



November 16, 2022

To: Joint Committee on Child Welfare System Oversight

From: Natalie Nelson, Principal Research Analyst

Re: Foster Parent Preference in Adoption

In response to a question posed during the October 26, 2022, meeting of the Joint Committee on Child Welfare System Oversight, this memorandum highlights the laws of six states where foster parents are given preference in adoption proceedings when placement with a relative is not possible.

According to the Child Welfare Information Gateway, in order for states to receive federal payments for foster care and adoption assistance under Title IV-E of the Social Security Act, they must “consider giving preference to an adult relative over a nonrelated caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant state child protection standards.” Title IV-E further requires all states operating a Title IV-E program to exercise due diligence to identify all grandparents, all parents of a sibling of the child where such parent has legal custody of the sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents), and provide notice to them stating:

- (1) The child has been or is being removed from the custody of his or her parents;
- (2) The options the relative has to participate in the care and placement of the child; and
- (3) The requirements to become a foster parent to the child.¹

When there is no relative willing or able to be an adoptive resource, several states give preference to a nonrelative foster parent when the child has been living with the same foster parent for a significant period of time when he or she becomes available for adoption. Excerpts of the relevant statutes are provided below.

Illinois

750 ILCS 50/15.1. Licensed Foster Parent

- (a) Any person over the age of 18, who has cared for a child for a continuous period of one year or more as a foster parent licensed under the Child Care Act of 1969 to

¹ Child Welfare Information Gateway. (2018). *Placement of children with relatives*. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau, available at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/placement/>.

operate a foster family home, may apply to the child's guardian with the power to consent to adoption, for such guardian's consent.

(b) Such guardian shall give preference and first consideration to that application over all other applications for adoption of the child but the guardian's final decision shall be based on the welfare and best interest of the child. In arriving at this decision, the guardian shall consider all relevant factors including but not limited to:

- (1) the wishes of the child;
- (2) the interaction and interrelationship of the child with the applicant to adopt the child;
- (3) the child's need for stability and continuity of relationship with parent figures;
- (4) the wishes of the child's parent as expressed in writing prior to that parent's execution of a consent or surrender for adoption;
- (5) the child's adjustment to his present home, school and community;
- (6) the mental and physical health of all individuals involved;
- (7) the family ties between the child and the applicant to adopt the child and the value of preserving family ties between the child and the child's relatives, including siblings;
- (8) the background, age and living arrangements of the applicant to adopt the child; and
- (9) the criminal background check report presented to the court as part of the investigation required under Section 6 of this Act.

(c) The final determination of the propriety of the adoption shall be within the sole discretion of the court, which shall base its decision on the welfare and best interest of the child. In arriving at this decision, the court shall consider all relevant factors including but not limited to the factors in subsection (b).

(d) If the court specifically finds that the guardian has abused his discretion by withholding consent to an adoption in violation of the child's welfare and best interests, then the court may grant an adoption, after all of the other provisions of this Act have been complied with, with or without the consent of the guardian with power to consent to adoption. If the court specifically finds that the guardian has abused his discretion by granting consent to an adoption in violation of the child's welfare and best interests, then the court may deny an adoption even though the guardian with power to consent to adoption has consented to it.

Missouri

Mo. Rev. Stat. § 453.070. Investigations precondition for adoption — contents of investigation report — how conducted — assessments of adoptive parents, contents — waiving of investigation, when — fees — preference to foster parents, when

7. Any adult person or persons over age 18, who, as foster parent or parents, have cared for a foster child continuously for a period of 9 months or more and bonding has occurred as evidenced by the positive emotional and physical interaction between the foster parent and child, may apply to an authorized agency for the placement of the child with them for the purpose of adoption if the child is eligible for adoption. The agency and court shall give preference and first consideration for adoptive placements to foster parents. However, the final determination of the propriety of the adoption of that foster child shall be within the sole discretion of the court.

New Jersey

N.J.S.A. 30:4C-26.7. Application by foster parents for placement of children for adoption

Any person, who, as a resource family parent, has cared for a child continuously for a period of 15 months or more, may apply to the Division of Child Protection and Permanency, for the placement of the child with them for the purpose of adoption and if the child is eligible for adoption, the division shall give preference and first consideration to their application over all other applications for adoption placements.

New York

NY Soc. Serv. Law § 383. Care and custody of children

3. Any adult husband and his adult wife and any adult unmarried person, who, as foster parent or parents, have cared for a child continuously for a period of 12 months or more, may apply to such authorized agency for the placement of said child with them for the purpose of adoption, and if said child is eligible for adoption, the agency shall give preference and first consideration to their application over all other applications for adoption placements. However, final determination of the propriety of said adoption of such foster child shall be within the sole discretion of the court, as otherwise provided herein. Foster parents having had continuous care of a child, for more than 12 months, through an authorized agency, shall be permitted as a matter of right, as an interested party to intervene in any proceeding involving the custody of the child. Such intervention may be made anonymously or in the true name of said foster parents.

Oklahoma

10A Okl.St. Ann. § 1-4-812. Determination of eligibility of foster parent to adopt

A. During any permanency hearing, if it is determined by the court that a child should be placed for adoption, the foster parent of the child shall be considered eligible to adopt the

child, if the foster parent meets established eligibility requirements pursuant to this section.

B. If the child has resided with a foster parent for at least one (1) year, the court shall give great weight to the foster parent in the adoption consideration for the child unless there is an existing loving emotional bond with a relative of the child by blood or marriage who is willing, able, and eligible to adopt the child.

C. In making such determination, the court shall consider whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing permanently to treat the child as a member of the family. The court shall consider, without limitation:

1. The love, affection, and other emotional ties existing between the child and the relatives of the child, and the child's ties with the foster family;

2. The capacity and disposition of the child's relatives as compared with that of the foster family to give the child love, affection, and guidance and to continue the education of the child;

3. The length of time a child has lived in a stable, satisfactory foster home and the desirability of the child's continuing to live in that environment;

4. The physical and mental health of the relatives of the child as compared with that of the foster family;

5. The experiences of the child in the home, school, and community, both when with the parents from whom the child was removed and when with the foster family;

6. The age and preference of the child;

7. The long-term best interests of the child; and

8. Any other factor considered by the court to be relevant to a particular placement of the child.

Tennessee

Tenn. Code Ann. § 36-1-115. Persons eligible to file adoption petition; residence requirements; preference for foster parents

(g)(1) When a child is placed in a foster home by the department or otherwise, and becomes available for adoption due to the termination or surrender of all parental or guardianship rights to the child, those foster parents shall be given first preference to adopt the child if the child has resided in the foster home for 12 or more consecutive months immediately preceding the filing of an adoption petition.