

Barton Child Law & Policy Clinic	Emory University School of Law 1301 Clifton Road Atlanta, Georgia 30322	Phone: 404.727.6664 Fax: 404.727.6820 E-mail: child_law@law.emory.edu Internet: www.childwelfare.net
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Definition of “Relative” Under Georgia and Federal Law

Mary Margaret Oliver
Visiting Professor

Melissa Dorris
*Barton Child Law &
Policy Fellow*

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TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
I. Introduction	1
II. History of Federal Statutes and Policies That Define “Relative” ..	1
A. Child Abuse Prevention and Treatment Act (CAPTA) – 1974 . . .	1
B. Indian Child Welfare Act – 1978	2
C. Adoption Assistance and Child Welfare Act – 1980	2
Childcare and Development Fund (CCDF) – 1990	
D.	3
E. Uniform Adoption Act (UAA) – 1994	3
Personal Responsibility and Work Opportunity Reconciliation Act	
F. (PRWORA) – 1996	4
Adoption and Safe Families Act (ASFA) – 1997	
G.	4
III. Treatment of Relatives Under Georgia Law	5
Adoption and Safe Families Act (ASFA) – 1997	
A.	5
B. Child Deprivation Proceedings – O.C.G.A. § 15-11-103(a)(1). . .	6
<i>Judicial interpretation</i>	
1.	7
2. <i>DFCS Manual and Regulations</i>	8
C. Adoption Law – O.C.G.A. §§ 19-8-7, 19-8-15	9
D. Guardianship – O.C.G.A. § 29-4-8	9
Divorce and Child Custody – O.C.G.A. § 19-7-1(b.1)	
E.	10
F. Property Law – O.C.G.A. §§ 53-2-1, 44-5-111	10
G. Judicial Interpretations of Family Relationships	11
IV. CONCLUSION	11

TABLE OF AUTHORITIES

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I. Introduction

Placement of a child with relatives who know and presumably care for the child has long been a preferred disposition for a child taken into state custody as a result of abuse or neglect. Moreover, contemporary family structures in which extended family members¹ and fictive kin² provide care and protection for a child when that child's parents are unable to do so are increasingly more common. Both federal and state law approve of kinship care³ conceptually, but fail to provide guidance for proper and consistent implementation of relative care giving in practice. Consequently, as a result of the inefficiencies created, permanency for a child may be delayed.

A precise definition of who is a relative, a consistent timeline within which a search for a particular relative shall be made, and a hierarchy as to which relatives are to be preferred for placement have not been clearly established by either federal or state statutes or by the cases that have followed seeking a correct statutory interpretation. The purpose of this paper is to trace the use of the term "relative" through the federal and state statutes relating to abused and/or neglected children, and to outline what questions must be resolved to clarify the policies relating to preferred relative placements for children taken into state custody.

II. History of Federal Statutes and Policies That Define "Relative"

The term "relative" historically has received attention in federal statutes relating to neglected and abused children, but with a variety of specificities. As a result of these variations, ascertaining the extent to which federal policy preferring relative placement for a child taken into state custody remains problematic. The following federal statutes set forth the history of the use of the term "relative" as the preferred placement authorized by federal statutes relating to abused and neglected children.

A. *Child Abuse Prevention and Treatment Act (CAPTA) – 1974*

The Child Abuse Prevention and Treatment Act (CAPTA) of 1974⁴ provided funding to states to prevent, identify, and treat child abuse and neglect, and for the first time legislatively highlighted issues of child abuse and neglect. CAPTA also created the National Center on Child Abuse and Neglect⁵ and developed standards for receiving and responding to reports of child maltreatment.⁶

CAPTA mentions kinship care only in passing, as an approved subject for an innovative pilot project or program.⁷ The act authorizes grants to public and private nonprofit agencies in not more than 10 states for the purpose of developing or implementing "procedures using adult relatives as the preferred

placement for children removed from their home, where such relatives are determined to be capable of providing a safe nurturing environment for the child and where such relatives comply with the State child protection standards.”⁸ Thus, CAPTA began the initiative to explore the use of relatives as preferred placement options but failed to define “relative” at this crucial formal introduction of the practice of kinship care.

B. Indian Child Welfare Act – 1978

Congress first specifically acknowledged the involvement of extended family in child placement decisions in the Indian Child Welfare Act of 1978 (ICWA).⁹ This act embraces the existing social norm within the Native American culture for tribe members outside of the nuclear family to care for children of the tribe, sometimes for extended periods of time. Defining “extended family member” according to

[t]he law or custom of the Indian child’s tribe or, in the absence of such law or custom, [as] a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent,¹⁰

ICWA legislatively recognized the non-traditional living patterns structured around the extended family that are routinely practiced within certain cultures.

To protect and preserve the extended family’s and tribe members’ role to provide a custodial placement, ICWA identifies a hierarchy of placement preferences for Native American children removed from their homes. Preference for adoption should be given in the following order: “a member of the child’s extended family, other members of the Indian child’s tribe, or other Indian families.”¹¹ Similarly, when making pre-adoptive or foster care placements of Native American children, ICWA directs states to strive to place them with

[a] member of the Indian child’s extended family, a foster home licensed, approved, or specified by the Indian child’s tribe, an Indian foster home licensed or approved by an authorized non-Indian licensing authority, or an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs.¹²

Further, under ICWA, tribes retain primary jurisdiction over all custody matters involving Indian children including foster care placement proceedings, termination of parental rights, pre-adoptive placement and adoptive placement.¹³

By contrast to the specificity supplied by ICWA, other statutes as discussed hereinafter have not identified the custodial preferences of relatives or kinship care placements. ICWA is unique in its specificity and listing of priorities, and in part offers a helpful legislative model.

C. Adoption Assistance and Child Welfare Act – 1980

Following ICWA, Congress enacted the Adoption Assistance and Child Welfare Act of 1980 (AACWA).¹⁴ Without specifically identifying a preferential scheme for relatives in child placement decisions for abused and/or neglected children, the act commanded states to find the “least restrictive, most family-like setting available located in close proximity to the parent’s home, consistent with the best interests and special needs of the child” when placing children in foster care.¹⁵ This mandate readily lent itself to be interpreted as an unstated preference for the use of extended family members as a placement resource, and as a result, several states began to enact laws that specifically preferred relatives.¹⁶

D. Childcare and Development Fund (CCDF) – 1990

In 1990, the Childcare and Development Fund (CCDF) established a block grant incentive program to provide states, territories, and tribes with funding to assist low-income families with childcare expenses.¹⁷ Under this program, State or local governments issue childcare certificates directly to low-income parents who may use the certificates only as payment for childcare services.¹⁸

Eligible childcare providers include by definition:

[A] childcare provider that is 18 years of age or older who provides childcare services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider.¹⁹

Thus, the CCDF embraces childcare provided by relatives, who are specifically identified by the legislation as grandparents, great grandparents, siblings, aunts or uncles.

E. Uniform Adoption Act (UAA) – 1994

The National Conference of Commissioners on Uniform State Laws proposed a Uniform Adoption Act (UAA) in 1994.²⁰ While the act was formally accepted as a uniform proposal, it has been widely opposed by most major national child welfare organizations and has not been enacted in any state.²¹ While the climate surrounding the content of the UAA is controversial, the intent of the drafters was to standardize practice across the nation. Thus, the concise definitions included in this model are worth considering as reflective of a possible national consensus as to the meaning of the terms defined.

The UAA defines “relative” to mean “a grandparent, great grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece or nephew of an individual, whether related to the individual by the whole or the half blood, affinity, or adoption.”²² This conception, however, specifically excludes an individual’s stepparent from the definition.²³ Relatives are identified as a preferred placement option under the UAA, if such placement is consistent with the child’s best interests. In order of preference, an agency should place a minor with: (1)

an individual who has previously adopted a sibling; (2) an individual with characteristics specifically requested by the child's parents if such person can be located in a timely manner; (3) an individual having physical custody of the minor for six of the last 24 months or half of the child's life, whichever is less; (4) a relative with whom the child has a positive emotional relationship; (5) any other individual approved by the agency.²⁴ Such precise definitions and prioritization of placement options provide guidance that enables child welfare agencies and courts to investigate relative placement resources more efficiently and effectively, thereby expediting permanency and stability for the child.

F. Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) – 1996

Passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996 operated to replace the traditional welfare Aid to Families with Dependent Children (AFDC) income assistance program with the Temporary Aid to Needy Families (TANF) block grant system.²⁵ The purpose of this act, under the banner of "welfare reform," included "provid[ing] assistance to needy families so that children may be cared for in their own homes or in the homes of relatives."²⁶

In order for a state to be eligible for payments, it must submit a plan providing that "[T]he 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."²⁷

PRWORA has implications for kinship care even beyond this stated preference as a function of replacing AFDC, one of the major sources of economic support for kinship families, with TANF, which imposes time limits on benefits and work requirements. Under PRWORA, kinship caregivers are no longer entitled to federally subsidized income assistance.²⁸ Further, work requirements are imposed on all adult recipients of assistance.²⁹ A state can choose whether to exempt kinship care providers from individual work requirements, but such persons must be included in the state's overall work participation rate unless they receive only child-only payments.³⁰ Child-only payments are likewise excluded from the 60 month lifetime benefit restriction.³¹

The Department of Health and Human Services (DHHS) defers to states "to define families in ways that they think are most appropriate" while more information is gathered on how child-only policies affect the achievement of TANF goals.³² Thus, depending on how a state defines families, relative caregivers may feel the effects of time limits and work requirements. While this statute affirms a preference for placing children in state custody with relatives, its failure to offer a definition of relative or to provide states with precise guidance to facilitate development of their own definitions undermines implementation in practice of the very preference created.

G. Adoption and Safe Families Act (ASFA) – 1997

By the late 1990's the number of children in out-of-home care had increased dramatically.³³ As a result of this growth in the foster care population and the increasing length of time children spent in foster care placements, the issue of permanency for children in state custody came into the forefront of the political agenda. In response to growing dissatisfaction with the child welfare system and in recognition of reform efforts and initiatives in several states, Congress enacted the Adoption and Safe Families Act of 1997 (ASFA), which requires numerous and significant changes to state law and policies to remain eligible for federal funds under Titles IV-B and IV-E of the Social Security Act.³⁴

ASFA amends these funding schemes in part to include provisions concerning relative care. As part of the important shift in policy for abused and neglected children, ASFA specifically recommends kinship care as an alternative to traditional foster care as a placement option. ASFA indicates that a "fit and willing relative" could provide a "planned permanent living arrangement,"³⁵ and further, makes an exception to the expedited timeframes for filing petitions for termination of parental rights if, "at the option of the State, the child is being cared for by a relative."³⁶

Moreover, implicitly embracing the practice of kinship care, ASFA mandates state incorporation of kinship foster care providers into the traditional foster care system in order to qualify for federal funding.³⁷ As a further incentive to utilize this practice, ASFA explicitly requires states to 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."³⁸ Receipt of the federal funds is contingent in part on compliance with ASFA's provisions concerning relative placement.³⁹ However, while relative placement is clearly preferred, it is not specifically defined nor does the statute or relevant federal regulations direct states to adopt such a definition.

III. Treatment of Relatives Under Georgia Law

Federal policies relating to the treatment of relatives are reflected in companion state laws. Georgia law, reflecting the pattern identified in relevant federal acts, also fails to offer clarity or consistency to practices involving relative care giving, creating inconsistency in the implementation of those practices. The following discussion explains the current state of the law relating to the use of relatives as placement resources in the state of Georgia.

A. Adoption and Safe Families Act (ASFA) – 1997

In 1998 Georgia was one of 38 states to enact legislation to comply with ASFA pertaining to reasonable efforts, termination of parental rights, and permanency hearings.⁴⁰ The Georgia Code, consistent with the legislative purposes of

ASFA, emphasizes safety and permanence for children in state custody due to maltreatment.⁴¹

To achieve these objectives, Georgia adopted legislation consistent with ASFA expediting termination of parental rights proceedings in certain circumstances. Designed to free children for permanent placement elsewhere when reunification with the child's birth family is not appropriate, such policies necessarily make the issue of placement a priority. However, the failure of Congress and the states, including Georgia, to provide comprehensive guidance through a precise definition of who is a relative and to assign specific priority to a relative creates potential for these intended goals to be undermined by specific practices.

ASFA directed DHHS to convene an advisory panel charged with reporting on the extent to which relatives are utilized as a placement for children in foster care.⁴² The final report submitted by the committee maintains that many states (19 and the District of Columbia) operate under a broad definition of kin, which includes persons with emotional ties to the child, such as godparents, neighbors, and family friends.⁴³ Further, the panel reported that almost all states (48 and the District of Columbia) give preference to relatives when placing a child with someone other than his or her parents.⁴⁴

Georgia appears to explicitly create such a preference in circumstances where parental rights have been terminated,⁴⁵ but in application, the preferred status of relatives as placement options is qualified in the context of termination of parental rights⁴⁶ and is not established for other dispositions in a deprivation case other than termination of parental rights proceedings. Likewise, although Georgia was categorized in the DHHS report as a state that defines "kin" to include persons beyond "relatives,"⁴⁷ neither term is statutorily defined with enough clarity to facilitate consistent implementation in practice. By failing to set forth a definition for relative to identify which persons are contemplated in policies relating to kinship care, Congress has allowed states, like Georgia, wide latitude to determine for themselves how to support kin caring for children who have been abused or neglected.

B. Child Deprivation Proceedings – O.C.G.A. § 15-11-103(a)(1)

Section 15-11-103(a)(1) of the Georgia Code, relating to termination of parental rights in juvenile proceedings and impacting subsequent child placement decisions, provides:

If, upon the entering of an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall first attempt to place the child with a person related to the child by blood or marriage or with a member of the child's extended family. A thorough search for a suitable family member shall be made by the court and the Department of Human Resources in attempting to effect this placement. . . . A placement shall be made under the terms of this paragraph only if such a placement is in the best interest of the child.⁴⁸

The state courts have emphasized that this subsection does not require a trial court to give preference to family members in making a placement of a child following termination of parental rights.⁴⁹ Notwithstanding the language giving priority in time to attempts to place the child with a relative, such a placement will be made only if it is in the best interests of the child.⁵⁰ Thus, although the statutory text intimates a preference for relatives, judicial decisions make clear that being related to a child by virtue of consanguinity or affinity is not the sole requirement for receiving placement of that child. An evaluation of suitability of any qualifying relative, counterbalanced by the child's best interests, is always required.⁵¹

1. Judicial interpretation

The Georgia Court of Appeals ruled in *In re N.B.* that the juvenile court's finding that no suitable relative existed for placement was premature pending an evaluation of the paternal grandfather's suitability.⁵² Thus, persons standing in the capacity of a legal relative removed to the degree of relationship of at least a grandparent are generally perceived by the courts to fall within the scope of the preference for relative placements. However, this placement is not absolute; placement with the relative must be found to serve the child's best interests. Thus, the Georgia Court of Appeals has held that the decision not to place children with a family member upon termination of their parent's rights will not be overturned in light of proof that the children will remain in a safe and stable foster home and evidence of the foster mother's intent to adopt them.⁵³

The record in *In the Interests of D.T.* documented unsuccessful efforts by the Division of Family and Children's Services (DFCS) to investigate the possibility of finding a suitable placement for the two half-brothers with blood relatives. Based on a recommendation by DFCS that remaining together was in the boys' best interests, the court on review found sufficient support for the juvenile court's determination that the children remain together in DFCS custody pending adoption.⁵⁴ So while relative preference is created by statute, the conventional best interests of the child standard remains ultimately determinative.

Notably, in the case of D.T., appellant father's relatives were not considered for placement because the father failed to legitimize the children.⁵⁵ In direct contrast, in a case decided only a few months earlier, the Court of Appeals reversed and remanded a trial court's determination as to the suitability of placement of a child with a putative grandfather.⁵⁶ The court upheld the termination of the putative father's parental rights pursuant to O.C.G.A. § 15-11-96(h), which provides that a putative father loses all rights to the child and is not entitled to object to the termination of his rights if he fails to file a legitimation petition within 30 days after receiving notice of the filing of the petition.⁵⁷ Nevertheless, the court thereafter requested additional investigation pursuant to O.C.G.A. § 15-11-103(a)(1) into whether the appellant father's father, was, in fact, a blood relative of the child.⁵⁸ By doing so, the court seemed to be suggesting that the parents of a putative father whose parental rights have been terminated must be considered part of the child's extended family, and therefore,

be investigated as a possible placement prior to pursuit of other avenues of permanent placement.

The inclusion of putative persons within the scope of the definition of relative and the preferred placement hierarchy could theoretically make the child's placement vulnerable to claims from a universe of unidentified legally unrelated persons. These conflicting rulings highlight the dilemma confronting judges and caseworkers created by the absence of a consistent and specific definition of relative throughout the state Code or as provided by federal law.

2. DFCS Manual and Regulations

Despite the lack of legal guidance for practice, the court and Division of Family and Children's Services (DFCS) are statutorily charged to conduct a thorough search for a suitable family member to effect a relative placement whenever possible.⁵⁹ Without clear statutory and judicial guidance, caseworkers may interpret this mandate inconsistently, at the expense of stability and permanence for the child.

The official policy of Georgia's Division of Family and Children's Services (DFCS) recognizes that most children's need for permanency is best met by insuring the continuity of family relationships.⁶⁰ Therefore, the guidance provided in the Georgia Department of Human Resources Foster Care Services Manual reflects the general position that in practice, relatives should be preferred when considering placement options.⁶¹ These policies, placing time limits on the requirement to search for relatives, too often are not reflected in actual practice. This disconnect creates situations in which the best placement for a child is not realized because a relative, who is a preferred placement option, is not identified at the initiation of the case. The lack of a uniform definition of relative and a consistent placement preference hierarchy directly contributes to such poor outcomes.

According to the manual, caseworkers must thoroughly assess the family unit, including investigation of the child's relative network, by completion of either a Family Assessment or as part of the Comprehensive Child and Family Assessment, to prepare for anticipated placement decisions.⁶² Caseworkers are instructed to complete the Family Assessment within 30 days of the child's removal, or alternatively, the Child and Family Assessment must be completed by DFCS-approved providers within 60 days following removal.⁶³ Consistent with this requirement, the agency includes an internal directive to search for extended family members, including putative fathers, "as soon as the child enters care."⁶⁴

As the Georgia Court of Appeals has noted, there is no statutory provision comparable to O.C.G.A. § 15-11-103(a)(1), which mandates that, prior to termination proceedings and as a prerequisite thereto, the juvenile court must make an attempt to place the child with the child's extended family or relative.⁶⁵ The statutory mandate binding the juvenile court and DFCS to investigate a child's relatives and to give them preferred status attaches only when placing the child following termination of parental rights. Thus, while DFCS policy

encourages early exploration of relative networks in anticipation of placement, the reality is that the statutory and policy preference for relative placement applies only in anticipation of termination of parental rights.⁶⁶

Other Georgia statutes, which more clearly define “relatives” and “extended family,” may be helpful in reaching a consensus on the understanding of the terms as they relate to child deprivation matters. In general, these statutes achieve specificity when defining relatives that is noticeably absent in the juvenile code.

C. Adoption Law – O.C.G.A. §§ 19-8-7, 19-8-15

A child’s relatives are clearly identified by statutory formulations addressing voluntary surrender of parental rights. In the Georgia adoption code, O.C.G.A. § 19-8-7 provides that “a child who has any living parent or guardian may be adopted by a *relative who is related by blood or marriage to the child as a grandparent, aunt, uncle, great aunt, great uncle, or sibling*” if the living parent or guardian voluntarily and in writing surrenders parental rights to that relative and the relative’s spouse.⁶⁷ Other Code provisions relating to adoption similarly constrain the definition of relative. O.C.G.A. § 19-8-15 grants the privilege of objecting to an adoption only to such persons related by blood to the child.⁶⁸ Thus, a former husband did not have standing to object to the adoption petition filed by the children’s mother’s new husband because he lacked a blood relationship to the children.⁶⁹

Further, the effect of a decree of adoption operates generally to sever all legal relationships between the adopted individual and his relatives, which relatives are construed, again, according to designations of blood relationships.⁷⁰ Subsection (a)(2) of 19-8-19 establishes such legal relationships between the adopted child and the adoptive parents, extending the adoptee such rights “as if the adopted individual were a child of biological issue of that petitioner.”⁷¹ The rights enumerated include the right to inherit from the adoptive parents and through them, inheriting also from adoptive relatives.⁷² The determinative factor for positioning the status and rights of relatives in adoption law appears to be a blood relationship to the child. If, as O.C.G.A. § 15-11-103(a)(1) directs, the court and DFCS must first attempt to place a child with a relative following involuntary termination of parental rights, aiming ultimately to establish permanency and stability for the child through adoption, diligent searches for relatives should be consistent with relatives approved for adoption and relationships and rights flowing from adoption. Therefore, relatives by marriage, or relatives who have not been proven to be blood relations presumably would not be defined as relatives under the “relative adoption” statute.

D. Guardianship – O.C.G.A. § 29-4-8

Relatives are also an appropriate focus for less permanent custody arrangements such as guardianships. Just as with placements following termination of parental rights, the child’s nearest relative is preferred for

guardianship. O.C.G.A. § 29-4-8 provides, “[A]mong collateral relatives applying for the guardianship of a minor child, the nearest of kin by blood, if otherwise unobjectionable, shall be preferred.”⁷³ As with statutory provisions addressing adoption, rights attendant to relationship status are limited correspondingly with degree of consanguinity. However, though the child’s nearest relative has an absolute right to appointment as the child’s guardian if that relative is unobjectionable,⁷⁴ the probate court judge may exercise his discretion to grant guardianship to one who is not a blood relative.⁷⁵ The guiding principle for the court in making this determination is the best interests of the child, but nonetheless, the court’s consideration of relatives is confined to those demonstrating a blood relationship to the child.

E. Divorce and Child Custody – O.C.G.A. § 19-7-1(b.1)

In custody disputes between a child’s parents and a third party, third party standing corresponds with the concept of who stands in the capacity of relative. The Georgia Supreme Court has defined such a “third-party relative” as a related person who is not a parent to the child.⁷⁶ In this context, to the extent relatives are encompassed within the intended scope of third parties, the concept of relatives is construed even more narrowly. O.C.G.A. § 19-7-1(b.1) limits third party standing to grandparents, great-grandparents, aunts, uncles, great aunts, great uncles, siblings, or adoptive parents.⁷⁷ While this section, unlike those previously discussed, is broad enough to include those related by affinity and consanguinity, it specifically lists those who are afforded this status to the exclusion of all others.

F. Property Law – O.C.G.A. §§ 53-2-1, 44-5-111

Concerned with the free alienability of property and the traditional value placed on ownership of land, statutes bearing on inheritance and property transfers carefully and precisely define kin relationships. O.C.G.A. § 53-2-1(8), a portion of the Georgia descent and distribution statute, speaks to the priority placed on intestate distribution by virtue of the intricate and complex formula described for determining degrees of kinship.⁷⁸ As a specific illustration, the section provides that degrees of kinship

shall be determined by counting the number of steps in the chain from the relative to the closest common ancestor of the relative and the decedent and the number of steps in the chain from the common ancestor to the decedent. The sum of the steps in the two chains shall be the degree of kinship, and the surviving relatives with the lowest sum shall be in the nearest degree and shall share the estate equally.⁷⁹

Using this formula, where no spouse survives the decedent, relatives in order of nearest degree of kinship would be: children, parents, siblings, grandparents, uncles and aunts.⁸⁰

Involving fewer calculations but equally precise, the Georgia Transfers to Minors Act defines “member of the minor’s family” as “the minor’s parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half-blood or by adoption.”⁸¹ The contrast between the level of specificity supplied for estate planning and property distribution purposes in the probate code and the vagueness of the juvenile code reflects historical patterns of the greater societal valuation of property than children. While what is in the best interests of the child should be paramount, perhaps a more scientific approach to exploring the extended family network would better aid caseworkers and the court in evaluating potential relative placements than does the presently existing statutory directive.

G. Judicial Interpretations of Family Relationships

Where the court is called upon to define relationships relevant to areas of the law other than juvenile law and child welfare, it has done so with particularity. For example, the Georgia Court of Appeals reversed a trial court’s decision because of its application of an erroneous definition of “relative,” holding that a defendant driver was a “resident relative” of the defendant insured within the meaning of the insurance policy such as to extend coverage to the driver under the insured’s policy.⁸² The appellate court defined “relative” as “a kinsman; a person connected with another by blood or affinity.”⁸³ The court further explained that when used generically, the term includes those related by consanguinity as well as ties of affinity, but when used restrictively, applies only to those related by blood.⁸⁴ Moreover, the court affirmed that, as a general rule, a husband is related by affinity to the blood relatives of the wife, and a wife is related by affinity to the blood relatives of her husband.

This relationship by affinity is generally dissolved upon the death of either party to the marriage which created the affinity, provided the deceased party left no issue living, but under certain circumstances may sometimes continue after death.⁸⁵ The same court had previously established that a foster child is not a relative for purposes of liability under an automobile insurance policy since the foster parent is paid to care for the child.⁸⁶ Criminal law recognizes that affinity generally ceases upon the death of the blood relative through whom the relationship was created, but the court was willing to find that the existence of a parent-child relationship continues after the death of the child’s mother when a stepparent-custodian voluntarily received a stepchild into the family and treated the child as a family member.⁸⁷ Thus, to the extent a common meaning of the term “relative” in the legal community can be extracted from judicial decisions, a finding of a blood relationship between the parties appears elemental.

IV. Conclusion

The existence of family, the source of the most intimate daily associations, defines for most people their strength and health. For a child not cared for by competent and loving parents, or even worse, neglectful and abusive parents,

the availability of other family members to provide care and security is all important. Federal and state law has properly established a preference for relative care for children legally removed from their parents, but both the law and practice of this preference is not consistent. Among the issues that should be revisited, and reevaluated, are the identification of which persons are considered to be the child's relatives for placement purposes, the timing of the "relative search," and the extent to which relative preference for placement should preempt permanency for a child, particularly if a child has bonded with a caregiver who is a legal stranger but who has lovingly cared for the child for a significant period of time.

One commentator has opined that if a family member has not voluntarily appeared in court early in the child's state custody the preference for relative placement is greatly diminished. Searching for a relative at later stages in a case seems contrary to the goal of permanency because a child's placement could be disrupted if a fit and willing relative is found and the statutory preference for relative placement applied. The lack of precise policy and legal guidance to give direction in practice as to which persons should be evaluated as suitable relative placements, the timeframes within which to conduct this relative search and consistent application of the statutory preference for relative placement may undermine the stated objectives of the child welfare system to provide safety and permanency for a child. These issues can and should be clarified, enabling greater consistency and efficiency in both law and practice and ultimately, improved outcomes for the children being served.

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¹ Throughout this paper the terms “extended family members,” “relatives,” and “kin” are used interchangeably.

² The term “fictive kin” refers to those individuals whom family members refer to as relatives but who have neither a blood nor marriage tie, but who have been accepted or even informally “adopted” into the family network. See Gilbert A. Holmes, *The Extended Family System in the Black Community: A Child-Centered Model for Adoption Policy*, 68 Temple L. R. 1649, 1659 (1995). Such relationships have strong historical roots in many ethnic cultures. African Americans forged such relationships “for absorbing the shocks of sale and separation.” Barbara Stark, *Deconstructing the Framers’ Right to Property: Liberty’s Daughters and Economic Rights*, 28 Hofstra L. Rev. 963, 1037 (2000). Similarly, the establishment of such networks helped forge bonds of peace and trust in Native American culture and within Latino families. See Tim Alan Garrison, Book Review, *Review Essay: Recent Works in the History of U.S. Indian Policy*, 36 Tulsa L. J. 415, 420 (2000) and Joan Williams, *Implementing Antiessentialism: How Gender Wars Turn Into Race and Class Conflict*, 15 Harv. Blackletter L.J. 41, 70 (1999).

³ Kinship care is usually defined as care of a child by biological family members or a familial representative. Jim Moye & Roberta Rinker, Essay, *It’s a Hard Knock Life: Does the Adoption and Safe Families Act of 1997 Adequately Address Problems in the Child Welfare System?*, 39 Harv. J. on Legis. 375 (2002).

⁴ See 42 U.S.C.A. §§ 5101, et seq. (2002).

⁵ See *id.* at § 5101.

⁶ See *id.* at § 5106a.

⁷ See *id.* at § 5106(3)(B).

⁸ *Id.*

⁹ See 42 U.S.C.A. §§ 1901, et seq. (2002).

¹⁰ *Id.* at § 1903(2).

¹¹ *Id.* at § 1915.

¹² *Id.*

¹³ *Id.* at § 1911(a).

¹⁴ See 42 U.S.C.S. §§ 670, et seq. (2002).

¹⁵ See *id.* at § 675(5)(A).

¹⁶ See Office of Inspector General, Dep’t of Health and Human Serv., *Using Relatives for Foster Care 2* (1992).

¹⁷ See 42 U.S.C.S. § 9859(n)(5)(B) (2002).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Uniform Adoption Act of 1994, *available in* <<http://www.law.upenn.edu/bill/ulc/fnact99/1990s/uaa94.htm>>.

²¹ For a listing of national child welfare organizations who formally oppose the adoption of the UAA, see <<http://www.plumsite.com/she/uaa.html>>, last visited September 30, 2002.

²² See UAA, *supra* note 19 at § 1-101.

²³ *Id.*

²⁴ See *id.* at § 2-104.

²⁵ See 42 U.S.C. § 601(a)(1) (2002).

²⁶ *Id.*

²⁷ See *id.* at § 671(a)(19).

²⁸ U.S. Dep't of Health and Human Serv., Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Report to Congress on Kinship Foster Care, 24 (1999).

²⁹ *Id.* at 25.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ The number of children residing in foster care had risen from 270,000 at the end of 1985 to approximately 502,000 by the end of 1996. See Note, *The Policy of Penalty in Kinship Care*, 112 Harv. L. Rev. 1047 (1999).

³⁴ See 42 U.S.C.S. §§ 1305 et seq. (2002).

³⁵ 42 U.S.C.S. § 675(2)(E) (2002).

³⁶ *Id.* at § 675(a)(3)(E)(i).

³⁷ See Megan O'Laughlin, Note, *A Theory of Relativity: Kinship Foster Care May be the Key to Stopping the Pendulum of Termination v. Reunification*, 51 Vand. L. Rev. 1427, 1448 (1998). States may not exclude relative caregivers from federal foster care funds if the relative otherwise qualifies. See Miller v. Yoakim, 440 U.S. 125, 137 (1979) .

³⁸ See 42 U.S.C.S. § 671(a)(19).

³⁹ See *id.* at § 670.

⁴⁰ National Conference of State Legislatures, 1998 State Legislative Responses to the Adoption and Safe Families Act of 1997 (1999).

⁴¹ See O.C.G.A. § 15-11-58(a)(1) (2002) (mandating that in making reasonable efforts with respect to a child, the child's health and safety shall be the paramount concern).

⁴² 42 U.S.C.S. § 675(a)(1)(A) (2002).

⁴³ DHHS report, *supra* note 28 at 18.

⁴⁴ *Id.*

⁴⁵ See O.C.G.A. § 15-11-103(a)(1) (2002).

⁴⁶ See In re B.R.W., 242 Ga. App. 232 (2000); *cf.* In re S.K., 248 Ga. App. 122 (2001); *see also* In re N.B., 239 Ga. App. 336 (1999).

⁴⁷ See DHHS report, *supra* note 28.

⁴⁸ O.C.G.A. § 15-11-103(a)(1).

⁴⁹ See In re B.R.W., *supra* note 46.

⁵⁰ See In re S.K., *supra* note 46.

⁵¹ See In re N.B., *supra* note 46.

⁵² *Id.*

⁵³ In the Interest of D.T., 251 Ga. App. 839 (2001).

⁵⁴ See *id.*

⁵⁵ *Id.* at 844 (reporting testimony of caseworker that the Department was ultimately unable to consider any of appellant father's relatives for placement because he failed to legitimize the child).

⁵⁶ In the Interest of S.H., 251 GA. App. 555 (2001); *see also* In re S.B., 237 Ga. App. 692 (1999) (holding that the trial court was not required to place a child with the putative father's mother or uncle, who testified that they would be willing to accept custody during the termination hearing, where 91) although the putative father's mother and uncle knew of the child's birth and subsequent removal from her mother's custody, neither one contacted DFACS or took any action to seek custody or to support the child prior to the termination hearing, and (2) the putative father was never married to the child's mother, and he provided no evidence that he was in fact her biological father). *But see* Nelson v. Taylor, 244 Ga. 657 (1979) (holding that the parents of the biological father are "relatives" because a putative father is a parent with a duty to support an illegitimate child).

⁵⁷ See O.C.G.A. § 15-11-96(h) (2002).

⁵⁸ In the Interest of S.H., *supra* note 56 at 559.

⁵⁹ See O.C.G.A. § 15-11-103(a)(1); *see also* In the Interest of S.H., *supra* note 56 at 559.

⁶⁰ See Georgia Dep't of Human Resources, Foster Care Services Manual, Section 1006.7, *available in* <<http://www.childwelfare.net/DHR/policies/Foster/>>, last visited September 24, 2002.

⁶¹ See *id.* at Section 1006.2 (stating a preference for placement with a fit and willing relative over other planned permanent living arrangements such as long-term non-relative foster care where reunification, adoption, or guardianship is not appropriate); see also Section 1006.7 (directing workers to select “permanent placement with a fit and willing relative” as the permanency plan when placement with a parent is not possible and a suitable relative has indicated a willingness to provide care for the child).

⁶² *Id.* at Section 1006.1.

⁶³ *Id.*

⁶⁴ *Id.* at Section 1006.7(1) and (2).

⁶⁵ See In the Interest of B.R.S., 198 Ga. App. 561, 563 (1991) (*emphasis supplied*). See also In the Interests of P.F.J., 174 Ga. App. 47, 48 (1985).

⁶⁶ See In the Interest of J.J.W., 247 Ga. App. 804, 807 (2001) (reaffirming “[T]he issue of placement with relatives is one to be made by the juvenile court, together with the department, following the juvenile court’s decision to terminate parental rights. According to O.C.G.A. § 15-11-103(a), ‘[a] thorough search for a suitable family member shall be made by the court and the Department of Human Resources in attempting to effect this placement.’”

⁶⁷ O.C.G.A. § 19-8-7(a) (2002) (*emphasis supplied*).

⁶⁸ See O.C.G.A. § 19-8-15 (2002).

⁶⁹ See Kelly v. Silverstein, 207 Ga. App. 381 (1993).

⁷⁰ See O.C.G.A. § 19-8-19(a)(1) (2002) (stating that all legal relationships are terminated including those affected by written instruments which do not expressly include the individual by name or some designation not based on a parent and child or blood relationship).

⁷¹ O.C.G.A. § 19-8-19(a)(2).

⁷² See *id.*

⁷³ O.C.G.A. § 29-4-8 (2002).

⁷⁴ See Kelley v. Kelley, 129 Ga. App. 257 (1973); see also Abrams v. Daffron, 155 Ga. App. 182 (1980).

⁷⁵ See O.C.G.A. § 29-4-8.

⁷⁶ See Grantham v. Grantham, 269 Ga. 413 (1998).

⁷⁷ See O.C.G.A. § 19-7-1(b.1) (2002).

⁷⁸ See O.C.G.A. § 53-2-1(8) (2002).

⁷⁹ *Id.*

⁸⁰ See *id.*

⁸¹ O.C.G.A. § 44-5-111(10) (2002).

⁸² See Rutledge v. Auto-Owners Insurance Co., 249 Ga. App. 361 (2001).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See Ledford v. State Farm Mutual Auto. Ins. Co., 189 Ga. App. 866 (1989).

⁸⁷ See Gish v. State, 181 Ga. App. 478 (1987).