



**Why You Can't Get Custody of Your Grandchild
A Research Study Conducted by the
Grandparents Resource Center
Denver, CO**



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When the author's grandchildren were placed in foster care, she was deeply affected by what she experienced when she tried to get her grandchildren out of foster care. She alternated between feeling very angry about the injustice of the social services system and deeply hurt by the coldness of the judicial system. She often felt powerless, especially when she saw her three-year-old grandson abused and beaten by his foster mother.

A current documented research project lead the author to identify a growing trend in the United States of social services departments placing children in foster care and, consequently, an increase in the number of grandparents who need assistance in dealing with those departments and the court systems they are aligned with. Since most foster care systems dismiss grandparents as viable custodians, grandparents seeking custody require help from outside the system.

The attempt by grandparents to reunify their families is overlooked by the foster-care system and the judicial system; courts usually rubber-stamp decisions made by the social services department, and those decisions rarely favor assigning custody to grandparents over placing their grandchildren in foster homes. A lack of scholarly literature related to this problem reveals that, nationally, grandparent-adoption is a low-profile issue.

Debi Brazzale (2010) recounts a meeting of Colorado lawmakers in December, 2010, which demonstrated their dissatisfaction with the administration of foster care by the Colorado Department of Human Services. They expressed dismay over gaps in tracking the money that is paid out for foster care, a task that falls under the purview of the Colorado Department of Human Services, which initiates a complex sequence of allocating the money: First, the Department allots the money to individual counties, which then outsource it to privately owned child-placement agencies that pay foster families for their services (Brazzale, 2010).

In 2008, the state's auditor found that the Colorado Department of Human Services had not heeded the recommendation of the previous two years' audits that the program receive oversight because of the numerous instances in which expenses charged to the program by foster-care providers may have been excessive or unallowable. Since then, the Department began receiving federal funds through the American Recovery and Reinvestment Act in 2009, which does not require an audit of the "vendors" who service the foster care program, so it has decided to consider its private child-placement agencies as "vendors" and, therefore, not subject to the scrutiny of an audit. This decision troubled Senator Morgan Carroll, D-Aurora:

Let me just be candid—I find that disturbing. We're talking about some really high-profile problems with the division of child welfare. We're talking about the past experience of being overcharged and having unallowable expenses in a system that desperately needs money to go to direct care for children. (Brazzale, 2010)

Furthermore, Carroll called for oversights to be put in place, regardless of how the child-placement agencies are defined by the department, asking officials from the Department of Human Services who were testifying before the Legislators, “We have identified basic oversight lapses here. This is a population that is not able to do its own oversight, and if you’re not doing it—who’s doing it?” (Brazzale, 2010).

Senator Lois Tochtrop, D-Thornton, reiterated the concerns of her colleagues: “This administrative cost [of child-placement agencies] is pass-through money. The county gives it to [the agency]; [the agency] passes it through to the foster parents. That’s where the concern is: pass-through that there’s no oversight on” (Brazzale, 2010). Tochtrop concluded by asserting that if the problem is not remedied, it might be time to evaluate “the overall structure of human services and to reconsider decentralization put in place just over a decade ago” (Brazzale, 2010). Echoing Tochtrop, Senator Dave Schultheis, R-Colorado Springs, expressed hope that the department will find a way to create the oversight that appears to be lacking: “I do hope that future audits appear better than they appear here. It gives the impression that you [the Department of Human Services] don’t care about it. It looks like we’re at logger heads and you’re going to do what you want to do” (Brazzale, 2010).

Jenise May, a Deputy Executive Director of the Colorado Department of Human Services, responded by defending the Department’s reluctance to exclude the agencies from the auditing requirements:

When you end up in that arena, you end up having to track a dollar down to the provider level. It really limits our ability to serve the child,” May said. “For example, a child may not be able to receive a birthday present under the federal guidelines if even child-placement agencies must be audited. (Brazzale, 2010)

An article written by retired New York Supreme Court Judge Brian Lindsey asserts that as a human services department and a family court judge become closer and closer partners, there is less and less of a true adversarial system; he believes that no judge can remain truly neutrality. Lindsey contends that as a result of judges’ bias toward human services, the family court system “guarantees” the breakup of families: “This is one reason why the grandparent who is seeking custody has such a hard time when the parental rights have been terminated” (as cited in Dutkiewicz, 2011).

In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act, which will help more children find permanent families. In her report to Congress on the Act, Emilie Stoltzfus (2008) states that despite the progress the Act represents, thousands of children, especially older children and children of color, still wait for families. In addition, the many families who have adopted lack critical post-adoption support that is essential to the children’s long-term stability and wellbeing (Stoltzfus, 2008).

Colorado Adoption Facts (2009) states that for children waiting to be adopted in Colorado, the average length of stay in foster care is 34.8 months—almost three years. On average, children who were adopted in 2007 spent more than two years, 26.7

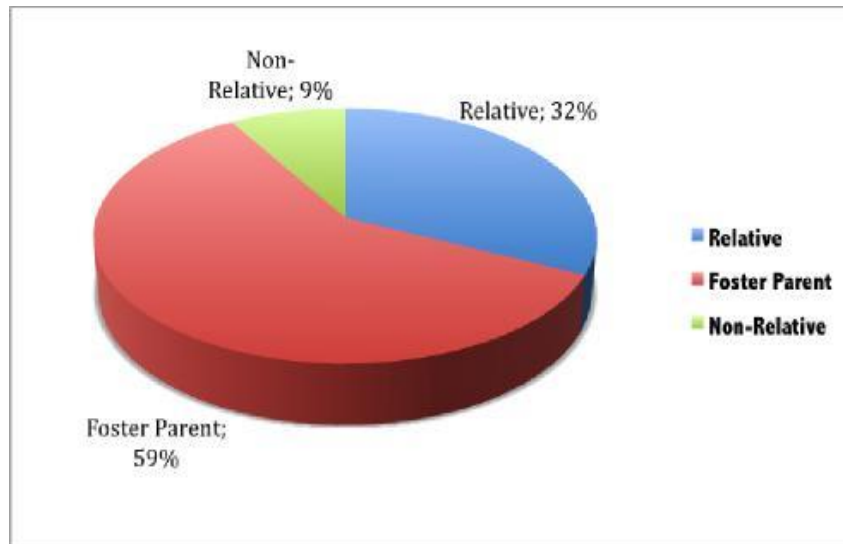
months, in care before the adoption was finalized. The average age of Colorado's adopted child is about 5.8 years while a child who is waiting for adoption is, on average, 8.4 years old. Research shows that for youth over the age of nine, the likelihood of being adopted drops significantly (Colorado Adoption Facts, 2009).

It was found that, most of the time, if the grandparent, rather than the foster family, adopts the grandchild, the child's sense of worth, wholeness, stability, emotional security, and confidence are enhanced because he has been placed with his own blood relations. Furthermore, adoption by his own family circumvents future abandonment issues and mental problems related to being separated from his family of origin forever. Additionally, children will not feel, as they often do, that their worth is grounded in their monetary value to their foster-adopt family (Berens, 2000).

According to the Adoption and Foster Care Analysis and Reporting System (AFCARS) by U.S. states, in Colorado, children who were placed into foster care were more likely to be adopted by their foster parents than by their grandparents. In fact, 59 percent of the children who entered the human services system were later adopted by their foster parents while only 32 percent were adopted by relatives (Foster Care, 2009). Thus, you can see that Foster Parent adoptions are two to one against relative adoptions.

The importance of human services enlisting grandparents in the care of their grandchildren can be inferred from the following table, which indicates the need for more permanent homes for foster children.

Figure 1
Colorado Adopting Parents' Relationship to Child
Prior to Adoption, 2007



According to an article published by the North American Council on Adoptable Children, "In Colorado, the Department of Human Services says, "By setting adoption assistance rates equal to foster care rates, agencies can help ensure that foster parents have an incentive to adopt" (Colorado Adoption Facts, 2009).

Only about 43 percent of Colorado children adopted in 2007 were receiving Title IV-E federal adoption assistance. Many of the children who were not IV-E eligible did not qualify due to their birth parents' income. Some children who do not qualify for federal assistance receive no adoption subsidies at all. Thus there would be no gain to adoptive parents to adopt a child without getting subsidies for them, except for those exceptional families who truly see these children as part of their families and want to adopt them.

It is important to note that although there was considerable discussion about extending the incentives to include guardianships or reunification, the final Act only includes incentives for adoption.

The Act extends the adoption incentives program for five years, changes the baseline for determination of incentive payments, and increases the level of the incentive payments. In addition, states may receive additional payments if their adoption “rate” exceeds the highest ever previously recorded since 2002. The Act defines the adoption “rate” as the number of foster care adoptions finalized during the fiscal year divided by the number of children in foster care on the last day of the preceding fiscal year. This rate fails to take into account the number of children for which adoption was not a goal, and actually may penalize states with high rates of reunification. It appears that this definition simply mirrors the existing Department of Human Services measure that was created due to the lack of reliable data on the case plan goals of children in care. States may want Department of Human Services to allow them some flexibility in assessing changes in the adoption rate using a more accurate measure.

Under previous law, states could only claim reimbursement for special needs children adopted from foster care who met Title IV-E income eligibility standards (i.e., children who were removed from the home of parents whose income would have made them eligible for *Aid to Families with Dependent Children* in 1996). The Act removed this requirement, and thus states, over time, can seek reimbursement for adoption assistance payments made on behalf of all special needs children who meet other IV-E eligibility requirements.

Title IV-E training dollars have been available to reimburse states (at an enhanced 75 percent rate) for costs associated with training public agency workers. The Act allows states to seek enhanced reimbursement (prior law allowed reimbursement at the administration rate of 50 percent) for costs associated with training private agencies, which are defined as “state-licensed or state approved child welfare agencies providing services,” as well as court personnel, attorneys, guardians ad litem (GAL), court appointed special advocates, and prospective relative guardians (“Child Welfare Policy Manual: 8.2 E TITLE IV-E, 8.2D.3 TITLE IV-E, Adoption Assistance Program, Payments,” 2001).

Some of the key decisions facing states, and the potential contributions that the advocacy and philanthropic communities can make in implementation of the Act, are discussed above. However, the courts also have an opportunity to influence the implementation of many of the key provisions of the Act. For example, judges can ask:

- 1) caseworkers how they have made due diligence to notify relatives of children in care;
- 2) relatives identified if they were informed of the option of becoming foster parents;
- 3) child welfare officials whether unlicensed kinship care placements are safe, and if so, why they were not licensed with waivers of non-safety standards;
- 4) caseworkers what reasonable efforts were made to keep siblings together in foster care, and when separated, what reasonable efforts are being made to ensure frequent visitation;
- 5) caseworkers of foster youth who will be aging out of the systems, and the foster youth them-selves, about the transition plan that has been developed;

- 6) caseworkers about the efforts taken to allow children to remain in their school or origin; and
- 7) prospective adoptive parents if they were informed about their eligibility for the federal adoption tax credit.

Many can argue that the existing federal financing structure limits the flexibility states have, fails to make states accountable for child or system outcomes, provides insufficient incentives for states, unnecessarily drains resources for administrative purposes, or simply denies states the resources needed to implement meaningful reforms.

Moreover, many policymakers are concerned about the message that maintaining this link sends that the federal government only has a financial stake in the care of foster children from poor families.

In addition to not addressing de-linking of foster care from *Aid to Families with Dependent Children*, the Act did not address the imbalance between federal funds allocated for foster care and adoption and the funds allocated for prevention and child protective services. With IV-E an uncapped entitlement and IV-B capped (and at a relatively low level), researchers and advocates have noted that states lack any financial incentive to achieve the child welfare goals of keeping families together and ensuring timely permanency for children removed from their homes. Reducing the number of children in foster care only reduces the amount of federal revenue states receive.

Rob Geen (2009) states that an average of 25,000 per state children age out of foster care each year without achieving permanence

Trends in Foster Care and Adoption—FY 2002-FY 2009
(Based on data submitted by States as of July 29, 2010)
Source: AFCARS data, U.S. Children's Bureau, Administration for Children and Families

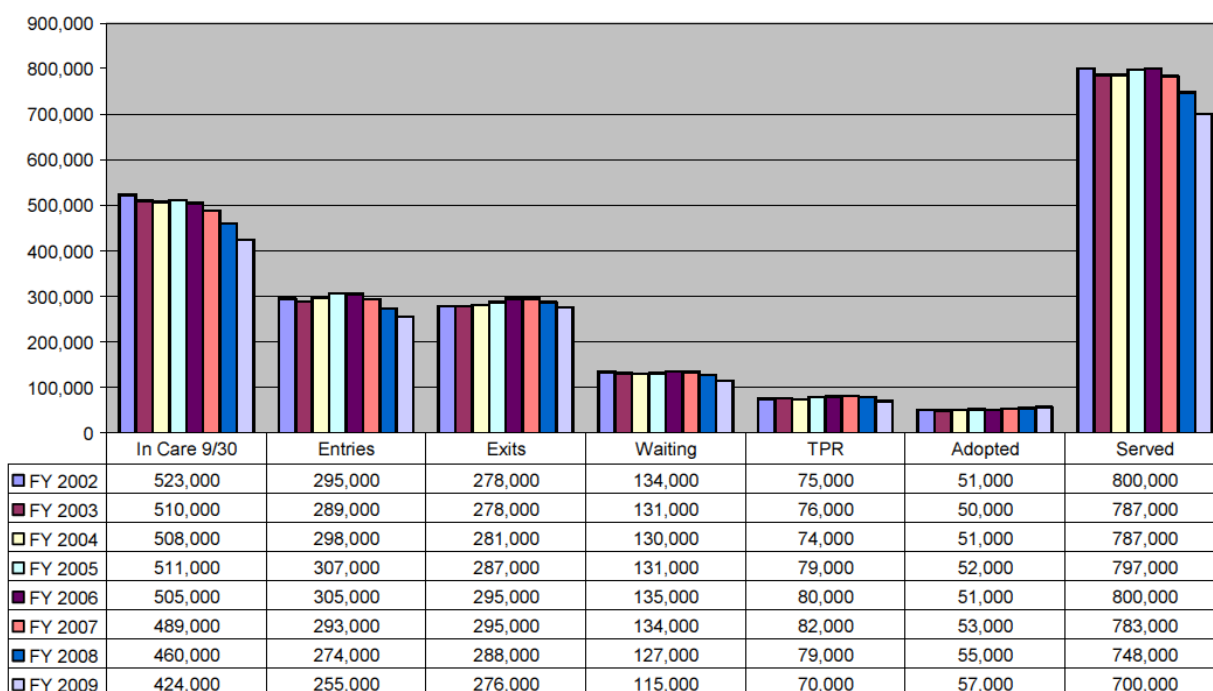


Figure #1: Trends in Foster Care Adoption—FY 2002-2009. This chart includes data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) by States, the District of Columbia and Puerto Rico by July 29, 2010.

After considering these statistics, along with the available literature, these questions persisted: Why haven't human services departments taken advantage of the pool of grandparents who want custody of their grandchildren? Wouldn't the addition of grandparents to potential guardians improve the statistics in this table, along with the lives of the children involved? The narratives implied in this table also validated the critical necessity of examining the issue of grandparents' rights to custody of their grandchildren and expanding and disseminating knowledge of it to a national audience while educating and mentoring grandparents' throughout the

United States who are attempting to assert their rights with courts and human services department.

It was conferred with a number of people when information was gathered and data was analyzed. One person in particular, David Dougherty, a high-profile Colorado attorney who teaches law at University of Colorado in Boulder, Colorado, and was awarded the American Jurisprudence Award in Evidence, reinforced the reality that was emerging from the examination of the issue of grandparents' rights to their grandchildren in foster care. Having worked in the field of grandparents' rights, Dougherty confirmed the apparent lack of public interest in the issue of grandparent's custodial rights: "There are no general statistics on how many grandparents are denied visitation and/or custody rights of their grandchildren in Colorado" (D. Dougherty, personal communication, February 17, 2011).

The traditional bias of the Department of Human Services against family reunification is reflected in the funding of the Title XX of the Social Security Act. Uncapped funds were made available for out-of-family placement and "guaranteed prosecution" for family members accused of child abuse were promised; little funding was ever provided for in-home support or rehabilitation services. No funds were made available for defending the family member accused of harming the child against false or unfounded charges (Section 10, 2000).

In an effort to bring some balance to the system, the Adoption Assistance Child Welfare Act (Public Law 96-272) was passed. Its goals were threefold: to prevent foster care placement, to encourage reunification of families in the foster care system, and to provide permanent adoptive families for children who cannot be returned to their

homes. However, a major requirement for continued funding, that the state make “reasonable efforts” to keep the family together, is not overseen by the United States Department of Health and Human Services. In lieu of making these reasonable efforts, states can put children into foster care programs by way of “voluntary” placements (Adoption Assistance, 2004).

The research summarized above confirms that numerous challenges exist when grandparents are seeking to gain custody of their grandchildren, with problems ranging from the knowledge of human service systems and courts to family communication and financial needs.

Shirley M. Berens the Executive Director of the Grandparents Resource Center authored a self-help manual "Grandparents Custody Rights Denied" for those grandparents seeking custody, visitation and/or adoption of their grandchildren whom have been placed into foster care.

The book explains the judicial and human service systems you are faced with and how you can educate yourself and/or your attorney on how to get custody of your grandchildren. Education is the key to your success.

For further information contact the Grandparents Resource Center's web site at www.grc4usa.org for further details. The target release date of the book "Grandparents Custody Rights Denied" is January 2012.

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