

What's Worse than Going into Foster Care?

This “just-when-you-thought-it-couldn’t-get-worse” [New York Times article](#) documents a “shadow foster care” system that tells parents to find their own foster care or else the state will take their children.

The quality of Minnesota’s foster care system is uneven. But a non-system would be worse.

[This testimony](#) to a District of Columbia Oversight Committee details the consequences. They include no path to either reunification or permanency for the child, no funding for services to the child or to pay the foster parents, and most importantly that the child has no voice – no social worker, Guardian *ad litem* or lawyer to represent their interests, however imperfectly.

Experts are quoted stating that the number of children in these shadow placements equals those in legal foster homes. Thankfully this practice isn’t happening in Minnesota, as far as we know. Let’s keep it that way.

This New York Times article is one of the most discouraging things I have read for a long time. You can get a link from our blog or look it up online. It was published on December 2nd, 2021, the reporter is Lizzie Presser, and the title is “How ‘Shadow’ Foster Care Is Tearing Families Apart”. I also recommend that you click the link to the policy analysis on this phenomenon by Kate Piper, which she gave as testimony to a District of Columbia Human Services Oversight Committee also in December this year. Kate gave it on behalf of APSAC, which is the American Professional Society on the Abuse of Children. This testimony is not yet the official position of APSAC but will probably be shortly. More on her recommendations later.

The Times story tells about two sisters who were very close but were separated by a series of random placements not part of the foster care system that left their relationship frayed. The article quotes experts saying that the number of children in shadow foster care is approximately the same as those in legal foster care. We would like to see more evidence for this statement. That particular statistic did not have a clear citation, and it is difficult to see how they would get this number since one of the main points of the article is that this shadow system is highly unregulated, so figures would not show up in the national child protection or foster care databases. Similarly, since parents would have no day in court to determine whether they really have to relinquish custody of the children, even looking at the court records state by state, which would be prohibitively time consuming, would not shed light on these numbers.

However there is enough information in the article to assume that shadow foster care is real and substantial problem. The reporter states that the door to this shadow system is often a “safety plan”, which ideally is a child protection process where parents agree to steps to keep their children safe and which may include having them staying with friends or relatives temporarily while the parents address the issues that got them to the front door child protection, such as drug addiction or outbursts of violence. Safety plans are a standard process if children are in child protection.

However some states are apparently using a “safety plan” to divert children to a friend or relative which may happen without the parents actually getting into the child protection system. Some states call this “kinship diversion” or “voluntary kinship placements”. If parents are pressured into giving up custody of their children, is this beneficial to the child? It depends to some degree on the quality of the alternative placement. This is illustrated by the Times article because one sister went to a stable setting and did well while the other went through a number of disastrous settings and may never fully recover.

But even if a setting is a good one, the fact that it’s not a formal placement means it lacks the protections for both parents and children that a formal foster care system provides.

Interestingly, the article partly blames President Reagan, whose massive cuts to family programs during the 1970s became a major driver of policies and practices ever since. Among other things it reduced other support services and ironically made child protection the service of first rather than last resort.

The article equally blames the Annie E Casey foundation for promoting the idea that diverting families from child protection was a policy that promoted good family values by keeping parents and children out of government control. There are really a couple of sidebars to that perspective.

First looking at the history of Annie E Casey and Casey Family Services over the years, we are reminded that it is hard to tell the liberals from the conservatives anymore, because they both emphasize parental control to the point that children are essentially overlooked.

Second, the New York Times article makes a common misstatement that needs to be corrected. It is the point of view that the adverse lifelong effects that foster care children often experience is due to foster care itself, when much research points to the fact that these adverse consequences were caused by what happened to children before they were in foster care. So poor adult outcomes like being involved in crime, unemployment, lack of stable relationships, and drug or alcohol abuse are tied more clearly to the abuse and neglect that happened prior to children being put in foster care. In fact a majority of adults who were in foster care say that their placements were necessary and a good thing for them. This is yet another reason to question the amount of emphasis in public policy on so-called family preservation policies – policies which actually preserve the control the parents have over their children while they are allowed to continue damaging the child members of the family.

We do want to see more information and data about this shadow foster care system, but to whatever degree it exists, the APSAC testimony does an excellent job of pointing out the pitfalls of these arrangements.

First, relatives may not see anything particularly worrisome about the home situation, and might easily side with the parents’ point of view. I have noticed that when child protection complaints are brought, friends and relatives almost always identify with the parents rather than the children. They think the abuse didn’t happen, or is not as bad as child protection makes out. It makes sense. The parents are the ones that we have the relationships with primarily, that we are bonded with, not the children. So without appropriate vetting and a social worker being an

independent set of eyes and ears in the relationship with the kin caregivers, there is a good chance that relatives will perceive parents to be the victims of child protection rather than the children being victims of the parents.

Also, if unregulated, relatives often frequently allow access to the children by the bio parents. As a result they may get the children to change their stories. Or the physical abuse might continue. Or in some cases sexual abuse might continue.

Echoing what we have found out from the Hennepin County Citizens Review Panel report on kinship foster care, Piper notes that kin sometimes agree to take a child due to family or social worker pressure but not be in a position to carry out that commitment long-term. And finally, let's be real here, relatives often come from the same dysfunctional family system and therefore may themselves continue abusing the children or come up with new forms of abuse.

The issue here isn't kinship placement itself. Often, when done with appropriate vetting and support, it's the best available alternative to staying with bio parents. The issue is diverting parents from the legal system and consequently not having much of a handle on what is happening with the children.

But in the legal foster care system parents and often children have due process and they have legal rights. Often both have lawyers to represent their interests. The court wants to know how the Department determined that the children were abused or neglected. Someone needs to make the case to a judge that it's really necessary to remove the children. Workers are required to make reasonable efforts to provide services to prevent the breakup of the family, or to help the family reunify, and to help the child recover from the abuse. And if the child is placed out of the home there is a plan for timely reunification or another permanent arrangement for the child such as adoption or Transfer of Legal Custody to a relative. In addition licensed kinship foster care providers get financial support and children presumably get the services in the case plan. None of this happens if children are diverted to some informal arrangement with no oversight.

Piper points out the catch 22 situation that we don't have data or research on how kinship diversion is working because we don't know who the children are. Do children change places more frequently, do they have more trauma, are they reunified as frequently, etc.

Another nuance is that physical custody may be transferred to a relative, but that doesn't include legal authority. In the case of one of the girls in the time story, she went to live with a 20-year-old brother but the fact that he was not her legal guardian meant that she couldn't enroll in school except as a homeless child. Other life circumstances requiring a legal guardian such as receiving medical care are also in limbo.

Piper ends with a series of recommendations which I won't go over in detail but I commend to your reading. They include that children who are diverted to kinship placements should still go through all of the formal protections provided by the child protection system. Caregivers should be vetted as with any foster or legal kinship placement, and investigation or assessment should be done as with all cases and the results included in the case records, kinship care provider should be provided with information about how they can become licensed and get foster care payments, both parents and children should be provided independent legal representation so

they receive due process when they are being separated, and data should be maintained on kinship diversion cases just as with any other child protection or foster care situation.

We think of the United States as a beacon of fairness and compassion for children. Let's get real. However widespread this shadow foster care system is, it's a blot on our national character. If you were not around in the 1980's, or haven't read about this in history, Nicolae Ceauseque was a Stalinist-style dictator in Romania from 1966 to 1989. The combination of crushing poverty brought about by his failed Soviet wannabe economic plans and the prosecution of women who had abortions meant a surplus of unwanted children. There were an estimated 100,000 children at any one time stuck in grossly underfunded orphanages who grew up without much food or the kind of stimulation that allows infants and toddlers minds to develop. So the orphanages produced a generation of children who were malnourished and severely mentally damaged, and who consequently died young or often spent their lives in prostitution and crime. We think that believing in Reagan's motto "government is the problem not the solution", is some sort of noble expression of American liberty. What instead it is really about being too selfish to contribute to the common good, even to the extent of merely paying for the basic services that are necessary to keep children safe and clothed and educated. We portray ourselves as a people who love our children but we love more having freedom from legal accountability for them so we can to control them, harm them, use them without interference, or if someone else is doing those things we feel justified in saying that it's none of our business or the government's either. If we are honest, there is a long term and increasingly dominant strain of our national character that resembles more the world of the Romanian orphanages than it does the idealized image we have of ourselves. And this will continue as-is and get worse until we decide to put an end to it.

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