

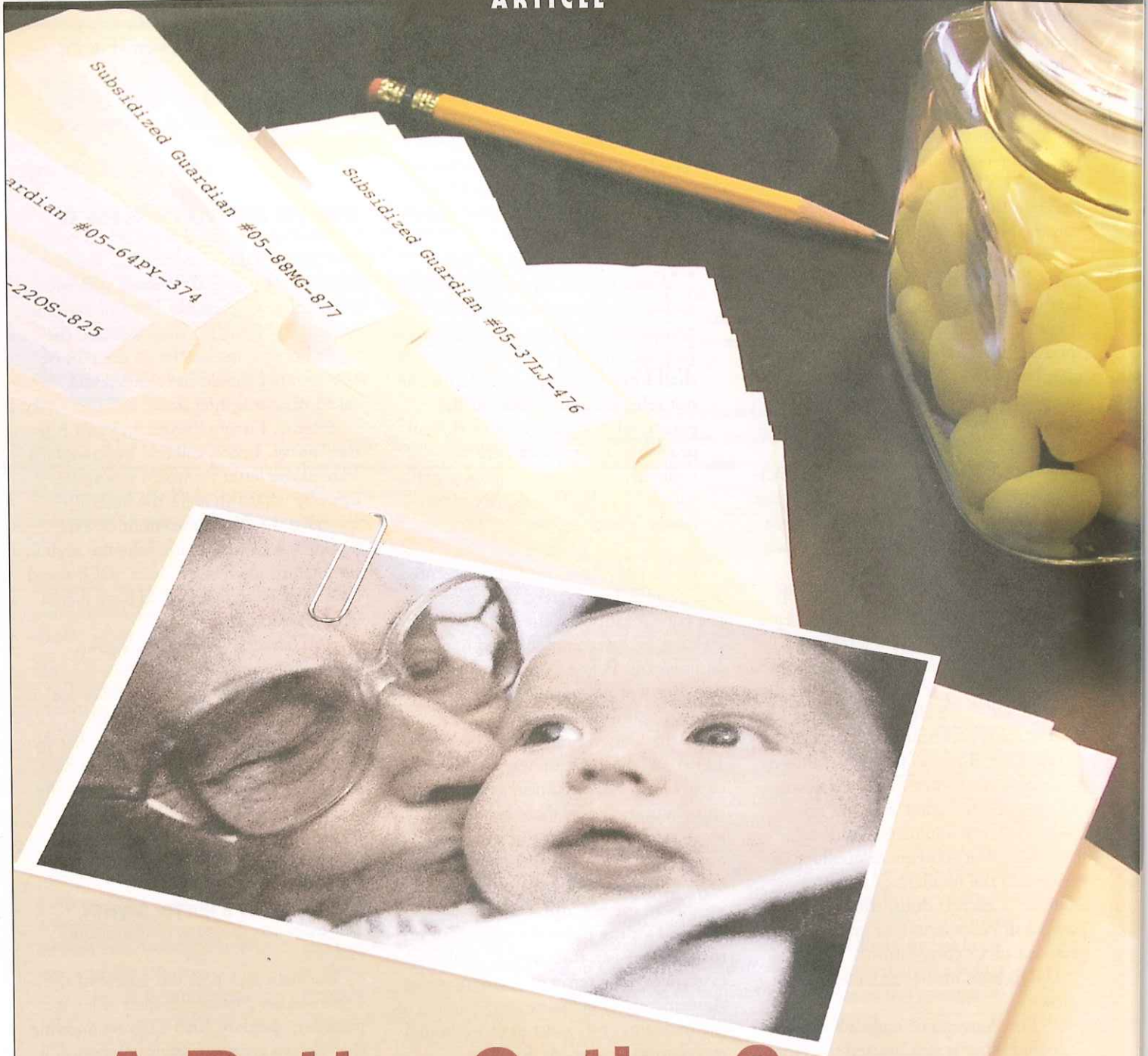
March, 2005

Already Home: Why Tennessee Needs Subsidized Guardianship

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A Better Option?

Some children in Tennessee's foster care system are 'already home' with relatives, but there's no category to recognize that. Is Subsidized Guardianship the answer?

**By Susan L. Brooks, Andrew J. Shookhoff
and Candice M. Richards**

Jermaine is a 14-year-old who has been living with his maternal aunt for the past four years. His mother has struggled with a substance abuse problem, and has been in and out of prison during this time. Jermaine's aunt is a *kinship foster parent* meaning that technically Jermaine is a ward of the state, and his aunt receives assistance from the state to care for him. This is a necessity given the aunt's financial circumstances, including the fact that she is also taking care of Jermaine's two siblings and other children and grandchildren of her own.

Despite his mother's struggles, Jermaine continues to love his mother and to hold out hope for her recovery. He is adamant that he does not want to be adopted, even by his aunt. Jermaine's aunt does not feel the need to adopt him, given that they already have a close and well-defined family relationship. Both Jermaine and his aunt hope one day Jermaine's mom will be able to step in and have her kids living with her.

The goal on Jermaine's Permanency Plan, which is the blueprint for mapping out his long-term goals, is "Planned Permanent Living Arrangement with a Relative" (PPLA)¹. Although technically this goal does not violate the law, it means that most likely, unless his mother is able to rehabilitate successfully, Jermaine (and probably his siblings as well) will remain in the state's legal custody until they reach adulthood, simply because they cannot return to their mother's care, and because adoption is not suitable to them. It also means that Jermaine and his siblings, along with their aunt, will have to accommodate twice-monthly case-manager visits in their home and attend regular court reviews and administrative meetings. And the case manager must continue to spend his or her time on these required administrative tasks — time that could be better spent working with more vulnerable children and families. Despite the facts that this placement is stable and Jermaine's aunt can manage it well assuming she continues to receive financial help, she still must obtain permission before doing such routine tasks as taking one of the children to the doctor.

Fran is the maternal grandmother caring full-time for three of her 13 grandchildren, a baby girl named Shauna, and 10-year-old twins, Terence and Terrell. Her daughter, Alicia, is the children's mother. Alicia loves her children and tries her best to be a good mother, but because of her chronic mental illness, she will never be capable of fully parenting them on her own. Their fathers unfortunately have not been involved in their lives. Fran is a kinship foster parent for these children.

Fran is very willing to raise them until they are grown, but she does not want her daughter's parental rights to be severed. She wants to encourage Alicia to be as involved in raising the children as is safe and possible. Like Jermaine's aunt, she too does not believe that it would be in the children's best interests to have their mother's parental rights terminated.

The meaning of kinship foster care has even more dramatic consequences for this family, because of the ages of the children. Their choice is either be forced to remain in the state's

custody for their entire youth, or face the prospect of having their mother's parental rights terminated, neither of which is a desirable option. Fran wishes she could afford to care for the children on her own without the state's help, but she knows that is not realistic, given her fixed retirement income.

Both of these families faced a terrible dilemma given the current state of affairs in Tennessee's child welfare system. Yet, these families and their situations are not unique in Tennessee. The 2000 Census ranked Tennessee 10th in the nation for its proportion of grandparents raising grandchildren,² and indicated that there are over 61,000 grandparent caregivers in our state.³ For most children living with relatives, financial constraints create significant hardships. Relative caregivers acting on their own currently are not eligible for any significant financial assistance to care for kin, even though almost 20 percent of their families live below the poverty line.⁴ However, there is a legal option that would help a significant number of these families: **Subsidized Guardianship (SG)**.

The SG Option

Kinship foster families, such as Jermaine's and Fran's, could benefit tremendously from a guardianship option subsidized by the federal government. Under such a program, young people in the care of the state who cannot be returned to their biological parents and do not wish to be adopted can remain in the safe and stable permanent homes of extended family members. Recent studies indicate that children in out-of-home care who live with relatives do better overall than children who live with strangers.⁵

SG option would promote children's well-being and would be a cost-effective measure, both in terms of immediate cost-savings and long-term beneficial effects.⁶ They would facilitate permanency by moving children out of state custody and into permanent arrangements with relatives (and other long-term caregivers) without the necessity of first terminating parental rights.

According to surveys by the Urban Institute and the Children's Defense Fund, 34 states offer some form of SG, which is often funded through a combination of federal (TANF, Title IV-B and other non-IV-E sources) funds and state and local funds.⁷ Seven states have received waivers from the federal government that allow them to use Title IV-E funds to operate SG programs.⁸ The Department of Health and Human Services currently is offering states the opportunity to apply for similar waivers.⁹

States currently offering SG as an option say that SG has numerous benefits. Guardianship provides children with a more stable and permanent placement than foster care. With SG, relative caregivers providing stable, permanent homes can receive needed financial support without having to go through other unnecessary requirements of foster care. This option recognizes that most children who are in the care of grandparents or other relatives do not need intensive supervision of their placements by the court or by state agencies. It reserves the intensive casework and supervisory resources of the courts

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and the state agencies for cases in which children do not have an option for safe, stable care within the family.

We project that close to 2,000 children could immediately exit the custody of the Tennessee Department of Children's Services (DCS) using this option.¹⁰ These would include children who are now in state custody and have been placed with relatives. If the state were to broaden its subsidized guardianship program to include non-relatives, that number would potentially be much larger.¹¹

Current research indicates that kinship may actually be the strongest predictor of permanency. An extensive study conducted in Illinois, a state that funds and supports SG and subsidized adoption at the same level, shows that the existence of a kinship relationship may be an even stronger predictor of permanency and stability than whether permanency is achieved through adoption or guardianship.¹² Relatives were consistently more likely to make a permanent commitment to the children in their care than non-relatives.¹³ From the children's standpoint, they appear to view themselves as equally, if not more, safe and stable when they are in the care of relatives.¹⁴ In short, the legal designation seems to make less of a difference from the standpoint of the child and the caregiver than the kinship bond.

It is also worth mentioning that a significant number of grandparent caregiver arrangements are within the African-American Community.¹⁵ At the same time, African-American children are over-represented in the foster care system.¹⁶ Supporting the efforts within the African-American community to care for their own children through SG would be more culturally sensitive and would likely help to address the racial disparities in Tennessee's foster care system.

Implementing SG as an option would also create significant cost savings for the state of Tennessee. Currently, the close to 2,000 children who are in the state's legal custody and placed with relatives must receive the same state agency and court supervision as every other child in foster care, despite the fact that most of these

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Legal options for relative caregivers: Current Tennessee policies and practices

In many Tennessee households, grandparents and other relatives are taking care of children whose parents are unable to do so because of substance abuse, mental or physical illness, economic hardship, incarceration, domestic violence, child abuse or neglect, or other issues. There are currently five legal "options" available to relative caregivers.

1. Why do relative caregivers need to know about the five legal options?

- The "legal relationship" between the child and his or her relative caregiver determines;
- The amount of medical, financial and other types of support available to assist relative caregivers;
- The ability of the relative to consent to medical treatment, enroll a child in school, and perform other parental roles;
- The rights and responsibilities of the parents, including whether and how they can resume their parental roles.

2. What are the five current legal options and how do they differ?

OPTION 1: INFORMAL FAMILY-ARRANGED CARE

Relative caregiver provides "primary care and control" without any legal document and without any change of legal custody, legal rights, or legal responsibilities.

Relative caregiver is often eligible for a Families First "child-only" payment, TennCare (at least coverage for the child).

Relative caregiver may be eligible for community-based services.

Relative caregiver may be eligible for tax deduction, earned income tax credit, child care credit and other tax benefits.

OPTION 2: POWER OF ATTORNEY (POA)

Written legal agreement between parents and relative caregiver to transfer "temporary care giving authority" for medical and educational decision making in "hardship situations."

No transfer of legal custody.

No lawyer required.

No need to go to court or file anything with a court.

Form available through DCS and on line at www.aarp.org/tn.

Form must be completed by caregiver and custodial parent and must be notarized.

Relative caregiver may use POA to enroll the child in school, in extracurricular activities, and special education programs.

Relative caregiver may use POA to obtain medical and mental health treatment for the child.

Parents may authorize relative caregiver to make other decisions.

"Hardship situations" include situations in which parents are unable to care for their child because of substance abuse, mental or physical illness, economic hardship, incarceration, or other issues.

Relative caregiver is often eligible for Families First "child-only" payment, TennCare (at least coverage for the child).

Relative caregiver may be eligible for community-based services.

Relative caregiver may be eligible for tax deduction, earned income tax credit,

child care credit and other tax benefits.

OPTION 3: LEGAL CUSTODY

Relative caregiver is given "legal custody" by court order (in most cases through a proceeding in juvenile court; in some cases through circuit or chancery court).

Custody can be "sole custody" or "joint custody" (shared custody).

Custody order ordinarily provides for parent to have visits and other contact with child, but may specify certain conditions.

Custody order ordinarily provides for parent to pay child support.

Custody order ordinarily provides relative caregiver with authority to enroll child in school, obtain medical and mental health treatment, and make other parental decisions.

Relative caregiver is often eligible for Families First "child-only" payment, TennCare (at least coverage for the child).

Relative caregiver may be eligible for community-based services.

Relative caregiver may be eligible for tax deduction, earned income tax credit, child care credit and other tax benefits.

OPTION 4: KINSHIP FOSTER CARE

DCS takes legal custody through juvenile court.

Relative caregiver becomes an "approved foster home" for the child.

Relative caregiver receives "foster care board payment" and other financial services and assistance available to foster parents.

Child and parents receive services and assistance from DCS.

Relative caregiver must undergo background check, home study, and complete foster parent training classes in order to become an "approved foster home" for the child.

Child's situation will be monitored regularly by DCS and by the court, through visits by the DCS worker to relative caregiver's home and by court hearings, DCS meetings, and meetings with the foster care review board.

DCS has the right and obligation to provide for the educational, medical, and mental health needs of the child.

Ordinarily parents have the right to have visits and other contact with child, but there may be certain conditions placed on that visitation to ensure the health and safety of the child.

Parents are ordinarily required to pay child support.

OPTION 5: ADOPTION

Relative caregiver becomes the permanent legal parent of the child.

Court "terminates parental rights," meaning that parents lose all legal rights and responsibilities forever. This can occur as part of a termination of parental rights hearing,

by the parents co-petitioning the court, or by the parents signing a voluntary surrender with the court.

Court order grants the adoption and establishes the relative caregiver as the "new" parent.

Relative caregiver has sole and complete authority to decide whether there is any contact between the child and the parents.

If the child is in DCS legal custody in foster care (either a kinship foster home or some other foster home or residential placement) and the relative adopts the child from foster care, the relative is usually eligible for financial and other assistance through an adoption subsidy.

If the child IS NOT in DCS legal custody at the time of the adoption, the relative is NOT eligible for any adoption subsidy.

After adoption, caregiver is no longer eligible for Families First "child-only" payment and may or may not be eligible for TennCare for the child.

3. What support is available through Families First?

A relative caregiver may be eligible to receive a "child-only" payment from Families First, about \$140 a month for one child (with small additional amounts for each additional child). The relative caregiver:

- Must be within the 5th degree of relationship to the child (includes siblings, grandparents, aunts and uncles, first cousins).
- Must have "primary care and control" of the child.
- Does not have to have legal custody.
- Does not have to be below a certain income level to qualify (only the child's income can be considered in determining "child only payment" eligibility; additional assistance, including food stamps, may be available depending on household income).
- Does not have to enroll in or meet the work requirements or time limits of the Families First Welfare to Work Program.

Application for "child only" payment, food stamps and other assistance, should be made at the local Department of Human Services office.

4. What support is available through TennCare?

A relative caregiver is usually eligible for free or low cost health insurance on behalf of the child in his or her care. The child's eligibility for TennCare depends on the child's income, not on the relative caregiver. Relative caregivers may also be eligible for free or low-cost health insurance for themselves. For information on TennCare enrollment call 877-608-1009.

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children are only in state custody because of their relatives' financial need. The result of this arrangement is that the state spends thousands of dollars every year on the administrative costs of staffing and monitoring these cases. Additionally, these children's cases must be regularly reviewed by judges, meaning that the cases take up precious and costly court time. Moving these children into SGs would thus not only mean a cost savings for DCS, but also cost savings for the already overcrowded court system.

Additionally, by moving these children out of state custody and into permanent homes with relatives, the state would

improve its compliance with the demanding requirements of the Adoption and Safe Families Act (ASFA),¹⁷ the federal law governing our foster care system. Under this act, the state must move children into permanent situations within extremely short time frames, or risk losing important federal funding to support vulnerable children in this state. The law also provides financial incentives and bonuses for achieving permanency for children, particularly through adoption.¹⁸

In other states, implementing SG has led to increased adoptions of children out of foster care as well. Currently, when families in Illinois are offered both

options at the identical levels of funding, they choose subsidized adoption three times as often.¹⁹ If the Tennessee experience were similar, it would mean that not only would the state be in better compliance with the federal law, but that the state would actually receive financial bonuses that could be spent in other important ways to help vulnerable children and families in our state.

Finally, by offering subsidized guardianship to families, the length of time children spend in state custody could potentially decrease. Implementation of SG as an option would also probably reduce the rate of re-entry for children who exit custody to live with relatives. Subsidized guardianship offers a permanency option that allows children to stay where they already feel at home without severing familial ties or confusing established relationship roles. If we can move children out of state custody into safe,

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Legal options for caregivers

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5. What support is available by becoming a Kinship Foster Home?

A relative caregiver who becomes a "Kinship Foster Home" receives the same support that is available to all other foster parents, including:

A monthly board payment (more than \$300 per month) for *each child* (higher for a child with special needs)

A periodic clothing allowance;
Medical, dental and mental health services for the child;
Additional supportive services.

The Kinship Foster Care board payment is significantly higher than the Child-Only payment, especially if there is more than one child in the home.

For information on becoming a Kinship Foster Home, a relative caregiver should contact the local Department of Children's Services office or the State Department office at 1-877- DCS KIDS (1-877-327-5437)

6. What support is available through the Relative Caregiver Program established by the Tennessee Legislature?

The Tennessee legislature has established "relative caregiver programs" in a number of Tennessee counties. The support provided by these programs varies, but often includes:

Support groups, respite care, individual and family counseling, legal services, concrete needs (beds, mattresses, clothing), tutoring, informational meetings, access to accurate information, emergency financial help

For information about the relative caregiver programs contact the Relative Caregiver Program Coordinator at 615-253-6976.

P A I N E O N P R O C E D U R E

Understanding the best evidence rule

By Donald F. Paine

Today the best evidence rule is not the big deal it once was. Let's take a stroll through Article X of the Tennessee Rules of Evidence to see why.

When the "content" of a writing must be proved, Rule 1002 taken alone appears to state a preference for the original defined in Rule 1001(3) to include a computer printout. Rule 1001 defines a computer printout as an original and defines a mechanical or electronic or chemical reproduction as a "duplicate." Rule 1003 makes a duplicate equally admissible with an original. Consequently, a best evidence issue will arise nowadays only when oral testimony is offered to prove the content of a document.

Rule 1004 lists instances where even oral testimony is admissible. Most important is the category for collateral writings, those being writings "not closely related to a controlling issue." The judge necessarily has some leeway in distinguishing collateral versus controlling issues. Oral testimony is also admissible if the original is

(1) lost or destroyed without bad faith,

(2) not obtainable by subpoena duces tecum, or
(3) in the opponent's possession.

Another category is in Rule 1007. If the opposing party has admitted documentary contents during testimony or a deposition — or in another writing — you can use the admission instead of the original document.

Rule 1005 covers filed official records and recorded instruments such

as registered deeds. Obviously originals cannot be removed for trials; therefore certified copies can be used instead.

Rule 1006 applies to voluminous documents that "cannot conveniently be examined in court." A summary of contents can be introduced into evidence so long as the originals or

duplicates were made available for inspection by your adversary.

Finally, Rule 1008 separates judicial from juror functions. For example, the judge decides whether an original was destroyed in good or bad faith. On the other hand, the jury decides whether the original ever existed.

I hope this short course helps you. ☞

**"A best evidence issue
will arise nowadays
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permanent homes with relatives, we will be ensuring a potentially better future for countless Tennessee children who might otherwise flounder in the foster care system. As stated by Dr. Viola Miller, Commissioner of the Tennessee Department of Children Services, "[w]e're not talking about more kids or more money ... we're talking about different ways to individualize how we spend those dollars to frame programs around children and families instead of having to take children and families and stuff them into those predetermined programs."²⁰ *Id.*

Notes

1. PPLA is only one of several goals that might be reflected on the Plan in a kinship foster care arrangement. Others might be: Reunification, Exit Custody with Relative, and Adoption.

2. Jane Lawler Dye and Tavia Simmons, *Grandparents Living with Grandchildren: 2000, CENSUS 2000 BRIEF* (October 2003), <http://www.census.gov/prod/2003pubs/c2kbr-31.pdf> (last visited Oct. 21, 2004).

3. *Id.*

4. In Tennessee, children in relative care and outside the formal system of foster care may be eligible to receive a Child-Only Grant through the Department of Human Services' Temporary Aid to Families (TANF) Program. Grant amounts range from roughly \$140/month for one child to a maximum of \$345/month for seven or more children. If the children were placed into foster care and relatives were approved as kinship foster parents, these relatives would receive well over \$300/month per child. These figures illustrate the need to provide better assistance for relatives who want to maintain the family unit and take care of these kids, but may not have the financial resources to care for them on their own. See Elizabeth S. Black & Susan L. Brooks, *A Tale of Two Grandmothers: Child Welfare, TANF, & the Need for More Support for Kinship Care in Tennessee*, 11 PUB. POL'Y & AGING REP. 7, 8 (2000).

5. Fostering Results, *Family Ties: Supporting Permanence for Children in Safe & Stable Foster Care with Relatives & Other Caregivers* 20-21 (Mark Testa, Nancy Salyers, Michael Shaver, & Jennifer Miller, eds., 2004). Additional information is available from Fostering Results at www.fosteringresults.org.

6. Fostering Results, *Family Ties: Supporting Permanence for Children in Safe & Stable Foster Care with Relatives & Other Caregivers* 13-15

(Mark Testa, Nancy Salyers, Michael Shaver, & Jennifer Miller, eds. 2004). Under SG, financial support would still be provided, but administrative costs would be reduced because there would no longer be a need for extensive court and agency supervisory resources. See Rob Geen, *What Are the Cost Considerations for Subsidized Guardianship?*, in *USING SUBSIDIZED GUARDIANSHIP TO IMPROVE OUTCOMES FOR CHILDREN* 65 (Mary Bissell & Jennifer L. Miller eds., 2004).

7. Geen, *supra* note 6, at 63.

8. *Id.* at 63-64.

9. *Id.* at 63.

10. This projection is based on 2004 figures submitted by DCS, including the number of current kinship foster homes, as well as an examination of the number of young people who have relevant permanency goals, including PPLA with a Relative, and Exit Custody with a Relative/Reunification (i.e., dual goals).

11. Given that many kinship families in Tennessee fall outside of the formal foster care system, it is also hoped that the federal government will provide additional funding of a preventive nature for kids who are at risk of entering the foster care system.

12. Aron Shlonsky, *What Have We Learned from Evaluations About Subsidized Guardianship?*, in *USING SUBSIDIZED GUARDIANSHIP TO IMPROVE OUTCOMES FOR CHILDREN* 57-58 (Mary Bissell & Jennifer L. Miller eds., 2004).

13. *Id.* at 58.

14. *Id.*

15. Terry Cross, et al., *How Does Subsidized Guardianship Respect Culture? Perspectives on African American, Native American, and Latino Experiences*, in *USING SUBSIDIZED GUARDIANSHIP TO IMPROVE OUTCOMES FOR CHILDREN* 51 (Mary Bissell & Jennifer L. Miller eds., 2004).

16. "By 2000, they represented 40% of the foster care population even though they accounted for only 15% of children in the general population." *Id.*

17. 42 U.S.C.A. §§ 671, 673b, 675 (and other scattered sections of 42 U.S.C.) (West 2003).

18. 42 U.S.C.A. § 673b (West 2003).

19. Leslie Cohen, *How Do We Choose Among Permanency Options? The Adoption Rule Out & Lessons from Illinois*, in *USING SUBSIDIZED GUARDIANSHIP TO IMPROVE OUTCOMES FOR CHILDREN*, 19, 22 (Mary Bissell & Jennifer L. Miller eds., 2004).

20. Judith R. Tackett, *Policy Hampers Foster Care System*.

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