



Permanent Legal Custodianship: A Valuable Permanency Option in Kinship Care

Legal Applications, Policy and Practice

Post-permanency lessons learned, and practice and policy recommendations for future growth and improvement

Judge Cheryl Allen, J.D., retired Pennsylvania Superior Court Judge

Dr. Sharon L. McDaniel, MPA, Ed.D., President and CEO, A Second Chance, Inc.

Grace Wankiiri Orsatti, J.D., judicial law clerk, Court of Common Pleas of Allegheny County

Executive Summary

A reflective analysis covering a 15-year span, this report examines outcomes for nearly 1,400 youth—mostly African American and female—served by A Second Chance, Inc. (ASCI) in Pennsylvania’s Allegheny County who achieved permanency through permanent legal custodianship (PLC)*, without notable incident.

As a pioneer and longtime provider of kinship care in Pennsylvania, ASCI was well-positioned to analyze PLC’s impact on the lives of thousands of youth it has served. Through this report, the agency aims to inform those who touch the lives of children and families and influence their outcomes—legislators, judges, court personnel, public health and human services administrators, nonprofit leaders, and practitioners. An additional goal of the report is to call attention to one of the greatest challenges kinship care families continuously face: accessing accurate information about the available benefits and services they need. Key among them are permanency options and pre- and post-permanency support to improve transition and permanency outcomes.

Current practice—which suggests that the permanency process ends when the child welfare system closes a case—can leave families and their communities vulnerable. In this report, recommendations for practitioners and systems reflect a shift both in policy and the practice paradigm to sustain and protect the safety, permanency and well-being of youth and families in the child welfare system.

**Note that in the state of Pennsylvania, PLC can be prefixed with “Subsidized” (SPLC) to denote families’ eligibility to receive subsidies, including Medicaid, from county child*

welfare agencies. The amount of a PLC subsidy may not exceed that of a foster care maintenance payment—the daily reimbursement paid to a foster parent for providing basic family foster care.

Part I: ACHIEVING PERMANENCY THROUGH KINSHIP CARE

The ache for home lives in all of us, the safe place where we can go as we are and not be questioned.

—Maya Angelou

I. Statement of Purpose

The purpose of this paper is to present an overview of permanent legal custodianship (PLC) as a valuable permanency option in kinship care cases. Examining how PLC has been implemented in kinship care cases, particularly in Pennsylvania, this paper provides a reflective analysis of the applicable law. In addition, this reflective analysis documents and examines the outcomes for 1,386 youth who were placed with a kinship caregiver through A Second Chance, Inc. (ASCI), and who achieved permanency through PLC. This figure represents 83% of the children in permanent legal custodianship in Allegheny County, Pennsylvania, and covers the period between January 1, 2003, and June 30, 2018.

The goal of this paper is to inform legislators, judges, court personnel, public health and human services administrators, nonprofit leaders, and practitioners of the applicable law, as well as the benefits, strengths, and overwhelmingly successful implementation of PLC as a kinship care option. This paper provides a case study of children in Pennsylvania in permanent legal custodianship placements with kinship caregivers. It also reflects on the post-permanency lessons learned, in addition to practice and policy recommendations for future growth and improvement.

II. Introduction

“Who am I?” has been a question pondered by the greatest thinkers of all time, from Plato to W.E.B. Du Bois. Across multiple academic disciplines, scholars generally agree that the concept of personal identity is in large part formulated and developed according to early childhood experience, which begins at home. Undoubtedly, the people we shelter and with whom we break bread shape and influence our lives, whether we know or admit it.

Since the beginning of civilization, however, not all children have had stable environments of “home” with their biological parents, and in many cultures and societies, the definition of immediate family is broader and/or more fluid than commonly accepted today. The literary traditions of Western civilization are rich with tales of orphans, often depicted as being characters out of place and left to fend for themselves, at times consigned to intolerable living conditions, and always seeming forced to make their own way in the world. Nonetheless, a major underlying motif in these classic stories is that the

orphans are usually capable of achieving a sense of happiness and finding their place in the world—their own “home,” so to speak. Most often, achieving such stability requires a strong sense of will on the part of the orphan, coupled with the help and guidance of a great mentor.

Throughout American history, many such children have been reared in the homes of other people. However, the manner in which such children are cared for has changed over time.¹ In colonial America, the common practice of sending orphans to live and work elsewhere as indentured workers gradually gave way to increased “institutionalization of dependent minors” in the mid-nineteenth century.² This period of American history saw a rise of publicly funded orphanages and charitably funded poorhouses where, in many cases, a relative or stranger could simply claim a child housed there.³

Changing views and increased urbanization in the latter part of the century, however, saw a return to a form of indentured servitude, with city children relocated to the rural countryside to further an “anti-urban, anti-immigrant ideology.”⁴ This practice, in which caregivers began to receive payment to board and care for children, paved the way for the modern foster care system. Increased recognition of the need to protect the interests of such vulnerable children led to the creation of federal agencies tasked with child welfare. The Social Security Act of 1935 laid the foundation for modern social welfare programs and launched an era of increased governmental oversight of children out of the care of their parents.⁵

With the advent of the modern welfare state, governmental social agencies have played a significant role in overseeing the placement of displaced children. The benefits of providing children with permanency have been increasingly appreciated, and a permanent home is now the ideal for a child entering the child welfare system. Perhaps derived from common human experience, or perceived as a natural or divine right, government has always favored laws that preserve the family and encouraged maintenance of the bond between children and their biological parents, as well as reunification, even when separation occurs. However, when reasonable efforts to reunite a child with his or her biological parents fail, governmental child welfare agencies must consider alternative placement arrangements to achieve permanency and stability for the child.

African American families have faced unique hardships in the modern welfare system. Within this community, family members have historically provided for the care of

¹ Hacsí, T., *From Indenture to Family Foster Care: A Brief History of Child Placing*, 74 *Child Welfare* 162, 1995.

² *Id.*

³ *Id.*; Moye, J.; Rinker, R., *It's A Hard Knock Life: Does the Adoption and Safe Families Act of 1997 Adequately Address Problems in the Child Welfare System?*, 39 *Harv. J. on Legis.* 375, 378–80, 2002.

⁴ Hacsí, T., *From Indenture to Family Foster Care: A Brief History of Child Placing*, 74 *Child Welfare* 162–180 (January–February, 1995).

⁵ *Id.*; *It's A Hard Knock Life: Does the Adoption and Safe Families Act of 1997 Adequately Address Problems in the Child Welfare System?*, 39 *Harv. J. on Legis.* 375, 378–80, 2002.

children separated from their birth parents, where able. In early American history, however, the first African Americans had little, if any, control over maintenance of the family unit as a result of slavery.⁶ Children separated from parents by sale or death were therefore cared for by other members of the slave community; thus, caregivers were not always blood relations. Kinship and “quasi-kinship” networks that developed throughout the South and characterized African American family life continue today.⁷

African American migration to the industrial North occurred with the same goals and expectations of other immigrant groups: better employment and educational opportunities, better housing, and an overall better quality of life.⁸ However, opportunities were limited for African Americans, and with few viable alternatives, the care of out-of-home children previously met by the extended family or others in the community, became increasingly replaced by the developing public child welfare system.⁹ To date, “African American caregivers and children are disproportionately represented nationally in child welfare. But African American families are also disproportionately represented nationally in the kinship care population.”¹⁰

Whether called mutual aid, interconnectedness, or a collective spirit, there remains a shared cultural bond between and among African Americans. Some would suggest that this cultural bond can be traced to days of enslavement when Black family members were separated and sold to the highest bidder. Slave owners were often unmoved by whole families being separated and detached from one another. African American fathers and mothers could easily be sold to slave owners in different states. These inhumane practices happened routinely. The care of younger children whose parents were sold was left to others who took them in as if they were their own flesh and blood.

...

It is a conspicuous generosity like this that characterizes the meaning of kinship in the African American community, [in which] kinship care ... has always been a vibrant expression of cultural bonding. It has been well-documented that that

⁶ Bass, Sharon F., *The Public Foster Care System and the Transracial Placement of African-American Children: Exploring the History and the Issue*, The University of Pennsylvania Journal of Law and Social Change 4, no. 1, 4 U. PA. J. L. & SOC. CHANGE 73-89, 1997.

⁷ *Id.*

⁸ Denby, R. W., Kinship care: Increasing child well-being through practice, policy, and research at 44-45, 2015.

⁹ Bass, Sharon F., *The Public Foster Care System and the Transracial Placement of African-American Children: Exploring the History and the Issue*, The University of Pennsylvania Journal of Law and Social Change 4, no. 1, 4 U. PA. J. L. & SOC. CHANGE 77, 1997.

¹⁰ Denby at 44-45.

informal caring of kin has been the reality for African Americans for quite some time.¹¹

Anthropological research has documented the value and prevalence of kinship networks within African American communities, other communities within the United States, including Native Americans, and throughout the world. Such kinship care, whether formal or informal, is more common than institutionalization for the nearly 200 million children worldwide who do not live with a biological parent.^{12 13}

In 2014, approximately 120,000 children (29 percent of all children in foster care) in the United States were living with a relative foster family. The number of children living with relatives is far larger—estimated to be 2.7 million in 2010—when also factoring in children in informal care. Informal kinship care continues as a longstanding practice in many African American, Hispanic, and Native American communities.¹⁴

The benefits of kinship care have been well documented. A 2008 study found a “protective effect” of kinship care on the early behavioral outcomes of a sample of children entering out-of-home care:¹⁵

Compared to children entering foster care, children entering kinship care had a lower estimated risk of behavioral problems, even after accounting for their lower baseline risk and increased placement stability. Even children who moved to kinship care after sustained periods of foster care showed some benefit. The magnitude of this association between placement setting and later behavioral problems should reassure a child welfare community that has increasingly moved toward kinship placement in recent years.¹⁶

It is well accepted that “[k]inship foster placement offers greater family, culture, and community continuity, an increased likelihood of being placed with siblings, and continued

¹¹ Denby, R. W., *Kinship care: Increasing child well-being through practice, policy, and research* at 45, 2015.

¹² Leinaweaver, J., *Informal Kinship-Based Fostering Around the World: Anthropological Findings*, *Child Development Perspectives* Volume: 8 Issue 3, 2014.

¹³ *Id.* (“Informal kinship-based fostering has been documented in many places, including West Africa (Bledsoe, 1990; Goody, 1982; Gottlieb, 2004; Notermans, 2004), Oceania (Barlow, 2004; Carroll, 1970; Carsten, 1991; Donner, 1999; Ottino, 1970), Latin America (Fonseca, 1986; Leinaweaver, 2008; Van Vleet, 2009; Walmsley, 2008; Weismantel, 1995), and minority communities in North America (Stack, 1974; Strong, 2001). Indeed, the more rigid biological definitions of kinship used to calculate foster care arrangements in North America and Western Europe are atypical worldwide (Keller, 2013).”).

¹⁴ *Child Welfare Gateway, Racial Disproportionality and Disparity in Child Welfare* (Nov. 2016), https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf.

¹⁵ Rubin, D.M., et al, *Impact of kinship care on behavioral well-being for children in out-of-home care*, *Archives of Pediatric and Adolescent Medicine* 162(6), 550-556 (2008) (discussing the effects and benefits of kinship care).

¹⁶ *Id.*

contact with biological parents than occurs in non-kinship placement.”^{17 18} The United States Department of Health and Human Services has recognized that “[w]hen removal

¹⁷ Swanke, J.R., Yampolskaya, S., Strozier, A., Armstrong, M.I., *Mental health service utilization and time to care: a comparison of children in traditional foster care and children in kinship care*. Child Youth Services Review 2016.

¹⁸

There is strong evidence that children in kinship foster care have fewer behavioral problems and fewer mental health problems than children in non-kinship foster care. Kinship foster care can also lead to more stable placement, including a reduced likelihood of re-entry and placement disruption and fewer placements, than non-kinship foster care.

Children age 6 or older in kinship care are less likely to have behavioral problems than peers in non-kinship foster care; infants in kinship care are also less likely to have developmental delays. African American children who live with younger or healthier kinship caregivers appear less likely to have behavioral problems than those who live with older or less healthy caregivers. Kinship foster care placement laws appear to lead to greater numbers of kinship placements and a higher stability of placement in the short-term, and greater levels of child safety in the long-term.

Children in kinship care are as likely to reunite with their parents as children in non-kinship foster care. Children in unlicensed kinship care are more likely to reunite with their parents than children in licensed kinship care. Kinship care appears to lead to more guardianships and fewer adoptions than non-kinship foster care. Kinship caregivers are less likely to use mental health services for foster children than non-kin foster parents, perhaps due to caregivers' characteristics and their relationship with the child welfare system, and differences in service needs.

Researchers suggest that kinship caregivers feel more committed to a child than non-kinship caregivers and are more likely to continue caring for the child despite behavioral problems and other difficulties. Placements with grandparents may be especially likely to last. Supervision while children visit their parents may improve kinship placement stability. Experts recommend financial and service support for kinship caregivers to increase the quality and permanency of placement.

University of Wisconsin Population Health Institute, *Kinship foster care for children in the child welfare system* (March 26, 2018), <http://whatworksforhealth.wisc.edu/program.php?t1=20&t2=113&t3=106&id=415> citing Winokur M, Holtan A, Batchelder KE., *Kinship care for the safety, permanency, and well-being of children removed from the home for maltreatment*, Cochrane Database of Systematic Reviews. 2014; Wu Q, White KR, Coleman KL, *Effects of kinship care on behavioral problems by child age: A propensity score analysis*, Children and Youth Services Review. 2015; Perry KJ, Price JM, *Concurrent child history and contextual predictors of children's internalizing and externalizing behavior problems in foster care*, Children and Youth Services Review. 2018; Stein REK, Hurlburt MS, Heneghan AM, et al., *Health status and type of out-of-home placement: Informal kinship care in an investigated sample*, Academic Pediatrics. 2014; Bell T, Romano E., *Permanency and safety among children in foster family and kinship care: A scoping review*, Trauma, Violence, & Abuse. 2017; Hayduk I., *The effect of kinship placement laws on foster children's well-being*, The BE Journal of Economic Analysis & Policy. 2017; Villodas MT, Litrownik AJ, Newton RR, Davis IP, *Long-term placement trajectories of children who were maltreated and entered the child welfare system at an early age: Consequences for physical and behavioral well-being*, Journal of Pediatric Psychology. 2016; Zorc CS, O'Reilly ALR, Matone M, et al. *The relationship of placement experience to school absenteeism and changing schools in young, school-aged children in foster care*, Children and Youth Services Review. 2013; Stacks AM, Partridge T. *Infants placed in foster*

is necessary, it is often ideal for children to be placed directly with kin” and that “[p]lacement with family members may be more beneficial than non-relative foster care for the children involved because it helps to preserve community, family, and cultural ties.”¹⁹

Kinship care can help children maintain familial ties and provide stability in potentially turbulent situations. Additionally, studies have shown that children in formal kin placements have fewer placement and school disruptions and fewer behavioral problems than children in nonrelative foster care. Given these findings and that kinship care is an oft-used practice amongst families of color, it is critical that child welfare agencies utilize kinship care where appropriate and connect formal and informal kinship families with the resources they need.²⁰

Recognizing the advantages of kinship care, states have increasingly begun to promote and prioritize kinship placements amid a “growing belief that kinship care actually proves more advantageous for children in foster care.”²¹

In Pennsylvania, Dr. Sharon McDaniel, a champion and pioneer, has originated and established kinship care as a preferred placement for children in danger of lingering indefinitely in foster care or in the impersonal environment of institutions. A renowned author, lecturer, and theorist in child welfare, Dr. McDaniel has devised an unparalleled model of permanency that supplants the gaps in the current regime of child placement. Dr. McDaniel believes that it is a moral imperative and right for children to be with their kin.

III. A Brief Historical Timeline of PLC

In 1980, Congress enacted the Adoption Assistance and Child Welfare Act (AACWA) to reduce reliance on the foster care system. The AACWA “emphasized the

care prior to their first birthday: Differences in kin and nonkin placements, Infant Mental Health Journal. 2011; Rufa AK, Fowler PJ. *Kinship foster care among African American youth: Interaction effects at multiple contextual levels*, Journal of Social Service Research. 2016; Ryan JP, Perron BE, Moore A, Victor B, Evangelist M., *Foster home placements and the probability of family reunification: Does licensing matter?* Child Abuse & Neglect. 2016; Swanke JR, Yampolskaya S, Strozier A, Armstrong MI., *Mental health service utilization and time to care: A comparison of children in traditional foster care and children in kinship care*, Children and Youth Services Review. 2016; Rock S, Michelson D, Thomson S, Day C. *Understanding foster placement instability for looked after children: A systemic review and narrative synthesis of quantitative and qualitative evidence*; British Journal of Social Work. 2015; Farmer E., *What factors relate to good placement outcomes in kinship care?*, British Journal of Social Work, 2010; Ringel JS, Schultz D, Mendelsohn J, et al., *Improving child welfare outcomes: Balancing investments in prevention and treatment*, Santa Monica, CA: RAND Corporation; 2017.

¹⁹ https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf

²⁰ Child Welfare Information Gateway, Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, November, 2016.

²¹ Ragany, M., Wallace, L., *Adoption and Foster Care*, The Georgetown Journal of Gender and the Law, 14 Geo. J. Gender & L. 281, 313, 2013.

importance of providing reasonable efforts both to prevent a child from being removed from her family, and to return her to her family.”²² Furthermore, “[t]he AACWA attempted to federalize state foster care programs by establishing comprehensive standards [and] also regularized federal reimbursements for state-approved foster care.”²³

In 1997, Congress revamped the child welfare system with the enactment of the Adoption and Safe Families Act (ASFA), which changed the primary concern of the child welfare and adoption system from the promotion of family reunification to the child's health and safety.²⁴

ASFA's biggest change to foster care and adoption law is the requirement that a “permanency hearing” must be held within 12 months of a child entering foster care. At this hearing, a permanency plan must be worked out for the child as to whether he/she will return home, be placed for adoption, be placed in kinship care, or whether the state will file for the termination of parental rights.

. . .

Another unprecedented change wrought by ASFA upon the child welfare system is that the state must file a petition to terminate the parental rights of the child's parent(s) if the child has been in the system for 15 of the most recent 22 months, if a court has determined that the child was an abandoned infant, or if the court finds one of the elements that eliminates the state's reasonable efforts requirement. Concurrently, the state must “identify, recruit, process, and approve” an adoptive family for the child, unless the child is being cared for by a relative, the state has documented a compelling reason for determining that filing such a petition is not in the best interest of the child, or the state has not provided the child's family with adequate services.²⁵

Thus, ASFA amended Title IV-E of the Social Security Act to require states to move toward permanency and away from the danger of children languishing in foster care, by requiring counties to comply with timelines for permanency with the creation of scheduled guidelines and itineraries, except in kinship care cases in which a relative accepted the role of caregiver for the child.²⁶

²² Cahn, Naomi R., *Children's Interests in A Familial Context: Poverty, Foster Care, and Adoption*, 60 Ohio St. L.J. 1189, 1195 (1999).

²³ *Id.*

²⁴ Moye, J.; Rinker, R., *It's A Hard Knock Life: Does the Adoption and Safe Families Act of 1997 Adequately Address Problems in the Child Welfare System?*, 39 Harv. J. on Legis. 375, 378–81 (2002).

²⁵ *Id.* (emphasis added).

²⁶ Child Welfare League of America, *Timeline of Major Child Welfare Legislation* <https://www.cwla.org/wp-content/uploads/2014/05/TimelineOfMajorChildWelfareLegislation.pdf>

Recognizing that children cared for in the long-term by fit and willing relatives, such as grandparents, aunts, or uncles, cannot be viewed in the same manner as those children “languishing” indefinitely in stranger foster homes, ASFA made clear that such children in the care of extended family are exempt from termination/adoption timelines.

In 2008, the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections Act) amended Title IV-E of the Social Security Act to further recognize the importance of kinship care. The Fostering Connections Act sought to connect and further support relative caregivers, assisting children in their care by ensuring they received subsidies.²⁷ As such, the Fostering Connections Act incentivized the use of guardianships for children in the care of relatives.^{28 29}

The Fostering Connections Act defines a child eligible for such kinship guardian assistance payments as:

- A child who has been removed from a home pursuant to a voluntary placement agreement or judicial determination that continuation in the home would be contrary to the child’s welfare;
- A child eligible for foster care maintenance payments;
- A child for whom being returned home or adopted are not appropriate permanency options;
- A child who demonstrates a strong attachment to the prospective relative guardian and for whom the relative guardian has a strong commitment to caring permanently; or
- A child at least 14 years old who has been consulted regarding the kinship guardianship arrangement.

The act specifies that if states are not able to meet these requirements, they may—at their discretion—fund guardianship programs with their own funds, so long as they do not pay relative caregivers a rate greater than the foster care subsidy.

In 1983, prior to both ASFA and the Fostering Connections Act, Massachusetts became the first state to pass legislation that subsidized legal guardianship, providing funds for children to live permanently under the care of a legal guardian—often a relative or kin—when reunification or adoption was not appropriate. Although some states have followed suit and offered subsidized guardianship in one form or another, it is still a

²⁷ Fostering Connections to Success and Increasing Adoptions Act of 2008, PL 110–351, October 7, 2008, 122 Stat 3949; 42 USCA § 671

²⁸Child Welfare League of America, *Timeline of Major Child Welfare Legislation* <https://www.cwla.org/wp-content/uploads/2014/05/TimelineOfMajorChildWelfareLegislation.pdf>;

²⁹ Vesneski, W., Killos, L., Pecora, P., McIntire, E., *An Analysis of State Law and Policy Regarding Subsidized Guardianship for Children: Innovations in Permanency*, 21 U.C. Davis J. Juv. L. & Pol’y 27, 33 (2017)

relatively recent phenomenon in many jurisdictions, and each state has its own approach to kinship guardianship.

Some states have been reluctant to implement subsidized guardianship, perhaps based on an unfounded fear that such a program may undermine or discourage adoption. Regardless, every child in the child welfare system is entitled to placement, whether that placement is with a guardian or in an adoptive foster home, and kinship care continues to gain acceptance across the nation as a valuable permanency option.

In 1998, the Pennsylvania General Assembly amended the Pennsylvania Juvenile Act in response to ASFA.³⁰ Those amendments resulted in changes to juvenile dependency proceedings in Pennsylvania. In particular, Pennsylvania saw a shift away from family reunification as the primary concern, with dependency proceedings focusing instead on the needs of the child.³¹ The safety, permanency, and well-being of the child thus took precedence over other considerations, including the parents' desires.

Section 6351 of the Pennsylvania Juvenile Act details the required findings and determinations that a Juvenile Court must make in regard to dependent children, including who may secure custody of children in the child welfare system, and what the permanency goals should be.³² All such permanency decisions are made under an umbrella analysis of the needs of the child and what is best suited to the child's safety, protection, and physical, mental, and moral welfare.³³

The permanency alternatives for a dependent child, subject to certain considerations, are as follows:

- Reunification with the birth parent(s);
- Adoption, and the county agency will file for termination of parental rights;
- Placement with a legal custodian;
- Placement with a fit and willing relative;
- Placement in another planned, permanent living arrangement.

Pennsylvania administrative regulations clarify that, of these permanency goals, "[o]ne goal is not mandated over another nor do the language of [the administrative regulations] require that each goal be implemented in the order in which they are listed."³⁴ Since one goal is not mandated over another, it is clear that both adoption and placement in the home of a relative are equally viable options for a dependent child under the Juvenile Act, as specified in §6351.

In compliance with ASFA, the Pennsylvania Juvenile Act created a decision timeline with which county agencies are to comply in dependency cases. Under the Juvenile Act, if a child has been in placement for at least 15 of the last 22 months, the juvenile court must determine whether the county agency has petitioned to terminate

³⁰ *In re R.J.T.*, 9 A.3d 1179, 1196 (Pa. 2010)

³¹ *Id.*

³² *In re D.C.D.*, 105 A.3d 662, 673 (Pa. 2014)

³³ 42 Pa.C.S.A. § 6351

³⁴ *In re C.J.R.*, 782 A.2d 568, 570 (Pa. Super. 2001); 55 Pa.Code § 3130.67.

parental rights and identify, recruit, process, and approve a qualified family to adopt the child, unless: (i) the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child; (ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or (iii) the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian, or custodian within the time frames set forth in the permanency plan.³⁵

The Pennsylvania Supreme Court has interpreted this language to mean that when the child has been in placement for 15 of the last 22 months, juvenile courts are to determine whether the state child protective services agency has filed a termination petition. The juvenile court must then consider whether the current placement is appropriate for the child, or if and when another placement would be appropriate.³⁶

For kinship care provides, long-term permanent placement with kin is made available by statute as a valid and viable permanency option. Pennsylvania courts have explained PLC as follows:

In Pennsylvania, a juvenile court may award permanent legal custody to a child's caretaker pursuant to Section 6351(a)(2.1) of the Juvenile Act. This is an arrangement whereby a juvenile court discontinues court intervention as well as supervision by a county agency, and awards custody of a dependent child, on a permanent basis, to a custodian. Parental rights are not terminated. The custodian is typically provided a financial subsidy for the child by the local county children and youth agency. The subsidy component is generally an integral component when permanent legal custody is considered a viable option.

A trial court may consider permanent legal custody, upon the filing of a petition by a county children and youth agency that alleges the dependent child's current placement is not safe, and the physical, mental, and moral welfare of the child would best be served if subsidized permanent legal custodianship were granted. Upon receipt of this petition, the court must conduct a hearing and make specific findings focusing on the best interests of the child.³⁷

ASFA and the Fostering Family Connections Act amendments, as well as the Pennsylvania Juvenile Act, are entirely consistent in establishing that permanent legal custodianship without the requirement of adoption is a natural route to permanency for children in the care of their grandparents, aunts, uncles, and other relative caregivers or fictive kin.

³⁵ 42 Pa. C.S.A. §6351.

³⁶ *In re R.J.T.*, 9 A.3d 1179, 1190 (2010).

³⁷ *In re S.H.*, 71 A.3d 973, 977–78 (Pa. Super. 2013).

Recent federal law reflects a commitment by our governing legislative bodies to support non-adoptive kinship care providers. The Family First Prevention Services Act (Family First Act) was signed into law on February 9, 2018, with the purpose of enabling states to use federal funds available under Title IV of the Social Security Act³⁸ to provide enhanced support to children and families. The act seeks to prevent foster care placements by funding mental health and substance abuse prevention and treatment services; in-home, skill-based parenting programs; and kinship navigator services for parents and relatives of children in danger of entering foster care.³⁹ The goal of the Family First Act is to take preemptive measures to help children and families avoid the foster care system, by making preventive services available to their parents and kinship caregivers, before children enter the foster care system. This reflects Congress' commitment to supporting and providing services to kinship caregivers, as well as biological parents.

In Pennsylvania, recently enacted legislation provides the option of temporary guardianship for grandparents or other caregivers in cases where parents are unable to care for their children. This legislation, which allows families to temporarily place their children with family members without entering the juvenile dependency system, has been spurred in large measure by the rising opioid epidemic, which has "pushed the need for grandparents to take care of grandchildren to the forefront."⁴⁰

Similar statutes have been enacted in other states in response to the crisis of undocumented immigrant children entering the country unaccompanied by a parent.⁴¹ These temporary guardianship provisions offer families the option of placing their children with kin during an emergency or under other specified conditions, again acknowledging the critical role that kinship caregivers play in child welfare.

Pennsylvania continues to recognize kinship care as a vital permanency alternative for children in placement.⁴² These views are supported by well-accepted research on the value and positive outcomes of kinship care. Nonetheless, concerns

³⁸ 42 U.S.C.A. § 620 *et seq.* and 42 U.S.C.A. § 670 *et seq.*

³⁹ 42 U.S.C.A. § 622.

⁴⁰ Act 88 of 2018 amended the Domestic Relations Act to define a "temporary guardian" as "a family member, appointed by a court for a limited period as a guardian of the minor when the minor's custodial parent has entered a rehabilitation facility for treatment of drug or alcohol addiction or has been subject to emergency medical intervention due to abuse of drugs or alcohol." 2018 Pa. Legis. Serv. Act 2018-88 (H.B. 1539); 23 Pa.C.S.A. § 5601 *et seq.*; 23 Pa.C.S.A. § 5621 *et. seq.*

⁴¹ 2018 Maryland House Bill No. 1613, Maryland 438th Session of the General Assembly, 2018, 2018 Maryland House Bill No. 1613, Maryland 438th Session of the General Assembly, 2018

⁴² See Act 89 of 2018 (providing for the establishment of kinship navigator programs to, *inter alia*, provide support and guidance to current and future kinship caregivers or persons who intend to become kinship caregivers, develop and provide training for individuals to serve as kinship caregiver navigators, and educate the public on services and supports available to kinship caregivers) Kinship Caregiver Navigator Program Act, 2018 Pa. Legis. Serv. Act 2018-89 (H.B. 2133); 62 P.S. § 3071.1 *et. seq.*

continue to be raised against kinship care as child welfare advocates seek to ensure the best outcomes for children—those in kinship placements as well as those being cared for by non-kin foster caregivers. Some scholarship suggests caution in kinship care cases, on grounds that not enough resources have been placed into comprehensive study of outcomes for children who are adopted as compared to those placed in permanent kinship care.⁴³

However, while more studies continue to assess whether adopted children face better outcomes than those in permanent legal custody with kin, this does not mean adoption should be withheld as a placement alternative, nor should it mean that permanent kinship care should be withheld as a placement alternative. Simply because more study is needed to determine which of the two placement alternatives may have better outcomes does not mean that neither is valuable. Moreover, as dependency courts are well aware, it may be difficult to quantify which alternative is better as a whole, given that each dependency matter must be dealt with on a case-by-case basis, with no two children's circumstances being the same, even within the same families.

Undoubtedly, scholarship and research must continue to investigate and review the outcomes for children in both adoption and kinship care cases and examine how to improve outcomes for children in both circumstances. While such scholarship continues, Pennsylvania, like many other states, can and should—in accordance with applicable law, which provides for both permanency options—support and make both options equally available where appropriate and in a manner best suited to the welfare of the child.

IV. An overview of applicable law

The Adoption Safe Families Act (ASFA), Fostering Connections Act, and Pennsylvania Juvenile Act

⁴³ Rufa, A.K., Fowle, P.J., *Kinship foster care among African American youth: Interaction effects at multiple contextual levels*, *Journal of Social Service Research* 42(1):1-18, October 2015.

[S]ome researchers and policy-makers have expressed concerns that placement into kinship care is only placing children with families and environments similar to that from which they were removed initially (Dubowitz et al., 1994; Ehrle & Geen, 2002). Furthermore, it appears that many African American children in kinship foster care may be moving to homes rife with similar disadvantages to those in their previous home. Research suggests that African American children entering kinship foster care are moving to homes that are in more violent and less cohesive neighborhoods (Berrick, 1997), with caregivers who are older (Coakley et al., 2007; Barth et al., 2008a) and have poorer physical health (Barth et al., 2008a). In light of these additional risk factors, the use of kinship foster care within African American youth and families must be examined further to inform policy and practice in the child welfare system.

The federal government has expressly stated that, in determining permanency outcomes for children who are removed from their homes, kinship care must be considered as a placement alternative. Specifically, under a “best interests of the child” umbrella analysis, the Social Security Act generally provides for the following outcomes for children in care:

- Reunification with the birth parent(s);
- Adoption, and the county agency will file for termination of parental rights;
- Placement with a legal custodian;
- Placement with a fit and willing relative; or
- Placement in another planned, permanent living arrangement.

42 U.S.C.A. § 675; 45 C.F.R. § 1355.20

In 1997, Congress enacted the Adoption Safe Families Act (ASFA). ASFA’s stated purpose is to “promote the adoption of children in foster care.”⁴⁴ ASFA addresses the problem of foster care drift, the “lengthy placement away from the natural family, without a clear goal to return the child or find some other permanent home.”⁴⁵ The goal of ASFA—to promote permanency in the form of adoption for children in the foster care system—arose out of a desire to prevent such long-term uncertainty for children in the foster care system. To that end, ASFA requires states to initiate court proceedings to remove any restrictions that keep a child in foster care from being adopted.

ASFA seeks to reward states that increase adoptions with the understanding that although terminating parental rights is the critical first step in moving children into permanent placements, termination alone is not enough.⁴⁶ Thus, in addition to termination, ASFA also promotes adoption.⁴⁷ To that end, after a child has been waiting in foster care for at least 15 of the most recent 22 months, ASFA requires states to seek termination of parental rights and pursue adoption unless any of the exceptions specified in the statute exist.⁴⁸ It is these exceptions to ASFA—in particular, the exception for children in the care of relatives—that this paper will discuss in detail.

ASFA has resulted in many positive outcomes in the child welfare system by increasing permanency for children previously in danger of languishing in foster care. However, in promoting adoption as a desired outcome, it cannot be overstated that ASFA sets apart several clear exceptions to the termination of parental rights/adoption model.

⁴⁴ Adoption of Children—Foster care, PL 105–89, November 19, 1997, 111 Stat 2115

⁴⁵ Hartley, E.K., Government leadership to protect children from foster care “drift” (1984), *Child Abuse Neglect*, 8 (1984) at 337-42.

⁴⁶ Congressional record, 105th Congress, 1st Session Issue: Vol. 143, No. 160 at S12668-S12675 (at S12674)

⁴⁷ Congressional record, 105th Congress, 1st Session Issue: Vol. 143, No. 160 at S12526-S12567.

⁴⁸ 42 U.S.C.A. § 675

As stated previously, among those exceptions, and within the language of ASFA itself, Congress clearly excludes children being cared for by family members.

Through ASFA, Congress makes clear that kinship care providers are entitled to different treatment. ASFA specifically excludes relatives and kinship care providers from the adoption/termination goal applied to those children in traditional foster care with non-kin or strangers. This is because kinship care provides certain benefits and advantages that cannot be overlooked. In ASFA's legislative history, the sponsoring members of Congress took great pains to emphasize that "[k]inship care—the full-time care and protection of children by a relative—is in many cultures, a time-honored tradition." In order to protect those time-honored traditions, Congress made clear at the time of ASFA's enactment that "at the same time that [ASFA] speeds adoptions where appropriate, it also gives States the discretion to choose not to initiate legal proceedings when a child is safely placed with a relative."⁴⁹

Because the legislature did not intend for kinship care to be subject to the same termination/adoption process as traditional stranger foster placements, the legislature provided for permanent legal guardianship in place of termination/adoption, further recognizing the value that kinship care provides to society.

In the legislative history behind ASFA, members of Congress made clear that "[t]hroughout history relatives have come forward to care for and raise children when the parents were unable to do so themselves." In support of such considerations, ASFA "made significant strides toward recognizing relative care arrangements for what they are—legitimate, appropriate placements for a family."⁵⁰

Although ASFA seeks to promote adoption, a plain reading of ASFA together with the Fostering Connections Act reflects no mandate to pursue adoption before considering PLC in kinship cases. No hierarchy exists in the federal law under which the state agency must look to have the child adopted before PLC can be pursued for children in kinship care. No mandate exists under applicable law requiring kin to adopt the children in their care. Rather, for those raising the children of their family members, PLC provides a viable, statutorily supported, common-sense solution to offer the child permanency.⁵¹

The purpose of PLC, as recognized by Congress, is to strengthen and protect families and to help children maintain cultural and psychological ties to their family members. The family is the foundation of the community and, under the plain language of the Social Security Act, PLC is a mechanism to maintain those family and community ties while providing the child with permanency. While adoption requires termination of parental rights and severance of family ties, PLC has the benefit of preserving important

⁴⁹105th Congress, 1st Session Issue: Vol. 143, No. 156 — Daily Edition at S12199, November 8, 1997 (emphasis added).

⁵⁰ 105th Congress, 1st Session Issue: Vol. 143, No. 156—Daily Edition at S12201, November 8, 1997.

⁵¹ This reading of ASFA as establishing an exception for relative caregivers is supported by various states implementing ASFA's provisions. See *Ex parte W.T.M.*, 851 So. 2d 55 (Ala. Civ. App. 2002). See also 10 A.L.R.6th 173 (Originally published in 2006).

family bonds and relationships, providing children with continuity and reducing trauma that arises from interference with family structure.

Despite the strides made in ASFA and the Fostering Connections Act toward protecting the important culture of kinship care that is customary across the United States and around the world, kinship care continues to be viewed as an inferior and less-desirable option to be utilized only when reunification or adoption fails, out of fear that without adoption, children are in danger of languishing in the foster care system. However, ASFA and the Fostering Connections Act clearly recognize that children being cared for by relatives are not languishing in the foster care system. ASFA and its legislative history evidence a clear recognition of the value and importance of kinship care.

The Pennsylvania Juvenile Act, mirroring ASFA, clearly provides that agencies shall exclude children in kinship care from termination/adoption, which otherwise must be pursued after the stated 15-month period. Since the statute *excludes* children in kinship care from mandatory adoption proceedings, for states to *require* kinship caregivers to adopt—with PLC to be used only as a fallback—results in an illogical interpretation of the law. The legislature could not have intended such an interpretation of the statute, which appears impossible to execute.⁵²

The Juvenile Act clearly reflects that kinship care was never intended to be treated in the same manner as traditional foster care. Congress did not envision scenarios in which state agencies give kinship care providers an ultimatum to either adopt the child or risk having the child removed. Rather, Congress made available PLC as an acceptable form of permanency.

To the extent that the Juvenile Act requires adoption to be considered as preferential to PLC, such a requirement appears to conflict with federal and state law. In kinship cases, PLC is not secondary to adoption, but an equally legitimate alternative to termination and adoption after considering the best interests of the child. In general, a child has been in placement for at least a year and often more before permanency with a kinship caregiver is even considered. During that time, the state agency has the opportunity to assess whether PLC in the kinship home is suited to the child's needs. By the time PLC is considered at the end of this process, the child is and has been in a stable placement with kin, in which the natural bonds between the child and kinship caregiver have already been developed, tested, and reinforced. To assert that in this final permanency stage, adoption *must* be chosen before PLC in kinship cases, unreasonably triggers placement upheaval. It subjects the child to the potential threat of removal from the permanent care of relatives if an adoptive home is available, simply because adoption is viewed as preferential to PLC in the hierarchy. It also shows a discouraging lack of

⁵² See 1 Pa.C.S.A. § 1922 (In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used: (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable [and] (2) That the General Assembly intends the entire statute to be effective and certain.)

sensitivity to the message relayed to children in the care of kin, minimizing the validity of their remaining family relationships. Such a formalistic, hierarchical approach diminishes the importance of a child's roots and familial bonds, instead implying that their remaining family is not worth preserving.

PART II: KINSHIP CARE IN THE MODEL OF A SECOND CHANCE, INC.

Founded by Dr. Sharon McDaniel, MPA, Ed.D., in 1994, A Second Chance, Inc. (ASCI) is the only known organization in the nation that exclusively provides kinship care case management and support services to the entire kinship triad (the child/youth, birth family, and kinship caregivers). ASCI is a nonprofit corporation purposed to provide a safe, secure, and nurturing environment to children who are being cared for by their relatives or close family friends. Since its founding, ASCI has expanded its presence in Pennsylvania, facilitating the permanent placement of countless children in its kinship care program, it also consults and trains other jurisdictions across the country on its model. ASCI has gained national recognition for its efforts and has emerged as an authoritative institutional expert in the field of kinship care and PLC.

Within ASCI's mission to strengthen and preserve healthy kinship families for children, the agency provides an array of holistic services catering specifically to kin in the child welfare system. Utilizing the unique kinship-triad model, which remains at the cutting edge and forefront of PLC in the nation, ASCI focuses on the interrelationship between and the needs of the child, birth parent(s), and kinship caregiver.

By emphasizing the strengths inherent within such a framework, ASCI's program, unlike other practice models, enables children to live with the people they already know and trust. The triad model employed by ASCI is designed to reduce the trauma that children often experience when placed with persons who are initially unknown. Critically, the kinship triad encourages support of and reliance on family and extended family, while helping and permitting children to stay connected with their siblings and biological parents. It is undeniable that the strength of kinship care rests on the fact that it enables children to maintain ties to family and encourages family preservation in suitable homes. This hallmark of the program is of paramount importance to ASCI's model.

The kinship triad is made up of the child or youth, their birth family, and their caregiver. The three roles are naturally and intimately linked ... ASCI is committed to servicing the entire triad ... in order to effectively preserve and strengthen the kinship family unit.⁵³

Ultimately, the defining features and characteristics of ASCI's kinship care model are premised on the idea that in a time of need or dramatic change, a child, and possibly the biological parent when suitable, can naturally and rightfully turn to a member of the family or fictive kin. Indeed, throughout the streams of time, and across all boundaries related to race, ethnicity, culture, and nationality, extended family members and sincere friends of the family

⁵³ <http://www.asecondchance-kinship.com>

have assumed the responsibility of caring for one another's children. In most instances, these people already have a stake in the matter by virtue of their relationship with the parents and/or child and are more likely to assume the role of caregiver or mentor, thus providing the child with the best opportunity at a second chance. Research and common sense tell us that it is much easier for a child to deal with traumatic experience and personal crises (e.g., separation from biological parents) when placed with someone with whom there is already an established bond.

In supporting families that are providing kinship care, ASCI values family group decision-making (FGDM) as a practice of empowering family members to create a plan to address concerns identified by child welfare agencies and the court system. ASCI is an innovator of kinship care permanence in that it approaches the process as a broker of services, thus linking the family to support services and resources to assist them in caring for their kin. During an FGDM conference, family members, friends, child welfare workers, and other professionals discuss the family's strengths, concerns, and resources in order to create a plan to promote safety, permanency and well-being for the family."⁵⁴

Only when a family itself is ready to make the choice of adoption or PLC will it be lasting. In kinship care, the family constellation can only shift when the family has worked through the decision-making process together. At ASCI, the strengths of the family unit are recognized. When kinship care families are active participants granted self-determination and allowed to share in decision-making, it creates a greater sense of ownership, investment and participation that yield positive results.

ASCI combines history, tradition, and research-based analysis of the benefits of kinship care in a unique service model that yields success for children. Through its triad model of FGDM, ASCI consistently surpasses the national average in terms of positive outcomes for children. PLC as a permanency option evolves naturally from the family-involved decision-making model it pioneered. Just as data has shown that a majority of children are better off and have more positive outcomes in kinship care, the overwhelming majority of the children who achieve permanency through PLC do so very successfully. In kinship cases, PLC allows families to determine their own permanency options, and ASCI has led the way in promoting this. The agency has strengthened PLC as a natural progression to permanency in those cases where children are placed with kin.

PART III: DATA

An evaluation of the children involved in ASCI's kinship care placement program between January 1, 2003, and June 30, 2018, reveals that an overwhelming majority of the children successfully transitioned to permanency through PLC, without notable incident. In Allegheny County, 1,664 children achieved permanency through PLC during this period (see Figure 1), with 1,386 of those children achieving PLC through ASCI.⁵⁵

⁵⁴ <http://www.asecondchance-kinship.com>

⁵⁵ Data and chart in Figure 1 obtained from the Allegheny County Department of Human Services' Office of Children, Youth and Families (CYF).

Thus, 83% of all the children who achieved permanency through PLC in Allegheny County did so through ASCI's program.

Figure 1: PLC Exits by Year Exiting Care

	Permanent Legal Custodianship Exits, by Year Exiting Care																Total
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	
ASCI:	54	57	67	78	86	95	94	83	85	63	70	123	125	117	111	78	1386
Other Provider(s):	20	18	12	11	16	8	15	29	19	9	17	31	18	20	20	15	278
Total	74	75	79	89	102	103	109	112	104	72	87	154	143	137	131	93	1664
Pct. of PLC Exits with ASCI	73%	76%	85%	88%	84%	92%	86%	74%	82%	88%	80%	80%	87%	85%	85%	84%	83%

a) Demographics: Race, Gender, and Age

According to national studies provided by the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, African American children are represented in foster care 1.8 times their rate in the general population.⁵⁶ National statistics provided by the Annie E. Casey Foundation show that one in five Black children spend time in kinship care at some point during their childhood.⁵⁷

In terms of the 1,386 children served by ASCI who achieved permanency through PLC, the majority were Black (49%) while approximately one-third were White (36%).⁵⁸

Figure 2. Number of ASCI Children Who Achieved Permanency Through PLC (by race): January 1, 2003, to June 30, 2018

	Number of Children	Percentage
Black	684	49%
White	495	36%
Two or more races	185	13%
Other single race	11	0.8%
Unknown race	11	0.8%
TOTAL:	1386	100%

A comparison by gender reflects that of the children served by ASCI who achieved permanency through PLC, slightly more female children (52%) were served than male children (48%).

Figure 3. Number of ASCI Children Who Achieved Permanency Through PLC (by gender): January 1, 2003, to June 30, 2018

⁵⁶ https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf

⁵⁷ <https://www.aecf.org/m/resourcedoc/AECF-SteppingUpForKids-2012.pdf>

⁵⁸ All ASCI and comparative data obtained from the Allegheny County Department of Human Services' Office of Children, Youth and Families (CYF), January 1, 2003 to June 30, 2018.

	Number of Children	Percentage
Females	725	52%
Males	661	48%
TOTAL:	1386	100%

At the intersection of race and gender, statistics are consistent with national trends in child welfare, reflecting that Black children and youth are overrepresented in the system compared to White children and other races. The percentage of Black females (26%) exceeded the percentage of Black males. Of the ASCI children who exited to PLC, the percentage of Black males exceeded that of White males, and similarly, Black females exceeded White females.

Figure 4. Number of ASCI Children Who Achieved Permanency Through PLC (by race and gender): January 1, 2003, to June 30, 2018

Race/Gender	No. of Children	Percentage
Black female	356	26%
Black male	328	24%
White female	259	19%
White male	236	17%
Female, two or more races	98	7%
Male, two or more races	87	6%
Female, other single race	6	0.43%
Male, other single race	5	0.36%
Female, unknown race	6	0.43%
Male, unknown race	5	0.36%
TOTAL:	1386	100%

b) Rates of Successful PLC Placements vs. Re-entries into the Child Welfare System

A review of how many ASCI's children who achieved permanency through PLC returned to the child welfare system yielded exceptionally positive outcomes. For the vast majority of children, the rates of re-entry into the child welfare system were remarkably low.

Statistical evidence reflects that an overwhelming majority of ASCI children who achieved permanency through PLC had positive outcomes. An amazing 97% percent of ASCI children who had exited from the child welfare system to PLC did not return to the child welfare system within 365 days, indicating that successful PLC outcome had been

achieved. Only 3% of the population of children who achieved PLC through ASCI re-entered the child welfare system within this timeframe.

Figure 5. Re-entries of Children into the Child Welfare System Within 365 Days

EXIT AGE	ASCI Children Placed in Permanent Legal Custody (PLC)	
	ASCI Children Placed in Permanent Legal Custody (PLC)	ASCI Re-Entry into the Child Welfare System Within 365 Days
0	4	0
1	34	0
2	69	1
3	107	2
4	88	0
5	72	1
6	88	2
7	69	0
8	80	0
9	80	2
10	71	1
11	81	2
12	74	5
13	74	8
14	72	8
15	78	3
16	69	4
TOTAL	1,210	39

This chart reflects the number of children who exited to PLC through ASCI and the number of re-entries into the child welfare system of all children who exited to PLC through ASCI.

**c) System Involvement with the Juvenile Probation Office (JPO)
January 1, 2003, to June 30, 2018**

In terms of involvement with the Juvenile Probation Office (JPO), which provides placement services and support for delinquent youth, of the 509 children who exited ASCI’s program, only one single child re-encountered juvenile probation services.

Figure 6. JPO Placement: All Children⁵⁹

JPO Placement Post-Exit					
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome
All Children	ASCI PLC	509	1	62	1
Under 10	ASCI PLC	305	0	40	0
10 and Over	ASCI PLC	204	1	22	1

Figure 7. JPO Placement: Black

JPO Placement Post-Exit					
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome
All Children	ASCI PLC	227	0	33	1
Under 10	ASCI PLC	123	0	20	0
10 and Over	ASCI PLC	104	0	13	1

Figure 8. JPO Placement: White

JPO Placement Post-Exit					
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome
All Children	ASCI PLC	180	1	18	0
Under 10	ASCI PLC	115	0	13	0
10 and Over	ASCI PLC	65	1	5	0

⁵⁹ Figures 6 through 20 reflect the data pertaining to all children in Allegheny County who exited to PLC through ASCI.

Figure 9. JPO Placement: Black and male

JPO Placement Post-Exit: Race - Black (Male)							
	Exit Type	1-Year Window	1-Year Outcome	Pct.	5-Year Window	5-Year Outcome	Pct.
All Children	ASCI PLC	226	1	0%	31	1	3%
Under 10	ASCI PLC	139	0	0%	21	0	0%
10 and Over	ASCI PLC	87	1	1%	10	1	10%

d) System Involvement with County Jail Facilities

Similarly, the rates of jail involvement for ASCI children are exceedingly low. It is significant to note that the highest rates of jail involvement occurred within the 10-year window, indicating that many children in this demographic may have already entered adulthood, having aged out of the juvenile system to commit offenses as adults. Of the ASCI children with jail activity post-exit, Black children experienced jail involvement at a significantly higher rate than White children.

Figure 10. Jail Activity Post-Exit: All Children

Jail Activity Post-Exit - All Children							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	1021	2	565	16	163	22
Under 10	ASCI PLC	585	0	320	0	87	1
10 and Over	ASCI PLC	436	2	245	16	76	21

Figure 11. Jail Activity Post-Exit: Black

Jail Activity Post-Exit:							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	479	2	281	11	78	14
Under 10	ASCI PLC	254	0	151	0	38	1
10 and Over	ASCI PLC	225	2	130	11	40	13

Figure 12. Jail Activity Post-Exit: White

Jail Activity Post-Exit							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	365	0	199	3	69	7
Under 10	ASCI PLC	216	0	114	0	39	0
10 and Over	ASCI PLC	149	0	85	3	30	7

Figure 13. Jail Activity Post-Exit: Black Males

Jail Activity Post-Exit							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	365	0	199	3	69	7
Under 10	ASCI PLC	216	0	114	0	39	0
10 and Over	ASCI PLC	149	0	85	3	30	7

e) Necessity of Ongoing Services After Achieving Permanency: Social and Behavioral Statistics

Children in the child welfare system experience trauma resulting not only from the initial *cause* of removal (e.g., abuse or neglect), but also from the physical removal from their homes and separation from their biological parents. Recognizing the ongoing need for services to provide for the physical, mental, and emotional well-being of the children—even after exit from the child welfare system—ASCI evaluated the following social and behavioral areas of need:

- Drug and alcohol services
- Mental health services
- Housing and homelessness support services

(1) Drug and alcohol services

The need for drug and alcohol services is essential for children in placement given that parental substance abuse is a primary reason children enter the child welfare system. To that end, ASCI promotes drug and alcohol education in an effort to prevent the cycle of child, drug and alcohol abuse. Children in placement have often been exposed to drugs and alcohol at an early age. Drug and alcohol education programs, as well as treatment services, are part of the transition process and absolutely essential. ASCI’s drug and alcohol services for youth have their origin in prevention and reflect the necessity of proactive services—anticipating the needs of children in care to change the trajectory of drug and alcohol dependence for many families.

Figure 14. Drug and Alcohol Services Received: All Children

Drug and Alcohol Activity Post-Exit January 1, 2003 to June 30, 2018							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	1222	11	781	46	382	55
Under 10	ASCI PLC	694	1	430	6	198	17
10 and Over	ASCI PLC	528	10	351	40	184	38

Figure 15. Drug and Alcohol Services Received: Black

Drug and Alcohol Activity Post-Exit: Race - Black							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	293	2	220	21	120	24
Under 10	ASCI PLC	143	1	107	2	48	8
10 and Over	ASCI PLC	150	1	113	19	72	16

Figure 16. Drug and Alcohol Services Received: White

Drug and Alcohol Activity Post-Exit							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	423	6	265	15	135	17
Under 10	ASCI PLC	253	0	151	2	76	3
10 and Over	ASCI PLC	170	6	114	13	59	14

(2) Mental health services

Research is clear that children in all placement settings—traditional foster care, kinship care, group homes, or residential settings—exhibit greater mental health needs compared to youth in the general population.⁶⁰ It is well accepted that many mental health problems experienced by such children can be ameliorated through targeted mental health treatment interventions documented to have positive mental health outcomes for children.⁶¹ The need for such mental health treatment does not cease at the time a child achieves permanency through PLC, adoption, or otherwise. The data displaying the mental health needs and results of those ASCI children who exited child welfare to PLC reflects the need for ongoing mental health treatment even after permanency is achieved.

Figure 17. Mental Health Services Received: All Children

Mental Health Activity Post-Exit - All Children							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	954	65	584	185	285	127
Under 10	ASCI PLC	479	39	315	118	143	76
10 and Over	ASCI PLC	270	26	199	67	114	51

⁶⁰ Hambrick, E. P., Oppenheim-Weller, S., & N'zi, A., & Taussig, H. N. Mental health interventions for children in foster care: A systematic review. *Children and Youth Services Review* (2016); Bellamy, J.L., Gopalan, G., Traube, D.E. A national study of the impact of outpatient mental health services for children in long-term foster care. *Clinical Child Psychology and Psychiatry* (2010).

⁶¹ *Id.*

Figure 18. Mental Health Services Received: Black

Mental Health Activity Post-Exit: Race - Black							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	496	26	331	106	176	77
Under 10	ASCI PLC	244	13	170	64	82	44
10 and Over	ASCI PLC	167	13	121	42	75	33

Figure 19. Mental Health Services Received: White

Mental Health Activity Post-Exit							
	Exit Type	1-Year Window	1-Year Outcome	5-Year Window	5-Year Outcome	10-Year Window	10-Year Outcome
All Children	ASCI PLC	316	33	186	59	93	43
Under 10	ASCI PLC	155	23	100	38	49	27
10 and Over	ASCI PLC	80	10	65	21	37	16

(3) Housing and Homelessness Support Services

ASCI children achieved exceptional outcomes with respect to the need for housing or homelessness services. This success is a reflection of ASCI's commitment to provide transitional living services for youth seeking to achieve greater independence. Kinship caregivers are also more likely to continue to provide a support network for children long after they have transitioned out of the system.

Figure 20. Housing and Homelessness Support Services Received

Housing and Homelessness Post-Exit - All Children			
	Exit Type	1-Year Window	1-Year Outcome
All Children	ASCI PLC	328	3
Under 10	ASCI PLC	189	3
10 and Over	ASCI PLC	139	0

Housing and Homelessness Post-Exit, Race - Black			
	Exit Type	1-Year Window	1-Year Outcome
All Children	ASCI PLC	139	1
Under 10	ASCI PLC	74	1
10 and Over	ASCI PLC	65	0

Housing and Homelessness Post-Exit, Race - White			
	Exit Type	1-Year Window	1-Year Outcome
All Children	ASCI PLC	114	0
Under 10	ASCI PLC	66	0
10 and Over	ASCI PLC	48	0

PART IV: REFLECTIONS AND LESSONS LEARNED

As the above data reflects, the overwhelming majority of children who exit the child welfare system to PLC do so successfully. For children in kinship care, PLC provides a

natural transition to permanency, with positive results. The small minority of negative outcomes, such as juvenile probation or jail placements, are significantly low for ASCI children exiting to PLC. Furthermore, the low number of children with negative outcomes remains low in the overall population of children who attain permanency through PLC.

The sizeable majority of ASCI children who exited to PLC have positive outcomes. ASCI's programs, through which children in kinship care naturally progress to permanency by way of PLC, demonstrate proven outcomes of success.

Research continues to prove, however, that *all* children removed from the care of their parents—even when those parents are unfit, unwilling, or unable to provide appropriate care—suffer trauma rooted in the underlying causes of their initial removals and also in the rupturing of relationships that occurs during the process, including children placed in kinship care. This trauma does not end simply because an order has been signed that awards permanent legal custody to a kinship caregiver or creates a new family through adoption. For *all* children, a greater effort must be made to identify their needs as early in the process as possible, and to provide ongoing, targeted, and effective services to help them succeed even after permanence is achieved.

For kinship families in particular, evidence strongly indicates that relative caregivers uniquely struggle in the aftermath of permanency. In the post-permanency stage, which is often marked by the sudden absence of government agency involvement, kinship caregivers continue to nurture and provide for children who are still experiencing the effects of trauma. At times, however, these families lack information about the resources available to assist them in meeting the varied and individual needs of the children in their care. Although kinship care providers obtain legal custodianship at the time legal rights are transferred, kinship families nonetheless continue to need assistance—medical, psychological, behavioral, financial, etc.—after permanency is achieved.

PART V: RECOMMENDATIONS

It is imperative, first and foremost, that courts, practitioners, and agencies emphasize pre-permanency planning in order to improve transition and permanency outcomes. Through pre-permanency planning, risk factors are assessed and identified in order to best determine the needs of children. Such measures ease transition both for children and caregivers and can make the process of receiving ongoing services more efficient and effective, eliminating delays that can be detrimental to children and their kinship families.

It is imperative that caregivers have access to comprehensive services that meet their needs. The Social Security Act has made funds available to state and local welfare agencies; private nonprofit organizations with experience in working with foster children or children in kinship care; and institutions of higher education, to help children who are in or at risk of entering foster care reconnect with family members.

Most recently, on February 9, 2018, the federal government enacted the Family First Prevention Services Act (Family First), which provides further support and funding for programs to assist kinship care providers. In particular, Family First makes available financial support for evidence-based programs that provide services in areas of need—such as mental health resources, drug and alcohol prevention and treatment, and in-home parent skill-based programs—and allocates funds for kinship navigator services intended to help kinship care providers identify and obtain services they may require.

By enacting such legislation, Congress has recognized the difficulties that kinship caregivers face and has declared, as a matter of public policy, that funds should be available to assist caregivers in their transition. This signifies the early stages of a much-needed shift in the paradigm, reflecting increasing recognition that families need support long after their cases close, specifically from those service providers that assist in healing the trauma many children in kinship care have experienced.

The Children’s Defense Fund notes:

Relative caregivers report that one of their greatest challenges in raising children is getting accurate information about the benefits and services that are available to their families. Many relative caregivers often are overwhelmed when searching for government services and benefits and may not know about private resources. Having a person or other tools to help guide them through the variety of resources available to them and their grandchildren or other relative children is critical in ensuring that kinship families receive all the support services they need.

To fully serve families in the post-permanency phase and ensure the best outcomes, the needs of families, and the community organizations able to provide for those needs, must be identified early in the process. Assessments conducted prior to permanency as to which agencies are equipped to accept children who have experienced trauma, and what services with proven outcomes are available, would benefit transitioning families. It is necessary for such community agents to recognize that there should be no time limit placed on the healing process.

The 2016 Kinship Summit in Albany, New York, echoed the importance of pre- and post-permanency planning, noting that services that include family group decision-making encourage listening to caregivers and youth, provide opportunities for engagement, and allow service providers to better assess target areas of need and respond accordingly and more effectively.⁶² Recognizing that “many caregivers rely heavily on informal exchanges of information in support groups and in other peer-to-peer settings,” child welfare professionals and organizations suggest that “mutual sharing can help support the family and provide reassurances from other persons who have had similar

⁶² New Directions for Kinship Care Policy and Practice: A Position Paper from the Kinship Summit at Albany, New York, September, 2016.

experiences,” and that “children in kinship families may benefit from counseling and their own support groups.”⁶³

In order to improve outcomes for children exiting to PLC, ASCI makes permanency meetings with the kinship triad a requirement. ASCI’s permanency planning includes providing the family with and educating them about community-based support services that might become necessary after permanency is achieved. ASCI’s services additionally include permanency support groups with professionals and paraprofessionals serving as group leaders for those families on a path to PLC. Through structured group meetings occurring on a regular basis, families are kept informed of the services available to them and are able to proactively address concerns that may arise during the permanency planning process. In this manner, ASCI empowers families through coaching, training, and problem-solving skill development.

These group meetings additionally allow families to form a community of mentoring, relationship-building and support. They additionally offer the opportunity for socialization and recreational activities among families; allow ASCI to provide information and educational materials relevant to families; and offer a safe space for caregivers to share their issues and concerns.

More must be done, however, to connect kinship care providers to comprehensive services that meet their needs. Allegheny County is recognized for its advances and forward-thinking approaches in the child welfare arena. The county has been recognized nationally and globally as a leader in creating better outcomes for vulnerable children and families. As a model for child welfare program success, numerous agencies within Allegheny County collaborate to provide services to families before, during, and after permanency is achieved. These services include but are not limited to: diversion programs for youth at risk of entering the juvenile justice system; after-school care to engage and develop youth and reduce the likelihood of crime; educational supports; and programs to support older youth entering adulthood and seeking independence.

In Allegheny County, the Juvenile Section of the Court of Common Pleas’ Family Division operates a Community Intensive Supervision Program (CISP) as a court-ordered, community-based alternative to residential placement. Targeting first-time and repeat male offenders between 10 and 18 years of age, CISP monitors youth, holds them accountable, requires them to check in after school and on weekends, and requires them to complete 100 hours of community service before they can be positively discharged from the program.⁶⁴

Additionally, supportive nonprofits within Allegheny County, such as Youth Enrichment Services (YES), collaborate with the juvenile court to serve at-risk youth. The

⁶³ *Id.*

⁶⁴ Community Intensive Supervision Program Fact Sheet, December 8, 2011, <https://www.alleghenycourts.us/downloads/family/juvenile%20section/Brochures/Community%20Intensive%20Supervision%20Program.pdf>

YES Diversion 2000 program (D2000) offers 24/7 monitoring and mentoring for juvenile offenders as an alternative to detention.⁶⁵ Through D2000, intervention specialists conduct school and home visits, monitor school attendance, make daily curfew calls, and arrange academic support. D2000 additionally creates family action plans for each child, which are designed to protect the child and the well-being of their community, decrease truancy, reduce recidivism and ensure that the family’s rules will be adhered to throughout the duration of the program.⁶⁶

Greater relationship-building among government agencies and community service providers is necessary to ensure kinship caregivers are provided with education and the resources they need, which can often help divert at-risk youth before involvement in delinquency proceedings.

The provision of resources like diversion programs, early intervention, after-school services, and support and mentoring groups can help reduce the danger of delinquency. For example, the U.S. Department of Justice reports that “violent crimes by juveniles occur most frequently in the hours immediately following the close of school on school days”.⁶⁷ According to the Children’s Defense Fund, a study of children in after-school programs found that those children have:

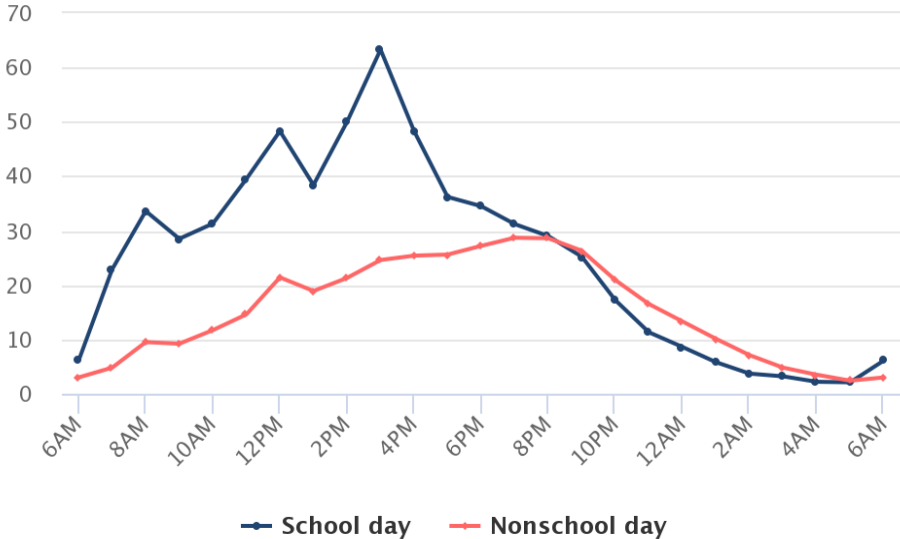
fewer school absences, better conflict management strategies, and better work habits at school than did their school classmates who lived in the same neighborhoods but did not attend the programs. In

⁶⁵ <https://www.youthenrichmentservices.org/our-students>

⁶⁶ *Id.*

⁶⁷ Office of Juvenile Justice and Delinquency Prevention, October 22, 2018, <https://www.ojjdp.gov/ojstatbb/offenders/qa03301.asp>

Juvenile violent crime time of day
(Offenders per 1,000 juvenile violent crime offenders)



addition ... children who participated more frequently had better work habits, displayed better interpersonal skills, engaged in less misconduct in their neighborhoods and at school, and missed less school.”⁶⁸

Such programs and services geared to youth and their families, who might otherwise struggle with a lack of adequate support in the aftermath of permanency, can significantly improve outcomes.

Proactive programs—such as the Oakland Planning and Development Corporation’s School 2 Career youth program in Pittsburgh, Pennsylvania, which prepares at-risk youth for college and career success by providing year-long after-school and summertime initiatives—offer children and families the tools to succeed. ASCI has also instituted support services aimed at improving outcomes for youth seeking to achieve permanency through kinship care. ASCI’s Camp C.O.P.E.S. (Children Optimizing Personal Experience through Sports) program is designed to give youth in kinship care the opportunity to develop teamwork, relationships, work ethic, and competitive-awareness skills.

Various other Allegheny County collaborators address the needs of youth who might otherwise fail to receive needed services in other important areas. The 412 Youth Zone is a center that provides services for young people ages 16-23 who are transitioning out of the system and are eligible for independent living services, or who might be experiencing housing instability. LIFE Male Science Technology Engineering Arts and Math Academy, scheduled to open in Pittsburgh in 2020, is pursuing a mission to prepare male scholars for college and career success, and to serve as a catalyst to increase the presence of African American males in the STEM pipeline. In the Stanton Heights area of Pittsburgh, the Neighborhood Academy recently launched a program geared toward males in middle school who demonstrate financial need, providing an educational model specifically suited to their needs and intended to “break the cycle of generational poverty that has held them captive and deprived society of the full value of their lives.”⁶⁹

ASCI itself, as a community-based entity, operates under a holistic framework to connect families with professional services to meet the individual and varying needs of each child and family. ASCI’s comprehensive kinship care curriculum seeks to understand each individual child. In its work with children who are in placement, the agency evaluates each child’s particular trauma background—presuming that trauma is inherent in the removal of children from their birth parents—while addressing additional forms of trauma including physical, sexual, and emotional abuse or neglect, loss and grief, domestic, community and school violence, medical trauma, and external events such as domestic and international terrorism, war, and natural disaster. ASCI recognizes that by

⁶⁸ School-Age Child Care: Keeping Children Safe and Helping Them Learn While Their Families Work, Children’s Defense Fund, 2003, <https://www.childrensdefense.org/wp-content/uploads/2018/08/school-age-child-care.pdf>

⁶⁹ <https://www.theneighborhoodacademy.org/about-us/mission-statement.cfm>

better understanding the impetus of the trauma, taking measures to deal with the trauma during the pre-permanency stage, and continuing such proactive participation through and into the post-permanency stage, the child is given a better opportunity to succeed.

The need for additional, well-designed services that have been rigorously evaluated for success is ongoing. Kinship care families must be connected with community service providers early on, in order to fulfill all the needs of the children in their care, and, in this way, maintain the continued success of kinship care relationships in the post-permanency process.

PART VI: CONCLUSION

Permanent legal custodianship (PLC) has proven itself to be a valuable permanency alternative. For children in kinship care, PLC—with its focus on family group decision-making—allows for a natural progression to permanency. A Second Chance, Inc., demonstrates an overwhelmingly high rate of success for children who transition to PLC.

Some believe that permanency can only be achieved through adoption. Such rigid notions of permanency, professed in some cases by those outside the child welfare system, ignore the more meaningful perspective of those *within* the system: the children. Viewed from the perspective of the dependent child, kinship care with a grandparent, other relative, or fictive kin, is a vastly different form of care than placement with a stranger. PLC allows children to maintain family, cultural, and community ties. Removing a child from his or her parents causes trauma. PLC mitigates this trauma by keeping the children who experience it in the care of family and providing them with invaluable continuity and support. When we communicate to a child that his or her family has no value, we communicate that his or her origins also have no value.

In protecting the welfare of children, state entities acting under *parens patriae* authority are increasingly concerned with promoting family unity and strengthening families. This bolsters children's sense of security and identity and sends a message to children that their identities are worth preserving. Put another way, "an entirely innocent being is now in a court of law, a helpless chip on the bewildering ocean of litigation. It is the responsibility of the law to guide this human mite into a harbor of refuge, protection, care, and assured future well-being."⁷⁰ Permanent legal custodianship with a relative caregiver is a means to that end.

⁷⁰ Com. ex rel. Ruczynski v. Powers, 219 A.2d 460, 460 (Pa. 1966, Musmanno, J.).