

Statutory Preferences for Relative Placement

As a prerequisite for receiving funding for child welfare services, federal law requires states to "consider giving preference to an adult relative over a non-related caregiver when determining placement for a child, provided that the relative caregiver meets all relevant State child protection standards."¹ As such, all states currently mandate, either by statute or other state policy, that child welfare agencies give preference to "fit and willing"² relative caregivers. At least ten states (CA, CO, FL, GA, ID, MN, NV, NH, NJ, and OR) go further and require the agency to make a concerted effort to seek out kin when a child is identified as abused or neglected. In all cases, the relative placement must be in the best interest of the child and/or consider the "physical and emotional welfare of the child."³ Colorado considers the needs of the family and community in addition to the child.⁴

Considering the implications for receipt of federal funding, it is presumptive that states would provide straightforward language in their statutes regarding the placement of children and youth with relatives for kinship care. However, a fifty-state statutory review reveals that this is not always the case. In some states, language regarding relative placement will appear in several different sections of the code, making it difficult for grandparents and other relatives conducting their own research to determine their rights and responsibilities in regards to their own kin.⁵ In some states, a stated preference for relative care is buried deep within complicated statutory language or does not appear at all (but is reflected in state policy and practice). In all states, the way the federal law regarding relative placement is interpreted might hinge on the particular use of a word or phrase. "Shall attempt to place" (the most common instruction to state agencies) has a very different meaning than "promote the placement of a child" or even "shall recommend."

Only ten states (AK, IN, CO, LA, MN, MO, MT, NY, OK, and UT) enumerate which relatives should be considered for placement; some states do so by priority list, typically prioritizing grandparents over other relatives.⁶ Missouri does not articulate a priority list, but nevertheless states a preference for grandparents over other relatives. Both blood relatives and adoptive relatives are typically considered for placement. Indiana, for instance, instructs the court to specifically consider "placing the child with a suitable and willing blood or adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling."⁷

If a state does not identify which relatives should be considered first for kinship care, most states do define "relative" or "kin" or "relative caregiver" elsewhere in their code. Thus, potential kinship caregivers should not be deterred if they are of a degree of kinship not specifically enumerated in the section relating to relative placement.

At least ten states (CA, CO, FL, GA, ID, MN, NV, NH, NJ, and OR) require states to actively seek out relatives when a family first encounters the child welfare system. Four states (CA, CO, FL, and GA) require the search to be "diligent," while three require the search to be "reasonable." Some states require the state to search for relatives over a specific period of time. In Nevada, a search for relatives must be completed within one year.⁸ In New Jersey, a search for relatives must be initiated within thirty days and is considered complete when all "sources" contacted have "either responded to the inquiry or failed to respond within forty-five days."⁹ In Minnesota, the relative search should last no more than six months; Minnesota is also the only state that indicates by statute that a search for relatives should include both maternal and paternal relatives, although this does not preclude other states from including both sides of the family in their searches.¹⁰

It is important to recognize that states are not automatically required to place a child with a relative. The state may determine that a relative's home is unsuitable or a relative declared fit by the state may be unwilling to provide care for the child. Most states require the state to keep detailed and comprehensive documentation of any decisions made regarding placement, and relatives will sometimes be able to appeal an unfavorable decision. Florida and Minnesota do not rule out transferring custody to a relative at a later point in time. New Jersey, however, does not require a state to reevaluate its decision or a relative's decision at any point in time.

Any decision to not place a child with a relative typically needs to be written and/or orally communicated. Alaska specifically provides that such communication "shall be made in the adult family member's native language" in case any discrepancies should arise.¹¹

Two states stand out as having particularly innovative relative placement policies. California's policy is unique in that it details over a dozen factors—beyond best interest of the child and the wishes of the parents and relatives—that might impact a state's decision to place a child with a relative. For example, caseworkers and courts should consider: placement of siblings and half-siblings in the same home; the good moral character of the relative and any other adult living in the home; the nature and duration of the relationship between the child and the relative; and the ability of the relative to protect a child from his or her parents, facilitate visitation with the child's other relatives, and provide legal permanence for the child if reunification plans ultimately fail.¹² Such elaborate direction and detail will help decision-makers make the best possible placement determinations for an already-vulnerable child.

Whenever possible, Kansas allows relatives to take an active role in determining a child's placement. State officials work to convene a conference consisting of the child's grandparents, aunts, uncles, siblings, cousins, and any other relatives interested in potentially providing care. The secretary makes sure that all of the relatives are properly informed of the child's situation, and the relatives are able to decide amongst themselves the relative most fit (if any) to assume care of the child. Unless the state determines that there is "good cause" to place the child with a person other than the relative recommended by the child's relatives, the child "shall be placed" in accordance with their recommendation.¹³ It is uncertain whether the state must actively seek out all relatives to conduct this group conference or if relatives are encouraged to step forward on their own when they know a family member has entered state custody. One study indicates that two states besides Kansas hold family conferences to identify placement options for kin,¹⁴ but it is unclear whether such a practice is enumerated by statute.

Though the vast majority of states are considerate of children's legal right to be placed with relatives (assuming it is in their best interest), the law in this area is constantly changing to provide better protection for children, youth, and families. In 2005 alone, eleven states (AZ, CO, MD, MT, NJ, NY, PA, SD, TX, MO, and WA) created or revised provisions of their state law relating to relative placement.¹⁵ It is likely that more states will continue to evolve their law to reflect states' increasing reliance on kinship families to care for abused and neglected children.

¹42 U.S.C. 671(a)(19).

²This language is not used in all state statutes. Some states, Colorado for example, require a relative to be "appropriate, capable, willing, and available." COLO. REV. STAT. ANN. § 19-1-115 (1)(a) (2006). Other states state that a relative must be "qualified to receive care for the child" (Georgia) or "suitable and willing" (Indiana).

³MASS. GEN. LAWS. ANN. CH. 119, § 39 (2006).

⁴COLO. REV. STAT. ANN. § 19-3-508(b)(l) (2006).

⁵See e.g., CAL. [FAM.] CODE § 7950(a) (2006); CAL.[WELF. & INST.] CODE § 361.3 (a) (2006).

⁶MO. ANN. STAT. § 210.565 (2006).

⁷IND. CODE ANN. 31-34-4-2 (2006).

⁸NEV. REV. STAT. ANN. § 128.110 (2006).

⁹N.J. STAT. ANN. § 30:4C-12.1 (2006).

¹⁰See MINN. STAT. ANN. § 260C.212 (2006).

¹¹See ALASKA STAT. § 47.14.100 (2006).

¹²See CAL.[WELF. & INST.] CODE § 361.3 (a) (2006). Other factors, such as the ability of the relative to "provide a safe, secure, and stable environment" for the child are also considered. *Id.*

¹³KAN. STAT. ANN. § 38-1559 (a) (2006).

¹⁴See Amy Jantz, Rob Geen, Roseana Bess, Cynthia Andrews & Victoria Russell, "The Continuing Evolution of State Kinship Care Policies." *Assessing the New Federalism: An Urban Institute Program to Assess Changing Social Policies*, December 2002, p.9.

¹⁵National Conference of State Legislators, "Highlights of Recent Kinship Care State Legislative Enactments," available at <http://www.ncsl.org/programs/cyf/kinshiphigh.htm>.