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Foster care system penalizes relatives, legal activists say

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SACRAMENTO — Ruth McNatt lost her daughter last year, when the young woman was knifed by a 16-year-old mental patient in San Bernardino County.

McNatt's daughter, 24-year-old Karen Jones, left three young children — 6-year-old twin girls and a 4-year-old boy. Their father had abandoned them before their mother's death. Karen Jones supported them by working as a waitress.

Ruth McNatt did what she thought was the "right thing" — she took them home with her.

"Your whole gut response is, 'Go get those babies,'" she said. "They needed to be told they were going to be OK and have somebody who loved them there."

She petitioned for and got legal guardianship — a status that, ironically, made her ineligible for federally required foster care assistance from the state.

Had she turned the kids over to the state and won them back in court, she probably would have qualified for foster payments.

But now, 14 months later, the 44-year-old divorced office manager, her orderly lifestyle changed forever, has decimated her savings and signed a second mortgage on her house to help pay for the children's care.

She also has received a crash course in the vagaries of the law as it pertains to children's services, learned how to badger bureaucrats, written letters to newspapers and petitioned legislators.

She is fighting to change a system that she said works against her efforts to keep the family together.

McNatt and other financially strapped relatives — many of them aging grandparents on fixed incomes — face a complicated legal battle over the responsibility of the state to provide foster care funds equally to the relatives who take in abandoned, neglected, abused and orphaned kids.

In a 1985 decision in *King v. McMahan*, a San Francisco Superior Court judge ruled that such funds

should be provided to relatives as they are to non-related foster parents. The decision was overturned the following year on appeal. The California Supreme Court refused to hear the case.

Legal services and lobbying groups concerned with children's issues are now backing a bill, AB 1221 by Assemblyman Rusty Areias, D-Los Banos, to legislate what the courts won't approve.

Passed by the Assembly and now pending in Senate, the Foster Care Equity Act would eliminate the disparity in foster care payments and could result in more placements of foster children with relatives — usually the preferred choice of foster placement experts.

"California has a stated policy to first place children with relatives when it is in the best interests of the child, but the current system acts as a disincentive to this form of preferred placement," Areias said. "With the dire need in this state for suitable homes for abused and neglected children, it makes no sense that the state discriminates against those who could provide the best home for these children."

State Social Services Deputy Director Robert Horel, who oversees California welfare programs, said McNatt's \$24,000 annual income would seem ample to mothers with three children on welfare.

"It's unreasonable to take children and put them with relatives and pay them as if they were non-family," Horel said. "To say grandparents need a lot more money — I don't know that is true. If we're going to put money into foster care, this is not the place to put it."

Like an estimated 3,000 to 4,000 children who were abused, neglected, abandoned or orphaned and taken in by relatives, the Jones are outcasts of the massive state foster care system.

Their grandmother is going broke.

If the three children had been placed in institutional, government-funded care at a cost of \$3,000 to \$6,000 per child a month, or if they had been

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placed with unrelated foster parents in a family home for \$300 to \$400 each a month, the state foster care system would pay.

But because they were taken in by their grandmother, they are eligible only for welfare. Aid to Families with Dependent Children. The difference is at least \$100 per child more for foster care than welfare, with increases as the children get older.

The difference can be critical. McNatt makes less than \$25,000 as an office manager in Pasadena. She receives approximately \$600 in welfare and Social Security benefits for the three children, and uses most of that for child care while she works. The additional \$348 she would receive in foster care would make a critical difference.

A further irony for McNatt is that she has not received promised reimbursement for some \$4,000 in the cost of therapy for the children, to be paid by the state to victims of violent crimes.

Her daughter's killer remains in a mental facility, "unable to assist in his own defense" due to incompetency. Officials at the state Board of Control, which administers the victims' fund, says the McNatt claim is being processed.

"This is a woman who is trying to keep her family together after a devastating crime," said Mia Baker, a special assistant district attorney in charge of the Victim-Witness Assistance Program in the Los Angeles County District Attorney's office. "The defendant is receiving all sorts of therapy and support, and these kids are having a rough go of it."

Baker said the DA's office and the LA County Board of Supervisors — in addition to legal, social and children's groups — are supporting the foster care equity bill.

Elizabeth Arnold, the Contra Costa County Legal Services Foundation attorney who brought the *King v. McMahon* suit, is one of the prime movers in pushing AB 1221

through the Legislature. She said McNatt's case is not unusual and may be less severe than others.

In other cases, relatives have given up children to the anonymity of foster care or to institutional care in expensive group facilities because they can't afford the cost, Arnold said. Siblings have been separated, and some older children have ended up in the juvenile justice system after unsuccessful placements.

"Everyone, including the state, recognizes that the kids are better off with a relative," Arnold said. "It just seems incredibly ironic that you take the first-priority [placement], and then the state refuses to pay."

A 1979 U.S. Supreme Court decision in an Illinois case, *Miller v. Youakim*, conferred equal foster care benefits under federal law for relatives, but federal standards "require much more demanding criteria" than state standards for foster care payments. Children must be placed under a court order and must have qualified for welfare before they were removed from the home.

And, as Ruth McNatt now knows, the relatives cannot have guardianship.

Pamela Mohr, a staff attorney with Public Counsel, a legal services program operated by the Los Angeles County and Beverly Hills Bar Associations in Los Angeles, advises clients on three to five guardianship cases a day involving relatives facing severe financial hardship if they shelter their family's children.

Mohr cited the case of an aunt and uncle "who had gotten seven kids of her sister's together, kids who had been in various foster homes, one of whom had a baby of her own, and they literally could not pay the rent and food and utilities." With foster care payments, Mohr said, the couple could keep the family together.

Some Los Angeles courts are trying to force people to take guardianship and have had to send the kids back to a juvenile institution,

she said.

"I see a lot of kids who go back and forth between foster homes," she said, "and a lot of them do end up in the juvenile justice system."

The foster care bill is opposed by the Deukmejian administration through the state Department of Social Services, which administers foster care programs and says the measure is inequitable and would cost too much. The state Department of Finance warned that that it could cost \$50 million. According to the Legislative Analyst's review of the bill, it has unknown, potentially major costs.

Legal services attorneys familiar with the issues say those estimates are absurdly inflated. They insist the program would be cost-effective over the long-term and would mean more children could be placed with relatives instead of with strangers or institutions.

"Part of the problem is that there are no reliable statistics," Arnold said. She called the state's estimates "total garbage, because they admit they don't know how many kids are out there."

"I would be very surprised if this were not cost-effective legislation," said Abigail English, a staff attorney with the National Center for Youth Law in San Francisco. Many of the affected youngsters are siblings who have to be split up and sent to state-supported foster care, which easily can run upwards of \$2,000 a month in a long-term group home for teenagers.

"The long-term benefit would substantially offset [initial costs]," said Leslie Medina, principal consultant to the Assembly Consumer Protection Committee, who disputed the estimates. "On the one hand they say there are no figures, then they come up with \$50 million without saying where it comes from."

As placement agencies face a shortage of California foster homes, the foster care system's problems finally are being aired.

The major backer of AB 1221 is the California Children's Lobby, a highly respected statewide lobbying

organization that has fought a long and often lonely battle in the courts and the Legislature.

"The system is in a crisis situation," said Karen Tefelski, legislative advocate for the Children's Lobby. In April, the number of children in out-of-home care was 41,645, up from 39,718 in January and 35,039 a year earlier.

"And that is a conservative figure," she said. "It doesn't include kids with relatives, kids on the streets. There is just this incredible increase."

She said children are also staying longer in emergency placement. The average stay has gone from 50 days in 1985 to 100 days in 1987.

Comelia Brown lives in a four-bedroom apartment on Eddy Street in San Francisco with a grown daughter and the three teen-age and pre-teen children of another daughter who has been in and out of prison for selling drugs. Brown is 65, and suffers from allergies and a back ailment.

Her monthly income is \$560 of supplemental security income and \$616 in AFDC for the children. One of the kids requires a special school because of learning disabilities, and one has been classified as gifted at a local school.

"The kids are getting bigger, and prices are going higher. Food is high; clothes are higher," Brown said. She would receive an additional \$300 a month if she were classified as a foster parent.

"I would mostly be able to buy them clothes that they need," she said. "It would improve everything."

Brown came to Sacramento this legislative session to voice her support for AB 1221, but her trip was for naught.

"The legislators were late, and I never got to testify," she said.

"I've been saddled with these kids for a long, long time, off and on practically all their lives," she mused. "I have a friend who keeps foster children, and they pay her. I have my grandchildren, and I don't get anything."