-home placements.<sup>126</sup> Some child welfare professionals argue that kinship placement restricts reunification services for biological parents to assume conservator rights.<sup>127</sup> Specifically, the problem stems from child welfare workers “ask[ing] a relative to care for the child while the parents ‘work on getting themselves together’ rather than to provide the comprehensive services and supervision the parents need to continue to care for the child at home.”<sup>128</sup> Kinship caregivers may feel pressured to assume childcare responsibility without understanding the full implications, which can lead to future abandonment of the child.<sup>129</sup> In addition, child welfare professionals have concerns that “the apple does not fall far from the tree” and placement with relatives may expose a child to the same maltreatment that necessitated removal.<sup>130</sup> However, over the past thirty years, many of these concerns have been “eliminated by the social and legal cli-

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122. TEX. DEP’T OF FAM. & PROTECTIVE SERV., OVERVIEW AND PRELIMINARY EVALUATION OF THE RELATIVE CAREGIVER ASSISTANCE PROGRAM 10 (2008), [http://www.dfps.state.tx.us/documents/Child\\_Protection/pdf/2008-09-22\\_Kinship-Evaluation.pdf](http://www.dfps.state.tx.us/documents/Child_Protection/pdf/2008-09-22_Kinship-Evaluation.pdf).

123. *Id.*

124. *Id.* at 9.

125. *Id.*

126. See TEX. HEALTH & HUM. SERV. COMM’N & TEX. DEP’T OF FAM. & PROTECTIVE SERV., DISPROPORTIONALITY IN CHILD PROTECTIVE SERVICES—POLICY EVALUATION AND REMEDIATION PLAN 8 (2006), [http://www.dfps.state.tx.us/Documents/about/pdf/2006-07-01\\_Disproportionality.pdf](http://www.dfps.state.tx.us/Documents/about/pdf/2006-07-01_Disproportionality.pdf) [hereinafter TEX. HEALTH & HUM. SERV. COMM’N ] (claiming concerns that the extended family would expose the child to similar conditions which previously required removal from their biological parents).

127. See generally THE ANNIE E. CASEY FOUND., THE KINSHIP DIVERSION DEBATE: POLICY AND PRACTICE IMPLICATIONS FOR CHILDREN, FAMILIES AND CHILD WELFARE AGENCIES 12 (2013), <http://www.aecf.org/m/pdf/KinshipDiversionDebate.pdf> (exploring reasons why kinship placement is not always the best option).

128. *Id.* at 13.

129. See *id.* at 5 (expressing concerns that children are being “inappropriately diverted” to live with kinship caregivers).

130. Holczer, *supra* note 11, at 676.



mate.”<sup>131</sup> A Texas CPS study concluded that when a child was removed from an out-of-home placement due to the risks of abuse or neglect, 70.6% of these replacements occurred when the child was in non-relative (foster) placements, compared to only 29.4% in kinship placements.<sup>132</sup>

Another frequently debated argument reiterated by those who oppose financial funding to kinship caregivers is the notion that “kin should not be paid for caring for a related child since such care is part of the familial responsibility.”<sup>133</sup> Some contend the monetary stipend given to a relative minimizes parental focus on reunification plans, especially if the relative receives a financial reward for caring for the child.<sup>134</sup> Critics believe that assuming responsibility for a family member should be done without compensation, noting attitudes such as “[w]here I come from, family takes care of family . . . [w]hy should the government give people money to do the right thing?”<sup>135</sup> The counterargument is that financial support is exactly that, support for the child—not a salary given for the benefit of the caregiver.<sup>136</sup> Governmental aid is not a monetary reward given to kinship caregivers for their care giving.<sup>137</sup> The financial support provides a caregiver with money for “housing, food, transportation, clothing, and miscellaneous [costs].”<sup>138</sup> Kinship caregivers should be afforded the same opportunity to provide quality care without the burdensome financial constraints of supporting additional children.

### C. *Financial Hardships and Strains*

Adding the expenses of a new child to an existing family is a financial burden for most kinship placements.<sup>139</sup> In 2013, the estimated child-rearing expenses ranged between \$12,880 and \$14,970, annually.<sup>140</sup> These expenses are reflected by the CPS reimbursement rate for the basic needs of a child in foster care, which computes to \$23.10 a day, averaging to

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131. *Id.*

132. TEX. DEP'T OF FAM. & PROTECTIVE SERV., *supra* note 122, at 9.

133. Holczer, *supra* note 11, at 675–76 (citing Rob Geen & Jill Duerr Berrick, *Kinship Care: An Evolving Service Delivery Option*, 24 CHILD. & YOUTH SERV. REV. 1, 4 (2002)).

134. *Id.* at 676.

135. THE ANNIE E. CASEY FOUND., *supra* note 127 at 10.

136. *Id.*

137. *Id.*

138. 1 TEX. ADMIN. CODE § 355.7103 (2001).

139. *Parents Projected to Spend \$245,340 to Raise a Child Born in 2013, According to USDA Report*, U.S. DEP'T OF AGRIC. (Aug. 27, 2014), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2014/08/0179.xml>.

140. *Id.*

\$693 a month.<sup>141</sup> A non-relative placement is eligible to receive approximately \$693 a month per foster child, while a unverified kinship family does not receive any monetary reimbursement.<sup>142</sup> The federal government recognized this disparity by amending Parts B and E of Title IV Social Security Act.<sup>143</sup> The amendments provide kinship caregivers who assume legal guardianship with a monthly financial stipend comparable to foster care payments received by licensed foster homes.<sup>144</sup> However, the amendment failed to recognize unverified kinship caregivers, leaving them to fund the placement with their own financial resources.<sup>145</sup> It has long been recognized that kinship placements lack financial support.<sup>146</sup> A 2002 study found that “50 percent of children in kinship foster care live in low-income households.”<sup>147</sup> This data reflects the need for governmental support for all types of kinship placements, but the lack of a legislative solution limits the furtherance of additional unverified kinship placements.<sup>148</sup> These limitations include fewer care services, fewer requests for care services, and many additional barriers not experienced by government funded placements.<sup>149</sup>

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141. *Texas Health and Human Services Commission 24-Hour Residential Child Care Facilities Rates*, TEX. DEP'T OF FAM. & PROTECTIVE SERV., [https://www.dfps.state.tx.us/PCS/rates\\_childcare\\_reimbursement.asp](https://www.dfps.state.tx.us/PCS/rates_childcare_reimbursement.asp) (last visited Oct. 6, 2014).

142. *See* *Fostering Connections Act*, Pub. L. No. 110-351, § 101, 122 Stat. 3949 (2008) (requiring a kin guardian to be legally recognized by the state by assuming legal guardianship in order to qualify for financial assistance).

143. *Id.*

144. *Id.*

145. *See id.*

146. MADELYN FREUDLICH, *LEGISLATIVE STRATEGIES TO SAFELY REDUCE THE NUMBER OF CHILDREN IN FOSTER CARE* 3 (2010), [http://www.ncsl.org/documents/cyf/strategies\\_reducing\\_the\\_number\\_of\\_children\\_in\\_foster\\_care.pdf](http://www.ncsl.org/documents/cyf/strategies_reducing_the_number_of_children_in_foster_care.pdf). Challenges in reducing the number of children in foster care are:

Insufficient services to ensure permanency for children; Inadequate reunification services-family engagement, individualized assessments and case planning, and appropriate and targeted services; Inadequate implementation of concurrent planning (simultaneously planning for adoption or legal guardianship while pursuing reunification with the birth family); Difficulties with timely completion of adoption home studies; Inadequate supports for kinship care and legal guardianship; Delayed court hearings; and Multiple moves for children while in foster care. *Id.*

147. MACOMBER ET AL., *supra* note 18.

148. ROBB GEEN, URBAN INST., *FOSTER CHILDREN PLACED WITH RELATIVES OFTEN RECEIVE LESS GOVERNMENT HELP* 2 (No. A-59, 2003), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/310774-Foster-Children-Placed-with-Relatives-Often-Receive-Less-Government-Help.PDF>.

149. *Id.*

i. The Current Environment of Kinship Care

As previously mentioned, unverified kinship homes are not eligible for foster care reimbursements.<sup>150</sup> The Texas CPS currently issues kinship caregivers a guide titled “The Kinship Manual.”<sup>151</sup> The manual offers guidance to caregivers for addressing issues that arise during the process of having a CPS child in their custody.<sup>152</sup> One specific area of interest asks, “[w]hat assistance and financial resources are available to help?”<sup>153</sup> This section informs the caregiver of financial resources, including a program that offers \$500 annually for a child.<sup>154</sup> The manual also provides information for services such as the TANF and the Women, Infants and Children Program, as well as information on how to acquire food stamps.<sup>155</sup> However, in 2011, the national average for foster care payment was approximately \$511 a month, while a TANF child-only payment was \$249.<sup>156</sup> The numbers clearly reflect a financial gap that places a financial burden on unverified kinship placements.<sup>157</sup>

In 2014, Texas CPS paid out \$399,426,761 in foster care payments with a projection to pay \$408,524,070 in 2015.<sup>158</sup> In contrast, only \$10,124,858 was paid in “Relative Caregiver Monetary Assistance Payments” with a projected expense of “9,687,972 for 2015.”<sup>159</sup> A temporary caregiver progress report issued by the Texas Department of Family and Protective Services explained how the government acknowledged the potential implications of underfunded programs regarding child placement.<sup>160</sup> The report explained “[r]esearch has shown kinship placements have failed due to lack of financial resources”<sup>161</sup> and “the lack of financial resources to support these kinship placements has frequently led to breakdowns in

150. See generally TEX. DEP’T OF FAM. & PROTECTIVE SERV., KINSHIP MANUAL (2011), [http://www.dfps.state.tx.us/documents/Child\\_Protection/pdf/KinshipManual.pdf](http://www.dfps.state.tx.us/documents/Child_Protection/pdf/KinshipManual.pdf) (providing an informational guide to potential kinship families).

151. *Id.*

152. *Id.*

153. *Id.* at 7.

154. *Id.* at 8.

155. *Id.* at 7–8.

156. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 61, at 4.

157. Holczer, *supra* note 11, at 670.

158. TEX. DEP’T OF FAM. & PROTECTIVE SERV., ANNUAL REPORT & DATA BOOK 2014, at app. 115 (2014), [https://www.dfps.state.tx.us/documents/about/Data\\_Books\\_and\\_Annual\\_Reports/2014/FY2014\\_AnnualRpt\\_Databook.pdf](https://www.dfps.state.tx.us/documents/about/Data_Books_and_Annual_Reports/2014/FY2014_AnnualRpt_Databook.pdf).

159. *Id.*

160. See generally TEX. DEP’T OF FAM. & PROTECTIVE SERV., PROGRESS REPORT: RELATIVES AND OTHER DESIGNATED CAREGIVER ASSISTANCE PROGRAM (2009) [http://www.dfps.state.tx.us/documents/Child\\_Protection/pdf/2009-12-01\\_Progress-Report.pdf](http://www.dfps.state.tx.us/documents/Child_Protection/pdf/2009-12-01_Progress-Report.pdf) (analyzing the RCAP’s benefits to kinship placements).

161. *Id.* at 10.

the placements, resulting in children and youth entering non-kinship placements.”<sup>162</sup>

In response, Texas CPS developed the Relative Caregiver Assistant Program (RCAP), a financial compensation program aimed at assisting extended families who assume caregiver responsibilities.<sup>163</sup> The RCAP offers financial support to qualified kinship caregivers by allocating \$1,000 per sibling through a one-time payment and subsequent annual payments of \$500 per child.<sup>164</sup> From March through August 2006, 2,205 children in 1,166 kinship placements received approximately \$1.45 million in assistance.<sup>165</sup> Although the program provides some assistance, when distributed, the amount is vastly underfunded compared to the \$693 monthly payments received by a licensed foster parent.<sup>166</sup> Overall, the landscape is beginning to shift as CPS has acknowledged its shortcomings by explaining “financial assistance to caregivers who provide relative placement to a child in [Texas Department of Family Protective Services] substitute care results in better outcomes.”<sup>167</sup>

#### D. *Reaction and Response from the Federal Government*

The federal government has long recognized the importance of kinship caregivers and the positive impact they can make in the lives of children in the child welfare system.<sup>168</sup> The Adoption and Safe Families Act (ASFA) of 1997<sup>169</sup> authorized states to set their own foster care licensing standards.<sup>170</sup> The ASFA also stated that if states were to receive reimbursement from the federal government, “relatives must meet the same

162. *Id.* at 6.

163. TEX. HEALTH & HUM. SERV. COMM’N, *supra* note 126, at 9.

164. TEX. HEALTH & HUM. SERV. COMM’N, *supra* note 127, at 9; *id.* at 6.

165. *Id.* at 4.

166. See *Texas Health and Human Services Commission 24-Hour Residential Child Care Facilities Rates*, *supra* note 141 (establishing \$8,316 a year as the minimum amount to be reimbursed to a foster family compared to the \$500 a year a kinship caregiver receives).

167. TEX. DEP’T OF FAM. & PROTECTIVE SERV., RELATIVES AND OTHER DESIGNATED CAREGIVER ASSISTANCE PROGRAM 9 (2012), [http://www.dfps.state.tx.us/documents/Child\\_Protection/2012-05-02-RODCAP.doc](http://www.dfps.state.tx.us/documents/Child_Protection/2012-05-02-RODCAP.doc).

168. See Fostering Connections Act, Pub. L. No. 110-351, 122 Stat. 3949 (2008) (amending parts B and E of title IV of the Social Security Act, in an effort to provide more kinship support, enhance the lives of children in foster care and incentivized adoptions); see also CHILDREN’S BUREAU/ACYF, *supra* note 111, at 4 (explaining how the Fostering Connections Act of 2008 supports kinship placements by requiring agencies to identify relatives within thirty days after removal, requiring reasonable efforts be made to place siblings together, and giving states the ability to waive non-safety related requirements for foster care licenses for kinship caregivers).

169. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

170. Holczer, *supra* note 11, at 680.

licensing/approval standards as non-relative foster family homes.”<sup>171</sup> The effect of this decision left unverified kinship caregivers with the unfavorable choice of personally funding a license, or continuing care without government aid.<sup>172</sup>

In 2008, the federal government enacted the Fostering Connections Act of 2008 (the Act) detailing five main provisions aimed at improving the lives of children involved with the child welfare system.<sup>173</sup> These provisions are: Connecting and Supporting Relative Caregivers; Improving Outcomes for Children in Foster Care; Tribal Foster Care and Adoption Access; Improvement of Incentives for Adoption; and Clarification of Uniform Definition of Child and Other Provisions.<sup>174</sup> The Act supports kinship placements by requiring state child welfare agencies to identify relatives within thirty days after removal, requiring reasonable efforts be made to place siblings together, and giving states the authority to waive non-safety related requirements for foster care licenses for kinship caregivers.<sup>175</sup> The ultimate goal is to provide additional kinship support, while enhancing the lives of children in foster care through incentivizing adoption options.<sup>176</sup> According to Texas CPS, the main goal of the bill was to

improve the lives of children and youth in foster care and increase the likelihood that they will be able to leave the foster care system to live permanently with relatives, caregivers or adoptive families. The law accomplishes this by extending and providing services for relatives, children in foster care, tribal nations, and adoptive families.<sup>177</sup>

In addition, the government furthered support to encourage long-term kinship placements by providing federal funding to the states for “kinship guardianship assistance.”<sup>178</sup> This provided financial assistance to those relatives who accept permanent legal guardianship of the children they

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171. *Id.* at 680 (citing Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, 65 Fed. Reg. 16, 4032-33 (Jan. 25, 2000) (to be codified at 45 C.F.R. pt. 1355-57)).

172. *Id.*

173. Fostering Connections Act, Pub. L. No. 110-351, 122 Stat. 3949 (2008).

174. *Id.*

175. CHILDREN’S BUREAU/ACYF, *supra* note 111, at 4.

176. 122 Stat. 3949.

177. *Fostering Connections*, TEX. DEP’T OF FAM. & PROTECTIVE SERV., [http://www.dfps.state.tx.us/Child\\_Protection/Fostering\\_Connections/default.asp](http://www.dfps.state.tx.us/Child_Protection/Fostering_Connections/default.asp) (last visited March 7, 2015).

178. *See generally* 42 U.S.C. § 671 (2012) (establishing a method for states to become eligible to receive federal funds for foster care and adoption assistance).

previously fostered.<sup>179</sup> The government should expand the guardianship assistant program beyond just long-term kinship caregivers, to also encompass those caregivers who are temporarily caring for a child. Clearly the implementation of the Act is evidence that the government recognizes the benefits of kinship placements and the need of financial support.<sup>180</sup>

#### E. *State Efforts to Alleviate the Financial Burden*

Similar to Texas law, Tennessee requires kinship placements to be a licensed foster home to receive the same payments afforded to foster care settings.<sup>181</sup> The Tennessee Code requires that kinship placements be approved foster homes to obtaining funding

[i]f the relative is approved by the department to provide foster care services, in accordance with rules and regulations adopted by the department regarding foster care services, and placement with the relative is made, the relative may receive payment for the full foster care rate for the care of the child and any other benefits that might be available to the foster parents, whether in money or in services.<sup>182</sup>

In 2005, Tennessee launched a pilot program “to encourage placements with relatives for children who are at risk of removal from their home and placement in state custody.”<sup>183</sup> The program offered eligible family members an additional source of funding alongside TANF benefits.<sup>184</sup> The “Family First Kinship Care” Payment provided a monthly payment of between \$160 and \$190 to relatives, and when combined with the TANF benefits, a family could receive around \$300 a month per child.<sup>185</sup> Unfortunately, the expansion of this pilot program failed as it was only offered in three regions.<sup>186</sup> In 2006, Tennessee implemented another program, the Relative Caregiver Program (RCP), designed “to support relative caregivers of a minor child.”<sup>187</sup> Although the program did not offer a monthly payment plan, supportive services and start-up funds were avail-

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179. *See id.* § 671(a)(28) (providing states the option of entering into kinship guardianship assistance agreements in order to receive federal funding).

180. 122 Stat. 3949.

181. TENN. CODE ANN. § 37-2-414(b)(2) (2015).

182. *Id.*

183. FAMILIES FIRST KINSHIP CARE PAYMENT OVERVIEW 1 (2005), <http://www.workfirst.wa.gov/reexam/reexamdocs/FKC%20overview%20and%20procedures.pdf>.

184. *Id.*

185. *Id.*

186. *Id.*

187. PROMISING PRACTICE FACT SHEET-CHILD-ONLY TANF/KINSHIP CARE RELATIVE CAREGIVER PROGRAM-TENNESSEE 1 (2010), <http://www.workfirst.wa.gov/reexam/reexamdocs/TN%20Relative%20Care%20Program%20%286%29.pdf>.

able to kinship caregivers.<sup>188</sup> As of 2010, the RCP program serves 4,718 children.<sup>189</sup> Looking forward, there is a potential risk the State General Assembly will end Tennessee's RCP program.<sup>190</sup> Limited funding is cited as one of the largest concerns, as “[f]inancial support to families is critical to long-term sustainability . . . .”<sup>191</sup>

Tennessee's pilot program is a potential model for other states to follow. The program's primary focus of providing monetary compensation to familial caregivers is the type of framework that legislatures can reform to specifically tailor to their state's budget. The financial support assists families in meeting their short-term monetary obligations, while helping to absolve financial limitations of kinship programs.<sup>192</sup>

### III. DISPROPORTIONATE MINORITY REPRESENTATION IN THE CPS SYSTEM

#### A. *The Problem: Disproportionality of Minorities*

As previously mentioned, in Texas, African-American and Native American children are less likely to be adopted than children of other races.<sup>193</sup> While the exact causes of the disproportionate number of racial minorities in the CPS system are unknown, it appears to be linked to “family risks, institutional and personal biases, system processes and resources and geographical context.”<sup>194</sup> Although there are many theorized contributing factors of disproportionality, multiple studies have determined that race significantly contributes to the high percentage of minority children in foster care.<sup>195</sup> Other potential causes of disproportionality, such as “poverty, classism, racism, organizational culture, service strategy and resources,” are identified, but it is highly suggestive that race “influences the institutional response to maltreatment resulting in higher sub-

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188. *Id.* at 2.

189. *Id.*

190. STATE OF TENN. DEP'T OF CHILDREN'S SERV., CHILD AND FAMILY SERVICE PLAN FY 2015-2019, at 14 (2014), <https://www.tennessee.gov/youth/dcsguide/fedinitiatives/TDCS%20CFSP%202015-2019.pdf>.

191. *Id.*, at 13.

192. See generally FAMILIES FIRST KINSHIP CARE PAYMENT OVERVIEW, *supra* note 183 (identifying the need for additional financial support for families who took on another child due to CPS involvement).

193. See *Disproportionality in Child Protective Services System*, *supra* note 4 (defining the subset of African-American and Native American children as those who are permanently removed from their homes).

194. *Id.*

195. See CASEY FAMILY PROGRAMS, *supra* note 12, at 4 (defining “minority” as African-American, Native American, Mexican-American, and other races not identified as the majority—which is Caucasian).

stantiation and placement rates for children of color.”<sup>196</sup> A government study reported that higher rates of poverty and challenges to accessing support services are casually linked to the disproportionate rate of African-American children in foster care.<sup>197</sup> In Texas, CPS examined triggers for child welfare intervention and determined that “poverty and neglect together increased the likelihood” of involvement.<sup>198</sup> This is evidenced by the fact that “[m]ore than 60% of child removals in Texas involved families with annual incomes of about \$10,000 or less. This is a [contributing] factor in disproportionality because poverty rates are higher among African-American families.”<sup>199</sup>

Some factors surrounding families in poverty which influence state agencies’ involvement include: “[p]oor families are less likely to have adequate back-up arrangements or private support systems in times of emergency . . . are more likely to have trouble acquiring safe housing (or any housing); they are less likely to have adequate nutrition, medical care, child care and education and . . . are more likely to suffer emotional harms from the stress of their situations.”<sup>200</sup> Support for the contention of poverty being a significant influence for reasons behind CPS involvement has indicated that “[t]he foster care program has thus been referred to as a ‘de facto poverty’ program with critics alleging that the government has taken over child rearing responsibilities from poor families.”<sup>201</sup>

#### B. *Increased Rates of African-American Children in the System*

African-American children account for one-fifth of the child population in the United States.<sup>202</sup> However, according to national foster care statistics, African-American children represent almost one-half of the

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196. *Id.*

197. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 61, at 4.

198. JOHN FLUKE ET AL., RESEARCH SYNTHESIS ON CHILD WELFARE DISPROPORTIONALITY AND DISPARITIES 12 (2010), [http://www.cssp.org/publications/child-welfare/alliance/Disparities-and-Disproportionality-in-Child-Welfare\\_An-Analysis-of-the-Research-December-2011.pdf](http://www.cssp.org/publications/child-welfare/alliance/Disparities-and-Disproportionality-in-Child-Welfare_An-Analysis-of-the-Research-December-2011.pdf); TEX. HEALTH & HUM. SERV. COMM’N, *supra* note 126, at 4.

199. TEX. HEALTH & HUM. SERV. COMM’N, *supra* note 126, at 4.

200. Stephanie Smith Ledesma, *The Vanishing of the African-American Family: “Reasonable Efforts” and its Connection to the Disproportionality of the Child Welfare System*, 9 CHARLESTON L. REV. 29, 47 (2014) (citing Nell Clement, *Do “Reasonable Efforts” Require Cultural Competence? The Importance of Culturally Competent Reunification Services in the California Child Welfare System*, 5 HASTINGS RACE & POVERTY L.J. 397, 413–14 (2008)).

201. *Id.* at 47 (citing Mark E. Courtney, *Foster Care and the Costs of Welfare Reform*, THE FOSTER CARE CRISIS 129, 148 (1999)).

202. *Id.* at 35 (citing Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 U. ILL. L. REV. 171, 172 (2003); Ruth McRoy, *Expedited Permanency: Implications for African-American Children and Families*, 12 VA. J. SOC. POL’Y & L. 475, 476 (2005); and SUSAN CHIBNALL ET AL., CHILDREN OF COLOR IN THE CHILD WELFARE SYSTEM: PERSPECTIVES



population placed in the foster care system.<sup>203</sup> A 2013 report showed that approximately 7 million children were domiciled in Texas.<sup>204</sup> Specifically, the report proffered a statistical break-down by categorizing children into specific racial groups.<sup>205</sup> Hispanic children accounted for 49.4% of the population, Anglo children represented 32.6%, and 11.6% were African-American.<sup>206</sup> In the same year, a CPS report showed that 17,022 children were removed from their homes.<sup>207</sup> Of these children, 7,306 (42.9%) were Hispanic; 5,410 (31.8%) were Anglo-American; and 3,297 (19.4%) were African-American.<sup>208</sup> These findings are significant because the national population of Anglo and Hispanic children correlate to their removal frequency, while the population of African-American children, when compared to the removal rate, nearly doubled.<sup>209</sup> Disconcerting statistics of this nature highlight the importance of addressing the issue of disproportionality and the key role out-of-home placements play in reducing the number of underrepresented children in the child welfare system.<sup>210</sup>

African-American children are not only present in foster care at higher rates, but they also remain in care almost twice as long as other racial groups.<sup>211</sup> As mentioned, children in the CPS system have an increased risk of being subjected to negative influences affecting their academic studies, spiritual well-being, cultural roots, established familial bonds, and the connections within their community.<sup>212</sup> Since 2004, federal and state lawmakers have recognized these disconcerting realities by implementing

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FROM THE CHILDREN WELFARE COMMUNITY (2003), <https://www.childwelfare.gov/pubPDFs/children.pdf>.

203. Ledesma, *supra* note 200, at 35 (citing Roberts, *supra* note 202, at 172; McRoy, *supra* note 202, at 476; and CHIBNALL ET AL., *supra* note 202).

204. See TEX. DEP'T OF FAM. & PROTECTIVE SERV., *supra* note 51, at app. 137 (detailing that in 2013, 7,159,172 children resided in Texas).

205. See *id.* (detailing the specific populations, which included 827,289 (11.6%) African-American; 2,336,977 (32.6%) Anglo; and 3,533,665 (49.4%) Hispanic).

206. *Id.*

207. *Id.* at app. 189.

208. *Id.* at app. 195.

209. *Id.* at app. 189, 195.

210. See generally TEX. HEALTH & HUM. SERV. COMM'N, *supra* note 126, at 1 (recognizing how African-American children are disproportionality represented in CPS, looking at root causes and developing potential strategies to address the issue).

211. See CHILDREN'S BUREAU/ACYF, CHILD WELFARE INFO. GATEWAY, ADDRESSING RACIAL DISPROPORTIONALITY IN CHILD WELFARE 4 (2011), [https://www.childwelfare.gov/pubs/issue\\_briefs/racial\\_disproportionality/racial\\_disproportionality.pdf](https://www.childwelfare.gov/pubs/issue_briefs/racial_disproportionality/racial_disproportionality.pdf) (explaining that in 2003, the average stay of a Caucasian child was approximately 24 months, but an African-American child stayed 40 months in foster care).

212. CASEY FAMILY PROGRAMS, *supra* note 12, at 4.

policies and procedures aimed at reducing these problems.<sup>213</sup> Disproportionality is not limited to foster care, as it extends to children placed with family members as well. In Texas, from 2006 to 2007, 30.6% of African-American children were placed with relatives, compared to 32.2% of Anglo children.<sup>214</sup> One year later, the gap narrowed to 29.9% of African-American and 30.9% of Anglo children placed with relatives, showing growth towards awareness.<sup>215</sup>

### C. *Current Approaches and Remedial Solutions to Combatting Disproportionality*

In 2005, the Texas Legislature attempted to combat the issue of disproportionality by enacting Senate Bill 6.<sup>216</sup> The bill required CPS to address disproportionality amongst child placement by providing a plan for corrective action.<sup>217</sup> CPS must “analyze data regarding children removal and other enforcement actions . . . [to] determine whether enforcement actions were disproportionality initiated against any racial or ethnic group.”<sup>218</sup> In response, CPS developed a comprehensive approach to address the disparities by establishing disproportionality specialists, enhancing training techniques, developing a relationship with local communities, by increasing staff diversity, and establishing a Permanency Care Assistance Program (PCA)—a program focusing primarily on permanency for children who “might otherwise grow up in foster care without a caring adult.”<sup>219</sup>

In addition, CPS developed a “remediation” plan to address legislative concerns regarding disproportionality.<sup>220</sup> The plan included information

213. See FREUDLICH, *supra* note 146, at 21 (detailing how states such as Michigan formed an advisory committee to explore why minorities are being overrepresented; in Texas, Senate Bill 6 required CPS to investigate whether their services “were disproportionately against any racial or ethnic group”; and in Washington legislation required analysis and recommendation on racial disparity).

214. TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 122, at app. B 14.

215. *Id.*

216. Act of Sept. 1, 2005, 79th Leg., R.S., ch. 268, § 1.54, 2005 Tex. Sess. Law Serv. 621 (West) (codified at TEX. FAM. CODE § 264.2041); REBECCA BREIDENBACH ET AL., *Disproportionality in Child Protective Services: Updated Results of Statewide Reform Efforts 3* (2011), [https://www.dfps.state.tx.us/documents/Child\\_Protection/pdf/2011-08-01\\_Disproportionality.pdf](https://www.dfps.state.tx.us/documents/Child_Protection/pdf/2011-08-01_Disproportionality.pdf).

217. § 1.54; BREIDENBACH ET AL., *supra* note 216, at 3. .

218. § 1.54.

219. *What’s the Texas Department of Family and Protective Services Doing About Disproportionality?*, TEX. DEPARTMENT OF FAM. & PROTECTIVE SERV., [https://www.dfps.state.tx.us/Child\\_Protection/Disproportionality/whats\\_texas.asp](https://www.dfps.state.tx.us/Child_Protection/Disproportionality/whats_texas.asp) (last visited Nov. 15, 2014).

220. See generally *Disproportionality in Child Protective Services System*, *supra* note 4 (providing information on influences of disproportionality and plans to address disproportionality through the stages of CPS involvement).

on influences of disproportionality, and offered various ways to address disproportionality through the stages of CPS involvement—such as exit from care, removals, and in-home services.<sup>221</sup> CPS also established the Family Group Decision Making (FGDM) program, designed to involve immediate and distant relatives of a child who have been removed from their home;<sup>222</sup> while expanding kinship support by offering a one-time payment and annual reimbursements.<sup>223</sup> Under this program, a qualified kinship caregiver could receive up to \$1,000 per sibling group in a one-time payment and annual recurring payments of \$500 per child,<sup>224</sup> as well as expanding the search for more diverse adoptive families.<sup>225</sup> To encourage and expand adoption for minority children, CPS made a recommendation for a less arduous application process, more public awareness, and greater recruiting efforts within the African-American community.<sup>226</sup>

In 2011, CPS released a progress report detailing the efficacy of the programs and the progress made toward reducing disproportionality.<sup>227</sup> The findings showed the programs were having a positive effect, while the overall rate of disproportionality was gradually decreasing.<sup>228</sup> Specifically, removal of Hispanic children from the home were continuing to decline, and the removal rate of American-Indians decreased by more than 23% since 2006.<sup>229</sup> Unfortunately, the study found that “African-American families were 18% more likely than Anglo families to have their investigation result in a child being removed from the home . . . .”<sup>230</sup>

i. Reasons for Continued Improvement and Change: Two Steps Forward, One Step Back

States are implementing various techniques to reduce disproportionality.<sup>231</sup> In 2011, a study in Illinois found that permanency rates for African-American children increased as a result of integrating kinship care as a permanency option.<sup>232</sup> Also, in Minnesota, increased discussions about

221. TEX. HEALTH & HUM. SERV. COMM'N, *supra* note 126, at 1.

222. *See id.* at 7 (describing the conference as one to help “develop a plan to ensure safety and permanency for the children involved”). “An agreed upon, family-driven service plan is negotiated in the conference and contains goals, tasks and assignments for the family and others associated with the case.” *Id.*

223. *Id.* at 4.

224. *Id.*

225. *Id.* at 12.

226. *Id.* at 11–12.

227. BREIDENBACH ET AL., *supra* note 217.

228. *Id.* at 4.

229. *Id.*

230. *Id.* at 12.

231. CHILDREN'S BUREAU/ACYF, *supra* note 211, at 4.

232. *Id.* at 20.

disproportionality helped expand services offered to minority children.<sup>233</sup> Similarly in Washington, the waiting time for an African-American child to be adopted decreased by three months, although overall it still remained longer than an Anglo child.<sup>234</sup> As mentioned, as a result of legislative action, CPS in Texas developed a remediation plan to address the concerns of disproportionality which specifically involved kinship support.<sup>235</sup> CPS responded to the Legislative mandate that CPS identify relatives who could serve as caregivers and provide them with “resource material, financial assistance[,] and support services.”<sup>236</sup>

The 2014 CPS Annual Report indicates that the agency is continuing to work towards reducing the disproportionate representation of children of color,<sup>237</sup> noting that African-American and Hispanic children left state care to live with relatives at a high rate.<sup>238</sup> A special Children’s Commission within the Texas Supreme Court’s Permanent Judicial Commission for Children, Youth, and Families works in collaboration with CPS on issues such as disproportionality.<sup>239</sup> Unfortunately, as of 2013, 17.4% of children removed from their home were African-American; yet they only make up 11.5% of the population.<sup>240</sup>

#### IV. THE ROLE OF KINSHIP PLACEMENTS IN REDUCING DISPROPORTIONALITY

##### A. *Linking Financial Assistance to Reduced Disproportionality*

Texas Senate Bill 6 forced CPS to address the concerns of disproportionality involving kinship support.<sup>241</sup> CPS followed the legislative mandate requiring CPS to identify relatives who could serve as caregivers and provide them with “resource material, financial assistance[,] and support services.”<sup>242</sup> As previously explained, CPS developed the Relative Caregiver Assistance Program (RCAP)—a compensation program designed to allocate funds to kinship caregivers—which enabled them to qualify for stipends of \$1,000 per sibling group in a one-time payment and annual recurring payments of \$500 per child.<sup>243</sup> The purpose was to provide “support to kinship placements that otherwise might not be sustaina-

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233. *Id.*

234. *Id.* at 20–21.

235. TEX. HEALTH & HUM. SERV. COMM’N, *supra* note 126, at 9.

236. *Id.*

237. TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 158, at 23.

238. *Id.*

239. *Id.* at 24.

240. *Id.* at app. 42.

241. TEX. HEALTH & HUM. SERV. COMM’N, *supra* note 126, at 9.

242. *Id.*

243. *Id.*

ble due to lack of financial resources.”<sup>244</sup> While the assistance helps to alleviate some of the financial hardship incurred by these caregivers, it pales in comparison to the \$693 continuous monthly payments a non-relative foster parent receives from the state.<sup>245</sup> A 2009 study by Texas CPS reported that 77% of kinship placements qualified and benefitted from the \$500 annual payment offered by the program.<sup>246</sup> Financial assistance plays a hugely important role in the long-term success of kinship placement programs.<sup>247</sup> This is evidenced by the increased participation in kinship placement by African-American families—a group with one of the highest poverty rates—which surpasses the number of Anglo families involved in kinship placements.<sup>248</sup> In addition, from 2006 to 2011—the years in which the RCAP paid out \$46.8 million in financial assistance<sup>249</sup>—the number of African-American children placed with relatives was greater than that of Anglo children.<sup>250</sup>

In 2007, the Government Accountability Office offered a potential solution to finding African-American children long-term care: to “[provide] financial subsidies to guardians who are willing to parent foster children permanently.”<sup>251</sup> The solution reinforces the notion that adequate funding is one of the main driving forces needed to counter the financial limitations placed on African-American relatives and children in the welfare system.<sup>252</sup> Furthermore, a 2008 federal subcommittee examined disproportionality and made recommendations to Congress, including directives to “[e]xamine the rate of placement of children of all cultural, racial, and ethnic communities in foster and formal kinship arrangements.”<sup>253</sup> The subcommittee acknowledged the great value in placing children with relatives, but stated that financial limitations potentially threaten the use and merit of this practice.<sup>254</sup>

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244. TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 167, at 6.

245. *Texas Health and Human Services Commission 24-Hour Residential Child Care Facilities Rates*, *supra* note 142.

246. *See* TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 161, at 5 (reporting the 77% represented 12,809 children benefitting from the program’s financial assistance).

247. *Id.* at app. A 12.

248. *See id.* (explaining that as of August 2008, 32% of African-American families were involved with kinship placements, compared to 28.5% of Anglo families).

249. TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 167, at 3.

250. *See id.* at 5 (reporting that 58.8% of African-American children under the conservatorship of CPS were placed with relatives compared to 54.2% of Anglo children).

251. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 61, at 33.

252. *See id.* (establishing a link between financial assistance and guardians who offer long-term foster care).

253. CHILD WELFARE LEAGUE OF AM., HEARING ON RACIAL DISPROPORTIONALITY IN FOSTER CARE UNITED STATES HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON INCOME SECURITY 9 (2008), <http://waysandmeans.house.gov/media/pdf/110/cwlafr.pdf>.

254. *Id.*

In *Miller v. Youakim*,<sup>255</sup> the Supreme Court held that a relative foster parent who satisfies state foster home licensure requirements, was eligible to receive the same benefits as an unrelated foster parent.<sup>256</sup> According to the Court, “a proper remedial environment for such foster children arises from the status of the child as a subject of prior neglect, not from the status of the foster parent.”<sup>257</sup> The framework established by the Supreme Court should extend to encompass all kinship placements. The current legislative landscape provides in order to receive financial assistance, kinship placements must meet all eligibility requirements of non-related foster parents. This is problematic because factors such as financial constraints can prevent families from obtaining the proper license, and without the license, families are not eligible to receive additional funding.<sup>258</sup>

Unfortunately, becoming a foster parent is not a simple undertaking.<sup>259</sup> The length of time for foster parents to become a licensed foster home usually involves a two- to three-month process.<sup>260</sup> As mentioned, Texas law requires foster/adoptive homes to satisfy both technical and physical requirements, such as adequate sleeping space, a limit of no more than six children in the home, safety inspections of the home, pet vaccinations, CPR/First Aid certification, TB testing, and attending twenty hours or more of training annually.<sup>261</sup> These stringent licensing requirements often create significant obstacles for kinship caregivers.<sup>262</sup> “[K]in are more likely to be poor, working outside the home, older, less educated, unprepared for their new caregiving role, and isolated from others in the community.”<sup>263</sup>

There is national concern that incentives exist to keep children in foster care.<sup>264</sup> As previously noted, the state receives federal reimbursement

255. 440 U.S. 125 (1979).

256. *See id.* at 145 (declining to make an “unreasonable attribution” that Congress had an intent to differentiate among children who are equally neglected and abused, based on a living arrangement).

257. *Id.*

258. *See* TEX. HEALTH & HUM. SERV. COMM’N, *supra* note 126, at 8 (asserting that requiring relatives to meet all requirements influences the achievement of kinship placements).

259. *See Foster Care-Frequently Asked Questions*, PATHWAYS, <http://www.pathway.org/faqfostercare.html> (last visited June 14, 2015) (providing information to potential foster parents on the timeframe to become a licensed foster home).

260. *Id.*

261. *Requirements for Foster/Adopt Families*, *supra* note 29.

262. Holczer, *supra* note 11, at 678.

263. *Id.* at 678 (citing GREEN, *supra* note 148, at 1).

264. *See* Tayna Asim Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 MARQ. L. REV. 215, 220 (2013) (exploring disproportionality in the foster care system).

for children in foster homes.<sup>265</sup> Some scholars suggest this financial component is counterintuitive by working against moving children out of foster care.<sup>266</sup> Offering additional financial support funded by the federal government can strengthen kinship placements, and may ultimately lead to permanency if reunification cannot be achieved for the children whom adoptive homes are more difficult to find, specifically African-American boys.<sup>267</sup>

### B. *The Financial Impact: A Current Snapshot*

In March 2014, the Congressional Research Service issued a report detailing the current situation of federal funding within the CPS system.<sup>268</sup> The largest amount of federal funding comes from the Title IV-E Social Security Act.<sup>269</sup> The Act provides a basic payment structure for each individual state's child welfare system and includes detailed requirements that must be satisfied to qualify for the funds.<sup>270</sup> Currently, federal funding is available to the states for "kinship guardianship assistance."<sup>271</sup> The eligibility requirements for kinship guardianship assistance enable the state to provide financial payments to those kinship relatives who assume legal guardianship of the children they previously fostered.<sup>272</sup> In FY 2012, states received federal funding for approximately 16,000 children permanently placed with relatives.<sup>273</sup> Nationally, the budget for Kinship Guardianship Assistance was \$80,000,000 while the foster care budget was \$4,288,000,000.<sup>274</sup> While the national foster care budget stayed relatively consistent from FY 2012 to FY 2013, funds allocated to Kinship Guardianship Assistance nearly doubled.<sup>275</sup> This data signifies the importance the federal government has placed on kinship care programs by significantly increasing the funds allocated to relatives that have taken on

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265. *Id.*

266. *See id.* at 221 (labeling the foster care system as a billion-dollar enterprise and explaining that some scholars believe the system exploits those in most need).

267. TEX. DEP'T OF FAM. & PROTECTIVE SERV., *supra* note 122, at 8.

268. EMILIE STOLTZFUS, CHILD WELFARE: AN OVERVIEW OF FEDERAL PROGRAMS AND THEIR CURRENT FUNDING (2014), <http://fosteryouthalliance.org/wp-content/uploads/2014/04/Child-Welfare-An-Overview-of-Federal-Programs-and-Their-Current-Funding.pdf>.

269. *Id.*

270. 42 U.S.C. § 671 (2012).

271. § 671(a)(28).

272. *Id.*

273. STOLTZFUS, *supra* note 268 at 12.

274. *Id.* at 13.

275. *See id.* (reporting that in FY 2013 and FY 2014, the national foster care budget was \$4,285,540,000 and \$4,279,000,000, respectively, and the Kinship Guardianship Assistance budget for the same years was \$123,000,000 and \$124,000,000).

legal guardianship.<sup>276</sup> However, the disbursement of these funds does not apply to those in the interim period during which children awaiting reunification with their biological parent are under relative care. A possible solution to this problem would be to re-allocate the \$4 billion in federal funds used for the foster care budget.<sup>277</sup> A portion of these funds could be distributed to these relatives which would help alleviate some of the financial hardships incurred as a result of taking on this care-taking responsibility.

In response to the federal “Kinship Guardianship Assistance” program, the Texas Legislature responded by implementing the “Permanency Care Assistance Program” (PCA).<sup>278</sup> The PCA program is designed “to provide financial support to relative (or ‘kinship’) caregivers who take permanent legal responsibility for a child who cannot be reunited with his or her parents and for whom adoption is not an appropriate permanency option.”<sup>279</sup> Texas CPS recognizes the benefits of kinship placements: providing love and care in a familiar setting; enabling children to live with those they know and trust; reinforcing a sense of connection to birth families and their culture; helping sustain extended family relationships; creating a sense of stability and safety; and supporting the child’s healthy relationship within the family.<sup>280</sup> The stability of a placement “is enhanced when kinship caregivers receive the fully foster care subsidy.”<sup>281</sup> The federal government and Texas both recognize the multifaceted benefits and advantages of a child being placed with relatives, and the need for those relatives to receive financial assistance.<sup>282</sup> “[K]inship care payments should turn on the government’s responsibility for children in state custody . . . regardless of where the child is placed.”<sup>283</sup>

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276. See generally *id.* (itemizing the federal funding available to states under the Title IV-E Social Security Act).

277. *Id.*

278. *Permanency Care Assistance (PCA)*, TEX. DEP’T OF FAM. & PROTECTIVE SERV., [http://www.dfps.state.tx.us/Child\\_Protection/Fostering\\_Connections/pca.asp](http://www.dfps.state.tx.us/Child_Protection/Fostering_Connections/pca.asp) (last visited Mar. 6, 2015).

279. *Id.* The eligibility qualifications for Texan families reflect those set out by the Federal Government. *Id.*

280. *Kinship Care*, *supra* note 9.

281. Holczer, Note, *supra* note 11, at 677 (citing Mark F. Testa & Kristen Shook Slack, *The Gift of Kinship Foster Care*, 24 CHILD. & YOUTH SERVS. REV. 79, 103 (2002)).

282. See, e.g., 42 U.S.C. § 671 (2012) (providing federal funding to states who initiate plans to place children with relatives); *Permanency Care Assistance (PCA)*, *supra* note 279 (outlining Texas’s approach in attempting to comply with the Kinship Guardianship Assistance Payments Program); *Kinship Care*, *supra* note 9 (explaining the benefits of kinship placement that Texas has recognized).

283. Holczer, Note, *supra* note 11, at 680.



### C. *Future Effects for Children in CPS Custody*

Although this comment focuses on children and families with permanency plans of reunification, there is a significant benefit to early kinship support.<sup>284</sup> When parental reunification is no longer achievable, kinship placement is considered preferential because “kin are better able to promote identity, the continuation of traditions, and relationships with extended family . . . .”<sup>285</sup> A 2009 CPS study indicated that when compared to parental reunification, children, and youth who benefit from a payment “are slightly more likely to exit a kinship placement, . . . and much more likely to be adopted.”<sup>286</sup> A study such as this is evidence that kinship funds could encourage placements that would otherwise be unable to financially support an additional child.<sup>287</sup> In 2009, 29% of children who received the benefits from the RCAP had conservatorship transferred to their kinship caregivers,<sup>288</sup> which suggests that more children are finding permanency with kinship caregivers.<sup>289</sup> If results such as this were noted to be beneficial from the RCAP’s \$500 annual payment, it is this comment’s contention that even more placements may be viable with consistent and substantially more monthly assistance. During FY 2005 to 2008, it was observed that “children and youth who ha[d] been in a kinship placement [were] less likely to re-enter [CPS] care.”<sup>290</sup> More recently, a 2012 CPS report concluded that children placed with relatives who received RCAP payments, exited the CPS system (through either reunification, custody to relatives or adoption) earlier than children in placements that did not receive funding.<sup>291</sup>

## V. CONCLUSION

For two years I worked as a Child Protective Services caseworker. I observed disproportionality in minority children and how the racial disparities affected the financial hardships of kinship families. I vividly remember a case involving a Hispanic woman who took on the responsibility of caring for three of her sister’s children. She wanted the children to remain together and avoid living with strangers in foster care. She frequently expressed doubts of continuing care because of the finan-

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284. See TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 167, at 3 (identifying benefits to children when the permanency plans shift away from reunifications).

285. TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 160, at 7.

286. *Id.*

287. *Id.* at 9.

288. *Id.* at 10.

289. See generally *id.* (examining benefits of the RCAP).

290. *Id.* at 8.

291. See TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 167, at 4 (reporting that children in kinship placements are more likely to have a positive exit).

cial struggles she faced with supporting three additional children. Due to technicalities, she was unable to be a fully licensed foster parent, which disqualified her from receiving government aid. I also observed African-American siblings split between placements—as it was not financially feasible for a single family member to support more than a few children. I have seen how financial assistance for kinship placement programs positively impact caregivers in their ability to care for the children of their relatives, which has led to a reduction in the overall number of minorities in foster care.

African-American children are removed from out-of-home placements more frequently, and remain in the CPS system longer—than any other race.<sup>292</sup> Despite the continual efforts made by CPS in addressing the financial disparities in placement programs, the overrepresentation of racial minorities in the child welfare system continue to be a relevant topic of disconcert.<sup>293</sup> Kinship placements are beneficial to children who have been removed from their home by offering a variety of strengths, including greater stability—which has the effect of reducing behavioral problems—while highlighting the importance of cultural traditions.<sup>294</sup> Unfortunately, often times finances limit kinship caregivers' ability to care for a child. CPS recognizes the enormous role financial assistance plays in assisting kinship caregivers' ability to care for a child.<sup>295</sup> One way to alleviate the financial burden is to expand foster care payments to non-licensed (non-verified) kinship homes. Family members should receive the same financial benefits without having to go through the foster home approval process. This financial assistance will likely increase familial willingness to undertake such an enormous responsibility while the biological parents navigate their way through the child welfare system.

Nelson Mandela once said, “[t]here can be no keener revelation of a society’s soul than the way in which it treats its children,”<sup>296</sup> and unfortunately, the current landscape of child disproportionality is reflected by a system burdened with financial difficulties. Kinship caregivers are affected by this burden, and until there is a solution, the overrepresenta-

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292. See TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 51, at app. 195 (identifying how African-American children make up 11.6% of the population, but 19.4% were removed from their homes to the 31.6% Anglo children removed, when they make up 32.6% of the population).

293. See generally TEX. HEALTH & HUM. SERV. COMM’N, *supra* note 126 (offering various plans to address disproportionality through the stages of CPS involvement, such as exit from care, removals, and in-home services).

294. CONWAY & HUTSON, *supra* note 14, at 12.

295. TEX. DEP’T OF FAM. & PROTECTIVE SERV., *supra* note 167, at 9.

296. Ledesma, *supra* note 200, at 30 (citing Nelson Mandela, President of S. Afr., Speech by President Nelson Mandela at the Launch of the Nelson Mandela Children’s Fund (May 8, 1995)).

tion—specifically amongst African-American children in the welfare system—will continue to be a problem. The mission statement of Texas CPS “is to protect children, the elderly, and people with disabilities from abuse, neglect, and exploitation by involving clients, families, and communities.”<sup>297</sup> CPS has a responsibility to protect every child—including those involved in kinship placements. Without adequate funding, it is impossible to ensure that every child within the welfare system will be afforded the same opportunity to be placed in an environment to succeed. Expanding financial assistance to kinship placements is one potential solution to the bigger problem of disproportionality among racial minorities in the child welfare system.

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297. *Our Mission, Vision and Values*, TEX. DEP’T OF FAM. & PROTECTIVE SERV., [https://www.dfps.state.tx.us/About\\_DFPS/mission.asp](https://www.dfps.state.tx.us/About_DFPS/mission.asp) (last visited Nov. 16, 2014).