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ARTICLE

RELATIVE PREFERENCE, EMOTIONAL ATTACHMENTS, AND THE BEST INTEREST OF THE CHILD IN NEED OF ASSISTANCE

By: Richard A. Perry, Esq.¹

I. INTRODUCTION

Human beings are defined largely through their attachments and bonds with others. This is true for children who have been found to be “Children in Need of Assistance” and who are under the oversight of the Juvenile Court as it is with any other person. These attachments and emotional bonds should be valued and safeguarded by the child welfare system. In Maryland, there is a preference for relatives in finding placement and permanency for Children in Need of Assistance. This relative preference will often serve to protect children and their attachments with others. However, this preference is often misunderstood and misstated, and is sometimes applied in an absolutist manner that is inconsistent with the law and that can serve to ignore a child’s emotional attachments. And while the relative preference often serves to lessen children’s distress of being removed from their homes, the relative preference can also sometimes be applied in a manner that is naïve or careless and that places children at risk.

This article seeks to set forth the actual law on relative preferences in Child in Need of Assistance cases in Maryland, including an exploration of the legislative history of pertinent laws regarding relatives. I argue that the law as written largely provides thoughtful and effective mechanisms for safeguarding Children in Need of Assistance and their emotional attachments. This article discusses ways in which practice can however diverge from the law regarding relative preference. This article argues that the laws dealing with relatives can and should be applied in accordance with the text of the laws, and also with the best interest of the child at the forefront. This means applying the law in a manner that recognizes the ways in which relative preference can go wrong if applied carelessly or naively; that values and honors the attachments and emotional bonds of children; and that treats the relative preference first and foremost as the right and benefit of the child.

¹ The views expressed in this article are those of the author alone and are not to be attributed to any other person or organization.

A. Legal Overview.

A “Child in Need of Assistance,” or “CINA,” “means a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.”² When the Court finds that a child is a CINA, the Court can leave the child in the custody of the parent under an Order of Protective Supervision, or can place the child in the custody of the Department of Social Services (“DSS” or the “Department”).³ When children are brought into the custody of the Department there are two primary ways in which the role of relatives arises. The first is in the placement of the child, and whether the child is placed with relatives, with “fictive kin,” or in a foster home. The issue of placement may arise in the initial phase of a case but may also arise at any point thereafter. The next is in the determination of the permanency plan of a Child in Need of Assistance.

When children are brought into the custody of the Department the child welfare system is tasked with finding permanency for the child. The goal of the child welfare system is not to keep a child in the system but to find a permanent home for them.⁴ To do this the Court must periodically conduct permanency planning review hearings to determine the “permanency plan” for a child.⁵ The permanency plans are reunification with a parent, adoption by a relative, custody and guardianship to a relative, adoption by a non-relative, custody and guardianship to a non-relative, and “another planned permanent living arrangement.”⁶ Questions involving relatives come into play when the Court has determined not to pursue a plan of reunification and is deciding among the plans involving adoption and custody and guardianship.

Another element to this picture was added recently when Maryland enacted a law allowing for placement of children with “kinship caregivers” - individuals who are sometimes called “fictive kin,” who are not blood relatives but who have close ties with the child or the child’s family.⁷

² MD. CODE ANN., CTS. & JUD. PRO. § 3-801(f) (2019).

³ See MD. CODE ANN., CTS. & JUD. PRO. §§ 3-819(c)(1)(i) and 3-819(b)(1)(iii)(2)(C) (2019); there are other potential dispositions, but these are the most common and we will not explore the others as they are not pertinent to our inquiry.

⁴ MD. CODE ANN., CTS. & JUD. PRO. § 3-802(a)(7) (2019).

⁵ MD. CODE ANN., CTS. & JUD. PRO. §§ 3-823(b)(1)(i) and (h)(1)(i) (2019).

⁶ MD. CODE ANN., CTS. & JUD. PRO. § 3-823(e) (2019); MD. CODE ANN., FAM. LAW § 5-525(f) (2019).

⁷ MD. CODE ANN., FAM. LAW § 5-534 (2019); H.B. 1212, 2019 Leg., 440th Sess. (Md. 2019); S.B. 24, 2019 Leg., 440th Sess. (Md. 2019). “Another planned permanent living

B. The role of the child's preference in placement and permanency issues.

Throughout the following discussion this article will refer to the “child” while discussing matters of placement and permanency. However, the “child” can be a newborn infant, a 20-year-old, or any age in between. Youths of different ages can present very different issues when it comes to placement and permanency. When a youth is old enough to articulate that they want to live with a particular relative or fictive kinship caregiver (and there is not an indication of coaching or undue influence from parents or others), that youth's preference should be given weight, so long as the proposed caregiver is assessed to be appropriate. If a youth feels comfortable and safe with a relative or kinship caregiver, and is old enough to articulate this, placing the child with that relative or kinship caregiver will hopefully lead to more stability in placement and better outcomes for the youth. If a youth does not want to live with a particular relative or kinship caregiver, and is old enough to articulate this (and there is no indication of coaching or undue influence from parents or others), then it is likely not going to work out well for anyone to forcibly place the child with that prospective caregiver. The youth's preference should be increasingly compelling to an ever-growing degree as the child grows in age and articulation. The increasing role of the youth's articulated preference is assumed in this article to be a factor in each of the placement and permanency issues discussed below.

II. RELATIVE PREFERENCE IN THE PLACEMENT OF CHILDREN IN NEED OF ASSISTANCE

Removal of a child from the child's home, away from what is familiar, can potentially be traumatic, even when it is necessary to protect the health or safety of the child. Placement of a child with a relative or a close family friend can make the child feel comfortable and at ease. However, if done carelessly, naively, without proper assessment of the relative, or without consideration of the attachments and best interests of the child, the placement can be detrimental. The context in which such placements occur is also critically important: Placement of the child during the initial phase of a case raises different issues, and is governed by different laws, than subsequent placement of a child with relatives.

arrangement” is a plan for youth at least 16 years of age that does not involve finding a caregiver and closing the child's case. MD. CODE ANN., CTS. & JUD. PRO. § 3-823(e)(1)(i)(5) (2019). It does not feature in this article.

A. Initial placement of a child with relatives.

There is a strong preference for relative placement in the initial phase of a CINA case. Family Law § 5-534(c) states this preference as follows:

(c) Placement

- (1) In selecting a placement that is in the best interests of a child in need of out-of-home placement, the local department shall, as a first priority, attempt to place the child with a kinship parent.
- (2) The local department shall exhaust all reasonable resources to locate a kinship parent for initial placement of the child.⁸

Likewise, Courts and Judicial Proceedings § 3-815(c)(5) directs that there is a preference for relative placement in the shelter care⁹ phase of a CINA case, stating: “Unless good cause is shown, a court shall give priority to the child’s relatives over nonrelatives when ordering shelter care for a child.”¹⁰ Courts and Judicial Proceedings § 3-819(b)(3) further directs that at the Disposition Hearing, which is held to determine if the child is a Child in Need of Assistance, if the Court grants custody of the child to an individual other than the parent: “Unless good cause is shown, a court shall give priority to the child’s relatives over nonrelatives when committing the child to the custody of an individual other than a parent.”¹¹

The preference for placement with relatives needs no defense or explanation. We all have relatives who we love and feel comfortable with.

⁸ MD CODE ANN., FAM LAW § 5-534(c). FAM LAW § 5-534(c) uses the term “kinship parent” instead of the term “relative.” This is a somewhat confusing term, but the definition of “kinship parent” in FAM LAW § 5-534(a)(3) is the same as the definition of a “relative” in MD. CODE ANN., CTS. & JUD. PRO. § 3-801(x), using the same definition of being related “by blood or marriage within five degrees of consanguinity or affinity under the civil law.”

⁹ MD. CODE ANN., CTS. & JUD. PRO. § 3-801(bb): “Shelter care means a temporary placement of a child outside of the home at any time before disposition.” In practical terms, the Department files a CINA petition and brings a child into its custody on an emergency basis; there is a hearing before the Court the next business day to determine if the child should remain in the Department’s custody, or “shelter care,” until the adjudication hearing.

¹⁰ MD. CODE ANN., CTS. & JUD. PRO. § 3-815(c)(5).

¹¹ MD. CODE ANN., CTS. & JUD. PRO. § 3-819(b)(3). In practical terms this provision has little effect. Under MD. CODE ANN., CTS. & JUD. PRO. § 3-819.2(f), custody and guardianship cannot be granted to an individual unless the Court considers a report and home study of the prospective custodian. The Department has 120 days to complete this report (MD. CODE ANN., CTS. & JUD. PRO. § 3-819.2(f)(3)), a timeline much more often breached than met, putting its completion well after the Disposition Hearing.

Most people can imagine that if something had happened to our parents when we were children, we would have wanted to live with family or kin. We can presume that relatives will be the first and most likely source of a good, loving home for children who cannot live with their parents. However, like any presumption, this will not always be the case in reality. The very existence of CINA cases is owed to the fact that the most basic and fundamental presumption about human life – that parents will properly care for their children – has already been breached. It should not be a shock that just as with parents, on occasion relatives will not be appropriate caretakers for children, despite our hopes, expectations, and presumptions. Therefore, when done carelessly or naively, placement with relatives or fictive kin can be detrimental.

One problem that can arise in placement of Children in Need of Assistance with relatives is that those relatives might have conflicting loyalties. The relative might be primarily loyal to the parent from whom the child was removed, and may not believe that restrictions placed on the child's contact with the parent need to be followed. The recent Maryland Court of Special Appeals case *In re J.N., F.N., and R.N.*¹² presents a striking example of what can go wrong with a relative placement, and why child welfare practitioners must not be naïve to the potential for a relative to have conflicting loyalties. In that case R.N. and J.N. were removed from their mother due to her mental illness and unsuitable living conditions in the home.¹³ The children were found CINA and were placed in the custody and guardianship of their maternal grandmother, who signed a safety plan agreeing not to leave the mother alone with either child.¹⁴ Concerns were soon raised about the maternal grandmother violating the safety plan by allowing the mother unsupervised access with the children.¹⁵ The maternal grandmother signed another safety plan.¹⁶ The mother was then found to have sexually abused J.N. while in the maternal grandmother's home.¹⁷ The maternal grandmother signed another safety plan in which she agreed that the mother would leave the home.¹⁸ However the maternal grandmother continued to violate the safety plans and allowed the mother back into the home.¹⁹ The children were

¹² *In re J.N., F.N., and R.N.*, No. 3199, 2019 WL 4678282 (Md. App. Sept. 25, 2019).

¹³ *Id.* at *3.

¹⁴ *Id.*

¹⁵ *Id.* at *1.

¹⁶ *Id.*

¹⁷ *Id.* at *1-2.

¹⁸ *In re J.N., F.N., and R.N.*, No. 3199, 2019 WL 4678282, at *1, *5 (Md. App. Sept. 25, 2019).

¹⁹ *Id.* at *1.

removed from the maternal grandmother and again found to be Children in Need of Assistance.²⁰

This case shows a phenomenon that can occur with relative placements, where the relative has a loyalty to the parent and does not follow safety plans or Court orders regarding contact and visitation. This may occur for various reasons; among them may be that the relative does not believe that the parent has done something wrong, or minimizes the actions of the parent, or sometimes because the relative cannot say “No” to the parent. I have encountered similar situations regarding my own clients. For example, in one case a youth was placed with an uncle when the child was removed from the mother due to substance abuse and other issues. However, the uncle then sent the child back to the mother. In another case I represented two young children, one a substance-exposed newborn, who were removed from their parents due to drug abuse by both parents and continued heroin use by their mother. The children were placed with their maternal grandmother. That maternal grandmother allowed the parents to move into her home with the children, without notice to the Department and in violation of the Court’s orders. The home was raided by police, who found a hypodermic needle on the floor, LSD in the refrigerator, and various other drugs in the house with the young children.

These are of course not typical cases, but they are some examples of a potential hazard of relative or kinship placements: That the relative will not take seriously the dangers that caused the child to be taken from the custody of his parents, and will not follow the Court’s orders regarding visitation or placement.

The Code of Maryland Regulations (“COMAR”) recognizes these concerns and seeks to address them. COMAR presents a thoughtful mechanism for addressing these concerns. First, potential relative caregivers must undergo state and federal criminal background checks as well as child protective services clearances, and have an initial inspection of their home.²¹ Then, just as importantly, COMAR provides that the Department must conduct an assessment as to whether the relatives truly understand their need to protect the child and will enforce visitation and other restrictions:

In order to approve a relative as a kinship parent, a local department shall conduct:

. . . .

(2) An assessment of the relative with particular attention given to:

²⁰ *Id.* at *1,3.

²¹ MD. CODE REGS. 07.02.25.10(E)(1) (2011).

- (a) Their relationship with the child and the child's parents;
- (b) The care provided by the relative to other children in the relative's home;
- (c) Their knowledge and understanding of the circumstances that led to the need for the child's placement;
- (d) Their role in the past in helping or protecting the child or preventing occurrences of abuse or maltreatment of the child, including the relative's present ability to protect the child placed in the relative's home; and
- (e) Their ability to understand the need for protection.
- (f) Their willingness to assume legal responsibility for the child if reunification is not possible within 12 to 18 months;
- (g) Their willingness to cooperate with the local department and to maintain regular contact with assigned caseworkers;
- (h) Their willingness and ability to follow local department requirements regarding:
 - (i) Working with birth parents and encouraging reunification;
 - (ii) Enforcing the visitation schedule developed by the local department with the child's parents;
 - (iii) Supporting and encouraging the child's educational progress;
 - (iv) Ensuring that the child attends school according to Maryland law and regulation; and
 - (v) Refraining from using corporal punishment as a method of discipline.²²

Several of these provisions are particularly important for an effective inquiry into whether the proposed relative placement for the child will truly protect the child and enforce the Court's orders regarding the child. One of these is: "Their knowledge and understanding of the circumstances that led

²² MD. CODE REGS. 07.02.25.10(E)(2) (2011).

to the need for the child's placement".²³ We should ask whether the relatives understand and more importantly *accept* why the child was removed from the parents. If the child was removed because of the parent's drug use – does the relative understand and accept the severity of the drug use? If we have a pre-verbal infant whose parent injured the child – does the relative caregiver understand that the child's injuries were non-accidental? If the relative lacks the essential facts about what happened to the child, these facts should be given to the prospective relative placement. If the relative has the facts, do they accept the facts, or are they in denial? If the relative is in denial, or minimizes the situation, this should raise a red flag regarding the placement and whether the relative placement will be safe and appropriate for the child.

Another important factor of the COMAR assessment is: "Their role in the past in helping or protecting the child or preventing occurrences of abuse or maltreatment of the child, including the relative's present ability to protect the child placed in the relative's home."²⁴ We should ask: If the relative knew or should have known that the abuse or neglect was occurring, what if anything did the relative do to stop it? In some cases, relatives are the ones who report the child neglect or abuse to Child Protective Services. Or the relative supports and protects the child through a willingness to testify on behalf of the child at the initial Adjudication hearing.²⁵ These are strong indications that the relative will protect the child going forward. In other cases, the relative may know about the abuse or neglect, and may do nothing to stop it, or even worse may facilitate or enable it. If a relative knew or should have known of abuse or neglect of the child, and the relative failed to take steps to protect the child from the abuse or neglect, including if necessary reporting the abuse or neglect to the Department, then it is questionable whether we can properly entrust the care of the child to that relative now.

A third important factor in the COMAR assessment is: "Their ability to understand the need for protection."²⁶ This is an essential inquiry. Does the prospective relative caretaker truly understand and accept that they need to protect the child from the abuse and neglect that the child was removed from? Do they understand and accept that the abuse or neglect was serious, or do they minimize it? Do they understand and accept that it was the parent who abused or neglected the child, or are they in denial? Do they insist on accidental causes for non-accidental injuries of a pre-verbal child? We must ask these questions and ensure that the prospective relative caregiver

²³ *Id.*

²⁴ *Id.*

²⁵ An "[a]djudicatory hearing means a hearing under this subtitle to determine whether the allegations in the petition . . . are true." MD. CODE REGS., CTS. & JUD. PROC. § 3-801(c) (West 2019); *see also* MD. CODE ANN., CTS. & JUD. PROC. § 3-817 (West 2019).

²⁶ MD. CODE REGS. 07.02.25.10(E)(2)(e).

understands and accepts the reality and severity of the abuse or neglect, and will do what is necessary to protect the child.

Notably, while some of these factors are objective, some of them involve the prospective relative caretaker's intentions and beliefs. For such questions there is no crystal ball, and a prospective relative may not be candid. Even the best attempt at such an inquiry can be thwarted by an effective deceiver. I had a case where an aunt said very convincingly that she understood and accepted that a young child had been intentionally injured, only to discover after the child was placed with the aunt that she had not been honest. However, despite this imperfection we must expect that a thorough inquiry into these matters will often be effective. The assessment required by COMAR will be a valuable tool, even if it is an imperfect one.

A problem is that this requirement of COMAR is not well known. The assessment of potential relative placements that COMAR requires is often not done, even informally, and this places children at risk. We want children placed with relatives, but we must recognize that relatives may have conflicting loyalties, and may have an inability to accept that their family member – who may be a parent who abused or neglected a child – did something wrong. The assessment mandated by COMAR serves to minimize the risk of relative recalcitrance and denial while fulfilling the strong preference for relative placement in the initial stages of the CINA case. This inquiry is, therefore, in the best interest of the child, as it safeguards children while moving towards relative placement. The actors in the child welfare system should therefore ensure that this inquiry is done in every case. This will help avert risks to children. This starts with the Department, the party directed by COMAR to perform the assessment. The Department should always conduct this assessment as required.

However, the Juvenile Court should take an active role in ensuring that this mandatory assessment is done. If the Court does not receive the assessment, the Court should ask for it. The Court should look for any concerning items and make its own inquiries of the parties and prospective caretakers.

Child's counsel may or may not be in a position to insist on the assessment, based on whether child's counsel is advocating for the best interest of the child or for the child's expressed wishes. In Maryland, children's counsel must determine whether their client has "considered judgment" on an issue.²⁷ If the child has "considered judgment" on an issue, the child's counsel represents what the child wants, irrespective of whether it is in the child's best interest.²⁸ If the child does not have considered judgment on an issue, then the child's counsel advocates for the best interest of the

²⁷ MD. RULES ATTORNEYS APPENDIX 19-D (2016).

²⁸ *Id.*

child.²⁹ This is relevant because if a youth wants to live with a particular relative, and the child has considered judgment on the issue, child's counsel must advocate for that placement, and will not be in a position to insist that the Department conduct the required relative assessment or reveal to the Court any concerns. This heightens the responsibility on both the Department and the Court to make sure that the required relative assessment is done. If the child is young or disabled and does not have considered judgment, then the child's counsel should insist on the assessment and make sure that any concerns are addressed.

The assessment required under COMAR 07.02.25.10(E) helps to ensure that the preference for relative placement is implemented in a manner that is safe and in the best interest of the child. The statute gives a strong preference for relative placement in the initial stage of a CINA case. However, the best interest of the child standard can and still should guide the initial placement of the child. The purpose clause of House Bill 308, which created Family Law section 5-534, states that a purpose of the statute is "providing that a placement be in the best interests of the child,"³⁰ and the text of the statute links the relative preference to the endeavor of "selecting a placement that is in the best interests of a child in need of out-of-home placement."³¹ The Bill Analysis for House Bill 308 states that: "This bill would allow a child to be placed with relatives even if the strict foster care standards are not met, provided that the placement is in the best interests of the child."³² Conducting the assessment required by COMAR 07.02.25.10(E)(2) helps to ensure that the relative placement is in the best interest of the child.

B. Initial placement with "fictive kin" kinship caregivers.

As mentioned above, a new possibility for youth in the custody of the Department was created in 2019 when Maryland enacted a law for "fictive" kinship placement of children. In April 2019 Governor Hogan signed into law Senate Bill 24 / House Bill 1212, which created as of October 1, 2019 an option for "fictive" kinship placements for youth in foster care.³³ The law creates a new category of caregiver, the non-relative "kinship caregiver."³⁴ If a child cannot be placed initially with a relative (referred to by this statute as a "kinship parent"),³⁵ then the child may now be placed with a kinship

²⁹ *Id.*

³⁰ H.B. 308, 1995 Leg., 409th Sess. (Md. 1995).

³¹ MD. CODE ANN., FAM. LAW § 5-534 (West 2019).

³² Walter M. Baker, S. Jud. Proc. Comm., B. Analysis, S. 308, 1995 Sess., at 1-2 (Md. 1995).

³³ H.B. 1212, 2019 Gen. Assemb., Reg. Sess. (Md. 2019); S.B. 24, 2019 Gen. Assemb., Reg. Sess. (Md. 2019)

³⁴ MD. CODE ANN., FAM. LAW § 5-534 (West 2019).

³⁵ *Id.*

caregiver.³⁶ The statute leaves to the Department the task of approving a kinship caregiver, but sets forth specific requirements as to who the Department can approve as a kinship caregiver.³⁷

First, a kinship caregiver must be “related to the child by blood or marriage beyond five degrees of consanguinity or affinity,” or must be “a close family friend of the child or the child’s family”.³⁸ Second, the kinship caregiver must have “a strong familial or other significant bond to the child or the child’s family”.³⁹ Third, the kinship caregiver must have “maintained regular contact with the child or the child’s family sufficient to demonstrate strong familiarity with the child’s activities and daily needs”.⁴⁰

Finally, in order to approve placement of a child with a kinship caregiver, it must be the case that “[p]lacement with the individual is in the child’s best interest.”⁴¹

The statute prescribes a specific mechanism for the Department to obtain information from the prospective kinship caregiver to determine if the prospective kinship caregiver qualifies: “A prospective kinship caregiver shall submit to the local department an affidavit that includes specific facts to enable the local department to determine whether the individual meets the criteria specified in paragraph (1) of this subsection.”⁴²

This law was passed unanimously in both the Maryland House and Senate⁴³ and received strong support from a wide coalition of stakeholders.⁴⁴ It enables children to be placed with persons such as godparents, close family friends, or your “Aunt Hillary” who has known your parents since childhood but is not really your aunt. This provides greater opportunity for a youth to be placed with a person who the youth knows and feels comfortable with, which in turn hopefully lessens the trauma of the youth’s placement out of the home.

Placement with “fictive kin” was previously provided for by Maryland Regulations. A “Kinship Care” program was created in COMAR 07.02.09

³⁶ *Id.*

³⁷ *Id.*

³⁸ MD. CODE ANN., FAM. LAW §5-534(e)(1)(i) (West 2019).

³⁹ MD. CODE ANN., FAM. LAW § 5-534(e)(1)(ii) (West 2019).

⁴⁰ MD. CODE ANN., FAM. LAW § 5-534(e)(1)(iii) (West 2019).

⁴¹ MD. CODE ANN., FAM. LAW § 5-534(e)(1)(iv) (West 2019).

⁴² MD. CODE ANN., FAM. LAW § 5-534(e)(2) (West 2019).

⁴³ S.B. 24, Gen. Assemb., Reg. Sess. (Md. 2019); H.B. 1212, Gen. Assemb., Reg. Sess. (Md. 2019).

⁴⁴ Supporters from Catholic Charities, CASA, Maryland Legal Aid, the Department of Human Services, Advocates for Children and Youth, the Coalition to Protect Maryland’s Children, the National Association of Social Workers, and the Maryland Association of Resources for Families and Youth testified in favor of Senate Bill 24 before the Judicial Proceedings Committee on January 22, 2019. *See* JUD. PROC. COMM., WITNESS LIST, S. 4439-24, Reg. Sess., at 1-2 (Md. 2019).

in 2000.⁴⁵ COMAR defined “kin” as “other individuals who make up the family support system, such as relatives beyond the fifth degree of consanguinity or affinity, godparents, friends of the family, and other adults who have a strong kinship bond with the family.”⁴⁶ As with the current law, these “kin” were termed “kinship caregivers,” and these “kinship caregivers” were to be preferred as placement options for youth in the custody of the Department when there was no appropriate relative “kinship parent” available.⁴⁷ However, the “fictive kin” option, along with the entirety of COMAR 07.02.09, was repealed in 2012.⁴⁸ The Notice of Proposed Action to repeal these provisions did not specifically address fictive kin; it simply stated that: “The purpose of this action is to repeal this chapter in its entirety since the Kinship Care Program requirements in this chapter are being incorporated as a new regulation under COMAR 07.02.25. This consolidates all the requirements for a home to be approved by a local department for the placement of a child committed to the State of Maryland into a single chapter.”⁴⁹ However, the regulations under COMAR 07.02.25 gave no provision for placement with fictive kin or “kinship caregivers,” and the new regulations did not discuss the loss of this option; the fictive kin option simply disappeared.⁵⁰ The 2019 law therefore remedied the loss of the previously-existing fictive kin program.

The new law contains several noteworthy provisions. First, it allows for the kinship caregiver’s relationship to be with the child, *or* with the child’s family. This means that appropriate individuals who are close to the child, but who do not have a relationship with the child’s parents, can be considered as kinship caregivers.

Second, placement with the kinship caregiver is predicated on a determination that such placement is in the best interest of the child. It is not assumed that such placement is in the best interest of the child, but rather calls upon the Department to evaluate whether the placement is in the best interest of the child.

The requirement that the prospective kinship caregivers provide an affidavit attesting that they meet the requirements to be found a kinship caregiver is an excellent step. I would however argue that the assessment required to be conducted for relatives under COMAR 07.02.25.10(E)(2) should also be conducted for potential kinship caregivers. With kinship

⁴⁵ MD. CODE. REG. § 07.02.09.02 (repealed 2012) (originally adopted as 27 Md. Reg. 581-82 on Mar. 10, 2000).

⁴⁶ See MD. CODE. REGS. §§ 07.02.09.02(B)(13), 07.02.09.03(A) (repealed 2012).

⁴⁷ See MD. CODE. REGS. §§ 07.02.09.02(B)(13), 07.02.09.03(A) (repealed 2012).

⁴⁸ Notice of Proposed Action, 39 Md. Reg. 145 (Jan. 27, 2012).

⁴⁹ *Id.*

⁵⁰ Notice of Proposed Action, 38 Md. Reg. 1706-17 (Dec. 16, 2011).

caregivers there remains a potential risk that the kinship caregiver will have conflicting loyalties. I represented a child who had been removed from his mother due to mental health issues and substance abuse while operating a car (with the child in the car); the child was placed by the Department with a fictive kin “grandmother.” The fictive grandmother later left the child with the mother without notice to the Department or the Court and in violation of Court orders. The assessment required for relatives under COMAR should also be conducted of fictive kin in order to prevent such problems.

The previous fictive kin program required an assessment of the “kinship caregivers.” It was not as extensive as the assessment currently required for relative caregivers, but it did include several important components, including an assessment of the “Kin’s ability to provide a home that is stable, healthy, and safe for the child”; the “Kin’s willingness and ability to protect the child from: (a) Abuse and neglect; (b) Punishment for revealing prior abuse or neglect; and (c) Pressure to change the child’s account of the abuse or neglect”; and the “Kin’s willingness and ability to follow local department requirements regarding . . . Enforcing the visitation schedule developed by the local departments with the child’s parents”.⁵¹ Updating COMAR to require an assessment for kinship caregivers to match those for relatives makes sense and will help protect children in care. Moreover, fictive kin should not have a less rigorous assessment than relatives.

C. Subsequent placement with relatives and kinship caregivers.

As discussed above, there is a strong preference for placement with relatives in the initial phases of a CINA case. However, the statute provides a separate and strikingly different standard for placement of youth with relatives subsequent to the initial placement. Family Law § 5-534(c)(4) states: “If a kinship parent or a kinship caregiver is located subsequent to the placement of a child in a foster care setting, the local department may, if it is in the best interest of the child, place the child with the kinship parent or kinship caregiver.”⁵² This is in stark contrast to the language for initial placement with relatives. The use of the language “may . . . place” for a potential subsequent placement differs sharply from the language used in the provision governing initial placement with relatives, which uses the word “shall” twice in directing the Department to “as a first priority, attempt to place the child with a kinship parent” and to “exhaust all reasonable resources” to do so. The potential subsequent placement is also explicitly conditional and contingent on the placement being in the best interest of the child.

⁵¹ MD. CODE REGS. 07.02.09.03(D) (repealed 2012).

⁵² MD. CODE ANN., FAM. LAW § 5-534(c)(4) (West 2019).

Family Law section 5-534 was created by House Bill 308 in the 1995 session of the Maryland Assembly.⁵³ The legislative history of House Bill 308 does not elaborate on the strikingly different approaches taken for the initial placement of a child versus the subsequent placement of the child. However, this very different standard for initial versus subsequent placements makes imminent sense. After a child is initially placed, the child needs stability and continuity. The child begins to develop bonds and emotional attachments with her caregivers. There arises a potential cost and harm to moving a child from a stable foster home that did not exist in the initial setting. Dislocating the child from a home where the child has formed these attachments and emotional bonds can be harmful to the child. As will be discussed below, this potential harm is recognized explicitly elsewhere in Maryland CINA law, as the law specifically requires the Department and the Court to consider the potential emotional and developmental harm that may arise from moving a Child in Need of Assistance from the child's current placement when the Department or the Court consider the child's permanency plan.⁵⁴ The passage of time has consequences, and affects the best interest of the child. Moreover, under COMAR 07.02.11.11(L), the Department is required to try to minimize the number of placements that a child has while in the care of the Department: "The local department shall make every effort to minimize the number of placements a child has during an episode of out-of-home care."⁵⁵ Moving the child from his placement increases the number of placements that the child has while in care; increasing the number of placements should require careful analysis and thoughtful consideration of the child's best interests. It may still be determined that such a move is in the child's best interest. The child may have a strong bond or relationship with the prospective relative, and the child himself may want the move, and in such a case, the child's preferences should be given great weight, so long as the prospective relative is an appropriate caregiver. The point is that the statute requires that a change of placement in such circumstances must be in the best interest of the child and is not to be made automatically or simply as a reflexive DNA-driven exercise. The Department and the Court must and should engage such a proposed move thoughtfully, carefully, and with specificity, and should recognize the potential harm that may arise in some circumstances from removing a child from a placement where the child has formed bonds and found stability.

For illustration, imagine a situation where a young child has lived with a foster parent for over a year, and calls the foster parent "Mommy." To that

⁵³ H.B. 308, 1995 Leg., 409th Sess. (Md. 1995).

⁵⁴ MD. CODE ANN., FAM. LAW § 5-534(f)(1) (West 2019); MD CODE ANN., CTS. & JUD. PROC. §3-823(e)(2) (West 2019).

⁵⁵ MD. CODE REGS. 07.02.11.11(L) (2019).

child, the foster parent is her mother. That is the emotional and psychological world and reality for that child. The child does not know about DNA. If the child came into care very young, the time the child has spent with the foster parent may constitute most or all of the life that the child remembers. It should not be controversial to suggest that removing the child from that situation and from the person she calls “Mommy” can be traumatic for the child. That scenario calls for our empathy and for the most careful thought and consideration. By requiring that any such subsequent move be in the best interest of the child, Family Law section 5-534(c)(4) requires a more thoughtful approach in such situations.

Unfortunately, I have encountered situations where there is scant analysis of the child’s specific situation or best interests when a relative subsequently emerges. I have encountered situations where the subsequent emergence of a relative caused a simple, automatic response to move the child to the relative, without any thoughtful analysis of the best interest of the child. Any course that precedes as “a relative has emerged, therefore we move the child from the foster home to the relative” simply ignores the governing statute.⁵⁶ The governing statute calls for a more thoughtful approach predicated on the best interest of the child; the Department and the Courts should recognize and follow this more thoughtful approach.

D. Relative preference in placement: What does Federal law have to say?

Maryland Law must conform to the parameters set forth by Federal law in order for Maryland to get funding from the Federal Government.⁵⁷ While Federal law supports and encourages relative involvement, it does not direct relative placement irrespective of a child’s best interest, and does not constrain Maryland law to do so.

Federal law supports relative resources for children in various ways. Federal law encourages reaching out to relatives when a child comes into care. For instance, 42 U.S.C. § 671(a)(29) requires that the state reach out to and notify a broad swath of relatives when a child is brought into care.⁵⁸ There is a provision for states to offer guardianship assistance payments for relatives.⁵⁹ Federal law permits states to waive “nonsafety standards” for

⁵⁶ MD. CODE REGS. 07.02.11.11(A) gives a preference for relative placement that is unqualified by the phase of the case. This regulatory provision would be subordinate to the statutory direction of MD. CODE ANN., FAM. LAW § 5-534(d).

⁵⁷ 42 U.S.C. § 671(a) (2019).

⁵⁸ 42 U.S.C. § 671(a)(29) (2019).

⁵⁹ 42 U.S.C. § 671(a)(28) (2019).

relative foster family homes, “only on a case-by-case basis . . . for specific children in care.”⁶⁰

However, Federal law does not dictate a narrow focus on relative placement irrespective of the child’s best interest. 42 U.S.C. § 671 states that “the 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.”⁶¹ The statute requires only consideration of a preference for relative caregiving; it does not require a state to place a child with a relative irrespective of the child’s situation or attachments or when it is not consistent with the best interests of the child.

E. Who is the relative preference and kinship caregiver option for?

In dealing with relative preference issues in both placement and permanency planning, a question emerges: Who is the preference for? Is the preference there to benefit the child, the parent, or the relative? These questions can arise, for example, when a parent does not like the relative who the child wants to live with, or the relative who would be the best person for the child to live with. I submit that the best interest of the child governs these inquiries, and the relative preference should be viewed first and foremost as a right and benefit of the child.⁶² Accordingly, when the Department or Court is applying the relative preference laws, disputes should be resolved in favor of the child’s welfare and emotional stability, even when this conflicts with the desires of the parent.⁶³

Conflict between the parent and the child over a relative placement can come into play where a parent dislikes a relative or kinship caregiver who is

⁶⁰ 42 U.S.C. § 671(a)(10)(D) (2019).

⁶¹ 42 U.S.C. § 671(a)(19) (2019).

⁶² It cannot be seriously advanced that the relative preference provisions are for the benefit of the relative, who are not parties to the case. Relatives (and *a fortiori* fictive kin) have no constitutionally protected interest in visitation or custody of children, and statutory rights granted to them are subjected to heavy qualifications to avoid constitutional infirmity. *See, e.g., Koshko v. Haining*, 398 Md. 404 (2007). And when relatives seek to intervene in custody or visitation matters with children, including CINA children, the best interest of the child standard is applied. *See, e.g., Karen P. v. Christopher J.B.*, 163 Md. App. 250, 265 (2005) and *McDermott v. Dougherty*, 385 Md. 320, 354 (2005).

⁶³ I anticipate an argument that the choices of parents should be presumed to be in the best interest of the child. That is true for parental decisions in the normal course of events. *See, e.g., In re Victoria C.*, 437 Md. 567 (2013). However, we are dealing with Children in Need of Assistance who have already been removed from their parents. The parent has been found unable or unwilling to provide proper care to the child, and the child has been placed in the custody of the Department. The even stronger presumption that children should be in the care of their parents has already been overcome.

otherwise a good and appropriate caregiver for the child. This can occur for any number of reasons. The relative might have been the one to report the parent's abuse or neglect to Child Protective Services. The relative might testify for the child against the parent at the Adjudication hearing. The parent may not like that the child went to the relative for safety and support when fleeing abuse or neglect. The parent may not like that the relative provides a comfortable alternative to the parent in caring for the child. When this occurs, and if the relative has been properly assessed and found to be appropriate, the child's best interest and feelings of safety and comfort should not be thwarted by the parent's dislike. The preference for relatives and the option for fictive kin placement should be treated in these cases as the right and benefit of the child, rather than the parent.

For example: I represented a child in a situation where the Department bypassed a fit and appropriate relative to place the child with a fictive kin "grandmother" because the mother disliked the relative, and the Court endorsed this placement. Later, the fictive grandmother had housing instability and left the child with the mother without notice to the Department or the parties and in violation of the Court's order. I would submit that the Department and the Court initially erred in treating the relative preference as the right of the parent, rather than that of the child. I have on the other hand also seen correct applications of the relative preference law, where the Department treated the relative preference as the benefit and right of the child. In one case a child was placed with his adult cousin, who was an appropriate caregiver. The child's mother however did not like the cousin and wanted the child removed from the cousin and placed in foster care. The Department and the Court correctly treated the relative preference as the benefit and right of the child and continued to place a child with his adult cousin, over the objections of the child's mother. In another case, a mother asked that her child, who was in the care and custody of the Department and placed with an appropriate aunt and uncle, be moved from that aunt and uncle and instead be placed with an adult sister of the child who was not an appropriate caregiver. The Department correctly rejected that suggestion, and again appropriately treated the relative preference as the right and benefit of the child, rather than the parent.

Treating the relative preference laws as the right and benefit of the child is supported by these laws being linked to the best interest of the child standard. The Maryland statutes setting forth the relative preferences and the kinship caregiver option themselves reference the best interest of the child. For the child's initial placement, the purpose clause of House Bill 308, which initially created Family Law § 5-534,⁶⁴ states that a purpose of the statute is

⁶⁴ H.B. 308, 1995 Leg., 409th Sess. (Md. 1995).

“providing that a placement be in the best interests of the child,”⁶⁵ and the text of the statute links the relative preference to the endeavor of “selecting a placement that is in the best interests of a child in need of out-of-home placement”.⁶⁶ Placement of a child with a relative subsequent to the initial placement is expressly conditioned upon the placement being in the best interest of the child,⁶⁷ and placement of a child with a fictive kin provider is also expressly conditioned upon the placement being in the best interest of the child.⁶⁸ The governing Maryland statutes reference the best interest of the child standard, and the Department and the Courts should accordingly interpret and apply the relative preference provisions and the kinship caregiver option as being for the benefit of the child and to advance the child’s best interest.

The legislative histories of the pertinent statutes creating relative preferences for placement also focus on the child’s welfare and best interests. The Bill Analysis for House Bill 308, which created Family Law section 5-534, states that: “This bill would allow a child to be placed with relatives even if the strict foster care standards are not met, provided that the placement is in the best interests of the child.”⁶⁹ Written testimonies from the Foster Care Review Board and the American Academy of Pediatrics in support of the law both emphasized the importance of the best interest of the child standard contained in the law.⁷⁰ The legislative history of House Bill 935 from the 2005 Legislative Session, which added several provisions to the Courts and Judicial Proceedings Article that direct a preference for relative placement in the initial stages of a CINA case,⁷¹ also includes a focus on the welfare of the child in child placement decisions. The Department of Human Resources submitted its written testimony supporting the bill, focusing on the experience of the child in an out-of-home placement: “Placing a child with persons they know decreases the possibility of trauma children often experience when removed from their home and placed in foster care.”⁷²

⁶⁵ H.B. 308, at 1(Md. 1995).

⁶⁶ MD. CODE ANN., FAM. LAW § 5-534 (West 2019).

⁶⁷ MD. CODE ANN., FAM. LAW § 5-534 (West 2019).

⁶⁸ MD. CODE ANN., FAM. LAW § 5-534 (West 2019).

⁶⁹ JUD. PROC. COMM., BILL ANALYSIS OF THE KINSHIP PROGRAM, S. 409-308, Reg. Sess. (Md. 1995).

⁷⁰ Letter from Vonzella Perry, Chairperson, Children’s Legislative Action Comm., to Walter Baker, Chairman of the Senate Judicial Proceedings Comm. (Mar. 30, 1995).

⁷¹ MD. CODE ANN., CTS. & JUD. PRO. § 3-815 (West 2017) (directing that preference be given to placement with relatives during the shelter care period); MD. CODE ANN., CTS. & JUD. PRO. § 3-819 (West 2019) (directing a preference for relatives if the Court grants custody of a child to an individual at the Disposition Hearing); *See* HB 935, 2005 Leg., 419th Sess., at 4-5 (Md. 2005).

⁷² Letter from Elizabeth D. Seale, Department of Human Resources, to the Senate Judicial Proceedings Comm. (Mar. 10, 2015).

These legislative histories, referencing the best interest of the child and the benefits to the child from the relative preference, support the Department and the Juvenile Court treating the relative preference provisions as being first and foremost the right and benefit of the child.

The legislative history of Senate Bill 24 / House Bill 1212, which amended Family law section 5-534 to allow for placement with fictive kin, shows a strong focus on the child's welfare in the push for the legislation. Written testimonies in support of Senate Bill 24 / House Bill 1212 describe how placement with fictive kin can lessen the trauma of an out-of-home placement for the child. For example, the Department of Human Services wrote in support of Senate Bill 24 that: "Kinship connections allow children and youth to remain with people they know and trust. This eases their feelings of separation and loss, helps to preserve the physical and emotional attachments to their kin, and minimizes the impact of trauma."⁷³ Advocates for Children and Youth describe that "when there is an established loving relationship, a child may still consider this person family. Placement with kin caregivers can minimize the trauma of the removal."⁷⁴ The Baltimore City Department of Social Services explained that: "Kinship care can reduce the trauma that children may have previously endured and the trauma that accompanies parental separation by providing them with a sense of stability and belonging in an otherwise unsettling time."⁷⁵ The Coalition to Protect Maryland's Children wrote about the importance of youth having "stable, responsive relationships with caring adults at home . . . For many youth, fictive kin are as much a family member as kin related by blood or marriage. Allowing fictive kin to serve as kinship guardians provides the youth with a source of stability".⁷⁶ The overwhelming support for Senate Bill 24 and House Bill 1212 was centered on the benefits to the child, reducing a child's feelings of trauma, and the best interest of the child. This legislative history of Senate Bill 24 / House Bill 1212 supports treating the kinship caregiver option as the right and benefit of the child, and the Department and the Courts should apply the law in that manner.

Moreover, Maryland Courts have articulated that the best interests of the child is the overriding consideration when it comes to child welfare issues. As the Court of Special Appeals stated in *In re Adoption of Quintline B. and Shellariece B.*: "The best interests of the child is the transcendent principle in

⁷³ Letter from Rebecca Jones Gaston, Exec. Dir., Md. Dep't of Hum. Services, to the Senate Judicial Proceedings Comm. (Mar. 21, 2019).

⁷⁴ Letter from Rachel White, Child Welfare Dir., Advocacy for Children and Youth, to the Senate Judicial Proceedings Comm. (Jan. 22, 2019).

⁷⁵ Letter from James Becker, Dir. of Legal Services, Balt. City Dep't of Soc. Services, to the Senate Judicial Proceedings Comm. (Mar. 21, 2019).

⁷⁶ Letter from The Coal. to Protect Md.'s Children, to the Senate Judicial Proceedings Comm. (Jan. 22, 2019).

both CINA and TPR proceedings.”⁷⁷ Likewise, in *Baldwin v. Baynard*, the Court stated: “The best interest of the child standard is the overarching consideration in all custody and visitation determinations.”⁷⁸ The supremacy of the best interest of the child standard was affirmed by the Court of Appeals in *In re Adoption / Guardianship No. 10941*: “No doubt the trial court’s refusal to terminate [the Mother’s] parental rights stemmed at least partly from the well-established right of a natural parent to raise his or her child. But as we discussed above, this right is not an absolute one, and is always subservient to the child’s best interests.”⁷⁹ Likewise, in *In re Mark M.*, the Court of Appeals stated: “Pursuant to the doctrine of *parens patriae*, the State of Maryland has an interest in caring for those, such as minors, who cannot care for themselves. We have held that the best interests of the child may take precedence over the parent’s liberty interest in the course of a custody, visitation, or adoption dispute.”⁸⁰ The Court of Appeals articulated in *In re Najasha B.* that the very purpose of CINA law is to advance the best interest of the child: “The broad policy of the CINA Subtitle is to ensure that juvenile courts (and local departments of social services) exercise authority to protect and advance a child’s best interests when court intervention is required.”⁸¹ There is no reason for the best interest of the child standard to not apply to decisions about placement. Furthermore, COMAR directs the Department that the best interest of the child is to be used to resolve disputes between parents and children: “When there is a conflict between the rights of the parents or legal guardian and those of the child, the child’s best interest shall take precedence.”⁸² Therefore, when the Department or the Court must determine the appropriate placement for a child and apply the laws governing relative preferences and the fictive kin option, if there is conflict between the parent and the child on the issue, the Department and the Court should view the relative preference and the kinship caregiver option as being first and foremost for the benefit of the child who has been removed from the home, rather than the parent, and should apply the laws based on the best interest of the child.

A parent has a right to demand that a relative or kinship caregiver work with the parent and support and encourage reunification of the child with the parent; and indeed, that is part of the assessment required to be conducted of the prospective relative caretaker under COMAR 07.02.25.10(E).⁸³ If a

⁷⁷ *In re Adoption of Quintline B. and Shellariece B.*, 219 Md. App. 187, 204 (2014).

⁷⁸ *Baldwin v. Baynard*, 215 Md. App. 82, 108 (2013).

⁷⁹ *IN RE ADOPTION/GUARDIANSHIP NO. 10941 IN CIRCUIT COURT FOR MONTGOMERY CTY.*, 335 MD. 99, 121 (1994).

⁸⁰ *In re Mark M.*, 365 Md. 687, 705-06 (2001) (internal citations and quotations omitted).

⁸¹ *In re Najasha B.*, 409 Md. 20, 33 (2009).

⁸² MD. CODE. REGS. § 07.02.07(a)(2020).

⁸³ MD. CODE. REGS. § 07.02.25.10(E) (2020). The current law holds:

prospective relative or kinship caregiver cannot do that, then they may not be an appropriate caregiver. But if the prospective relative or kinship caregiver has had the required assessment, is an appropriate caregiver, will work with the birth parents and encourage reunification, and the child feels comfortable with that person, then the relative or kinship placement should not be defeated due to a parent's dislike. The preference for placement with a relative should be viewed first and foremost as the benefit and right of the child, and the Department and the Courts should resolve conflicts in the implementation of the law in accordance with the best interest of the child.

III. THE RELATIVE PREFERENCE IN CINA PERMANENCY PLANNING.

There is a preference for relatives in selecting a permanency plan for Children in Need of Assistance. However, under the statutes governing the determination of a child's permanency plan this preference is heavily qualified. The relative preference in permanency planning is often misunderstood, misrepresented, and misquoted. The governing statutes require in the determination of a child's permanency plan a thoughtful consideration of the child as a full human being, with an interior life and with valuable attachments and emotional bonds. The relative preference is within, subject to, and conditioned upon an evaluation of the best interest of the child, with specific attention paid to the child's attachments, time, and stability. The simplistic "there is a relative, there child goes" approach that one may see in CINA practice is flatly incompatible with the governing law. This divergence is only highlighted when one examines the legislative history of the CINA permanency planning statutes.

A. What is the actual law regarding selection of a permanency plan?

Two parallel statutes give the governing law regarding the selection of the permanency plan for Children in Need of Assistance. First, Family Law Article, section 5-525(f) sets forth the requirements on the Department in selecting a permanency plan:

(f) Permanency plan; best interests of the child

- (1)** In developing a permanency plan for a child in an out-of-home placement, the local department shall give primary consideration to the best interests of the child, including

In order to approve a relative as a kinship parent, a local department shall conduct:
 (2) [a]n assessment of the relative with particular attention given to: . . . (h)[t]heir willingness and ability to follow local department requirements regarding:
 (i)[w]orking with birth parents and encouraging reunification. *Id.*

consideration of both in-State and out-of-state placements. The local department shall consider the following factors in determining the permanency plan that is in the best interests of the child:

- (i) the child's ability to be safe and healthy in the home of the child's parent;
- (ii) the child's attachment and emotional ties to the child's natural parents and siblings;
- (iii) the child's emotional attachment to the child's current caregiver and the caregiver's family;
- (iv) the length of time the child has resided with the current caregiver;
- (v) the potential emotional, developmental, and educational harm to the child if moved from the child's current placement; and
- (vi) the potential harm to the child by remaining in State custody for an excessive period of time.

(2) To the extent consistent with the best interests of the child in an out-of-home placement, the local department shall consider the following permanency plans, in descending order of priority:

- (i) returning the child to the child's parent or guardian, unless the local department is the guardian;
- (ii) placing the child with relatives to whom adoption, custody and guardianship, or care and custody, in descending order of priority, are planned to be granted;
- (iii) adoption in the following descending order of priority:
 - 1. by a current foster parent with whom the child has resided continually for at least the 12 months prior to developing the permanency plan or for a sufficient length of time to have established positive relationships and family ties; or
 - 2. by another approved adoptive family; or
- (iv) for a child at least 16 years old, another planned permanent living arrangement.⁸⁴

⁸⁴ MD. CODE ANN., FAM. LAW § 5-525(f) (West 2018).

Then, Courts and Judicial Proceedings Article, section 3-823(e), provides the parallel instructions for the Juvenile Court in determining the Child in Need of Assistance's permanency plan:

(e) Determination of child's permanency plan

(1) At a permanency planning hearing, the court shall:

(i) Determine the child's permanency plan, which, to the extent consistent with the best interests of the child, may be, in descending order of priority:

1. Reunification with the parent or guardian
2. Placement with a relative for:
 - A. Adoption; or
 - B. Custody and guardianship under Section 3-819.2 of this subtitle;
3. Adoption by a nonrelative;
4. Custody and guardianship by a nonrelative under Section 3-819.2 of this subtitle; or
5. For a child at least 16 years old, another planned permanent living arrangement that:
 - A. Addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and
 - B. Includes goals that promote the continuity of relations with individuals who will fill a lasting and significant role in the child's life; and

(ii) For a child at least 14 years old, determine the services needed to assist the child to make the transition from placement to successful adulthood.

....

(2) In determining the child's permanency plan, the court shall consider the factors specified in Section 5-525(f)(1) of the Family Law Article.⁸⁵

The same section of Courts and Judicial Proceedings Article instructs that: "At the review hearing, the court shall: . . . Change the permanency plan if a change in the permanency plan would be in the child's best interest".⁸⁶

⁸⁵ MD. CODE ANN., CTS. & JUD. PROC. § 3-823 (West 2019).

⁸⁶ MD. CODE ANN., CTS. & JUD. PRO. § 3-823 (West 2019).

B. Analyzing the text of the law governing selection of a permanency plan.

First, the provisions governing the selection of a Child in Need of Assistance's permanency plan are explicitly directed to the best interest of the child and are expressly mandatory. Family Law section 5-525(f)(1) states that "the local department **shall** give primary consideration to the **best interests of the child** (emphasis added)."⁸⁷ Note that this direction to the Department is mandatory, through the use of the word "shall". And the primary consideration is the best interests of the **child** – not the parent, not a relative, and not a notion of genetic continuity.

Family Law Article, section 5-525(f)(1) then proceeds to require the Department to consider six specific factors in determining the Child in Need of Assistance's permanency plan.⁸⁸ These factors require the Department to consider the child's actual lived experience in the world and the child's emotional bonds and attachments. The Department must consider the "child's attachment and emotional ties to the child's natural parents and siblings;" and "the child's emotional attachment to the child's current caregiver and the caregiver's family".⁸⁹ This means looking at the child's world from the child's point of view and looking at the child's actual present attachments to others. By requiring consideration of "the length of time the child has resided with the current caregiver," the statute recognizes that the time that a child spends with a caregiver is important, and that the passage of time for a child affects his attachments and life experience.⁹⁰ By requiring consideration of "the potential emotional, developmental, and educational harm to the child if moved from the child's current placement," the statute recognizes that removing a child from a placement where the child has resided and formed bonds and attachments can potentially be harmful.⁹¹ The actual law governing the determination of the child's permanency plan is not only predicated upon the child's best interest, but requires evaluation of the child's best interest from the child's point of view, and treats the child as a full human being whose emotional life and attachments matter.

The Family Law statute then proceeds to a hierarchy of permanency plans. However, this hierarchy is expressly conditioned upon and subject to the best interest of the child. The statute states that "To the extent consistent with the best interests of the child" there is a hierarchy of permanency plans.⁹² This

⁸⁷ MD. CODE ANN., FAM. LAW § 5-525(f)(1) (West 2018).

⁸⁸ *Id.* at § 5-525(f)(1).

⁸⁹ *Id.* at § 5-525(f)(1)(ii)-(iii).

⁹⁰ *Id.* at § 5-525(f)(1)(iv).

⁹¹ *Id.* at § 5-525(f)(1)(v).

⁹² *Id.* at § 5-525(f)(2).

hierarchy places adoption and custody and guardianship to a relative above adoption and custody and guardianship to a non-relative; however, one does not get to that hierarchy without first passing through the condition that the hierarchy is only to the extent consistent with the best interest of the child.⁹³ And, the statute has already provided the considerations that the Department must consider in evaluating the best interest of the child.⁹⁴ Only after considering the six mandatory factors in determining the best interest of the child from the child's point of view and with full recognition of the child's emotional attachments does one arrive at the conditional hierarchy of permanency plans.

Courts and Judicial Proceedings directs in a parallel manner how the Juvenile Court must address the selection of the child's permanency plan. Courts and Judicial Proceedings directs that: "In determining the child's permanency plan, the court shall consider the factors specified in Section 5-525(f)(1) of the Family Law Article."⁹⁵ The Juvenile Court is therefore required to consider the same six factors as are set forth in Family Law § 5-525(f)(1). The Juvenile Court must consider the child's emotional attachments to the child's parents and siblings, and to the child's current caregiver.⁹⁶ The Juvenile Court must consider the time that the child has lived with the current caregiver.⁹⁷ The Juvenile Court must consider "the potential emotional, developmental, and educational harm to the child if moved from the child's current placement".⁹⁸ The Juvenile Court *must* consider these factors, as the statute uses the word "shall." It is a mandatory obligation on the Court, not discretionary. Just like the Department, the Juvenile Court is obligated by the statute to consider the permanency plan for the child from the child's point of view, valuing the child's current emotional attachments, recognizing that time has an effect on the child, and recognizing that removing a child from a placement where the child has formed emotional attachments can cause "potential emotional, developmental, and educational harm to the child".

Just as with the Family Law Article, Courts and Judicial Proceedings gives a hierarchy of permanency plans, placing adoption or custody and guardianship with a relative above adoption or custody and guardianship with a non-relative. And, just as with the Family Law Article, this hierarchy is explicitly subject to and conditioned upon the best interests of the child, as

⁹³ *Id.* § 5-525(f)(3).

⁹⁴ *Id.* at § 5-525(f)(1).

⁹⁵ MD. CODE ANN., CTS. & JUD. PROC. § 3-823 (West 2019).

⁹⁶ FAM. LAW § 5-525(f)(1)(iii)-(iv).

⁹⁷ *Id.* at § 5-525(f)(1)(iv).

⁹⁸ *Id.* at § 5-525(f)(1)(v).

the hierarchy is “to the extent consistent with the best interests of the child”.⁹⁹ And again, the statute has directed the Court in terms of evaluating the best interest of the child, requiring that the Court consider the six factors set forth under Family Law section 5-525 that look at the child’s emotional attachments and experience. Courts and Judicial Proceedings gives a hierarchy of plans that does not excuse the Court from considering the child’s present emotional attachments, but rather is explicitly subject to the consideration of the child’s life and emotional attachments from the child’s point of view.

Federal law does not direct a different result than Maryland law. Federal statute discusses potential permanency plans for children. It places adoption above custody and guardianship,¹⁰⁰ and it places all plans above another planned permanency living arrangement.¹⁰¹ However, it does not otherwise give a rigid hierarchy of permanency plans, and it does not direct choosing permanency plans involving relatives rather than non-relatives regardless of the child’s best interest, time with a caregiver, or emotional attachments.¹⁰²

The plain texts of the statutes governing the determination of the permanency plan for a Child in Need of Assistance direct a consideration of the child’s emotional attachments and the child’s best interest, and make any hierarchy of permanency plan subject to such consideration. Processes that simply state that if there is a relative, then the child shall go with that relative are in derogation of the law.

One sometimes hears an objection to consideration of a child’s emotional attachments in selecting a permanency plan along the lines of: “of course the child will form attachments with a caregiver if the child lives with the caregiver for a long time.” This argument is persistent, if puzzling. Yes indeed, if a child is removed from his parents’ care, and the child remains with a non-relative caregiver for a long period of time, that child may form emotional attachments with that person, and it may indeed become harmful to remove the child from the care of that person. It is not at all clear why the fact that this phenomenon is predictable somehow lessens its importance. The fact that it is predictable should motivate those who do not want it to happen to take timely action to prevent it. It is after all a phenomenon caused by parties to the child’s CINA case, and preventable by the parties to the child’s CINA case. To the extent that a person could consider it a “problem,” it is not the child’s fault, and should not be the child’s problem, that the child has remained with a stable loving caregiver for an extended period of time. It is the obligation of parents, the Department, and relatives who may

⁹⁹ MD. CODE ANN., CTS. & JUD. PROC. § 3-823 (West 2019).

¹⁰⁰ 42 U.S.C.A § 675 (West 2018).

¹⁰¹ *Id.* at § 675(5)(C); 42 U.S.C.A § 675A (West 2019).

¹⁰² *See*, 42 U.S.C.A at § 675(5)(C); 42 U.S.C.A § 675A

potentially be concerned about this to effectuate a swift placement with an appropriate relative early in the case. As discussed above, the law recognizes that placement with relatives should occur at the beginning of the CINA case. Under COMAR regulations, the Department is obligated to “immediately initiate a search for relatives” of the child when the child comes into care, and the Department must then give notice to those relatives within 30 days about the “Options to participate in the care and placement of the child” and the “Options that may be missed by failure to respond to the notice.”¹⁰³ Parents should immediately provide the Department with information about potential relative caregivers, and relatives should swiftly reach out or respond to the Department to become a placement resource. Timely action by adults, and not the dismissal of and dislocation of a child from the child’s secure emotional attachments, is the appropriate remedy for this potential concern.

In addition to being mandated by the text of the governing statutes, a thoughtful approach that considers the child’s emotional attachments is also called for by basic empathy for the child. Imagine again the young child who has lived with a foster parent for over a year and calls the foster parent “Mommy.” Again, for a young child, life with this foster parent might be the only thing she remembers. From the child’s perspective that foster parent is her mother. Of course removing the child from her psychological, emotional mother risks causing trauma. The law and basic empathy require that this reality for the child be valued and considered.

C. The legislative history of the governing permanency planning statutes.

The legislative histories of Family Law section 5-525 and Courts and Judicial Proceedings section 3-823 serve to emphasize that a process that reflexively chooses permanency plans with relatives without consideration of the present attachments and life experiences of the child is incompatible with the texts and histories of the statutes.

1. The legislative history of Family Law section 5-525(f).

The Family Law statute governing the selection of a permanency plan previously did give a rigid hierarchy of permanency plans that favored relatives. In early 1994, Family Law section 5-525 gave a simple hierarchy of permanency plans, stating:

In developing a permanency plan that is in the best interest of a child under foster care, the local department shall consider the following in descending order of priority:

¹⁰³ MD. CODE REGS. 07.02.11.05(C)(3) (2020).

- (1) returning the child to the child's parent of guardian, unless the department is the guardian;
- (2) placing the child with relatives to whom adoption, guardianship, or care and custody, in descending order of priority, are planned to be granted;
- (3) adoption in the following descending order of priority:
 1. by a current foster parent with whom the child has resided continually for at least the 12 months prior to developing the permanency plan or for a sufficient length of time to have established positive relationships and family ties; or
 2. by another approved adoptive family;
- (4) an independent living arrangement . . .¹⁰⁴

In 1994, Maryland enacted House Bill 619, dramatically changing the law and fashioning the law into largely the form we now see. House Bill 619 added the language that in developing a permanency plan: "the local department of social services shall give primary consideration to the best interests of the child."¹⁰⁵ House Bill 619 further added the language that in determining the child's permanency plan, the Department was required to consider (most of)¹⁰⁶ the factors that we now see under Family Law section 5-525(f)(1): the child's attachment and emotional ties to the child's natural parents and siblings; the child's emotional attachment to the child's current caregiver and the caregiver's family; the length of time the child has resided with the current caregiver; the potential emotional, developmental, and educational harm to the child if moved from the child's current placement;

¹⁰⁴ H.R. 619, 408TH GEN. ASSEMB., REG. SESS. (MD. 1994); MD. CODE ANN., FAM. LAW § 5-525 (1994).

¹⁰⁵ H.R. 619, 408TH GEN. ASSEMB., REG. SESS. (MD. 1994); MD. CODE ANN., FAM. LAW § 5-525 (1994).

¹⁰⁶ THE FIRST OF THE MANDATORY SIX FACTORS IN PRESENT FAMILY LAW SECTION 5-525(F)(1)(I), "THE CHILD'S ABILITY TO BE SAFE AND HEALTHY IN THE HOME OF THE CHILD'S PARENT," WAS ADDED BY HB 1093 IN 1998. *SEE* H.B. 1093, 1998 LEG., 412TH SESS. (MD. 1998).

and the potential harm to the child by remaining in state custody for an excessive period of time.¹⁰⁷

House Bill 619 also created and added the language we now see in Family Law section 5-525(f)(2), that the priority of permanency plans is “to the extent consistent with the best interests of the child under foster care”.¹⁰⁸ Whereas before there had been a simple hierarchy of plans that flatly favored plans involving relatives over plans involving non-relatives, Maryland changed the law in 1994 to make that hierarchy subservient to the best interest of the child and to the mandatory considerations of the child’s attachments and experience.

House Bill 619 therefore took a statute that gave a straight hierarchy of permanency plans that favored relatives over non-relatives, irrespective of the child’s emotional attachments, and fundamentally changed it. The Senate Judicial Proceedings Committee Bill Analysis for House Bill 619 explained why: “Proponents of the bill say that the purpose is to ensure that the strength of the relationship between a child and the child’s foster parents is given more weight when a permanency plan is formulated.”¹⁰⁹ The Bill Analysis further elaborates: “Proponents wish to discourage the practice of automatically returning a child to a relative of the child even in instances in which the child has developed a strong relationship with foster parents but may barely know or not even have met the relative who is to be awarded custody.”¹¹⁰ In enacting House Bill 619, the Maryland Assembly consciously sought to recognize and elevate the role of a child’s emotional attachments with foster parents in the selection of a permanency plan, rather than “automatically returning a child to a relative”.

The written testimony supporting House Bill 619 further shows the reasoning behind the change in the law.

The Department of Human Resources supported House Bill 619, stating: “The bill will provide clear direction to line services staff and ensure that the service worker considers the child’s bonding and attachment with the caretaker as a significant factor in permanency planning.”¹¹¹

The Kennedy Krieger Institute submitted two sets of testimony to the House Judiciary Committee in support of House Bill 619 that cogently set forth the need for the change in the law. Dr. Stephen Boren, Director of Evaluation / Consultation Services wrote:

¹⁰⁷ H.B. 619, 1994 Leg., 408th Sess., § 5-525(c)(1) (Md. 1994).

¹⁰⁸ *Id.* at § 5-525(c)(2).

¹⁰⁹ JUD. PROC. COMM., BILL ANALYSIS OF H.B. 619, S. 408-619, Reg. Sess., at 2 (Md. 1994).

¹¹⁰ *Id.*

¹¹¹ Letter from Dept. of Human Resources to Senate Judicial Proceedings Comm., at 1 (Mar. 15, 1994).

All children require secure and loving attachments to have normal emotional development. In the case of children in foster care, these attachments typically are tenuous and lacking.

At the present time, current regulations may hamper the State in securing a permanent placement for children in a timely manner that also takes into account the best interests of the child. Thus, children can be taken into foster care, begin to establish the type of secure, loving bond necessary to undo some of the damage that has been done, only to be at risk to be removed from the placement in order to satisfy current regulations. Due to the best interests of the child not having to be taken into account, a child may be taken to a relative irrespective of the child's emotional attachment and bond to a new caretaker. When this happens, the child suffers yet another major blow to his sense of safety, security, and the cycle of damage begins again.

House Bill 619 goes a long way toward correcting some of the problems of securing the appropriate permanent placements for children in foster care. This Bill establishes that the best interest of the child is the primary consideration in developing a permanency placement for the child. Because of the safeguards established in this bill, there is less risk that a child would be removed from a placement wherein he has made a bond and begin to make progress in resuming a normal developmental progression. The harm that could be done by removing a child from a placement that is fostering emotional, developmental, and educational progress must now be taken into account.¹¹²

George L. Carson, LCSW, the Clinical Senior Clinician for the Kennedy Krieger Family Center, submitted additional testimony in support of House Bill 619:

By having the wisdom to direct the local Departments of Social Services to consider a child[]'s emotional attachment to a current or potential caregiver, the Maryland General

¹¹² *PERMANENCY PLANS*; HEARING ON H.B. 619 BEFORE THE H. COMM. ON JUDICIARY, 1994 Leg., 408th Sess. 1-2 (Md. 1999) (testimony of Dr. Stephen I. Boren, Kennedy Krieger Institute).

Assembly can help to enhance a sense of well-being and security for emotionally disturbed children. As the cases illustrate, children will become attached to caregivers who provide nurturance, safety, and care over them. This is crucial for the long term emotional health and development of all children, but is especially so when a child's development has been disrupted due to abuse, neglect, and moving from placement to placement. When children who have been placed in out-of-home care are removed from caregivers with whom they have developed secure attachments, they can, and often do, develop long lasting emotional problems such as the inability to attach emotionally to others.¹¹³

The testimonies from the Kennedy Krieger Institute articulate well the importance of a child's secure emotional attachments, and the harm that can be caused by dislocating children from placements where they have emotional attachments. House Bill 619 consciously changed and remedied Maryland law such that the secure emotional attachments of children must be respected, valued, and considered in selecting the child's permanency plan.

House Bill 619 was opposed by the organization "Grandparents United." Grandparents United expressed "grave concerns" that giving weight to "The Child's emotional attachment to current caregivers;" "the length of time the child has resided with current caregivers;" and "The potential emotional, developmental, or educational hard to the child if moved from the child's current placement" would shift determinations away from relatives and towards foster families.¹¹⁴ The Maryland House and Senate unanimously approved House Bill 619 despite these concerns.¹¹⁵

2. The legislative history of Courts and Judicial Proceedings Section 3-823(e).

In 2005, Maryland enacted House Bill 935, which was titled "Priority of Relatives as Caregivers" and which sought to elevate the role of relatives as caregivers for Children in Need of Assistance.¹¹⁶ This bill added the provisions, discussed above, setting forth the preference for relatives over

¹¹³ *PERMANENCY PLANS*; HEARING ON H.B. 619 BEFORE THE H. COMM. ON JUDICIARY, 1994 Leg., 408th Sess. 3 (Md. 1999) (testimony of George L. Carson, LCSW, Kennedy Krieger Institute).

¹¹⁴ *PERMANENCY PLANS*; HEARING ON H.B. 619 BEFORE THE H. COMM. ON JUDICIARY, 1994 Leg., 408th Sess. 3 (Md. 1999) (letter of Gail Martin and Linda Kelley, Grandparents United).

¹¹⁵ See Legislative History for H.B. 619, 1994 Leg., 408th Sess. (Md. 1994).

¹¹⁶ H.B. 935, 2005 Leg., 419th Sess. (Md. 2005).

non-relatives in the early phases of a CINA case at shelter care (Courts and Judicial Proceedings section 3-815(c)(5)) and at disposition (Courts and Judicial Proceedings § 3-819(b)(3)).¹¹⁷ However, in its consideration of House Bill 935, the Maryland Assembly pulled back from fundamentally altering and elevating the role of relatives in the selection of permanency plans for Children in Need of Assistance.

House Bill 935 clarified the role of relatives in the determination of the permanency plan for a Child in Need of Assistance. Previously, Courts and Judicial Proceedings Article section 3-823(e) had listed effectively the same permanency plans as Family Law section 5-525 in effectively the same order, but did not explicitly state that the permanency plans were in order or in a hierarchy.¹¹⁸ House Bill 935 initially proposed a major change in the role of relatives in the selection of permanency plans for Children in Need of Assistance. House Bill 935 initially set forth for Courts and Judicial Proceedings section 3-823(e)(2) that: “Unless good cause is shown, a court shall give priority to the child’s relatives over nonrelatives when determining the child’s permanency plan.”¹¹⁹ This would have created a law where the existence of a relative option, rather than a child’s emotional attachments or the child’s best interest, played the primary role in the selection of the child’s permanency plan.

Instead, the House Judiciary Committee stepped away from that proposal and substantially amended House Bill 935. This change may have potentially been inspired by the written testimony of the Citizens Review Board for Children. The Citizens Review Board for Children gave written testimony to the House Judiciary Committee supporting House Bill 935 because of its emphasis on placement of Children in Need of Assistance with relatives in the early phases of a CINA case, but expressing concern about the proposed permanency planning provision: “We are concerned that the bill as written on page 6 might cause a rigid interpretation that could lead, for example, to a child being removed from a very successful and long-term placement with foster parents in favor of relatives whom the child has never met. The remainder of the bill deals with giving a priority to relative placement at the earliest possible time in the life of a case, a principle with which we agree 100%.”¹²⁰ The Citizens Review Board suggested that the bill be amended to cross-reference Family Law section 5-525, instead of stating a flat preference

¹¹⁷ MD. CODE ANN., CTS. & JUD. PROC. §§ 3-815 3-819 (West 2019).

¹¹⁸ MD. CODE ANN., CTS. & JUD. PROC. § 3-823 (2004); MD. CODE ANN., FAM. LAW § 5-525 (2004).

¹¹⁹ H.B. 935, at 7.

¹²⁰ *FOSTER CARE PERMANENCY PLAN*; HEARING ON H.B. 619 BEFORE THE H. COMM. ON JUDICIARY, 2005 Leg., 419th Sess. (Md. 1999) (testimony of James Trent, Citizens Review Bd. for Children).

for relative permanency plans.¹²¹ The House Judiciary Committee appears to have followed the Citizens' Review Board's suggestion, as it amended the bill and struck the language that "Unless good cause is shown, a court shall give priority to the child's relatives over nonrelatives when determining the child's permanency plan".¹²² The House Judiciary Committee instead substituted in language requiring that in selecting the child's permanency plan, "the court shall consider the factors specified in § 5-525(E)(1) of the Family Law Article."¹²³ Therefore, when faced with a proposal to make placement with relatives the central factor in the selection of a child's permanency plan, the Maryland Assembly rejected that proposal, and instead codified that the Juvenile Court must consider the child-centered factors in Family Law section 5-525 in selecting the child's permanency plan.

The House Judiciary Committee also added to Courts and Judicial Proceedings section 3-823 language similar to that in Family Law section 5-525, that the listed permanency plans were "in descending order of priority," while also adding the language from Family Law section 5-525 that the order of priority was "to the extent consistent with the best interests of the child".¹²⁴ House Bill 935 therefore conformed Courts and Judicial Proceedings section 3-823 to its counterpart in Family Law section 5-525.

The legislative history of Courts and Judicial Proceedings section 3-823(e) shows that when presented with the option to make selection of permanency plans relative-centered, rather than child-centered, the Maryland Assembly chose to reject the relative-centered proposal and affirmed that the Juvenile Court must take a child-centered approach, predicated on the best interest of the child standard, and with a requirement for the Juvenile Court to consider the child's emotional attachments, the length of time with the child's caregiver, and the potential harm from removing the child from a stable long term placement. This legislative history strongly contradicts application of a reflexive, automatic, relative-centered approach to permanency plans, and emphasizes the child-centered approach of the statute's text.

D. Application of the law to permanency planning decisions.

The text and legislative history of Family Law section 5-525(f) and Courts and Judicial Proceedings section 3-823(e) make clear that the Department and the Court must determine a Child in Need of Assistance's permanency plan based on the best interest of the child, and must consider this from the

¹²¹ *Id.*

¹²² H. COMM. ON JUDICIARY, Report on Amendments to H.B., Gen. Assemb., 420-935, Reg. Sess., at 7, para. 2 (Md. 2005).

¹²³ *Id.*

¹²⁴ MD. CODE ANN., CTS. & JUD. PROC. § 3-823 (West 2019).

child's point of view, valuing the child's emotional bonds, recognizing that time and attachments matter to the child, and recognizing that removing a child from a secure and stable placement can have potentially negative consequences for the child. The governing law does not permit a reflexive policy of automatically removing a child from a stable placement and from secure attachments and sending the child to a relative. This does not mean that children should never be removed from foster homes in favor of permanency plans with relatives; what it means is that that outcome should only occur as the result of a thoughtful analysis of the child's attachments and lived experience as required by the law. It cannot under the law be the result of a policy of automatically sending a child to a relative just because a relative exists. Unfortunately, I have witnessed such a reflexive policy in practice by both the Department and by Courts. Such a policy does not comply with the law. Children in Need of Assistance are human beings, with attachments to other human beings. They can have attachments to parents and relatives, but they can also have attachments and bonds with others, including foster parents, and the law requires that these attachments and bonds be valued and considered in the selection of the child's permanency plan.

CONCLUSION

The laws governing the role of relatives and fictive kin for Children in Need of Assistance are for the most part nuanced and thoughtful. They are predicated on the best interest of the child. Relatives can form a very important role in helping a Child in Need of Assistance feel safe and avoid trauma when removed from a parent's home, and relatives can enable a child to have a safe and stable permanency if they are not returned to their parents' home. But naïve or careless placement with relatives can be detrimental, and a reflexive and absolutist approach to relatives in permanency planning can lead to a situation where the child's attachments and bonds are ignored, and the child's experience of life is not fully valued. The laws regarding the roles of relatives and fictive kin in placement and permanency planning for Children in Need of Assistance should be read and applied. When disagreement arises, these laws should be interpreted and applied as being for the benefit first and foremost of the child who has been placed out of the home. Maryland law recognizes the importance of relatives, and does prioritize the role of relatives, but Maryland law also recognizes that time and attachments matter for children, and that removing a child from a secure and stable attachment can be harmful to the child. It is the obligation of the Department and Courts to likewise recognize this, and to apply the Maryland laws regarding relatives and fictive kin with a thoughtful mind always for the best interest of the child.