

The Ties That Bind:

*Strengthening, and Reducing Racial Disparities
in Kinship Foster Care in Massachusetts*



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Massachusetts Law Reform Institute

October 7, 2014

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TABLE OF CONTENTS

| | |
|---|----|
| EXECUTIVE SUMMARY | 5 |
| OVERVIEW | 7 |
| I. WHAT IS KINSHIP FOSTER CARE? | 12 |
| II. BENEFITS AND CHALLENGES OF KINSHIP CARE | 15 |
| III. LAW, POLICIES, PRACTICES AND RECOMMENDATIONS | 18 |
| A. Operationalizing DCF’s Commitment to Kinship Foster Care | 20 |
| 1. Implement a presumption of kinship foster care..... | 20 |
| 2. Appoint a kinship care coordinator..... | 21 |
| B. Eliminating Unnecessary Barriers to Licensing Kinship Foster Caregivers | 23 |
| 1. Review DCF’s licensing requirements and new Model Standards to determine if Massachusetts unnecessarily precludes qualified kin..... | 24 |
| 2. Incorporate the basic operating principles of the Model Standards..... | 26 |
| 3. Provide training and guidance to ensure social workers exercise their licensing discretion soundly | 26 |
| C. Identifying and Engaging Kin from the Start of a Case | 27 |
| Use practice models such as Family Group Conferencing that engage kin from the start and are effective with communities of color..... | 27 |
| D. Building Trust and Collaboration in Communities where Kin Live, Especially in Communities of Color | 29 |
| Build on existing relationships in communities where kin live..... | 30 |
| E. Providing Adequate Support to Kinship Foster Parents | 31 |
| 1. Examine the extent to which kinship foster parents access Kid’s Net and PACT funds..... | 32 |
| 2. If kinship foster parents underutilize Kid’s Net and PACT, train and expect workers to ensure kinship foster parents can fully access these resources..... | 32 |
| 3. Provide modified foster care trainings for kinship foster parents..... | 32 |
| 4. Identify and address the greatest gaps in services to kin with limited English proficiency..... | 33 |
| F. Maintaining and Using Data to Identify Problem Areas and Monitor Progress | 34 |
| 1. Maintain, analyze, and share data on kinship foster care that is disaggregated by area office and by race..... | 34 |
| 2. Use data for continuous quality improvement and to increase public accountability..... | 34 |
| 3. Adequately fund DCF data and policy staff..... | 35 |
| G. Heightening the Legal Standard for Removal of Children from Kinship Foster Homes to Other Foster Homes | 36 |
| Craft a test for moving children from kinship foster care to non-kin foster care that recognizes the family relationship..... | 36 |
| CONCLUSION | 37 |
| ENDNOTES | 38 |

EXECUTIVE SUMMARY

Kinship foster care -- in which a child welfare agency places children who must be removed from their parents into foster care with their relatives -- is a critically important resource for many vulnerable children in Massachusetts. Not only does the research tell us that children generally do better when placed with family, but also kinship foster care is an urgently needed resource for the Commonwealth as increasing numbers of children are being placed in foster care.

In 2010, Massachusetts' Department of Children and Families ("DCF") identified the need to increase kinship care, particularly for African American and Latino children. An internal review DCF commissioned at that time presented some stark data about the status of Massachusetts' DCF's kinship care placement record:

- A white child in Massachusetts is 14% LESS likely to be placed with kin than if he/she lived elsewhere in the US
- A Latino child living in Massachusetts is 50% LESS likely to be placed with kin than if he/she lived elsewhere in the US
- An African American child living in Massachusetts is 42% LESS likely to be placed with kin than if he/she lived elsewhere in the US

Massachusetts' low overall kinship care rates in relation to some other states may be, in part, an unintended consequence of a sound policy that Massachusetts has implemented to support kinship care. Massachusetts is one of several states that require that all kinship foster homes be licensed according to the same standards that apply to any other foster home. This requirement is intended to ensure that children are placed in safe and stable kinship homes. In addition, since full licensure is a pre-requisite for federal reimbursement for foster care payments, Massachusetts is able to pay all kinship foster parents the same foster care rates as all other foster parents receive. This is good for children, but not all states do this. Thus, what a number of other states report as "kinship foster placements" may be kin who are not fully licensed and who must depend on TANF benefits rather than the higher foster care payments.¹

Thus Massachusetts has chosen to provide more financial support to kinship foster parents than a number of other states, but stringent licensing practices sometimes get in the way of the excellence that Massachusetts is capable of. Licensing requirements, developed at an earlier time and not with kin in mind, may be creating unnecessary barriers to kinship caregivers. We discuss in Part III, Section B how Massachusetts can look to thoughtful work being done by national leaders on modifying licensing standards to address current realities and respect cultural norms.

In addition, the troubling issue of racial disproportionality looms large. While our overall kinship foster care numbers are somewhat low, our rates of kinship foster care for children of

color are far lower than for white children in Massachusetts and far lower than for children of color in other states. This report begins to tackle this important and challenging issue.

To its great credit, DCF has a strong history of supporting kinship care, and has embedded a preference for kinship care throughout its policies. Since the 2010 report, and earlier in some instances, DCF has undertaken to address its relatively low kinship care placement rates by implementing new practices and policies to increase kinship care such as expanding its efforts to identify kin as early as possible, waiving requirements for kinship foster parents, and training to reduce social worker bias against kin, creating a special liaison for kinship caregivers within its Ombudsman's office, increasingly engaging kin in policy discussions, and reaching out to the communities in which its families live.

In this report, written with the support of the Annie E. Casey Foundation and the assistance of the Massachusetts Budget and Policy Center (MassBudget), we examine the extent to which Massachusetts has achieved its twin goals of increasing kinship foster care generally and increasing kinship foster care for children of color in particular. We make recommendations intended to bring the Commonwealth closer to achieving these goals. Our recommendations outline specific steps that DCF can take, but we note that the Department must have the support of the legislature in order to implement these proposals. In our recommendations, we identify where investment is needed to carry out sound and greatly needed initiatives. DCF has the potential to resume its leadership role in kinship foster care. Realizing that potential will require commitment and well-targeted investment by DCF's leadership and the legislature.

Over the past year, we have interviewed numerous stakeholders both outside of and within DCF. Within DCF, we spoke to frontline workers and central office officials as well as a union representative. We spoke to kinship caregivers of color--both kinship foster parents and those who had not been involved with DCF--to learn their perspective as well as to advocates, providers, and experts on kinship care both within Massachusetts and outside. We reviewed the literature on kinship care, and together with MassBudget, analyzed the data that is publicly available on kinship care in Massachusetts, and some additional data that DCF made available to us. Finally, we brought to bear our own experience on DCF issues gained through our years of child welfare advocacy.

We begin with Massachusetts' historical commitment to kinship care and the many strong policies and practice innovations that the Massachusetts child welfare agency (DCF) has developed over the years to carry out that commitment. We then point to where practice appears to diverge from policy, and where promising practices have fallen off.

We make recommendations in seven areas stating its current status in Massachusetts and our recommendations for improvement.

- A. Operationalizing DCF's commitment to kinship care at all levels of the agency
- B. Eliminating unnecessary barriers to licensing kinship caregivers
- C. Identifying and engaging kin from the start of a case
- D. Building trust and collaboration in communities where kin live, especially in communities of color
- E. Providing adequate support to kin
- F. Maintaining and using data to identify problem areas and monitor progress
- G. Heightening the legal standard for removing children from kinship homes

These topics are separated out in this report for purposes of clarity, but they work as an integrated system. This system requires basic mechanisms such as a presumption in favor of placement of children with kin, a kinship care coordinator, and a robust data system which would enable DCF to monitor practices and their results, to undertake an effective continuous quality improvement process to promote kinship care, and to shore up DCF's accountability to the legislature and the public. These mechanisms provide the foundation for other recommended initiatives such as reviewing DCF's licensing requirements, ensuring that kin receive the supports they are entitled to and need, and building bridges into the communities where kin live.

The final recommendation could be implemented either by DCF or by the legislature. It would recognize that kin are family, and that their relationship with the children in their care is a relationship that precedes contractual kinship foster care relationships created by the state. The Commonwealth could recognize this by creating a higher test (or criteria) for when it is appropriate to remove children from kinship foster care into non-relative foster care than is currently applicable to all kin and non-kin foster care removals.

This report is designed to be read at multiple levels. The Table of Contents sets out the general topics and under each, our recommendations. The report also has extensive endnotes which provide an additional level of detail. The Table of Contents can therefore be used as a reference guide to take the reader to whatever additional level of detail s/he is interested in pursuing.

OVERVIEW

Kinship foster care is widely recognized, nationally and in Massachusetts, as the preferred out-of-home-placement for children whom the state must remove from their parents. It is also an important resource for any child welfare agency such as Massachusetts which is challenged to find enough foster homes for the children in its care.²

In this report, we look at kinship care as a critically important resource that the Commonwealth can better tap into to ensure that children retain family connections in those cases where they must be removed from their parents. Not only is kinship foster care recognized by DCF and child welfare experts around the country as good for children, but it also addresses a critical resource problem in Massachusetts: while we have many well-qualified, loving foster parents in Massachusetts, we don't have enough of them to take in the increasing numbers of children whom DCF is placing out of their homes.³

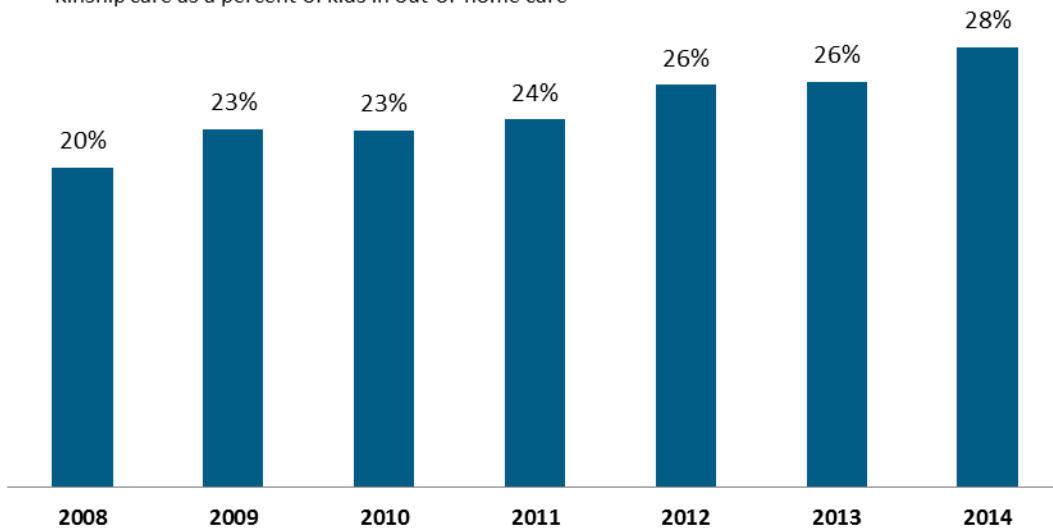
As detailed in Part II below, benefits of kinship foster care over non-relative foster care include increased stability because children are more likely to remain in one foster care placement with kin than they are with non-kin, and a greater chance of a child's finding a permanent home. Other important benefits for children who remain within their extended family include less disruption and trauma upon removal from their parents, and continued connections with their family, cultural and linguistic heritage, and with their community.

Kinship Foster Care Placement Rates in Massachusetts

Encouragingly, in recent years, Massachusetts kinship foster care placements rates have increased. The chart below illustrates that between 2008 and 2014, our kinship foster care placement rates have increased from 20% of all out of home placements to 28%.

In Massachusetts, children placed with kin 38 percent more often in 2014 than in 2008

Kinship care as a percent of kids in out-of-home care



Source: MassBudget from DCF Monthly Operations Statistical Reports

Nonetheless, in 2012, the last year for which we have kinship foster care data for both Massachusetts and other states, Massachusetts still placed in the bottom half of states in the use of kinship foster care. (Between 2012 and 2014, Massachusetts continued to make strong strides, but as of 2013, the last year for which national kinship foster care rates are available, Massachusetts (at 26%) was still two percentage points lower than the national average (28%).⁴

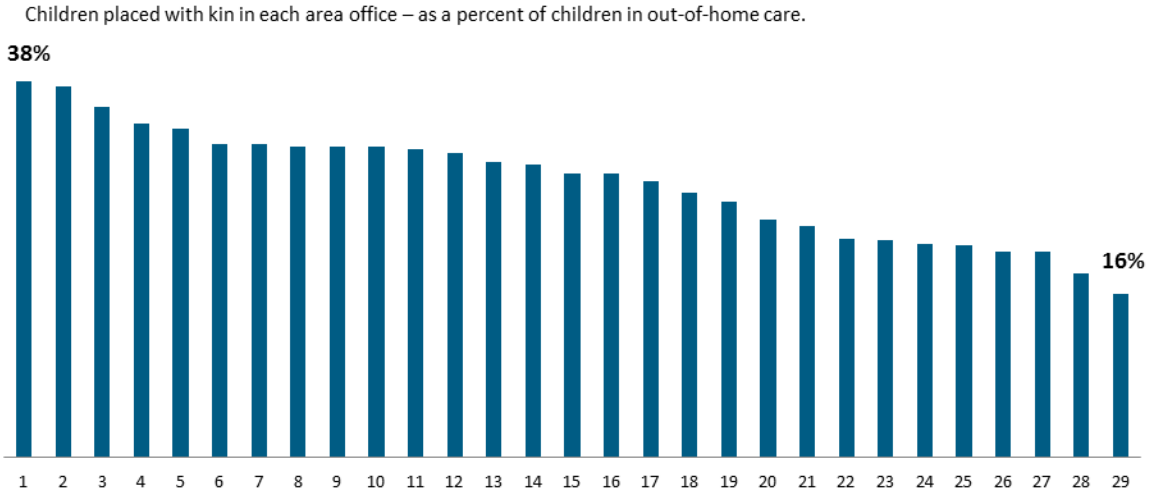
Children placed with kin in Massachusetts at a lower rate than many other states



Source: MassBudget from KidsCount data center at <http://datacenter.kidscount.org/data/tables/6247-children-in-foster-care-by-placement->

Kinship care rates also vary widely from one DCF area office to another as the chart below illustrates. While some area offices place almost 40% of children in kinship foster care, others place fewer than 20% of children with kin.

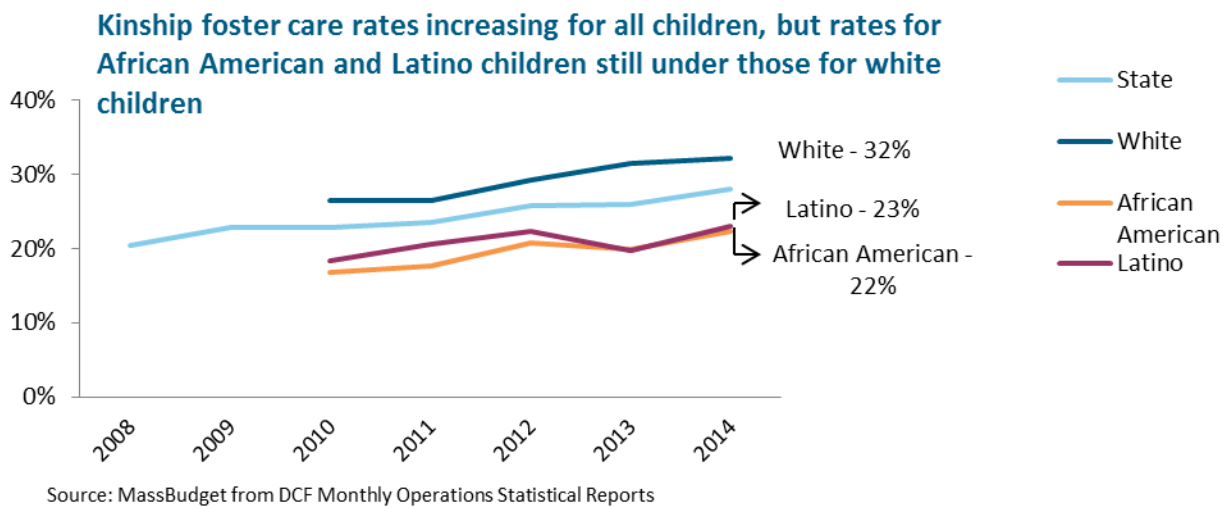
Area offices place children with kin at different rates



Source: MassBudget from February 2014 DCF Monthly Operations Statistical Report

Kinship Care Foster Care Rates for Children of Color in Massachusetts

More significantly, and disturbingly, in Massachusetts, African-American and Latino children are less likely to be placed in kinship care than are white children. Here too, recent trends are encouraging; the gap between rates of placement for children of color and white children is decreasing.⁵ Nonetheless, rates of kinship foster care placement for children of color remain significantly lower than for white children. As the chart below illustrates, in 2014 over 32% of white children in DCF’s care were in kinship foster care, while only 23% of Latino children and 22% of African American children were.



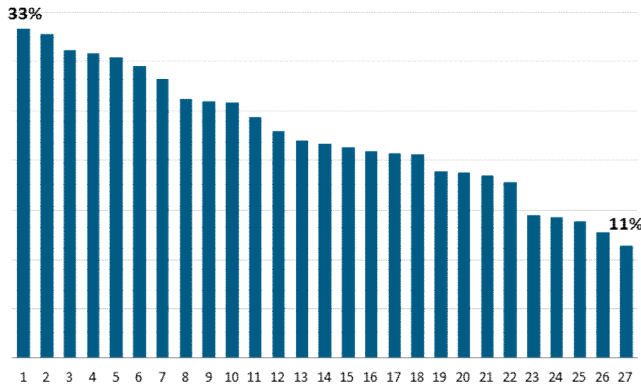
The disproportionately low rate kinship care placements for children of color in Massachusetts appears to be out of sync with many other states in which the rates of African American children in kinship care either tracks the disproportionately high rates of children of color in foster care generally, or exceeds those rates.⁶ As referenced in the Executive Summary above, a 2010 study that DCF commissioned found that while a white child in Massachusetts is 14% less likely to be placed with kin than if he/she lived elsewhere in the US, an African American Child is 42% less likely to be placed with kin than if he/she lived elsewhere in the US, and a Latino child is 50% less likely.⁷

The low rate of kinship foster care for children of color in Massachusetts is particularly concerning given that they are placed in foster care at higher rates than white children.⁸ In other words, children of color in Massachusetts are both removed from their parents at higher rates than children and placed with their kin at lower rates than white children. Together these two separate instances of racial disproportionality add up to a disturbing trend of moving children of color in the Commonwealth away from their families.

As with kinship care rates generally, rates of placement for African American and Latino children vary widely from office to office. The charts below show the disparity in kinship foster rates in different area offices for Latino and African American children. For Latino children the area office with the highest kinship foster care rate places kids with kin at triple the rate of the area office with the lowest rate. For African American children, the gap is even larger. The area office with the highest rate places children with kin almost 10 times more than the office with the lowest rate. In fact, the area office with the lowest rate places fewer than one in 30 African American children with kin.

Area offices place Latino children with kin at different rates

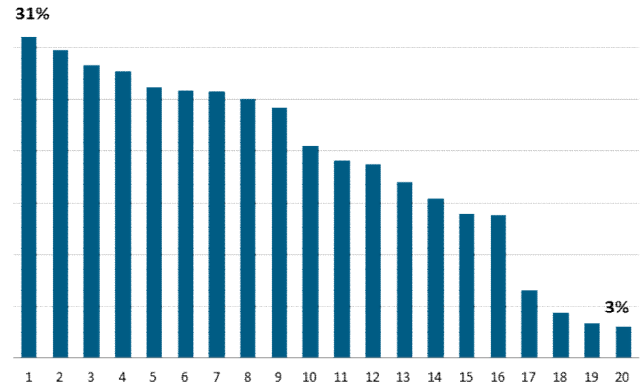
Children placed with kin in each area office – as a percent of children in out-of-home care.



Source: MassBudget from February 2014 DCF Monthly Operations Statistical Report. Only includes area offices with 20 or more Latino children in out-of-home care.

Area offices place African American children with kin at very different rates

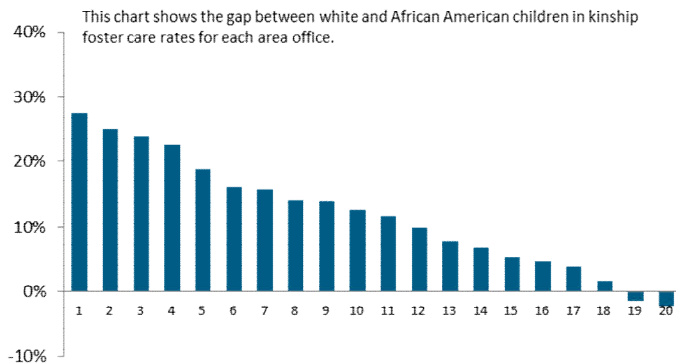
Children placed with kin in each area office – as a percent of children in out-of-home care.



Source: MassBudget from February 2014 DCF Monthly Operations Statistical Report. Only includes area offices with 20 or more African American children in out-of-home care.

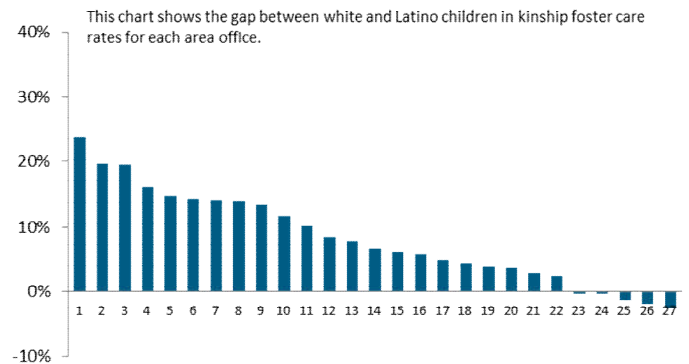
Racial disparities in kinship foster care rates vary widely from office to office as well. The majority of area offices place a higher percentage of white children with kin than children of color. These variations between offices suggest DCF may be able to learn from what’s working well in offices with high overall kinship care placement rates, offices that have high kinship foster care rates for children of color in kinship care, and from offices that have the least racial disproportionality in kinship care placements. See data recommendations in Part III Section F (2) below.

Most area offices place a higher percentage of white children in kinship foster care than African American children



Source: MassBudget from February 2014 DCF Monthly Operations Statistical Report
* Only includes area offices with 20 or more African American children in out-of-home care.

Most area offices place a higher percentage of white children in kinship foster care than Latino children



Source: MassBudget from February 2014 DCF Monthly Operations Statistical Report
* Only includes area offices with 20 or more Latino children in out-of-home care.

I. WHAT IS KINSHIP FOSTER CARE?

Kinship foster care vs. non-DCF kinship care

In Massachusetts, over 30,000 children live in households headed by a family member who is not their parent. Most of these children have not been found to have been abused or neglected and thus do not become involved with the state child welfare agency, the Department of Children and Families (DCF). Non-DCF involved care is a long standing tradition that existed well before child welfare agencies did, and it remains a viable and important option for many families.⁹

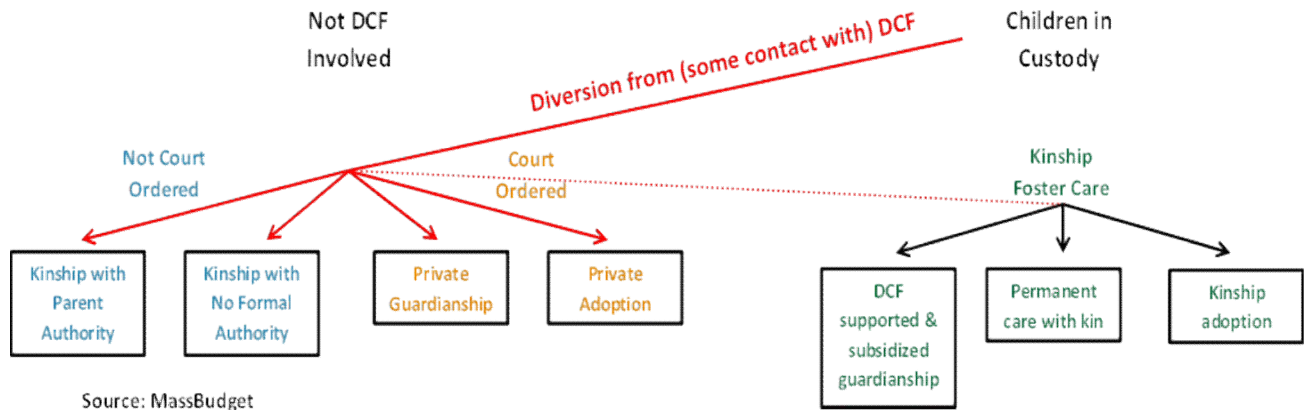
However, a smaller group of children who are found to have been abused or neglected are removed from their homes and placed by DCF with other family members, in what is called a “kinship foster care” placement.

Non-DCF involved kinship care can either be formal (through court orders) or informal (without court involvement), and informal kinship caregivers can either have decision making authority given by parents or not. Court ordered private kinship care can take the form of kinship guardianships or kinship adoptions.

For some children who have only limited contact with DCF, kin may prefer and/or the department may refer their kin to, seek private guardianships or adoptions rather than become foster parents.¹⁰

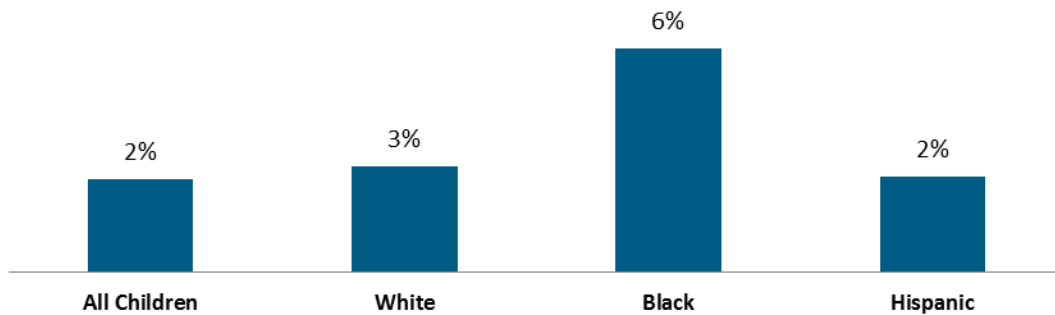
In Massachusetts, if children are taken into DCF custody, then in order for them to live with kin, their kin must be licensed as kinship foster parents. Kinship foster parents are then paid the same rates as other foster parents. After kin serve as foster parents for some time, if the child is not returned to his or her parents, DCF will support some kinship foster parents to become guardians of the child, or in some cases to adopt.¹¹ Kin with DCF-supported guardianships are eligible for financial subsidies at the same rates as foster parents. Those whom DCF does not support for a subsidized guardianship may seek a private court approved guardianship or adoption which would not entitle them to foster care subsidies (although they may still be eligible for TANF benefits, TAFDC grantee-relative of child-only benefits in Massachusetts). If children can't be returned home, some kinship foster parents may go on to adopt their kinship foster children, either with a DCF subsidy or without, and in some situations, DCF will approve ongoing kinship foster care.

Types of Kinship Care



Across the state, African-American children live with their kin (either through DCF or not) at higher rates than do other children. This reflects a longstanding tradition within African American communities that transcends state boundaries.¹² Of all children in Massachusetts, 2% live with kin who are not their parents compared to 6% of African American children.

African American children twice as likely to be in kinship homes as other children



Source: MassBudget from U.S Census Bureau

Since we know that DCF places African American children in kinship foster care at lower rates than it places white children, we can infer that African American children in Massachusetts live in non-DCF involved kinship care at substantially higher rates than white children do.¹³

These non-DCF involved kinship caregivers are free from DCF oversight, but receive less financial support (they rely on public assistance rather than the higher foster care payments) and have less access to other forms of DCF provided supports than foster parents. While there are many advantages of non-DCF involved kinship care for those who can afford it, it can be a severe financial strain on low-income kin. Moreover, private care is usually not an option for families in which the child has already come to the attention of DCF.

DCF's definition of "kin"

The Massachusetts child welfare agency (DCF) defines kin broadly to include adults who are considered family but are not related by blood. DCF's definition of kin for purposes of kinship foster care is:

related by blood, marriage or adoption (i.e., adult sibling, grandparent, aunt, uncle, first cousin) or, may be a significant other adult to whom the child and parent(s) ascribe the role of family, based on cultural and affectional ties or individual family values.^{14 15}

II. BENEFITS AND CHALLENGES OF KINSHIP FOSTER CARE

A substantial and growing body of literature establishes the benefits of kinship foster care for children involved in the child welfare system. These include greater well-being through maintenance of connections to the child's family, community, cultural and linguistic heritage as well as the important child welfare goals of placement stability, finding permanent homes for children.

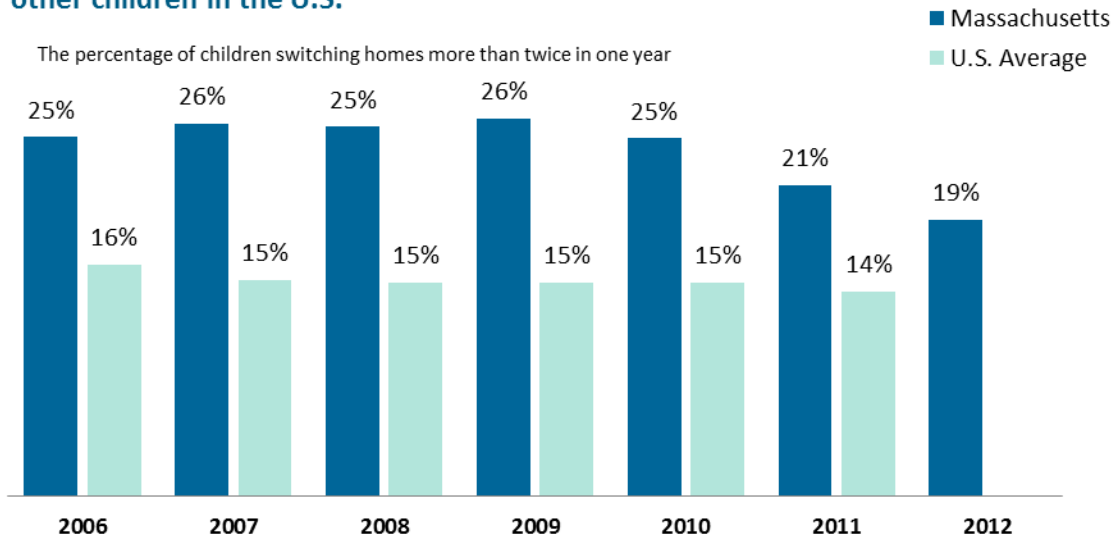
Family and Community Continuity: One of the most fundamental benefits of kinship care is that children remain within their families, while not staying in the direct care of their parents where they may not be safe. Often children already have well established relationships with, and some have even previously lived with, their kinship caregivers.¹⁶ In those cases, kinship foster care does not create a rift in children's lives. Even when children don't already know their kinship caregivers, they can experience continuity when living with kin. The child's caregivers are already their family. They also often observe the same customs their parents observe, speak the same language, and eat the same foods, all of which provide not only comfort but continuity for children.

Studies also show that children in kinship care are more likely to remain in the same neighborhood, be placed with siblings, and have consistent contact with their birth parents (where appropriate) than children in foster care.¹⁷ In addition, fewer children in kinship care report changing schools than do children in non-kin care.¹⁸ All of these elements of continuity can provide short and long term stability and mitigate the trauma of being taken from their parents. The maintenance of these connections serves children in the long term by building on, rather than replacing, the foundational elements of their birth identity (their sense of being a part of a family, a community, and a culture).^{19 20}

Placement Stability: A large body of research establishes that children in kinship care are less likely to experience multiple placements (a key measure of stability) compared to children in non-kin foster care.²¹ In one study, children in non-kin placements were about three times more likely to experience a disruption in placement during the study than children in kin placement.²² Children in foster care are 2.6 times more likely than are children in kinship care to experience three or more placement settings.²³

In Massachusetts, children experience multiple placements at higher rates than the national average. DCF has looked to increasing kinship care as a way of reducing the number of placements children must endure.²⁴

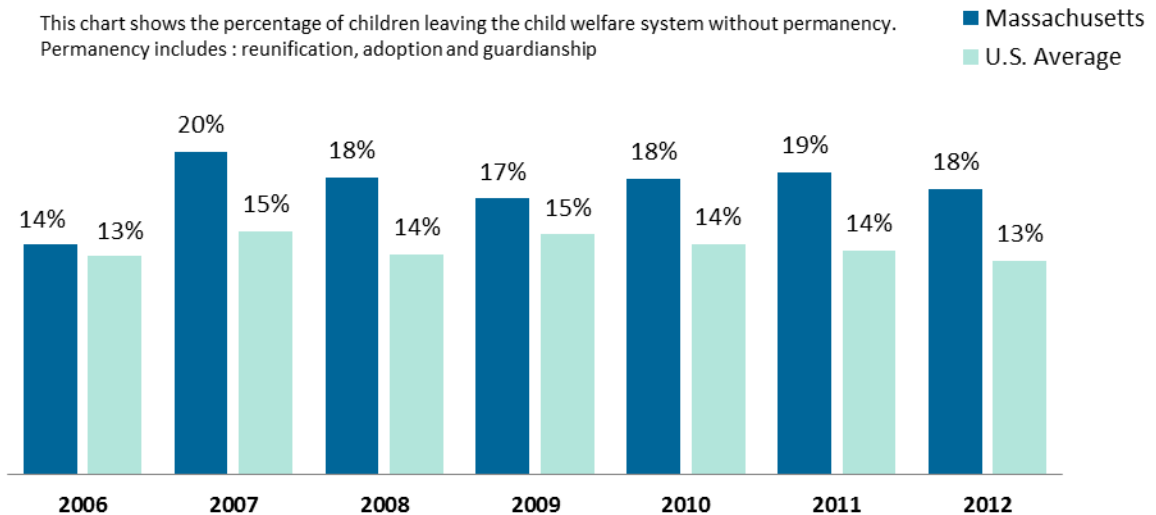
Children in Massachusetts moving placements less often in 2012, but still more than other children in the U.S.



Source: MassBudget from AFCARS - <http://www.acf.hhs.gov/programs/cb/research-data-technology/statistics-research/cwo>
 Note: AFCARS shows children with 2 or fewer placements – this graph has been inverted to show children with more than 2 placements.

Permanency: In addition, for those children who can not be reunified with their parents, children living with kin are more likely to find permanent homes with kin than those living in non-kinship homes.²⁵ Massachusetts children achieve permanency at lower rates than the national average. Massachusetts has looked to increase kinship care as a way of increasing permanency.

Children in Massachusetts leave the child welfare system without a permanent home more often than other children in the U.S.

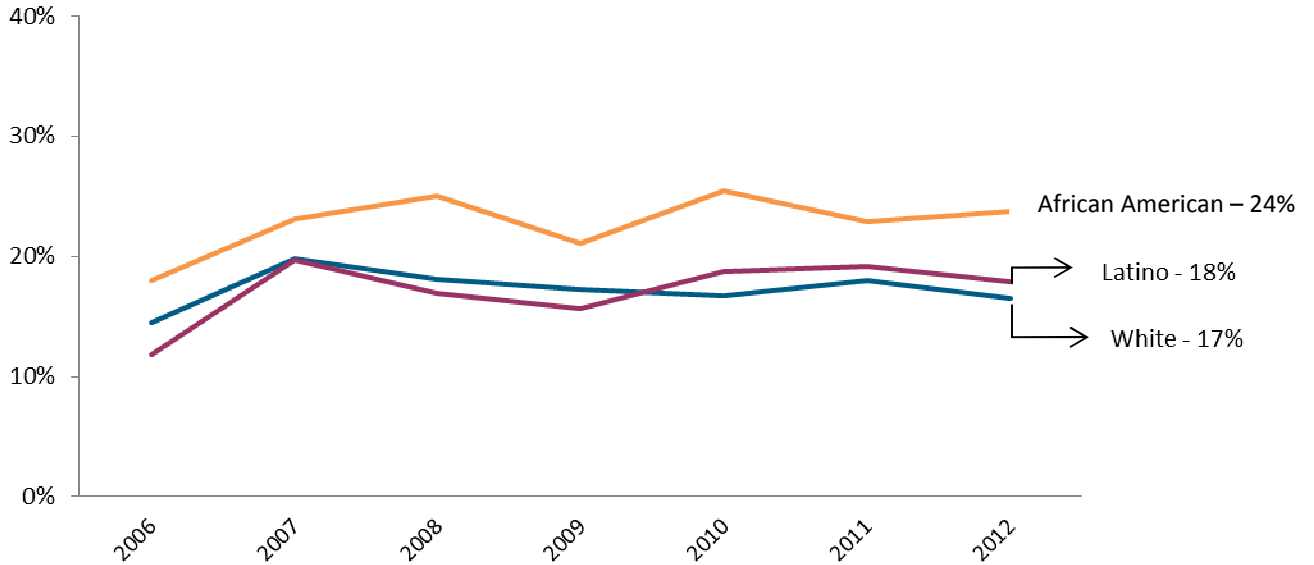


Source: MassBudget from AFCARS - <http://www.acf.hhs.gov/programs/cb/research-data-technology/statistics-research/cwo>
 Note: AFCARS shows children placed in permanent homes - this graph has been inverted to show children not placed in permanent homes.

Disturbingly, as with kinship foster care placement rates, permanency rates for African American children in foster care in Massachusetts are substantially lower than for white children.

African American children exit care without permanency more often than other children

The percentage of children not placed in a permanent home. Permanent homes include: reunification, adoption and guardianship



Source: MassBudget from AFCARS - <http://www.acf.hhs.gov/programs/cb/research-data-technology/statistics-research/cwo>

III. LAWS, POLICIES, PRACTICES AND RECOMMENDATIONS

DCF's formal policies exceed basic federal requirements in promoting kinship foster care in several important respects.

Most notably, federal law requires that any foster placement for which federal reimbursement for foster care payments is made must be licensed according to the same standards as all other foster homes in the state.²⁷ Massachusetts has not followed the path taken by many states which have created a lesser system of standards for kinship foster parents, under which they are "approved" rather than licensed. These states then do not make foster payments to these kinship homes; instead the families must rely on TANF benefits. As a result, many children in these states live in homes that are not necessarily as safe as other foster homes and do not receive the financial support that their counterparts in non-kin foster homes receive.

In Massachusetts, all foster homes are licensed according to the same standards and all foster homes, kin and non-kin, receive foster care payments. Kinship caregivers are also eligible for the full range of supports that other kinship caregivers can receive including a clothing allowance that is more generous than the TANF clothing allowance, free school meals, health insurance (which is needed if they move out of Massachusetts) and other discretionary benefits such as Kids Net and PACT funding (discussed in more detail below.) All kinship foster parents have social workers assigned to them, just as non-kin foster parents do. In addition, because they are fully licensed, kinship caregivers in Massachusetts are eligible to become state-supported subsidized guardians and receive federally reimbursable guardianship subsidies at the same rate as foster care payments. This is a huge strength of the Massachusetts system for which Massachusetts deserves great credit.

In addition, federal law has a general requirement that a state must "consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child,"²⁸ and that a state must notify all kin of their options within 30 days of a child's being placed in foster care.²⁹ However, Massachusetts law is more specific in its promotion of kinship care. Massachusetts statutes and DCF's regulations:

- **define kinship care broadly,**³⁰
- **specifically mandate kin be considered above all other non-parental placements,**³¹
- **require that DCF engage kin from the start of a case,**³²
- **allow for emergency placements with kin that are not permitted for non-kinship foster care placements,**³³
- **allow workers to waive for kin some of the foster home licensing requirements that cannot be waived for non-kin,**³⁴

- **require that workers identify, in the service plan of each child placed in out-of-home care, which kin were considered and if children were not placed with kin, why not.**³⁵

DCF has an active director of Community Outreach, who works with all the liaisons in the Ombudsman's office including the kinship care liaison. She also works with the Family Advisory Council which includes kinship caregivers, sits on the Grandparents' Commission, and is instrumental in efforts to educate social workers about, and overcome negative preconceptions about, kinship care.

Despite many strong state laws and policies, ongoing initiatives, and impressive leadership in this field, three significant realities in Massachusetts merit particular attention and are addressed in this report: First, a number of licensing policies and practices in Massachusetts have become obstacles to kinship care placements for children of all races, and some have made it particularly difficult for African-American and Latino children to be placed with their kin. Second, some policy requirements are not consistently followed in practice.³⁶ Third, funding cuts since 2009 have resulted in the reduction of at least one promising initiative, and have reduced DCF's capacity to access and utilize critical data to guide policy that could effectively promote kinship care in the Commonwealth.

A. OPERATIONALIZING DCF'S COMMITMENT TO KINSHIP FOSTER CARE

DCF's Commissioners have been strongly supportive of kinship care.³⁷ Despite this, our research suggests that in Massachusetts, DCF's frontline workers do not uniformly share that commitment, or consistently carry it out in practice. As described in Part II above, although Kinship care has strong benefits, it also presents challenges. Some workers and managers tend to focus on the benefits to children of being placed with kin, and others tend to focus more on the challenges of placing children with kin. This predisposition without training, supervision and accountability, can result in varying practices between workers, offices or region. As described in the Overview above, there are wide variations in rates of kinship care from area office to area office which may reflect, in part, different prevailing attitudes with respect to the value of kinship care.³⁸

In addition, our research suggests that some workers have negative views of kin and believe that kin who raised parents who are struggling to care for their children must be bad parents themselves, and will thus be bad foster parents. This attitude is often referred to as "the apple doesn't fall far from the tree."³⁹

Operationalizing leadership's commitment to kinship care means finding a means of ensuring that all members of the agency, particularly front line workers, carry out that commitment in their daily practice. This requires training, supervision, and ongoing accountability of social workers and the agency as a whole to promoting, and overcoming the barriers to, kinship foster care.

Recommendations:

1. Implement a presumption of kinship foster care

One way of ensuring that all workers carry out DCF's commitment to promoting kinship care is to create a presumption that children will be placed into kinship care, unless the worker explains and documents why such a placement would not serve the child's interests.

A commissioner in a neighboring state stated this presumption as follows:

It is our *obligation* to do everything possible to keep children within the family system. To this end, **I am making it the *expectation* that all children in our care be placed with relatives and the *exception* that they go into non-relative care.** In other words... the presumption is that they be placed with relatives. This is a culture and a norm that the children need us to adopt and operationalize *immediately* in our practice.⁴⁰

Of course a presumption does not mean that children should be placed with kin even if doing so would not be in the child's interests. A presumption simply requires the worker to explain and document the reasons a kinship placement was not made.

Massachusetts has, in fact, gone part of the way towards implementing a presumption in favor of kinship care. As noted in the introduction to Part III above, social workers are required to document in the service plan of each child who is placed in out of home care which kin were considered and why children were not placed with kin.⁴¹ Our research suggests that workers often do not answer this question on their service plan forms. DCF could verify whether this is in fact the case by randomly sampling the service plans of children who have been placed in out-of-home-care. The forms are kept electronically.

Engaging supervisors and managers in enforcing and monitoring compliance with this requirement could begin to shift practice towards finding ways to make appropriate kinship foster care work and also provide DCF with a wealth of information as to why kinship care placement are not being made, and provide insights into what barriers might feasibly be addressed and how. It would be important that workers are given specific guidelines as to the information required so that the data entered is useful in a continuous quality review (CQI) process. For example, rather than answering that a kinship placement was denied due to “licensing requirements” the worker could identify the particular licensing requirement the kin failed to meet.

2. Appoint a DCF kinship foster care coordinator to create a cohesive and uniform set of practices to carry out the Department’s commitment to kinship.

This could either be done statewide or piloted on a regional basis. The coordinator would be the hub of a system of dedicated kinship specific resources at every level of the department. This may require additional funding. A proposal to pilot this on a regional basis has been developed and circulated within DCF.⁴² It should be given serious consideration. The coordinator would

- **provide support to the local area offices including consultation and training on kinship care issues,**
- **oversee a kinship support program,**
- **design and oversee a modified foster care training designed to meet the needs of kinship foster parents,**
- **meet with all levels of area office staff to learn what is working and what isn’t,**
- **participate in kinship care initiatives both within DCF and in the community (courts, schools, Commission on Grandparents Raising Grandchildren),**
- **gather and analyze data, and**

- **report on issues that need to be addressed to upper level management and the Commissioner.**

This proposal provides an excellent framework for implementing many of the proposals in this report. Almost all of the proposals in this report depend on a dedicated kinship care leader who can:

- **facilitate a continuous quality improvement process to strengthen kinship foster care by supporting, and communicating with kinship caregivers and with all levels of DCF staff particularly front line workers and their supervisors,**
- **be involved in all forums in which kinship caregiver issues are addressed both within DCF and in the community,**
- **gather and analyze data about what is happening on the ground in order to provide feedback to local staff and identify and inform upper level management about systemic issues and how they might be addressed.**

B. ELIMINATING UNNECESSARY BARRIERS TO LICENSING KINSHIP FOSTER CAREGIVERS

While DCF deserves much credit for licensing kin according to the same standards as non-kin foster parents, and providing the same level of foster care payments to all foster parents, Massachusetts' current foster care licensing requirements merit attention, because they may pose unnecessary barriers to qualified kin. This is because licensing requirements in Massachusetts, as well as in other states, were not developed with reference to current realities for families, particularly for many kinship foster families.

Some of DCF's licensing requirements for foster homes can be a barrier to qualified kin becoming foster parents.

Household Space Requirements: The licensing requirements that are most widely identified as discouraging kinship placements are household space requirements.⁴³ Of these, a number do not necessarily implicate safety issues. These include:

- **the requirement that any foster child sleep in a designated bedroom even if that would require displacing an adult caregiver into a living room,⁴⁴**
- **a prohibition against children older than age four to sharing bedrooms with children of the opposite gender⁴⁵ and that prohibit any child over age one sharing a bedroom with an adult,⁴⁶**
- **requirements that limit the total number of foster children and total number of all children who can live in a foster home.⁴⁷**

While the situations these regulations address can, in some circumstances, be dangerous or unhealthy and therefore deserve investigation, they don't always put children at risk, they are not required under federal law, and they could unnecessarily bar placement of children with qualified, loving kinship caregivers. The regulations do provide a process for waiving some of these requirements for kin;⁴⁸ however, that process is not always quick, and is not necessarily uniformly applied throughout the Commonwealth.⁴⁹

All of these standards may be hard to meet for kinship homes in which space is tight because the family cannot afford a larger home and/or because multiple generations within an extended family live together. Research suggests this may be particularly the case for African American families. Brown et. al., point out that many African-American kinship families are unlikely to meet the nuclear family norm, and that instead kin care households are often made up of several generations and include multiple adults in multiple roles.⁵⁰ Thus, these space requirements may disproportionately exclude African American families.

Broad Discretion: In addition, DCF's licensing requirements leave a great deal of discretion to social workers to determine whether a foster home is appropriate. For example, social workers are required to determine whether the foster parents have "sufficient income" and "appropriate fiscal management" to maintain stability and security for the foster children,⁵¹

whether they have “a stable housing history,”⁵² and whether foster parents are “able to talk with the child comfortably and constructively about his or her birth parents and family.”⁵³

These are, of course, important areas to investigate, and discretion is valuable when exercised on the basis of sufficient knowledge and training. However, our research suggests that not all social workers necessarily have the training and supervision to make these difficult determinations based on a skilled assessment of all the available relevant information. For example, social workers may not be well equipped to understand or navigate the complex maze of family relationships that may result in additional challenges for kin in understanding the child’s history of family stress or trauma.

Blanket consents: Other licensing requirements, such as the directive to applicants to provide the name and contact information of “any physician, psychologist or other professional who has treated the applicant or other household member for any serious or chronic illness, drug abuse, or alcohol abuse”⁵⁴ may have a chilling effect on potential kinship caregivers because these requirements can feel intrusive and intimidating. This is especially the case if the social worker does not convey the limits on when such information will be sought, how far back DCF will look, and how this highly personal information will be used. Moreover, DCF’s requirement that applicants give blanket consent to DCF’s contacting anyone the applicant has identified on the application,⁵⁵ rather than allowing the applicant to make consents as needed, could unnecessarily discourage kin from applying to be foster parents.

RECOMMENDATIONS

1. **Review DCF’s licensing requirements and new Model Standards to determine if Massachusetts unnecessarily precludes qualified kin**

Review reasons children not placed with kin: As we recommended in section A (1) above, a review of the reasons children are not placed with kin is an important starting point. If social workers enter the required data thoroughly, this review would show what percentage of the cases in which children are not placed with kin are due to licensing requirements, and which licensing requirements are the greatest barriers. Some of these requirements are federally mandated, but for others, including household space requirements, the federal government allows more leeway.

Federal law permits states to revise their licensing requirements to be more appropriate for kinship caregivers without compromising safety in two ways. First, Title IV-E of the Social Security Act allows states to waive what federal law refers to as “non-safety related” licensing standards on a case by case basis when licensing a relative’s home.⁵⁶ Second, states may revise their licensing requirements for all foster homes so long as those requirements are “reasonably in accord with recommended standards of national organizations concerned with such standards for institutions or homes.”⁵⁷

New model standards developed by just such organizations have just recently been issued. They were developed by the American Bar Association, the Annie E. Casey Foundation, Generations United, and the National Association for Regulatory Administration. They suggest a set of standards that protect children but do not unnecessarily exclude willing, competent, loving foster parents who may be struggling with financial challenges or with the challenge of being the hub of, and host to, many extended family members.⁵⁸

We do not offer an opinion as to whether Massachusetts should go the route of increasing waivers for kinship caregivers or the route of revising its licensing standards for foster homes.⁵⁹ We would, however, point to the model standards as an excellent source of the substance of standards that could be applied at the least to kinship homes.

It is not an easy task to strike the right balance between ensuring that children are safe in foster homes and promoting kinship foster care.⁶⁰ The model standards can serve as a resource and reference point for Massachusetts as it undertakes a review of its licensing standards for the purpose of promoting safe and appropriate kinship care.

Space requirements merit careful scrutiny. These are considered “non-safety” requirements which, under federal law, states may waive on a case-by-case basis and are also addressed specifically by the model standards.

The requirement that a foster child sleep in a bedroom: The model standards require only that “each child in foster care must have a sleeping space with an individual bed or crib, mattress and linens, as appropriate for the child’s needs and age and similar to other household members.” Their interpretative guidelines (hereafter “guidelines”) state:

The term sleeping spaces rather than bedroom is used intentionally. The agency may find that a home should be licensed even if there are not separate bedrooms as such, provided that a room may also be used as a sleeping space with a bed that fits the child.⁶¹

They also state:

The standards do not require specific square footage in the sleeping spaces or in the home itself. The agency should not let arbitrary space requirements prevent the licensing of an appropriate and safe home. The agency should exercise common sense in determining capacity limits based on the living space.⁶²

Rules prohibiting opposite gender foster children over age four (and siblings over age eight) from sharing a bedroom: The model standards allow opposite gender children to sleep in the same room until they are five, allow related children to share a room with agency approval, and also allow related children to share a bed with agency approval.⁶³

Limits on number of foster children and total number of children in a home: The model standards establish presumptive limits of five foster children and eight total children and permit waivers to allow siblings to live together and to allow children to live with kin or others with whom they have an established meaningful relationship.⁶⁴

2. Incorporate the basic operating principles of the Model Standards

These principles reflect DCF's recognition that kinship care is an important resource for children and for the Department.

A few of the principles in the model standards that are worth special consideration are:

- **the home study process should be mutually respectful and collaborative,**⁶⁵
- **family foster home licensing standards should be flexible and reflect community standards. Middle class norms should not prevail,**⁶⁶
- **if necessary, the agency should assist the applicant with costs associated with meeting the standards.**⁶⁷

3. Provide training and guidance to ensure social workers exercise their licensing discretion soundly

Since licensing requires some exercise of discretion, it is important that workers and their supervisors have been provided high quality and frequent training and supervision to ensure they exercise their discretion in a way that best promotes kinship care, and eliminates bias against kin who are low-income, non-white, or who do not speak English as a first language. Trainings could be aimed at dispelling potential biases,⁶⁸ and making clear DCF's expectation that children should be placed with kin whenever possible. Supervisors⁶⁹ can also provide guidance to social workers as to how to work with the challenges that kinship caregivers face so they don't preclude loving and capable kin from becoming kinship foster parents.⁷⁰

C. IDENTIFYING AND ENGAGING KIN FROM THE START OF A CASE

DCF's written policies require identification of kin at the earliest stages of the case, well before placement. Its written policy states:

*"starting at initial contact and continuing through the Department's determination that a child needs out-of-home placement, the Social Worker, in consultation with the family, the child age 12 or older and the Supervisor, identifies all kin and families known to the child and family who might be willing and available to be approved as the child's placement."*⁷¹ (emphasis added).

Despite this requirement and DCF's general support for engaging kin from the start, our research suggests that DCF workers do not consistently have information about kin prior to the child's removal. This lack of information makes it much harder to place children with kin on the same day the court orders them into the custody of the department.⁷² Consequently, children are often placed, at least temporarily, in a non-kinship home, either an emergency facility⁷³ or in a non-kinship foster home. If kin are subsequently located and approved the child/ren will have already experienced the trauma of being placed with strangers and will then experience the additional trauma of a second move or of multiple moves.

Family Group Conferencing: One model that has proven effective in involving kin from the start, is Family Group Conferencing in which DCF invites individuals whom the parents have identified as their support network to help support the family in keeping their child(ren) safely at home.⁷⁴ In the past, DCF had a family group conference coordinator in each area office and was able to regularly conduct family group conferences. These conferences involved extended family with the parents in helping to provide resources and make decisions about how to best meet the needs of the children.⁷⁵ This practice not only brought resources to bear to help keep children safely at home, but also served the purposes of identifying supportive kin early on, while allowing an opportunity for the parents and kin to strengthen their relationships through a partnership to help the children.

However, the coordinator positions were eliminated with budgets cuts that began in 2009. Within the past few years, DCF has hired a few area officers at the regional level. As a result some family group conferences are taking place but only for a limited number of cases and generally only after the child has been removed from his or her parents' home.⁷⁶

Recommendation:

Use practice models such as Family Group Conferencing that engage kin from the start and are effective with communities of color

One of the reasons that family group conferencing has been successful is that it engages not only the child's parents but also extended family members and other members of the family's

own network to craft a plan for the child's safety and well-being that best suits the specific and cultural needs and capacities of the family.⁷⁷

In places where it has been fully embraced, family group conferencing was found to 1) increase numbers of children who remained in their homes, with their families more connected to community resources and support; 2) increase rates of kinship placement when removal from the home was necessary; 3) increase exits from out of home care; and 4) reduce lengths of stay in care⁷⁸

In addition, a substantial body of research indicates that the Family Group Decision making approach, including family group conferencing, is a culturally compatible approach to working with families of color. One study found this is so because the family group conference model is typically not a novel concept or practice for these populations. African American focus group participants remarked that it is often customary for families to solve problems among themselves.⁷⁹ Other studies reported that American Indian and Latino focus group participants said that family group conference was respectful and "congruent with their traditions."⁸⁰ Additionally, collaborating with relatives to make important group decisions may not be uncommon for families of color, as extended kin tend to already play a large role in the everyday lives and care giving of these children.⁸¹

Family group conferencing has been shown to be effective in achieving so many important child welfare outcomes that it should be considered an investment that Massachusetts cannot afford not to make. However, it may require additional funding. Not only is this process effective in keeping children safely at home by mobilizing extended family and community resources to help, but it also helps solve the important resource problem of recruiting immediately available safe and loving foster homes for children if they must be removed. By involving kin through family group conferences the child welfare agency gains added capacity to learn through conversations with extended family members about the needs of their cultural groups and communities, and can begin to gain trust and build crucially needed bridges into communities as recommended in Section D below. Importantly, because it reinforces longstanding traditions of extended family involvement, particularly in communities of color, it can reduce racial disproportionality in kinship care by tapping the strengths of those communities.⁸²

D. BUILDING TRUST AND COLLABORATION IN COMMUNITIES WHERE KIN LIVE, ESPECIALLY IN COMMUNITIES OF COLOR

Building Trust: The theme emphasized most strongly and repeatedly by the kinship caregivers of color with whom we spoke was that they did not trust DCF. They reported that they felt judged and criticized by DCF workers, felt that DCF workers had stereotyped views about their racial or ethnic group, and felt that DCF's rules were overly strict and its scrutiny overly intrusive. A suggestion they offered was that DCF partner with community groups to build trust in the communities in which kinship caregivers live.

A challenge for any child welfare agency is that they are seen as a punitive force by families who are struggling to keep their families together, but must at the same time gain the trust of those parent's relatives to recruit them to serve as foster care resources. DCF, like almost all child welfare agencies, has more children in its caseload from some neighborhoods than from others. These communities tend to be low-income and often communities of color.⁸³ These are the communities that DCF must find ways to work with effectively in order to reduce racial disproportionality in its caseload, and in kinship care in particular.

Many kin are from the same communities as the parents who are investigated by DCF. Their views about DCF are based both on their direct experiences with DCF and on word-of-mouth through family members, neighbors, and other community members. Many have experienced or heard indirectly about instances of racial stereotyping, prejudice, and judgmental and punitive attitudes by social workers. The experience of being stereotyped by DCF workers becomes seared in the minds of community members, passed along, and integrated into the community's collective understanding of DCF, even if the Department has made important strides to educate and train its workers.

Key to building trust and collaboration is ongoing, consistent child welfare agency engagement by trained staff who interact with community leaders and members in a supportive, informative and non-defensive way.

Current initiatives: DCF and the Massachusetts legislature deserve credit for a number of statewide and local initiatives to reach out to and work closely with community representatives and community groups.⁸⁴ Most recently the Commonwealth has established Family Resource Centers (FRC's) to serve as community hubs for support groups and referrals to community based services that child welfare involved families need.⁸⁵ The new FRC system will include at a minimum 14 sites; one per county, school liaisons mainly in the gateway cities, and network to provide emergency assistance to runaway children.⁸⁶ Questions remain about whether FRCs will be able to accomplish the many requirements of their mission with the limited funds allocated.

DCF also runs or supports kinship support groups. Other support groups have formed independently of DCF. A number of these consist mostly of informal kinship caregivers, rather

than kinship foster parents. Some, however, are more evenly balanced between DCF involved kinship caregivers and private kinship caregivers.⁸⁷

Recommendations:

Build on existing relationships in communities where kin live

Kin whom we have spoken to have suggested that DCF can build bridges within their communities and increase the willingness and ability of kin to work with them as kinship caregivers, if DCF engages regularly with the community. This would mean engaging in communities proactively, to provide information about how the DCF kinship foster care process works, respond to questions and concerns, and to listen to and respond to feedback.

Based on suggestions from kin we spoke to, it seems useful to start with a core group of community members who are leaders in, or trusted by, other community members who can support this outreach effort, and advise DCF of the best formats for engaging with their particular community. Possible formats include DCF and community leaders co-hosting or helping to organize events, holding a series of informational and discussion sessions, and expanding or creating support groups, or advisory boards, that include kinship foster parents.⁸⁸

In order to address racial disproportionality, it would make sense to begin in communities of color in each region from which large numbers of DCF involved families live. Of course, the ability to communicate in the languages that kin in that area speak will be key. Successes in these areas may serve to promote successes in other areas.

Existing programs that may provide starting points include grandparent support groups and FRC, particularly in communities in which the centers already have strong relationships with community groups. However, these centers may require additional funding to be able to carry out its many community based mandates effectively.

E. PROVIDING ADEQUATE SUPPORT TO KINSHIP FOSTER PARENTS

As described above, all kinship foster parents are paid the same foster care rates as all other foster parents. In addition, kinship foster parents, like all other foster parents, also receive a quarterly clothing allowance, their foster children under age five are eligible for WIC, and their school-aged foster children are eligible for free school lunch and for state funded medical, dental, and psychiatric state subsidized health care (MassHealth in Massachusetts).

Kinship foster care payments provide an important floor to support the ability of kinship foster parents to support their foster children. But kinship caregivers still struggle to be able to care for their foster children and often do not get the services they need. There are two separate issues: first, kin have different and more complicated challenges than many non-kin foster parents have; second, kin do not always know about or gain access to some of the services that non-kin caregivers get.

Challenges Facing Kinship Caregivers: Non-kin foster parents generally have more preparation to take in children than kin do. Usually they have made a planned decision to take in foster children at a time that makes sense for them. They go through trainings, get their homes ready, and have an opportunity to talk to and enlist the support of their family members and their own children. Kinship caregivers rarely have the opportunity to make a planned decision about taking in the children of their kin. Even if they knew there was trouble in the child's home, they may well have hoped and believed the parents would be able to keep their children at home.

Kin also face other types of challenges generally not faced by non-relative foster parents. They already have relationships with their foster child's parents which must be managed and handled sensitively during a very difficult transition period. The children's parents are and will remain family, and many other family members may have opinions about the arrangement as well. In addition, as described in Part II above, kin as a population, face the challenges of older age, poorer health and greater poverty than non-kinship foster parents do. These challenges suggest that kinship caregivers may need more support to ensure the healthy development of children in their care.⁸⁹ Moreover, kinship foster parents reflect the demographics of the families from which the children came. They tend to be lower income than non-relative foster parents.⁹⁰ And kin who do not speak English as their first language will need services and support in their first language. This means they can face long waitlists or unavailability of services in their language.

While their needs for support are often greater, and while the services and supports that DCF provides appear on paper to be the same as for other foster parents, our research suggests that kinship caregivers are less aware of a least two important additional supports than non-relative kin who learn about them through more informal channels.

Resources and Supports for Foster Parents: One of these very helpful supports is Massachusetts Kid's Net which offers foster parents many trainings and support groups in each

area office, provides family resource liaisons who help and support foster parents in navigating the system, and provides respite and child care to allow foster parents to attend events. The other is PACT⁹¹ funds that DCF provides to some foster parents for providing life skills training to children in their care. A number of individuals we interviewed, from both outside and inside DCF reported that that kinship caregivers are often not aware of the availability of Kid's Net and PACT funds and do not use them at the same rates that non-relative foster caregivers do.

These reports raise an important question which DCF could confirm or disconfirm by examining the amount of PACT funds that go to kin and non-kin foster parents, and the enrollment of kin and non-kin foster parents in Kid's Net programs.⁹²

In addition, the MAPP training that all foster parents is routinely waived for kin.⁹³ While kin may not need the same level of training as non-relative foster parents, they could benefit from training at the outset of their service.

Recommendations:

1. Examine the extent to which kinship foster parents access Kid's Net and PACT funds

See recommendation F(1) in data section below.

2. If kin underutilize Kid's Net and PACT, train and expect workers to ensure kinship foster parents can fully access these resources

Social workers can then be trained to ensure that kin are notified as fully and frequently as non-kin foster parents about discretionary financial and other resources they may be available to them, and assist kin in obtaining those resources when appropriate. Results can be monitored by regular review of data on use of PACT, Kid's Net and other resources available to foster parents. See data section (Section F below). Note that providing these essential supports to kin may require additional funding.

2. Provide modified foster care trainings for kinship foster parents

While non-kinship foster parents are required to undergo DCF's intensive MAPP (Massachusetts Approach to Partnerships in Parenting) foster care training program, kinship foster parents in Massachusetts are generally exempted from the MAPP trainings. To its credit Massachusetts does not require kin to undergo training before a child can be placed with them on an emergency basis, however, kinship caregivers do need a general orientation to the DCF system in order to know about their obligations to DCF, what resources are available to them, and to know where they can turn for support. Mini-MAPP trainings will be most effective if they are tailored to the needs of kin, many of whom will have already taken in their kinship foster children.⁹⁴ One way to make sure these trainings are seen by kin as supportive and not simply another obligation would be to offer the trainings both during day time and evening

hours to accommodate the differing schedules of kinship foster parents. Meetings should be accessible, or transportation should be provided, child care should be provided, and a welcoming meal, especially if the training is offered around mealtimes would be a great incentive to getting overworked, stressed out, kinship caregivers to attend.

Attendees at mini-MAPP trainings could then move into kinship caregiver support groups if they chose.

3. Identify and address the greatest gaps in services to kin with limited English proficiency

While developing supportive services in the languages that kin speak is costly, it is required by DCF's regulations,⁹⁵ and necessary to ensuring that kinship care is available on a fair, just and equitable basis to all children in the Commonwealth.⁹⁶

F. MAINTAINING AND USING DATA TO IDENTIFY PROBLEM AREAS AND MONITOR PROGRESS

DCF does not make public and does not appear to regularly utilize data on key issues that would help the agency identify problem areas and assess progress towards the outcomes of increasing kinship care generally and in particular for children of color. While it does have access to, and provided us with its monthly operations statistical reports (MOST reports) which track, among other things, the rates of kinship care placements broken down by race for each area office, it did not have access to information on whether, how many, and at what point in the case kin were engaged and considered as foster care placements, when licensing waivers were waived, and what the reasons were that children were not placed with kin.⁹⁷

DCF's ability to maintain data and effectively use that data in policy formulation is severely hindered by budget cuts which have eviscerated both its data and its policy staffing.

Recommendations:

1. Maintain, analyze, and share data on kinship care that is disaggregated by area office and by race

Basic kinship care data which should be broken down by race and area office includes:

- **outcomes in safety, permanency and stability for children showing results for kinship care vs. non-kinship care, broken down by race,**
- **information that social workers provide about reasons that children are not placed with kin,⁹⁸**
- **area office rates and state rankings on rates of kinship care placement for all children and specifically for children of color,**
- **comparative rates of kin and non-kin use of PACT, Kid's Net and other resources (identifying amounts of PACT funding used and specific Kid's Net and other resources used),**
- **frequency and reasons for licensing waivers granted.⁹⁹**

2. Use this data for continuous quality improvement and to increase public accountability

As part of a continuous quality improvement (CQI) process, this data could be shared with area office and regional management and other relevant staff, to help transmit best practices that could be replicated statewide, and develop plans to address what needs to be changed to achieve kinship care goals.

The CQI process for kinship care could be run by or with the assistance of the kinship care coordinator proposed in Recommendation A (2) above.

With respect to kinship care in communities of color, it would also be important to identify local minority populations in addition to African-American and Latino populations, and track kinship care placement for those populations in addition to those groups already tracked.

Efforts to share data, replicate best practices, and address problematic practices may also have the benefit of creating more consistency between area offices. This would promote equity and fairness and eliminate concerns that where someone lives might determine whether or not they are able to become a kinship foster parent.

It is critically important to share data in a meaningful manner with the legislature to make the case for needed investment, and to show progress made towards clearly articulated kinship care outcomes.

3. Adequately fund DCF data and policy staff

DCF should specify the number and estimated cost of staff needed and make the case for such funding.

Although this is not the front line services that tend to get priority for funding, it is necessary in order to be able to provide those services in a fair, equitable and effective manner. Policy and data collection are interdependent capacities. Without adequate data, DCF is hard pressed to know whether its policies are being followed.

Data capacity would also enable DCF to provide more regular and meaningful reports to the legislature on its progress towards kinship care and other important child welfare goals.

DCF may well get the support of Massachusetts child welfare advocacy groups as well for this purpose.

G. HEIGHTENING THE LEGAL STANDARD FOR REMOVAL OF CHILDREN FROM KINSHIP FOSTER HOMES TO OTHER FOSTER HOMES

No matter how close or longstanding the familial relationship a child has with his or her kinship foster caregivers, DCF may remove a child from that kinship foster home and place the child in another foster home whenever it determines “there is a more suitable placement for the child’s permanency, safety or wellbeing.”¹⁰⁰ This is the same standard that is applied to transfers from non-kin foster homes, and accords no recognition to the fact that the kin’s relationship to the child was not created by the state.

This stands in sharp contrast to the standard DCF must meet to remove a child from his or her parents. In those cases, the state must prove by clear and convincing evidence¹⁰¹ that the parents are not “currently fit to further the welfare and best interests of the child.”¹⁰² The state must meet a heavy burden of proof before removing a child from his or her parents because fundamental rights are at stake. As the Supreme Court wrote in Stanley v. Illinois:

The rights to conceive and to raise one's children have been deemed essential, ... basic civil rights of man, ... and rights far more precious ... than property rights[.] It is cardinal with us that the custody, care and nurture of the child reside first in the parents[.]¹⁰³

Similarly, children have a constitutionally protected liberty interest in being raised and nurtured by their parents.¹⁰⁴

A number of courts that have reviewed cases where a state has proposed to remove a child from their kin to place the child in another foster home have recognized that kin have a legally protected relationship with the child which requires greater protection than the relationship a child might have with non-kin foster parents.¹⁰⁵

Recommendations:

Craft a test for moving children from kinship foster care to non-kin foster care that recognizes the family relationship

Creating an intermediate substantive standard that DCF must meet before it can remove a child from a kinship home to place that child in another kinship home¹⁰⁶ makes policy sense. This is because a standard for removal from kin that is higher than for non-kin foster parents but lower than for parents recognizes that kin stand halfway between parents and non-kin foster parents.¹⁰⁷ Such a standard could generally require that the state show, by a preponderance of the evidence, that the child’s safety, or the child’s ability to find a permanent home would be at risk if the child were to remain in the kinship foster home.

Courts that have reviewed such have identified three key factors that create a constitutionally protected liberty interest in the child-kin foster care relationship which should be protected from unnecessary intrusion.¹⁰⁸ These are:

1. A biological relationship between the child and the kinship caregiver
2. The child and the kinship foster caregiver have lived together before the foster care agreement was entered into
3. There is no potential for conflict between the kin and the rights of the parents at issue

These factors, could guide the shaping of legislation or DCF policy as to the circumstances under which a higher standard for removal from kin should be required.

CONCLUSION

Massachusetts can be in the forefront of kinship foster care. We need to get there because we know it's best for children and because kinship care is a resource necessary to ensure we have enough good foster homes. We know what to do because we have done much of it in the past and have other important initiatives underway. Targeted investment is critical, but the financial outlays needed are not large and are not the major ingredient for success. What is needed now is a steadfast commitment to a coordinated multi-pronged approach to strengthening kinship foster care for all foster children in the Commonwealth and in particular for children of color.

ENDNOTES

¹Some states have lower numbers of kinship foster homes because their child welfare agencies divert many kin who step up to serve as foster parents to the court to seek guardianship without child welfare agency involvement. These kin are not eligible for foster payments and the other benefits foster parents receive and must rely on any TANF benefits they are eligible for.

²In our report issued earlier this summer, “If Not Now, When: A Call to Action for Systemic Child Welfare Reform in Massachusetts” we addressed the many ways that Massachusetts can reduce the number of children entering foster care, and fulfill its mandate to keep children safely at home whenever possible. This report addressing best options for children who must be removed from their parents should be read in conjunction with our earlier report since that report addresses the primary child welfare challenge: ensuring that children be kept safely at home with their parents whenever possible, and placed in foster care only when that is not possible.

³In Connor B. v. Patrick, U.S. Circuit Court Judge William Young found that in “persistent placement problems” in foster care “can primarily be traced to a single root cause: there is a severe shortage in the number of foster homes in Massachusetts.” “DCF’s general goal,” Judge Young found “is to maintain a pool of around 4000 unrestricted homes for foster care placements... but the Department has fallen short of that target since the late 1990s....Staffing shortfalls contribute substantially to the drag in foster home recruitment..... What’s more, neither bolstering the administrative ranks nor obtaining the requisite number of foster homes will resolve the ongoing placement challenges related to ensuring a child’s unique fit with a prospective placement, a consideration which rightly figures prominently in placement decisions. See ...[Deposition of DCF’s Assistant Commissioner of Foster Care and Adoption]: (“At any point in time, when you look at the number of homes that [DCF] ha[s] . . . you’ll have sometimes upwards of 1,000, 1,500 homes without placements. . . . [I]t’s all about matching the right home. . . . [W]e’re looking at are we able to bring in homes that can take sibling groups, are we able to bring in homes that can take certain types of behavior? Are we able to bring in homes that can work more closely with families? Are we able to bring in homes that can commit to a family over time as opposed to taking a child for three to five days until we can find another home? So a lot of it is not just based on numbers but also the type of homes you look at.”) Internal references omitted. *Connor B. ex rel. Vigurs v. Patrick*, 985 F.Supp.2d 129, D.Mass., 2013, (November 22, 2013), pp. 144-145

⁴And in fact MA kinship care rates have increased at a higher rate than the nation as a whole. National rates increased from 24% in 2006 to 27% in 2012 and to 28% in 2103 while, in a similar but not identical time period, MA rates rose from 20% in 2008 to 28% in 2014. See Chart Pack, Slide 3. Also, note that AFCARS has just released 2013 national data, but it is not yet broken down by state.

⁵Between 2010 and 2014, children of color in Massachusetts experienced a greater increase in kinship care placements than white children did. Even with a dip in 2013, African American children experienced a 33% increase in kinship foster care rates, and Latino children experienced a 25% increase between 2010 and 2014.

⁶See, *Disparities and Disproportionality in Child Welfare, Analysis of Research*, (Papers from a Research Symposium Convened by the Center for the Study of Social Policy and the Annie E. Casey Foundation on behalf of the Alliance for Racial Equity in Child Welfare), (December 2011), p. 39 and studies cited therein. (“*Much of the literature maintains that African American and American Indian children are more likely to be placed with relatives than their White counterparts....Similarly, recent research indicates that more than one third of Latino children in foster care are living in kinship placements, which represent “the highest rates among all racial/ethnic groups”*)

⁷Maza, P., *Placement Stability in Massachusetts*, National Resource Center for Child Welfare Data and Technology, (January 20, 2011), p 15

⁸According to DCF’s most recent quarterly report (3/31/13), while African American children constitute 7% of the children in Massachusetts, they constitute 15% of the population of children in DCF out-of-home care. Latino children constitute 15% of the children in MA and 26% of the children in DCF out-of-home care. In contrast to the overrepresentation of children of color in DCF out-of-home care, white children are underrepresented. They constitute 67% of the children in MA, and 47% of the children in DCF substitute care. *DCF Quarterly Report* (Fiscal Year 2013, 3rd Quarter), page 20, Table 9.

⁹As the United States Supreme Court noted in *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), pp 504-505: “Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and

children has roots equally venerable and equally deserving of constitutional recognition. Over the years, millions of our citizens have grown up in just such an environment, and most, surely, have profited from it... Out of choice, necessity, or a sense of family responsibility, it has been common for close relatives to draw together and participate in the duties and the satisfactions of a common home.”

¹⁰ This report does not address the issue of kin who have some contact with DCF and whom DCF then refers to the courts, at their request or otherwise, to seek custody without DCF involvement. A concern in these cases is that kin rarely receive the counseling they need about the financial and other tradeoffs of non-DCF involved kinship care versus DCF kinship foster care. See, Kaban and Weisz, *Protecting Children: A Study of the Nature and Management of Guardianship of Minor Cases in Massachusetts Probate and Family Court* (2008). See also, The Annie E. Casey Foundation’s *The Kinship Diversion Debate: Policies and Practice Implications for Children, Families and Child Welfare Agencies*, January 2013. <http://www.aecf.org/resources/the-kinship-diversion-debate> In Massachusetts, the Commission on Grandparents Raising Grandchildren and the Probate and Family Court have both stepped into the breach with helpful manuals. See, The Grandparent’s Commission’s “A Resource Guide for Grandparents Raising Grandchildren” http://www.massgrg.com/assets/grandparents_raising_grandchildren-2.pdf and the Probate and Family Court’s “A Guide for Relative Caregivers.” <http://www.mass.gov/courts/selfhelp/guardians/guide-relative-caregivers.html>. However, one-on-one counseling is often necessary at this crucial juncture.

¹¹ 110 CMR 7.209 A child must be determined to have a special need as defined by the Definition of Child with Special Needs 7.209, section 2 of the Department of Children and Families Regulations .

¹² This is discussed in Section III (B), see also, footnote 50.

¹³ It is possible that the high rates of non-DCF involved kinship care among African American families in Massachusetts could contribute in to a limited extent to the relatively low for African-American Children. It may be that among African American families that kin who are available to care the children of their struggling relatives tend to step up earlier to help than do white relatives, and therefore fewer African American kin are available after DCF becomes involved. However, this factor is unlikely to have much of an impact and this trend is not limited to Massachusetts.

¹⁴ DCF’s Family Resource Policy #2006-01, p 385.1

¹⁵ In addition, Massachusetts has a category called “child specific” which consists of non-kin who step up to care for a specific child (for example a teacher or a friend’s parent). Family Resource Policy, p. 385.1. DCF prioritizes child specific placements right after kin, and before foster parents who have no prior connection to the child, Permanency Planning Policy, p. 12

¹⁶ Brown, S., Cohon, D., and Wheeler, R., 2002, *African American Extended Families and Kinship Care: How relevant is the foster care model for kinship Care*, Children and Youth Services Review, Vol. 24, Nos. 1 / 2, p. 62; Conway, T. and Hutson, R., *Is Kinship Care Good for Kids?*, Center for Law and Social Policy (2007) pp. 1-2

¹⁷ Conway and Hutson, 2007 pp. 1-2

¹⁸ Conway and Hutson, pp. 1-2 citing, *National Survey of Child and Adolescent Well-Being* (NSCAW) *CPS Sample Component Wave 1 Data Analysis Report*, U.S. Department of Health and Human Services, Administration for Children and Families, (2005) available at

http://www.acf.hhs.gov/sites/default/files/opre/cps_report_revised_090105.pdf pp 7-17-- 7-18 (63% of children in kinship care report changing schools, and 80% of children in non-kin foster care report changing schools.)

¹⁹ Winkour, M., Crawford, G., Longobardi, R., and Valentine, D., 2008, *Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes*, Families in Society: The Journal of Contemporary Social Services, Vol. 89, No. 3, p. 339, citing Wilson, D. & Chipungu, S., *Kinship Care: Special Issue*, Child Welfare (1996), p. 387

²⁰ In general studies have shown that children in kinship foster care have fewer behavioral problems, more adaptive behaviors, fewer psychiatric disorders, and a greater sense of well-being than children in non-relative foster care. Children in non-kin foster care are 6.3 times more likely than children in kinship care to be involved with the juvenile justice system. Some studies indicate that children are safer in kinship care than in foster care. One study found that children in foster care were 10.1 times more likely than children in kinship care to have a new allegation of institutional abuse or neglect. Winkour, Crawford, et. al., (2008) p. 343.

²¹ Conway and Hutson, R., citing Testa, M., 2001 *Kinship Care and Permanency*, Journal of Social Service Research, Vol. 28 (1) pp. 25-43

²² Chamberlain, P., Price, J., Reid, J., Landsverk, J., Fisher, P., Stoolmiller, M., 2006, *Who disrupts from placement in foster and kinship care?*, p. 415 (Foster placement disruption is defined as any exit from the foster or kinship placement home that was made for a negative reason.)

²³ Winokur, M., Holton, A. & Valentine, D., *Kinship Care for the Safety, Permanency, and Well-being of Children Removed from the Home for Maltreatment*, Campbell Systematic Reviews (2009), p. 27.

²⁴ Maza report see footnote 7. It is not hard to see why kinship care could lead to greater placement stability for children in the child welfare system. A child's transition from his or her parents' home is likely to be less disruptive and traumatic s/he is placed with kin. A smoother transition, may lead to better behavior, and an easier experience for the caregivers. In addition, bonds between relatives and children may deepen the commitment of kinship foster caregivers to weathering whatever challenges the child's behavior may present. All of these factors may reduce the risk of placement disruption, and of the child's having to move to a new placement.

²⁵ Winkour, Holtan and Valentine (200), p. 28.

²⁶ Geen, R., *The Evolution of Kinship Care Policy and Practice*, Princeton University, Brookings Institute, Future of Children Journal, issue entitled Children, Families, and Foster Care Volume 14 Number 1 (Winter 2004), pages 135-6.

²⁷ P.L. 105-89 (Adoption and Safe Families Act) and Final Rule (January 2000).

²⁸ 42 USC 671 (19) (State Plan requirements of Title IV-E of the Social Security Act)

²⁹ Social Security Act, §471 (a) (29)

³⁰ DCF's Family Resource Policy #2006-01, p 385.1; see page 15 *DCF's Definition of "kin"*

³¹ 110 CMR 7.101 (2)(a); DCF Permanency Planning Policy (Policy # 2013-01), p. 12

³² DCF Permanency Planning Policy (Policy # 2013-01), p. 12 DCF

³³ M.G.L. c. 15D, §6(d)

³⁴ These waivers are permitted but not required under federal law applicable to foster families for which the federal government will reimburse the states. 42 USC 671 (10) (State Plan requirements of Title IV-E of the Social Security Act)

³⁵ 110 CMR 7.101 (8)

³⁶ Another factor that is likely related to the relatively low numbers of African American children in kinship foster care is that African American children in out-of-home care are placed in residential facilities rather than in foster homes, at higher rates than are white or Latino children. In the latest published DCF Quarterly Report (3/31/13), 24 percent of African American children in placement were placed in residential facilities compared to just 18 percent of white children and 19 percent of Latino children.

³⁷ Several key examples include: 1) DCF provided state subsidies for kinship guardianships long before the Fostering Connections to Success Act made these payments reimbursable under Title IV-E of the social security act; 2) MA was an active participating in Casey Family Programs' Breakthrough series on Supporting Kinship Care (2007) <http://www.nxtbook.com/nxtbooks/casey/kinship/index.php?startid=5#/16> and another series on Reducing Racial Disproportionality and Disparate Outcomes for Children and Families of Color in the Child Welfare System (2009) <http://centerforchildwelfare.fmhi.usf.edu/kb/dispr/Reducing%20Disproportionality%20-Casey.pdf> and brought back important tools from both; 3) DCF commissioned and presented the findings of a 2010 report on strengthening placement stability through increasing kinship care and committed to increasing kinship care: and, 4) as detailed in Part III Section D, DCF has initiated many community outreach programs to build relationships in communities where the majority of the families with which it is involved live.

³⁸ Local office differences kinship care placement rates likely reflect differences in local conditions as well.

³⁹ For a discussion of the myth "The apple doesn't fall far from the tree." see, e.g. Conway, T and Hutson, R, *Is Kinship Care Good for Kids?*, Center for Law and Social Policy, (2007) p. 2. DCF has taken a number of promising training and other initiatives to address this view to the extent that it creates conflicts between practice and DCF policy and priorities. See also, *Disparities and Disproportionality* p 41, referencing the existence of this attitude among child welfare professionals nationally.

⁴⁰ Connecticut Department of Children and Families Commissioner Joette Katz, *Memo to all Staff Re. Relative Placements*, April 21, 2011. A number of this Commissioner's requirements (in the areas of working with kin from the start and changing license requirements and processes), are similar to those in this report (as detailed below.) To create accountability for results, she laid out specific expectations and

directed that a comprehensive database be maintain to create accountability for results. She also directed that regional directors receive monthly date reports on their results. *(See recommendations in Part III, Section F on maintaining and using data, below.)*

⁴¹ See footnote 35

⁴² Please contact the author of this report at Selsen@mlri.org for further information about this proposal.

⁴³ Criminal background checks (CORI) checks also preclude some kinship caregivers. However, Massachusetts law provides that DCF may under some circumstances waive a CORI record with sufficient assurances that the home will not present a danger and that there are good reasons, including the relationship between the potential foster parent and the child, for placing that child in that home. Recent changes to federal law have imposed stricter requirements for criminal background checks, and recent changes to state law have accommodated and, in some instances, exceeded federal requirements. See, Chapter 77 of the Acts of 2013 and Outside Section 152 of the FY 2015 budget which amends G.L. c. 119, §26A. This report does not address changes to CORI background checks because that area is largely governed by recently enacted federal law. It will be important to monitor state law changes not required by federal law to assess whether they result in the exclusion of qualified kinship caregivers.

⁴⁴ DCF regulations at 110 CMR 7.105 do not specifically state that a foster child must sleep in a bedroom.

However, DCF's interpretation of its regulations is that, when taken as a whole, they require a bedroom for the foster child. *(See, sub-parts 1, 4, 5, 6, 7, 8, 9)*.

⁴⁵ 110 CMR 7.105(6) Children over age four may not share a bedroom with a child of the opposite gender, except that siblings of the opposite gender may share a bedroom up to age eight. This means, for example, that two five-year-old cousins placed in a two bedroom apartment would have to each have a bedroom and displace their grandmother who would have to sleep in the living room and agree to a plan to get a bigger apartment

⁴⁶ Unless two children had shared a bedroom before they were 18 and one of them turns 18. 110 CMR 7.105 (4).

⁴⁷ 110 CMR 7.105 (12) No more that 4 foster children and no more than six children may live in a foster home at one time. While this requirement can be waived to allow up to six foster children and 8 children in a home at one time, the waiver process is complicated and potentially cumbersome. The regional director may authorize a waiver to limits on number of children in the home in order to place siblings together or for other limited reasons. If these criteria are not met, waivers to allow children to be placed with kin may only be made by the Commissioner upon the recommendation of a departmental clinical review team and in consultation with other professional involved in the case. 110 CMR 7.105 12(a) and (b).

⁴⁸ Household space licensing requirements that can be waived for kin include amount of bedroom space, and limits on foster/total children in a home.

⁴⁹ We do not have quantitative data on how many kinship caregivers have been disqualified as a result of the household space licensing requirements. DCF states that it is unable to easily access social worker's responses they are required to provide in electronic form on each foster child's service plan as to why the child was not placed with kin.

⁵⁰ Brown, S, Cohon, D, Wheeler R., *African-American Extended Families and Kinship Care: How relevant is the foster care model for kinship care?*, Children and Youth Services Review Vol. 24, Nos. 1/2, pp. 55-79 (2002). Also note that one way African American families have responded to adversity is through an increased reliance on kin. Thus the extended family form, which may make kinship families appear chaotic because they do not imitate the culturally idealized family structure, may instead reflect adaptability and flexibility in which family members 'pool resources and build[...] community while coping with long term poverty and growing unemployment rates among men.'" Brown, Cohon and Wheeler, p. 73-74. Roberts notes that these cooperative networks often relied upon by African American mothers have included members of the extended family (grandmothers, sisters, aunts and cousin) as well as nonblood kin and neighbors. Roberts, D., *Kinship Care and The Price of State Support for Children*, University of Pennsylvania Law School, Legal Scholarship Repository (2001) pages 1621-1622

⁵¹ 110 CMR 7.104(4) It was reported to us that this requirement has been interpreted differently over time and that in the past DCF allowed more people receiving public assistance to become kinship foster parents than it does now.

⁵² 110 CMR 7.100(4)(d)

⁵³ 110 CMR 7.104(1)(o)/

⁵⁴ 110 CMR 7.103 (3)(f)

⁵⁵ 110 CMR 7.103 (3)(m)

⁵⁶ 42 USC 671 (10). See footnote 34

⁵⁷ 42 USC 671 (10)

⁵⁸ Model Family Foster Home Licensing Standards, available at <http://www.grandfamilies.org/Portals/0/Model%20Licensing%20Standards%20FINAL.pdf>

⁵⁹ This is a judgment that requires consideration of a wide number of variables outside the scope of this report including the need for increased non-kin foster homes. We would note that one factor that could mitigate in favor of changing the standards for all foster homes is that federal law requires that waivers be made on a case-by-case basis. This puts a heavy burden on individual social workers or their supervisors to make the call that a waiver is appropriate in a given case, and a corresponding heavy responsibility on them if something goes wrong in that home.

⁶⁰ One might suggest that the standards for kinship homes should be no stricter than those a child's parents must meet in order to avoid a finding of abuse or neglect. What makes that approach more complicated for a state child welfare agency is that children the agency places in foster care are in the custody of the state. The state has a higher level of responsibility and liability for children in its custody than for children living with their parents.

⁶¹ Model Family Foster Home Licensing Standards, Interpretive Guide, Guideline to Standard 6A at p. 24.

⁶² Model Family Foster Home Licensing Standards, Interpretive Guide, Guideline to Standard 5A at p. 23. DCF states that there is a good clinical reason for not allowing foster children to sleep in a living room: "we do not want our children to feel like they are the leftover in the family or unimportant. In other words, everyone else has a bedroom but this child does not." This is certainly an important consideration, but does not have to necessarily override the child's interests in being placed with kin. The model standards acknowledge the equity concern and address it in a flexible manner: "Children in foster care should not....be made to sleep in routinely designed public spaces when other children in the home have their own bedroom. All children in the home should be treated equitably. If that equity exists, the agency should exercise discretion and some children, for example, may be allowed to use Murphy beds or a bed that doubles as a sitting place for the family during the day." See Model Standards, Interpretive Guide, standard 6A, at p. 24.

⁶³ Model Standards 6(A) & (B) at p. 8.

⁶⁴ Model Standards 5 (A) and 5 (B) at p. 8.

⁶⁵ Model Standards, Interpretive Guide, standard 4(A), at p. 21.

⁶⁶ Model Standards, Principles, Principle 5, at p. 5, and Interpretive Guide, Guideline to Standard 7(B), at p. 25. Note, community standards as used in the Model Code address the need for culturally competent standards that recognize that the cultural traditions of minority groups are not necessarily the same as those of white middle class families.

⁶⁷ Model Standards, Principles, Principle 5, at p. 5.

⁶⁸ Biases reported to us include: "The apple doesn't fall far from the tree," "Low income or minority relatives are not able to provide as good a life for kinship foster children as higher income white foster parents can," and "Kin are expected to care for their own, and shouldn't receive financial or other supports or incentives."

⁶⁹ Providing this training to supervisors would help them reinforce the Department's commitment to kinship care, and help ensure oversight of social workers so they make decisions which promote kinship care consistent with the safety and well being of the children in their custody.

⁷⁰ Such limitations might include: physical space limitations in their homes, income limitations which make it harder for kin to provide enrichment and other activities to their foster children, lack of transportation which may make it harder for kin to get their foster children to therapy and other and other needed supports and activities, moderate limitations which come with age, criminal histories of kin or their other household members which do not affect their ability to care for a foster children

⁷¹ Permanency Planning Policy, p. 16. DCF's written policy also, as part of its requirement to make reasonable efforts to keep children with their parents, that the worker encourages and assists the family in identifying, connecting with and using supportive resources within their kin network. Permanency Planning Policy, p. 5.

⁷² This is not to say same day emergency placements with kin are not made. If kin can be quickly identified by parents on the day of removal, and can be quickly approved using an expedited approval process available for kin only, children may be placed with kin immediately upon leaving their parents' home.

⁷³ referred to as a "hotline home"

⁷⁴ In Family Group Conferences, DCF clearly state the risk to the children that has prompted DCF's involvement and the coordinator asks participants to discuss what they are worried about with this family and what they see as the family's strengths. The coordinator then asks participants to come up with a plan to keep the children safe and leaves the room. When the group has come up with a plan, they write it up and the DCF social worker keeps a copy and follows up with participants to ensure they are doing what they said they would. DCF's Child Welfare Institute trains social workers on how to work with families effectively to help them identify kin. One method is the Family Safety Circle process in which the social worker engages in a non-threatening dialog with family members to identify who their support network is. However, our research suggests that this process is not widely used.

⁷⁵ The Family Group coordinator invited participants and facilitated the meetings.

⁷⁶ While social workers reportedly receive some training on the family group conference model, they are generally not expected to coordinate and facilitate meetings.

⁷⁷ Disparities and Disproportionality, p. 51,

⁷⁸ Disparities and Disproportionality, p. 52, citing Miller, O. A., & Ward, K. J. (2008). Emerging strategies for reducing disproportionality and disparate outcomes in child welfare: The results of a national Breakthrough Series Collaborative. *Child Welfare*, 87(2), p. 213.

⁷⁹ See, Disparities and Disproportionality, p. 52.

of color in the child welfare system: a review and emerging themes. *Children and Youth Services Review*, 26(6), 507-527

⁸⁰ Disparities and Disproportionality, p. 52

⁸¹ Disparities report. p. 52

⁸² One of the greatest resource challenges to thoroughly integrating family group conferences into DCF's child welfare practice is the current demand on social workers' time that has resulted from a recent spike in increased caseloads on top of already high caseloads. Family Group Conferencing is an intensive model that requires skill and training. One possibility, tried with some success in other states, is to reach out to ministers, community organizers, and other individuals engaged in and respected by the community to serve as facilitators of Family Group Conferences.⁸² In addition, the caseload issue must be addressed.

⁸³ Roberts, D., *The Racial Geography of State "Child Protection,"* Institute for Policy Research, Northwestern University, Working Paper Series, (2006), pages 127-128

⁸⁴ Statewide initiatives include the Commissioner's Statewide Advisory Council which consists of local Area Board representatives, advocates, and providers who meet with the Commissioner quarterly to review DCF issues and policy ideas, and the Family Advisory Council which includes kinship caregivers. Local groups include local Area Boards and Community Connections programs. Community Connections groups have family advocates, some of whom have been very effective in connecting families with community based resources. While many of these groups have been very effective, they exist only in some communities and haven't all necessarily focused on kin. DCF also funds PATCH program that run out of four areas offices across the state. In these programs DCF workers are located in a community-based site, or co-locate with a community based organization or community connection coalition and engage with families as a part of a community-based organization, using innovative and successful practices such as teaming, family based conferencing, and parent empowerment and advocacy. These programs are well positioned to engage kinship caregivers, have two-way communication about the Department's resources and expectations, and the needs and feedback of kinship caregivers.

⁸⁵ A number of the Community Connections groups have worked with or become the Family Resource Centers for their areas.

⁸⁶ This year the legislature has provided funding in the amount of \$7.7 million for the implementation of Chapter 240 of the Acts of 2012. This funding is to include funding the current FRC system until the newly procured system comes online in approximately 6 months.

⁸⁷ A kinship caregiver support group at an area office in the Southeastern region has been run by the same social worker for 11 years providing weekly meetings, monthly newsletters and important information and community for both DCF and non-DCF involved kinship caregivers. The model has recently been replicated in two other area offices.

⁸⁸ Using existing ties to the communities when possible, DCF could host coffees or other get-togethers in which they provide information about the benefits of kinship care for children, financial benefits available to kinship caregivers, how the DCF process works, the rationale for its licensing requirements, the legal process of kinship care placement through DCF, non-DCF involved kinship care giving options, and what supports are available to kin. Well-trained DCF community engagement workers should also be able to respond to questions and challenges with the goal of building bridges to the community and expanding a necessary foster care resource.

⁸⁹ See note 26, Geen, *The Evolution of Kinship Care*, at 135.

⁹⁰ Geen, at 135

⁹¹ PACT stands for Program of Assertive Community Treatment. As with Kid's Net report of underutilization of PACT funds are anecdotal and have not been confirmed by DCF staff.

⁹² If these anecdotal reports are borne out by the data, possible explanations which could be addressed through policy guidance and supervision include: 1) that DCF social workers tend to develop relationships with, and want to provide incentives to, non-kin foster parents over time whom DCF often engages multiple times to be foster homes for many children over many years. Social workers may not develop the same relationships with kinship caregivers whom they engage with generally only one time for specified children 2) social workers may carry an expectation that family members are expected to care for their own and should not receive any additional supports or incentives or because they feel the children are ok because they are with "family" 3) since Kin are generally exempted from the MAPP foster care training series that is a pre-requisite for non-relative foster parents, they don't have the same opportunities to hear from DCF and informally from other foster parents about support programs such as Kid's Net and PACT payments. (This may be an unintended consequence or a well-intentioned waiver.) Recommendation no E (2) suggests a small scale pre-training for kin that could help ensure they are aware of all available supports and accomplish other beneficial goals as well) 4) Language could be a barrier for kin both in communicating with their social worker and in participation in Kid's Net groups and contracted services⁹² 5) caregivers may not want to access the services because they are afraid to say they need help for fear the children will be removed.

⁹³ According to DCF, the social worker discusses its foster care booklet with kin in order to offer additional information and clarification. They are also offered ongoing trainings provided by Kid's Net and run through the areas offices.

⁹⁴ See <http://mappbooks.org/> for one example of a foster care training curriculum modified for kin.

⁹⁵ The Department recognizes the special concerns of linguistic and cultural minorities in the Commonwealth. The Department shall be responsive to issues of ethnic and cultural diversity by utilizing social workers who are attuned to ethnic and cultural values and traditions. The Department shall ensure that both the services it provides directly and those it provides through providers or contracts are culturally sensitive to the various minority groups in the client population. 110 CMR 1.06

⁹⁶ See 110 CMR 1.05 "The Department's services shall be provided on a fair, just, and equitable basis."

⁹⁷ Even though social workers are expected to provide that information in the electronic service plans they are required to update each time the family's case goal changes. See footnote 35 above.

⁹⁸ Ensure that the reasons social workers submit are broken down into specific variables.

(For example, failure to meet licensing requirements could be broken down into specific reasons such as unable to provide a bedroom for foster child is adequately specific to identify a potential barrier to kinship care.)

⁹⁹ The Fostering Connections to Success Act requires that states provide much of this data to Congress. However, in the most recent report to Congress, Massachusetts appears to be the only state that did not provide any responsive data. The requirement is at § 471(a) (10) of the Social Security Act. The Report is the Children's Bureau's Report to Congress on States' Use of Waivers of Non-Safety Licensing Standards for Relative Foster Family Homes, (2011), pp. 6-7.

¹⁰⁰ 110 CMR 7.116 (2)

¹⁰¹ *Santosky v. Kramer*, 455 U.S. 745, 755 (1982); *Adoption of Mary*, 414 Mass. 705, 710 (1993); *Custody of a Minor*, 389 Mass. 755, 766 (1983).

¹⁰² *Custody of a Minor*, 389 Mass. 755, 766 (1983) (quoting *Petition of the Dep't of Pub. Welfare to Dispense with Consent to Adoption*, 383 Mass. 573, 589 (1981))

¹⁰³ *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)

¹⁰⁴ See *Suboh v. Dist. Attorney's Office*, 298 F. 3d 81, 91 (1st Cir. 2002); see also *Care and Protection of Manuel*, 428 Mass. 527, 535 (1998) (children, like parents, are entitled to due process in care and protection cases). A long line of Supreme Court cases beginning in 1923 recognizes that the fundamental liberty guaranteed by the due process clause of the Fourteenth Amendment protects the private sphere of family life from government interference. See, e.g., *Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

¹⁰⁵ *Rivera v. Marcus*, 696 F. 2d 1016 (2nd Cir., 1982). See also, *Johnson v. City of New York*, 2003 WL 1826122, not reported in F. Supp. 2d. United States District Court, S.D. New York (2003) and *Renaud v. Mattingly*, 2010 WL 3291576, not reported in F. Supp. 2d. United States District Court, S.D. New York (2010)

¹⁰⁶ We do not suggest that any higher standard should be imposed when removing a child from kin to reunify the child with his or her parents. This heightened standard should apply only when moving a child from a kinship foster home to another foster home.

¹⁰⁷ In *Rivera v. Marcus*, the Court identified three important differences between the typical foster family and the natural family. First, there is generally no biological relationship between foster parents and the children in their care. Moreover, while the natural family has its origins separate and apart from state law, the source of the foster family relationship is contractual in nature and is carefully circumscribed by the state in the foster care agreement. Finally, there is a virtually unavoidable tension between protecting the liberty interests of the natural parents while also extending familial rights in favor of non-kin foster parents. *Rivera v. Marcus*, 696 F. 2d 1016 at 1024 (2nd Cir., 1982) citing *Smith v. OFFER*, 431 U.S. 816 at 844 (1977). See also, *Johnson v. City of New York*, 2003 WL 1826122, *United States District Court*, S.D. New York (2003) ("Where, as here, children have been in continuous custody of a foster parent since early childhood, the Court sees no basis for distinguishing the kinship foster family's interest in a prompt hearing from that of the natural family.")

¹⁰⁸ These cases have not addressed the substantive standard for removal of children from kinship foster home. They have instead addressed procedural protections that must be in place to protect the liberty interests of kinship foster parents.

ABOUT THE AUTHOR

Susan R. Elsen joined the Massachusetts Law Reform Institute in 2001 and serves as MLRI's Child Welfare and Family Law Attorney. She engages in advocacy to ensure that children grow up in homes that are safe, financially secure and provide a foundation for a healthy, productive adulthood. She graduated from Princeton University and Columbia University School of Law. Before joining MLRI, she was an Assistant Corporation Counsel for the City of New York, a staff attorney at legal services programs in Massachusetts, and an attorney in private practice. Susan serves on the DCF Commissioner's Statewide Advisory Council, as co-chair of the Strengthening Families Coalition, and as coordinator of the legal services Family Law Task Force. She is a member of the Massachusetts KIDS COUNT Advisory Council, a partner in the national State Policy Advocacy and Reform Center (SPARC), and a member of the Children's Law Support Project.

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