A Joint Statement on the Use of Hidden Foster Care During the Pandemic:
Need for Attention to Risk of Increased Use in Uncertain Times
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In recent months, child welfare professionals have been continually challenged by the need to make adjustments to practice in light of the coronavirus pandemic. Systems which were far from optimal prior to this public health crisis are struggling to ensure that children are safe while their rights and those of their parents are protected, despite unprecedented barriers. Critical activities that depend on interpersonal interaction, such as investigative interviews, family team meetings, family visits, and court hearings are occurring remotely, often with subpar technology support. Collaboration and coordination among the professionals who support families involved in the system — social workers, treatment professionals, GAL/CASA, children’s attorneys, parent attorneys, court personnel and others — is more critically needed yet harder to accomplish than ever. As the pandemic continues and its effects on society deepen, state governments are beginning to face critical fiscal challenges, which may pressure child protection agencies to conserve resources by choosing the least expensive interventions possible.

In this climate, decision making around the separation of parents and children in the name of safety is even more fraught than usual. The use of one practice that is controversial in “normal” times, the use of “voluntary” out of home safety plans, is of particular concern now. A recent academic article defined this practice, also referred to as “hidden foster care,” in this way: “Hidden foster care occurs when CPS agencies cause a change in a child’s physical custody without any family court action, without placing the child in the agency’s own custody, and without reporting the child’s removal to the federal government.”1 Parents may be told that the only way to avoid having their child removed is if they agree to a “voluntary” plan under which their children must be cared for by a relative, friend, neighbor or “host family.” Because there is no court involvement, essential review of evidence of abuse/neglect and the necessity of removal (i.e., whether there is sufficient evidence of imminent harm to require a separation of child from parent) occur without legal oversight or due process protections for parents and children. The Children’s Bureau does not require states to report these arrangements, so we do not have sufficient data on hidden foster care, though we know anecdotally that it has a real human cost for families.

Hidden foster care is often defended as a way to empower families to make their own arrangements for safe care of their children, avoiding unnecessary stigma, bureaucracy and litigation. However, it disguises the often-involuntary nature of the choices parents are asked to make, as well as the true number of children separated by child protection agencies from their parents. It also presumes that any resulting trauma to those children is negligible because they are typically placed with relatives. The practice of hidden foster care has raised concerns from across the child welfare ideological spectrum. For example, without counsel for parents or family court oversight, the necessity of removing children is reasonably questioned. When

children are in hidden foster care, state agencies have no obligation to provide reunification services, nor is the continued need to remain separated from a parent subject to court oversight. Separations may continue for weeks, months, or even years, without review and with uncertainty for everyone involved. During this period, authority to make crucial decisions about children’s health, education, and welfare may remain in limbo. Some parents ejected from their homes have become homeless or been denied or lost all contact with their children during the period in which hidden foster care is used. Kinship caregivers in hidden foster care are denied the benefits of the formal foster care system, especially foster care board rates and other services – a particularly ironic loss given that kinship caregivers are disproportionately low-income compared with non-kinship foster parents. And in situations in which parents pose an ongoing threat to children’s safety, the lack of oversight can leave children’s safety in jeopardy.

None of us knows what the ultimate impact of the current coronavirus crisis on the child welfare system and the families it serves will be. However, there is reason to be concerned that one result, in some jurisdictions, could be an increased use of hidden foster care. With limits on casework activities, barriers to engagement with families, and restricted access to court processes, it seems likely that workers may more frequently bypass court custody and formal foster care in favor of “voluntary” arrangements. Hidden foster care is cheaper for child welfare agencies than formal foster care, because it does not trigger the need to pay foster care subsidies and multiple other costs. States’ severe fiscal challenges may pressure agencies to save money by using hidden foster care in a greater proportion of cases. In addition, agencies may seek to limit new cases during this time in anticipation of a surge in community referrals after pandemic restrictions such as school closings end. Some are also struggling with sufficient foster care resources as potential resource families shelter in place, seeking to limit their families’ exposure to COVID. This raises the risk of inappropriate congregate care placements, which agencies may seek to avoid through greater use of hidden foster care. And because in nearly all states the practice is not regulated or tracked, we will be unable to quantify how many more children may experience unnecessary separation from parents, relative caregivers may struggle with ill-defined responsibilities and insufficient support, and parents may be deprived of both legal advice and reunification services.

It will not be easy to change this long-standing practice, but we need to raise awareness of its use and its impact on families’ lives. We need to shine a light on hidden foster care, to make community members aware of the risks parents take when they enter into such agreements. More concretely, we must encourage state agencies to track the number of cases in which children leave home pursuant to a safety plan or similar so-called “voluntary” arrangement. We could then track case outcomes to better understand the experiences of parents and children affected by hidden foster care over time. We must also persuade the Children’s Bureau to mandate that state agencies report these data to the federal government, along with the “official” foster care data already required. States could also advocate with the Children’s Bureau and legal services organizations to use IV-E dollars to provide lawyers for parents in hidden foster care cases, to ensure parents’ decisions are truly informed and voluntary.
The pandemic has resulted in significant challenges for our systems, but it cannot be used as a justification for separating families without due process, leaving them in legal limbo and not providing needed services to ensure family integrity and child safety.

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