



Guardianship  
Assistance  
Policy and  
Implementation

A National  
Analysis of  
Federal and  
State Policies  
and Programs

JANUARY 2018

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## Acknowledgments

The authors would like to thank Casey Family Programs' partners: the Children's Defense Fund, the American Bar Association, Generations United, and Annie E. Casey Foundation, as well as state child welfare and guardianship assistance experts for their review of this report. We would also like to thank Casey Family Programs strategic consultants for connecting the authors with state guardianship policy experts.

This work is part of an ongoing collaboration with the Chapin Hall Center for Children at the University of Chicago. The collaboration seeks to understand whether and how state guardianship policies are associated with outcomes for children in the foster care system, including a child's length of stay in foster care and time to achieve permanency through guardianship.

**Note on terminology:** Multiple terms are used to refer to state guardianship assistance programs. In this report, we refer to federal IV-E Guardianship Assistance Program (GAP) as federal GAP or Title IV-E GAP. We refer to state funded programs that are separate from Title IV-E GAP and may have child and guardian eligibility criteria that differ from federal requirements as *state-funded guardianship* or *state guardianship assistance*. The terms *subsidized guardianship* and *guardianship assistance* are used interchangeably as more general terms for these overall guardianship programs.

## Executive summary

This report represents a review of the federal Title IV-E Guardianship Assistance Program (GAP) and state-funded guardianship assistance. Federal Title IV-E GAP, and state guardianship assistance statutes and administrative codes were reviewed in the summer of 2016. A survey of state experts in guardianship, or child welfare administrators in the states without a guardianship program currently in place, was also conducted later that year. The report, developed in collaboration with the Chapin Hall Center for Children, was guided by a desire to clearly understand how states are, or are not, supporting guardianship placements in the law and in practice.

States fund their guardianship assistance programs with state or TANF dollars, and they fund federal GAP programs with Title IV-E funds. States may choose to draw down Title IV-E funds to subsidize state guardianship payments in which children and their adult guardians meet Title IV-E qualifications, and they may use additional state funds to subsidize guardianship cases in which the child or the adult guardian does not meet federal qualifications for the Title IV-E GAP program.

States choosing to draw down Title IV-E GAP money for guardianship subsidies must follow the parameters of federal law. However, many states using Title IV-E GAP funds to support guardianship either narrow or expand their federal guardianship assistance programs in the following domains:

- Eligibility criteria for guardianship, including the child's maximum eligible age; the child's age of input into the guardianship decision; and whether the state will allow fictive kin to serve as guardians.
- Amount and types of financial support to families, including the maximum allowable monthly subsidy.
- Post-guardianship management, including periodic guardianship eligibility review.
- Parental rights and responsibilities, including: whether parental rights are explicitly noted; whether child support requirements are stated; and whether family reunification is explicitly noted in state statutes and administrative codes.

States vary widely in their monthly subsidy of guardianship programs, with the maximum rate reaching as high as \$1,360 per month, based upon the states' basic foster care rates. States that choose to draw down Title IV-E GAP to fund their guardianship assistance programs report that they do so because (a) it is the best option for children who cannot be adopted or reunified with their parents; (b) federal funding supports state programs; and (c) federally subsidized guardianship allows additional funding to be used to help move identified populations of children to permanency more quickly.

States that decline to draw down Title IV-E GAP to support guardianship assistance, and instead use state or TANF funds or do not have a guardianship assistance program, report

that: (a) guardians and children in the state will not meet Title IV-E eligibility criteria, particularly foster care licensure requirements of Title IV-E GAP; (b) funding and resources to implement Title IV-E GAP are lacking; and/or (c) guardianship is not considered a permanent placement option for children.

Based on our review of state statutes, administrative codes, and guardianship assistance research and literature we found that state child welfare agencies and court systems should consider the following innovative strategies and recommendations in order to support child permanency options through Title IV-E GAP and guardianship assistance. Additionally, through our 50-state survey state guardianship experts shared the following strategies as their ideas of ways to maximize the effectiveness of their guardianship assistance programs. A number of these strategies and recommendations warrant further research on their effectiveness:

- Build a community of support so that the public child welfare agency can develop a strong relationship and referral process with organizations that provide services to guardians and their children.
- Educate state legislators, judges, parents, guardians, child welfare staff, practitioners and leaders on the benefits of exiting children out of foster care to guardianship (e.g., termination of parental rights is not required) and why these benefits might be best for some children and families. This includes training child welfare staff on the value of guardianship as a permanency option, on guardians' and their children's unique needs, and on how best to meet those needs.
- Set guardianship subsidy rates that are equal to foster care and adoption rates, as some states already do.
- Enact standards for waiver of non-safety licensure requirements. (In general, state child welfare agencies determine licensure regulations, not the federal government.)
- Create concise and colorful pamphlets with brief checklists to help relatives and fictive kin understand the differences between legal guardianship, adoption and foster care, and between the types of services and supports available to them for each option.
- Use both federal Title IV-E GAP funds and state funds (as needed) to support guardians and children because multifaceted funding can help.

Recommendations derived from reviewing state statutes and administrative codes, as well as our survey of 50 state child welfare and guardianship assistance experts include:

- 1.) Support state policies that develop subsidized guardianship. Develop written policies and protocols that reflect the needs of children and families with respect to guardianship assistance, and recognize their unique circumstances. This includes early identification and frequent engagement of relative guardians; and ensuring that caseworkers, supervisors, judges, guardians ad litem, parent counsel and others are informed about the benefits and availability of subsidized guardianship as a permanency option.

- 2.) Additional research is needed to determine if state policies that set guardianship subsidy rates close or equal to foster care rates result in improved use of guardianship and better child outcomes.

Recommendations derived from our review of the guardianship and child welfare literature include:

- 1.) Collect and analyze child outcome data for children moving to permanency in guardianship. Data should include the extent to which guardianship is being used, child well-being outcomes, service needs, disruption rates and potential cost savings from shorter stays in foster care.
- 2.) Clear and consistent communication from leadership about the value of guardianship can make a difference. Agency executives can communicate that positive engagement with relatives who may consider becoming guardians is valued. Leadership is key to developing a positive organizational climate, and dedicating staff and resources to supporting children in guardianship placements.<sup>1</sup>

Organizations can also identify within-agency champions who have the authority to implement policies and promote practices consistent with support for guardians and guardianship placements. This includes developing resources that allow relatives to clearly understand guardianship as an option in comparison with adoption and foster care support.<sup>2</sup>

- 3.) Building upon the kinship navigator innovation in Washington state and other states, create a strong community network to support guardianship families, with a focus on networking through support groups and service organizations. Community-based organizations can provide helpful services to children, parents, and guardians; and all parties may work together to develop a smooth transition from guardianship to adulthood.

States have used their discretion to create diverse legal frameworks to support guardianships in their jurisdictions. This approach to legal permanency is viewed as a valuable alternative when family reunification and adoption are not available options for a child. Together, federal laws, state guardianship laws, policies, procedures, implementation strategies, and supports provide a rich source of innovations for states to consider when developing best practices in guardianship assistance programs.

<sup>1</sup> Maciolek, S. (2015, June). *Use of research evidence: Social services portfolio*. A William T. Grant Foundation White Paper. Retrieved from <http://wtgrantfoundation.org/resource/use-of-research-evidence-social-services-portfolio>

<sup>2</sup> Generations United, ChildFocus, and American Bar Association Center on Children and the Law. *wikiHow for Kinship Foster Care*. Washington, D.C. Retrieved from [http://grandfamilies.org/Portals/0/KinshipCareWikiHow\\_V1R5-2.pdf](http://grandfamilies.org/Portals/0/KinshipCareWikiHow_V1R5-2.pdf)

## Introduction

Every year in the United States, approximately 702,000 unique children are confirmed as victims of child maltreatment.<sup>1</sup> The vast majority of maltreated children remain with their families while the initial crisis is addressed or ongoing services are provided. On any given day in 2015, nearly 428,000 children in the United States were living in foster care.<sup>2</sup> Most of these children were placed into out-of-home care because of some form of parental neglect, while others had experienced physical, sexual, or emotional abuse. While in out-of-home care, many children experience multiple placements, which research has correlated with an increase in emergency room visits, behavioral health problems, loss of social support networks, delayed permanency, and (in young men) higher rates of criminal justice system involvement.<sup>3</sup>

Thus, one of the most pressing goals of public child welfare services is to ensure that children rapidly and safely achieve family permanency. For many children, reunification with parents is the primary goal. However, when reunification is unsafe or not in the child's best interest, adoption or legal guardianship with a caring adult are the primary alternatives.<sup>4</sup>

Placement with relatives has become an increasingly viable option for meeting the best interests of child welfare cases. Relative care is a centuries-old practice, where "children lacking parental care became members of the household of other relatives, if such there were, who reared them to adulthood."<sup>5</sup> Today, children from every culture continue to be raised by relatives when their parents are unable to meet their responsibilities. Relative care has also become a preferred option for many child welfare systems, and federal law has been clear that it is preferred placement when children are placed into foster care because they cannot safely remain with their parents.<sup>6,7</sup>

In fact, 9 percent of the approximately 243,000 children exiting foster care in 2015 achieved permanency with a guardian. Similarly, exit to guardianship was a case plan goal for 3 percent of all children in care in 2015. For another 3 percent, the goal was identified as "live with other relative(s)." However, it should be noted that these children and their caregivers were not receiving the legal or financial benefits of guardianship as provided through child welfare.<sup>2</sup> Just as important, for every child in the foster care system placed with relatives, another 20 children are being raised by grandparents or other relatives outside of formal foster care systems.<sup>7</sup>

Children of color are overrepresented in the foster care population, and relative care is particularly common in families of color.<sup>8</sup> In fact, African American children constitute approximately 14 percent of the child population in the United States,<sup>9</sup> yet represent 24 percent of all children in foster care. Caucasian children represent over 50 percent of the child population in the United States and 43 percent of all children in foster care. Hispanic children represent nearly 25 percent of the child population and 21 percent of all children in foster care. American Indian/Alaska Native (AI/AN) children represent less than 1 percent of the child population and 2 percent of all children in foster care. Asian American children represent



almost 5 percent of the total United States child population, and 1 percent of all children in foster care.<sup>2</sup>

### Guardianship as a permanency option for children

Research also shows that children do best when raised with relatives,<sup>10</sup> even if that is foster care with relatives.<sup>11</sup> In recent years, guardianship with a relative has become recognized as an important permanency option for children in foster care when reunification is not possible. Research shows that approximately 45 percent of children in out-of-home care have case plan goals other than reunification. The goals include adoption (22 percent), guardianship (9 percent), and going to live with other relatives (6 percent).<sup>2</sup>

State courts, which have authority over child welfare cases, determine the scope of a guardian's rights and responsibilities. Accordingly, definitions of guardianship and the terms of guardianship orders and agreements vary from state to state. In all states, however, guardians are granted care, custody, and control of a child and are responsible for providing the child with a safe and stable home, food, clothing, and basic health care. Guardians also have the right to make certain decisions regarding the child, including consent to school enrollment and routine medical care.

The primary difference between guardianship and adoption is that guardianship does not require termination or relinquishment of parental rights, and guardians' rights are not as expansive as parental rights. In many states, birth parents may retain certain rights and responsibilities such as the right to consent to adoption of the child, major medical treatment, and enlistment in the armed forces; and they often remain responsible for paying child support. As part of the guardianship agreement, courts can allow birth parents to maintain contact with their child including regular visitation. Birth parents may also retain the right to petition the court to revoke or modify a guardianship upon a showing of changed circumstances and that changing the guardianship is in the child's best interest. Another distinction between guardianship and adoption is that the legal relationship between a guardian and child ends when the child reaches the age of majority, is adopted, or marries.

One of the reasons relative guardianship has become integrated into child welfare practice is that it fills the need for permanency when neither reunification nor adoption are appropriate. For example, guardianship may be well-suited for an older child who has an established relationship with a relative caregiver, but adoption is not appropriate, perhaps because either the relative or child is unable or unwilling to pursue it. Guardianship may also be the right choice in cases in which reunification is not possible or in the child's best interest, but there are no grounds for termination of parental rights. For example, this might be a case where the birth parent is severely disabled and unable to parent, but both the parent and child want to maintain their relationship and legal standing as parent and child.

Guardianship also allows for maintenance of bonds between children and their birth families in culturally sensitive contexts.<sup>12</sup> Maintenance of strong familial and tribal bonds among American

Indian and Alaska Native (AI/AN) children and families is a particularly salient reason to promote guardianship assistance within tribes. American Indian children's loss of familial, tribal, and cultural connections is likely to increase when placed with families that do not share their culture or heritage. This challenge is particularly acute for AI/AN children who are disproportionately represented in foster care<sup>13</sup> and whose familial and cultural ties are a central part of their overall well-being.

Many states recognize the value of relatives as caregivers and have facilitated the guardianship process in recent decades. Beginning in the early 1980s, states began providing subsidies to relative guardians with their own funds or by applying to receive Title IV-E waiver dollars. These subsidies allowed relatives to provide appropriate support and care for children in a more permanent setting rather than having these children remain in the foster care system at a higher cost to the state. Federal adoption assistance support has been available to all states since 1980. However, federal guardianship assistance was only made available to all states under Title IV-E of the Social Security Act in 2008, with the passage of the *Fostering Connections to Success and Increasing Adoptions Act*. Some states that have opted into the Title IV-E Guardianship Assistance Program continue to subsidize non-Title IV-E eligible guardianships with other sources such as other state or TANF funds.

### Fostering Connections Act

In 2008, Congress passed the *Fostering Connections to Success and Increasing Adoptions Act* (*Fostering Connections Act*). An important purpose of the Act was to incentivize the use of relative guardianships to help children in foster care achieve permanency.<sup>7</sup> Among other things, the Act established the Title IV-E Guardianship Assistance Program (GAP), which allows federal funds to be used to support state subsidies for eligible children and relative guardians who are committed to caring permanently for these children. As of this writing, 33 states, the District of Columbia and six tribes have implemented GAP.<sup>14</sup>

The *Fostering Connections Act* gives states the option to use Title IV-E funds for guardianship assistance if the following requirements are met:

- The guardian is a relative of the child (although the law does not define "relative").
- The guardian has a strong commitment to caring permanently for the child, is a licensed foster parent, and has cared for the child in a licensed foster care home for at least six consecutive months.<sup>15</sup>
- The child meets eligibility requirements for receipt of Title IV-E foster care maintenance payments.
- If the child is 14 years of age or older, he or she must be consulted about the guardianship.
- Neither reunification nor adoption are appropriate permanency options for the child.
- The state will match federal funds with state dollars at the Medicaid matching rate.<sup>16</sup>

If states are not willing or able to meet these requirements or choose not to operate a Title IV-E GAP program, they may fund a relative guardianship assistance program with their own funds. The *Fostering Connections Act* allows states to pay relative guardians up to the same rate as the state's monthly foster care subsidy, but not more than this. While the federal guardianship statute sets out a basic framework for Title IV-E GAP, including eligibility requirements, the states retain discretion to shape and develop their programs in unique ways. For example, states may define which relatives are eligible (i.e. relatives by blood, marriage, or adoption, or expanded to include *fictive kin* such as close family friends). They may also add to some eligibility requirements, provide supports to families beyond the monthly subsidy, and formulate the terms of the guardianship support agreement. Perhaps most importantly, the *Fostering Connections Act* does not directly address the issue of parental rights, yet state-subsidized guardianship programs can impact a parent's continuing responsibilities, including child support obligations, depending on how the state implements Title IV-E GAP.

When compared with children in non-relative care, research suggests that children in relative care experience greater stability as shown by fewer placement and school changes, and more positive feelings about their placement.<sup>17</sup> Given that guardianship has grown in use, it is imperative that states conduct a rigorous evaluation of its associated benefits and potential risks. In other words, the success of guardianship must be gauged not by how quickly and how many children are placed in permanent guardianship, but rather by how many children remain in these placements as stable homes and how their developmental needs are being met.<sup>18</sup>

### Purpose of the present study

Given the continuing interest of states in taking advantage of the optional provision of the *Fostering Connections Act*, we initiated a research project to expand our understanding of Title IV-E GAP statutes and administrative codes. Our work was intended to be a first step in expanding the growing yet still relatively modest body of research concerning guardianship.

Our research was guided by two key questions:

1. *How do state statutes and administrative codes support (or fail to support) relative guardianship as a permanent placement option for children in foster care?*
2. *How do the written provisions of state statutes and codes vary with their on-the-ground implementation?*

In short, by first analyzing state guardianship statutes and policies, and then following up with a brief implementation survey directed to the state's guardianship assistance expert, we sought to understand how states are shaping the role of relative guardianship within their child welfare systems. It is hoped that our findings will benefit state and federal policymakers, including legislators and child welfare leaders, as they consider guardianship policies or assistance programs, particularly Title IV-E GAP. Of note, a third phase of the project, conducted in collaboration with the Chapin Hall Center for Children, will review variance in state guardianship policy and its associated outcomes for children, such as length of stay in care and timing to permanency.

## Data collection and measures

### Overview

We adopted a two-phase approach to our analysis of state guardianship assistance programs. First, during the summer of 2016 we used content analysis to analyze state statutes and administrative codes pertaining to guardianship assistance for children in the child welfare system. Second, in the fall of 2016 we conducted structured phone surveys with state child welfare or guardianship experts to interpret state policies and administrative codes, and to gather additional information about the practical and financial implementation of state guardianship assistance policies in a variety of child welfare systems (i.e., state-administered versus state-supervised and county-administered systems).

### Analysis of subsidized guardianship state statutes and administrative codes

Data for our analysis included state statutes and administrative codes pertaining to subsidized guardianship. We also used findings from a detailed review of guardianship law, particularly the *Making It Work* report, a collaborative effort led by the Children’s Defense Fund, Generations United, the ABA Center of Children and the Law, ChildFocus and Child Trends.<sup>6</sup> Content analysis techniques were employed to review individual statutes and codes. *Content analysis* refers to analytic techniques that are well suited to the empirical study of legal texts; they range from “impressionistic, intuitive, interpretive analyses to systematic, strict textual analyses.”<sup>19</sup>

We took an approach that was composed of three specific stages:

- **Stage 1:** We located applicable statutes and codes by using previous analyses of guardianship statutes and through Westlaw searches. Once located, we examined individual state statutes, codes, and materials for searched for key terms and provisions that appeared in the Title IV-E GAP legislation. This search was initially focused on guardianship eligibility criteria and subsidy amounts, regardless of funding mechanism. From this initial examination and search, numerous important terms and provisions emerged that are not included in the federal law.
- **Stage 2:** We recorded the emergent terms and provisions, then iteratively searched the statutes, codes, and other materials for these new terms. Ultimately, we identified, coded, and condensed the major themes in the legal materials into larger, cohesive themes.<sup>20</sup> This phase of the analysis was concluded when we could no longer identify any additional terms or provisions.
- **Stage 3:** We developed descriptions of the terms, provisions, and themes in the materials and then excerpted illustrative quotes that best reflect the meaning of each grouping of terms.<sup>21</sup>

### Survey of state guardianship experts

In order to supplement the findings from the legal materials, we gathered additional data through a survey. To identify individuals who would be knowledgeable of how state guardianship laws were being implemented, we first contacted Casey Family Programs strategic consultants. These individuals have ongoing working relationships with child welfare



leaders, administrators, and staff in every state and the District of Columbia. Strategic consultants directed us to the appropriate state guardianship experts. We invited these experts to participate in a brief, one-hour telephone survey examining how guardianship assistance is implemented in their state. State experts were informed that their responses would be combined with those of other child welfare professionals, and that their names and positions would not be identified in any reports or public records.

Those who agreed to participate in the survey were asked whether their state has a guardianship assistance program, followed by a series of questions regarding state funding, implementation, judicial oversight, and practices surrounding guardianship. State experts who indicated that their state does not have guardianship assistance or Title IV-E GAP were asked about their understanding of the reasoning behind that decision. The full survey can be found on the Casey website (see [casey.org](https://www.casey.org)). We contacted experts in all 50 states and the District of Columbia and requested their participation. Experts from states without a guardianship assistance program were also invited to participate, and only one expert declined. Findings presented here include a summary of information from the 50 jurisdictions that participated in the implementation survey as well as our review of state law and policies.

## Results: State guardianship provisions

### Key state provisions

This section presents the key provisions identified during the content analysis of state law and administrative codes. (See also Appendix A.) In Table 1 we also summarize the overall frequency with which key provisions in statutes or codes were found. It is important to note that some state materials are highly detailed while others are more skeletal and only address key features of guardianship assistance programs. Furthermore, not all of the terms and provisions analyzed are addressed by all 50 states and the District of Columbia. When terms and provisions are absent from the materials we reviewed, “Not Available (NA)” is noted.

Occasional inconsistencies and conflicts among a state’s own statutory provisions and administrative codes were noted. The *Making It Work* report,<sup>6</sup> with its descriptive analysis of state guardianship policies, was used to help reconcile these conflicts. We also sought to clarify conflicts throughout the survey.

Overall, our research findings reveal a patchwork of Title IV-E GAP and guardianship assistance laws across the United States. These laws suggest that the states are inclined to support opportunities for guardianship, whether subsidized or not.<sup>20</sup> Our analysis of the survey data further supports these findings.

Table 1: National Summary of State and Washington DC Guardianship Statutes and Administrative Codes  
(N= 51)

Funding	Eligibility Criteria			Payment	Post-Guardian-ship Mgmt.	Parental Relationship		
	Source of Guardianship Funding	Maximum Eligible Age	Age of Input			State Allows Fictive Kin as Guardian	Maximum Negotiated Monthly Subsidy (% of Foster Care Payment)	Periodic Case Review
Title IV-E GAP: 6 states	Age 21: 26 states	Age 12: 8 states	Yes: 40 states	100% FC: 35 states	Yes: 30 states	Yes: 28 states	Yes: 31 states	Yes: 23 states
Title IV-E GAP & State: 27 states	Age 19: 8 states	Age 14: 32 states	No: 11 states	<100% FC: 3 states				
State: 8 states	Age 18: 14 states			Other: 4 states				
TANF: 3 states								
NA: 7 states	NA: 3 states	NA: 11 states		NA: 9 states	NA: 21 states	NA: 23 states	NA: 20 states	NA: 28 states

Data collected and analyzed from state statutes and codes are current as of July 2016. Fictive kin includes family friends and non-relatives that the child or the parent considers "family." NA indicates that these guardianship terms are missing from state statutes and administrative codes identified in our findings. States that do not have a guardianship assistance program are counted as NA.

## Findings: Overview

In the next sections we address the findings from our analysis of state subsidized guardianship statutes, state administrative codes, and interviews with 50 state experts. In order to draw down Title IV-E funds to support state guardianship subsidies, states must follow the parameters of federal law. However, there are areas where states can exercise discretion to either expand or narrow their individual federally funded Guardianship Assistance Programs (GAPs). Variations in four domains were found in our analysis of legal materials:

1. Eligibility criteria for guardianship
2. Amount of financial support to families
3. Post-guardianship management
4. Parental rights and responsibilities

States clearly vary in their approach to these issues. While many states expand the funding for which guardians may apply, others choose to either strictly follow federal guidelines or to fund guardianship assistance programs with state rather than federal dollars.

## Findings: Eligibility criteria

### Variance in eligibility criteria for guardianship assistance

Federal Title IV-E GAP legislation identifies several criteria to determine whether children and relatives are eligible for federally subsidized guardianship funding. Of great significance is the federal requirement that relatives become licensed foster care providers. However, state licensing criteria, when they appear in state law, vary across the states. This variation led us to initially focus on identifying children’s eligibility for guardianship assistance. We identified three federal eligibility criteria where states vary in their requirements and each is discussed in the sections that follow.

1. Extension of eligibility for subsidized guardianship beyond age 18
2. Age at which children must be consulted before a guardianship decision is determined
3. Eligibility of different types of relatives and fictive kin to serve as guardians

### Extension of eligibility for guardianship assistance

Federal law states that federally funded Title IV-E GAP “may not be limited due to the age of a child under 18 years old...”<sup>22</sup> This means that Title IV-E GAP payments extend until the child reaches at least age 18. Under federal law, states may exercise their discretion to extend Title IV-E GAP eligibility to a maximum age of 21 years for children who were age 16 or older when their guardianship subsidy became effective. More than half of the states (26 states) have modified their age limits to allow children to remain in guardianship until age 21; eight states allow it until age 19; 14 states cap guardianship eligibility at age 18 (Table 1). Three states did not specify an age in publicly available policies or statutes. Generally, this variance suggests that the majority of states have recognized that children and families need support beyond age 18. Consequently, they have chosen to make guardianship more appealing to families by allowing for an extended period of support. (See Appendix A for a state-by-state policy overview.)

It is important to note that in Title IV-E GAP cases where eligibility extends beyond 18 years of age, the child must meet certain conditions for the subsidy to continue. These include completing high school or an equivalent program, being enrolled in a post-secondary or vocation education program, working or preparing for work, or having a medical condition that prevents engaging in these activities.

### Age of children’s input into guardianship

Title IV-E GAP law requires that children age 14 or older “be consulted regarding the guardianship arrangement.” States vary in their implementation of this federal policy.

Specifically, eight states require children as young as 12 years to be consulted regarding the guardianship decision; 32 states identify 14 years as the minimum age; and 11 states do not specify an age in the materials we examined. These findings suggest that some states believe in consulting with younger children when deciding upon guardianship, while others are more cautious about involving younger children in the decision. (See Table 1 and Appendix A.)

### Fictive kin eligibility

While Title IV-E GAP law requires guardianship placement with a “relative,” only grandparents are explicitly mentioned; otherwise, the original legislation is silent on the definition of a relative. In general, the Title IV-E GAP law states that its purpose is to enable the states “...to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children.”<sup>23</sup> Nevertheless, states have the discretion to limit the definition of relatives to those related by blood, marriage, or adoption. Alternatively, they may expand their definitions to include fictive kin — individuals with whom the child has a close relationship, such as close family friends. Federal law does not define kin in terms of tribal clan membership for Native American families but again leaves that to the states to address.

It should be noted that in 2014 the federal *Preventing Sex Trafficking and Strengthening Families Act* required the following be included in the definition of relatives by each state implementing a Title IV-E GAP program: *all adult grandparents, and all parents of a sibling of the child, where such parent has legal custody of a sibling.*<sup>24</sup> Siblings must include those who would have been considered siblings by the state, except that their parents’ rights were terminated or their parents died.

Our analysis of state statutes found that most states do not explicitly define *relative* in their guardianship statutes. Because of this, we referred to other provisions in state guardianship law and policy (such as the “Definitions” provisions at the beginning of statutory sections concerning dependency) to determine the meaning of the term. In examining these various statutes, we found that 40 states include fictive kin in their definitions of relative, while 11 states require that a guardian be related by blood, marriage, or adoption. (See Figure 1.) It is important to note that the implementation of this language may vary; and social workers, child welfare leaders, and decision-makers may support guardianship by fictive kin as a practice or implementation-level policy decision. Nevertheless, it is instructive to see how state laws and policies differ, at least in official pronouncements.

When states allow fictive kin to serve as guardians this may increase the pool of relatives eligible for guardianship assistance. Two such examples of expansive definitions from state statutes and codes follow as illustrations:

*A "nonrelative extended family member" is defined as an adult caregiver who has an established familial relationship with a relative of the child... . The parties may*

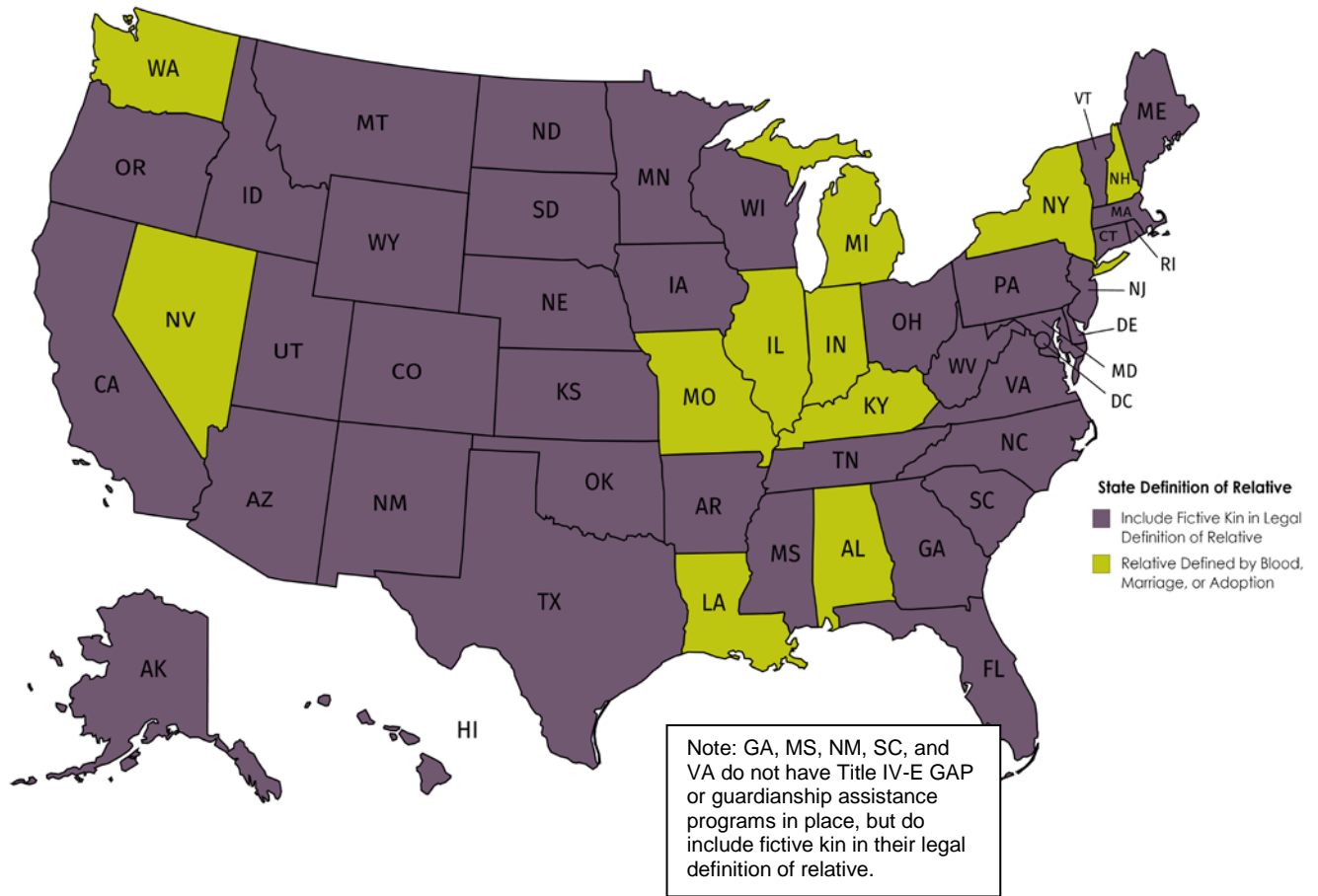


*include relatives of the child, teachers, medical professionals, clergy, neighbors, and family friends.<sup>25</sup>*

*A kinship guardian is: a member of the child's extended family; a member of the child's or family's tribe; the child's godparents; the child's stepparents; or a person to whom the child, child's parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family.<sup>26</sup>*

In contrast, states with more narrow definitions of *relative* may limit the number of people who are both defined as kin and who can serve as a subsidized guardian (whether supported through the Title IV-E program or not). This has the potential of reducing the number of guardianships established in those states.

Figure 1: Variance in State Definition of Relative



## Findings: State financial support to guardians

### Overview

Although other supports are allowed and may be required by law, the primary means for supporting families who become guardians is through providing financial assistance. States fund their guardianship assistance programs with state or TANF dollars, and they receive support for their federal GAP programs through Title IV-E funds. States may choose to draw down Title IV-E funds to support state payments for subsidized guardianship cases in which children and their adult guardians meet Title IV-E qualifications, or they may use state funds to subsidize guardianship cases in which the child or the adult guardian do not meet federal Title IV-E programmatic qualifications for guardianship assistance.

States who choose to administer a Title IV-E GAP program may receive federal support for funds they provide for a monthly maintenance payment as well as a one-time payment of up to \$2,000 to cover non-recurring expenses associated with establishing the guardianship.<sup>27</sup> However, just as states have the discretion to expand eligibility requirements, they also have the freedom to adjust the financial supports provided to families, which is exercised by setting the monthly maintenance payment amount for each guardianship established. States determine what an individual guardian will receive, up to the maximum amount, by negotiating with relative caregivers and entering into a guardianship agreement.

While the states set the ongoing monthly subsidy amount, the *Fostering Connections Act* requires that the assistance payment “not exceed the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home.”<sup>28</sup>

### Monthly maintenance payments vary by state

Based upon the data found in state statutes and administrative codes, we determined that a majority of states (35) allow for monthly subsidy payments equal to 100 percent of the foster care payment. Three states allow for negotiation of payment below 100 percent of the monthly foster care payment. The following excerpt from the Louisiana Administrative Code exemplifies the language states use to set a subsidy rate below the monthly foster care payment:

*The amount of payment shall not exceed 80 percent of the state’s regular foster care board rate based on the monthly flat rate payments of the regular foster care board rate for the corresponding age group.*<sup>29</sup>

It should be noted that four states specify an amount equal to their state’s adoption subsidy and eight states did not include their rate of subsidy in the materials we found and reviewed. (See Table 1 and Appendix A.)

In general, states vary in the source of funding they use to provide financial support to guardians (e.g., Title IV-E, state funds, a combination of both, TANF, or other funds).

Title IV-E GAP is the primary source of funding for six states because they are eligible to draw down Title IV-E GAP only after expending state funds. States only receive a portion from the federal government of what they provide to guardians. Eight states use individual state funds to support guardianship assistance programs, and three states primarily fund their guardianship assistance programs with TANF dollars. The remaining states that subsidize guardianship use a mixture of Title IV-E and state dollars to fund Title IV-E GAP and state guardianship assistance programs. Missouri uses a mix of Title IV-E GAP, TANF, and state funds. (See Figure 2 and Appendix A.)

The amount of the financial subsidies provided to guardians are similarly diverse. In most states, the guardianship subsidy is negotiated between caregivers and the child welfare agency, where negotiations begin at \$0 but the upper ceiling is the rate paid on behalf of the child while in foster care. Exceptions to this are the states of Washington and Louisiana, which cap the upper limit of funding a guardian may receive at 80 percent of the foster care rate paid on behalf of the child, and the state of Florida, which caps the upper limit at 82 percent of the foster care rate paid on behalf of the child.

### **Funding guardianship assistance: Washington state**

Prompted by federal financial incentives, Washington implemented its Title IV-E guardianship program in 2010. The program, known as R-GAP, or Relative Guardianship Assistance Program, replaced the state's former dependency guardianship program. Washington's R-GAP program is funded with Title IV-E GAP dollars and the required state dollar match. The state has interpreted guardianship eligibility to include relative guardians by blood, marriage, or adoption.

For American Indian or Alaska Native children, relatives may be extended family members as defined by the law or custom of the child's tribe. In the absence of such law or custom, a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a 24-hour basis to an Indian child as defined in the law may serve as the guardian.<sup>30</sup> The inclusion of fictive kin is not specifically stated.

Subsidies may be up to 80 percent of the foster care rates for the child, which includes any additional subsidy amount allowed for a child with special needs. Washington's guardianship expenses are reimbursed by the federal government at a 50 percent match rate. The use of R-GAP Gatekeepers, staff who assist caseworkers and supervisors as they navigate the regulations and policies of the R-GAP program, has been a critical tool in the program's implementation in Washington state.





guardians, but this assistance is not ongoing. (See highlights from Connecticut and Oregon, which follow.) Figure 3 depicts the variance in state monthly subsidy amounts.

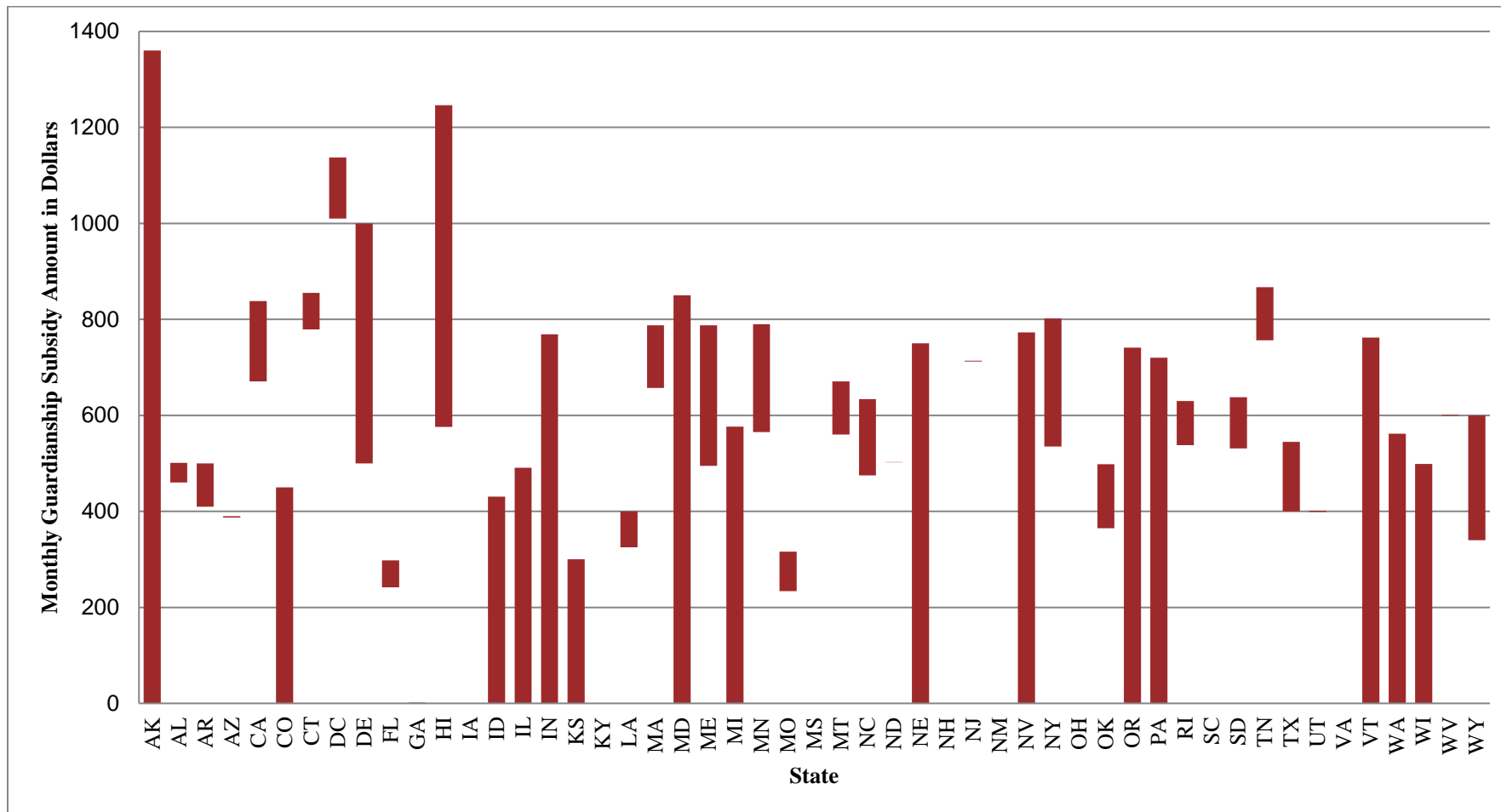
### **Funding guardianship assistance: Connecticut**

Connecticut's Title IV-E program was implemented in 2012 to increase permanency for children. Title IV-E funds provide 90 percent of the state guardianship program funding while the other 10 percent is covered only by state funds. The monthly stipend offered for guardianships is the same as that offered for adoptions. In July 2015, Connecticut expanded its guardianship program to allow fictive kin to be eligible for IV-E guardianships. To improve families' understanding of various permanency options, caseworkers in Connecticut use an informational grid displaying the major components and benefits of different permanency options. This has been an effective practice tool for caseworkers, case supervisors, judges, and families considering adoption and guardianship.

### **Funding guardianship assistance: Oregon**

Oregon's Title IV-E program began in 1999 as the Title IV-E Waiver Demonstration Project, to offer alternatives for child permanency. The program was found to be an important permanency option for Oregon families, and the state moved to adopt the program as a regular IV-E GAP program in 2008. The program is funded with federal Title IV-E and supplemented with TANF dollars. Subsidies in Oregon are negotiated with guardians in a process that is similar to state negotiations for adoption subsidies. A non-Title IV-E guardianship program was implemented in 2015. In determining if guardianship is the best plan for children and determining that reunification and adoption are not appropriate, Oregon uses a Permanency Committee, which is composed of the child's case team, Court Appointed Special Advocate (CASA), the local child welfare branch manager or supervisor, and two additional staff members.

Figure 3: State Monthly Guardianship Subsidy Ranges in Dollars



GA, IA, KY, MS, NM, OH, SC, and VA do not have funded guardianship assistance programs. No information was available for NH. Data and information collected and analyzed from survey results, government websites, and other publicly available state information as of December 2016.

## Findings: Post-guardianship management

### Overview

We examined three additional issues in our review of legal materials and our interviews with state guardianship experts that are addressed in the following sections:

1. Periodic eligibility review after guardianship is established
2. Naming a successor if a guardian dies or cannot continue
3. Dependency case status after guardianship is established

### Eligibility review after establishment of guardianship

A majority of state materials (30 states) explicitly reference the need for regular review of guardianships (Table 1). However, the rigor of this review varies. It may be as minimal as an annual report to officials that attests to the child's continued residence in the guardian's home, or the guardian may need to apply annually for continued funding. In addition, some legal materials make clear that the case review helps to evaluate the ongoing need for financial subsidy. For example, the District of Columbia code indicates that as part of the annual review, "the need for continuing each permanent guardianship subsidy" shall be determined.<sup>31</sup> Similarly, Idaho requires "a mandatory annual evaluation of the need for continued assistance and the amount of the assistance."<sup>32</sup> Interviews also underscored the varied approach. Experts told us the following:

*Guardians have to re-apply each year for GAP. Local departments of social services send out the re-applications, which ask if the child is still living with the guardian and if other eligibility criteria are still met. A new home study is not required. If the application is approved, the subsidy continues in place.*

*We require an annual contact and education letter to keep track of where the child is attending school. We also look at the reports and follow up with services that may need to be added to the child's care. It's not a probate court type review, but the probate courts do their own annual review of subsidized guardianship.*

*Once a year guardians receive a letter and a one-page review survey to ensure that the child is still in their care and in school. Guardians are also asked to indicate any change in circumstances.*

*An annual review verifies the child is still in the [guardian's] home and the child's assets or income (SSI). We do not consider guardians' income or assets [in our review].*

In contrast, 17 state experts indicated that their state does not conduct an annual review of guardianship status. However, this does not necessarily indicate the absence of state requirements that guardians report major status changes. As one guardianship expert stated:

*Guardians are required to report changes and respond to requests for information per the guardianship agreement. Currently, information is requested on a case-by-case basis and these are mostly prompted if the department receives information that the child is no longer in the home. Our state is moving towards sending a simple survey to guardians on an annual rolling basis to ensure the child is still in [the guardian's] care and the guardian is still providing services.*

These reports clearly have a bearing on the status of a guardianship. In fact, 13 state experts surveyed indicated that guardianship agreements had been terminated by the courts after the courts reviewed the required reports. However, the number of terminations was nearly always described as *few*, *very few*, or *only one or two per year*. Only one state expert indicated a higher number of guardianships terminated per year, explaining: *The subsidy is terminated if a request for information is not followed through. We send out 2,000 letters per year and 25 to 35 [guardianships] are terminated a year.*

Overall, our research indicates that states customize the review process and procedures to meet their needs, with some states choosing processes that are relatively simple and other states imposing a heavier burden on guardians. These reporting requirements distinguish guardianship from adoption and reunification wherein the state does not, ultimately, maintain an ongoing presence in the parent/child relationship. This ongoing review diminishes the zone of privacy around a family involved in a guardianship compared to adoption or permanent reunification. In rare cases the ongoing review may provide the child and family with additional programs and services and it provides a minimal check on the child's well-being.

### Successor guardianship

In adoption and reunification, children's parents are responsible for indicating who will take custody of their child in the event of their death or incapacity. Federal Title IV-E GAP regulations indicate that a successor guardian must be named. The 2014 *Preventing Sex Trafficking and Strengthening Families Act* added a provision that allows for continued guardianship in the event of the guardian's death. Specifically, the Act states:

*In the event of the death or incapacity of the relative guardian, the eligibility of a child for a kinship guardianship assistance payment under this subsection shall not be affected by reason of the replacement of the relative guardian with a successor legal guardian named in the kinship guardianship assistance agreement...*<sup>33</sup>

During the interviews, 30 of the experts indicated that successor guardian provisions are in place in their state, whereas these provisions do not exist in five states with state-funded



programs. Experts from states using Title IV-E funding to support guardianship indicated successor guardianship provisions are in place. However, the state requirements vary for the successor guardian and for how the transfer of guardianship takes place. Most state experts indicated that the successor guardian must pass a background check and/or home study, and to receive Title IV-E GAP, clearance of criminal and child abuse background checks are required. Not all states require that the successor guardian be licensed as a foster parent to receive the guardianship subsidy. Eleven state experts indicated that if a successor guardian is not named, the child returns to the child welfare system until either a successor guardian or foster care placement can be identified. As one state expert said:

*If the child is under 18 [years old] he or she returns to foster care — or reverts to the previous status. If the child is over 18, guardianship extension ends and the child is emancipated. Sometimes the courts will place the child with another guardian; rules are currently being drafted.*

Overall, once the guardian candidate has met federal requirements (including a fingerprint-based background check, and child abuse and neglect registry checks both in-state and out-of-state on the successor guardian and other adults aged 18 and older living in the successor guardian's home), states may customize successor guardian procedures to meet the state's unique needs. For example, some have processes that require relatively little effort on the part of the successor guardian. Two state experts explained this approach:

*The caregiver can name a successor guardian. We conduct a best-interest assessment and connect with the family. New guidelines allow money to transfer to the successor guardian; we have the same standard for safety, but successors do not have to be licensed. They must have a long-term plan to care for the child.*

*Once a person is named as a successor guardian, we enter into an agreement for subsidy.*

Other state codes adopt a more laborious approach. For example, the Maryland administrative code makes clear that guardianship assistance ends if “the child or relative guardian dies” and that guardianship assistance cannot be transferred to a relative unless the relative is “party to both the guardianship assistance agreement and the applicable decree of custody and guardianship.”<sup>34</sup>

### Dependency case after establishment of guardianship

States vary in their handling of the underlying dependency case once a guardianship has been established. Our review of state statutes and administrative codes found that at least 13 states appear to close the dependency case. In Oregon, for example, a guardianship order terminates the department's “care or custody” of the child and an order is entered “relieving the Department of responsibility for the care, placement, and supervision of the child.”<sup>35</sup> Similarly, in Nebraska, the case is dismissed “following the court hearing finalizing the guardianship.”<sup>36</sup> In

Washington, the dependency case is closed and a guardianship case is opened.<sup>37</sup> However, in Washington state, guardianship cases are also governed by dependency law and the Juvenile Court. While some states close the dependency case, it is not always clear how the case is then managed by the Court.

During our survey of state guardianship experts we asked them to rate the perceived ease or difficulty of terminating a legal guardianship in their state or jurisdiction. Twenty-one state experts indicated that termination is either *very easy* (two state experts), *easy* (seven state experts) or *somewhat easy* (12 state experts). Three experts explained their responses:

*Guardianship is viewed as less permanent and easier to terminate (than adoption), and there are a lot of court requirements for guardians. All that is required for termination is the guardian to file a motion in court to terminate guardianship and write a letter to DHHS to terminate the subsidy.*

*A biological parent can file a motion to regain custody. The court will usually follow the parent's wishes. There is an opportunity for due process if the subsidized guardian has an issue with the child returning to the parent's custody.*

*We are a small state, so there is isn't a lot of bureaucratic red tape.... Our staff are much more able to go out into the field as well as into court to terminate guardianship when necessary. We seek concurrence from the family for any modifications to the subsidy amount. If the family disagrees, we have an administrative hearing process that is fairly easy to navigate.*

Two state experts indicated that terminating a legal guardianship relationship is between *somewhat easy* and *difficult* depending upon negotiations between the guardian and the child welfare department. One state rated this level of ease as difficult because of the absence of federal requirements for termination of guardianship, which leaves the determination up to state discretion.

Six state experts indicated that guardianship is either *difficult* (five state experts) or *very difficult* (one state expert) to terminate; they explained their responses as follows:

*It's very difficult because we have structured it in a similar manner to our adoption subsidies.*

*It's difficult for [guardianship] to be overturned in court because of court costs.*

*It requires judicial action. We work closely with parents prior to determining the guardianship role. We don't get behind undoing permanent guardianship.*

*The guardian could file to terminate the guardianship if they know what to do or if all parties are in agreement that the child will benefit from a change.*

However, it should be noted that most experts stated that while guardianship assistance payments and terms may be modified, legal guardianship decrees are not frequently overturned.

## Findings: Parental rights and responsibilities

### Overview

The ongoing residual relationship between children and their parents after guardianship is established is arguably the most distinctive feature of relative guardianship compared to other permanency options for children. Because of the significance of parental rights, we focused on three issues addressed in state law and policy:

1. Parent visitation during guardianship
2. Parents' child support responsibility during guardianship
3. Reunification with parents after establishing guardianship

### Parent visitation

Parents' rights do not need to be terminated in order to establish a legal guardianship relationship. In fact, the absence of the need to terminate parental rights may be one of the primary benefits of guardianship. Given that parents retain certain rights to their children following guardianship, it is not surprising that 28 states address parental visitation in their legal materials (Table 1). A number of these states indicate that the terms of visitation should be set out in guardianship orders (a typical approach, as each case is unique and requires judicial review and determination) although they do not specify these terms. For example, Georgia only requires that the visitation schedule be "reasonable:"

*Permanent guardianship orders...[e]stablish a reasonable visitation schedule which allows the child... adjudicated as a dependent child to maintain meaningful contact with his or her parents through personal visits, telephone calls, letters, or other forms of communication or specifically include any restriction on a parent's right to visitation.<sup>38</sup>*

### Child support

While parents may have the right to visit their children following guardianship, they may also have continuing responsibilities to them. Our analysis of state materials found frequent references to parents' ongoing liability for child support as a legal financial obligation. States make clear that this obligation is legally distinct from the subsidy payment to guardians; meaning, parents do not owe child support to the guardians, but must pay support to the state (presumably as reimbursement for the monthly subsidy). Thirty-one states refer to parents' ongoing child support duties (see Table 1).

## Parental reunification

Legal and policy language in 23 states variously suggest possible parental reunification after establishment of a guardianship. Parents may bring a legal action to end guardianship and seek reunification with their child; this action would likely be prompted by an improvement in parents' circumstances surrounding their ability to care for the child. Like other legal procedures pertaining to children, the ultimate standard for determining whether parental reunification is appropriate, and the guardianship is terminated, is whether it is in the child's best interest.

## Findings: Factors in a state's decision to use federal Title IV-E funding for subsidized guardianship

### Why do states opt to administer a federal Title IV-E Guardianship Assistance Program?

State experts cite several reasons why their states chose to opt to administer a Title IV-E GAP and draw down federal dollars for guardianship assistance programs. We identified the following reasons from the interview data:

1. Guardianship assistance is the best option for children who cannot be adopted or returned to their parents
2. Federal funding supports state programs
3. Guardianship assistance allows funding flexibility for identified populations of children

Twelve state experts cited the state's support of Title IV-E GAP as the best avenue for children to find permanency. This is true particularly for those children for whom adoption is not an appropriate option, adolescents who are at risk of aging out of foster care, or children with special needs. Two state experts noted that guardianship assistance helps their state's poorest families.

Financial incentives are another reason that states chose to draw down Title IV-E GAP funding. Eight state experts described using federal funds as a way to supplement their existing state-funded guardianship assistance budgets. As one expert noted, it makes fiscal sense for the state:

*It's our policy that if there is a federal resource available and we have a need, we will go after the federal funding first. The Title IV-E program aligns with our state legal custodianship program.*

Another expert stated that drawing down federal Title IV-E dollars to support children with special needs is a more equitable distribution of funding by placement type (i.e., more uniform benefits between foster care, adoption assistance and guardianship assistance):

*[Our state] has had relative custody assistance. It was a clumsy system made up of Child-Only and TANF grants. It did not address all of children's needs or special needs, or the quality of their care placement. Now [our state] will have relatively uniform benefits between foster care, adoption assistance, and guardianship assistance and can monitor placements closely.*

Another guardianship expert also noted that the state's decision to draw down Title IV-E GAP funding increases their options for moving children, particularly children who are Native American, to safe and permanent homes. Three guardianship experts said their states are presently working to implement Title IV-E GAP. Two state experts noted that their state legislatures are supportive of using federal Title IV-E dollars to fund subsidized guardianship and the state is interested in submitting a state plan amendment to operate Title IV-E GAP:

*We are making steps in the right direction towards adoption of federal IV-E; we are looking towards a change in our practice and licensing providers. There is no legislative resistance, so it should go through soon.*

*We will have subsidized guardianship in place by January 2017.*

*[Our state] now has a kinship care program, which was just funded by the legislature to provide subsidies to relative caregivers. Most kids are placed with kin; kinship care providers are mostly diversion or informal placements, but they could become licensed. We are working hard to develop the IV-E subsidized guardianship component of the kinship care program, and we want to provide kin with the same money as foster care parents in the future.*

### Why do states choose not to administer a Title IV-E GAP?

Some states do not opt to administer a federal Title IV-E GAP. The reasons for doing so fell within three broad categories:

1. Guardians and children in the state will not meet Title IV-E eligibility criteria
2. Support, funding, and resources to implement Title IV-E GAP are lacking
3. Guardianship is not considered a permanent option for children

State licensure requirements and the perceived inability of guardians and children to meet federal Title IV-E GAP standards led four states to refrain from using federal Title IV-E GAP dollars to subsidize these guardianships:

*Most of our guardians will not meet Title IV-E requirements, especially requirements for licensure.*

Three state experts indicated their perspective that their state legislatures are not in favor of Title IV-E GAP, citing licensure requirements as the most prominent deterrent. It should be noted that foster parent licensure is an administrative decision made by child welfare agency



personnel and not determined by federal requirements. Although the guardian must pass criminal record and child abuse registry checks to obtain foster parent licensure, states have discretion when determining whether a guardian should be licensed or whether there are acceptable waivers to licensing requirements. In certain situations, requiring licensure can discourage individuals from applying to be a guardian.<sup>39</sup>

Alongside licensing concerns, experts also expressed their views that conservative state politics and a lack of enthusiasm for extending subsidized guardianship payments to age 21 were barriers. Finally, two experts indicated that their states are not engaged in the use of federal funds for Title IV-E GAP because individuals in their state felt that *guardianship is not a permanent option; adoption is our primary goal*.

## Discussion

This study of state guardianship assistance statutes and administrative codes, and our survey of state guardianship and child welfare experts, were guided by a desire to clearly understand how individual states are supporting, or are not supporting, guardianship assistance placements in state law and in practice as well as their use of federal funds to support this effort. We also sought to build upon the base of scholarship on guardianship and to bring clarity to the varied ways in which states adopt and implement the federal law.

In order for states to draw down Title IV-E GAP money for guardianship subsidies, they must follow the parameters of federal law. However, we found clear areas where states have exercised their discretion and either narrowed or expanded this federal framework. This discretion in creating guardianship programs falls into four domains:

1. Eligibility criteria for guardianship
2. Amount of financial support to families
3. Post-guardianship management
4. Parental rights and responsibilities

States have used their discretion to create diverse legal frameworks to support guardianship assistance in their jurisdictions, resulting in a varied body of state guardianship laws. Taken together, our research findings reveal variance in guardianship laws across the states. There is significant opportunity to educate people in the child welfare system about guardianship, raise awareness of it, and promote understanding of guardianship as a permanency option. Additional research is needed to better understand how a more refined combination of federal and state legislation and implementation policies and practices can better support children, guardians, and families.

Future research should consider a focus on understanding how guardianship affects outcomes for children of color who are disproportionately over-represented in the child welfare system. Specifically, African American children represent 14 percent of the total United States

population of children and 21.5 percent of the children exiting foster care to guardianship while white children represent 50 percent of the total United States population of children, and only 45 percent of the children in guardianship families.<sup>2</sup> Research is needed to understand this disparity.

## Innovations, strategies, and recommendations

State guardianship experts shared the following strategies for maximizing the effectiveness of state guardianship assistance programs. The below strategies reflect their suggestions, a number of which warrant further research and exploration of their impact on guardianship rates and outcomes for these children:

- Build a community of support so that the public child welfare agency can develop strong relationships and referral processes with organizations that provide services to guardians and their children.
- Educate state legislators, judges, parents, guardians, child welfare staff, practitioners and leaders on the benefits of guardianship (e.g., termination of parental rights (TPR) is not required) and why these benefits might be best for some children and families. This includes training child welfare staff on the value of guardianship as a permanency option, guardian families' unique needs, and how best to meet those needs.
- Enact standards for waiver of non-safety licensure requirements. (In general, state child welfare agencies determine licensure regulations and not the federal government.)
- Set guardianship subsidy rates that are equal to foster care and adoption rates, as some states already do.
- Create concise and colorful pamphlets with brief checklists to help relatives and fictive kin understand legal guardianship, adoption, and foster care and the differences in your state regarding service provision and support.
- Explore the use of both Title IV-E GAP funds and state funds (as needed) to support guardians and children as multi-faceted funding can help.

The following recommendations are based upon our findings of state and federal guardianship assistance laws, implementation information gathered in the state survey of experts, and a review of extant guardianship literature. In many cases, these recommendations are designed to fill a gap or meet an identified need in evaluating outcomes for children and adolescents who exit the child welfare system and move to permanency in guardianship.

Recommendations from our review of state statutes and administrative codes, and from our survey of 50 state child welfare or guardianship assistance experts include the following:

1. **Support state policies that develop subsidized guardianship.** Develop written policies and protocols that reflect the needs of children and families with respect to guardianship assistance, and recognize their unique circumstances. This includes early

identification and frequent engagement of relative guardians and ensuring that caseworkers, supervisors, judges, guardians ad litem, parent counsel and others are informed about the benefits and availability of subsidized guardianship as a permanency option. This re-examining of funding structure is designed to ensure that both the caretakers and children in guardianship homes receive all the financial and other supports they may need to address multiple key domains, including child emotional and behavioral functioning, resiliency, protective factors and overall sense of self. (See Figure 4.)

#### Figure 4: Key Assessment Domains for Child Assessment in Child and Family Social Services

(Cognitive, language, physical, dental, vision and hearing health may also need to be assessed.)



Source: Pecora, P.J. (2015). *Assessment: Ensuring That Children Receive the Right Services at the Right Time from High Quality Providers*. Presentation for the National Association for Children's Behavioral Health conference, Baltimore, MD, July 16, 2015.

2. **Conduct additional research to determine if protocols that reflect equity and the unique circumstances of children and families receiving guardianship assistance result in improved use of guardianship and better child outcomes.** While we lack research regarding the impact of guardianship rates that are similar to foster parent rates, child welfare agencies and court systems that value guardianship assistance align their policies and practice to ensure that children have the needed services and supports for permanency. These policies and practices include:

- Defining roles and expectations for all stakeholders, including agency leadership and staff, guardians and care providers, family, and legal and judicial representatives.
- Identifying and continually engaging relatives and fictive kin who may serve as child guardians. Making relative search, engagement, and education of guardianship status and benefits a priority.
- Ensuring that caseworkers, supervisors, judges, guardians ad litem, parent counsel, and others are informed about the availability and benefits of subsidized guardianship as a permanency option.
- Making licensing relative caregivers a priority and examining state barriers to licensure to determine if licensure can be simplified and streamlined for relative caregivers.<sup>39,40</sup>
- Supporting widespread understanding in written materials and information that for some cultural groups or families terminating parent rights is *not* an acceptable option, and that guardianship with planning for beyond age 18 is a viable permanency option that can lessen child trauma and family conflict.

Recommendations derived from our review of guardianship assistance policy and child welfare literature include the following:

1. **Collect and analyze child outcome data to support guardianship assistance as a safe and stable permanency option for children.** Guardianship is often considered a more fragile permanency option than adoption or family reunification. Better data on the prevalence and causal factors of guardianship disruptions or terminations are needed so that proactive steps can be taken to increase the success of this option. State and local child welfare agencies may collect and analyze data on guardianship assistance, including the extent to which guardianship is being used, child well-being outcomes, service needs, and disruption rates. Ideally this would include cost savings, if any, from reduction in foster care usage. More empirical data are needed on the relative permanence of guardianship in comparison to adoption and family reunification to support policies that enhance services to children and guardians.
2. **Clear and consistent communication from leadership about the value of guardianship can make a difference.** Agency executives can communicate that positive engagement with relatives who may consider becoming guardians is valued. Leadership is key to developing a positive organizational climate, and dedicating staff and resources to supporting children in guardianship placements.<sup>41</sup> Organizations can also identify within-agency champions who have the authority to implement policies and promote practices consistent with support for guardians and guardianship placements. Training on the value of relative guardians, on their unique needs and on how to best meet these needs should be provided to agency staff. Child outcome data can be used to highlight relative guardianship successes. Data should be consistently reviewed to understand the experience of children living with relatives.

- 3. Create a strong community network to support guardianship assistance.** Child welfare agencies can focus on developing strong relationships and referral processes with organizations that provide relevant services to children, parents, and guardians. State agencies can educate community providers in the importance of services to guardians and children in guardianship as a support for stable child placements. Local child welfare agencies may work to gain court approval of relative guardianship as the permanency option in a court review as early as it is known that this is the most appropriate case option. In some states, taking this step helps ensure that the guardianship approval is quick and relatively less burdensome for guardians and caseworkers. Agencies might consider reviewing the cases of older youth who have been assigned the permanency goal of *another planned permanent living arrangement* (APPLA) to determine if relative guardianship is a more appropriate permanency option.

Agencies may also build community networks and opportunities for guardianship families to network through mentoring, support groups and leadership development. In addition, planning for life beyond guardianship is critical. Agencies and community organizations may choose to work together to address such questions as: How can the transition from guardianship to adulthood be designed to preserve as many of the benefits and as much security as possible for the youth as they reach age 18? What kinds of follow-up support services to families will be most helpful? How can agencies best stay in touch with these families?<sup>42</sup>

### Conclusion

This two-phase study found that states have used their discretion to create diverse legal frameworks to support guardianships in their jurisdictions. This approach to legal permanency for a child is generally viewed as a valuable alternative when family reunification or adoption are not possible or not in the child's best interest. When viewed together, the federal law and the state guardianship laws, policies, procedures, and supports provide a rich source of innovations for states to consider.





Eligibility Criteria					Funding			Post-Guard. Mgmt.	Parental Relationship		
State	Source of Guardianship Funding <sup>2</sup>	Maximum Eligible Age for Subsidy/ Conditional	Age of Child Input into Guard.	State Allows Fictive Kin as Guardian	Maximum Negotiated Monthly Subsidy (% of Foster Care Payment)	Minimum Subsidy Monthly Payment (\$)	Maximum Subsidy Monthly Payment (\$)	Periodic Eligibility Review	Parental Visitation Rights Explicitly Noted	Child Support Required	Possibility for Family Reunification Explicitly Noted
Idaho	IV-E GAP & State	18	14	Yes	100%	0	431	Yes	NA	Yes	NA
Illinois	IV-E GAP & State	21	14	No	100%	0	491	Yes	Yes	NA	NA
Indiana	IV-E GAP & State	19	14	No	Other	0	769	Yes	Yes	Yes	Yes
Iowa	State	19	14	Yes	100%	N/A	N/A	Yes	Yes	Yes	Yes
Kansas	State	21	NA	Yes	Other	0	300	Yes	Yes	Yes	NA
Kentucky	NA	18	NA	No	100%	N/A	N/A	Yes	NA	Yes	NA
Louisiana	IV-E GAP	18	14	Yes	80%	325	400	Yes	Yes	NA	Yes
Maine	IV-E GAP & State	21	14	Yes	100%	495	788	Yes	Yes	Yes	Yes
Maryland	IV-E GAP & State	21	14	Yes	100%	0	850	Yes	NA	Yes	Yes
Massachusetts	IV-E GAP & State	21	14	Yes	100%	679	679	NA	NA	NA	NA
Michigan	IV-E GAP & State	21	14	No	100%	0	577	NA	NA	NA	NA
Minnesota	IV-E GAP	21	14	Yes	100%	565	790	NA	Yes	Yes	NA
Mississippi	NA	NA	NA	Yes	100%	N/A	N/A	NA	Yes	Yes	NA

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Missouri	IV-E GAP, State & TANF	18	14	No	100%	234	316	NA	NA	NA	NA
Montana	IV-E GAP & State	19	12	Yes	100%	560	671	NA	NA	NA	Yes
Nebraska	IV-E GAP & State	19	14	Yes	100%	0	750	Yes	NA	Yes	NA
Nevada	State	18	14	No	100%	0	773	NA	NA	NA	Yes
New Hampshire	NA	NA	NA	No	NA	N/A	N/A	Yes	Yes	NA	NA
New Jersey	IV-E GAP & State	18	12	Yes	100%	713	713	Yes	Yes	Yes	Yes
New Mexico	NA <sup>6</sup>	18	14	Yes	NA	N/A	N/A	NA	Yes	Yes	Yes
New York	IV-E GAP & State	21	14	No	100%	535	802	Yes	Yes	NA	NA
North Carolina	IV-E GAP & State	18	NA	Yes	NA	475	634	NA	NA	Yes	NA
North Dakota	IV-E GAP & State	18	14	Yes	NA	503	503	Yes	Yes	Yes	NA
Ohio	State & TANF <sup>7</sup>	19	NA	Yes	NA	Time Limited		Yes	NA	Yes	NA
Oklahoma	TANF & IV-E GAP	19	14	Yes	100%	365	498	NA	Yes	Yes	Yes
Oregon	IV-E GAP & State	21	14	Yes	100%	544	741	NA	NA	NA	NA



Eligibility Criteria					Funding			Post-Guard. Mgmt.	Parental Relationship		
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Pennsylvania	IV-E GAP & State	21	12	Yes	100%	0	720	NA	Yes	Yes	Yes
Rhode Island	IV-E GAP & State	21	14	Yes	100%	538	630	NA	Yes	NA	Yes
South Carolina	NA	19	NA	Yes	NA	N/A	N/A	Yes	Yes	Yes	Yes
South Dakota	IV-E GAP & State	21	14	Yes	100%	531	638	NA	NA	NA	NA
Tennessee	IV-E GAP & State	21	12	Yes	100%	756	867	Yes	Yes	Yes	Yes
Texas	IV-E GAP & State	21	14	Yes	100%	400	545	NA	NA	NA	NA
Utah	TANF	NA	NA	Yes	NA	400	400	NA	Yes	Yes	NA
Vermont	IV-E GAP & State	21	12	Yes	100%	0	762	NA	Yes	Yes	NA
Virginia	NA	21	NA	Yes	100%	N/A	N/A	Yes	NA	Yes	Yes
Washington	IV-E GAP	21	14	No	80%	0	562	NA	Yes	NA	Yes
West Virginia	State <sup>8</sup>	21	14	Yes	100%	600	600	Yes	NA	NA	NA
Wisconsin	IV-E GAP & State	21	14	Yes	Other	0	499	Yes	NA	Yes	NA
Wyoming	State	18	14	Yes	100%	340	600	Yes	Yes	Yes	NA

<sup>1</sup> Data collected and analyzed from state statutes and administrative codes is current as of July, 2016. Data collected and analyzed from survey results, government websites, and other publicly available state information are current as of December 2016.

<sup>2</sup> State experts informed the source of state guardianship funding.

Eligibility Criteria			Funding			Post-Guard. Mgmt.	Parental Relationship				
State	Source of Guardianship Funding <sup>2</sup>	Maximum Eligible Age for Subsidy/ Conditional	Age of Child Input into Guard.	State Allows Fictive Kin as Guardian	Maximum Negotiated Monthly Subsidy (% of Foster Care Payment)	Minimum Subsidy Monthly Payment (\$)	Maximum Subsidy Monthly Payment (\$)	Periodic Eligibility Review	Parental Visitation Rights Explicitly Noted	Child Support Required	Possibility for Family Reunification Explicitly Noted

<sup>3</sup> NA (not available) indicates the frequency with which these guardianship terms are missing from state statutes and administrative codes or funding information identified in our findings. Not all of the terms and provisions analyzed are addressed by all 50 states and Washington, D.C.

<sup>4</sup> Other indicates that the guardianship payment is equal to the adoption subsidy.

<sup>5</sup> The Georgia state expert informed us that in January 2014, Georgia stopped allowing relative care subsidies and removed “custody to relatives” as a legal permanency option.

<sup>6</sup> New Mexico recently received approval for a Title IV-E GAP program. At the time of our survey, the state did not have a subsidized guardianship or guardianship assistance program.

<sup>7</sup> Ohio does not have a formal guardianship assistance program. At the time of our survey, the state expert indicated that Ohio does have some locally funded programs for guardians. Funding is provided by the state for a limited time.

<sup>8</sup> Although West Virginia has received federal approval to use Title IV-E GAP, at the time of our survey the state expert indicated that 100% of guardianship assistance funds are from the state.



- <sup>1</sup> U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2016a). *Child maltreatment 2014*. Retrieved from <http://www.acf.hhs.gov/programs/cb/research-data-technology/statistics-research/child-maltreatment>
- <sup>2</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (2016b). The AFCARS report preliminary FY 2015 estimates as of June 2016 (23). Washington DC: US Department of Health and Human Services. Retrieved from <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport23.pdf>
- <sup>3</sup> See: Rolock, N., Koh, E., Cross, T. & Massing, J.E. (2009). *Multiple Move Study: Understanding Reasons for Foster Care Instability*. Springfield, IL: Children and Family Research Center, School of Social Work, University of Illinois at Urbana-Champaign. Pecora, P.J. & Huston, D. (2008). Why should child welfare and schools focus on minimizing placement change as part of permanency planning for children? *Social Work Now*, 41, 19-27. Rubin, D.M., Alessandrini E.A., Feudtner, C., Localio, A.R. & Hadley, T. (2004). Placement changes and emergency department visits in the first year of foster care. *Pediatrics*, 114, e354-e360. Ryan, J. & Testa, M. (2004). *Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability*. Champaign-Urbana, IL: University of Illinois at Urbana-Champaign School of Social Work, Children and Family Research Center.
- <sup>4</sup> U.S. Department of Health & Human Services (2016b). *Child Welfare Outcomes 2010–2013: Report to Congress*. Retrieved from <http://www.acf.hhs.gov/programs/cb/resource/cwo-10-13>
- <sup>5</sup> Slingerland, W.H. (1919). *Child-placing in families*. New York, NY: Russell Sage Foundation, p. 27.
- <sup>6</sup> Children's Defense Fund, Child Trends, American Bar Association Center on Children and the Law, Casey Family Programs, Child Focus, & Generations United (2012). *Making It Work: Using the Guardianship Assistance Program (GAP) to Close the Permanency Gap for Children in Foster Care*. Seattle, WA, and Washington, DC: Authors. Retrieved from <http://www.childrensdefense.org/library/data/making-it-work-using-the.pdf>
- <sup>7</sup> Generations United (2016) *Raising the Children of the Opioid Epidemic: Solutions and Support for Grandfamilies*. Washington, DC: Author. Retrieved from [http://www.gu.org/Portals/0/documents/Reports/16-Report-State\\_of\\_Grandfamilies.pdf](http://www.gu.org/Portals/0/documents/Reports/16-Report-State_of_Grandfamilies.pdf)
- <sup>8</sup> Scannapieco, M. & Hegar, R.L. (Eds.). *Kinship Foster care--policy, practice, and research*. New York: Oxford University Press. (1999).
- <sup>9</sup> ChildTrends Data Bank. (2016). *Racial and Ethnic Composition of the Child Population*. Retrieved from [https://www.childtrends.org/wp-content/uploads/2014/07/60\\_Racial-Composition.pdf](https://www.childtrends.org/wp-content/uploads/2014/07/60_Racial-Composition.pdf)
- <sup>10</sup> Winokur, M., Holtan, A. & Batchelder, K. (2014). Kinship care for the safety, permanency and well-being of children removed from the home for maltreatment, *Campbell Collaboration*, 10(2); Wu, Q., White, K., & Coleman, K. (2015). Effects of kinship care on behavioral problems by child age: A propensity score analysis. *Children and Youth Services Review*, 57, 1-8.
- <sup>11</sup> Koh, E. & Testa, M. (2011). Children discharged from kin and non-kin foster homes: Do the risks of foster care re-entry differ? *Children and Youth Services Review* 33, 1497-1505.
- <sup>12</sup> Child Welfare Information Gateway. (2016). *Kinship Guardianship as a Permanency Option*. Retrieved from <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/kinshipguardianship/>

- <sup>13</sup> Annie E. Casey Foundation. (2016). *A Movement to Transform Foster Parenting*. Baltimore, MD: Author. Retrieved from <http://www.aecf.org/resources/a-movement-to-transform-foster-parenting>
- <sup>14</sup> Thirty-three states have been given final approval for GAP amendments, including: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, and Wisconsin. New Mexico has also been given approval for GAP amendments, and is currently working to implement GAP.
- <sup>15</sup> Licensure of foster parents is an administrative decision made by child welfare agency personnel. States have discretion when determining whether a guardian should be licensed or whether there are acceptable waivers to licensing requirements. See: Annie E. Casey Foundation, American Bar Association, National Council of Juvenile and Family Court Judges. (n.d.). *Judicial Tip Sheet: Kin First, Keeping Families Together*. Retrieved from [http://grandfamilies.org/Portals/0/documents/KinshipCare%20Judges-1Pager\\_Final.pdf](http://grandfamilies.org/Portals/0/documents/KinshipCare%20Judges-1Pager_Final.pdf)
- <sup>16</sup> Public Law 110-351, Sec. 101(b)(3)(A)(iii).
- <sup>17</sup> Generations United. (n.d.) *Children thrive in grandfamilies*. Washington, DC: Author. Retrieved from <http://grandfamilies.org/Portals/0/16-Children-Thrive-in-Grandfamilies.pdf>
- <sup>18</sup> Koh, E. & Testa, M. (2011). Children discharged from kin and non-kin foster homes: Do the risks of foster care re-entry differ? *Children and Youth Services Review* 33, 1497-1505.
- <sup>19</sup> Hsieh, H. & Shannon, S. (2005). Three approaches to qualitative content analysis. *Qualitative Health Research*, 15, 1277-1288.
- <sup>20</sup> Graneheim, V.H. & Lundman, B. (2004). Qualitative content analysis in nursing research: Concepts, procedures and measures to achieve trustworthiness. *Nurse Education Today*, 24, 105-112.
- <sup>21</sup> See additional findings from this study: Vesneski, W., Killos, L., Pecora, P., & McIntire, E. (In press). An analysis of state law and policy regarding subsidized guardianship for children: Innovations in permanency. *UC Davis Journal of Juvenile Law & Policy*.
- <sup>22</sup> H.R. 6893 (110<sup>th</sup>): *Fostering Connections to Success and Increasing Adoptions Act of 2008*.
- <sup>23</sup> Public Law 110-351, Sec. 101(a)(3)(28).
- <sup>24</sup> 42 U.S.C. § 671 (a) (29), Sec.101 (b)
- <sup>25</sup> California Welfare and Institutions Code, § 362.7.
- <sup>26</sup> Montana Child and Family Services Policy Manual: Substitute Care for Children Guardianship, p. 11/10.
- <sup>27</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. § 673(d) (2) (2014), Pub.L. No. 110-351. Sec.101 (b).
- <sup>28</sup> 42 U.S.C. § 673 (d) (2) (2014), Pub.L. No. 110-351. Sec.101 (b).
- <sup>29</sup> La. Admin. Code tit. 67, pt. V, § 4101(B)(1) (2016).
- <sup>30</sup> 25 U.S.C Sec. 1903(4).
- <sup>31</sup> District of Columbia Code § 16-2399(f) (2016).
- <sup>32</sup> Idaho Admin. Code r. 16.06.01.702(04)(f) (2016).
- <sup>33</sup> *Preventing Sex Trafficking and Strengthening Families Act*. 42 U.S.C. § 673(d)(3)(C) (2012).
- <sup>34</sup> Maryland Code Regs. 07.02.29.13(A)(5), (C) (2016).

- <sup>35</sup> Or. Admin. R. 413-070-0959 (2016).
- <sup>36</sup> Neb. Dep't of Health & Human Serv. (2012). Legal Guardianship Guidebook 5, [http://dhhs.ne.gov/children\\_family\\_services/Guidebooks/Legal%20Guardianship%20Guidebook.pdf](http://dhhs.ne.gov/children_family_services/Guidebooks/Legal%20Guardianship%20Guidebook.pdf)
- <sup>37</sup> Wash. Rev. Code Ann. § 13.36.040(4) (West 2016).
- <sup>38</sup> Ga. Code Ann. § 15-11-242(a) (2016).
- <sup>39</sup> See: NARA, Generations United, Annie E. Casey Foundation, & American Bar Association's Center on Children and the Law. (2016). *Model Family Foster Home Licensing Standards*. Washington, D.C. Retrieved from <http://www.grandfamilies.org/Portals/0/Model%20Licensing%20Standards%20FINAL.pdf>
- <sup>40</sup> See: Annie E. Casey Foundation, American Bar Association, National Council of Juvenile and Family Court Judges. (n.d.). *Judicial Tip Sheet: Kin First, Keeping Families Together*. Retrieved from [http://grandfamilies.org/Portals/0/documents/KinshipCare%20Judges-1Pager\\_Final.pdf](http://grandfamilies.org/Portals/0/documents/KinshipCare%20Judges-1Pager_Final.pdf)
- <sup>41</sup> Maciolek, S. (2015, June). *Use of research evidence: Social services portfolio*. A William T. Grant Foundation White Paper. Retrieved from <http://wtgrantfoundation.org/resource/use-of-research-evidence-social-services-portfolio>
- <sup>42</sup> During and post-guardianship and adoption supports are what the National Quality Improvement Center on Adoption & Guardianship Support and Preservation is testing with a wide range of states and one American Indian Tribal Nation. See: [http://qic-ag.org/wp-content/uploads/2017/02/FinalLitReview\\_2-15-17.pdf](http://qic-ag.org/wp-content/uploads/2017/02/FinalLitReview_2-15-17.pdf)

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