



**L E G A L  
S E R V I C E S**

**I N C O R P O R A T E D**

**TESTIMONY**

**ON**

**EXAMINING THE CHALLENGES OF  
GRANDPARENT CAREGIVERS – AN UPDATE**

**BEFORE:**

**NEW YORK CITY COUNCIL  
COMMITTEE ON AGING**

**PRESENTED BY:**

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Thank you for the opportunity to testify today. My name is Sara Wood and I am the staff attorney for the Kinship Caregiver Law Project at MFY Legal Services and the Co-Chair of the New York City Kincare Task Force. This testimony was prepared in collaboration with Gerald Wallace, Esq., Director of the NYS Kinship Navigator. I am pleased to be here today to speak about the important role played by kinship caregivers in the lives of tens of thousands of New York City children.

MFY is a nonprofit organization established in 1963 that provides free civil legal services to approximately 7,500 poor and low-income New Yorkers annually in housing, public benefits, health, consumer, foreclosure and employment matters. We prioritize services to vulnerable and under-served populations such as persons who are elderly, disabled, poor or immigrant, while simultaneously working to end the root causes of inequities through impact litigation, law reform, and policy advocacy. MFY's Kinship Caregiver Law Project operates city-wide to assist non-parent relative caregivers in legal matters, including custody, guardianship, visitation and adoption proceedings, where the child is not in foster care. MFY is one of the few programs in the entire city that provides full legal representation to kinship caregivers in Family Court proceedings.

MFY's Kinship Caregiver Law Project receives close to 100 calls per month from caregivers or relatives seeking basic information about their legal rights. Most caregivers are desperate to know their legal status in relation to the child. Often they have no legal order and would like to become a legal custodian. Some have an order and have been served with modification papers from a parent. Others would like to adopt the child in their care. Many are struggling financially to make ends meet and are seeking information on any benefits they are entitled to.

It is nearly impossible to know exactly how many caregivers are in New York City and what legal status they might have in relation to the child. Based on Census data as reported by the Annie E. Casey Foundation, an estimated 150,000 to 250,000 New York children are currently being raised in homes where nonparents are responsible for their care. According to the Office of Children and Family Services, only 6,001 of these children were in kinship foster care in June 2010.<sup>1</sup> There are twenty-five to forty times more children being cared for informally by relatives than are in the formal kinship foster care system.

On May 23, 2012, The Annie E. Casey Foundation published a policy paper describing kinship families and showing that higher numbers of children are cared for by relatives than reported in past Census data. Nationally, approximately 2.7 million are children cared for by relatives and family friends, with the highest numbers in California (333,000), Texas (276,000), Florida (164,000), and New York (153,000). These families are disproportionately poor minorities. Annie E. Casey reports that one in five African American children, and one in eleven of all children, will live with kin during their childhood. The report describes the special challenges faced by kinship families and makes recommendations for supportive policies and services.

Many kinship caregivers are caring for children for the same reasons that children enter foster care: parental illness or death, substance abuse, incarceration, young parents, or abandonment for a variety of reasons. However, without the resources that foster care brings, caregivers are left without services and a without a stipend, leading to an unequal system for similarly situated children. If only a small percentage of these children were placed in the foster

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<sup>1</sup> <http://www.ocfs.state.ny.us/main/cfsr/statewide.asp?county=Statewide>

care system, the system and the city's resources would be entirely overwhelmed. It is important that kinship caregivers are recognized for the valuable resource that they are.

There is a great need for legal services. Most caregivers proceed in court unrepresented and are unable to uphold legal rights of themselves and the children in their care. Obtaining a legal order can be lengthy, daunting, and almost impossible process for a relative caregiver without an attorney. There are several legal obstacles in the caregiver's path and protections for the parent. Many caregivers have difficulties finding a birth parent in order to serve the parent with papers. If a parent is located, served and appears, the parent has a right to legal counsel if s/he cannot afford an attorney. A relative caregiver does not have the same automatic right to counsel.<sup>2</sup> Many caregivers report that having an attorney to represent them would have made a difference in being heard in the courtroom and in ultimately proving their case. Again, MFY is one of the few organizations that is responding to this unmet legal need and we encourage more funding for these programs so that caregivers can obtain legal advice and representation in proceedings when necessary to stabilize families.

In order to address one of the barriers in Family Court, MFY Legal Services and kinship advocates across New York State are working to amend a provision in domestic relations law that currently only applies to grandparents. We are working to expand the provision so that it will apply to other relatives as well. In a custody or guardianship proceeding between a caregiver and an absent parent, caregivers must prove "extraordinary circumstances" before courts will consider the best interests of children. In 1976, the Court of Appeals ruled in *Bennett v. Jeffreys*<sup>3</sup> that extraordinary circumstances include abandonment, unfitness, surrender, or an "extended disruption of custody." 40 NY 2d 543, 549 (1976). Kinship caregivers invariably ask how long a

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<sup>2</sup> New York Family Court Act § 262.

<sup>3</sup> *Matter of Bennett v. Jeffreys*, 40 NY2d 543 (1976).

period of time qualifies as an extended disruption, and case law provided no defined time period. However, in 2004, Domestic Relations Law § 72 was amended to provide a clear answer for grandparents: a “continuous 24 month period.”

Because Domestic Relations Law § 72 applies only to grandparents, it permits them, but not other relative caregivers, to claim an “extraordinary circumstance” when they can prove 24 months of continuous residence in their home by a grandchild. Expanding the definition of extraordinary circumstances in Domestic Relations Law § 72 to include all relative caregivers, not just grandparents, would greatly aid other relative caregivers to successfully petition courts for custody or guardianship after caring for children for 24 months. Amending the statute provides a clear and uniform standard for all relatives who have cared for a child for at least a 24-month period, thereby increasing family stability by allowing a relative caregiver to make important decisions regarding the health, education, and well-being of a child in her care

The bill that would extend the current provision to include relatives as well as grandparents has been introduced by both the State Senate and Assembly (S. 1749-C and A. 10218-A). We are hopeful that the bill will pass both houses this year, but we need your support.

There are very good reasons to support kinship families. They are the only large scale resource for children at risk, they get better outcomes, and they are less expensive than foster care. The reasons for their success are clear. Extended families are highly motivated to go the distance. Most of kinship care is done by grandparents, and a grandparent's love is the cure for many ills.

Once again, thank you for the opportunity to testify.