

# **Kinship Care Laws, Procedural Rules, & Cases (July 2021)**



## Law Prioritizing Kinship Care

(FEDERAL)

- **42 USC section 671(e)(1)**  
(e) Prevention and family services and programs  
(1) In general subject to the succeeding provisions of this subsection, **the Secretary may make a payment to a State** for providing the following services or programs for a child escribed in paragraph (2) and the parents **or kin caregivers of the child** when the need of the child, such as parent, or such as caregiver for the services or programs are **directly related to the safety, permanence, or well-being of the child or to preventing the child from entering foster care:**

- **42 U.S.C.A. § 671 (a)(19): Federal preference for placement with a relative. Foster Care and Adoption assistance.**

[https://www.ssa.gov/OP\\_Home/ssact/title04/0471.htm](https://www.ssa.gov/OP_Home/ssact/title04/0471.htm)

“Provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards”

- **Indian Child Welfare Act (ICWA) of 1978: Federal law that governs the removal and out-of-home placement of American Indian children.**

<https://www.bia.gov/bia/ois/dhs/icwa>

“to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture.” **25 U.S. Code § 1902**

- **Fostering Connections to Success and Increasing Adoptions Act of 2008**

<https://www.govinfo.gov/content/pkg/PLAW-110publ351/pdf/PLAW-110publ351.pdf>

Allows all states the option to provide kinship guardianship assistance payments, or payments to relative foster parents committed to caring permanently for a child who has been living with them for at least six months. **This helped facilitate the transfer of children from state custody to relative guardianship in instances where a return home or adoption is not appropriate.**

Allows, for the first time, tribes to receive federal funding to directly administer their own child welfare programs (previously, tribes had to negotiate with states to receive IV-E funding).

➤ **Family First Prevention Services Act of 2018**

Allows for expanded use of preventative services and funds to keep children in their homes or with kinship while receiving the needed supportive services

➤ **Grandparents Raising Grandchildren Act of 2018**

<https://www.congress.gov/bill/115th-congress/senate-bill/1091/text>

*An Act*

To establish a Federal Advisory Council to Support Grandparents Raising Grandchildren. <<NOTE: July 7, 2018 - [S. 1091]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Supporting Grandparents Raising Grandchildren Act.>> SECTION 1. SHORT TITLE.

This Act may be cited as the ``Supporting Grandparents Raising Grandchildren Act''. SEC. 2. FINDINGS.

Congress finds the following:

- 1) More than 2,500,000 grandparents in the United States are the primary caretaker of their grandchildren, and experts report that such numbers are increasing as the opioid epidemic expands.
- 2) Between 2009 and 2016, the incidence of parental alcohol or other drug use as a contributing factor for children's out-of-home placement rose from 25.4 to 37.4 percent.
- 3) **When children cannot remain safely with their parents, placement with relatives is preferred over placement in foster care with nonrelatives because placement with relatives provides stability for children and helps them maintain family connections.**

➤ **§675a. Additional case plan and case review system requirements**  
<https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section675a&num=0&edition=prelim>

**(a) Requirements for another planned permanent living arrangement**

In the case of any child for whom another planned permanent living arrangement is the permanency plan determined for the child under section 675(5)(C) of this title, the following requirements shall apply for purposes of approving the case plan for the child and the case system review procedure for the child:

**(1) Documentation of intensive, ongoing, unsuccessful efforts for family placement**

At each permanency hearing held with respect to the child, the State agency documents the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the State agency to return the child home or secure a placement for the child with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including through efforts that utilize search technology (including social media) to find biological family members for the children.

➤ **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)**

<https://www.congress.gov/104/plaws/publ193/PLAW-104publ193.pdf>

**SEC. 505. KINSHIP CARE.**

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

- (1) by striking “and” at the end of paragraph (16);
- (2) by striking the period at the end of paragraph (17) and inserting “; and”; and
- (3) by adding at the end the following:

“(18) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.”.

➤ **Adoption and Safe Families Act of 1997 (ASFA)(P.L. 105-89)**

<https://www.congress.gov/bill/105th-congress/house-bill/867/text>

Builds upon the role of relatives when children are placed in the child welfare system. Allows for relatives to provide permanency. Section 303 Kinship Care.

# Law Prioritizing Kinship Care

(STATE)

## ➤ 67 Pa. C.S. §3102 Kin Definition

**"Kin."** An individual 21 years of age or older who is one of the following:

- (1) A godparent of the child as recognized by an organized church.
- (2) A member of the child's tribe, nation or tribal organization.
- (3) An individual with a significant, positive relationship with the child or family.

## ➤ Act 14 of 2019 Chapter 31 Family Finding

### § 3101. Legislative intent.

- This chapter is intended to ensure that family finding occurs on an ongoing basis for all children entering the child welfare system. This chapter is also **intended to promote the use of kinship care** when it is necessary to remove a child from the child's home in an effort to:
  - (1) Identify and build positive connections between the child and the child's relatives and kin.
  - (2) Support the engagement of relatives and kin in children and youth social service planning and delivery.
  - (3) Create a network of extended family support to assist in remedying the concerns that led the child to be involved with the county agency.
- "Family finding." Ongoing diligent efforts between a county agency, or its contracted providers, and relatives and kin to:
  - (1) **Search for and identify adult relatives and kin and engage them in children and youth social service planning and delivery.**
  - (2) Gain commitment from relatives and kin to support a child or parent receiving children and youth social services.
- **§ 3103. Family finding required.**

Family finding shall be conducted for a child when the child is accepted for service and at least annually thereafter until the child's involvement with the county agency is terminated or the family finding is discontinued in accordance with section 3104 (relating to discontinuance of family finding).
- **§ 3105. Kinship Care Program.**
  - (a) Establishment of program.--The Kinship Care Program is established in the department.
  - (b) Relative notification.--Except in situations of family or domestic violence, the **county agency shall exercise due diligence to identify and notify all grandparents and**

other adult relatives to the fifth degree of consanguinity or affinity to the parent or stepparent of a dependent child and each parent who has legal custody of a sibling of a dependent child within 30 days of the child's removal from the child's home if temporary legal and physical custody has been transferred to the county agency. The notice must explain all of the following:

- (1) Any options under Federal and State law available to the relative to participate in the care and placement of the child, including any options that would be lost by failing to respond to the notice.
- (2) The requirements to become a foster parent, permanent legal custodian or adoptive parent.
- (3) The additional supports that are available for children removed from the child's home.
- (c) Placement of children.--If a child has been removed from the child's home under a voluntary placement agreement or is in the legal custody of the county agency, **the county agency shall give first consideration to placement with relatives or kin.** The county agency shall document that an attempt was made to place the child with a relative or kin. If the child is not placed with a relative or kin, the agency shall document the reason why the placement was not possible.

➤ **Pennsylvania Statutes Title 11 P.S. Children § 2633. Children in Foster Care Act 2010**

<https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/2010/0/0119..PDF>

<https://casetext.com/statute/pennsylvania-statutes/statutes-unconsolidated/title-11-ps-children/chapter-24-children-in-foster-care-act/section-2633-children-in-foster-care>

**Children in Foster Care shall be provided with the following:**

- (4) The ability to live in the **least restrictive, most family-like setting** that is safe, healthy and comfortable and meets the child's needs.
- (10) Permission to visit and have contact with family members, including siblings, as frequently as possible, consistent with the family service plan and the child's permanency plan, unless prohibited by court order, but no less than that prescribed by statute or regulation.
- (12) An environment that maintains and reflects the child's culture as may be reasonably accommodated.
- (18) **First consideration for placement with relatives, including siblings. In the absence of relatives, to have any kinship resource be considered** as the preferred placement resource if the placement is consistent with the best interest of the child and the needs of other children in the kinship residence.

(19) Consideration of any previous resource family as the preferred placement resource, if relative and kinship resources are unavailable and the placement resource is consistent with the best interest of the child.

(22) A permanency plan and transition plan developed in conjunction with the child, and reviewed with the child, that provides the child with:

(iv) Connections with reliable adults.

➤ **42 Pa. C.S., Chapter 63. The Juvenile Act**

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/42/00.063..HTM>

**6334. Petition**

**(a) Contents of petition.**--A petition, which shall be verified and may be on information and belief, may be brought by any person including a law enforcement officer. It shall set forth plainly:

(1) The facts which bring the child within the jurisdiction of the court and this chapter, with a statement that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency is alleged, that the child is in need of treatment, supervision or rehabilitation.

(2) The name, age, and residence address, if any, of the child on whose behalf the petition is brought.

(3) The names and residence addresses, if known to the petitioner, of the parents, guardian, or custodian of the child and of the spouse, if any, of the child. If none of his parents, guardian, or custodian resides or can be found within this Commonwealth, or if their respective places of residence address are unknown, the name of any known adult relative residing within the county, or if there be none, the known adult relative residing nearest to the location of the court.

**6351. Disposition of dependent child.**

**(a) General rule.**--If the child is found to be a dependent child the court may make any of the following orders of disposition best suited to the safety, protection and physical, mental, and moral welfare of the child:

(1) Permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.

(2) Subject to conditions and limitations as the court prescribes transfer temporary legal custody to any of the following:

(i) Any individual resident within or without this Commonwealth, including any relative, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.

(ii) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.

(iii) A public agency authorized by law to receive and provide care for the child.

(2.1) **Subject to conditions and limitations as the court prescribes, transfer permanent legal custody to an individual resident in or outside this Commonwealth, including any relative**, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child. A court order under this paragraph may set forth the temporary visitation rights of the parents. The court shall refer issues related to support and continuing visitation by the parent to the section of the court of common pleas that regularly determines support and visitation.

(e) Permanency hearings and (f) Matters to be determined at permanency hearings

➤ **Act 89 of 2018 Kinship Navigator Act**

<https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessIn d=0&act=89>

"Kinship caregiver." An individual who:

- (1) is at least 21 years of age;
- (2) lives with and is responsible for the care of a child; and
- (3) is related within the fifth degree of consanguinity or affinity to the parent or stepparent of the child.

"Kinship caregiver navigator." An individual who has been trained by the department to understand the various State agency systems serving kinship caregivers and assist in accessing Federal, State and local services and supports available to kinship caregivers.

➤ **Act 95 of 2015**

<https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2015&sessIn d=0&act=92>

Section 18. Sections 1303(a.1) and 1303.2(a) of the act, added June 30, 2012 (P.L.668, No.80), are amended to read:

Section 1303. Kinship Care Program.

\* \* \*

(a.1) Relative notification.--Except in situations of family or domestic violence, **the county agency shall exercise due diligence to identify and notify all grandparents and other adult relatives to the fifth degree of consanguinity or affinity to the parent or stepparent of a dependent child and each parent who has legal custody of a sibling of**

**a dependent child** within 30 days of the child's removal from the child's home when temporary legal and physical custody has been transferred to the county agency. The notice must explain all of the following:

(1) Any options under Federal and State law available to the relative to participate in the care and placement of the child, including any options that would be lost by failing to respond to the notice.

(2) The requirements to become a foster parent, permanent legal custodian or adoptive parent.

(3) The additional supports that are available for children removed from the child's home.

\* \* \*

Section 1303.2. Permanent legal custodianship subsidy and reimbursement.

(a) Amount.--The amount of permanent legal custodianship subsidy for maintenance costs to a permanent legal custodian **or a successor permanent legal custodian** shall not exceed the monthly payment rate for foster family care in the county in which the child resides.

➤ **Act 25 of 2003 Kinship Care**

<https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2003&sessIn d=0&act=25>

## **ARTICLE XIII KINSHIP CARE**

### **Section 1301. Scope.**

This article relates to the Kinship Care Program.

### **Section 1302. Definitions.**

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"County agency." The county children and youth social service agency exercising the power and duties provided for in section 405 of the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, or its successor, and supervised by the department under Article IX.

"Foster parent." An individual approved by a public or private foster family care agency to provide foster family care services to a child who is temporarily separated from the child's legal family and placed in the legal custody of an agency.

"Relative." An individual who is:

(1) Related within the third degree of consanguinity or affinity to the parent or stepparent of a child.

(2) At least 21 years of age.

### **Section 1303. Kinship Care Program.**

(a) Establishment of program.--The Kinship Care Program is established in the department.

(b) Placement of children.--If a child has been removed from the child's home under a voluntary placement agreement or is in the legal custody of the county agency, the county agency shall give first consideration to placement with relatives. The county agency shall document that an attempt was made to place the child with a relative. If the child is not placed with a relative, the agency shall document the reason why such placement was not possible.

(c) Regulations.--

(1) The department shall promulgate regulations necessary to carry out the provisions of this article. These regulations shall provide all of the following:

(i) Relatives shall receive the same foster care rate as other foster parents if they are complying with the regulations governing foster parents.

(ii) Foster care payments received by a relative who is a foster parent shall be excluded from consideration when calculating eligibility for public welfare assistance.

(2) The regulations shall be subject to review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 2. All acts and parts of acts are repealed insofar as they are inconsistent with the addition of Article XIII of the act.

Section 3. The addition of Article VIII-A of the act shall apply retroactively to July 1, 2003.

Section 4. This act shall take effect as follows:

(1) The following provisions shall take effect in six months:

(i) The addition of Article XIII of the act.

(ii) Section 2 of this act.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 30th day of September, A. D. 2003.

# Law Prioritizing Kinship Care

(CUSTODY)

➤ **§ 5324. Standing for any form of physical custody or legal custody.**

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.053.024.000..HTM>

The following individuals may file an action under this chapter for any form of physical custody or legal custody:

- (1) A parent of the child.
- (2) A person who stands in loco parentis to the child.
- (3) A grandparent of the child who is not in loco parentis to the child:
  - (i) whose relationship with the child began either with the consent of a parent of the child or under a court order;
  - (ii) who assumes or is willing to assume responsibility for the child; and
  - (iii) when one of the following conditions is met:
    - (A) the child has been determined to be a dependent child under 42 Pa.C.S. Ch. 63 (relating to juvenile matters);
    - (B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or
    - (C) the child has, for a period of at least 12 consecutive months, resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.
- (4) Subject to paragraph (5), an individual who establishes by clear and convincing evidence all of the following:
  - (i) The individual has assumed or is willing to assume responsibility for the child.
  - (ii) The individual has a sustained, substantial and sincere interest in the welfare of the child. In determining whether the individual meets the requirements of this subparagraph, the court may consider, among other factors, the nature, quality, extent and length of the involvement by the individual in the child's life.
  - (iii) Neither parent has any form of care and control of the child.
- (5) Paragraph (4) shall not apply if:
  - (i) a dependency proceeding involving the child has been initiated or is ongoing; or
  - (ii) there is an order of permanent legal custody under 42 Pa.C.S. § 6351(a)(2.1) or (f.1)(3) (relating to disposition of dependent child).

*(May 4, 2018, P.L. 112, No. 21, eff. 60 days)*

- **§ 5325. Standing for partial physical custody and supervised physical custody.**  
<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=23&div=0&chpt=53&sctn=25&subsctn=0>

In addition to situations set forth in section 5324 relating to standing for any form of physical custody or legal custody), **grandparents and great-grandparents may file an action under this chapter for partial physical custody or supervised physical custody in the following situations:**

- (1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;
- (2) **where the relationship with the child began either with the consent of a parent of the child or under a court order and where the parents of the child:**
  - (i) have commenced a proceeding for custody; and
  - (ii) do not agree as to whether the grandparents or great-grandparents should have custody under this section; or
- (3) **when the child has, for a period of at least 12 consecutive months, resided with the grandparent or great-grandparent**, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, an action must be filed within six months after the removal of the child from the home.

*(May 4, 2018, P.L. 112, No.21, eff. 60 days*

- **§ 5328. Factors to consider when awarding custody.**  
<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/23/00.053.028.000..HTM>

- (a) Factors.--**In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:
- (1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
  - (2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.
    - (2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).
  - (3) The parental duties performed by each party on behalf of the child.
  - (4) **The need for stability and continuity in the child's education, family life and community life.**
  - (5) **The availability of extended family.**
  - (6) **The child's sibling relationships.**
  - (7) The well-reasoned preference of the child, based on the child's maturity and judgment.

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

(11) The proximity of the residences of the parties.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

(15) The mental and physical condition of a party or member of a party's household.

(16) Any other relevant factor.

# Rules Prioritizing Kinship Care

(PA Rules of Juvenile Court Procedure)

## Pennsylvania Rules of Juvenile Court Procedure

### ➤ Pennsylvania Rules of Juvenile Procedure 1149

#### *Court's inquiry and determination.*

1) The court shall inquire as to the efforts made by the county agency to comply with the family finding requirements pursuant to 62 P. S. §1301 *et seq.*

2) The court shall place its determinations on the record as to whether the county agency has reasonably engaged in family finding.

- **Comment:** Pursuant to paragraph (A)(2), the court is to place its determinations on the record as to whether the county has reasonably engaged in family finding. The level of reasonableness is to be determined by the length of the case and time the county agency has had to begin or continue the process. For example, **at the shelter care hearing, the county agency should at least ask the question whether there is family or kin available as a resource. The initial removal of the child is the most critical time in the case.** Potential trauma should be considered and ameliorated by family finding efforts as much as possible. Phone calls at this time are reasonable. However, at the dispositional or permanency hearings, the county agency has had more time to engage in a more thorough diligent search as discussed *infra*. See also Rule 1120 and its Comment

### ➤ Rule 1210. Order for Protective Custody.

A. *Application of order.* The application for a court order of protective custody may be orally made; however, the request shall be reduced to writing within twenty-four hours. The request shall set forth reasons for the need of protective custody.

#### B. *Finding of court.*

1) A child may be taken into protective custody by court order when the court determines that removal of the child is necessary for the welfare and best interests of the child.

2) **At the time the court issues a protective custody order, the court shall inquire as to whether family finding efforts pursuant to Rule 1149 have been initiated by the county agency.**

3) The order may initially be oral, provided that it is reduced to writing within twenty-four hours or the next court business day.

C. *Law enforcement.* The court may authorize a search of the premises by law enforcement or the county agency so that the premises may be entered into without authorization of the owner for the purpose of taking a child into protective custody.

D. *Contents of order.* The court order shall include:

- 1) the name of the child sought to be protected;
- 2) the date of birth of the child, if known;
- 3) the whereabouts of the child, if known;
- 4) the names and addresses of the guardians;
- 5) the reasons for taking the child into protective custody;
- 6) a finding whether reasonable efforts were made to prevent placement of the child;
- 7) a finding whether the reasons for keeping the child in shelter care and that remaining in the home is contrary to the welfare and best interests of the child; and
- 8) findings and orders related to the requirements of Rule 1149 regarding family finding.

***Comment***

Pursuant to paragraph (D)(8), the county agency should be looking for family and kin as a resource to aid and assist the family to prevent removal of the child from the home. When removal of the child is necessary, placement with family and kin will help reduce the potential trauma of the removal from the home. See Rule 1149 regarding family finding requirements.

➤ **Rule 1242. Shelter Care Hearing.**

A. *Informing of rights.* Upon commencement of the hearing, the court shall ensure that:

- 1) a copy of the shelter care application is provided to the parties; and
- 2) all parties are informed of the right to counsel.

B. *Manner of hearing.*

- 1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.
- 2) *Recording.* If requested, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.
- 3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The child's attorney, the guardian, if unrepresented, and the attorney for

the guardian shall be afforded an opportunity to examine and controvert written reports so received.

4) *Advanced communication technology*. Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

C. *Findings*. The court shall determine whether:

- 1) there are sufficient facts in support of the shelter care application;
- 2) the county agency has reasonably engaged in family finding;
- 3) custody of the child is warranted after consideration of the following factors:
  - a) remaining in the home would be contrary to the welfare and best interests of the child;
  - b) reasonable efforts were made by the county agency to prevent the child's placement;
  - c) **the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available**

➤ **Rule 1330. Petition: Filing, Contents, Function, Aggravated Circumstances.**

A. *Filings*.

1) A dependency petition may be filed at any time; however, if a child is taken into custody, the requirements of paragraph (A)(2) shall be met.

2) Within twenty-four hours of the shelter care hearing, the county agency shall file a dependency petition with the clerk of courts when:

- a) the child remains in protective custody pursuant to Rule 1201, 1202 or 1210; or
- b) the child is not in protective custody but it is determined at a shelter care hearing pursuant to Rule 1242 that the filing of a dependency petition is appropriate.

B. *Petition contents*. **Every petition shall set forth plainly:**

- 1) the name of the petitioner;
- 2) the name, date of birth, and address of the child, if known;
- 3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;

4) if a child is Native American, the child's Native American history or affiliation with a tribe;

5) a statement that:

a) it is in the best interest of the child and the public that the proceedings be brought;

b) the child is or is not currently under the supervision of the county agency;

6) a statement detailing family finding efforts and, if the county agency is seeking placement:

a) the reasonable efforts made to prevent placement; and

b) why there are no less restrictive alternatives available;

➤ **Rule 1408. Findings on Petition.**

The court shall enter findings, within seven days of hearing the evidence on the petition or accepting stipulated facts by the parties:

1) by specifying which, if any, allegations in the petition were proved by clear and convincing evidence; and

2) its findings as to whether the county agency has reasonably engaged in family finding as required pursuant to Rule 1149.

**Comment**

The court is to specify which allegations in the petition are the bases for the finding of dependency.

Pursuant to paragraph (2), the court is to make a determination whether the county agency has reasonably engaged in family finding in the case. The county agency will be required to report its diligent family finding efforts at subsequent hearings. See Rule 1149 for requirements of family finding. See also Rules 1210(D)(8), 1242(E)(3), 1512(D)(1)(h), 1514(A)(4), 1608(D)(1)(h), and 1610(D) and their Comments for the court's findings as to the county agency's satisfaction of the family finding requirements and Rules 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1409, 1512, 1514, 1515, 1608, 1609, 1610, and 1611 on the court's orders.

➤ **Rule 1409. Adjudication of Dependency and Court Order.**

A. *Adjudicating the child dependent.* Once the court has made its findings under Rule 1408, the court shall enter an order whether the child is dependent.

1) *Dependency.* If the court finds from clear and convincing evidence that the child is dependent, the court shall proceed to a dispositional hearing under Rule 1512.

2) *No dependency.* If the court finds the child not to be dependent or the court finds a parent ready, willing, and able to provide proper parental care or control, the court shall:

- a) dismiss the petition;
- b) order the child to be discharged from custody and any restrictions ordered in the proceedings; and
- c) enter an order identifying individual(s) who will have the legal and physical custody until such order is modified by further order of the court.

B. *Timing.*

1) *Child in custody.* If a child is removed from the home, the court shall enter an adjudication of dependency within seven days of the adjudicatory hearing and enter its findings pursuant to Rule 1408.

2) *Child not in custody.* If a child is not removed from the home and if the court fails to enter an order of dependency, the court shall hold a status hearing every thirty days.

C. *Court order.* The court shall include the following in its court order:

1) A statement pursuant to paragraph (A):

- a) as to whether the court finds the child to be dependent from clear and convincing evidence;
- b) including the specific factual findings that form the bases of the court's decision;
- c) including any legal determinations made; and

2) Any orders directing the removal of a child from the home or change in the current residential status, including:

- a) orders as to placement; or
- b) visitation; or
- c) change in custody; and

3) Any orders as to any aids in disposition that may assist in the preparation of the dispositional hearing, including orders regarding family finding.

➤ **Rule 1514. Dispositional Finding Before Removal from Home.**

A. *Required findings.* Prior to entering a dispositional order removing a child from the home, the court shall state on the record in open court the following specific findings:

- 1) Continuation of the child in the home would be contrary to the welfare, safety, or health of the child;
- 2) **The child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there is no less restrictive alternative available;**
- 3) If the child has a sibling who is subject to removal from the home, whether reasonable efforts were made prior to the placement of the child to place the siblings together or whether such joint placement is contrary to the safety or well-being of the child or sibling;
- 4) The county agency has reasonably satisfied the requirements of Rule 1149 regarding family finding; and
- 5) One of the following:
  - a) Reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from the home, if the child has remained in the home pending such disposition; or
  - b) If preventive services were not offered due to the necessity for emergency placement, whether such lack of services was reasonable under the circumstances; or
  - c) If the court previously determined that reasonable efforts were not made to prevent the initial removal of the child from the home, whether reasonable efforts are under way to make it possible for the child to return home.

B. *Aggravated circumstances.* If the court has previously found aggravated circumstances to exist and that reasonable efforts to remove the child from the home or to preserve and reunify the family are not required, a finding under paragraphs (A)(5)(a) through (c) is not necessary.

➤ **Rule 1609. Permanency Hearing Orders.**

A. *Court Order.* After every permanency hearing, the court shall issue a written order, which provides whether the permanency plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Determination made.* The court's order shall reflect a determination made pursuant to Rule 1608(D).

C. *Transfer of custody.* If the court decides to transfer custody of the child to a person found to be qualified to provide care, shelter, and supervision of the child, the permanency order shall include:

- 1) the name and address of such person unless disclosure is prohibited by court order;

- 2) the limitations of the order, including the type of custody granted; and
- 3) any temporary visitation rights of parents.

D. *Orders on family finding.*

- 1) The court order shall indicate whether family finding efforts made by the county Agency were reasonable;
- 2) If the family finding efforts were not reasonable, the court shall order the county Agency to engage in family finding prior to the next permanency hearing;

➤ **Rule 1611. Permanency Hearing Orders for Children over Eighteen.**

A. *Court order.* After every permanency hearing for children over the age of eighteen, the court shall issue a written order, which provides whether the transition plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Determinations made.* The court's order shall reflect the determinations made pursuant to Rule 1610(D).

C. *Orders on family finding.*

- 1) The court order shall indicate whether family finding efforts made by the county Agency were reasonable;
- 2) If the family finding efforts were not reasonable, the court shall order the county Agency to engage in family finding prior to the next permanency hearing;

## **PENNSYLVANIA CASE LAW DISCUSSING** **KINSHIP PLACEMENT**

**In the Interest of L.H.**, 2019 WL 3917550 (Pa. Super. 2019) (unpublished memorandum): In this case, E.H., III (“Father”) appealed the trial court’s order, which adjudicated L.H. (“Child”) a dependent child and placed him in the custody of the Northumberland County Children and Youth Services Agency (“Agency”). On appeal, Father argued that the trial court erred and/or abused its discretion when it determined that the Agency had adequately investigated potential kinship on his side and that Child’s placement with maternal great-grandmother was in his best interest. The Superior Court affirmed the at-issue order on the basis of the trial court’s Pa.R.A.P. 1925(a) opinion. In doing so, the intermediate court held that both the relevant law, and the record in this matter, supported the trial court’s findings that, *inter alia*,: (1) the law does not require a court to place a dependent child according to family member’s desire to obtain custody; (2) the Agency need not consider all relatives or consider only certain relatives for placement of a dependent child; and (3) in this case, both parents were given opportunity to suggest placement options and Mother did, but Father did not.

**In re K.S.J.**, 2013 WL 11248418 (Pa. Super. 2013) (unpublished memorandum): G.S. (“Father”), appealed from the trial court’s decree, which involuntarily terminated his parental rights to his four children (“Children”). On appeal, Father presented several issues. Of particular note, Father asserted that the trial court erred in not finding that Wayne County Children and Youth Services (“CYS”) interfered with the placement of Children with a relative. Specifically, Father contended that Children had family members who agreed to act as a resource for some or all of Children, but CYS did not follow-up with them. In Father’s opinion, CYS’ failure to properly explore all familial resources who could care for Children meant that CYS’ initiation of termination proceedings was premature. The Superior Court, while cognizant that an agency should first consider placement of a dependent child with a relative, rejected Father’s claims, finding that they were belied by the record. Specifically, the intermediate court noted that: (1) the family’s CYS caseworker testified that she and another caseworker specifically asked Mother and Father to put together a list of potential family resources for Children and have them contact CYS; (2) Mother and Father were unable to provide any family members to care for Children; (3) Father offered no specific relative that could have been an appropriate resource for Children and in fact, he acknowledged that Mother’s family was the only potential resource for Children, as his family members either lived too far away or were deceased; and (4) Mother admitted that one of the CYS caseworkers contacted Mother’s family members to see if they were willing to act as a resource for Children. Based on the foregoing, the Superior Court concluded that the record demonstrated that CYS made efforts to place Children with family members but found no relative willing or able to act as a resource for them.

**In re K.B.**, 2016 WL 2955430 (Pa. Super. 2016) (unpublished memorandum): In this case, A.J.B. (“Mother”), appealed from the trial court’s order, which changed the permanency goal regarding her child, K.B. (“Child”), from reunification to adoption. On appeal, Mother asserted that the trial court: (1) abused its discretion and erred as a matter

of law when it failed to consider maternal grandparents desire to adopt Child or, in the alternative, their desire for permanent guardianship of Child; (2) erred when it failed to find that Clarion County Children and Youth Services' ("CYS") both did not properly consider kinship placement and failed to properly follow procedures in documenting why kinship placement was not possible in conformity with 62 P.S. § 1301-03 (since repealed); and (3) failed to hold a hearing to make a determination that family finding could be discontinued. The Superior Court affirmed the at-issue order on the basis of the trial court's Pa.R.A.P. 1925(a) opinion. In doing so, the intermediate court held that both the relevant law, and the record in this matter, supported the trial court's findings that, *inter alia*,: (1) "family finding" law does not require a court to consider, inquire about, or promote grandparent's desire to adopt or obtain guardianship; (2) family finding law did not require CYS to consider all relatives or to give consideration to only certain relatives, such as maternal grandparents; (3) CYS complied with family finding statutes and gave first consideration to relatives when CYS placed Child with paternal grandmother, whom Mother and Father identified as their preferred placement; (4) CYS documented kinship placements when Child was placed with paternal grandmother and then paternal aunt and uncle during Child's first seven months of CYS' involvement; (5) the law does not require CYS to document that attempts were made to place Child with every relative of Mother and Father, nor does law require CYS to evaluate all relatives and rank them according to best placement; (6) once Child was placed with appropriate relative, it would have been contradictory to CYS' goal to continue seeking placement with other relatives solely to satisfy these relatives' desires; and (7) CYS met objections of family finding statute by communicating with maternal grandparents through kinship letters and multiple telephone conversations, and by arranging and promoting visitations with Child.

**Interest of Z.B.**, 2019 WL 6999957 (Pa. Super. 2019) (unpublished memorandum): C.B. ("Paternal Grandmother") appealed the order denying her petition for the adoption of her five-year-old grandson, Z.B. ("Child"). In denying Paternal Grandmother's petition, the trial court determined that Child's best interests favored an adoption by T.R. and F.R. On appeal, Paternal Grandmother presented one multifaceted issue. Part of Paternal Grandmother's complaint was that CYS did not conduct any family finding to identify her or include her in the process. Ultimately, the Superior Court affirmed the trial court's order, finding that the record supported the lower court's determination that adoption by T.R. and F.R. would be in Child's best interest. Although the court did not directly speak to Paternal Grandmother's issue regarding family finding, it did emphasize that after Child's birth, Child's biological parents asked for support from T.R. and F.R., and both parents purposefully sought to limit contact between Child and Paternal Grandparents. Considering this dynamic, the intermediate court found that CYS "logically identified" T.R. and F.R. as "a favorable placement option."

**P v. S.K.**, 2017 WL 1476310 (Pa. Super. 2017) (unpublished memorandum): A child was adjudicated dependent shortly after birth due to her mother suffering from substance abuse and her father being incarcerated. Two years later, the paternal grandparents sought custody of the child, but were denied. The grandparents appealed, contending that the trial court erred in denying visitation because the Office of Children Youth and Families ("CYF") failed to conduct a proper kinship care search, and did not provide

grandparents with the opportunity to serve as a kinship placement. The Superior Court found no error or abuse of discretion, as the record showed CYF conducted a family finding on the maternal side after the child's birth. Moreover, the court noted that although paternal family finding had to wait until genetic testing had been performed, after the testing was completed, the father refused to respond to CYF, and failed to tell grandparents about the child for two years. Despite CYF's history of "spotty" recordkeeping, the Superior Court agreed with the trial court's finding that it would be unreasonable to blame CYF for the father's unwillingness to participate in the placement process.

**In re B.B.**, 2018 WL 579589 (Pa. Super. 2018) (unpublished memorandum): Two teenagers were adjudicated dependent due to their parents substance use. At a permanency review hearing, there was a dispute regarding the parent's production of kinship resource information. CYF performed a kinship home study on the maternal aunt and maternal grandparents, both of whom CYS described as inadequate placements. The orphans' court concluded that the children would be placed in a placement facility, and that CYS should immediately begin investigating other possible kinship placements. Mother appealed, arguing that CYS did not provide adequate justification for their failed investigations into kinship placement. The Superior Court agreed that CYS did not conduct an adequate investigation into possible kinship placements before the permanency review hearing. Specifically, the court noted that CYS failed to ask the dependent teenagers if they knew of any appropriate kin, and relied entirely on a form given to the parents. There was no indication on the record that CYS sought information about anyone other than the maternal aunt and maternal grandparents. Nonetheless, the Superior Court concluded that the trial court did not abuse its discretion in placing the children at an agency home while the agency searched for long-term placement, which was to include a court-ordered investigation into possible kinship placements.

**Interest of G.L.C.**, 2019 WL 6907556 (Pa. Super. 2019) (unpublished memorandum): Mother appealed from an order changing the permanent placement goal of her daughter from reunification to adoption and terminating her parental rights, arguing in relevant part that the trial court erroneously determined that the Community Umbrella Agency ("CUA") no longer needed to explore kinship placement. The Superior Court found that if reunification with the parent is no longer possible, and adoption is best suited to the child's welfare, a court is not required to compel an agency to consider family finding pursuant to 42 Pa.C.S. § 6351(f.1)(4). The Superior Court noted that the record reflected that CUA persistently investigated the possible placement of the child with a maternal cousin despite difficulties with interstate communication. However, the trial court explained, and the Superior Court agreed, that by the time of the termination hearing, CUA and the cousin had failed to make progress, and kinship placement at that time would have been detrimental to the child, who had been with the same pre-adoptive foster parents since shortly after her birth, and with whom the child had a strong bond.

**In the interest of N.M.**, 186 A.3d 998 (Pa. Super. 2018): Parents challenged the trial court's permanency orders declining to place Child in kinship care after a subsequent order terminating their parental rights to Child. The Superior Court reversed the

permanency orders and vacated the termination decree holding that the trial court abused its discretion by not placing Child in kinship care because the decision was based on speculation that Parents would abuse visitation rights and visit paternal grandmother's home without agency supervision. The court reasoned that paternal grandmother was willing and able to provide kinship care for Child, DHS supported kinship placement with paternal grandmother, and the Juvenile Act provides for the protection of children under these exact circumstances. 42 Pa.C.S.A. § 6351(a)(2)(iii) (disposition of dependent child allows court to "permit the child to remain with ... guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child").

**In re R.P.**, 957 A.2d 1205 (Pa. Super. 2008): Mother appealed an order adjudicating her children ("Children") dependent and placing them in foster care. On appeal, Mother challenged, *inter alia*, the trial court's decision not to place Children in kinship care. Mother argued that although aggravated circumstances were found Children and Youth Services ("CYS") was required to make reasonable efforts to preserve her family and the trial court failed to analyze CYS's efforts. The Superior Court rejected Mother's challenge, holding that the trial court complied with the "required replacement findings" set forth in 42 Pa.C.S. § 6351(b), which limits the required findings when aggravated circumstances exist.

**In re Adoption of G.R.L.**, 26 A.3d 1124 (Pa. Super. 2011): Parents appealed from orphans' court order terminating their parental rights. Parents contended that the county Office of Children and Youth ("OCY") failed to comply with the requirements of the Kinship Care Program set forth at 62 P.S. § 1303 (since repealed). The Superior Court held that the record demonstrated OCY complied with the Kinship Care Program. Specifically, OCY considered several of Parents' relatives as potential resources for Children while they were in foster care and documented such efforts. Additionally, the court faulted Parents for waiting until the termination hearing to recommend grandfather as a potential resource.

**Interest of A.R.**, 2020 WL 1487286 (Pa. Super. 2020) (unpublished memorandum): Children and Youth Services ("CYS") obtained emergency custody of A.R. ("Child") in 2017. Mother was found to be non-compliant with her permanency plan after several permanency hearings. In 2019, Mother's parental rights were terminated upon petition by CYS. Mother appealed raising two issues. Relevant here, Mother argued that the orphans' court erred when it deferred to CYS' refusal to place Child in kinship care with maternal aunt and uncle because CYS denied placement for inappropriate reasons. After setting forth the relevant statute, 67 Pa.C.S. § 3105(c), the Superior Court held that the orphans' court heard competent evidence throughout the termination proceedings that permitted it to conclude that placing Children in kinship care was not in the best interest of Children.