



**TESTIMONY FOR THE JOINT LEGISLATIVE HEARING ON THE  
GOVERNOR'S PROPOSED HUMAN SERVICES BUDGET  
FEBRUARY 8, 2017**

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**NYS Kinship System of Care: Improving Outcomes for  
Children Living with Grandparents and Other Relatives**

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## Kinship Care in NYS: Population and Services

### What is Kinship Care?

Kinship care refers to nonparents (grandparents, other relatives, and close family friends) who care for children when parents are unable or unwilling to care for their children. In New York State, most of these households provide care privately, and do not receive foster care supports.

### How Prevalent is Kinship Care?

Nationally, as mentioned in The New York Times article “Children of the Heroin Crisis Find Refuge in Grandparents' Arms”, 2.6 million grandparents are caring for children (May 21, 2016).<sup>1</sup> According to the same American Community Survey data cited in that article, in New York State, there are more than 130,000 grandparent “kinship” families. Together with aunts, uncles and other family members, estimates are as many as 200,000 kinship families are raising **300,000 children in New York State.**

### Commonality of Causes for Foster Care and Private Kinship Care

Children live with kin for similar reasons as to why they might enter foster care with non-relatives, namely parental abuse/neglect, substance abuse, incarceration, and other safety concerns. See the discussion on Diversion from Foster Care on page 4, for data on child protection records and low kinship foster care utilization outside New York City.

Children in these homes experience similar special needs as children in foster care, such as emotional and behavioral disorders, educational disabilities, trauma, and loss. Caregivers tend to be single, older (average age is 56 years old), and are more likely to be disabled and on a fixed income (36% of caregivers in the Research Foundation study had an income of less than \$20k)<sup>2</sup>.

### What Services are Available for Kinship Care Families?

New York State funds a statewide Kinship Navigator (information, referral, advocacy, and education services) and 22 localized kinship service providers (case management and support groups) administered by the Office of Children and Family Services. **In FY 2016-17, the executive budget Aid to Localities provided \$338,750 for OCFS local kinship programs and \$220,500 for the Kinship Navigator, with the legislature adding \$1.9 million for local programs and \$100,000 for the Kinship Navigator, totaling \$2,559,250 dollars for kinship services in NYS.**

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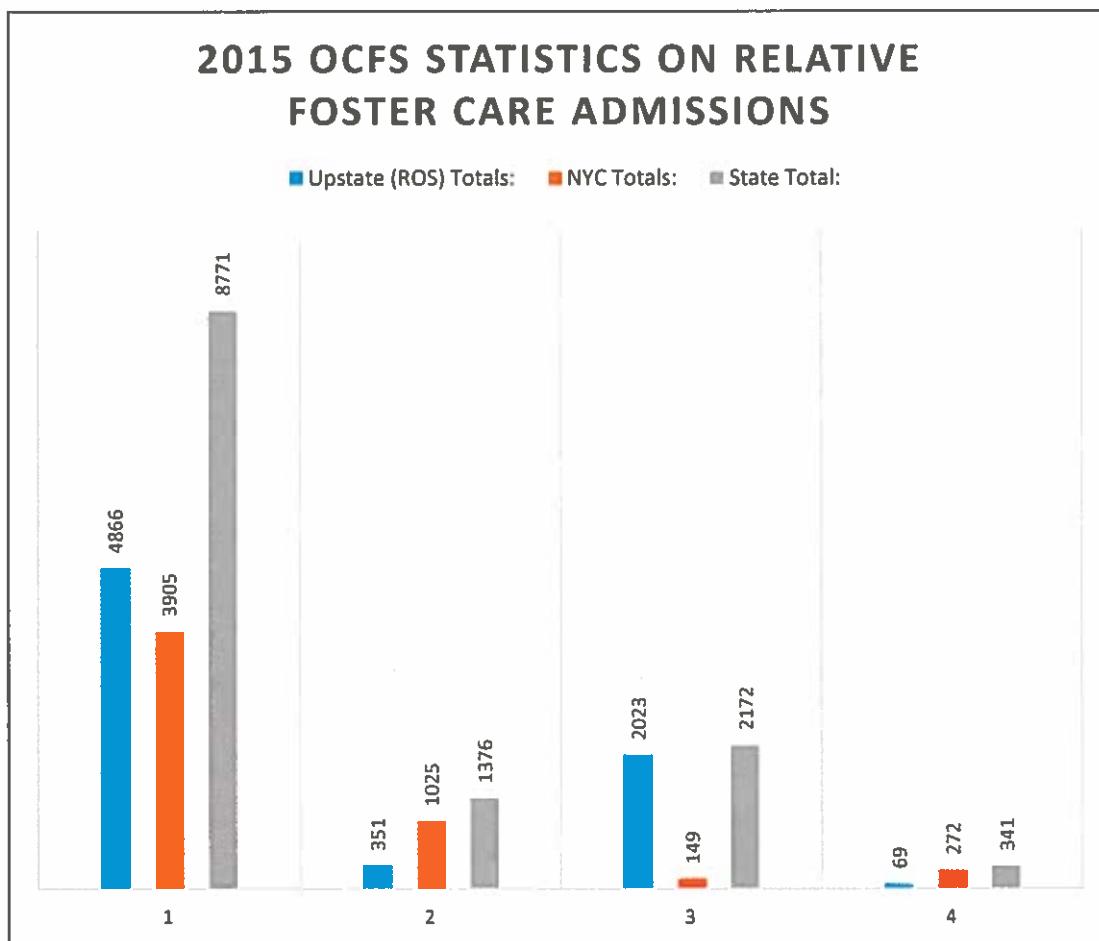
<sup>1</sup> See also, “Young Victims of the Opioid Epidemic” (NY Times editorial, Jan. 16, 2017).

<sup>2</sup> In a 2013-15 survey of kinship children and caregivers conducted by the Center for Human Services Research Foundation in 5 demonstration counties in upstate NYS, as part of the NYS Kinship Navigator Children’s Bureau demonstration project (final report forthcoming).

## Diversion from Foster Care

In an evaluation of child welfare records conducted by SUNY Albany during the Federal Kinship Navigator Demonstration Project, of a sampling of 455 children who were living with relatives in informal (private) kinship arrangements, 80% had past or present involvement with Child Protective Services. None were in relative foster care. While many caregivers intervene on their own, many are engaged by child welfare agencies to become placement resources. Few become foster parents, in 2015:

- 3,905 children placed in foster in New York City; 4,866 in Rest of State (ROS)
- Of these, 1,025 children were placed in relative foster care in NYC, 351 in ROS
- See OCFS 2015 data<sup>3</sup> on relative foster placements, “direct” custody, and KinGAP, showing widespread under-utilization of relative foster care in many upstate counties.



<sup>3</sup> OCFS Admissions to Foster Care by Initial Placement Setting 2012-2015 Report, found here: <http://ocfs.ny.gov/main/reports/Trends%20in%20Relative%20Placements%20Tables%20091916.pdf>

## Kinship Foster Care is Not Common Outside of New York City:

Despite statutory support for the use of kin as foster parents, only 15% of all children who came into foster care in 2015 were placed with relatives who were their foster parents. The disparity between NYC and ROS is alarming: 26% (1025) of all incoming children into foster care in NYC were placed with relatives, while only 3% (351) of children in ROS were placed with relatives.

The kinship community has ongoing discussions with OCFS regarding the disparate county practices in utilization of kin as a resource for at risk children. OCFS is working on changing local practices through development of trainings and regular meetings with supervisors and has recently held meetings with Erie and Monroe County DSS Commissioners regarding these issues. However, the practice has a long history and appears to be increasingly utilized. More immediate solutions are needed. *See* NYS Bar Task Force on Family Court 2013<sup>4</sup> recommending more uniform application of laws and practices to address the disproportionality. *See* recommendation 3.

## Diversion Placement Types:

### 1. Kinship Children Placed in Private Kinship Care via Informal Arrangements (No Article Ten)

There is no data available regarding number of such placements, but OCFS and local counties acknowledge its use. Often used as part of a “safety plan,” called an “alternative living arrangement,” or “parole,” this practice places children directly with kin when their parent’s home is deemed unfit by a child protective services worker, but no Article 10 proceeding or official custody arrangement is made. Caregivers may seek Article Six custody or guardianship or may simply care for children without court orders.

### 2. Kinship Children Placed in Private Kinship Care via “Direct” Custody (Article Ten)

*See* above graph. This practice involves child welfare placing a child in the care of a relative without certifying them as a foster parent. In 2015, there were 2,172 custody placements: 149 in NYC and 2,023 in ROS. Between 2011 and 2015, In **New York City**, the number of children directly placed with relatives **decreased 45 percent**, from 273 in 2011 to 149 in 2015. In **ROS**, the number of children directly placed with relatives **increased 71 percent** from 1,186 in 2011 to 2,023 in 2015.

### 3. Kinship Children Placed in Private Kinship Care via Article Ten Conversions to Article Six

There is no data available from OCFS or the Office of Court Administration on the number of cases, but OCFS and local counties acknowledge its frequent use. Navigator case records and reporting from family court attorneys also indicate numerous instances of this practice.

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<sup>4</sup> NYSBA Task Force on Family Court Final Report (2013) can be found at: <https://nysba.org/TFFCFinalReport/>

# The Opioid Crisis and its Impact on Kinship Care

## How Drug Use Impacts Kinship Care

With the current epidemic of heroin use throughout the country, much research has been done by national groups regarding its impact on children entering into kinship care arrangements with family members. According to the Center for Disease Control, between 2002 and 2013 rates of heroin overdose deaths have quadrupled, often leaving children of those deceased in limbo. Below are some reports and articles that further outline the issues.

### **Generations United Report: Raising the Children of the Opioid Epidemic**

This 23 page report gives recommendations for public policy changes that would help support kinship families as they take on the role of caregivers of children affected by the opioid crisis, including funding Kinship Navigators, increasing access to financial assistance (TANF), and engaging Aging services to support kinship families who are elderly. Important facts to note from this report:

- Parental substance use accounted for one third of all foster care placements (2014)
- Opioid epidemic is responsible for increase in foster care placements, nationwide
- Kinship families who take on children, keeping them out of foster care, save the country \$4 billion dollars every year
- Children thrive when placed with kinship caregivers, in comparison to being placed in foster care with strangers

<http://gu.org/OURWORK/Grandfamilies/TheStateofGrandfamiliesinAmerica/TheStateofGrandfamiliesinAmerica2016.aspx>

### **The New York Times: Children of the Heroin Crisis Find Refuge in Grandparents' Arms:**

This article, published May 21, 2016, gives firsthand accounts of grandparents throughout the country stepping in to care for their grandchildren in the face of great challenges. It follows stories from eight caregivers and how they deal with thwarted retirement plans, reshuffling family roles, and fears for the future. Some important facts from this article are:

- More than 2.6 million grandparents were responsible for their grandchildren nationwide in 2014, up 8 percent from 2000
- Heroin deaths have soared among white families in suburban and rural areas, while remaining level among blacks and Hispanics

<https://www.nytimes.com/interactive/2016/05/05/us/grandparents-heroin-impact-kids.html>

# KinGAP: Kinship Guardianship Assistance Program

## What is KinGAP?

In April 2011, a guardianship subsidy program became available to relative foster parents (kinship foster caregivers). This program, called “KinGAP” (Social Services Law 458-a-f), allows **relatives who are foster parents** to leave foster care and continue to receive the same financial assistance that they received when they were in foster care. Payments must be at same rate as the local department’s payment for an adoption subsidy and must be based on the foster care maintenance rate that the guardian received while the child was in foster care.

## Requirements:

Kinship foster parents are eligible when:

- the child and relative are related by blood, marriage, or adoption;
- the child **has been in foster care and placed with the relative** for at least six previous consecutive months;
- the agency has “ruled out” reunification and adoption (i.e., two permanency goals – return to the parents’ home and adoption – are not possible for the child);
- the agency has decided it is in the child’s best interests for the relative to be the child’s guardian;
- the child and relative guardian have a strong attachment; and
- the relative demonstrates a strong commitment to permanently care for child.

The child must be asked about what he or she wants if age 14 or older and must consent or agree to the guardianship if age 18. The relative guardian and household members must have cleared state and federal criminal background and child abuse registry checks. If the conditions are met, then the local department and the relative must enter into a subsidy assistance agreement before starting the guardianship court proceeding.

## Under-utilization of KinGAP

The OCFS KinGAP Report issued last month (January 2015) shows **only 341 children exited foster care to KinGAP** in 2015. Of these, **262 were in NYC and 68 in ROS**. Clearly, one of the causes of low utilization is the low number of kinship foster families, particularly in upstate New York. KinGAP is therefore part of the diversion issue.

KinGAP is also a funding concern. The original legislation delayed implementation for a year, because of resistance by county department of social services to the program. Counties were asked to pay for the program from the same foster care block grant without an increase in its funding. The lack of dedicated funds has contributed to low utilization.



## Conclusion

Based upon the statistical data and the above narrative, the NYS Kinship Navigator and the NYS Kinicare Coalition posit:

- Most kinship children are not foster care families
- Kinship children are similar to foster children but do not have access to foster care services
- Kin do not enter foster care due to local policies and practices that decrease utilization and increase diversion
- Rural and suburban kin are a major resource for children whose parents are opioid users
- Kinship children and their families need access to supportive services.

## Recommendations for Kinship Care Services in New York

### Recommendation 1: Declare September as Kinship Care Month

Since 2014, both the Assembly and Senate have passed resolutions that declared September as Kinship Care Month. Governor Cuomo also issued declarations each of the last three years. Since New York issued this resolution in 2014, eight other states and multiple municipalities throughout the country have issued declarations. Nationally, on September 30th, 2015, the U.S. Senate passed a resolution declaring September as Kinship Care Month, and while efforts fell short to have the President sign a declaration last year, multiple national organizations have come together to push the Congress to pass a resolution this year. In other states and at the federal level, New York's resolution is being used as a model.

Kinship Care Month is both a celebration and an advocacy strategy. It is a well-deserved opportunity to hold events that acknowledge the tremendous contributions of kinship families and to provide outreach to the kinship community. It is also an opportunity to educate policy makers.

Action by state legislatures and state governors is a simple measure that costs no money nor requires complicated legislation. Supporting proclamations in honor of kinship families opens the door for the dialogue that must begin. A dialogue that begins with the premise that children raised in kinship care must be afforded the supports and services they require to live safe and fulfilling lives. A proclamation is a way for NYS legislators and the Governor to say they are listening and that the citizenry of their state appreciates and honors the commitment and sacrifices of kinship families. A simple voice vote in the legislatures can yield a proclamation or the stroke of a pen can create a gubernatorial executive proclamation. Currently, voice votes are scheduled in both NYS legislative chambers for February 28<sup>th</sup>, 2017.





### **Recommendation 3: Legislature Should Resolve to Review Diversion Practices and Enact Reforms**

Diversion in New York State has a long history. State Comptroller Carl McCall issued a report on the practices in the early 1990's. The commentary to McKinney's Family Court Act Section 1017 refers to "ruses" committed by local departments to convince kin not to become foster parents. Year after year, we have testified to the Legislature about it. OCFS has acknowledged the issue, as has the New York State Bar, and numerous kinship summit reports.<sup>5</sup>

Yet, little is done to develop new directions in policy and practice to reform current practices. While there are good reasons why kinship families should care on their own, it is a fact that low foster care entry rates mean that many children who need foster care services are not receiving them. The solutions are complex and can only be addressed by a focused effort on the part of the Legislature. In this effort, there are many advocates and agencies who understand the issues and the need for solutions and who would offer their assistance. Just last fall, at the State University at Albany, a national kinship summit made recommendations for child welfare kinship reforms. With legislative leadership and the partnership of OCFS and the kinship community, it's time to set a new direction.

The Legislature should hold hearings on diversion and learn firsthand from caregivers and advocates the impact of this practice, and the Legislature should take action to review current child welfare practices and make recommendations for reform.

### **Recommendation 4: Amend Social Services Law 392 to Require DSS's to Refer Kinship Caregivers to Kinship Services**

Reforming child welfare agencies practices will take years to accomplish. Even if achieved, there will still be need for most children to remain in private kinship families. While diversion practices may decline, kinship families will continue to exist mostly on their own. Their main supports will be the OCFS administered kinship services programs. Given that most kinship families have contact with local departments of social services either through applications for benefits or through engagement with child welfare staff, local departments should ensure that kinship families have full access to kinship supports by connecting them to kinship services.

In the Kinship Navigator federal demonstration project, the most successful lesson was the collaboration with local departments of social services which led to a 600% increase in referrals to kinship services. With the current upsurge in kinship families now caused by opioid crisis, it is imperative that families receive specialized kinship services. Given the barriers to outreach (cost, rural isolation, reluctance of caregivers, etc.), implementing a requirement for referrals is a low cost solution which will cause many more kinship families to be connected to kinship services.

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<sup>5</sup> For summit reports, see [http://www.nysnavigator.org/?page\\_id=273](http://www.nysnavigator.org/?page_id=273)

Social Services Law section 392 was enacted to require local departments to make available information about public benefits and kinship services. See Office of Temporary and Disability Assistance informational letter OTDA 12-ADM-01 (Requirement to Make Information Available to Non-Parent Caregivers Relating to Available Services and Assistance Programs). The statute reads:

§ 392. Services for relative caregivers. Notwithstanding any other provision of law to the contrary, local social services districts shall make available through the district's website or by other means information for relatives caring for children outside of the foster care system. Such information shall include but not necessarily be limited to:

1. information relating to child only grants, including but not limited to, how to apply for child only grants; and
2. information on department of family assistance or local department of social services funded resources for relative caregivers, including those that provide supportive services for relative caregivers.

Implementation is inconsistent and does not include connecting caregivers to kinship services. Requiring local departments to make referrals to kinship services is a necessary step to ensure that no caregiver falls “between the cracks.” We no longer want to hear, “CPS gave me my grandchild eight years ago, and this is the first time I’ve found out there’s help for me.”

### **Recommendation 5: Move Funding for the KinGAP Program from the Foster Care Block Grant to the Adoption Subsidies Cost Center**

In 2010, the Legislature took the lead in approving a kinship guardianship assistance program (KinGAP), which allowed kinship foster parents who were close relatives to agree to take legal guardianship of their young grandchildren, nieces, and nephews in foster care under some well-defined criteria (See Social Services Law Section 458-a-f). Kinship children could then leave foster care, and their caregivers could receive a stipend similar to their foster care payments. For some families, this option is preferable to adoption because it allows the caregiver to maintain their familial role (staying grandma instead of adopting and becoming mom), and it does not force the termination of parent’s rights. It has worked well to provide some children with a permanent long-term family committed to them. But it remains under-utilized.

When this was first approved in 2010, the short-term expedient was to fund KinGAP within the Foster Care Block Grant. The problem is that the Foster Care Block grant is a fixed amount of money each county receives to cover foster care costs. However, KinGAP costs are designed to continue for several years, which drains funds which the county needs to support each year’s foster care costs. This funding mechanism inhibits counties from proceeding with some KinGAP

decisions, as shown by the low number reported each year by OCFS Services in its report to the Governor.

According to the 2015 KinGAP report, “between 2011 and 2015, there has been a significant increase of 48.9 percent in the number of children placed directly (in the direct legal custody) with a relative or other suitable adult under Article 101 (non-LDSS Custody). This increase equates to 713 more children with direct relative placements in 2015 as compared to 2011. In New York City, the number of children directly placed with relatives decreased 45 percent, from 273 in 2011 to 149 in 2015. In ROS, the number of children directly placed with relatives increased 71 percent from 1,186 in 2011 to 2,023 in 2015.”

We believe there is a direct correlation to the number of children being diverted away from foster care into direct custody with kin, due to the fact that counties do not want to keep these children drawing down on their limited foster care funds. The better course is to treat KinGAP in the same way the system treats adoption subsidy costs. Moving the cost out of the block grant will incentivize counties to certify more kinship foster homes. The Legislature should move KinGAP funding to the adoption subsidy costs center. That is fair to the state, to the counties, and mostly to the kinship families who deserve our support.

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