



ISSUE BRIEF

STRONG FAMILIES

How is the practice of hidden foster care inconsistent with federal policy and harmful to children and families?

Serious physical or emotional harm, or the risk of imminent harm, is a legal standard child protection agencies must meet in removing a child from their home.¹ **Hidden foster care**² is an unregulated practice inconsistent with federal policy whereby a child protection agency — following an investigation and a child removal decision — facilitates the child’s move from the family to the care of kin (a relative or trusted community member) **in lieu of seeking legal custody or providing economic or other supports**. Unlike a case in which the agency does assume legal custody, there are no supports offered to the child or temporary caregiver, and no plans are made to safely reunify the child with their parents. Safe reunification of a child and their parents should always be the goal after a removal takes place.

The practice of hidden foster care also is referred to by other terms, including “shadow foster care” and “informal kinship diversion.” By any name, **hidden foster care is never an appropriate or adequate child protection response**. Hidden foster care **circumvents legal safeguards** and shirks governmental responsibilities articulated in federal policy, both in situations where the child protection agency is justified in removing children from their home (when a safety assessment identifies



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actual or imminent risk of harm) and in cases where it is not (when a safety assessment does not identify actual or imminent risk of harm, but informal placement is pursued in lieu of supports to the family to address any identified safety risks).

[Use of hidden foster care varies greatly by jurisdiction.](#)

Even with the inconsistencies in implementation, Child Trends refers to these informal arrangements as “the most common out-of-home placement, with approximately half of children removed from their homes ending up in a diversion arrangement.” Little is known or tracked about the children and families impacted by hidden foster care because these placements are not part of federal reporting requirements. It is challenging to determine a precise number, but a Child Trends analysis estimated 100,000 to 300,000 children are diverted from foster care in this fashion per year.

[Well-functioning, effective child protection agencies](#) do *not* use hidden foster care as a policy or practice when removal is deemed necessary for child safety. Rather, agencies should follow a set of guiding principles to ensure that children placed with kin, along with their kinship families, receive the same level of economic and other supports guaranteed through the formal foster care system, and that kinship placements never are used to justify an unwarranted separation of children and family.

These three principles of best practice are:

- 1. Support to the child is central for safety and permanency**
- 2. Parents have a right to due process and quality representation**
- 3. Caregivers need support and resources to safely care for children**

Principle 1: Support to the child is central for safety and permanency

If a child’s removal from their home and/or legal caregivers has been deemed necessary as a result of actual or imminent harm, in the context of a child protection investigation and safety assessment, **children must not be re-assigned from formal**

THE ROLE OF FAMILY

Children have a [moral and legal right](#) to be with their families.⁵ Separating children from their parents is a traumatic experience, and everything possible should be done to keep them safely with the people who know them best. If a child protection agency determines that a child must be removed from home, the agency’s goal should be to formally place the child with kin. These children and their kinship families deserve equitable resources and supports that help protect their safety and well-being, and includes pursuing a path toward family reunification. The benefits of formally placing children with kin are well documented in research. Sometimes, however, the benefits of kinship care are wrongly used to justify the practice of hidden foster care. To the contrary, this practice of **informal placement is never justified.**

system supports through informal placement.

In accordance with federal policy, child protection agencies have a legal obligation to address and monitor the safety, permanency, and well-being of children following an investigation and determination of the need for removal, and to fully support children when removal is deemed necessary. That duty also extends to providing reasonable efforts toward reunification through the provision of supports and services beginning at the point of removal.

Hidden foster care, however, lacks the oversight that is imperative for an agency to determine the safety of children once they are informally placed with kin. The agency also cannot determine whether or when children are able to return safely to their parents, which should be the first goal of any child welfare intervention, or whether or when they can achieve another form of legal permanency such as guardianship or adoption.

Principle 2: Parents have a right to due process and quality representation

Hidden foster care involves the government reassigning a child to another home without a legal notice and

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hearing, violating parents' rights to [due process](#). Parents have a fundamental constitutional right to the care and custody of their children, and the government faces a high standard in order to legally justify its intrusion or surveillance. In cases where child protection becomes involved, a quality safety assessment is important to explore every possibility for supporting the family to stay safely together. If removal is sought after a thorough investigation and safety assessment, parents are entitled to legal representation at a hearing during which the judge will determine whether the government has met its legal burden to justify removal. If the judge finds sufficient evidence of abuse and/or neglect justifying continued removal, the case will continue under judicial oversight. **The practice of hidden foster care bypasses this essential process of checks and balances.** Rather than the agency seeking removal of the child and the court making the final determination, the agency improperly fills both roles by also taking on the second.

Further, child protection agencies must acknowledge and understand the power differential at play when they intervene with families. In stressful and traumatic experiences such as having a child removed, parents may feel coerced to make certain choices, possibly just to resolve the case and end the system's intrusion into their lives. Child protection agencies must have clear policies outlining what caseworkers can offer in terms of temporary and longer-term support. If informal placement with kin (hidden foster care) is proposed as an option when an agency lacks sufficient evidence to make a strong case for removal in court, a parent may opt for this path simply as a way to close the investigation and end system intrusion into the family's life, even if such a removal is unwarranted. In this respect, **hidden foster care introduces the potential for coercion** by asking parents to relinquish custody to trusted kin.

Hidden foster care also does not require the agency to provide a clear pathway for reuniting children safely with their parents. When a child protection agency makes the decision to remove a child, and the court authorizes that removal, the agency is legally required to develop — and the court must approve — a plan for family reunification (the legal standard is “reasonable or active efforts”). This plan, when properly constructed,

spells out specific actions the parent must take and the services and supports the agency must provide to address the conditions that necessitated removal. When those goals are met, the child must be safely returned home.

When the agency files a dependency petition with the court, **parents are entitled to legal representation at the court proceedings.** If they cannot afford an attorney, most jurisdictions provide for court-appointed legal representation.

In hidden foster care, the conditions for reunification are less clear, or possibly even nonexistent, and parents do not have a court-appointed lawyer or advocate to represent them in their efforts toward reunification.

Principle 3: Caregivers need support and resources to safely care for children

When an agency removes children from their parents, it is responsible for making all resources available to support the child, including economic supports, logistical help with parent/child visits, and trauma and behavioral health services for the children. Those supports should be — and increasingly are — made available to kinship caregivers.³ By virtue of its informal arrangement, **hidden foster care may result in kinship caregivers being denied access to critical financial and legal supports** they may need to care for children effectively.

Temporary caregivers — including all kinship caregivers — must be supported to ensure the safety and well-being of the child, and must be given the legal authority to make critical decisions on behalf of the child. In hidden foster care arrangements, caregivers are not granted this legal authority. [Legal guardianship](#) can be an important formal arrangement so a permanent caregiver can obtain medical services for their children or enroll them in school.

Questions to consider:

- What do our agency policies say or suggest about hidden foster care? Is it expressly prohibited or discouraged? Is it expressly or implicitly permitted or encouraged?

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- What conditions lead caseworkers in our agency to re-assign a family from the formal foster care system?
- How does our agency ensure that parents' legal rights to the care and custody of their children are safeguarded, even when safety concerns are identified?
- How does our agency take steps to acknowledge that families can come together and partner with kin and the agency to develop a safety plan?
- How does our agency ensure that all kin caregivers have the appropriate legal authority and supports (financial and otherwise) to make decisions about the child's well-being, including medical care and school enrollment?

The **Child Trends' Kinship Diversion Estimation Tool** is helpful for child protection agencies seeking to understand whether — and the extent to which — the practice of hidden foster care is being used.

- How does our agency take steps to ensure that parents are not being coerced into agreeing to removal via informal placement with kin, or that services or benefits are not being unknowingly waived?
- What efforts do our caseworkers make to reunify children in kinship care with their parents? Do they equal the efforts made for children in non-kin placements?

To learn more, visit [Questions from the field](#) at [Casey.org](#).

- 1 American Bar Association. (2009). *Child Safety: A guide for judges and attorneys*.
- 2 For more information about the practice and policy of hidden foster care (also known as shadow foster care or informal kinship diversion), please see the following resources:
 - Alliance for Children's Rights. (2020). [The human impact of bypassing foster care for at-risk children: Building a continuum of support for families diverted](#).
 - American Bar Association. (2020). [Addressing hidden foster care: The human impact and ideas for solutions](#).
 - The Annie E. Casey Foundation. (2013). [The kinship diversion debate: Policy and practice implications for children, families, and child welfare agencies](#).
 - Child Trends. (2019). [Variations in the use of kinship diversion among child welfare agencies: Early answers to important questions](#).
 - Gupta-Kagan, J. (2020). [America's Hidden Foster Care System](#). *Stanford Law Review*, 72, 841-913.
- 3 In February 2023, the Administration for Children, Youth, and Families published a [Notice of Proposed Rulemaking \(NPRM\) on Separate Licensing Standards for Relative or Kinship Foster Family Homes](#). If finalized, states would be encouraged to adopt alternative standards for kinship caregivers, as an alternative to case-by-case waivers, and require equivalent financial support for kinship placements.

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