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Kinship Caregivers in D.C. Say Child Welfare Agency Owes Foster Payments

BY MORGAN BASKIN



K.H. took in her young niece three years ago to keep her out of the Washington, D.C., foster care system. In an ongoing lawsuit, she and other caregivers say they were denied the public support entitled to formal foster parents. Photo by Farrah Skeiky.

Three years ago, a Washington, D.C., woman received a distressed call with an urgent request: Her sister was being admitted to a psychiatric hospital and needed help caring for her then-5-year-old daughter. Could she take her in?

Facing financial insecurity herself, the woman — who asked to be identified by her initials due to the sensitive nature of her case — nevertheless wanted to help her sister. But K.H. was quickly overwhelmed by the challenges of a child with significant emotional needs who arrived from a struggling, unstable home.

“I had this child with no clothes, no anything,” she told The Imprint. “I was living paycheck to paycheck. I literally had to make a choice: my rent, or to take care of her.”

An ongoing lawsuit filed in 2019 on behalf of K.H. and several other local caregivers alleges although they rescued their relatives and protected them from entering foster care, they received none of the vital financial help they needed to care for the children.

K.H. repeatedly requested a foster parent license, and completed the necessary requirements. But each time, the D.C. Child and Family Services Agency (CFSA) refused, denying her financial assistance that would have amounted to \$1,140 a month or more than \$13,600 during the first year of caring for her niece.



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The lawsuit alleges the child was placed “informally and illegally” in the care of her aunt. And because the agency did not recognize her formally as a caregiver, the agency did not help her obtain her niece’s birth certificate, medical records, immunization card or social security number, leaving her without access to welfare benefits or food stamps for an extended period.

D.C. has filed a motion to dismiss the case, and Judge Thomas Hogan of the U.S. District Court for the region is now deciding whether to grant that request. In making its case, an attorney for the agency has told the court that shifting children to the care of relatives

outside of the foster care system “is not prohibited by District of Columbia law or federal law and is not administered in a way that violates’ plaintiffs’ equal protection or due process rights.”

The motion also states: “Instead, kinship diversion represents one of CFSA’s options for ensuring that children are provided with necessary care and assistance, ideally while remaining in the care of relatives, rather than placed in a foster home.”

Oral arguments to discuss the merits of K.H.’s case took place in late July, but the court has yet to schedule another hearing.

The case highlights yet another example of the often-secretive and troubling way that **hundreds of thousands** of families are separated each year in the shadows of the foster care system.

As documented in The Imprint’s ongoing Hidden Foster Care **series**, these informal placements do not require evidence presented to a judge that a child is being abused or neglected, warranting their removal from home, and there are no lawyers to advise parties of their rights. Low-income caregivers like K.H. who take in the children are denied access to the financial support, health care and therapeutic services provided to foster parents, placing further strain on their households and the kids in their homes.

Under **federal law**, child welfare agencies must inform caregivers of their ability to apply for a foster care license, enabling them to receive an array of payments and supportive services to help alleviate the burden of caring for the child — from monthly stipends to child care, counseling and health care for the children.

But in the October 2019 lawsuit filed against D.C.’s child welfare agency, K.H. describes feeling pressured by a social worker to seek a court-ordered temporary custody agreement — she states that the social worker warned her that if K.H. didn’t become her niece’s primary caregiver, the child would go to foster care and likely be permanently separated from the family.

K.H. and her niece. Photo by Farrah Skeiky.

Scared of failing her sister and all alone in child-rearing, K.H. began falling behind on bills; in 2019 her landlord sued to evict her over \$2,300 in unpaid rent. Throughout her ordeal,

“At this point now, I’m feeling like less of a human,” K.H. remembers thinking. “I feel like, you guys are not hearing me. You guys don’t care about this child and, I’m telling you, we need help.”

A second plaintiff, identified as M.M. in the lawsuit, alleges that in February 2019, social workers illegally arranged for her to take in her 8-month-old grand-niece, after they discovered the baby’s parents were physically abusive. M.M. claims the child welfare agency has since denied her written request to become a licensed foster parent. She is seeking more than \$9,000 in damages.

A third plaintiff states she has cared for her teenage grandson since March 2019, when social workers moved him to her home. For a brief period, four of his siblings joined him. Like her fellow complainants, the caregiver identified as L.C. alleges the agency also denied her request to become a licensed foster parent, and believes she is owed more than \$25,000 in foster care payments.

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The practice of diverting children social workers believe are being abused or neglected away from the foster care system is widely known across the country but not formally tracked.

In an [opinion piece](#) published by The Imprint last December, associate professor of law at the University of South Carolina Josh Gupta-Kagan wrote that hidden foster care “lets an agency avoid its obligation to pay licensed kinship foster parents a foster care subsidy, leaving kinship caregivers able only to access more meager welfare benefits.” Meanwhile, he added “kinship caregivers — who in the aggregate are much less well-off financially than stranger foster parents — do not get the financial support they may need.”

In D.C., a total of 20 adult and child plaintiffs, including K.H., are currently suing the Child and Family Services Agency through six different lawsuits. They allege that its systemic reliance on informal kin placements has allowed the agency to avoid making monthly payments to relatives who should be licensed kin caregivers, amounting to millions of unpaid dollars over at least 10 years.

The plaintiffs are represented by a legal team that includes Marla Spindel, a family law attorney in D.C., who left her job as a court-appointed guardian for children to found KinCare Alliance, a firm representing kinship caregivers. Once she learned more about the predicaments they all-too-often face, Spindel said in an interview, “I realized that it was happening a lot, and that CFSA was not willing to do anything to help these families.”

Spindel is asking the judge to declare the use of kinship diversion a violation of local and federal law, and to issue a permanent injunction against its practice. Plaintiffs are also seeking financial damages, including back payment of the \$1,140 per month allotted to foster parents in D.C.

D.C.’s child welfare agency does not publicly report how many children are informally moved in with family members instead of placed into foster care, and a spokesperson declined to answer questions about whether such placements are tracked internally. The spokesperson, Kera Tyler, also declined to comment on the agency’s practice of making informal arrangements for children, citing the ongoing litigation.

Family law attorney Marla Spindel founded KinCare Alliance, a firm representing kinship caregivers. Photo courtesy of Spindel.

Diverting children from the foster care system is a feature, not a bug, of the child welfare system in the District, which this year struck an agreement with Judge Hogan to end a 30-year-long period of federal court oversight. Former agency chief Brenda Donald, who departed in June, made foster care diversions a central pillar of the agency’s mission when she became its director in 2013 — her third time in the role. In addressing the D.C. Council at the time, she **called** the strategy “narrowing the front door.”

Between 2005 and 2020, the number of children placed in D.C.’s out-of-home care system dropped from **2,588** to **667**, according to data published in a biannual report by an independent court monitor. The reductions are **attributed to** increased focus on bringing children into foster care only if no other safe option is available, and limiting the time they spend in temporary homes.

In 2006 — recognizing that kin caregivers are overwhelmingly older women — the D.C. Council created a child care subsidy for grandparents who are caregivers and senior citizens, a benefit that is distinct from what licensed foster parents receive.

At the time it was created, D.C.'s kin caregiver subsidy was one of the highest in the country, according to Louis Davis Jr., state director of D.C.'s branch of the AARP who helped lead the effort to create the fund.

But because money for the subsidy is budgeted as discretionary spending and the reimbursement rate fluctuates nearly every year, demand quickly outpaced supply; the waiting list sometimes stretches up to two years long. Last year, 844 families received the subsidy, and 68 were denied because the agency ran out of money, according to an annual review of the program published by the D.C. child welfare agency.

K.H. helps her niece with math homework.
Photo by Farrah Skeiky.

K.H. is still the primary caregiver for her niece, though she has finally begun receiving some financial assistance in the form of Temporary Assistance for Needy Families and the Supplemental Nutrition Assistance Program.

Now 8 years old, her niece is starting to come into her own, she said, discovering her own look and sense of style.

She's learning a lot, too, K.H. said — about how to be a young person, and how to reconcile her life now with what it was not so long ago.

“She's still breaking out of the confusion of what, really, a child's life is,” she said.

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