

SUPPORT A WORKER-LED APPEAL. DONATE TODAY.

HIDDEN FOSTER CARE: ALL OF THE RESPONSIBILITY, NONE OF THE RESOURCES

Illustrations by Rachel Levit Ruiz.

**Roxanna
Asgarian**

Dec 21, 2020



Outside of the traditional foster care system exists a shadow system of potentially hundreds of thousands of children removed by CPS to their relatives or family friends—without a court case, monetary support, or due process.

In August 2018, Laura* got a call from Child Protective Services. The agency asked if she could pick up 1-year-old Sophie in a small Texas town several hours away from Laura's home in Houston.

Laura wasn't related to Sophie, but she was in the room when she was born. Laura had been in Sophie's mother Ashley's life since Ashley was a teenager, when Laura dated Ashley's stepfather. During that time, Ashley's mother died by suicide. Since then, and long after Ashley's father and Laura had broken up, Ashley would call Laura when she needed help.

And she did need help. In 2005, Laura enrolled Ashley in rehab for substance use disorder. In the decade after that, Laura only heard from Ashley a few times, until 2016, when Ashley called again. She was pregnant, had gotten kicked out of rehab, and was in a bad relationship.

THE APPEAL

Laura and her husband built a room onto their Houston home and moved Ashley in. Sophie was born that fall, and the unlikely family began settling into a rhythm. But stability didn't last. When Sophie was about five months old, Ashley again began to struggle, and Laura suspected that Ashley was using drugs again.

When she found proof, Laura kicked Ashley out. She told her Sophie could stay, but Ashley took her daughter with her out of town. For about a year, Laura kept tabs on them as best she could, with Ashley even bringing Sophie to visit once. But in summer 2018, CPS called Laura with an ultimatum: If she wanted to care for Sophie, she needed to immediately pick her up. If not, she'd enter foster care.

Laura and her husband decided to take Sophie in while Ashley entered rehab again. The hope was that Ashley would get back on her feet, and that Sophie would be safe with people who loved her. "We never agreed to take the child for the long term, but were more than happy for her to stay in a loving, supportive home, and the only home she has ever truly known," Laura told The Appeal.

But Ashley hasn't been able to get back on her feet since then, and the agreement CPS initiated with Ashley, a temporary custody order, has expired. Laura and her husband have incurred tens of thousands of dollars in legal fees trying to achieve stability for Sophie, by placing her with either the couple or another loving family. But Laura and her husband, who had plans to retire, are instead caring for a 4-year-old child—without any legal rights, monetary support, or state services for the girl. (*Laura, Ashley, and Sophie's names have been changed to protect the child's identity.)



Removing children from their parents and placing them with relatives is a common occurrence in Texas, and around the country, as child welfare authorities intervene in situations like Sophie's. But unlike the traditional foster care system, no court case is initiated, and no lawyers are present to advise either parents or caregivers of their rights. Legal advocates say these arrangements lead to confusion around custody rights, are ripe for coercion of the parent, and leave caregivers without any support in caring for children.

The phenomenon has been termed "shadow foster care" or "hidden foster care" by legal researchers, who estimate that these informal arrangements are made at a rate on par with the traditional foster care system. In fiscal year 2014 in Texas, there were just over 30,000 children placed in the foster care system, with CPS cases in the courts overseen by judges; that year, the state made

34,000 informal placements of children with relatives as a result of a CPS investigation, which had no court cases attached. That number seems to be declining, according to recent data acquired from the Texas Department of Family and Protective Services. This year, DFPS reported about 12,000 children currently in such placements; more than 1,000 of these arrangements have been closed each year for the last five years with the child's relatives still caring for them, without a custody order in place.

"There's a lot of pressure to intervene relatively less and keep kids out of foster care," Josh Gupta-Kagan, an associate law professor at the University of South Carolina, told The Appeal. Last year, Gupta-Kagan wrote a Stanford Law Review article about the legal problems with hidden foster care. "Also, foster care is really expensive, so if you can place kids with—or induce parents to voluntarily transfer custody to—someone else who doesn't get paid, this can make your numbers look great, and saves everyone money."

Laura and her husband spent more than a year parenting Sophie while in legal limbo, and when their temporary custody agreement with Sophie's mother expired, they decided they needed help. Laura tried to initiate a case with CPS and get certified as a foster parent so that Sophie would qualify for services. But after CPS spoke with the family, the agency closed their case. "CPS threatened that she had already been with us for two years and was basically our responsibility now, even though we had no legal rights. [The caseworker] said this was a private matter and we would have to deal with it," Laura said. "Otherwise, we would have to call CPS and say we could no longer care for her—and they would come and take her, and we would never see her again."



Child welfare advocates and researchers have long believed that when children cannot be with their parents, the next best thing for their well-being and development is to be placed in kinship homes, with biological relatives or with “fictive kin,” like Laura, who have established relationships with the child. Sibling groups are more likely to stay together in kinship homes, and children move around less and have fewer behavioral problems. They’re also more often able to stay in the communities where they live and know people, giving them some sense of stability through the upheaval of family disruption.

But kinship placements are poorly compensated by the state compared to nonrelative foster homes. Currently in Texas, kinship caregivers are entitled to \$11.55 a day per child, or about \$345 a month—less than half of what a licensed nonrelative foster parent would bring in for each child designated at a “basic” level of care. That assistance lasts up to a year. Before 2017, when the Texas Legislature passed the bill to pay caregivers monthly, kinship families in Texas were only entitled to a one-time \$1,000 stipend, plus \$500 each year. In a state where 75 percent of maltreatment findings are for neglect—which is often poverty-related—instead of abuse, family members who take in children are also often struggling in poverty. And even that kinship rate is reserved for caregivers of children in the formal foster care system who meet all of the requirements; for those that took on children without CPS initiating a case, they receive nothing.

Many kinship placements happen organically, such as when a parent asks a relative to care temporarily or permanently for their child. But when CPS is involved, the “voluntary” aspect of these placements has been called into question in legal challenges dating back to the 1990s. Because these agreements are often offered as an alternative to having a case with CPS initiated—with an increased likelihood of the child ending up with a stranger—legal advocates like Gupta-Kagan say it’s inherently coercive and could be used to restrict parents’ rights when the agency might not have sufficient evidence to remove a child if they took the case to court. This year, a federal appeals court ruled that a Kentucky couple could sue social workers who allegedly threatened to remove their children if the parents didn’t agree to a “prevention plan” that didn’t allow the mother to be unsupervised with her newborn after a false-positive drug test.

In a court, CPS needs “to show abuse or neglect, that the child is in significant imminent risk of harm from that abuse or neglect, and show that the removal is necessary to protect the child, not some other remedy,” Gupta-Kagan said. “The question you have to ask is how much do you really trust CPS agencies to get all of that right all of the time, such that they should be allowed to do this without any due process checks?”

In his Stanford Law Review article, he goes further: “It is as if a police department investigated a crime, concluded an individual was guilty, did not file charges or provide him with an attorney, and told him he had to agree to go to jail for several weeks or months, or else it would bring him to court and things could get even worse.”

“When you look at it on paper, we want to avoid CPS bringing court cases, that’s the goal,” Tiffany Cebrun, a staff attorney at the Foster Care Advocacy Center (FCAC) in Harris County, told The Appeal. “In court you want permanency, there’s a rush to termination [of parental rights]. A lot of workers want to close out cases quickly.”

Still, she said, FCAC has several clients who “CPS kind of coerced” into taking relatives’ children. “A lot of caregivers were told they would have support,” Cebrun said. And without a court case, parents, many of whom are struggling with substance use disorder, aren’t given resources or treatment, either.

Though a parent loses the ability to live with and care for their child in these informal arrangements, they are not technically considered removals. So there’s very little data about the arrangements, both in Texas and around the country, because the federal government doesn’t ask states to report them.

There’s ample evidence that this practice is widespread around the country. “The number of children who pass through hidden foster care each year is roughly comparable with the number of children removed from their families, brought to court, and placed in formal foster care,” Gupta-Kagan notes in his article. A study of nearly 6,000 children in 83 counties nationwide estimated that when children were removed from home after a CPS investigation, nearly half of the time they were placed with relatives informally, with no court case initiated.

The lack of data has Gupta-Kagan and other legal advocates concerned that amid budget tightening due to economic effects of the coronavirus pandemic, the scope of these removals will increase, without any sense of how many children’s lives are being affected this way—or how much needed support these families will be going without.



Valerie Jackson is a psychologist who founded and runs Monarch Family Services, an agency that focuses on kinship placements. She’s experienced many situations like Laura and Sophie’s, where guardians are given care of a child but no support or sufficient documentation to go along with it. DFPS calls these “parental child safety placements” temporary and says they “should last no longer than 60 days.” But Jackson says there are many families who are altered long-term as CPS instigates the move of children and then exits the process. “If the state doesn’t take conservatorship they say, ‘God bless you and good luck’—they get nothing,” Jackson told The Appeal. “The majority of these families are low-income and with limited resources and limited knowledge of how to access resources, which increases the probability of placement breakdown...Or, if they remain in the care of this relative, they’re unable to survive comfortably.”

In San Antonio, Judge Peter Sakai, who has long presided over child welfare cases in Bexar County, said he often saw cases in his court where placements had broken down after long stretches of time where families were subject to these informal agreements. “San Antonio is known and it’s been documented that we have a lot of kids with their relatives—a lot. And a lot is through CPS intervention,” Sakai told The Appeal.

As child welfare cases increased in Bexar County in the early 2010s, the county considered adding another judge to oversee these cases. “We were reading the removals that were coming across the court’s desk,” said Sakai’s court administrator, Barbara Schafer. “The kids have been placed with grandma for three years and now it’s time to remove. What?! Y’all had them there for three years on a safety plan?”

“Safety plans,” another term for these informal removals, are problematic for relatives who want to enroll children in a new school or get insurance for them. Unlike custody orders, these plans are “just a big old sign that says ‘CPS is involved in my life.’ It’s not a legal binding document, it’s not filed into court. CPS uses it as leverage to say, ‘If you violate it, we’ll remove the kids,’” Schafer said.

Instead of hiring a new judge, Schafer had another idea: a separate “family preservation” docket, where appointed attorneys get a flat \$1,200 fee to file custody orders for relatives who are caring for children in place of their parents. Since its inception in 2015, the docket has finalized about 300 cases involving nearly 400 children, Schafer said.

These families get a custody order and are linked to federally funded services like Medicaid or Temporary Assistance for Needy Families, but they don’t get the monthly stipend that would provide substantial monetary assistance. Still, “Kids deserve to be taken care of and go to the doctor,” Schafer said, and “a lot of the grandparents are like, ‘We don’t want CPS in our home anymore.’”

That’s a crucial point: Many advocates whose goal is to limit the reach of the child welfare system say that informal, community-led arrangements that spring up in response to parents struggling with poverty or addiction can help shrink the scope of a family regulation system that violates parents’ rights and traumatizes their children—especially Black and Native children, who are disproportionately represented in foster care.

“Informal kinship care is the solution to a lot of this, but the state doesn’t want it to happen because then they don’t have oversight,” said Alan Dettlaff, the head of University of Houston’s Graduate School of Social Work and a founder of the Upend Movement, a network of organizations that promotes abolishing the child welfare system. “When the child welfare system first started, Black children were intentionally excluded. Black families and communities came together and developed their own ways to care for children—it’s about trusting Black families and communities to take care of their children.”

Still, Dettlaff advocates for more of these informal arrangements—with financial support. “We remove kids for neglect and place them in strangers’ homes, and give the stranger a monthly stipend to take care of the child,” he told The Appeal. “What if we just gave that \$1,000 a month to the mother who needed it?”





Illustrations by Rachel Levit Ruiz.

When CPS told Laura and her husband that their case was closed in May, the couple didn't know what to do. They had a grown biological child and weren't sure if they were up for parenting Sophie until adulthood. Ashley, who hadn't been able to achieve sobriety, decided that she wasn't able to provide Sophie with the life she deserved. But CPS refused to get involved, saying only that if Laura returned Sophie to Ashley, they'd initiate a case against Laura and her husband for endangerment.

"They convinced us to take on the child, so they could wash their hands of yet another case, but offered no direction or services," Laura said. "The worst part is they did not speak to the long-term issues, effects, or needs the child might have."

Laura and her husband recognize that they are lucky enough to afford tens of thousands of dollars in legal fees related to Sophie's case, and put Sophie in a private preschool. The majority of kinship caregivers have incomes below 200 percent of the poverty line—and about 40 percent of these caregivers are below the poverty line—but Laura and her husband are still stretched thin. They've decided to adopt Sophie. Their retirement plans are gone for now; instead, they've moved to the suburbs so Sophie can attend a more affordable preschool. "It was not in our grand scheme of things, but the only way for us to continue consistency with this child is for us to adopt her," she said. "We still think it's unfair for her to be with such old parents, but we still have life left in us."

Roxanna Asgarian reported this story with the support of the Fund for Journalism on Child Well-Being, a program of the USC Annenberg Center for Health Journalism's 2020 National Fellowship. ■

Support The Appeal

If you valued this article, please help us produce more journalism like this by making a contribution today.

- ADOPTION
- CHILD WELFARE
- FOSTER CARE
- TEXAS

More in Justice

THE TRUTH ABOUT MARIJUANA AND THE CRIMINAL LEGAL SYSTEM

[Katie Jane Fernelius](#) Apr 20, 2022

WHEN IT COMES TO REPORTING DEATHS OF INCARCERATED PEOPLE, MOST STATES BREAK THE LAW

[M. Forrest Behne, Craig Waleed, Meghan Peterson, and Lauren Brinkley-Rubinstein](#)

Mar 02, 2022

FLORIDA COPS NEARLY SENT A FIVE-YEAR-OLD TO JAIL

[Nneka Ewulonu](#) Apr 13, 2022

GAY AND TRANS ‘PANIC’ IS STILL BEING USED TO JUSTIFY ANTI-LGBTQ ATTACKS

[Adam M. Rhodes](#) Dec 20, 2021



Exposing how the U.S. criminal legal system fails to keep people safe and perpetuates harm.

TOPICS	LEARN MORE	CONTACT
Policing	About The Appeal	Contact
Pretrial	Masthead	Manage Your Recurring Donation
Prosecution	Transparency Policies	
Punishment	Donate	
Criminalization		
Politics		
Alternatives		
Newsletter		