

2019

Putting Family First: The Need for Reform in Minnesota's Foster Care Licensing Statutes and Processes to Support Relative Placement

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Recommended Citation

Woolman, Joanna and Slama, Elizabeth (2019) "Putting Family First: The Need for Reform in Minnesota's Foster Care Licensing Statutes and Processes to Support Relative Placement," *Mitchell Hamline Law Review*: Vol. 45 : Iss. 4 , Article 1.

Available at: <https://open.mitchellhamline.edu/mhlr/vol45/iss4/1>

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PUTTING FAMILY FIRST: THE NEED FOR REFORM IN MINNESOTA’S FOSTER CARE LICENSING STATUTES AND PROCESSES TO SUPPORT RELATIVE PLACEMENT

Joanna Woolman and Elizabeth Slama

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I. INTRODUCTION

Like many states, Minnesota’s child protection system faces serious challenges in its mission to protect children and support families. The balance between child safety and family preservation is elusive. Minnesota has swung the pendulum significantly to the side that prioritizes child removal by using investigative versus collaborative approaches to intervention and under-utilizing family foster care as the preferred removal placement. The last several years in Minnesota have brought an onslaught of policy changes in intake and screening processes relating to child protection, which, along with other factors (including a huge uptick in infant removals born

with drugs in their system), has resulted in a dramatic and alarming increase in the number of children being removed from their parents' care.¹ The number of children placed in Minnesota's foster care system has increased exponentially as there have more than 25,000 children are reported for abuse or neglect each year.² Most children are removed due to neglect—not serious physical or sexual abuse.³ Irrespective of the cause, the fact that Minnesota had the sixth-highest removal rate in the United States is alarming and reason for reform.⁴

When a child is removed from a home and placed in foster care, relatives are the preferred caregivers because this placement type keeps children connected with their families and communities, significantly reducing the initial trauma of removal.⁵ This is particularly true for communities of color, where maintaining a connection to identity, culture, and language can help alleviate additional trauma associated with placing these children in non-culturally supported homes.⁶ Additionally, children tend to be just as safe or safer, siblings are less likely to be separated, and relatives are frequently willing to adopt or become permanent guardians when reunifi-

1. See MINN. DEP'T OF HUM. SERVS., MINNESOTA'S OUT-OF-HOME CARE AND PERMANENCY REPORT 2017 21 (2018) [hereinafter MINN. DEP'T OF HUM. SERVS., OUT-OF-HOME REPORT 2017].

2. *Programs and Services*, MINN. DEP'T HUM. SERVS, <https://mn.gov/dhs/people-we-serve/children-and-families/services/child-protection/programs-services/> [<https://perma.cc/24EX-478S>] (last updated Apr. 10, 2018). In 2018, 38,751 children were the subjects of reports to Minnesota Child Protection Services for maltreatment. See MINN. DEP'T OF HUM. SERVS., CHILD PROTECTION IN MINNESOTA: KEEPING CHILDREN SAFE, 1 (2019).

3. MINN. DEP'T OF HUM. SERVS., MINNESOTA'S OUT-OF-HOME CARE AND PERMANENCY REPORT, 2016, 16 (2017) [hereinafter MINN. DEP'T OF HUM. SERVS., OUT-OF-HOME REPORT 2016]; see Richard Wexler, *Minnesota's Approach to Child Protection Makes Children Less Safe*, MinnPost (Apr. 20, 2018), <https://www.minnpost.com/community-voices/2018/04/minnesotas-approach-child-protection-makes-children-less-safe/> [<https://perma.cc/256A-CLBP>].

4. Joanna Woolman & Jeff Hayden, *The Trauma of Child Separation Also Exists Right Here in Minnesota*, STAR TRIB. (July 13, 2018, 5:54 PM), <http://www.startribune.com/the-trauma-of-child-separation-also-exists-right-here-in-minnesota/488151491/> [<https://perma.cc/H6YY-BSUY>]; see MINN. DEP'T OF HUM. SERVS., OUT-OF-HOME REPORT 2016, *supra* note 3, at 16; Wexler, *supra* note 3.

5. U.S. DEP'T OF HEALTH & HUM. SERVS., CHILDREN'S BUREAU, PLACEMENT OF CHILDREN WITH RELATIVES 1 (2018), <https://www.childwelfare.gov/pubPDFs/placement.pdf> [<https://perma.cc/S8LL-6ZBU>].

6. See U.S. DEP'T OF HEALTH AND HUM. SERVS., CHILDREN'S BUREAU, RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE, 12 (2016).

cation with parents is not possible.⁷ However, in Minnesota, only one out of approximately four children who enter foster care are placed with a relative.⁸ This falls below the national average of one in three children.⁹

While there are many long-term and short-term benefits to placing a child in relative foster care, Minnesota has steadily created unnecessary statutory barriers for family members to become licensed foster caregivers.¹⁰ A single criminal conviction from a voluminous list precludes someone from serving as a foster caregiver.¹¹ A prior maltreatment determination also disqualifies potential caregivers, even though these determinations are not based on an actual conviction but simply on a preponderance of the evidence standard.¹²

Many of these barriers to fostering children disproportionately impact communities of color because persons in these communities tend to have a higher rate of interaction with the law. In Minnesota, people of color are arrested, charged, tried, and incarcerated at much higher rates than their white neighbors.¹³ Moreover, Minnesotans of color are nearly three times more likely to be charged with a serious crime than their white peers.¹⁴ This disparity largely exists after calculating black and American Indian residents, who are four to eight times more likely to be charged with a fel-

7. In Minnesota, "Relative foster care applies when children are officially placed in a home by a social service agency and the children are related to the adults in the home or they have had a significant relationship." *Relative Foster Care*, CARVER CTY., MINN., <https://www.co.carver.mn.us/departments/health-human-services/child-family/foster-care-licensing/relative-foster-care> [<https://perma.cc/28RR-UJ8W>].

8. See *Minnesota's Children 2017*, CHILD WELFARE LEAGUE OF AM., <https://www.cwla.org/wp-content/uploads/2017/03/MINNESOTA.pdf> [<https://perma.cc/UMU9-Z8W9>].

9. KIDS COUNT DATA CENTER, *Children in Foster Care by Placement Type in the United States*, <https://datacenter.kidscount.org/data/tables/6247-children-in-foster-care-by-placement-type#detailed/1/any/false/871,870,573,869,36,868,867,133,38,35/2622,2621,2623,2620,2625,2626,2626/12994,12995> (last updated March 2019) (showing that thirty-two percent of U.S. foster children in 2017 were placed in relative foster homes).

10. See *infra* Part II.

11. See MINN. STAT. § 245C.15 (2018).

12. See MINN. STAT. § 245C.14 (2018).

13. Christopher Magan, *People of Color Jailed at Higher Rates—and Minnesota Wants to Nail Down Why*, TWIN CITIES PIONEER PRESS (Dec. 9, 2016, 1:51 PM), <https://www.twincities.com/2016/12/09/as-minnesota-works-to-close-racial-gaps-law-enforcement-plays-a-key-role/>

[<https://perma.cc/GCJ5-8BXL>]; see also William E. Martin & Peter N. Thompson, *Judicial Toleration of Racial Bias in Minnesota Justice System*, 25 HAMLINE L. REV. 235, 236–37 (2002).

14. Magan, *supra* note 13.

ony than whites.¹⁵ While the unnecessary barriers to foster care affect all races equally, the disparities within our criminal justice system expose communities of color to these disparities at a higher rate.

In addition to the statutory and cultural barriers that many relatives face in their attempt to care for related children, the process to become a caregiver is confusing and, in many cases, takes too long to be an effective or realistic option.¹⁶ The need to get a license is often urgent for relatives, so in order to facilitate family placements the process to apply for a license should be clear, easy to navigate, and expedited. Minnesota's current emergency relative placement statute does not provide enough explanation about the initial application or the appeal process for the denial of an emergency license.¹⁷ Furthermore, the statute does not require that all relatives interested in becoming foster parents are provided an opportunity to apply for licensing with the Minnesota Department of Human Services (DHS).¹⁸

Reform is necessary in Minnesota to address both the statutory and procedural barriers that impede relatives from being licensed as foster care providers. This article tracks the history of foster care licensing requirements in Minnesota, discusses the real-life story of a grandmother with a grandchild placed in foster care,¹⁹ explains the federal mandates established through the Adam Walsh Act,²⁰ discusses the existing flaws in the process, and highlights the ways in which Minnesota's current statutory scheme and processes disproportionately impact communities of color.²¹ Finally, the article provides recommendations for both statutory and rule changes that will help relatives seeking to care for children through foster care.²²

15. *Id.*

16. *See generally* MINN. DEP'T OF HUMAN SERVICES, *Steps to Become a Foster Parent* (July 11, 2018), <https://mn.gov/dhs/people-we-serve/children-and-families/services/foster-care/programs-services/steps-to-become-a-foster-parent.jsp> (outlining the six-step process to becoming a foster parent in Minnesota).

17. *See* MINN. STAT. § 245A.035 (2018).

18. *See id.*

19. *Infra* Part I A.

20. *Infra* Part II A.

21. *Infra* Part VI A, B.

22. *Infra* Part VII.

A. LaTonia's Story

LaTonia is a forty-one-year-old, African-American woman living in Anoka County, Minnesota.²³ LaTonia was present at the hospital for the birth of her grandson in March 2016. Upon birth, the child tested positive for drugs. As a result, he was removed from his parents and placed in a non-relative foster home four days after his birth. Because her grandson was born in Chisago County, a social worker from that county informed LaTonia that her grandson would be placed with a foster family until paternity was established for LaTonia's son. The social worker told LaTonia she could not care for her grandson because the baby had medical needs. Additionally, the social worker stated emergency relative placements are only utilized when the child is being placed with his or her other biological parent; everyone else must be a licensed foster care provider.²⁴

In May 2016, LaTonia provided—upon the social worker's request—a two-page list of relatives who could potentially serve as foster care providers for the child. Of the names LaTonia provided, only one relative was contacted: the child's great-great-grandmother who was unable to care for the child due to her age. Despite the county having a list of relatives willing and able to provide care to the child, he remained in a non-African-American,²⁵ non-relative foster care home with the “baby whisperers”—a Chisago County family that only fosters babies.²⁶ Over the previous eight-

23. LaTonia is a client that is currently represented by Brooke Beskau (a Mitchell Hamline Law Review associate) in the Mitchell Hamline Child Protection Clinic. This clinic is supervised by Professor Joanna Woolman, one of the authors of this article.

24. Regarding an unlicensed emergency relative placement, Minnesota law defines relative as “a person related to the child by blood, marriage, or adoption; the legal parent, guardian, or custodian of the child's siblings; or an individual who is an important friend with whom the child has resided or had significant contact.” MINN. STAT. § 260C.007, subdiv. 27 (2018).

25. The Minnesota DHS describes the importance of relative placements, in particular in communities of color: “In many instances, relative placement preserves the continuity of care, relationships, culture and environment that are essential to a child's overall well-being. Relative placement maintains the family system as the primary provider of care for the child, as day-to-day decisions continue to be made by adults that the child already knows and understands to be their family. The child continues to participate in family celebrations, traditions, vacations and activities.” MINN. DEP'T OF HUM. SERVS, RELATIVE SEARCH BEST PRACTICE GUIDE 1 (2012). Further: “The tradition of relative/kin caring for children is part of all cultural, racial and socioeconomic communities. How kinship care is understood and experienced may vary from community to community, from family member to family member, and parent to parent.” *Id.* at 10.

26. The nickname “baby whisperer” was given to the couple by their friends. See Liz Collin, *Chisago County Family Known for Fostering Babies & Only Babies*, CBS MINNESOTA (Feb. 20, 2017, 10:44 PM),

een months, these foster parents had cared for eight babies, often caring for two at a time.²⁷

LaTonia wanted her grandson placed with her and began the foster care licensing process in the summer of 2016. By September 2016, LaTonia completed the mandatory sudden infant death syndrome (SIDS) and shaken baby training. In October 2016, a paternity test confirmed that her son was the child's father, and LaTonia once again expressed interest in being a full-time and permanent care provider for her grandson. However, the social worker informed LaTonia that she was not able to receive a foster care license because she had a prior maltreatment determination on her record, which was an administrative finding and not a criminal conviction. The determination stemmed from a 2008 incident where LaTonia was the victim of domestic violence.

In November 2016, after receiving letters from Chisago County stating it had not received the relevant paperwork, LaTonia contacted the Minnesota DHS and was told she would receive a formal letter if she had been denied a license. LaTonia then contacted the social worker assigned to her grandson's case to inquire into her foster care licensing status. The social worker informed LaTonia that no decision has been made regarding her licensing. LaTonia followed-up a week later and, after receiving no response, contacted the social worker's supervisor. After receiving no response from the supervisor, she reached out again to Chisago County. In April 2017, a full year after LaTonia's grandson was placed in non-relative foster care, LaTonia was finally referred by Chisago County Social Services to her county of residence, Anoka County, to complete foster care licensing.

On August 23, 2017, after completing additional classes and a home evaluation, LaTonia was officially licensed as a foster care provider in Anoka County. LaTonia and her Anoka County licensing worker reached out to Chisago County to inform them LaTonia was licensed and able to provide care. However, despite her status as a licensed foster care provider, LaTonia's grandson was not placed with her and remained in his non-relative placement. He remained in non-relative placement despite the county's attachment expert's recommendation that he be immediately moved to his grandmother's home to support his best interests, including his racial and cultural identity. Neither the court nor Chisago County so-

<https://minnesota.cbslocal.com/2017/02/20/chisago-county-family-known-for-fostering-babies-only-babies/> [<https://perma.cc/NTM9-DP6U>].

27. *Id.*

cial services took necessary action to move the child, and as a result, he remained in non-relative care.

Throughout the child protection case, LaTonia sought out and maintained visitation with her grandson, so much so that a parenting assessor recommended that the child be placed with LaTonia because of the bond between the child and LaTonia and her direct relation to him. Eventually, her son's parental rights were terminated, and Latonia again sought to be the caregiver for her grandson—this time as an adoptive parent. However, the child remains in foster care. The foster parents have grown attached to the child, intervened in the case, and are now attempting to adopt the child. This is the same family where he originally placed.

Cultural and ethnic issues are significant in this case. If approved for adoption, the current foster parents, non-African-American individuals, intend to change the child's name to a "whiter" name.²⁸ LaTonia, now an advocate for relative foster care, summed it up best when she recently said, "I am constantly having to petition the courts to get time with him This whole process has broken my heart. I have missed out on a lot of first moments and memories that I felt have been stolen from me." The child has been removed from his natural parents for nearly three years. Whether he will ever be reunited with his family remains unknown.

II. A BRIEF OVERVIEW OF WHAT THE FEDERAL GOVERNMENT REQUIRES

A. *The Adam Walsh Act*

Before discussing Minnesota's foster care licensing processes and statutes, it is important to understand what federal law requires of state foster care systems. Modern federal requirements controlling foster care were significantly influenced by the abduction and murder of Adam Walsh—a crime that shook the entire nation. These changes were spearheaded, in part, by Adam's parents, John and Reve Walsh, who became strong advocates for missing children.²⁹ On July 27, 2006, the twenty-fifth anniversary

28. Studies have shown that children do better when they are placed in same-race foster families. Changing the child's name will remove him farther from his culture and identity. See Twila L. Perry, *Race and Child Placement: The Best Interests Test and the Cost of Discretion*, 29 J. FAM. L. 51, 51 (1991); see also MINN. STAT. § 260C.212 subd. (2)(b)(6) (2018) (stating that placing a child in a culturally appropriate home is the law in Minnesota).

29. See Press Release, The White House, President Signs H.R. 4472, the Adam Walsh Child Protection and Safety Act of 2006 (Jul. 27, 2006) [Published by Mitchell Hamline Open Access, 2019](https://georgewbush-</p></div><div data-bbox=)

of Adam Walsh's abduction, President George W. Bush signed the Adam Walsh Child Protection and Safety Act of 2006 into law.³⁰ The act emerged from Congress after separate House and Senate bills were passed to address the "growing epidemic of sexual violence against children."³¹ President Bush said the act would strengthen federal laws to protect children from sexual assault and other violent crimes, help prevent child pornography, and make the internet safer for children.³²

The overall purpose of this act has nothing to do with relative foster care.³³ In fact, its primary intent was to protect children by strengthening laws related to child sexual predators.³⁴ However, the final section of the act includes background studies requirements for foster care licenses. This

whitehouse.archives.gov/news/releases/2006/07/20060727-6.html [<https://perma.cc/5T4N-LEZ9>].

30. *Id.*

31. H.R. REP. NO. 109-218, pt. 1, at 20 (2005).

32. Press Release, *supra* note 29.

33. Despite its intent, the act did impact foster care requirements. Similarly, subsequent federal legislation seeking to protect children has unintentionally impacted foster care licensing. The Jacob Wetterling Act and Meghan's Law both sought to protect children yet had unintended consequences that were much farther reaching than the original laws' intent. The Jacob Wetterling Act, which was signed into law by President Bill Clinton after a masked gun man kidnapped, molested, and later killed Jacob, required that convicted sex offenders register on state and national registries. *See generally* Brittany Enniss, *Quickly Assuaging Public Fear: How the Well-Intended Adam Walsh Act Led to Unintended Consequences*, 2 UTAH L. REV. 697, 699-700 (2008). While the Wetterling Act was being established, the nation was once again shaken by the brutal rape and murder of seven-year-old Megan Kanka at the hands of a convicted sex offender, Jesse Timmendequas. *Id.* at 700. To appease the public outrage over Megan's murder, New Jersey passed a bill requiring the state to assess sex offenders and to give notice to the community when the threat of danger was serious enough. *Id.* However, some states remained hesitant to release offender registration to the public. *Id.* In response, the language of the Wetterling Act was changed from "may release" to "shall release" information "for any purpose permitted by state law." *Compare* H.R. 3355, 103d Cong. § 170101 (1994) with Megan's Law, Pub. L. No. 104-145 § 2, 110 Stat. 1345 (1996). The impact of these laws has been devastating for those convicted of even relatively minor offenses. For example, misdemeanor theft (shoplifting) is included on the list of disqualifying crimes in Minnesota (five-year disqualification). Potential foster parents with teens in the home with shoplifting convictions, will be initially barred from getting a foster care license because the disqualification applies to all members of the potential foster care provider's household. And although they can request a variance or set-aside—that process takes time, sometimes up to several months.

34. Jennifer L. Miller & Mary Bissel, *Adam Walsh Child Protection and Safety Act of 2006: Issues for Child Welfare Agencies*, CHILDFOCUS 2 (Apr. 2007), http://childfocuspartners.com/wp-content/uploads/AdamWalsh.final_.pdf [<https://perma.cc/KJ95-TVWV>].

section requires states to conduct background checks before licensing an individual as a foster care provider.³⁵

B. Required Background Checks for Foster Care Providers

The Adam Walsh Act requires states to conduct background checks on prospective foster parents, as well as any adult living in the household of a prospective foster parent.³⁶ These background checks include examining criminal records, and child abuse and neglect registries in the state of the proposed placement and any other state in which a prospective foster parent has resided in the preceding five years.³⁷ Under this act, a conviction for certain crimes permanently disqualifies an individual from becoming a foster or adoptive parent.³⁸ Specifically, if a person has been convicted of child abuse or neglect; spousal abuse; a crime against children, including child pornography; or a crime involving violence, such as rape, sexual assault, or homicide, they are prohibited from becoming a foster or adoptive parent under federal law.³⁹ Additionally, a person will not receive final approval for placement of a child if they committed a felony-level physical assault, battery, or a drug-related offense within the last five years.⁴⁰

The Adam Walsh Act does not articulate a different standard for licensing relative versus non-relative foster care providers. As a result, most states require relatives seeking foster care placement to comply with the general process to obtain a foster care license. There is no special provision for relatives to become licensed. However, the Adoption Assistance and Child Welfare Act, which serves as the foundation for the current child welfare system, contains a provision that calls for the least restrictive and most family-like placement setting.⁴¹ This provision has been inter-

35. 42 U.S.C. § 671(a)(20)(A), (B), *codified from* The Adam Walsh Child Protection and Safety Act, Pub. L. 109-248 (2006).

36. *Id.*

37. *Id.* (a)(20)(B).

38. *Id.* (a)(20)(A).

39. 42 U.S.C. § 671(a)(20)(A)(i).

40. *Id.* (a)(20)(A)(ii).

41. U.S. DEP'T OF HEALTH & HUM. SERVS., INFORMAL AND FORMAL KINSHIP CARE. A. KINSHIP FOSTER CARE (1997) [hereinafter U.S. DEP'T OF HEALTH & HUM. SERVS., KINSHIP CARE] <https://aspe.hhs.gov/report/informal-and-formal-kinship-care/kinship-foster-care> [https://perma.cc/7MAQ-FXCL]. “[E]ach child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents’ home, consistent with the best interest and special needs of the child” 42 U.S.C. 675(5)(A).

puted to mandate a preference for relative placement—whenever possible—in many jurisdictions, including Minnesota.⁴²

What constitutes kin varies by jurisdiction. A broad definition may include any person with whom the child has an emotionally close relationship, but who is not related to the child through blood or marriage, referred to as fictive kin.⁴³ Godparents, neighbors, or family friends may qualify as fictive kin.⁴⁴ A stricter view of what defines a relative may only consider those who are related by blood.

For example, in Georgia, relative is defined more restrictively and includes “a person related to a child by blood, marriage, or adoption, including the spouse of any of those persons even if the marriage was terminated by death or dissolution.”⁴⁵ Conversely, in Minnesota, relative is defined broadly as “a person related to the child by blood, marriage, or adoption; the legal parent, guardian, or custodian of the child’s siblings; or an individual who is an important friend with whom the child has resided or had significant contact.”⁴⁶

Although the reason why foster care licensing is part of the Adam Walsh Act is perhaps hard to understand, the background studies it mandates and the types of crimes it says are a barrier to foster care licensing are not unreasonable. In order to receive federal funding under Title IV-E, states must comply with the Adam Walsh Act’s requirements for foster care licensing—regardless of whether the applicant is a relative or non-relative caregiver.⁴⁷

C. Adoption and Safe Families Act and Proposed Draft Licensing Standards

In 1997, the Adoption and Safe Families Act (ASFA) formally endorsed placing children permanently with fit and willing relatives when children cannot live with their parents.⁴⁸ ASFA also allowed an exception

42. MINN. STAT. § 260C.212, subdiv. 2 (1); U.S. DEP’T OF HEALTH & HUM. SERVS., KINSHIP CARE *supra* note 41.

43. NAT’L. CONF. OF STATE LEGIS., THE CHILD WELFARE PLACEMENT CONTINUUM: WHAT’S BEST FOR CHILDREN? (2016), <http://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx> [<https://perma.cc/WZ7V-QP8Z>].

44. *Id.*

45. GA. CODE ANN. § 15-11-2 (62) (West, Westlaw through 2018 Legis. Sess.).

46. MINN. STAT. § 260C.007, subdiv. 27 (2018).

47. 42 U.S.C. § 471, *codified from* Social Security Act, Pub. L. 74-271, 49 Stat. 620 (1934).

48. *See* Adoption and Safe Families Act of 1997, H.R. 867 § 107(2)(E) (1997).

to the federally-mandated time limits, which requires states to initiate termination of parental rights proceedings when a child has been in foster care for fifteen of the last twenty-two months.⁴⁹ Under ASFA, when children are placed with relatives, termination is not subject to these same time constraints.⁵⁰

More recently, the Children's Bureau proposed draft foster care standards as a part of the requirements set forth in the recently passed Family First Act.⁵¹ The Family First Act also requires that states evaluate their own standards to assess compliance with the federal provisions.⁵² These provisions were open for public review and comment until October 1, 2018, and contain eight categories that closely resemble those developed by the National Association for Regulatory Administration (NARA).⁵³ Previously, NARA drafted comprehensive foster care licensing standards that reflected the minimum requirements of the Adam Walsh Act with respect to background checks.⁵⁴ The 2018 version contains the same recommendations, under which states should comply with the background check requirements of the Adam Walsh Act, but no additional crimes are listed as disqualifiers in this most recent draft.⁵⁵ Minnesota has not yet evaluated or modified its foster care licensing statutes as required by the Family First Act.

49. *Id.* at § 103 (a)(E)(i-iii).

50. *Id.* at § 103 (a)(E)(i).

51. See Family First Prevention Services Act, H.R. 253, 115th Cong. (2018); see also Notice for Proposed Model Family Foster Home Licensing Standards, 83 Fed. Reg. 37495-37500 (Aug. 1, 2018).

52. See John Kelley, *One More Week to Weigh in on National Foster Home Licensing Standards*, CHRON. OF SOC. CHANGE (Sept. 25, 2018), <https://chronicleofsocialchange.org/youth-services-insider/one-week-left-national-foster-home-licensing-standards> [<https://perma.cc/CJQ9-QY3K>].

53. *Id.*; see also NAT'L ASSOC. FOR REG. ADMIN., MODEL FAMILY FOSTER HOME LICENSING STANDARDS 4-12 (2018), <https://www.naralicensing.org/assets/docs/SharedResources/Model%20Licensing%20Standards%202018%20update.pdf> [<https://perma.cc/LA7Z-HWNS>] (defining thirteen standards: eligibility, physical and mental health, home study, capacity, sleeping, other living space, fire safety/evacuation plan, additional health and safety, criminal history, abuse and neglect background check, assurances, pre-license training, and emergency placement.).

54. See CHILDREN & FAMILIES ADMIN., NOTICE FOR PROPOSED MODEL FAMILY FOSTER HOME LICENSING STANDARDS (2018), <https://www.govinfo.gov/content/pkg/FR-2018-08-01/pdf/2018-16380.pdf> [<https://perma.cc/KY79-FYD8>].

55. See CHILD WELFARE INFO. GATEWAY, CHILDREN'S BUREAU, BACKGROUND CHECKS FOR PROSPECTIVE FOSTER, ADOPTIVE, AND KINSHIP CAREGIVERS 1 (2015), <https://www.childwelfare.gov/pubPDFs/background.pdf> [<https://perma.cc/674L-A5SV>].

III. THE HISTORY OF MINNESOTA'S FOSTER CARE LICENSING STATUTES

Minnesota's foster care licensing processes are codified in section 245C of the Minnesota Statutes,⁵⁶ a comprehensive statute that includes the procedures and processes for all types of DHS licenses in Minnesota. Accordingly, licensing for foster care, providing in-home child care, working in nursing homes, or becoming a personal care assistant are all governed by the same statute.⁵⁷ This is problematic for several reasons.

First, the same list of statutory barriers regarding both crimes and maltreatment determinations applies across the board to all categories of licenses.⁵⁸ This leads to overbreadth in terms of disqualifying crimes for each type of individual license. Crimes that often create reasonable barriers to an individual's ability to work as a transportation provider, such as criminal vehicular injury,⁵⁹ are unlikely to impact or relate to their ability to provide safe and appropriate care as a relative foster care provider. Furthermore, family foster care licenses are distinct from other types of licenses sought from the Minnesota DHS because they do not implicate running a business.⁶⁰ Rather, they provide the licensing requirements for individuals or families seeking to help children or sibling groups who are in need of a safe, temporary home.

Second, the appeals process provided by section 245C—even in instances of very minor crimes—is complex and difficult for applicants to navigate without an attorney.⁶¹ Minnesota's child welfare workers often do not have the time necessary to assist relatives with a variance or set-aside for minor crimes, which results in children remaining in non-relative foster homes longer than necessary, or even indefinitely.

Finally, the foster care licensing standards in section 245C are much more stringent than the state's adoption standards.⁶² This inconsistency

56. MINN. STAT. § 245C (2018).

57. *Id.* at § 245C.03, subdvs. 2-12.

58. *See id.* at §§ 245C.03, subdvs. 2-12, 245C.14-16.

59. *See* MINN. STAT. § 245C.15 (2018).

60. The other entities subject to disqualifying crimes include personal care providers, supplemental nursing services, child-care providers, children's therapeutic service providers, group housing providers, child protection workers, and special transportation workers such as a bus driver. *See* MINN. STAT. § 245C.03 (2018).

61. *See* MINN. STAT. § 245C.22.

62. MINN. STAT. § 259.22, subd. 1 (2018) ("Any person who has resided in the state for one year or more may petition to adopt a child or an adult.") In order to adopt, a person must go through a background check. MINN. STAT. § 259.41, subd. 3 (2018). Furthermore, to receive adoption assistance payments a person may not have a felony conviction for: (1) child abuse or neglect; (2) spousal abuse; (3) a crime against children, including

creates problems for children and families and does not make sense from a policy perspective because it can needlessly delay a child from being placed in their permanent home.

Over time, Minnesota has added significant statutory barriers to the DHS licensing standards, which go above and beyond the disqualifying crimes established under the Adam Walsh Act.⁶³ In total, since 2002, Minnesota has added over one hundred additional crimes that either permanently or temporarily prohibit individuals from becoming foster or adoptive care parents.⁶⁴ For example, a person may be disqualified for committing any of the following non-violent crimes: forgery, theft, receiving stolen property, and possession of shoplifting gear.⁶⁵ Additionally, compared to the Adam Walsh Act, Minnesota law requires additional time to lapse before a final approval for a permanent placement is given. The Adam Walsh Act only requires five years to lapse after a conviction for a limited number of felony-level offenses, whereas Minnesota law has created fifteen-year, ten-year, and seven-year time requirements for a wide variety of felony-level and misdemeanor offenses, not related to the safety of the children.⁶⁶ Altogether, these deviations from federal law serve as unnecessary statutory hurdles to foster and adoptive care licensing.

Section 245C.15 of the Minnesota statutes, which contains the list of disqualifying crimes, has been amended seven times since 2002.⁶⁷ In 2003, the statute articulated which criminal convictions would permanently disqualify an individual from receiving a license to provide foster care.⁶⁸ However, the 2003 version also codified temporary disqualification periods of seven, ten, and fifteen years with respective crimes.⁶⁹ Under these time constraints, if insufficient time elapsed since the discharge of a sen-

child pornography; or (4) a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery. (d) A home study under paragraph (b) used to consider placement of any child on whose behalf Title IV-E adoption assistance payments are to be made must not be approved if a background study reveals a felony conviction within the past five years for: (1) physical assault or battery; or (2) a drug-related offense. MINN. STAT. § 259.41, subdiv. 3(c)-(d) (2018).

63. See MINN. STAT. § 245C.15 (2018).

64. Compare *id.* at § 245C.15, subdiv. 1, with MINN. STAT. § 245C.15 (2002).

65. See MINN. STAT. § 245C.15 (2018).

66. See MINN. STAT. § 245C.15 (2018).

67. See History of MINN. STAT. § 245C.15, OFFICE OF THE REVISOR OF STATUTES, <https://www.revisor.mn.gov/statutes/cite/245C.15> [https://perma.cc/9AJF-JE8S].

68. MINN. STAT. § 245C.15, subdiv. 1 (2003) (current version at MINN. STAT. § 245C.15, subdiv. 1 (2018)).

69. *Id.* at § 245C.15, subdivs. 2-4.

tence, an individual was disqualified from receiving a foster care license.⁷⁰ Many of the applicable crimes did not directly relate to a person's ability to parent. For example, an individual could be disqualified for fifteen years for theft, forgery, or the possession of shoplifting gear.⁷¹

In 2004, the Minnesota Legislature clarified the ten-year disqualification period, stating that an individual would be disqualified for a decade if they are convicted of a listed gross misdemeanor but sentenced to a misdemeanor disposition.⁷² The seven-year disqualification category was also expanded to include serious or recurring maltreatment in any other state that has maltreatment determinations similar to those in Minnesota.⁷³ A year later, in 2005, the permanent disqualification category was expanded to include criminal sexual conduct in the fifth-degree and criminal sexual predatory conduct.⁷⁴

The 2006 changes to section 245C.15 were minimal.⁷⁵ However, in 2007,⁷⁶ and again in 2009,⁷⁷ the legislature significantly expanded the statute. Over the course of those two years, the legislature added the following crimes to the statute as permanent disqualifications: violation of predatory offender registration law, felony first-degree assault, domestic assault by strangulation, and indecent exposure to a minor.⁷⁸ Additionally, the legislature added the following crimes to the fifteen-year disqualification category: federal food stamp program fraud, crimes committed for benefit of a gang, possession of burglary tools, prohibited possession of firearms, and aiding an offender.⁷⁹

70. *Id.* at § 245C.15.

71. *Id.* at § 245C.15, subdiv. 2.

72. MINN. STAT. § 245C.15, subdiv. 3(d) (2004) (current version at MINN. STAT. § 245C.15 (2018)).

73. *Id.* at § 245C.15, subdiv. 4(b)(2).

74. MINN. STAT. § 245C.15, subdiv. 1 (2005) (current version at MINN. STAT. § 245C.15 (2018)).

75. Compare MINN. STAT. § 245C.15 (2006) (current version at MINN. STAT. § 245C.15 (2018)) with MINN. STAT. § 245C.15, subdiv. 1 (2005).

76. See MINN. STAT. § 245C.15 (2007) (current version at MINN. STAT. § 245C.15 (2018)).

77. See MINN. STAT. § 245C.15 (2009) (current version at MINN. STAT. § 245C.15 (2018)).

78. MINN. STAT. § 245C.15 (2007); MINN. STAT. § 245C.15 (2009) (current version at MINN. STAT. § 245C.15 (2018)).

79. MINN. STAT. § 245C.15 (2007); MINN. STAT. § 245C.15 (2009) (current version at MINN. STAT. § 245C.15 (2018)).

The 2010 modifications to the statute were minor.⁸⁰ However, in 2017 the legislature once again expanded the list of permanent disqualification crimes.⁸¹ Now, a childcare employee convicted of a crime that would make them ineligible for employment under United States Code, title 42, Section 9858F is permanently disqualified.⁸² Additionally, a childcare employee is disqualified if the person is registered or required to register on a state sex offender registry or on the National Sex Offender Registry.⁸³

IV. THE MINNESOTA FOSTER CARE APPEALS PROCESS

Minnesota does provide a mechanism to appeal a foster care license disqualification, but the appeal process is complicated and burdensome. Under Minnesota's statutes, an individual appealing a foster care license disqualification must send a letter to the county agency that initiated the background check.⁸⁴ This letter must be sent within thirty days of either personal service or receipt of the disqualification notice, whichever timeframe is shorter.⁸⁵ An individual seeking to appeal a disqualification must submit information showing the following: (1) the information the DHS commissioner relied upon to determine disqualification was appropriate is incorrect;⁸⁶ (2) the maltreatment information the commissioner relied upon to determine disqualification was appropriate is incorrect;⁸⁷ or (3) the subject of the study does not pose a risk of harm.⁸⁸

If an individual's disqualification appeal is denied due to their past criminal history, an individual can request a set aside⁸⁹ or a variance.⁹⁰ A set aside can be granted when it is determined that an individual does not pose a risk of harm.⁹¹ When making this determination, the considerations include: (1) the nature, severity, and consequences of the event; (2) wheth-

80. See MINN. STAT. § 245C.15 (2010) (current version at MINN. STAT. § 245C.15 (2018)).

81. See MINN. STAT. § 245C.15 (2017) (current version at MINN. STAT. § 245C.15 (2018)).

82. MINN. STAT. § 245C.15, subdiv. 1(a) (2017) (current version at MINN. STAT. § 245C.15, subdiv. 1(a) (2018)).

83. *Id.*

84. MINN. STAT. § 245C.21, subdiv. 1a (2018).

85. *Id.* at § 245C.21, subdiv. 1a(c).

86. *Id.* at § 245C.21, subdiv. 3(a)(1).

87. *Id.* at § 245C.21, subdiv. 3(a)(2).

88. *Id.* at § 245C.21, subdiv. 3(a)(3).

89. See MINN. STAT. § 245C.24, subdiv. 1 (2018).

90. MINN. STAT. § 245C.30, subdiv. 1 (2018).

91. MINN. STAT. § 245C.22, subdiv. 4(a) (2018)

er there is more than one disqualifying event; (3) the age and vulnerability of the victim; (4) the harm suffered; (5) the vulnerability of the persons served; (6) the similarity between the victim and persons served; (7) the time elapsed without repeat of the same event; (8) documentation that the individual completed rehabilitation or training; and (9) any other relevant information.⁹²

Some crimes serve as a permanent barrier to licensing and cannot be set aside.⁹³ Other crimes, like simple robbery, cannot be set aside if less than ten years has passed since the discharge of the sentence⁹⁴ or since the act was committed if the commissioner determines that a preponderance of evidence suggests that the act occurred.⁹⁵ Additionally, a set aside cannot be granted if less than seven years has passed since the individual committed maltreatment of a child that resulted in substantial bodily, mental, or emotional harm, or there is a preponderance of the evidence that the individual committed maltreatment.⁹⁶ If a set aside is granted, it is limited in scope to the licensed program for which it was requested.⁹⁷ For example, in the case of a foster care license, an individual granted a set aside remains disqualified as to other types of licenses controlled by the Minnesota DHS but may hold a foster care license.⁹⁸

If a disqualified individual is denied a set aside, they may be granted a time-limited variance if it is determined that there are conditions under which it is possible to minimize the risk of harm to those receiving the services.⁹⁹ If the individual does not comply with these conditions, the variance can be terminated immediately.¹⁰⁰ Additionally, the outright denial of a variance is a final decision and not subject to appeal.¹⁰¹

Minnesota law provides the commissioner up to forty-five working days to respond to a request for reconsideration after receiving all required and relevant information.¹⁰² In reality, this process often takes months. As a result, children may be kept away from their families in foster care for extended periods of time.

92. *Id.* at § 245C.22, subdiv. 4(b).

93. *See* MINN. STAT. § 245C.24, subdiv. 2 (2018).

94. *Id.* at § 245C.24, subdiv. 3(a)(1).

95. *Id.* at § 245C.24, subdiv. 3(a)(2); MINN. STAT. § 245C.14, subdiv. 1(2) (2018).

96. MINN. STAT. § 245C.24, subdiv. 4(1)-(2) (2018).

97. *See* MINN. STAT. § 245C.22, subdiv. 5(a)-(b) (2018).

98. MINN. STAT. § 245C.22, subdiv. 5(a) (2018).

99. MINN. STAT. § 245C.30, subdiv. 1 (2018).

100. *Id.* at § 245C.30, subdiv. 3.

101. *Id.* at § 245C.30, subdiv. 5.

102. MINN. STAT. § 245C.22, subdiv. 1(c) (2018).

Minnesota's licensing regime requires that county agency workers assist relatives seeking a license, including assistance with variances and set-asides. Section 260C (b)(4) of the Minnesota Statutes states that agency workers must notify relatives of the applicable family foster care licensing requirements, including how to request a variance.¹⁰³ Agency workers must also provide information on support that is available for relatives and children who reside in a family foster home.¹⁰⁴

V. MINNESOTA'S ADOPTION STANDARDS

The inconsistency between Minnesota's foster care standards, codified in section 245C.15, and Minnesota's adoption standards, codified in section 245C.33, creates problems for relative caregivers seeking both foster care licenses and the ultimate adoption of their relative child. If an interested relative cannot obtain a license for foster care, the child may be placed in a non-relative foster care home. This disruption and the resulting trauma caused to the child being placed in a non-relative home is significant.¹⁰⁵ If an interested relative is eligible for adoptive placement—should the child not return to their biological parent or parents in the meantime—then the child could be moved into that relative's home, but the damage done by the initial non-relative placement may be hard to undo. A better and more child-centered policy would sync these two standards so that children are placed with a relative who will be their permanent custodial care giver at the earliest possible point after their removal from home.

VI. DEMOGRAPHICS OF RELATIVE AS OPPOSED TO NON-RELATIVE FOSTER CARE IN MINNESOTA

A. *Racial Disparities in Foster Care Nationally*

Data collected by the Adoption and Foster Care Analysis and Reporting System (AFCARS) demonstrates that racial discrepancies are extremely prevalent within the foster care system.¹⁰⁶ For example, in 2016, 44% of

103. MINN. STAT. § 260C.221(b)(4) (2018).

104. *Id.*

105. MONIQUE B. MITCHELL, THE NEGLECTED TRANSITION: BUILDING A RELATIONAL HOME FOR CHILDREN ENTERING FOSTER CARE 51 (2016).

106. See CHILD WELFARE INFO. GATEWAY, CHILDREN'S BUREAU, FOSTER CARE STATISTICS 1, 8 (2018) [hereinafter CHILD WELFARE INFO. GATEWAY, FOSTER CARE STATISTICS], (<https://www.childwelfare.gov/pubPDFs/foster.pdf>) [<https://perma.cc/GA76-PEV5>].

the children in our nation's foster care system were white,¹⁰⁷ compared to the 61% of white individuals in the nation's general population.¹⁰⁸ In contrast, 23% of children in foster care placements were black or African-American,¹⁰⁹ while black or African-American individuals made up only 13 percent of the general population;¹¹⁰ 21% of children in foster care placements were Hispanic,¹¹¹ while Hispanic individuals represent 18% of the general population;¹¹² and 10% of children in foster care placements were other races or multiracial,¹¹³ while other races and multiracial individuals comprised 8% of the general population.¹¹⁴ In sum, this means that 54% of the children in foster care were children of color, while people of color represent only 39% of the general population.¹¹⁵

Forty-five percent of children in foster care in fiscal year 2016 spent their time in a non-relative foster care home.¹¹⁶ Thirty-two percent of children were placed in relative foster care.¹¹⁷ AFCARS reporting, to date, does not provide national data regarding the races of children in relative versus non-relative foster care placements.¹¹⁸

B. Racial Disparities in Minnesota's Child Welfare System

Minnesota's child welfare system has egregious racial disparities across the board. In 2017, 16,593 children in Minnesota experienced one

107. *Id.*

108. *QuickFacts United States*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045217> [<https://perma.cc/R2PG-YPY9>].

109. CHILD WELFARE INFO. GATEWAY, FOSTER CARE STATISTICS, *supra* note 106, at 8.

110. *QuickFacts United States*, *supra* note 108.

111. CHILD WELFARE INFO. GATEWAY, FOSTER CARE STATISTICS, *supra* note 106, at 8.

112. *QuickFacts United States*, *supra* note 108.

113. CHILD WELFARE INFO. GATEWAY, FOSTER CARE STATISTICS, *supra* note 106, at 8.

114. *QuickFacts United States*, *supra* note 108.

115. *See id.*; CHILD WELFARE INFO. GATEWAY, FOSTER CARE STATISTICS, *supra* note 106, at 8.

116. CHILD WELFARE INFO. GATEWAY, FOSTER CARE STATISTICS, *supra* note 106, at 3. The remaining percentage is comprised of children in institutions (7%), group homes (5%), preadoptive care (4%), trial home visits (5%), runaway (1%), or supervised independent living (1%). *Id.* at 4.

117. *Id.*

118. *See* U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD MALTREATMENT 2016 (2017), <https://www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf> [<https://perma.cc/WMK7-38SH>].

or more days in out-of-home care.¹¹⁹ Of the children, 46% were placed in a relative foster care placement.¹²⁰ In Minnesota, children of color make up a slightly larger proportion of children in relative foster care as opposed to non-relative care.¹²¹ Children of color are more likely than white children to be placed in relative care.¹²² For example, in 2015, 35% of children in relative foster care were white compared to 65% children of color.¹²³

This discrepancy may be because Minnesota's child welfare system, like its criminal justice system, contains serious disparities between whites and non-whites as compared to the relative make-up of the overall state population.¹²⁴ In 2017, Minnesota was 81% white.¹²⁵ Not surprisingly, then, of the 16,593 children in foster care, white children represented the largest group.¹²⁶ However, disproportionality remains a significant concern in Minnesota's child welfare system. According to the Minnesota DHS, in 2017, "American Indian children were 18.5 times more likely, African-American children were more than 3.0 times, and those identified as two or more races were 4.8 times more likely than white children to experience [foster] care"¹²⁷ Thus, even though children of color are more likely to be placed in relative foster care, non-relative foster care impacts communities of color at a higher rate than white communities in Minnesota due to these significant racial disparities.¹²⁸

119. MINN. DEP'T OF HUM. SERVS., OUT-OF-HOME REPORT 2017, *supra* note 1, at 6.

120. *Id.* at 26.

121. MINNESOTA KINSHIP CAREGIVING FEDERAL FISCAL YEAR 2015, CHILD TRENDS, https://www.childtrends.org/wp-content/uploads/2017/01/Minnesota-Kinship-Caregiving-Factsheet_2015.pdf [<https://perma.cc/37UV-EF9B>]; SANDRA BEEMAN ET. AL., KINSHIP FOSTER CARE IN MINNESOTA: A STUDY OF THREE COUNTIES, iii (1996), https://cascw.umn.edu/wpcontent/uploads/2014/07/Kinship_Full_Report.pdf [<https://perma.cc/N77T-UH34>].

122. *Id.*

123. CHILD TRENDS, *supra* note 121.

124. In 2017, of the children entering the Minnesota foster care system, 51.3% were children of color, 2.4% declined to identify, and 46.3% of children were white. MINN. DEP'T OF HUM. SERVS., OUT-OF-HOME REPORT 2017, *supra* note 1, at 15. Conversely, white Minnesotans represent 81% of the general population. MINN. STATE DEMOGRAPHIC CTR., DEP'T OF ADMIN., AGE, RACE, & ETHNICITY, <https://mn.gov/admin/demography/data-by-topic/age-race-ethnicity/> [<https://perma.cc/3A9M-N8SY>].

125. MINN. STATE DEMOGRAPHIC CTR., *supra* note 124.

126. MINN. DEP'T OF HUM. SERVS., OUT-OF-HOME REPORT 2017, *supra* note 1, at 6.

127. *Id.*

128. *Id.* at 16.

VII. PROPOSED CHANGES TO THE MINNESOTA FOSTER SYSTEM

A. *Proposed Legislative Reform in Minnesota*

Minnesota must amend Statute 245C to bring its foster care standards in line with its adoptive standards. Doing this will bring Minnesota into compliance with the NARA recommended licensing standards, which are consistent with the Adam Walsh Act's requirements. In the 2019 legislative session, House File 1050 was presented to address these needed reforms.¹²⁹

The purpose of this bill was to bring Minnesota's foster care licensing standards in line with the current state adoption and kinship assistance requirements.¹³⁰ Under H.F. 1050, a new section of Minnesota Statute 245C would have been added to accomplish these changes.¹³¹ The federal standards for adoption and kinship assistance established under the Adam Walsh Act were utilized as a guide in the drafting of this bill. However, the proposed bill contained standards that are slightly more stringent than the federal standards.¹³² Accordingly, the proposed bill can be viewed as "Adam Walsh plus." The "plus" includes some additional felony level offenses that trigger disqualifications,¹³³ the inclusion on Minnesota's child abuse registry in background checks,¹³⁴ and disqualification based on the voluntary termination of parental rights.¹³⁵

Increased relative foster care placement, particularly in communities of color, was also a goal of this bill.¹³⁶ Accordingly, H.F.1050 also sought to

129. H.F. 1050, 91st Legis., Reg. Sess. (2019).

130. H.F. 1050, 91st Legis., Reg. Sess. (2019) Bill Summary, <https://www.house.leg.state.mn.us/hrd/bs/91/HF1050.pdf> [<https://perma.cc/J5HF-6GQQ>].

131. H.F. 1050, 91st Legis., Second Engrossment Sec. 4, (2019), https://www.revisor.mn.gov/bills/text.php?number=HF1050&version=2&session=ls91&session_year=2019&session_number=0&format=pdf [<https://perma.cc/JW7E-EYSX>]

("Minnesota Statutes 2018, section 245C.02, is amended by adding a subdivision to read: Subd. 12a. Licensed family child foster care. 'Licensed family child foster care' includes providers who have submitted an application for family child foster care licensure under section 245A.04, subdivision 1. Licensed family child foster care does not include foster residence settings that meet the licensing requirements of Minnesota Rules, parts 2960.3200 to 2960.3230.").

132. Compare 42 U.S.C. § 671(a)(20)(A), (B), *codified from* The Adam Walsh Child Protection and Safety Act, Pub. L. 109-248 (2006), *with* H.F. 1050, 91st Legis., Reg. Sess. (Minn. 2019).

133. H.F. 1050, 91st Legis., Reg. Sess. (Minn. 2019).

134. *Id.*

135. *Id.*

136. *Id.*

streamline the licensing process for foster care providers by removing many non-child, safety-related criminal convictions from Minnesota's disqualification list relating to family foster care.¹³⁷ Minnesota's current law provides relatives who have been convicted of a crime not related to child safety, but nonetheless listed as a barrier under current licensing standards, with an opportunity to seek a variance.¹³⁸ Though these variances are often granted, the variance process can delay placement of the child with a relative, which can result in delayed permanency for the child when the relative is the best option for adoption or relative care.

H.F. 1050 did not pass this legislative session. Despite widespread, bi-partisan support from many diverse stakeholders, it was held up by the Republican-controlled Minnesota Senate, who refused to accept the House version of the bill after the bill was denied a hearing in the Senate Judiciary and Public Safety Finance and Policy Committee. This outcome was disappointing because it appeared that political and not policy reasons led to the omission of the bill's language in the larger HHS Omnibus bill. Stakeholders will continue to work over the summer to educate members of the Senate Health and Human Services and Judiciary and Public Safety Finance and Policy Committee about the importance of this bill and the positive impact it would have on children and communities, and to maintain the sense of urgency around its passing in the 2020 session.

B. Proposed Non-Legislative Reform in Minnesota

In addition to proposed legislation, there are other reforms that Minnesota could make to improve a relative's ability to provide foster care for their family members. These reforms include better training for county social workers to help relatives understand the requirements for seeking a foster care license, as well as general education to help these workers understand their role in the process. Additionally, kinship navigators—individual mentors who help relatives through the process of foster care licensure—could be added to agency staff in counties throughout the state.

Better collaboration between counties, the Minnesota DHS, private licensing, and adoption agencies would also help families seeking to provide both foster care and adoption for children. County agency employees are frequently inundated with unmanageable workloads when a child is removed from parental care. Having a non-public partner and designated agency to help the relative family get licensed—including assistance with paperwork, home visits, application filing details, and interaction with the

137. *Id.*

138. MINN. STAT. § 245C.24 (2018).

DHS around licensure—would greatly speed up the process and likely would result in more relatives being licensed. This type of public/private engagement could also increase availability and access to kinship navigators.

VIII. CONCLUSION

Data shows that there are many benefits to placing children in relative foster care rather than with non-relatives. Relative foster care providers typically behave more like biological parents than non-relative foster care providers.¹³⁹ Thus, children in relative foster care placements experience more stability than their peers in non-relative care.¹⁴⁰ Specifically, relative foster care involves less of a disruption to children because they are more likely to remain connected with their existing personal support network.¹⁴¹ For example, children placed in relative foster care typically stay connected to their teachers, neighbors, extended family, friends, faith groups, coaches, and sports teams.¹⁴² Preserving these important relationships reinforces children's sense of identity and self-esteem, which is often rooted in their connection to family history and culture.¹⁴³ Children are moved from a relative's home less frequently than from non-relative care, and placement with a relative is more likely to be permanent in instances where reunification with parents is not possible.¹⁴⁴

Despite the positive outcomes children experience when placed with a relative caregiver, the addition of numerous criminal and civil disqualifying offenses for foster care providers has resulted in unintended consequences, including a system in which relatives, especially minorities, are unable to become licensed to provide care. To best serve the interests of families and children, Minnesota must change the law and come into closer line with federal requirements and much of the rest of the country.

139. U.S. DEP'T OF HEALTH & HUM. SERVS., KINSHIP CARE, *supra* note 41.

140. *Id.*

141. *Id.*

142. NAT'L. CONF. OF STATE LEGIS., *supra* note 43.

143. Lynne Soine, *Kinship Foster Caregivers—Partners for Permanency*, 13 SOC. WORK TODAY 5 (2013), <https://www.socialworktoday.com/archive/091613p12.shtml> [<https://perma.cc/RFQ8-25BT>].

144. U.S. DEP'T OF HEALTH & HUM. SERVS., KINSHIP CARE, *supra* note 41.

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