

## **DC Committee on Human Services Agency Performance Oversight**

Testimony of Kathryn A. Piper, JD, PhD on Kinship Care Diversion on behalf of the American Professional Society on the Abuse of Children (APSAC)

**Introduction:** This written testimony is submitted on behalf of APSAC out of concern for the safety, permanence and well-being of maltreated children diverted from foster care to kinship care without court involvement. [APSAC](#) is a nonprofit, national professional society focused on meeting the needs of professionals engaged in all aspects of providing services for maltreated children and their families. APSAC's mission is to improve society's response to the abuse and neglect of its children.

### **Potential pitfalls to placement with kinship diversion:**

Most child advocates, including APSAC, agree that when children are found to have been abused and/or neglected and it is unsafe for them to remain in their home, the best option is placement with fit and caring relatives with whom the children have an established relationship. Kinship placements can be less traumatizing for the child, allowing the child to stay connected with their family and community. Moreover, prioritizing placement with relatives in foster care is required by federal funding law--42 U.S.C. § 671(a)(29).

However, pitfalls can occasionally occur with such placements:

- Kin may not perceive the negative impact of the home environment on the child's behaviors and join the parent in blaming the child.
- Kin may not believe the allegations of abuse/neglect and therefore may not see a need to protect the child from further abuse/neglect or pressure on the child to recant. In cases of sexual abuse especially, whether or not a caregiver believes the child and is able to support a child's therapeutic needs has a critical impact on that child's ability to heal.
- Kin may agree to take a child as the result of family pressure without a true commitment to caring for the child long-term.
- Kin may undermine reunification efforts if they have a hostile relationship with the parents.
- Relatives themselves may be abusive or neglectful toward the child because they come from the same troubled family background that led the parent to mistreat the child (Marsh & Piper, 2009, p. 9-10).

Thus, the appropriateness of such placements must be made on a case-by-case basis taking into account the facts and circumstances of the individual case. When relatives are fit and able to meet the needs of the maltreated child, APSAC fully supports kinship care. It is *diversion*, that is, circumvention of the legal system that APSAC opposes.

When a petition has been filed in juvenile court in cases involving child maltreatment, parents and children are appointed lawyers. Court oversight ensures that there is proof that 1) the children have been abused &/or neglected; 2) each parent unfit (where one parent is fit, the

child should be placed with that parent); 3) removal of the children from their home is necessary for their safety and well-being; and 4) the child protection agency (CFSA in DC) has made reasonable efforts (i.e., provided services) to prevent the child's removal. If so proven, the child is placed in state's custody which guarantees the child a number of rights and resources and a case plan is adopted, compliance with which is designed to ensure a safe and timely reunification of parent and child or, if not, some other permanent arrangement for the child.. The child protection social workers continue to assist the family (including the kinship care provider, when a child is placed within the kin network), monitor participation and progress in services and act, when necessary, as a buffer between parents and kinship caregivers.

Increasingly child protection agencies have instead opted for an alternative to court oversight by encouraging parents to "voluntarily" transfer custody of the children to a relative. APSAC has many concerns about the practice of kinship diversion.

**The child has no voice:** Professor Joshua Gupta-Kagan recommends the use of funding, made available by the Family First Prevention Services Act, to pay for lawyers for parents when state action results in a change in custody of children prior to or without the filing of a petition in juvenile court. APSAC advocates that children, too, be provided with legal representation. APSAC finds it concerning that in most cases of kinship diversion, the parents are allowed to identify the kinship caregiver (Malm, Sepulveda, & Abbott, 2019, p. 2).

Under the US constitution, parents are presumed capable to make decisions about their children's care, custody and control in the best interests of their children. (Troxel v. Granville, 530 U.S. 57, 2000). However, this presumption no longer holds where parents have abused and/or neglected their children and have been found to be "unfit." Neither should this presumption hold in cases of kinship diversion, where the public child protection agency has determined that the child is not safe in the parental home. Children who are the subject of these diversionary efforts deserve an independent voice regarding their placement.

**The children do not have the same rights and level of support and services as foster children placed with kin as licensed foster parents:** Often these children are traumatized and challenging to care for. The lack of resources provided for children and their kinship caregivers in diversion situations too often results in placement instability, as children bounce from relative to relative or are returned to parents with no assessment of the safety and risks of reunification.

**Diverted children have no guarantee of permanence:** The arrangements for a change in custody from the parents to the kinship caregivers at the encouragement of the child protection agencies usually have no limits on their duration and may be haphazard. Thus, children are often left in limbo for years. No one knows what happens to these children after the child protection agency closes the case.

**There is no data about the scope and outcomes of kinship diversion:** Because child protection agencies are not required by the federal Children's Bureau to report cases of kinship diversion, it is difficult to know how often these occur, and what happens to these children once diverted from foster care. We don't know: the number of placement changes, whether children are reunited with

their parents and how long it takes for that to happen, whether children are re-reported for maltreatment, whether children obtain permanence, and if so, how and how long did it take, and what are diverted children's long-term outcomes-educational, legal and behavioral. Without this data, this Committee has no way of knowing whether CFSA is meeting its goals of safety, permanence and well-being for maltreated children.

**Too often only physical custody is transferred to the kin caregiver:** Without having legal authority of the diverted child, kin caregivers lack the authority to make educational, medical and other decisions for the child. If parents retain legal custody, the parents retain the authority to take the children back at any time.

## **Recommendations:**

### **1. Regulate the practice of kinship diversion with written policies:**

These policies should define the kinds of cases that are appropriate for diversion from the formal child protection system. For instance, cases that require "intensive case work or monitoring" by CFSA should not be diverted (Annie E. Casey Foundation, 2013, p. 7). Other examples of cases that should not be diverted include situations where the parent is not competent to consent or the plan would require more than a short period with the caregiver. Policies should also include:

- a) criteria for screening kin caregivers (for example, the caregiver's ability to set appropriate boundaries with the parents); and
- b) a requirement that assessments of safety, risk and needs of caregiver's homes be conducted.

### **2. Mandate thorough investigation of allegations of abuse/neglect and an assessment of safety, needs and risk to the child where maltreatment is found:** Findings from such investigations and assessments must be included in CFSA records and accessible to parents, children and kin caregivers, and their legal representatives.

### **3. Information about placement options must be provided to kinship care providers as well as the differences in funding, services and legal authority of various placement options** (Alliance for Children's Rights & Lincoln Advocacy, 2020; Annie E. Casey Foundation, 2013).

### **4. Children must be provided independent legal representation any time children are being separated from a parent due to CFSA involvement** (Alliance for Children's Rights & Lincoln Advocacy, 2020).

### **5. In all cases of kinship diversion, CFSA should facilitate the creation of written agreements among CFSA, parents, children (or their independent legal representatives) that include:**

- a) the duration of such agreements;
- b) the timeline and conditions for reunification or other permanence for the child;
- c) the schedule and conditions for parent/child contact.

The Family First Preventive Services Act provides that "To access federal funds, state agencies must develop a 'written prevention plan' for each child it seeks to keep out of foster care"(Gupta-Kagan, 2020, p.51 ).

### **6. Mandate the collection of data by CFSA.** Data should be collected on the number and kind of cases diverted from foster care, the duration of kinship care arrangements, the

number of placement changes that occur and whether the children are re-reported for alleged maltreatment.

- 7. In cases of kinship diversion, mandate that CFSA facilitate a transfer of legal custody to the kin caregiver, and not just physical custody, before CFSA closes out the case.**

## References

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