every KID needs a FAMILY

Safely reducing reliance on institutional care placements for children in the child welfare system

NCSC
National Center for State Courts

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Every Kid Needs a Family

SAFELY REDUCING RELIANCE ON INSTITUTIONAL CARE PLACEMENTS FOR CHILDREN IN THE CHILD WELFARE SYSTEM

I. PURPOSE & INTRODUCTION

Since the codification of the Adoption Assistance and Child Welfare Act of 1980 and the earlier passage of the Indian Child Welfare Act in 1978, federal law and child welfare values support placing children in the least restrictive settings with proactive and effective intervention and services. In 2015, the Children's Bureau released a brief[1] about children in the child welfare system and reported that there were 402,387 children in the care of the child welfare system, and one in seven of those children was in an institutional (non-family) placement setting. Of the 55,916 children in non-family placement, 41% had no documented clinical or behavioral need that might warrant such a placement.[2] Also unsettling is that 31% of children in non-family placement settings were children 12 and younger.[3] Experts agree that the risk of clinical attachment disorders in young children who are placed in these types of settings is high.[4]

Research shows that children fare *much* better in family-based care, and yet child welfare systems continue to inappropriately place children in non-family environments. Agencies and the system generally need to better assess whether children should be placed in a non-family placement.

Most children who have been subjected to abuse or neglect are more vulnerable because of their maltreatment, and the developmental and physical outcomes for these children can be further compromised by the nature and quality of their placements. Types of placement, quality of placements, and number of placements have a significant impact on the physical and psychological well-being of children and youth.[5]

Judges are responsible for critical legal decisions concerning the well-being, safety, and permanency of children. Unlike in other case types, judges in child protection cases play a unique role of overseeing the social service agencies that are responsible for delivering services to children and their families. In 2018, Congress gave courts new responsibilities to approve and oversee non-family placements through the Family First Prevention Services Act (FFPSA). The FFPSA limits federal funding for non-family placements longer than two weeks to a newly defined type of institutional care – the Qualified Residential Treatment Program (QRTP). Agencies and courts must follow a rigorous assessment, approval, and oversight protocol for placements in a QRTP. States were permitted to "opt-in" to the provisions of the FFPSA as of October 1, 2019. All states are required to follow the FFPSA after October 1, 2021 (or forego federal foster care funding altogether).[6]

In 2015 the Annie E. Casey Foundation published Every Kid Needs a Family, a policy report that

[1] A National Look at the Use of Congregate Care in Child Welfare. Administration for Children and Families, Children's Bureau (2015). As of 2018, the number of children in foster care is 437,283. 47,293 (11%) of those children are in non-family placements. Annie E. Casey Foundation Data Center.
[2] *Id.*, at II.
[3] *Id.*, at III.
[4] The Annie E. Casey Foundation, Every Kid Needs A Family, (May 2015).
[5] Harden, J.B. (2004). Children, Families, and Foster Care. *The Future of Children.* 14(1), 44.
[6] For more information on FFPSA, see https://familyfirstact.org/.

highlighted recent statistics about children in the child welfare system who are placed in non-family placement settings. The report challenged policymakers, courts, social service agencies, and communities to do a better job in assessing and treating children who are living in a non-family placement setting. Annie E. Casey supported the collaboration between NCSC, NACC, and other critical legal partners and experts to develop the set of tools presented in this guide and other materials.[7] The purpose of this initiative is to assist judges, attorneys, and advocates in making better decisions regarding the placement of children to ensure the least restrictive and most family-like placement possible for each child under court jurisdiction. These materials provide information about what constitutes quality in placement, practices that one should see in placement for children, and what circumstances might support a short-term residential intervention. They also present systems reform strategies to judges and other court system administrators and program managers. Among these strategies include adequate planning, education and training, data collection, and an understanding of what is available in each court's local jurisdiction.

[7] See Acknowledgements above for a listing of contributing organizations.

II. WHAT DO WE KNOW ABOUT INSTITUTIONAL CARE PLACEMENTS?

- **Children do better in the least restrictive and most family-like placement.** The use of institutional care placements originated from a need to provide for children whose history, mental health conditions, and behavior made returning to birth parents, placement with kin, or foster home placement a challenge. However, while it is recognized that for some children, a short-term residential intervention might be in their best interest, it should only be used when it is the least detrimental alternative. An overwhelming body of research shows us that children simply do better in families. Children and youth who stay long-term in institutional care are more likely to test below or far below in basic English and math[8], drop out of high school, be arrested[9], and experience physical and sexual abuse while in group care[10].

  Why do children do better in families? Healthy attachments with a parent figure are necessary for children of all ages and help reduce problem behaviors and interpersonal difficulties.[11] Furthermore, group care prevents children from having access to peers who are coping well with everyday life, who do not have behavioral or emotional problems, and who can provide positive peer support.[12] Finally, although quality residential programs do exist, a lack of consistent and rigorous regulation of and standards for group care facilities results in many substandard programs that fail to provide quality interventions and fail to achieve positive outcomes for the children they serve.

- **Close to half of children placed in institutional care placements do not have a documented clinical or behavioral need that would warrant such a placement.** Of the 55,916 children in non-family placements in 2015, more than 40% had no documented clinical or behavioral need that might warrant such a placement. 31% of children in non-family placement settings were children 12 and younger. Experts agree that the risk of clinical attachment disorders in young children who are placed in these types of settings is high.[13] Too often, older children have historically been placed in institutional care because of their age and perceived lack of viable foster home options.[14] The use of institutional care placements should be strictly limited to young children whose mental health and therapeutic needs warrant a short-term stabilization.

- **There is tremendous variation in placement rates of children in non-family placements across and within states.** States vary significantly in their use of institutional care placements, and tremendous variation even exists within some states. For example, for federal fiscal year 2018, the percentage of children placed in non-family placements ranged from a low of 4% in Alaska and Hawaii to a high of 27 percent in Colorado. The national average is 11%. See Appendix A for a chart of the most recent data on institutional care placements in each state.

- **Institutional care placement is very costly.** The personal costs to children who are abused and neglected is immeasurable and the economic burden is significant. The cost of placing children in

[8] Wiegmann, W., Putnam-Hornstein, E., Barrat, V.X., Magruder, J. & Needell, B. The Invisible Achievement Gap Part 2: How the Foster Care Experiences of California Public School Students are associated with Their Education Outcomes (2014).
[9] Ruan, J.P., Marshall, J.M., Herz, D. & Hernandez, P.M. Juvenile Delinquency in Child Welfare: Investigating Group Home Effects, CHILDREN AND YOUTH SERVICES REVIEW, 30(9), 1088-1099 (2008).
[10] Dozier, et al. Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association. American Journal of Orthopsychiatry © 2014 American Orthopsychiatric Association, Vol. 84, No. 3, 219–225 (2014).
[11] *Id.* at 220.
[12] *Id.* at 221.
[13] The Annie E. Casey Foundation, Every Kid Needs A Family, Baltimore. (May 2015). The Annie E. Casey Foundation.
[14] *Id at 2.*

an institutional placement can be five to seven times the cost of placing children in a family setting[15].The disproportionate number of children living in non-family placement continues to drive up the costs for child welfare systems. Communities that have embarked on the reduction or elimination of non-family placements have succeeded in using their funding streams to provide a wide array of community-based services to keep children with families whenever possible. For example, see the Case Studies in Section VI.

- **Experts have identified critical components of safe, quality, and effective residential treatment programs.** After a thorough assessment process, if it is determined that a short-term residential intervention is in the best interests of the child and is the least detrimental treatment option, experts have identified the critical components of safe, quality, and effective residential treatment programs.[16] Many of these principles were incorporated into the Family First Prevention Services Act (FFPSA).

- **The FFPSA brings major changes to the process of placing children in institutional care settings**. Under the FFPSA, for most youth in care, the **only** type of non-family placement that can be supported by federal funds longer than two weeks is a newly defined qualified residential treatment program (QRTP).[17] Previously, federal funds could be used to support placement in a relatively open-ended array of group homes and residential treatment facilities. In contrast, QRTPs must, among other requirements, be licensed and accredited by designated national organizations and have a trauma-informed treatment model for children with serious behavioral or emotional issues. [18]

  The FFPSA requires a rigorous assessment following placement in a QRTP and a determination by the court that the placement is appropriate and the least restrictive alternative available to achieve treatment goals.[19] The placement must be re-approved at each review hearing[20]. By giving courts direct responsibility to approve and oversee a specific type of foster care placement for the first time, Congress clearly intended to limit the use and duration of institutional care to only those situations where it is necessary for therapeutic treatment. Even if the reader's state has not yet fully "opted in" to the provisions of the FFPSA, nothing prevents attorneys and judges from applying the spirit and principles of the law to current cases. The best interests of children and families are served by taking that approach and vigorously implementing the FFPSA in the future.

[15] *Id* at 7.
[16] See Best Practices for Residential Interventions for Youth and their Families: A Resource Guide for Judges and Legal Partners with Involvement in the Children's Dependency Court System, Building Bridges Initiative and the Association of Children's Residential Centers (2017). This pre-FFPSA resource guide describes critical components and actions steps for residential centers to treat children effectively, along with related key questions that courts should ask.
[17] Additional exceptions under the FFPSA are emergency placements of 2 weeks or less; housing for pregnant or parenting youth with their children; independent living programs for adult foster youth; and residential substance abuse treatment programs for mothers with their children. Pub. L. 115-123, section 50712 and 50741.
[18] Pub. L. 115-123, section 50741
[19] *Id.*, section 50742
[20] *Id.*

III. HOW CAN JUDGES IMPROVE PLACEMENT DECISION-MAKING?

Judges are in a unique position to improve outcomes for children in the child welfare system. If judges, along with attorneys and advocates, are armed with information and data about assessment and service delivery options, they can make better placement decisions and successfully support placement decisions that are in the best interests of children. At each phase of the legal process, judges must rely on the information presented to them about the physical health, mental health, and safety needs of the child, and subsequently use their independent authority to approve a placement decision for a child that ensures their best interest is being met through a placement that is least restrictive and most family-like. Although judges must rely on the accuracy of the information presented to them, it is also reasonable and appropriate for them to make active inquiry into placement options for children based on each child's best interests.

Judges can lead reform first by beginning to change the culture toward relying on fewer institutional placements (and for states transitioning to operating under Family First, the culture is already changing). Children and youth who have experienced abuse or neglect perceive and react differently to the world, and these differences manifest in many ways. But the bottom line is the same - children need to be placed in the least restrictive, safest, and most family-like home to maximize their ability to recover and have successful futures.

A child welfare culture that minimizes institutional care begins with engaging families and providing prevention supports in the community before the case reaches the courthouse door. Judges can use their leadership role in the child welfare community to promote expansion of prevention resources.[21] Judges can also cultivate a culture in the legal community that provides meaningful consideration, through legal advocacy and court hearings, of alternatives to institutional care throughout the case.

For example, providing access to high quality legal representation as early on in the case as possible, including before a petition is filed, can prevent the need for out of home care.[22] If the reasonable efforts required by state and federal law – to prevent the need for foster care, to reunify families, and to achieve timely permanency – are successful, institutional care placements will be minimized. Through the legal "hook" of reasonable efforts findings judges can ensure that child welfare agencies fulfill their responsibilities to ensure family placements for children whenever possible. A "no reasonable efforts" finding (or the threat of one) can motivate the agency to provide necessary services to reduce the need for foster care.[23]

Does the child welfare system in the jurisdiction do a good job at investigating family connections for children to be potential placement or support resources? Instituting a systematic approach, such as Family Finding, may facilitate providing those family resources and preventing unnecessary institutional care.

When making placement decisions regarding institutional care, judges are faced with three key questions:

(1) How do we know that an institutional care placement is best for *this* child;
(2) How do we know if the recommended institutional care placement is a *quality* program; and
(3) How do we know *when* a child in an institutional care placement can return to a family placement.

[21] See, e.g., Enhanced Resource Guidelines, National Council of Juvenile and Family Court Judges (2016), p.p. 30-33; California Standard of Judicial Administration 5.40(e), The Unique Role of the Juvenile Court Judge.
[22] See Judges Action Alert: Ensuring High-Quality Legal Representation for Parents and Children, ABA Center on Children & the Law, National Council of Juvenile and Family Court Judges (2020)
[23] See Edwards, Reasonable Efforts: A Judicial Perspective (2014); Edwards, Reasonable Efforts: Let's Raise the Bar, The Guardian, National Association of Counsel for Children (Spring 2020)

To provide guidance to judges, but also to educate attorneys and advocates, in making better-informed decisions around institutional care placements, a judicial benchcard is available on the Every Kid Needs a Family web site.

IV. WHAT ROLE CAN JUDGES AND OTHER COURT LEADERS HAVE IN IMPROVING PLACEMENT PRACTICES, POLICY, AND INFRASTRUCTURE?

Judges can use their leadership role to influence positive change in the use of institutional care placements for children in our child welfare system. Judicial leadership and commitment to establishing systemic oversight, performance measures, and outcome review will provide a catalyst to everyone working in the child welfare system to begin to look at solutions for ensuring that all children and youth have the opportunity to thrive in family placements.

Judges can hold other stakeholders to quality practice that reflects proper assessment in individual cases, the appropriate use of short-term residential intervention, evidence-based treatment modalities, and ongoing data collection about the outcomes of the children served in their respective jurisdictions.

Judges can communicate and collaborate with the child welfare agency and service providers to ensure that their community has access to a sufficient level of family-based placement options, and that the residential programs available to them are quality, evidence-based programs located close to children's families.

Judges can establish process and outcome measures to monitor their placement decisions. For example, judges can use case management reports to assess timeliness of hearings about placement decisions. They can also engage in efforts to look at broader measures such as the types of placements, frequency of placement changes, and the frequency of judicial review of those placements.

Judges can ensure that the court system implements the letter and spirit of the Family First Prevention Services Act in approving and overseeing QRTP placements.

Judicial branch administrators and program managers also have an important role in systems reform in this area. Court Improvement Programs across the country have provided much needed resources for juvenile courts to engage in collaboration with child welfare agencies, attorneys, children's advocates, and communities to promote better outcomes for children involved in the child welfare system. Court Improvement Programs can ensure that juvenile judges, attorneys, and advocates in their state are adequately and regularly trained on the principles and information contained in these materials and the Family First Prevention Services Act.

V. EXECUTIVE AND LEGISLATIVE BRANCH REFORM EFFORTS

State child welfare leaders and lawmakers in many states have been working to ensure that institutional care placements are only used as a short-term intervention when absolutely necessary to treat the behavioral and mental health needs of youth so they can return to a family placement. Some of their work includes the following strategies:

- Prohibit placement of children under a specified age, or prohibit placement of children under a specified age with defined exceptions;
- Develop enhanced admission criteria or facility requirements for children under a specified age;
- Require justification for residential placement, for example based on the clinical needs of the child and the use of assessments to determine the level of care;
- Require prior supervisory or departmental approval for residential placement;
- Develop case plans and placement criteria that specify purpose of placement, length of stay, and regular review;
- Mandate closure of facilities or limit capacity of institutional care placements;
- Implement explicit funding restrictions;
- Better oversight and administration of psychotropic medications for children in congregate care;
- Improve state oversight and licensing of residential facilities;
- Create three-branch task forces on residential care; and
- Limit approval of rates for additional facilities or additional capacity.[24]

Judges and other court leaders should explore opportunities to partner with the child welfare agency and state legislature in improvement and reform efforts within their states. One opportunity is to explore the establishment of a three-branch collaboration to develop an integrated and comprehensive state approach to safe, quality, and effective short-term residential interventions for children in the child welfare system.

[24] See State Policies on Non-Family Foster Care Settings. Youth Law Center (July 2015; Congregate Care, Residential Treatment and Group Home State Legislative Enactments. National Conference of State Legislatures.

VI. CASE STUDIES

Throughout the past twenty years, improvements have been made in the ways in which courts, child welfare agencies, legal advocates, and communities work together to ensure youth are placed with families. The issue of institutional care placement is complicated, and too often judges are dealing with lack of resources and options in their communities. Yet, there are examples across the country of court innovations and collaborations that have been implemented or are being tested in an attempt to reduce or eliminate the use of non-family placements. These efforts offer other jurisdictions some valuable information and strategies that they can employ to limit the use of non-family placements for children whose behavior and mental health needs warrant a short-term residential intervention. Hampton, Virginia's story highlights the results of a multidisciplinary collaboration, the goal of which was to eliminate the use of institutional care placement. Denver, Colorado's story highlights a court that established a specialized docket to focus on the placement of youth currently placed (or proposed to be placed) in residential placement, with the goal of reducing Denver's reliance on residential placement.

Hampton, Virginia

In 2007, the state of Virginia had the highest percentage of children placed in group care as compared to other states. To address this placement crisis, systems leaders in the city of Hampton, Virginia began to rethink their approach to the placement of children in institutional care placements. The courts, under the leadership of Judge Jay Dugger, and the child welfare community partnered to use pooled funding and community-based prevention and intervention services to keep children with families and eliminate the use of residential treatment centers.

The Comprehensive Service Act (CSA) enacted in Virginia in 1992 created a collaborative system of services that was child-centric and family focused. It allowed pooled, incentive-based funding that gave communities like Hampton the flexibility to use resources creatively on prevention and community-based treatment options. Hampton used the CSA legislation to their benefit and formed two statutorily mandated collaborative teams. The Community Policy and Management Team (CPMT) was responsible for defining the local CSA structure and to oversee implementation efforts and budget issues. The second team, the Family Assessment and Planning Team (FAPT) was responsible for overseeing individualized child and family case plans and monitoring care across agencies. Both teams included leaders or representatives from courts, education, health, mental health, and child welfare agencies as well as one private provider representative and one parent representative.

The CSA teams developed a "one child at a time" philosophy and core values that focused on keeping children and families together. The teams operated under the concept that "trying hard" was not good enough. The CPMT team had the authority to make policy and funding decisions that would allow creativity in the FAPT team so individualized, child-centered, family-focused, and community-based services could be provided to children and families.

In 2005, Hampton had close to 250 children in foster care and 32 in non-family group settings, and by 2008 there was only one child in residential care. Hampton's use of foster care fell from a peak of 281 children in 2002 to around 40 in 2014 - an 85 percent reduction.[25] Through the leadership of the CPMT and the persistence of the FAPT team, a model for treating high-needs children and youth was created.

[25] A Model for Collaboration and Results: How cross-agency collaboration helped Hampton, Va., build a broad array of child and family services. Annie E. Casey Foundation (Jan. 2015).

Specialized Intensive Foster Care (SIFC) was developed to provide high-needs children and youth with foster home settings that provided the support and care they needed. SIFC providers work with biological families to provide supervised family visits, coaching, and other treatment services that allow these children and youth to maintain family and community connections.

With the success of initiatives to keep children and youth at home and out of non-family placements, Hampton has focused its vision on "extreme prevention". Efforts now focus on identifying at-risk families and offering customized services to those families as early as possible. Home visitation programs, screening, and support services are helping to keep families intact. Additionally, children and youth involved in the juvenile justice system in Hampton who were historically placed in residential treatment are now served by the Family Stabilization Program, a program that diverts children and youth from residential placements and focuses on services that address family conflict and behavioral health and other treatment services. Hampton's success in reducing the use of institutional care and keeping children in families and in the community has led to similar efforts around the country, including in Denver, Colorado.

Denver, Colorado

Under the leadership of Judge Brett Woods, the Presiding Judge of the Denver Juvenile Court, the court has undertaken steps to reduce Denver's reliance on institutional care placements and ensure that the court provides a stronger oversight role in ensuring that that youth who do need this short-term intervention remain in non-family based placement no longer than absolutely necessary.

Colorado is the highest state in the country for percentage of children and youth in institutional care placements, and state child welfare and judicial branch leaders have made it a priority to undertake system reform efforts. To answer the call to action locally, the Denver Juvenile Court established a multidisciplinary team, including Judge Woods, attorneys, advocates, and child welfare agency leaders. The team conducted a site visit to Hampton, Virginia to learn about the reform efforts there. Upon the team's return from the site visit, they decided to establish a "congregate care docket" pilot in Judge Woods' courtroom that would feature more frequent review hearings to specifically address placement.

The first step of the pilot was to get a list of all dependency/neglect cases under Judge Woods' jurisdiction who were placed in residential placement. The next step was to design a special congregate care hearing report. The report has sections for current placement, diagnosis, prognosis for stepdown, permanent plan steps, discharge plan, date of last meetings held, and recommendations made to the court.

The hearings themselves were designed to be collaborative and problem-solving. The court ensures that key people attend the hearings, including someone from the agency's utilization management unit– in other words, someone who "walks in with the checkbook" and is empowered to cut through red tape and facilitates decision-making in the courtroom to ensure the best placement decisions.

Data has been instrumental to this effort in the Denver Juvenile Court, and the court is actively reviewing placement-related measures for children and youth under its jurisdiction. The team set a goal at the outset of the pilot to reduce the number of children in institutional care placements by 40 percent. Even before the pilot project in Judge Woods' court ended, other judges began seeing its success and expressed interest in adopting this special docket for their cases. Denver began 2017 with 181 children in congregate care. The year ended with 140 children in non-family placements. As of June 2020, there are

70 Denver children in congregate care.[26] The judicially-led collaborative effort has had synergistic effects in the child welfare agency. Knowing that the court would exercise special scrutiny over congregate placements, the agency instituted internal controls as well, such as requiring management approval of such placements. As Colorado now anticipates implementation of Family First, the Denver Juvenile Court has already reduced non-family placements far below the state average and is better prepared to exercise the oversight required by the new law.

[26] Email from Mimi Scheuermann, Deputy Executive Director, Protection and Prevention, Denver Human Services, June 2, 2020.

Appendix A
Children and Youth in Foster Care and Group/Institutional Placement 2018

State	Total Children and Youth in Foster Care	Children and Youth in Group/ Institutional Placement		State	Total Children and Youth in Foster Care	Children and Youth in Group/ Institutional Placement	
		Number	Percent			Number	Percent
United States	**437,283**	**47,293**	11%	**United States**	**437,283**	**47,293**	11%
Alabama	5,930	1,046	18%	**Montana**	3,946	278	7%
Alaska	2,792	109	4%	**Nebraska**	3,524	176	5%
Arizona	13,360	1,893	14%	**Nevada**	4,532	239	5%
Arkansas	4,234	748	18%	**New Hampshire**	1,531	310	20%
California	52,337	4,282	8%	**New Jersey**	5,526	328	6%
Colorado	5,542	1,465	26%	**New Mexico**	2,506	212	8%
Connecticut	4,225	332	8%	**New York**	16,385	2,216	14%
Delaware	719	119	17%	**North Carolina**	10,543	1,114	11%
Dist. of Columbia	707	62	9%	**North Dakota**	1,576	170	11%
Florida	24,404	2,560	10%	**Ohio**	15,730	1,960	12%
Georgia	13,793	1,620	12%	**Oklahoma**	8,634	506	6%
Hawaii	1,687	74	4%	**Oregon**	7,577	402	5%
Idaho	1,814	160	9%	**Pennsylvania**	16,566	2,333	14%
Illinois	16,840	1,220	7%	**Puerto Rico**	2,132	783	37%
Indiana	18,560	1,074	6%	**Rhode Island**	2,003	307	15%
Iowa	6,249	636	10%	**South Carolina**	4,456	897	20%
Kansas	8,068	613	8%	**South Dakota**	1,560	235	15%
Kentucky	9,355	1,230	13%	**Tennessee**	8,929	1,543	17%
Louisiana	4,562	401	9%	**Texas**	32,960	3,864	12%
Maine	1,768	88	5%	**Utah**	2,611	245	9%
Maryland	3,973	557	14%	**Vermont**	1,308	173	13%
Massachusetts	10,612	1,686	16%	**Virginia**	4,915	735	15%
Michigan	12,121	1,128	9%	**Washington**	11,399	535	5%
Minnesota	9,271	1,141	12%	**West Virginia**	7,138	1,193	17%
Mississippi	4,703	308	7%	**Wisconsin**	7,819	752	10%
Missouri	12,659	1,059	8%	**Wyoming**	1,091	176	16%

Source: The Annie E. Casey Foundation Kids Count Data Center