

TABLE OF CONTENTS

ACKNOWLEDGEMENTSii

EXECUTIVE SUMMARYiii

I. GROWTH OF KINCAREGIVERS 1

II. THE SPECIAL ROLE OF GRANDPARENT CAREGIVERS 3

III. OVERVIEW OF LEGAL BARRIERS AND OBSTACLES 4

A. Legal Information and Legal Services 5

B. Public Assistance System 7

C. Health Care System 9

D. Education System 10

E. Legal and Judicial System 11

F. Child Welfare System 13

IV. SUMMIT RECOMMENDATIONS 16

Overarching Recommendations 16

Training Recommendations..... 17

Statutory Recommendations 18

Funding Recommendations 19

V. CONCLUSION.....21

Appendix A. County Statistics of New York Grandparent Caregivers and Children

Appendix B. List of Definitions of Terms Describing Kincaregiving

Appendix C. Rights, Authority & Assistance

Appendix D. About the Author and Editor

Appendix E. Recent Kincaregiver Advocacy and Policy

Appendix F. Copy of Summit 2004 Agenda

Appendix G. Comparison of "Child-Only" Grants and Foster Care Payments

Appendix H. NYC ACS Notification Form

Appendix I. Bibliography

ACKNOWLEDGMENTS

This report is the result of the efforts of many individuals and organizations that share a common interest in the successful raising of children by New York's kinccaregivers. AARP New York (AARP NY) provided the leadership and resources for the overall effort. New York Life Foundation, in response to a request by AARP NY, provided financial assistance to ensure the project's success. The New York State Kinccare Coalition, representing over forty organizations throughout New York State, provided the cumulative expertise gained through numerous years of service to New York's kinccaregivers. Using committees, conference calls, and bi-monthly meetings, the Coalition collected and refined its descriptions of the barriers facing kinccaregivers and then developed solutions to these problems.

Many individuals volunteered their time and energy. AARP NY staff was especially generous. Beth Finkel, AARP NY Manager of State Operations, chaired the year-long effort and consistently invigorated everyone with her genuine interest. Staff at the New York State Office for the Aging, the New York State Office of Children and Family Services, and the New York State Office of Temporary and Disability Assistance offered valuable suggestions and comments. Individuals from various other public agencies offered helpful advice regarding the interaction between kinccaregivers and service providers.

Student interns Jenna Duwenhoegger and Rebecca Hansen were especially diligent in completing their research and keeping the project on course. Student intern Jody Chin and AARP NY Associate State Director Chaunda Cunningham aided in formatting and editing, and helped to see this report to its completion. Rose Mary Bailly, Esq. provided editorial assistance.

Finally, the kinccaregivers themselves must be recognized. It is their work with children that is the rationale for this paper. They are the only large-scale resource able and willing to lovingly care for "at risk" children. They deserve enactment of a comprehensive agenda that fully empowers them.

EXECUTIVE SUMMARY

Nationally, about 500,000 children are in foster care. About 131,000 of these children live with relatives who are foster parents in kinship foster care. However, these figures are dwarfed by the nearly five million children who live with their grandparents or other relatives outside the foster care system.

New York's statistics mirror the national picture. While fewer than 10,000 of the approximately 40,000 children in state care live with foster care relatives, close to 500,000 children are cared for privately by grandparents and other relatives. In fact, grandparents and relative caregivers are America's and New York's "other" child welfare system.

Across the nation, states have responded unevenly to the needs of these new families, and no state has comprehensively addressed the range of needs – recognition, authority, rights, and assistance. The lack of law in these areas is due to the traditional focus on the powers of parents and the state. Parents and the state derive their authority from the common law, statutes, and the substantive due process protections of federal constitutional law. Parents are the accepted natural guardians of their children and are protected from unwarranted state interference. The state itself, via its *parens patriae* power, has the authority and duty to care for children when parents cannot. Nowhere in our legal traditions does the moral value of family, meaning grandparents and relatives, translate into a consistently identifiable legal value. With children increasingly being raised by non-parent family members, new law is necessary to address the needs of these new families.

During the Pataki Administration, especially during the last four years, much progress has been made towards this goal; in particular, the "Grandparent Caregivers' Rights Act," the "Parental Designation Act," and the "Help for Caretaker Relatives" program. These legislative initiatives were in response to the efforts of AARP NY, the National Committee of Grandparents for Children's Rights, and more recently the New York State Kincare Coalition.

Building on these successes, New York law makers are in reach of accomplishing a comprehensive package of statutes and regulations in support of this emerging class of caregivers. New York's response will not only enable kincaregivers in this state, but can set standards for action in other states.

To begin addressing this issue, the New York State Kincare Coalition and AARP NY initiated a year-long analysis of the barriers to kincare in the Public Assistance (TANF "Child-Only" Grants), Health, Education, Legal and Judicial, and Child Welfare systems. The study's goals were to identify barriers, analyze their significance, and offer

potential solutions. The investigation, funded by the New York Life Foundation, began in January 2004.

As part of the Coalition's efforts, AARP's researchers distributed a 20 page survey to 187 organizations to confirm the accuracy of already identified barriers, identify additional barriers, confirm the validity of suggested solutions, and identify other solutions. The survey results are published in AARP's "New York Report on Barriers to Successful Kin Caregiving of Children."

The combined efforts of AARP NY and the Coalition culminated in a "summit" convened in Albany, New York, in November 2004 at which over 100 policy makers, law makers, advocates, kincaregivers, and Coalition members reviewed the research and made final recommendations for legislative and regulatory action. The inescapable conclusion of these deliberations was that New York needs to address a range of issues burdening caregivers, thereby acknowledging that kin, especially grandparents, are an underappreciated resource who lack the legal authority, security, financial assistance and other resources necessary to parent effectively.

RECOMMENDATIONS

The Kincare Summit produced four overarching Final Recommendations, which reflect best practices already established in New York or in other states. The remaining Recommendations address specific needs for training, statutory changes, and funding in the public assistance, health, education, legal, judicial, and child welfare systems.

OVERARCHING RECOMMENDATIONS

Recommendation One: Create a statewide "Kincare Information Program."

Recommendation Two: Restore funding for the "Help for Caretaker Relative Programs."

Recommendation Three: Create a subsidized "Guardianship Program."

Recommendation Four: Create a state-level "Task Force on Kincare."

TRAINING RECOMMENDATIONS

Public Assistance System

Recommendation Five: Publish a guide to applying for "Child-Only" grants.

Recommendation Six: Train staff of departments of Social Services.

Education System

Recommendation Seven: Train school-district personnel.

Legal and Judicial System

Recommendation Eight: Train court personnel.

STATUTORY RECOMMENDATIONS

Public Assistance

Recommendation Nine: Amend Social Services Law to create a "Good Cause" exemption from kin caregivers' cooperating in enforcement of support orders.

Educational System

Recommendation Ten: Amend Education Law as it relates to enrollment criteria, rights of legal custodians, responsibility of legal custodians for school-related activities, and the definition of "Person In Parental Relation."

Health Care System

Recommendation Eleven: Amend Public Health Law definition of "Person In Parental Relation."

Legal and Judicial System

Recommendation Twelve: Amend Domestic Relations Law to create a statutory period for "de facto" custody.

Recommendation Thirteen: Amend Social Services Law to ensure placement of the optimum number of children with kin caregivers.

FUNDING RECOMMENDATIONS

Public Assistance System

Recommendation Fourteen: Increase "Child-Only" grants.

Health Care System

Recommendation Fifteen: Mandate research of health care needs of kin caregivers and best practices.

Legal and Judicial System

Recommendation Sixteen: Provide legal representation for grandparents seeking custody based on "extended disruption of custody" under Domestic Relations Law § 72 and for kin in private adoptions.

Recommendation Seventeen: Collect and maintain statistics on third-party custody

disputes.

I. GROWTH OF KINCAREGIVERS

Since the 1970's, the number of relatives, especially grandparents, caring for children has grown substantially,¹ and the growth is likely to continue as many in the baby boomer generation become grandparents. According to the 2000 U.S. Census, more than 6 million children currently live with grandparents or other relatives.² Next to parents, grandparents are by far the single largest source of private caregiving. The 2000 U.S. Census showed that 4.5 million children are being raised by 2.4 million grandparents. A 1998 AARP survey showed that about 11 percent of "mature" grandparents already were caregivers.³

Over one-half of all grandparents provide some child-care assistance,⁴ and more than one in ten grandparents will raise a grandchild for six months or more.⁵ 38 1/2 percent of grandparent caregivers are responsible for a grandchild for five or more years.

25 1/2 percent of grandparent caregivers are over 60, with a median age of 57, and a median family income of \$31,700.⁶

In 2002, there were 186,435 non-parent custodial arrangements for New York's children.⁷ Approximately 70 percent of these arrangements involved grandparents.⁸ The

1 From 1970 to 1997, there was a 78% increase in the number of children living in grandparent headed households, to 3.9 million. Caspare, Lynne M. & Bryson, Kenneth R., Co-resident Grandparents and their Grandchildren: Grandparent Maintained Families, U.S. Bureau of the Census, March 1998.

2 Fact Sheet, Grandparents and Other Relatives Raising Children: Challenges of Caring for the Second Family 1(Generations United)(citing U.S. Census 2000 SF1, table P28, Relationship by Household Type for Population 18 and younger), available at http://www.gu.org/Files/ChallengesSheetfinal10_02.pdf.

3 Denholtz, Elaine, "The Extra Parent," p. 3, Universe 2003.

4 Guzman, Lina, "Grandma and Grandpa Taking Care of the Kids: Patterns of Involvement." ChildTrends, 2004.

5 "Grandparents and other relative caregivers often face a bewildering set of legal issues." Minkler, Meredith, "Grandparents & Other Relatives Raising Children: Characteristics, Needs, Best Practices, & Implications for the Aging Network. AOA, 2001.

6 Brabazon, Kevin, "Grandparents Living with Grandchildren and Grandparents Responsible for Grandchildren. Generations United, 2002. The years between 1970 and 1997 experienced a 78% increase in the number of children living in grandparent headed households. Caspare, Lynne M. & Bryson, Kenneth R., Co-resident Grandparents and their Grandchildren: Grandparent Maintained Families, U. S. Bureau of the Census, March 1998.

7 Safir, Adam & Leibovitz, Harold, State Profile of New York, 2002 National Survey of America's Families, Urban Institute & United Hospital Fund. Over 23,000 children in these non-

2000 Census figures show over 143,000 grandparents are solely responsible for one or more grandchildren.⁹ More than 55,000 children live with a grandparent for more than five years. Grandparent kincaregivers are split almost evenly between the greater New York City area and the rest of the state.¹⁰

With a growth rate of 30 percent per decade, the number of grandparent caregivers may approach 165,000 by 2010. By adding in the estimated 30 percent of kincaregivers who are non-grandparents the total number of New York kincaregivers is likely over 200,000.

Describing these relationships with a commonly-used definition is a daunting task because no uniform description exists in the law or in literature on the subject.¹¹ This report uses the term "kincaregivers" to include grandparents, relatives, at any degree of consanguinity, and non-blood caregivers, such as step-parents, step-grandparents or family friends, who have assumed the primary care and control of children regardless of their legal status as legal custodians, legal guardians, or informal caregivers.¹²

parent families do not have health insurance. *Id.*

8 Over 412,000 grandparents resided with their grandchildren in 2000. 2000 U.S. Census.

9 See Appendix A, Statistics of New York grandparent caregivers by county.

10 *Id.*

11 Kincare was the subject of hearings and reports by the United States Congress as early as 1992. See *Grandparents: New Roles and Responsibilities, A Briefing by the Chairman of the Subcommittee on Human Services of the Select Committee on Aging, House of Representatives, One Hundred and Second Congress, June 8, 1992, Comm. Pub. No. 102-876; Grandparents Rights: A Resource Manual, A Report by the Chairman of the Subcommittee on Aging, House of Representatives, One Hundred and Second Congress, December 1992, Comm. Pub. No. 102-898.* In 1992, the Child Welfare League also began focusing on this issue and has continued since then to support research and advocacy. By 1995, the White House Conference on Aging made recommendations regarding "kinship care." However, as yet no single term describing non-parental care has gained universal acceptance. A recent federal bill, co-sponsored by Senators Clinton, Snowe, and Daschle uses "kinship caregivers." See S. 985 introduced on May 10, 2005. Commonly used terms include: De Facto Custodian, Grandparent Caregiver, Formal Custody, Formal Kinship Care or Formal Care, Informal Custody, Informal Kinship Caregivers, Kincaregivers, Kinship Caregiver, Kinship Foster Care, Private Kinship Care, and Public Kinship Care. New York statutes also describe these relationships in various ways. See, e.g., N.Y. Ins. Law §§ 4235(f), 4305(c), 321(c), 3216(c)(4)(A) ("a person upon whom a child is dependent"); N.Y. Pub. Health Law §§ 2164, 2504a ("person in parental relation"); N.Y. Edu. Law §§ 2, 3212, et seq. ("person in parental relation"). A list of definitions of various terms used to describe kincaregivers is attached as Appendix B. For a discussion of the different formal and informal relationships of kincaregivers, see Appendix C, "Rights, Authority & Assistance: Informal Custody, Legal Custody, Guardianship, Foster Care and Adoption."

12 Unless stated, the term "kincaregivers" does not include kinship foster parents, who are agents

II. THE SPECIAL ROLE OF GRANDPARENT CAREGIVERS

An Albany County grandmother is asked by social services to take care of her newborn grandchild. She immediately rushes to the hospital and takes the infant home. Unable to continue to work while caring for the child, four months later she has lost her job, is being evicted, and cannot locate her mentally ill daughter because her phone service has been turned off. Still, she continues to care for her grandchild.

Our society's traditions place special value on grandparents¹³ but our laws have been slow to acknowledge that value.¹⁴ Hence, the special value of grandparents has not translated into a legal "right to care." For over 50 years, grandparents have been advocating for rights and, over time, "grandparents' rights" have evolved into two separate meanings. The earlier and more common expression of "grandparents' rights" is the right to visit with their grandchildren.¹⁵ The more recently evolved meaning refers to

of the child-welfare system and subject to significantly different laws and regulations.

13 The role of grandparents is especially important in the African American community. *See Moore v. City of East Cleveland Ohio*, 97 S. Ct. 1932, 431 U.S. 494, 52 L.Ed. 2d 531 (1977) As noted in *Moore*, approximately 44% of all African Americans live in extended families, whereas only 11% of whites reflect a similar structure. Within the extended African American family, grandparents are most likely to shoulder the responsibility of raising children. *Id.*

14 *Moore v. City of East Cleveland Ohio*, 97 S. Ct. 1932, 431 U.S. 494, 52 L.Ed. 2d 531 (1977) (a grandmother custodian was afforded the same protections from state interference that parents receive); I.R.S. Schedule EIC (Form 1040A) (grandparents can use the Earned Income Tax Credit when children are in their home for less than one year). In New York, see N.Y. Dom. Rel. § 72 (in expanding the opportunity for grandparents to seek visitation, the 1976 New York legislature took note of the special role that grandparents play in monitoring the well-being of their grandchildren. Leon E. Giuffreda, Senator's Memoranda on Grandparents, Visitations Right S.613-A, 1975 New York State Legislative Annual, pp. 50, 51); N.Y. Surr. Proc. Act § 1707 (Grandparents must receive notification when parents are dead or missing.); 42 U. S. C. § 216 (Grandparents may seek dependent benefits for un-adopted children in their care when the parents are dead or disabled); and C. 657 of the 2003 Laws of New York (grandparents afforded special rights in private custody disputes and notification about removals of children from parental homes by local departments of social services). *See also Matter of the Appointment of a Guardian for Baby K*, 188 Misc.2d 228, 727 N.Y.S.2d 283 (Broome Co. Surr. Ct. 2001) (a Surrogate's Court approving grandparent's guardianship of an unborn child).

15 Although controversial in its own right, the right of grandparent visitation has gained widespread acceptance. In the mid-1960s, New York enacted section 72 of the Domestic Relations Law, one of the first grandparent visitation statutes in the nation. *See* L. 1966, c. 631, codified at N.Y. Dom. Rel § 72. In the mid-seventies, this statute was expanded to include any

grandparents' rights with respect to grandchildren with whom they are residing, for whom they are the primary caregivers, or for whom they wish to care. In this context, grandparents rights are intended to replicate parental rights in circumstances when parents cannot parent, i.e., grandparents are the natural substitute guardians of their grandchildren. Such rights, either especially identifying grandparents or applying to all kincaregivers, are developing in New York, albeit slowly. In 2003 New York enacted its "Grandparent Caregivers' Rights Act"¹⁶ and in 2005 New York enacted legislation permitting parents to designate certain authority to kincaregivers.¹⁷

III. OVERVIEW OF LEGAL BARRIERS AND OBSTACLES

A Nassau County grandmother applies for a "Child-Only" grant of public assistance. She is told that she cannot make out the application unless she is the child's legal custodian or guardian. She chooses not to apply. And consequently does not have the resources to raise the child.

Kincaregivers, particularly grandparents, are shouldering unanticipated burdens when they undertake the task of raising children. These kincaregivers may work or live on fixed incomes such as Social Security or pensions, they may live in restricted housing for the elderly, and they may be advanced in age. Most have experienced debilitating family tragedies because of the substance abuse, disability, death or incarceration of the child's parents. In addition to these private burdens, kincaregivers are confronted daily with the unintended effects of laws and regulations not designed to accommodate kincaregivers. Although the advocacy of the past fifteen years has brought much attention to the problems, and New York has taken encouraging first steps with its

circumstance where "equity would see fit to intervene." L. 1975, c. 43, codified at N.Y. Dom. Rel. § 72(1). The subject of grandparent visitation is beyond the scope of this paper.

16 L.2003, c. 657 (noting that "The legislature hereby finds that, with 413,000 children living in grandparent-headed households in New York state, grandparents play a special role in the lives of their grandchildren and are increasingly functioning as care givers in their grandchildren's lives. In recognition of this critical role that many grandparents play in the lives of their grandchildren, the legislature finds it necessary to provide guidance regarding the ability of grandparents to obtain standing in custody proceedings involving their grandchildren."). Currently this law is the most expansive statutory grant of rights to grandparent caregivers in any state. *See Tolbert v. Scott*, 790 N.Y.S.2d 495 (2d Dep't 2005).

17 S. 6818 repealed and replaced in June 2005, with a chapter amendment that enacts a parental-designation power by adding Title 15-1 to the General Obligations Law.

Grandparents Caregivers Rights Act and Parental Designation Statute, much more remains to be done about the hardships facing kincalegiving families.

In January 2004, the New York State Kincare Coalition¹⁸ and AARP NY initiated a year-long analysis of the barriers to kincalegiving in New York. The goals of the study were to identify barriers in the public assistance, health, education, legal and judicial, and child welfare systems, analyze their significance, and offer recommendations for change.¹⁹ The investigation was funded by the New York Life Foundation.

As part of the Coalition's efforts, AARP's researchers distributed a 20-page survey to 187 organizations. The survey asked respondents to identify and prioritize the barriers in the 5 systems, and list recommendations to eliminate the barriers. 67 respondents returned the surveys. Of these, 43 were agencies actively providing services to kincalegivers. The responding agency personnel included social workers, nurses, attorneys or other community-based professionals. The results of the survey are reported in "AARP New York Report on Barriers to Successful Kin Caregiving of Children."²⁰

The combined efforts of AARP NY and the Kincare Coalition culminated in a Summit convened in Albany, New York during November 2004. The Summit brought together over 100 policy makers, law makers, advocates, kincalegivers, and Coalition members to review the research and make final recommendations for legislative and regulatory action.²¹ Summit participants identified critical caregiver needs that are illustrated in more detail below.

A. Need for Legal Information and Legal Services

A Monroe County grandmother cares for her grandson for over two years. Family Court orders the child back into the home of the father without a best interests analysis, as required by law. The grandmother cannot challenge the court's ruling because the grandmother cannot afford legal representation.

The 1995 White House Conference on Aging reported that one of the most

18 For information on the author and editor, *see* Appendix D.

19 The work of the New York State Kincare Coalition builds on the advocacy efforts of many other organizations and individuals over the last fifteen years. The history of recent advocacy and policy for kincalegiving rights in New York is set out in Appendix E.

20 The Report is available from AARP at <http://research.aarp.org>. Any barrier or solution that received a rating higher than 40% is identified in this discussion.

21 The attendees included agency personnel from the Office of Temporary and Disability Assistance (TADA), the Office of Children and Family Services (OCFS), and the Office for the Aging (SOFA). A copy of the agenda is attached as Appendix F.

pressing needs for grandparents and other kin raising children was legal information and legal services. A report to the Administration on Aging states that "Grandparents and other relative caregivers often face a bewildering set of legal issues,"²² a finding reinforced by the reports of state taskforces in Tennessee, California, Ohio, New Jersey, Washington State, and elsewhere.²³

Both New York's State Office for Aging (SOFA) and New York's 18 "Help for Relative Caregivers" programs have reached the same conclusion. In the mid-90s, SOFA's Targeted Caregivers Initiative identified the prevalence of this need. In 2003, the 18 "Help for Relative Caregivers" programs unanimously indicated a need for legal services among caregivers on a range of topics including custody rights, Department of Social Services (DSS) benefits, housing, and school placements.²⁴

The Kincare Coalition studied how other states disseminate information to kincaregivers and identified several noteworthy programs, specifically Florida, New Jersey, and Ohio. Among the most promising models are statewide "Navigator Programs" designed to get information and services to kincaregivers by using toll-free "hot lines" or help desks. The types of services available through "Navigator Programs" range from information and referral to case management, and financial assistance. Other kincaregiver information programs include local assistance programs that tailor services to kinship caregivers and multi-county projects whose goals are to institute statewide programs targeting kinship caregivers.

Summit participants agreed that the availability of information on legal rights and legal assistance is essential to kincaregivers who face formidable obstacles as they navigate the public assistance, health care, education, court (family and juvenile proceedings), and child welfare systems. Private partnerships, especially Hunter College's Grandparent Caregiver Law Center, which is now defunct for lack of funds, and the National Committee of Grandparents for Children's Rights (NCGCR), have been models of how to provide legal information using toll free numbers. The participants regarded these programs as successful but viewed the need as far greater than existing resources.

22 Minkler, M., "Grandparents & Other Relatives Raising Children: Characteristics, Needs, Best Practices, & Implications For The Aging Network." Washington, DC: Lewin Group & U. S. Administration on Aging, 2001.

23 Recommendations of the 1995 White House Conference on Aging; Minor & Wallace, "The Dilemma of Kinship Care: Grandparents as Guardians, Custodians and Caregivers," (Government Law Center, Albany Law School 1998); Child Welfare League: 1996 California Policy Summit on Kinship Care; 2001 Florida Summit on Kinship Care; Ohio 2002 Report on Kinship Care. A legal assistance model project was a high priority of the recommendations of the 2002 Report to the Washington State Legislature.

24 NYS Office of Children and Family Services, "Help for Caretaker Relatives Program, Interim Program Report – 2003."

B. Access to Public Assistance System -- Temporary Assistance to Needy Families (TANF "Child-Only" Grants)

A grandmother took her daughter's two young girls into her home. Later, the grandmother became their legal custodian. Neither the child welfare system, the courts, nor the local department of social services informed her about "Child-Only" TANF grants. For two years she suffered severe financial hardships until by chance she learned of these grants.

Financial support for kincaregivers is generally limited to federally-funded TANF "Child-Only" grants. "Child-Only" grants are based exclusively on the income and resources of the child. The caregiver's income is not considered.²⁶ The grant provides limited payments to kincaregivers for the care and boarding of a child. Nationally, only 6 percent of children in private kinship care eligible for TANF "Child-Only" payments receive them.²⁷

AARP survey results demonstrate that key barriers for kincaregivers regarding TANF "Child-Only" grants are inadequate knowledge about the grants, the complex application process, and inadequate financial assistance.²⁸

Kincaregivers often do not realize the children are eligible for assistance. Kincaregivers with eligible children may have raised them for years without assistance because they were never informed of the availability of grants. 79 percent of respondents indicated that the DSS workers should do more outreach to kincaregivers and 77 percent responded that information on TANF "Child-Only" application procedures should be distributed to kincaregivers.

26 Greenberg, Mark H., et al., *The 1996 Welfare Law: Key Elements and Reauthorization Issues Affecting Children*, 12 *Children and Welfare Reform* 9 (Winter/Spring 2002), available at http://www.futureofchildren.org/pubs-info2825/pubs-info.htm?doc_id=102547.

27 Murray, Julie, et al., "Estimating Financial Support for Kinship Caregivers." Urban Institute, 2004.

28 AARP New York Report on Barriers to Successful Kin Caregiving of Children, available at <http://research.aarp.org>.

Many kineregivers find the application process confusing. 72 percent of respondents suggested that support in filing applications should be increased.

The Summit participants suggested that staff may be unfamiliar with the process. They related anecdotes in which frontline workers in some counties seemed suspicious of applicants, demanded unnecessary documentation (like proof of legal custody or guardianship), insisted that kineregivers participate in work-related activities, sometimes erroneously declared applicants ineligible. 81 percent of respondents recommended training of DSS workers on TANF "Child-Only" grants. 70 percent of respondents recommended that a memorandum establishing uniform criteria for applicants should be distributed around the state.

Even the name(s) for these grants is unknown or not uniformly used within counties. Grants are sometimes referred to as a non-dependent grant (NDG's) or room and board rate. 67 percent of survey respondents indicated that a statewide uniform nomenclature should be established.

The "Child-Only" grant was considered inadequate by 67 percent of respondents. Consistent with other forms of public assistance, grants range from approximately \$300 to \$450, depending upon the county.²⁹ For a second or third child, the grants are approximately \$100 to \$150 per child. No additional funds are received for children with special or exceptional needs.³⁰ Thus, a kineregiver with three grandchildren would receive approximately \$650 to \$700 per month.³¹ 74 percent of survey respondents suggested that the amount of the grants be increased so that they are on a par with foster care grants. The direct payment to a foster family ranges from approximately \$400 to \$500 per child per month, depending upon the county; with grant increases of up to \$1300 for foster children with "special" or "exceptional" needs. For a second child and third child in foster care, unlike those receiving "Child-Only" grants, the rates double and triple. Since most kineregivers have more than one child, the monetary differences between the "Child-Only" grants and foster care payments are substantially more dramatic when comparing multiple households.³²

In evaluating the overall cost of these two types of programs, consideration should be also given to indirect costs. For foster children, these costs include: overhead of child welfare personnel, court proceedings, assigned counsel fees, reunification efforts,

29 See Appendix G for a Comparison of "Child-Only" Grants and Foster Care Payments.

30 *Id.*

31 See Appendix G for a Comparison of "Child-Only" Grants and Foster Care Payments.

32 *Id.*

33 The National Family Caregiver Support Program, part of the renewal of the Older Americans Act, provides funds for relative caregivers of children. P.L. 106-501 Part E, Sec. 373(a)(2) (2000), amending 42 U.S.C. § 3030s-1 Approximately 20 counties have used the discretionary funding.

terminations proceedings, and adoptions subsidies. For "Child-Only" grantees, the state has far less overhead.

Apart from "Child-Only" grants, little or no assistance is specifically targeted for kin caregivers. Some local offices on aging³³ and departments of social services have limited programs offering support groups or respite, but the state itself does not offer any special services. 67 percent of respondents suggested that child care stipends should be provided and 63 percent indicated transportation stipends should be provided.

63 percent of respondents suggested that TANF administration funding be expanded and 54 percent recommended that a Caregiver Services Coordination Agency be created.

Summit participants confirmed these findings and agreed that solutions should include child care funding, increased "Child-Only" payments, training for staff on the purpose of "Child-Only" grants, eligibility and assistance to kin caregivers, and creation of a common nomenclature and common qualifications. Some of their recommendations could be accomplished administratively by local departments of Social Services, such as conducting outreach to kin caregivers. They also suggested that as part of an examination of whether funding for "Child-Only" grants can be increased, a comparison of the actual cost/benefits of both programs should be done. This analysis might in turn serve as a basis for increasing TANF assistance to kin caregivers.

C. Access to the Health Care System

A grandmother was refused medical services for her grandson at a local pediatric office. She had been the informal custodian of the child for some time and was known to the medical staff. However, when the staff realized that she was not the legal guardian of the child, they felt compelled to deny routine care.

AARP's survey results identified a kin caregiver's lack of medical authority as a complicating factor in obtaining medical and mental health care and medical records. The survey results also showed that kin caregivers face problems in obtaining private health insurance and, for eligible children, Medicaid.

65 percent of respondents indicated that kin caregivers' authority was inadequate. New York's legal custodians³⁴ as well as many informal kin caregivers lack the necessary

34 See, e.g., N.Y. Public Health Law § 2504 (permitting parents, guardians, and "persons in parental relation" to make medical decisions for minors.)(emphasis added); N.Y. Public Health Law § 2164 (for immunizations, a "person in parental relation to a child" shall mean and include his father or mother, by birth or adoption, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of a child if he has assumed the charge

statutory authority to make medical decisions. By necessity, medical providers and schools often ignore this lack of authority but the uncertainty of the kin caregivers' authority makes their situation precarious. 58 percent of respondents indicated that this lack of authority also makes it difficult for kin caregivers to access health records.

Health insurance carriers may refuse to reimburse for a child's medical care unless the kin caregiver obtains guardianship over the child, a step the kin caregiver may be reluctant to take for fear of disturbing the relationship with the child's parent. 61 percent of respondents acknowledged that kin caregivers have difficulty in adding a child to a private plan and 56 percent indicated that kin caregivers are unable to obtain health care insurance. 61 percent of respondents suggested that the Child Health Plus Program should do more outreach to kin caregivers and 58 percent suggested that help is needed in completing the Child Health Plus application.

Many of the children may be eligible for Medicaid but the application is not drafted with kin caregivers in mind.³⁵ 61 percent of respondents indicated that the complexity of the application process may thwart persons otherwise eligible for this benefit. 72 percent suggested that DSS staff should receive training on eligibility criteria for children in kin care and 63 percent suggested that DSS should do more outreach regarding Medicaid.

Summit participants confirmed that the survey results accurately described the experiences of kin caregivers. Participants expressed concern that the health care needs of the kin caregivers and the children in their care are under-identified and under-served. Many of the kin caregivers are elderly and suffer from health problems that are exacerbated by the stress of caregiving. They may also suffer from mental health problems brought on by stress. The children often have significant mental health issues because they are not living with their parents. The adolescent years can be particularly difficult for both the caregiver and the teen.

D. Access to the Educational System



and care of the child because the parents or legally appointed guardian of the minor have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such child or are living outside the state or their whereabouts are unknown, *or have designated the person pursuant to title 15-a of the general obligations law as a person in parental relation*”(emphasis added). See also N.Y. Educ. Law § 2 & 3212(1) (Persons in Parental Relationship). (“A person in parental relation to another shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown, *including persons who have been designated pursuant to title 15-a of the general obligations law as person in parental relation to the child*)(emphasis added).

³⁵ A child with a “Child-Only” grant is eligible for Medicaid.

An Orange County grandfather becomes the caregiver for three children two weeks before the start of the school year when his daughter left the children with him and disappeared. He tries to enroll the children in school and is told by the school district that he must first become their legal custodian. Four months later, the children are still not in school because of bureaucratic red tape and an inability to locate the daughter for service of process.

Survey results showed barriers for kincaregivers attempting to meet the educational needs of children include lack of knowledge among school staff about kincaregivers' needs, inadequate support for kincaregivers in advocating for their children, and inadequate authority to make decisions and access school records. The lack of authority with respect to enrollment and inconsistent policies about enrollment across the state are also barriers.

Teachers and administrators may be unfamiliar with a kincare arrangement and thus reluctant to engage the kincaregiver as the family partner or share other information about the child. 77 percent of respondents said the school administration officials, parent coordinators, and teachers lacked an understanding of kincaregivers' needs and that administrators and staff should receive training. 67 percent of respondents said that kincaregivers had inadequate authority to make educational decisions and that this lack of clear authority made advocating for services difficult. 67 percent said that this lack of authority made it difficult to obtain records and other information.

Even enrolling a child in school can be complicated for kincaregivers. 58 percent of respondents viewed kincaregivers' authority to enroll children in school as inadequate. Under New York's Education Law, residency in a school district is necessary in order to qualify for tuition-free enrollment.³⁶ The statute requires proof of other residency to overcome the presumption that children reside with their parents. Although the law provides that residency can be proven by a totality of the circumstances,³⁷ many school districts demand that the kincaregiver have legal custody or guardianship. Without legal custody or guardianship, the kincaregiver faces tuition payments, thus, in many cases, straining their already limited income.

Kincaregivers may experience difficulty in assisting the children with their lessons. Learning theories may have changed, and some subjects may present challenges to the kincaregiver as well as the child. 74 percent of respondents said that there were inadequate support services and 70 percent said that kincaregiver knowledge of available assistance was inadequate.

Summit participants agreed that the barriers in the survey accurately described problems confronting kincaregivers. Among their recommendations, they indicated that school districts administratively should develop outreach programs for kincaregivers on

36 N.Y. Edu. Law § 3202.

37 See generally *Catlin v. Sobol* 77 N.Y. 2d 552, 569 N.Y.S.2d 353 (1991); *Matter of Moncrieffe*, 121 Misc. 2d 395, 467 N.Y.S.2d 812 (Surr. Ct. Nassau Co. 1983).

educational resources, including individualized education plans ("IEP's"), access to parent coordinators, and their educational rights and responsibilities.

E. Access to the Legal and Judicial System

A grandmother cares for her grandchild for over two years, with the assistance of the mother. The absent father returns and claims in court that he has kept up contact with his children. The child's mother who is eligible for assigned counsel has disappeared. The grandparent caregivers are not parties to the dispute and cannot afford counsel. The child is returned to the father.

AARP survey results showed that barriers in the legal/judicial system include the cost of legal services, inadequate funding for legal services programs, inadequate access to legal records, and inadequate respect by the courts for kincaregivers.

Kincaregivers are frequently at a disadvantage in legal battles because they may lack the necessary information to make informed decisions about how to proceed and they may lack the necessary funds to hire a lawyer. 88 percent of respondents identified cost of legal proceedings as a major barrier for kincaregivers. 84 percent said that funding for legal services programs was inadequate, making it difficult for such programs to take kincaregiver cases. 84 percent of respondents said that kincaregivers lacked knowledge of what services are available. 67 percent stated that they had inadequate assistance in completing court documents. 61 percent expressed the view that the court staff lacked an adequate understanding of the issues facing kincaregivers. As a consequence of these problems, kincaregivers have difficulty navigating the legal system.

65 percent also stated that kincaregivers did not have adequate access to court documents and legal records. 47 percent stated that kincaregivers had insufficient access to law guardians in court proceedings.

The survey also indicated that kincaregivers and professionals assisting them are convinced that kincaregivers are disadvantaged in court proceedings regarding children. 67 percent of respondents stated that kincaregivers lacked rights in legal proceedings. 65 percent said that the courts did not respect the rights that kincaregivers do have.

Although a kincaregiver with legal custody has some security that a parent cannot remove a child at will, a strong preference for parental reunification still places children in legal custody at a disadvantage. A kincaregiver without legal custody is in a more precarious position. Parents have primacy under the law. Thus, under New York law, in a third party custody proceeding, one between a parent and a non-parent, the court must find that "extraordinary circumstances" exist before the court will consider what custody arrangement is in the child's best interests.³⁸ "Extraordinary circumstances" are circumstances such as

³⁸ See, e.g., *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976); see also *Guinta v. Doxtator*, 2005 WL 1000173 (N.Y.A.D. 4 Dept.).

parental unfitness or "an extended disruption of custody."³⁹

Some states provide that a parent's voluntary placement of the child with another full time non-parent caregiver for a statutorily defined extended period of time is a sufficient reason to consider granting custody to the non-parent caregiver. New York recently adopted similar protection for grandparents by enacting legislation which provides that if a child resides with a grandparent for at least 24 continuous months, the court should consider that period of time an extended disruption of the parent's custody.⁴⁰ The legislation does not extend to children who reside with non-grandparent primary caregivers.⁴¹

Summit participants emphasized the inadequacy of kin caregivers' legal rights and the inadequacy of legal representation for those unable to afford an attorney. Family Court Act Section 262 provides for the appointment of counsel to indigent respondents in custody proceeding; grandparent caregiver petitioners do not qualify for assigned counsel. Yet, like a custodial respondent, the kin caregiver's custodial care of a child is threatened by the absent parent.

Kin seeking to become foster parents or to intervene in proceedings after placement with non-kin foster parents also lack the assistance of counsel and often are faced with hostile courts and social services staff.

Participants offered a range of solutions including funding for legal representation, access to legal information and legal forms via a Navigator Program, a "de facto custody" law, preference for kin in custodial proceedings, more protections for kin caregivers from child removal, and training for law guardians and judges. They also suggested that on an administrative level the Office of Court Administration should develop a method for distributing information to kin caregivers regarding services and benefits. Too often kin are awarded custody or guardianship and leave court unaware of government assistance, thereby potentially defeating the purposes of a court's final decision.

F. The Child Welfare System's Response to Caregiver Needs

³⁹ *Id.*; see also N.Y. Dom. Rel § 72.

⁴⁰ L.2003, c. 657, codified at N.Y. Dom. Rel §72 (the statute further provides that the court may find that extraordinary circumstances exist should the prolonged separation have lasted for "less than 24 months.").

⁴¹ Compare *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976) with "de facto" custody laws in Kentucky, KRS 403.270 (1998) (allowing a court to declare a relative or non-relative caretaker a child's custodian if it is in the child's best interests; Indiana, IC 31-14-13-2 (1999), allowing a primary caretaker of a child for a minimum period of time to apply for custody if a judge deems that to be in the best interests of the child; Minnesota, MS § 257C (2002), allowing a relative or non-relative "interested" third party to petition the court for custody of a child under their care by showing clear and convincing evidence that the parent has disregarded or abandoned the child and that placement with them is in the best interests of the child; Oklahoma, 10 Okl. St. 21.2 (2002), defining abandonment for children placed with relatives with same time periods as other three states: six month/one year time period dependent on age of child.

A Brooklyn grandmother confronts her son in a crack house and demands that he give her grandson to her. She later realizes that her teacher's pension is not enough to cover the costs of raising a three-year old with developmental disabilities. She applies to become a foster parent and the Administration of Children's Services tells her that she cannot qualify because the child is no longer at risk.

The survey results showed that the barriers for kincaregivers include kincaregivers' and child welfare staff's inadequate knowledge about foster care and subsidized adoption, inadequate training of child welfare staff, inadequate child welfare funding, and the complexity of the foster care certification process.

72 percent of respondents identified both kincaregivers' and staff's lack of knowledge of the options of foster care and subsidized adoption as a major barrier. 63 percent of respondents viewed the complexity of the certification process as a barrier.

61 percent of respondents viewed kincaregivers' access to kinship foster care as inadequate. 56 percent thought a DSS preference for non-kin foster care is a barrier.

Summit participants agreed that the survey identified most of their concerns. They indicated that while kin are recognized as a resource for abused and neglected children, some local departments of social services prolong the foster care certification process, thus dissuading kincaregivers from entering the kinship foster care system.⁴²

In interstate placements, kin seeking to bring a child into this state from another state's child welfare system face additional problems caused by bureaucratic delays in processing a child's transfer out of state through the Interstate Compact on Children.

Participants expressed concerns about New York's failure to seek a federal waiver for a statewide subsidized guardianship program recommended by its own feasibility study⁴³ because of a belief that a statewide program could quickly prove financial unfeasible. A subsidized guardianship program would assist kin who will not adopt because they do not wish to terminate parents' rights.⁴⁴ Subsidized guardianship provides permanency for children

42 The 1997 Federal Adoption and Safe Families Act (ASFA) increased state interest in kinship foster care but also inadvertently created disincentives for such care by encouraging rapid adoptions. States prefer foster parents as adoptive parents rather than kin who may ask to become caregivers after the child has been placed with a non-kin foster family. The goal of "permanency" through adoption can outweigh the interests of families who wish to become kincaregivers.

43 Wulczyn, Fred et al., "Relative Caregivers, Kinship Foster Care, and Subsidized Guardianship: Policy and Programmatic Option." Report to the Governor and Legislature, February 2003 (prepared for the NYS Office of Children and Family Services by Chapin Hall Center for Children, University of Chicago).

44 Many of these kin are forced to leave the child welfare system and become either legal custodians or legal guardians, usually with "Child-Only" TANF grants, SSI or no financial assistance. Brooks, 2001.

in a kinship arrangement without requiring kin to adopt.⁴⁵ It offers privacy and flexibility because the child is not a ward of the state.⁴⁶ It also provides financial support to assist the care and support of the child. Over 30 states now offer subsidies to kinship foster parents who are willing to become the "permanent" guardian.⁴⁷ States typically link the subsidy amount to the foster care board and maintenance rate, the adoption assistance payment, the TANF grant, or some combination of these payment levels. In states that use the board and maintenance payment as the standard, the subsidy may be a fixed percentage of, or equal to, the foster care rate.⁴⁸ Funding sources for subsidized guardianship include Federal IV-E Waivers, TANF funding, other federal funds, and in some states, a combination of state and local funds.⁴⁹

In addition to recommending subsidized guardianship, Summit participants suggested actions that DSS could accomplish administratively, such as monitoring the search for relatives,⁵⁰ mandating written notice to all grandparents and to other suitable relatives of their rights,⁵¹ creating mandatory procedures for search for grandparents and other suitable relatives,⁵² ensuring a streamlined qualification process for kinship foster parent, and

45 Bissell, Mary & Miller, Jennifer L., Using Subsidized Guardianship to Improve Outcomes for Children 1 (Children's Defense Fund 2004).

46 *Id.*

47 See, e.g., Children's Defense Fund, States' Subsidized Guardianship Programs at a Glance (October 2004), available at [www.childrendefense.org/childwelfare/kinshipcare/guardianship laws.pdf](http://www.childrendefense.org/childwelfare/kinshipcare/guardianship%20laws.pdf) Some states, such as New Jersey and Florida, have special court procedures which permit a qualified kincaregiver to receive higher payments if they are caring for children for reasons similar to those that would cause children to enter foster care. Mullen, F. & Einhorn, M. (2000, November). *The Effect Of State TANF Choices On Grandparent-Headed Households*. Washington, DC: Public Policy Institute. In New Jersey the process is similar to a guardianship proceeding. State navigators advise a kincaregiver about the procedure and facilitate legal representation. In Florida, a special adjudication makes a finding that the child would be in foster care but for the intervention of the extended family. Adjudicated kincaregivers can receive a stipend halfway between foster care payments and a "Child-Only" grant. *Id.*

48 Wulczyn, Fred at 4-5.

49 Bissell & Miller at 10.

50 The New York State Office of Children and Family Services should track implementation of Chapter Law 657 of the 2003 Laws of New York to track extent of search for relatives and placement with relatives.

51 The notice is pursuant to Chapter Law 657 of the 2003 Laws of New York (Family Court Act § 1017(1) and Social Services Law § 384-a(1a). Notice could contain information about "Child-Only" grants, EITC, other benefit programs, legal custody, legal guardianship, adoption, and subsidized adoption. See NYC ACS form in Appendix H for example of a written notice currently in use.

52 These procedures would expedite kin placements by describing the method for and the scope of the search and should include procedure to identify and expedite placements interstate via the Interstate

conducting a feasibility study to determine cost-effectiveness of kinship foster care payments.

IV. KINCARE SUMMIT RECOMMENDATIONS

The Kincare Summit produced four overarching Final Recommendations. The remaining Recommendations address specific needs for training, statutory changes, and funding in the public assistance, health, education, legal judicial, and child welfare systems.

OVERARCHING RECOMMENDATIONS

Recommendation One: Create a statewide "Kincare Information Program."

A statewide information and referral program or warm line would provide information about legal rights, legal services such as law school clinical programs, legal service providers, state, county and local bar association's pro bono programs, and other services. Assistance via an 800 number and a website would alleviate much of the confusion caused by misinformation about and misapplication of existing laws.

As part of the creation of the "Navigator" Program, one-stop shopping programs for kincaregivers should be created and implemented statewide. Local departments of social services already providing most services from a central location can accomplish a simplified one-stop shopping using a dedicated intake person and limited case management. Nassau County has already begun an ambitious project to provide one-stop shopping for all its residents. Fulton County has a successful program for close to 20 years. In other states, kincaregiver projects have already successfully created similar programs for kincaregivers. Colorado's program in El Paso County, for example, has been identified as a national model.⁵³

Recommendation Two: Restore funding for the "Help for Caretaker Relative." programs.

From 2002 to 2004, the New York State Office of Children and Family Services (OCFS) administered grants to 18 programs across New York State especially tailored to serve the needs of kincaregivers. According to OCFS's assessment, these 18 programs were highly successful. However, funding ceased during 2004.

Recommendation Three: Create a subsidized "Guardianship Program."

New York can still seek a waiver from the federal government in order to implement a federally funded statewide subsidized guardianship program.⁵³ Such a program could provide permanency for children in kinship care while not requiring kinship caregivers to seek termination of parental rights through adoption. Subsidized guardianship could provide financial assistance with payments that are higher than "Child-Only" grants, although not as high as foster care. Subsidies could be expanded to include kinship caregiver guardians who never were foster parents.

Recommendation Four: Create a state-level "Taskforce on Kinship Care."

Kinship caregivers must successfully interact with the public assistance, educational, health care, legal/judicial and child welfare systems. Their needs must be met by a coordinated state effort to understand and address unique circumstances. A state-level taskforce would provide the forum to continue the identification of barriers and to implement solutions to individual cases. Similar efforts should be encouraged at the county and municipal levels. Task forces should include grandparents and other kinship caregiver advocates.

TRAINING RECOMMENDATIONS⁵⁴

Public Assistance System

Recommendation Five: Publish a guide to applying for "Child-Only" grants.

The state social services universal application form for public assistance was not designed for use by kinship caregivers seeking "Child-Only" grants and Medicaid for eligible children. Publication of a **guide to applying for "Child-Only" grants** would eliminate much of the confusion for both applicants and intake staff. This guide should be available at local social services offices and on-line.

Recommendation Six: Train staff of departments of social services.

Local DSS staff should understand eligibility requirements of "Child-Only" grants, and be able to help kinship caregivers maximize benefits, obtain access to child care, and understand the options of foster care and adoption. Staff should also understand the health

53 See Wulczyn, Fred et al., Relative Caregivers, Kinship Foster Care, and Subsidized Guardianship: Policy and Programmatic Options. Report to the Governor and Legislature, February 2003 (in 2005 it is possible for New York State to apply for federal assistance to fund a subsidy program).

54 In 1999, NYSOFA with the NYS Developmental Disabilities Planning Council published a workshop series for grandparents raising children with disabilities. Other workshops, including the NYC Department for the Aging and Cornell University's Cooperative Extension PASTA series, also exist. Minimal funding is necessary to update these publications and to assist support groups in offering workshops.

care needs of the children in kinccaregiver families and be able to correctly provide kinccaregivers with information about existing services, including Medicaid and Child Health Plus.

Education System

Recommendation Seven: Train school-district personnel.

School personnel, including administrators, teachers, and staff should understand the legal rights of kinccaregivers and work to address the problems that kinccaregivers often face in attempting to enroll a child in school and/or in advocating for the children in their care.

Legal and Judicial System

Recommendation Eight: Train court personnel.

Law guardians, judges, attorneys, and court staff should understand the legal rights of kinccaregivers, and work to address the problems that kinccaregivers face in attempting to advocate for the children in their care.

STATUTORY RECOMMENDATIONS

Public Assistance

Recommendation Nine: Amend Social Services law to create a "Good Cause" exemption from kinccaregivers' cooperating in enforcement of support order.

Currently parents have certain "good cause" exceptions from cooperating in the enforcement of support orders. Kinccaregivers who reasonably fear that absent parents will remove children from their care should likewise have a "good cause" exception from cooperation when they can show that court orders are insufficient safeguards against removal of the child in their care.

Educational System

Recommendation Ten: Amend Education Law as it relates to enrollment criteria, rights of legal custodians, responsibility of legal custodians for school-related activities, and the definition of "Person In Parental Relation."

While legal custody and/or legal guardianship are evidence of residency, neither is legally required for school enrollment. The Education Law should clearly state that evidence of residency to rebut the presumption that children are currently residing with their parents is a totality of the circumstances, not limited to legal custody or guardianship. Proof of residency could be established by a sworn affidavit, similar to kinccaregiver affidavits used by the City of New York and Rochester's educational authorities. The law should also clarify the rights of kinccaregivers in the education system.

Health Care System

Recommendation Eleven: Amend Public Health Law definition of "Person In Parental Relation."

The Public Health Law permits "persons in parental relation" to consent to immunization of children and to most medical, dental, health, and hospital services, yet the

definition omits legal custodians and kincaregivers who can locate the parents but cannot get them to sign a designation. The definition should include legal custodians and these kincaregivers.

Legal and Judicial System

Recommendation Twelve: Amend Domestic Relations Law to create a statutory period for "de facto" custody.

A "de facto" custody statute in which a defined period of time during which a child had lived with a kincaregiver other than a grandparent creates an "extraordinary circumstance" that would mandate a "best interests" analysis. Requiring this analysis would avoid unreasonable removals of children from their homes.⁵⁵

Recommendation Thirteen: Amend Social Services Law to ensure placement of the optimum number of children with kincaregivers.

Ensure that family members are notified of removals and of their custodial and financial options and that local departments of social services place children with kin immediately after removal, pending the kincaregiver's qualification as a foster parent. In the alternative, ensure that family court judges place children in the care and custody of suitable relatives who do not seek to become foster parents pending the final custodial decision.

Create a preference for placement with grandparents or other kin in custodial disputes arising after children are placed in foster care. The preference would mandate some "special weight" be given to familial custody, for example, a rebuttable presumption that placement with grandparents or other kin during the first twelve months of foster care is in the best interests of children.⁵⁶

Create a legal procedure allowing kincaregivers to petition to become foster parents within a limited time after they privately assume caregiving. The kincaregivers would have to demonstrate that *but for* their intervention, children would have been placed in foster care.

FUNDING RECOMMENDATIONS

55 In *Alison D. v. Virginia M.*, 77 NY2d 651 (1991), the Court of Appeals declined to read "de facto" parent into the definition of parent in Domestic Relations Law § 70. In her dissent, Chief Judge Kaye declared that she would define "parent" so to include a "de facto" parent.

56 Aside from *Moore v. City of East Cleveland*, justification for special legal treatment of grandparents can also be found in *Troxel v. Granville*, 530 U.S. 57 (2000). The decision was widely portrayed as a blow to "grandparent rights." But while the decision did declare Washington State's visitation statute unconstitutional, a closer reading showed widespread support for the constitutionality of grandparent visitation statutes. The Court decided that "normally" the state cannot interfere with fit parents but that, in this instance, interference *could* occur so long as some "special weight" was given to the parent's decision about visitation (in this particular case, the Supreme Court found that no "special weight" was applied by the trial court). *Troxel v. Granville* reaffirms that grandparents have a special legal recognition in family law.

Public Assistance System

Recommendation Fourteen: Increase "Child-Only" grants.

Increasing "Child-Only" grants would enable more kin to become caregivers, with direct benefits to the foster care system, and indirectly to the courts, the criminal justice system, and the mental-health systems. Models for increase include those in New Jersey and Florida which have special court procedures which permit a qualified kincaregiver to receive higher payments if they are caring for children for reasons similar to those that would cause children to enter foster care.

Health Care System

Recommendation Fifteen: Mandate research of health care needs of kincaregivers and "Best Practices."

The causes of many health care problems among kincaregivers and their family members are under-identified and their needs are under-served. The Department of Health should undertake a study to identify the causes of health problems in these families and best practices for meeting their physical and mental-health needs. This study should lead in turn to the development of programs to help kincaregiver families such as mental health programs and support programs for adolescents.

Legal and Judicial System

Recommendation Sixteen: Provide legal representation for grandparents seeking custody based on "extended disruption of custody" under Domestic Relations Law § 72 and for kin in private adoptions.

Currently, Family Court Act § 262 assigns counsel only to respondents in custody proceedings. Many grandparents forced to petition for custody after caring for children cannot afford representation and often must permit absent parents to regain custody despite the desire of grandparents and the children to remain together. Unlike a petitioning parent who is seeking custody from the respondent custodial parent, a petitioning grandparent is seeking to remain the custodial caregiver and is actually similarly situated to a respondent custodial parent.

Many courts will not accept private adoptions without an attorney of record. While uncontested adoptions are relatively simple clerical procedures, the inability to pay attorney fees frequently dissuades kincaregivers from proceeding with the adoption.

Recommendation Seventeen: Collect and maintain statistics on "third-party custody" disputes.

The Office of Court Administration, which already collects statistics on Family Court proceedings, should begin collection of data on third-party custody and guardianship proceedings, including petitions where local departments of social services are a party in order to ascertain the number and outcomes at the trial level.

V. CONCLUSION

The overwhelming conclusion of the work of the KinCare Coalition and AARP NY is that New York can enable kin to become successful caregivers by granting them appropriate rights and authority, and insuring that kin caregivers have access to public assistance "Child-Only" grants and other services for which they are eligible.

This goal can be achieved by implementing the recommendations in this report. Most of the solutions have minor fiscal impact and are almost *de minimis* when compared with the potential societal consequences resulting from children who grow up in unstable and unloving homes.

New York has already taken significant steps towards answering the needs of these new families. It is hoped that this report will help move New York closer to providing a comprehensive package of rights, authority, and assistance.

As Denyse Variano, R.N., M.S.W, of Cornell University Cooperative Extension – Orange County, recently said. "anyone who works with these grandparents cannot forget them. Once you know them, you're hooked." Over the past 15 years, many individuals and organizations have become hooked, becoming passionate advocates for kin caregiving. All are united in their appreciation of the grandparents and other relatives who care so unselfishly for New York's children. All hope that New York will provide these caregivers with the recognition and support that they rightly deserve.
