

When Children Cannot Return Home: Adoption and Guardianship

Mark F. Testa

SUMMARY

Since the 1970s, finding alternative permanent families for children in foster care who could not return to their birth parents has been a primary goal of the child welfare system. Since that time, significant gains have been made in helping such children find permanent homes through adoption and guardianship. This article analyzes these trends and finds:

- ▶ A majority of states have doubled the number of adoptions from foster care over the 1995–97 baselines established by the federal government.
- ▶ Legal guardianship initiatives at the state level have been instrumental in helping thousands of children achieve permanence.
- ▶ Children who exit foster care to adoption tend to be younger than those who exit to guardianship.

- ▶ Postpermanency services and supports are important to the long-term success of these placements.

Innovative efforts to find adoptive parents and legal guardians for children in foster care could transform the nature of foster care if the number of children permanently living with families who receive state subsidies begins to exceed the number of children living in foster care. Looking forward, these changes would require child welfare agencies to think creatively and thoughtfully about how best to serve families and the children in their care.

Mark F. Testa, Ph.D., is associate professor and director of the Children and Family Research Center in the School of Social Work at the University of Illinois, Urbana-Champaign.

Achieving permanence for foster children has been a primary focus of child welfare professionals since the problem of children languishing in foster care (“foster care drift”) was first documented in 1959.¹ Most children in foster care will be reunified with their birth families, but for those children who cannot return home, finding an alternative permanent family can provide them with the stability they need to flourish. A home with either birth- or adoptive parents (“natural guardianship”) has historically been viewed as the preferred permanency option for children in foster care.² However, when such permanency options are not feasible or desirable, legal guardianship by either kin or foster parents willing to raise the child to adulthood is emerging as a promising alternative.

This article examines the evolution of U.S. child welfare policy and practice with respect to permanence when family reunification is not possible. The article begins by briefly discussing factors that have contributed to the current policy framework, and it discusses current strategies and trends for the primary alternative permanency options of adoption and legal guardianship, including a summary detailing the demographic characteristics of children most likely to experience each of these options. Next, the article discusses the stability of these permanency arrangements. The article concludes with a discussion of possible changes that may be in store for public child welfare systems as the numerical balance shifts between children in foster care and children placed in permanent homes.

Strategies and Trends in Achieving Permanence

Policies and practices to achieve permanence for children in foster care have evolved rapidly in the last two decades. The current consensus supporting permanence for children in foster care began to emerge in the 1970s, as evidence of the negative effects of long-term foster care placement on child well-being began to mount. Several studies documented the detrimental impact of children languishing indeterminately in foster care without a plan for permanence.³ The research findings reinforced the importance of permanent attachments and relationships for healthy child development and provided a strong evidence base in sup-

port of increased efforts to achieve permanence for foster children.⁴ Additionally, research funded by the U.S. Children’s Bureau demonstrated the feasibility of initiatives to improve an agency’s ability to find permanent homes for children who would otherwise have grown up in care.⁵ As a result, despite various tensions in determining the optimal permanency arrangement for individual children (see Box 1), the consensus around the importance of a stable family for children continued to grow. The overarching goal of the federal Adoption Assistance and Child Welfare Act (AACWA) of 1980 was to provide services and support to families and children in order to reduce the amount of time children would spend in care.

A decade after permanency planning became the guiding principle in child welfare, optimism over its potential to bring stability and security to the lives of foster children began to fade. Whatever gains may have been made in reducing the numbers of children in out-of-home care following the law’s passage, voluntary reporting by the states showed that by the late 1980s, foster care caseloads were again on the rise.⁶ By the early 1990s, more than 500,000 children were in foster care—the highest number ever recorded up to that time.⁷

Since the mid-1990s, both the number of foster children adopted and the number discharged to the legal guardianship of kin and foster parents have increased substantially. In part, these increases are outgrowths of the growing number of foster children in need of permanent homes. However, other factors have also played a role. A discussion of specific factors that have contributed to the increased number of children achieving permanence through adoption and guardianship, and the demographic characteristics of the children likely to experience each of these options, follows.

Encouraging Adoption

The provisions of the Adoption and Safe Families Act (ASFA) of 1997 endorsed adoption as the primary solution for the backlog of children in foster care who could not or should not return home. The act authorized the payment of adoption bonuses to states that increased numbers of adoptions over an established baseline.⁸ However, even before the passage of ASFA, social norms regarding adoption practices

Box 1

Tensions in Permanency Planning

Conflicts about the importance of biological and community ties in selecting a permanent family for a child, and the optimal degree of legal obligation to ensure permanency, tap into larger societal tensions regarding what types of permanency arrangements are truly in the “best interests” of the child.^a Two key areas of tension involve the role of social identity and the role of legal constraints.

Race Matching Versus Interracial Placement

For some, racially or ethnically matching a child to a permanent family is essential for ensuring the well-being of the child. For others, race matching is secondary to the need to place children with families who can offer them stability and nurturance, regardless of race. This tension is reflected in the differing objectives of federal policy. For example, the passage of the Indian Child Welfare Act (ICWA) in 1978 and the stated preference for placing children with kin in the 1996 welfare reform law illustrate a sensitivity to the benefits of communal and/or familial likeness. Conversely, policies such as the 1996 amendments to the Multiethnic Placement Act (MEPA) expressly forbid the consideration of race, ethnicity, or culture when placing a child.^b

Lasting Versus Binding

A related tension is expressed by two alternative definitions of permanency—one as “lasting” and the other as “binding.” In a

lasting placement, the goal is to find the foster child a home intended to last indefinitely—one in which the sense of belonging is rooted in cultural norms, has definitive legal status, and conveys a respected social identity.^c This definition recognizes that while natural guardianship through birth or adoption is the preferred placement choice, legal guardianship may be a more feasible option for some children. With the growing use of subsidized guardianship and other permanent living arrangements with kin, however, some legal advocates have argued that the commitment also needs to be made legally “binding” in order to qualify as truly permanent.^d This definition demotes guardianship as a permanency goal because it is more easily vacated by the caregiver and is more vulnerable to legal challenge by birthparents than are termination of parental rights and adoption.

The preference for biological or adoptive parenthood over legal guardianship found expression in the federal Adoption Assistance and Child Welfare Act (AACWA) of 1980. In situations where reunification was not possible, the act permitted states to make adoption assistance payments to adoptive parents of foster children with special needs.^e AACWA also recognized legal guardianship as a permanency option, but it made no special provision for guardianship assistance payments similar to the assistance available to adoptive parents of foster children.

^a Testa, M. Kinship care and permanency. *Journal of Social Service Research* (2001) 28(1):25–43.

^b This ban did not affect the application of ICWA.

^c Emlen, A., Lahti, J., Downs, G., et al. *Overcoming barriers to planning for children in foster care*. DHEW Publication No. (OHDS) 78-30138. Washington, DC: U.S. Government Printing Office, 1978.

^d Takas, M., and Hegar, R.L. The case for kinship adoption laws. In *Kinship foster care: Policy, practice and research*. R.L. Hegar and M. Scannapieco, eds. New York: Oxford University Press, 1999, pp. 54–67, and Bartholet, E. *Nobody's children: Abuse and neglect, foster drift, and the adoption alternative*. Boston: Beacon Press, 1999.

^e AACWA defined “special needs” as: “a specific factor or condition (such as the child's ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance.”

were evolving, and the number of adoptive parents seeking to adopt children from foster care had begun to grow.

Changing Social Norms

Beginning in the 1970s, social norms began to change, resulting in a lifting of secrecy surrounding adoption

and a decline in the number of non–foster care children available for adoption. Both these changes provided an impetus to prospective adoptive parents to adopt children from foster care.

Historically, norms of secrecy surrounding adoption discouraged potential parents from adopting children

who did not appear to be their birth children. People making placement decisions sought to match infants physically with the characteristics of adoptive parents. As a result, children who did not match the physical characteristics of the majority of adoption seekers (who were white), as well as older children and children with physical, mental, or emotional handicaps, were generally stereotyped as “unadoptable.”⁹ State laws dating back to the 1940s reinforced the secrecy of adoption by shielding adoption records from public scrutiny, permitting adopted children to be issued second birth certificates that substituted the names of adopted parents for birth parents, and concealing the identity of birth parents.¹⁰

Beginning in the 1970s, however, permanency advocates attacked these stereotypes, arguing that “every child is adoptable.” Their efforts encouraged a new group of prospective adoptive parents to step forward, a group seeking to express humanitarian values, provide permanent homes for foster children, or preserve children’s ties to kinship, ethnic, or cultural groups.¹¹ The rise of such “preferential adoptions” (adoptions motivated by reasons other than infertility)¹² helped gradually lift the veil of secrecy from adoption practice and at the same time increased the number of adoptions from foster care.

At about the same time, another shift in social norms had a significant impact on the overall number of children available for adoption. Historically, most children available for adoption were the children of unwed mothers. However, beginning in the 1970s, a reduction in the social stigma associated with illegitimacy and unwed motherhood led to fewer single mothers relinquishing their children for adoption. Responses to the National Survey of Family Growth show that voluntary relinquishment at birth decreased substantially after 1970. Whereas prior to 1973,¹³ 19% of children born to never-married white women were relinquished at birth, after 1989 the figure fell to below 2%. Among children born to never-married black women, the comparable percentage of infants relinquished at birth in 1989 virtually vanished from its level of 2% prior to 1973. As the 1990s approached, adoption seekers of all types increasingly turned to the only source of adoptable children that was expanding in the United States: children waiting in foster care.

Trends in Adoption

Since passage of ASFA in 1997, the number of adoptions from foster care has continued to grow. According to the Adoption and Foster Care Analysis and Reporting System (AFCARS), there were 36,896 adoptions of children with public child welfare involvement in federal Fiscal Year 1998 (October 1, 1997–September 30, 1998), 46,772 such adoptions in federal Fiscal Year 1999, and 50,722 such adoptions in federal Fiscal Year 2000. As of federal Fiscal Year 2001, 27 states and the District of Columbia had already doubled adoptions over the 1995–97 baseline set in the president’s 1996 initiative (Adoption 2002) and ASFA.¹⁴ Hawaii, Idaho, Illinois, Maine, Oklahoma, and Wyoming, were able to triple the number of adoptions. Adding up the peak number of adoptions each state finalized shows that the nation’s foster care systems surpassed the president’s goal of doubling adoptions by 2002 a year in advance. (See the Appendix at the end of this article for adoption trends in each state for federal Fiscal Years 1995 to 2001.) As a result, public foster care systems have begun to shrink. However, this trend also means that states will have a difficult time increasing adoptions in the future since the pool of children adoptable from foster care is becoming smaller.

Characteristics of Adopted Children

According to the latest available data, there appear to be distinct differences between foster care children who are adopted, those who are placed with legal guardians, and those who remain in care awaiting permanent homes.¹⁵ Adopted children tend to be younger than those placed with legal guardians or those waiting in care, and fewer of them are members of a minority race.

The average child adopted from the foster care system in federal Fiscal Year 2000 was 6.9 years old, and the average child awaiting adoption was 8.1 years old.¹⁶ In federal Fiscal Year 2000, the number of children under age six who were adopted from foster care was 28% higher than the number of younger children awaiting adoption. Conversely, the number of children age 11 and older who were adopted was 40% lower than the number of older children awaiting adoption.

A child’s race or ethnicity also affects the likelihood of being adopted. Black children constituted the largest

racial category of children adopted from foster care in Fiscal Year 2000, but their proportionate share of total adoptions dropped to 39% from 46% in Fiscal Year 1998 (see Table 1). This decline was due partially to the addition of a multiracial classification and improvements in moving African American children from foster care to permanent homes during Fiscal Year 2000. The impact of these changes can be gleaned by comparing the racial and ethnic distribution of adopted children to children awaiting adoption. Whereas the number of children of African American descent who were adopted during Fiscal Year 1998 was 13% lower than the number awaiting adoption at the end of the fiscal year, by Fiscal Year 2000 this underrepresentation had narrowed to 9%. Because of the increasing number of African American children being adopted, they constitute a smaller share of the pool of foster children awaiting adoption.

Characteristics of Adoptive Homes

The increase in adoptions over the 1995–97 baseline and the large gains among African Americans in particular are consistent with the goals of Adoption 2002, ASFA, and related policy initiatives. But the supply of new adoptive homes has not come from the untapped pool of families that federal officials believed could be recruited after the Multiethnic Placement Act¹⁷ cleared away some of the obstacles to transracial adoption. Rather, the major source of new adoptive homes has been relatives who previously were either ignored as an adoptive resource or were not asked to adopt on the mistaken assumption that relatives would not adopt.

Most children adopted out of foster care (almost two-thirds) are adopted by unrelated foster parents. But since 1997, relatives have become the fastest-growing source of new adoptive homes for foster children.

Table 1

Selected Demographics of Children Awaiting Adoption and Children Adopted, 1998 and 2000

	1998		2000	
	Waiting children	Adopted children	Waiting children	Adopted children
Total number	122,000 ^a	36,000 ^b	131,000 ^a	51,000 ^b
Age of child				
Under 6	38%	48%	36%	46%
6–10	37%	37%	34%	35%
11 and over	25%	16%	30%	18%
Race/ethnicity				
White	29%	34%	34%	38%
Black	53%	46%	43%	39%
Hispanic	11%	12%	13%	14%
Other	2%	2%	3%	2%
Multiracial	Not available	Not available	2%	2%
Unknown	5%	5%	5%	5%

^aThe number of children waiting to be adopted on September 30th of the federal fiscal year, identified as children who have a goal of adoption and/or whose parents have had their parental rights terminated (if under age 16).

^bThe number of children adopted from the public foster care system in the federal fiscal year.

Source: U.S. Department of Health and Human Services, Administration for Children and Families. Adoption and Foster Care Analysis and Reporting System. Reports 3 and 7. Washington, DC: DHHS, April 2000 and August 2002. Available online at <http://www.acf.hhs.gov/programs/cb/dis/afcars/cwstats.htm>.

Between federal Fiscal Years 1998 and 2000, the number of adopted children who were already related to their adoptive parents prior to finalization almost doubled, from 5,451 to 10,612. As a consequence, the proportionate share of kinship adoptions rose from 15% to 21% of all adoptions from foster care.

The discovery that relatives will indeed adopt if fully informed of their options came about as a result of innovative efforts to create alternative permanency options that built on the cultural traditions of informal adoption and kinship care among African Americans. For example, in 1994 Illinois developed a special foster care status called Delegated Relative Authority (DRA), which gave relative caregivers greater decision-making authority while retaining children in public custody in order to preserve federal eligibility for foster care subsidies. A study of DRA found that 70% of caregivers who preferred a child to stay with them until the child

was fully grown reported that they were willing to consider adoption.¹⁸ However, this study also found that the willingness of kin to adopt fell off sharply for children older than 11.

The Growth of Kinship Care and Guardianship

The number of kin care providers has increased substantially since the passage of ASFA. However, the growing number of children placed with kin may have inadvertently contributed to the growing backlog of children in long-term foster care because of lingering resistance to the idea of relatives adopting their own family members. In response, many child welfare agencies have rediscovered the utility of legal guardianship as a means of moving children off child welfare rolls, making kinship care arrangements legally lasting, and providing continued financial support to kin caregivers.

Growing Preference for Kinship Care

Between 1986 and 1990, the number of children placed in formal foster care with relatives rose from 18% to 31% of public placements in the 25 states that were able to supply such information to the U.S. Department of Health and Human Services (DHHS).¹⁹ The growth of kinship foster care after 1986 came in response to two developments: a heightened interest in honoring familial and cultural ties²⁰ and an inadequate supply of licensable foster homes, particularly in inner-city neighborhoods.²¹ As the national foster care population expanded, however, child welfare researchers began spotting connections between caseload growth and the rise in kinship foster care. They noticed that although foster children living with kin tended to have more stable placements than children living with non-kin,²² their rates of reunification and adoption were much lower,²³ thereby contributing to the backlog of foster children in long-term care. (See the article by Geen in this journal issue for further discussion of kinship care.)

Rediscovery of Guardianship

The growing number of kin caregivers has been the major impetus for the increased usage of guardianship. Legal guardianship actually predates adoption in American law. Court-appointed legal guardians are legally conferred with “the duty and authority to make important decisions in matters having a permanent

Legal guardianship is an attractive option for child welfare agencies and kin, as it addresses many concerns expressed about kin adopting their own family members.

effect” on the life, development, and general welfare of a child.²⁴ Although legal guardians need not be related to the child, kin make up a substantial proportion of appointed guardians.

Legal guardianship is an attractive option for child welfare agencies and kin, as it addresses many concerns expressed about kin adopting their own family members. When a child is adopted, all ties to the birth family are legally severed and the adoptive parents assume all legal and financial responsibility for the child. Legal guardianship does not require the termination of parental rights, thus children retain legal connections to their birth families, and guardians assume limited financial liability for the upkeep of children in their care. This can be a beneficial arrangement for some children and families. Guardianship, unlike adoption, allows kin to retain their extended family identities as grandparents, aunts, and uncles. Children may retain rights of sibling visitation. Birth parents may still exercise a limited role in their children’s upbringing as they hold onto certain residual rights and obligations, such as rights to visitation as well as obligation for child support. Birth parents may also petition the court to vacate the guardianship and return the children to parental custody if their circumstances change.

The inclusion of legal guardianship as a permanency option under ASFA recognizes that termination of parental rights and adoption may not always be in the best interests of foster children. For example, when legal grounds are insufficient to prove parental unfitness, but reunification is still undesirable, private guardianship creates legal certainty and stability in the caregiving relationship that is lacking when the state retains legal custody of the child. Furthermore, a number of aspects of guardianship might better serve not only the interests of the child but also the birthparent, substitute caregiver, and state.²⁵ For example, private guardianship:

- ▶ Makes the caregiver personally responsible for the welfare of the child and relieves the state of the civil liability for inadequate foster care;
- ▶ Might help lessen the separation trauma, sense of loss, and identity conflicts that sometimes develop when children are adopted, particularly if they are old enough to remember their parents or cherish their heritage, because private guardianship allows for the continued involvement of birth parents in the lives of their children;
- ▶ Is less expensive than foster care because the costs of casework services, public guardianship administration, foster home licensing, and judicial review are no longer incurred when the child welfare case is closed;
- ▶ Enables the state to seek to recover some of the costs of the subsidy program, because birth parents remain obligated to provide child support; and
- ▶ Is more in keeping with the custom of informal adoption by extended family members.

Support for subsidized guardianship, especially for children in long-term kinship care, grew gradually during the 1990s. The idea was endorsed by nearly every “blue-ribbon committee” convened on the subject of kinship foster care.²⁶ In 1995 the Children’s Bureau invited states to submit applications for subsidized guardianship demonstrations “which would allow children to stay or be placed in a familial setting that is more cost effective than continuing them in foster care.”²⁷ Reunification and adoption were acknowledged as the preferred choices, and terms and conditions established by the federal waiver demonstrations stipulated that guardianship be pursued only when adoption was inappropriate or unavailable as a permanency option. Currently, seven states (California, Delaware, Illinois, Maryland, Montana, New Mexico, and North Carolina) and the District of Columbia have been granted waivers to test the use of guardianship.²⁸

Trends and Characteristics of Children Discharged to Guardianship

The data indicate an increasing preference for guardianship.²⁹ AFCARS figures show that 10,341 children

exited foster care through legal guardianship during federal Fiscal Year 2000—a 77% increase over Fiscal Year 1998.³⁰ The best available data on the characteristics of children discharged to private guardianship (commonly called private wards)³¹ come from state-funded programs in the eight federal foster care guardianship demonstrations that DHHS has approved since 1997.³² Despite program and funding differences among state and federal demonstration programs, there are similarities across the states in the characteristics of children discharged to guardian homes as compared to children adopted from foster care.

Table 2 compares the age, race, and ethnicity of private wards with adopted children in the states of California, Illinois, and Washington. The data show that private wards tend to be older and more often members of a minority race than children adopted from foster care.

The age difference is consistent with the sentiment that guardianship better accommodates the preferences of older children, who may wish to maintain ties with their biological parents. The racial difference may reflect longstanding Native American, African American, and Hispanic traditions of extended family care that share important similarities with legal guardianship.

In sum, although the preference for adopting younger children continues, significant gains have been made in the number of older children achieving permanence either through adoption or legal guardianship. This trend is largely a result of more kin choosing to adopt and more children exiting foster care through legal guardianship. Moreover, a greater number of African American children are achieving permanence, largely as a result of state policy and administrative reforms that have aggressively promoted adoption and guardianship as alternatives to long-term kinship foster care.³³

Table 2

Selected Demographics of Children Discharged via Legal Guardianship Versus Adoption in Three States, circa 1999

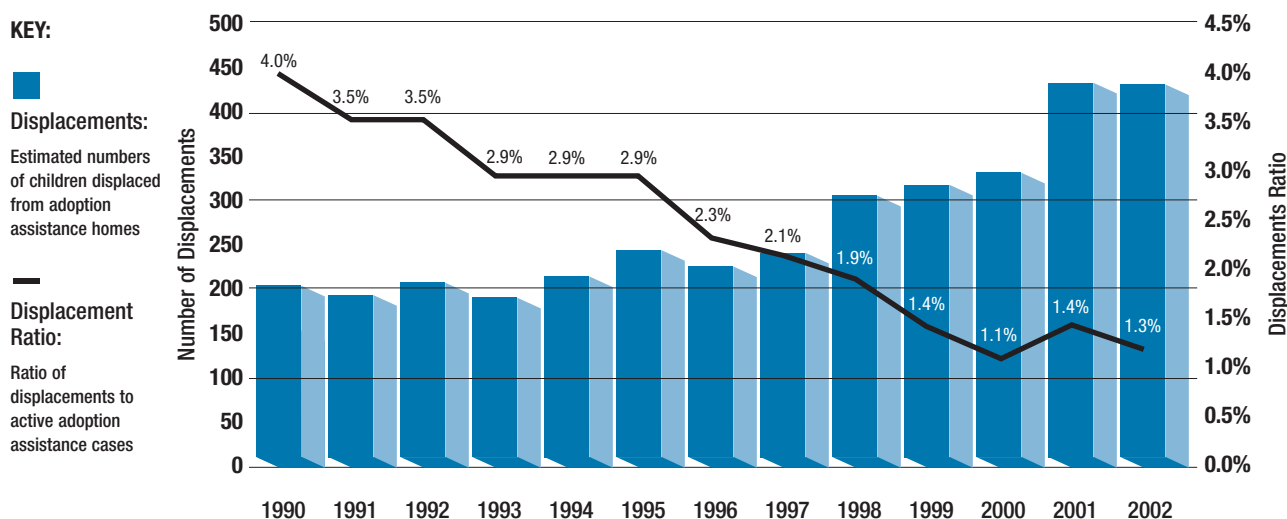
	California		Illinois		Washington	
	Private wards ^a	Adopted children	Private wards ^a	Adopted children	Private wards ^a	Adopted children
Total number	6,230	6,251	1,953	7,028	1,894	1,047
Age of child						
Under 6	21.5%	66.0%	13.7%	37.1%	32.0%	59.2%
6–10	41.0%	27.5%	37.7%	41.8%	38.0%	31.6%
11 and over	37.5%	8.3%	48.6%	21.1%	30.0%	9.3%
Race/ethnicity						
White	16.0%	42.9%	10.2%	14.7%	54.0%	36.5%
Black	48.0%	19.5%	87.4%	79.9%	24.0%	5.4%
Hispanic	33.0%	31.7%	2.2%	4.1%	5.0%	5.4%
Other	3.0%	3.1%	0.1%	0.1%	2.0%	2.4%
Unknown	—	2.8%	0.1%	1.2%	2.0%	44.9%

^aChildren discharged to legal guardianship are legally referred to as private wards.

Sources: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. Child welfare outcomes 1999: Annual report. Washington, DC: DHHS, February 2002; Needell, B., Shlonsky, A., Dawson, W.C., et al. KSSP and KinGAP: University, state, county, and advocate partnership for kinship care policy in California. Paper presented at the 23rd annual Association for Public Policy Analysis and Management Conference. Washington, DC. November 1–3, 2001; English, D.J., Ober, A.J., and Brummel, S.C. Report on the Washington state guardianship study. Olympia, WA: Office of Children's Administration Research, Washington State Department of Social and Health Services, March 1999; and Children and Family Research Center. Unpublished data. Urbana, IL: School of Social Work, University of Illinois at Urbana-Champaign, October 2002.

Figure 1

Trends in Adoption Displacement in Illinois



Source: Based on data collected by the Children and Family Research Center, School of Social Work, University of Illinois at Urbana-Champaign, October 2002.

The Stability of Permanency Arrangements

The importance of permanent attachments and relationships to healthy child development is widely recognized. At the same time, the push for permanence through adoption and guardianship has raised concerns that families are being forced into making ill-considered commitments that will result in the rupture of placement. However, evidence suggests that ruptures of permanency arrangements are rare.

Adoption Ruptures

The best available evidence suggests that the percentage of adoption displacements amounts to only a small fraction of entries into foster care. Adoption ruptures are difficult to track because of policies that conceal the identity of a child after finalization of the adoption. Nevertheless, data from AFCARS indicate that only 1.5% of entries into foster care between federal Fiscal Years 1998 and 2000 represented children who had been displaced from adoptive homes.³⁴ Although the percentage jumped to 2.6% in Fiscal Year 2001, this

rise is related more to the drop in foster care entries than to a rise in the incidence of displacements.

The perception that the incidence of adoption displacement is increasing is related to the fact that the ruptures are occurring among a vastly larger pool of completed adoptions. This situation gives the false impression of a growing problem, even though the incidence of displacement is constant or declining. The components of this statistical illusion can be illustrated with displacement estimates from Illinois.³⁵ Figure 1 shows that the estimated number of adoption displacements doubled in Illinois from 1990 to 2002. This statistic suggests a growing problem. But during this same period, the number of active adoption-assistance cases increased nearly sevenfold, so the ratio of displacements to active adoption cases has declined from 4% of active cases in 1990 to 1.3% in 2002. Thus, although the absolute numbers of displacements are rising, the underlying incidence of displacement is dropping in Illinois.

The small number of adoption ruptures may soon change, however, as a larger share of adopted children

Although agency involvement after adoption finalization has been discouraged, . . . Surveys of adoptive families reveal the need for postpermanency services.

age into early adolescence. Studies indicate that adoption ruptures (including adoptions that end before and after finalization) increase with the child's age at adoption.³⁶ Research on Illinois adoptions indicates rupture rates of 9% to 12% among foster children adopted between ages 5 and 15.³⁷ Whether these past displacement rates apply to current adoptions is unclear. In the past, most adoptions were made by families unrelated to the child. Today, many adoptions are made by kin. Research suggests that placement ruptures are two and a half times less likely among kin than among families unrelated to the child.³⁸

Kinship Care and Guardianship Ruptures

In recognition of the greater stability of kinship arrangements,³⁹ some have advanced the notion that kinship care should be favored as a permanency option in its own right.⁴⁰ Indeed, ASFA recognizes placement with "a fit and willing relative" as an acceptable permanency plan. Some jurisdictions routinely discharge foster children to the custody of kin, who merely act in loco parentis, without the full legal authority that adoption or guardianship confers. Although many relatives are willing to step in as substitute parents, either informally or formally, it is important to recognize that kinship care is not an unconditional safety net. Research on the stability of kinship care in states without subsidized guardianship programs suggests that rates of disruption are sensitive to both the level of financial support and the availability of postdischarge services to families. For example, in Texas, which does not have subsidized guardianship and where little in the way of postdischarge services are provided,⁴¹ a study found disruption levels as high as 50% for children discharged from foster care to the physical custody of kin.⁴²

In contrast, available data indicate that there are relatively few ruptures when states formally appoint kin as legal guardians and provide families with financial subsidies and postpermanency support services. In Illinois, for example, administrative records show that of the 6,820 children who entered subsidized guardianship starting in 1997, only 3.5% were no longer living in the

home of the original guardian as of March 2002. Approximately one-third of the guardianship ruptures were attributable to the death or incapacitation of the guardian. The remaining two-thirds occurred because the caregiver no longer wanted to exercise parental authority, and the guardianship was legally dissolved. In total, only 2% of subsidized guardianships awarded starting in 1997 resulted in dissolutions requiring the reappointment of the Illinois Department of Children and Family Services (IDCFS) as the public guardian.⁴³ Even though a longer period of observation is necessary to assess the overall stability of guardianship arrangements in Illinois, at the present time, the rates of guardianship ruptures are similar to adoption ruptures, controlling for differing ages at entry.

In Washington state, more than 80% of children interviewed in a guardianship survey indicated that they were happy with their guardianship arrangements.⁴⁴ Moreover, administrative data indicated that about 86% of Washington children placed in guardianships remain with their guardians until age 18.

The Future of Permanency Efforts and Foster Care

Congressional Budget Office projections show that sometime this decade, the number of children receiving federal adoption-assistance payments will exceed the number of children in federally reimbursed foster care.⁴⁵ This important milestone has already been achieved in states like Illinois, where the number of children in subsidized adoptive and guardianship homes surpassed the total number of children in foster care in July 2000. The changing balance between children in permanent homes and children in foster care has had a profound impact on the Illinois system and prefigures possible challenges that other child welfare systems are likely to face in the future in serving a residual population of older foster children with special developmental, educational, and emotional needs.

Efforts to expedite permanence in the past three decades have succeeded in overcoming adoption

stereotypes and moving more children to permanent homes. However, adaptations to existing service systems are required if these successes are to be preserved. Although agency involvement after adoption finalization has been discouraged in earlier adoption practice,⁴⁶ because of the vulnerabilities of adolescents and the limitations of existing community resources to address the unique challenges of caring for adopted children with special needs, public authorities will need to take a greater leadership role in this area.⁴⁷

Surveys of adoptive families reveal the need for post-permanency services. Fortunately, most adoptive families (64%) report never experiencing an emergency or crisis concerning any of their adopted children. But many do. Like families in general, most adoptive families facing an emergency or crisis usually turn first to informal systems of support, such as relatives, friends, neighbors, and other adoptive families.⁴⁸ When these informal supports are exhausted, families will next turn to physicians, religious leaders, and then former adoption workers. Common postpermanency services requested by adoptive families include respite care (weekend or short-term to alleviate parental stress), camp and other summer activities, support groups for adoptive parents and children, educational support (tutoring, testing, and advocacy), counseling, and assistance with finding and paying for residential treatment.⁴⁹ Guardians express many of the same needs.

The changing balance between foster care and legal permanence also has implications for the organization of services to children who stay in the foster care system. Just as the introduction of family preservation and support services increased the likelihood that children with complex needs would enter and stay in the foster care system, permanency planning may also result in the placement of younger children in permanent homes and the development of a residual group of older public wards with special developmental, emotional, and learning needs. This residual population will place additional demands on the system for mental health and remedial educational services that can easily outstrip the capacity of regular foster care in the absence of special wraparound and other support services. Services should also assist all older wards in making a successful transition to independent adulthood,



© Anne W. Krause/Corbis

regardless of whether they age out of the system or find permanence with legal guardians or adoptive parents as adolescents. The recent extension of federal college benefits to wards adopted after age 16 offers a model for ensuring that independence goals complement rather than substitute for permanency plans.

One-half century after child advocates and the federal government enunciated every child's right to guardianship,⁵⁰ achievement of this goal is in sight for the majority of children now entering the child welfare system. In time, foster care may become only a brief interlude between living with birth parents and permanence in a new home established through adoption or legally appointed guardianship. Meanwhile, the shifting balance between temporary foster care and legal permanence presents new challenges to the current organization of the child welfare system. Meeting these challenges will require creative and flexible responses to the changing dynamics of foster care and continued vigilance toward achieving permanence for all children in care.

ENDNOTES

1. Mass, H.S., and Engler, R.E., Jr. *Children in need of parents*. New York: Columbia University Press, 1959.
2. Legal guardianship over a child either through birth or adoption.
3. Bowlby, J. *Attachment and loss*. New York: Basic Books, 1969; and Goldstein, J., Freud, A., and Solnit, A.J. *Beyond the best interests of the child*. New York: Free Press, 1973.
4. See the article by Jones-Harden in this journal issue for a more detailed discussion of this research.
5. Emlen, A., Lahti, J., Downs, G., et al. *Overcoming barriers to planning for children in foster care*. DHEW Publication No. (OHDS) 78-30138. Washington, DC: U.S. Government Printing Office, 1978.
6. Although no reliable time series on foster care trends existed at the time, by piecing together different sources, some official observers determined that the number of children in out-of-home care had decreased dramatically as a result of AACWA from an estimated 500,000 in 1977 to less than 250,000 in 1983. See Gershenson, C.P. *Child welfare research notes #9*. Washington, DC: Department of Health and Human Services, Administration for Children, Youth, and Families, 1985. Others disputed this claim, however. See Steiner, G.Y. *The futility of family policy*. Washington, DC: Brookings Institution, 1981.
7. Several factors appear to have contributed to the increasing number of children in foster care. Analysis of the “flow” of children into and out of the foster care system, as reported to the Voluntary Cooperative Information System (VCIS), suggests that some of the rise can be attributed to parental drug addiction, concentrated urban poverty, and the AIDS epidemic. A marked decline in the rate of exits from care appears to have also contributed to the accumulation of children in long-term foster care. (VCIS was operated by the American Public Welfare Association and funded by the U.S. Department of Health and Human Services. It collected information voluntarily submitted by the states and compiled it in an annual report starting in Fiscal Year 1982. Prior to the development of AFCARS, VCIS was the primary source of data on the national child welfare system and the only source of comprehensive data estimates on the adoption of special needs children who at some time had been part of the substitute care system.) For further discussion of this topic, see Tatara, T. *Characteristics of children on substitute and adoptive care: A statistical summary of the VCIS national child welfare database*. Washington, DC: American Public Welfare Association, 1992; and the article by Stukes Chipungu and Bent-Goodley in this journal issue.
8. These bonuses authorized up to \$6,000 per child adopted over the baseline. See the article by Allen and Bissell in this journal issue for a full discussion of the provisions of ASFA.
9. Smith, J. *The realities of adoption*. New York: Madison Books, 1997.
10. Sokoloff, B. Antecedents of American adoption. *The Future of Children* (1993) 3:17–25; and Carp, W. *Family matters: Secrecy and disclosure in the history of adoption*. Cambridge, MA: Harvard University Press, 1998.
11. Hoksbergen, R.A. *Adoption in worldwide perspective*. Berwyn: Swets North America Inc., 1986.
12. Chandra, A., Abma, J., Maza, P., and Bachrach, C. *Adoption, adoption seeking, and relinquishment for adoption in the United States*. Advance Data from Vital and Health Statistics, No. 306. Hyattsville, MD: National Center for Health Statistics, 1999.
13. Testa, M.F., and Falconnier, L. *Improving data collection on adoption and relinquishment of children in the National Survey of Family Growth*. Final report prepared for a professional services contract, Center for Disease Control and Prevention. Hyattsville, MD: National Center for Health Statistics, December 1998.
14. Adoption 2002 was a 1996 presidential initiative to promote bipartisan federal leadership in adoption and other permanent placements for children in the public child welfare system. Duquette, D.N., Hardin, M., and Payne Dean, C. *Adoption 2002: The president's initiative on adoption and foster care*. Washington, DC: Children's Bureau, National Clearinghouse on Child Abuse and Neglect Information, 1999.
15. Demographic characteristics of foster children are more readily obtainable for children awaiting adoption or adopted from the public foster care system than for children discharged to legal guardianship.
16. U.S. Department of Health and Human Services, Administration for Children and Families. *Adoption and Foster Care Analysis and Reporting System*. Report 7. Washington, DC: DHHS, August 2002. Available online at <http://www.acf.hhs.gov/programs/cb/dis/afcars/cwstats.htm>.
17. For a brief description of Multiethnic Placement Act, see the Appendix at the end of the article by Allen and Bissell in this journal issue.
18. Testa, M., Shook, K., Cohen, L., et al. *Permanency planning options for children in formal kinship care*. *Child Welfare* (September–October 1996) 75(5): 451–70.
19. Spar, K. *Kinship foster care: An emerging federal issue*. Washington, DC: Library of Congress, Congressional Research Service, September, 1993.
20. Gleeson, J., and Craig, L. Kinship care in child welfare: An analysis of states' policies. *Children and Youth Services Review* (1994) 16(1/2):7–31.
21. Leos-Urbel, J., Bess, R., and Geen, R. *State policies for assessing and supporting kinship foster parents*. Washington, DC: Urban League, July 15, 2000.
22. Iglehart, A.P. Kinship foster care: Placement, service, and outcome issues. *Children and Youth Services Review* (1994) 16(1/2):107–22; Scannapieco, M., Hegar, R., and McAlpine, C. Kinship care and foster care: A comparison of characteristics and outcomes. *Families and Society* (1997) 78(5):480–88; and Wulczyn, F., and Goerge, R.M. Foster care in New York and Illinois: The challenge of rapid change. *Social Service Review* (1992) 66(2):278–94.
23. Berrick, J. D., Barth R., and Needell, B. A comparison of kinship foster homes and foster family homes: Implications for kinship foster care as family preservation. *Children and Youth Services Review* (1994) 16(1/2):33–64; Testa, M. Kinship foster care in Illinois. In *Child welfare research review*. Vol. 2. J.D. Berrick, R. Barth, and N. Gilbert, eds. New York: Columbia University Press, 1997, pp. 101–29; and Thornton, J.L. Permanency planning for children in kinship foster homes. *Child Welfare* (1991) 70(5):593–601.
24. Children's Bureau, Social Security Administration, U.S. Department of Health, Education, and Welfare. *Legislative guides to the termination of parental rights and responsibilities and the adop-*

- tion of children. No. 394. Washington, DC: U.S. Government Printing Office, 1961, pp. 2–3.
25. Leashore, B.R. Demystifying legal guardianship: An unexplored option for dependent children. *Journal of Family Law* (1984–85) 23:391–400.
 26. National Council of State Human Services Administrators. *Resolution on kinship care*. Washington, DC: American Public Welfare Association, 1997; American Bar Association. House of Delegates resolution on kinship care of abused, neglected, and abandoned children. Chicago: American Bar Association, 1999; and Child Welfare League of America. *Kinship care: A natural bridge: A report of the Child Welfare League of America based on the recommendations of the CWLA North American Kinship Care Policy and Practice Committee*. Washington, DC: CWLA, 1994, p. 83.
 27. Administration for Children and Families, U.S. Department of Health and Human Services. Child welfare demonstrations pursuant to section 1130 of the Social Security Act, Title IV-E and Title IV-B of the act, Public Law 103-432. *Federal Register* (June 15, 1995) 60(115):31483; and Williams, C. Expanding the options in the quest for permanence. In *Child welfare: An African-centric perspective*. J.E. Everett, S.S. Stukes Chipungu, and B.R. Leashore, eds. New Brunswick, NJ: Rutgers University Press, 1991, pp. 266–89.
 28. The federal foster care (Title IV-E) guardianship demonstrations adhere to the definition of legal guardianship contained in ASFA: “The term ‘legal guardianship’ means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term ‘legal guardian’ means the caretaker in such a relationship.” *Adoption and Safe Families Act*, 42 U.S.C. 675 (7).
 29. As compared with relative custody, for example. An award of legal custody confers on relatives the right of physical possession of the child and the duty to provide the child with food, shelter, education, and medical care. However, in most jurisdictions, an award of legal guardianship carries greater rights and responsibilities. During federal Fiscal Year 2000, there were 26,300 discharges to the custody of relatives. Although more than double the number discharged to legal guardianship, the number represents an increase of only 12% over Fiscal Year 1998, compared with a 77% increase in legal guardianship, from 5,836 to 10,341 cases, during this same period. See U.S. Department of Health and Human Services, Administration for Children and Families. *Welcome to the Children’s Bureau*. Available online at www.acf.hhs.gov/programs/cb. Interim estimates of April 2000 and Fiscal Year 2000 as of August 2002.
 30. See note 29, U.S. Department of Health and Human Services. Interim estimates of Fiscal Year 2000 as of August 2002.
 31. Children discharged to legal guardianship are legally referred to as private wards.
 32. See note 28.
 33. See Bartholet, E. *Nobody’s children: Abuse and neglect, foster drift, and the adoption alternative*. Boston: Beacon Press, 1999; Testa, M. The changing significance of race and kinship for achieving permanency for foster children. Paper presented at Race Matters: A Research Forum. Westat, Inc. and the Children and Family Research Center, UIUC. Washington, DC. January 8–9, 2001; and Wolczyn, F. Closing the gap: Are changing exit patterns reducing the time African American children spend in foster care relative to Caucasian children? Paper presented at the Research Roundtable on Children of Color in Child Welfare. Children’s Bureau. Washington, DC. September 19–20, 2002.
 34. Maza, P. Viewing adoption through the AFCARS lens. Presentation at the Seventh Annual Child Welfare Demonstration Projects Meeting. Washington, DC. February 2003.
 35. Children and Family Research Center. *Displacements from permanence*. Urbana, IL: University of Illinois at Urbana-Champaign, March 2003.
 36. Barth, R.P., Berry, M., Carson, M.L., et al. Contributors to disruption and dissolution of older-child adoptions. *Child Welfare* (1986) 65(4):359–71.
 37. Goerge, R., Eboni, H., Yu, D., et al. *Adoption disruption and displacement: The Illinois child welfare system, 1976–94*. Chicago: Chapin Hall Center for Children, 1995.
 38. See note 35, Children and Family Research Center.
 39. Foster care placements, guardianships, and adoptions.
 40. Williams, J.M. Kinship foster care in New York state—An African-American perspective. In *Fostering kinship: An international perspective on kinship foster care*. R. Greeff, ed. Aldershot, UK: Ashgate Publishing Limited, 1999, pp. 153–65.
 41. In Texas, kin assuming physical custody of a foster child must turn to the state welfare program for financial support.
 42. Terling-Watt, T. Permanency in kinship care: An exploration of disruption rates and factors associated with placement disruption. *Children and Youth Services Review* (2001) 23(2):11–126.
 43. In Illinois, 3.1% of the guardianships awarded in 1997, 2.7% of the 1998 guardianships, and 3.5% of the 1999 guardianships were dissolved by March 2002. Of all the guardianships dissolved or disrupted because of death or incapacitation, 49% necessitated the reappointment of IDCFS as the public guardian of the child because no family member was available to become the child’s private guardian.
 44. English, D.J., Ober, A.J., and Brummel, S.C. *Report on the Washington state guardianship study*. Olympia, WA: Office of Children’s Administration Research, Washington State Department of Social and Health Services, March 1999.
 45. Congressional Budget Office. *CBO baseline for foster care and adoption assistance*. Washington, DC: Human Resources Cost Estimate Unit, March 1999.
 46. Howard, J.A., and Smith, S.L. *Adoption preservation in Illinois: Results of a four year study*. Normal, IL: Illinois State University, 1995.
 47. Watson, K. Providing services after adoption. *Public Welfare* (1992) 50:5–13.
 48. Hemmens, G., Hardina, D., Madsen, R., and Wiewel, W. *Changing needs and social services in three Chicago communities*. Vol. 4, *Hardship and support systems in Chicago*. Washington, DC: Urban Institute, 1986.
 49. See note 46, Howard and Smith.
 50. Weissman, I. Guardianship: Every child’s right. *Annals of the American Academy of Political and Social Science* (1964) 355:134–39; and note 24, Children’s Bureau, Social Security Administration, U.S. Department of Health, Education, and Welfare.

Appendix

Adoptions of Children from Public Child Welfare Agencies, 1995–2001

States ^a	Number of Adoptions					Percentage Increase ^d
	Baseline average ^b	1998 ^c	1999 ^c	2000 ^c	2001 ^c	
Alabama	139	115	153	202	238	71.2%
Alaska	108	95	137	202	278	157.4%
Arizona	357	• ^e	761	853	938	162.7%
Arkansas	138	258	318	325	362	162.3%
California	3,287	4,418	6,372	8,764	9,859	199.9%
Colorado	417	576	714	691	610	71.2%
Connecticut	207	314 ^e	403	499	444	141.1%
Delaware	39	62	33	103	117	200.0%
District of Columbia	110	139	166	319	230	190.0%
Florida	987	1,549	1,358	1,629	1,761	78.4%
Georgia	493	724	1,150	1,080	899	133.3%
Hawaii	85	301	281	280	260	254.1%
Idaho	44	57	107	140	132	218.2%
Illinois	2,200	4,656	7,113	5,664	4,107	223.3%
Indiana	495	795	759	1,147	878	131.7%
Iowa	350	525	764	729	661	118.3%
Kansas	349	419	566	468	428	62.2%
Kentucky	211	209	360	398	573	171.6%
Louisiana	308	311 ^e	356	476	470	54.5%
Maine	108	125	202	379	364	250.9%
Maryland	342	478	592	548	815	138.3%
Massachusetts	1,116	1,100	922	861	778	-1.4%
Michigan	1,905	2,257	2,446	2,804	2,979	56.4%
Minnesota	258	429	633	614	567	145.3%
Mississippi	114	170	237	288	266	152.6%
Missouri	557	640	849	1,265	1,102	127.1%
Montana	115	149	188	238	275	139.1%
Nebraska	185	• ^f	279	293	292	58.4%
Nevada	149	• ^f	123	231	243	63.1%
New Hampshire	45	51	62	97	95	115.6%
New Jersey	621	815	732	832	1,028	65.5%
New Mexico	147	197	258	347	369	151.0%
New York	4,716	4,819	4,864	4,234	3,934	3.1%
North Carolina	467	882	949	1,337	1,327	186.3%

Number of Adoptions

States ^a	Baseline average ^b	1998 ^c	1999 ^c	2000 ^c	2001 ^c	Percentage Increase ^d
North Dakota	47	111	139	105	145	208.5%
Ohio	1,287	1,015	1,868	2,044	2,230	73.3%
Oklahoma	338	505	825	1,067	956	215.7%
Oregon	445	665	765	831	1,071	140.7%
Pennsylvania	1,224	1,516	1,454	1,712	1,564	39.9%
Puerto Rico	^e f	317	357	260	257	Not applicable
Rhode Island	261	222	292	260	267	11.9%
South Carolina	256	465	456	378	384	81.6%
South Dakota	56	55	84	94	97	73.2%
Tennessee	328	337	382	431	646	97.0%
Texas	880	1,602	2,063	2,040	2,318	163.4%
Utah	225	334	369	303	349	64.0%
Vermont	75	118	139	122	116	85.3%
Virginia	298	235	326	448	495	66.1%
Washington	607	878	1,047	1,141	1,204	98.4%
West Virginia	182	211	312	352	362	98.9%
Wisconsin	467	643	642	736	754	61.5%
Wyoming	15	32	45	61	46	306.7%
TOTAL	28,161	36,896	46,772	50,722	50,940	

^aStates are ranked by the percentage increase in adoptions over the baseline average of adoptions from 1995 to 1997.

^bThe data for Fiscal Years 1995 to 1997 were reported by states to set baselines for the Adoption Incentive Program. They came from a variety of sources including the Adoption and Foster Care Analysis and Reporting System (AFCARS), court records, file reviews, and legacy information systems.

^cUnless otherwise noted, the data came from the AFCARS adoption database. AFCARS adoption data are being continuously updated. They may differ from data reported for the Adoption Incentive Program because adoptions reported for that program are identified through a different AFCARS data element and must qualify in other ways to be counted toward the award of incentive funds. Counts include all adoptions reported as of April 1, 2003. Where appropriate, AFCARS data have been adjusted for duplication.

^dPercentage calculated based on the increase from the baseline average to the year between 1998–2001 having the greatest number of adoptions.

^eData usable for this purpose are not available.

^fReported by states as an aggregate number for the *Child Welfare Outcomes Annual Report*.

Source: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. *Adoptions of children with public child welfare agency involvement by state, FY 1995–FY 2001*. Washington, DC: DHHS, October 3, 2002. Available online at <http://www.acf.hhs.gov/programs/cb/dis/adoptchild03.htm>.

