



# Congregate Care and Placement Issues in Juvenile Court Proceedings

by Judge Leonard Edwards (ret.)

## Overview

Congregate care for children refers to out-of-home placement in a group or institutional setting. It includes group homes, orphanages, and institutions.<sup>1</sup> Congregate care has a long history in the United States. Over 100 years ago most children in out-of-home care lived in congregate care. After the White House Conference on the Care of Dependent Children in 1909, child welfare policy leaders concluded that a preferable placement for these children would be with a family, and the idea of foster care was born. Nevertheless, it took almost the entire twentieth century before the number of children placed in foster care reached the numbers placed in congregate care.<sup>2</sup> With the passage of the Fostering Connections Act of 2009, relatives became a placement preferred to foster care.<sup>3</sup> This legislation identified four placements considered to be permanent: parental care, adoption, guardianship, and relative care. Today, congregate care and foster care are not considered permanent placements.

The number of children in congregate care has declined dramatically since the White House Conference. Nevertheless, social service agencies and courts continue to place children in congregate care, both immediately after removal from parental care and in the long term. Approximately 43,823 children currently reside in group homes, residential treatment facilities, psychiatric institutions, and emergency shelters.<sup>4</sup> This article will address the responsibilities of juvenile courts to use their influence and powers to reduce the numbers of children placed in congregate care and increase the placement in relative care. First, it will discuss the negative impact that congregate care has on children. Second, it will review the

- 1 The federal analysis of Adoption and Foster Care Analysis (AFCARS) data defines congregate care as "a licensed or approved setting that provides 24-hour care for children in a group home (7-12 children) or an institution (12 or more children). The settings may include a childcare institution, a residential treatment facility or a maternity home." See National Conference of State Legislatures (NCSL). "Congregate Care, Residential Treatment and Group Home State Legislative Enactments, 2014-2019." 10/30/20. Available at: <https://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>.
- 2 Myers, J.E.B. *A History of Child Protection in America*. Xlibris Corporation. (2004).
- 3 The Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.
- 4 U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. "Adoption and Foster Care Analysis and Reporting System (AFCARS) FY2020 data." No. 28, 10/4/21. Available at: <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport28.pdf>; Williams, C. "Kids in Foster Care Belong in Families, Not Modern-Day Orphanages." *The Imprint*. 1/12/2022. Available at: <https://imprintnews.org/foster-care/kids-in-foster-care-belong-families-not-modern-day-orphanages/61937>; National Conference of State Legislatures (NCSL). "Congregate Care, Residential Treatment and Group Home State Legislative Enactments, 2014-2019." 10/30/2020. Available at: <https://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>.



## ABOUT THE AUTHOR:

**Judge Edwards** is a retired judge from Santa Clara County, California, where he served for 26 years, primarily in the juvenile court. He now works as a consultant. His writings can be seen on his website: [judgeleonardedwards.com](http://judgeleonardedwards.com).

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federal legislation that has addressed placement preferences for children removed from their homes. Finally, it will identify several ways that judges and attorneys can encourage permanent placements in both the child welfare and juvenile justice systems.

### **Congregate Care**

Numerous studies conclude that children placed in congregate care have poorer outcomes in their lives than in any other placement. Children placed in congregate care are more likely to have access to drugs, be subject to physical and sexual abuse, be involved in sexual trafficking, be administered psychotropic medications inappropriately, fall behind in their education, age out of care without appropriate supports in place, run away from their placements, and have lifelong medical and mental health challenges.<sup>5</sup> Over their lifetime these children are more likely to have poorer physical and mental health outcomes and die sooner than children at home or with relatives.<sup>6</sup>

One study followed, for thirty years, over 160,000 children who were placed in non-parental care for a period during their childhood. It concluded that children who were placed out-of-home in residential care reported worse health than children who grew up in a family environment. The authors recommended that “...when non-parental care is required, priority be given to non-residential care, especially the child’s extended relatives and friends.”<sup>7</sup> A more recent study of over 500,000 people concluded that the type of child placement matters:

[t]here are highly consistent impacts on health, socioeconomic circumstances, family life and living arrangements depending on care arrangements with kinship care having the best outcomes, residential care the least, and foster care lying midway between the two extremes.<sup>8</sup>

### **The Federal Government Response**

It took a long time for the federal government to absorb this data and make changes in the law. Apparently, many still believed the old adage that “the apple doesn’t fall far from the tree” and resisted placing children with their relatives. This is surprising because while there are between 400,000 and 500,000 children now in the nation’s child welfare systems, families have been turning to relatives to place their children for decades. The current number of children placed by families without state involvement is over 2.5 million,<sup>9</sup> and that number does

5 Casey Family Programs. “What are the outcomes for youth placed in congregate care settings?” 2/5/18. Available at: <https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/>; Think of Us. “Away From Home: Youth Experiences of Institutional Placements in Foster Care.” 2021. Available at: [https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96\\_Away%20From%20Home%20-%20Report.pdf](https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf); Behar, L. et al. “Protecting Youth Placed in Unlicensed, Unregulated Residential ‘Treatment’ Facilities.” *Family Court Review*, 45(3) 399–413, July 2007. Available at: <https://lenorebehar.com/assets/images/pdf/32.%20%20PROTECTING%20YOUTH%20PLACED%20IN%20UNLICENSED,%20UNREGULATED%20RESIDENTIAL%20TREATMENT%20FACILITIES.pdf>; Li, D., Chng, G., & Chu, C., “Comparing Long-Term Placement Outcomes of Residential and Family Foster Care: A Meta-Analysis,” *Trauma Violence Abuse*, 2019 Dec. 20(5): 653–664. Available at: <https://journals.sagepub.com/doi/full/10.1177/1524838017726427>.

6 For a review and discussion of these studies see Edwards, L. “The Urgency of Placing Children with Relatives.” *The Guardian*, NACC, Vol. 42, No. 4, 2020.

7 Murray, E., Lacey, R., Maughan, B., & Sacker, A. “Association of childhood out-of-home care status with all-cause mortality up to 43-years later: Office of National Statistics Longitudinal Study.” *BMC Public Health*, 2020, 20–735. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7238620/>.

8 Sacker, A. et al. “The lifelong health and wellbeing trajectories of people who have been in care: Findings from the Looked-after Children Grown Up Project.” *Nuffield Foundation*, London, July 2021. See also “The lifelong health and well-being of care leavers.” *Nuffield Foundation*, Policy Briefing, London, October 2021. Available at: <https://www.nuffieldfoundation.org/wp-content/uploads/2021/10/The-lifelong-health-and-well-being-of-care-leavers.-Nuffield-Foundation-and-UCL-policy-briefing.-Oct-2021.pdf>.

9 Annie E. Casey Foundation Kids Count Data Center. “Children in kinship care in the United States.” Available at: <https://datacenter.kidscount.org/data/tables/10455-children-in-kinship-care?loc=1&loc=1#detailed/1/any/false/2097,1985,1757/any/20160,20161>.

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not include family transfers to fictive kin and informal adoptions.<sup>10</sup> The federal government did not encourage placement with relatives until the twenty-first century when Congress passed the Fostering Connections Act in 2009.<sup>11</sup> That Act identified placing with family as a permanent placement and declared family placement was preferable to both foster care and congregate care. It also identified and supported three best practices for social service agencies: Family Finding, Guardian Navigators, and Family Group Conferencing.<sup>12</sup>

The federal government next passed the Preventing Sex Trafficking and Strengthening Families Act of 2014.<sup>13</sup> The intent of that law was to discourage placing children in stranger care. Social workers and probation officers were required to report to the court their “intensive, ongoing, unsuccessful efforts” to place the child in a permanent placement.<sup>14</sup> Federal funding for placements in congregate care was severely limited, and congregate care facilities had to provide special services for any child placed there by the court or social service agency.<sup>15</sup> That same legislation mandated juvenile court judges to make findings why the child before the court could not be placed in a permanent placement instead of in foster or congregate care.<sup>16</sup> Finally, the law stated that if the plan is Another Planned Permanency Living Arrangement (APPLA), it must contain: (1) documentation of intensive, ongoing, unsuccessful efforts for family placement, and (2) redetermination of appropriateness of placement at each permanency hearing.<sup>17</sup>

In 2018 Congress continued to restrict placement in congregate care with the passage of the Family First Prevention and Services Act, a part of the Bipartisan Budget Act.<sup>18</sup> That Act seeks to curtail the use of congregate or group home care for children and instead places a new emphasis on family foster homes. With limited exceptions, the federal government will not reimburse states for children placed in group care settings for more than two weeks.<sup>19</sup>

### Implementation

Increasing relative care and decreasing congregate care placements will occur only if the social service and probation agencies take bold steps to change practice, attorneys are alert to these requirements, and judges exercise their powers to ensure that changes are made in social service practice.

The first step is to persuade social workers that finding and engaging relatives is a best practice and that congregate care is detrimental to children. Marc Cherna, the director of the Allegheny County Department of Human Services (now retired), emphasized relative place-

<sup>10</sup> Ahebee, S. “How informal adoptions became a mainstay of African American family life.” *The Pulse*, 1/14/22. Available at: <https://why.org/segments/how-informal-adoptions-became-a-mainstay-of-african-american-family-life/>. Fictive kin are non-family members who become accepted as kin by the family. They are not related by blood or by marriage.

<sup>11</sup> See, *supra*, footnote 3.

<sup>12</sup> *Id.*, section 3.

<sup>13</sup> P.L. 113-183.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Family First Prevention Services Act of 2018, Pub. L. 115-123.

<sup>19</sup> *Id.*

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ment as a goal. He said he started by “winning over the hearts and minds of the caseworkers.”<sup>20</sup> Thereafter, he had to convince the juvenile court judges as they were concerned about permanency, and most relatives did not want to adopt. He reported that skeptical judges found that kinship placements were better than stranger foster care or adoption.<sup>21</sup> By implementing his recommended changes, the county human services department reduced the number of children in congregate care from 650 to 120, and relative placements increased from 20% to 65% of all children removed from parental care.<sup>22</sup>

Since Director Cherna’s groundbreaking work, several other jurisdictions have changed practice by emphasizing relative placement and reducing congregate care. In Los Angeles County, over half of the county districts implemented a family finding protocol, which resulted in relative placement in over 80% of dependency cases after the court removed children from parental care.<sup>23</sup> Several counties in Pennsylvania and Omaha, Nebraska, reported similar results after their human services departments implemented family finding and engagement protocols.<sup>24</sup> Under the leadership of Judge Michael Sholley, Snyder County in Pennsylvania, a county with less than 40,000 residents, reduced foster care dramatically through the use of these practices. These model jurisdictions place children with relatives at more than twice the national rate of 32% of cases where the agency removes children from parental care.<sup>25</sup>

Judges and attorneys can play an important role in this process by working with the local director of social services and providing the director with materials about the dangers of congregate care and the importance of relative placement. They can inform the local social services director about jurisdictions that have successfully increased the numbers of children placed with their relatives. As a retired judge, I met with our local agency director who then invited representatives from the Los Angeles Department of Children and Family Services to give an all-day seminar on how they increased relative placement in that county. Our director invited all the local social workers to the seminar as well as other key persons in the juvenile dependency system. Our local social workers were enthusiastic about the family finding project. Social workers teaching social workers made the presentation much more persuasive than hearing about the program from judges and community leaders. Our current director has a contract to implement a family finding and engagement protocol in the county.

For social workers, the process of kinship placement starts with finding and engaging relatives. This family finding is recommended as a best practice by the Fostering Connections Act and must be completed within thirty days from the date of the removal from parental care.<sup>26</sup> Best practices include asking the parents, children, and relatives and using social media and search

20 Casey Family Programs. “How did Allegheny County advance a kin-first approach?” 4/9/19. Available at: <https://www.casey.org/kin-first-allegheny/>.

21 *Id.*

22 *Id.*

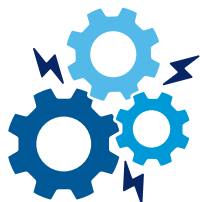
23 See, *supra*, footnote 6.

24 *Id.*

25 Edwards, L. “Relative Placement: The Best Answer for Our Foster Care System.” *Juvenile & Family Court Journal*, Vol. 69, No. 3 (2018) at pp 55-64, at p. 60. Available at: <http://judgeleonardedwards.com/docs/Relative-Placement-JFCJ-69-3-2018.pdf>.

26 See, *supra*, footnote 3, at section 103.

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engines to locate additional relatives.<sup>27</sup> One local agency in New Jersey produced excellent results by hiring a private investigator to find relatives.

The timing of placement is important. Children cannot wait for the long bureaucratic delays that many social services systems experience.<sup>28</sup> Delays in placement result in increased trauma for the child placed in out-of-home stranger care. Social workers should locate and engage relatives and complete the necessary steps for kinship placement immediately after or even before removal of the child.<sup>29</sup> Model counties have learned how to do background checks, house clearance, and waivers of minor crimes committed by household members in less than 24 hours,<sup>30</sup> making it possible to move the child from parental to relative care very quickly, sometimes in the same day.<sup>31</sup> California recently passed a law permitting judges to place with a relative “regardless of the status of any criminal record exemption or resource family approval, if the court has found that the placement does not pose a risk to the health and safety of the child.”<sup>32</sup> Statistics in Los Angeles County reveal that non-custodial parents (usually fathers) are the placement in approximately 19% of all cases. This placement increases the number of relatives known to the child.<sup>33</sup>

Social workers must explain the emergency nature of the family crisis to the relatives. Removing a child from parental care is traumatic for everyone involved, and relative participation may be more likely if they are engaged immediately and asked to participate in the family crisis. To contact them weeks after the removal may not persuade them of the necessity of their involvement since the child by that time is likely in foster care. Without explanation, relatives may not understand the long-term impact on the child when placed in stranger care, or their role in assisting the child. They may believe that foster care is an adequate placement during the reunification period.

Federal legislation recommends that the social worker or probation officer bring family members together to discuss the family crisis.<sup>34</sup> These meetings give the extended family the opportunity to problem-solve about the child. There are several models that the agency can employ, including family group conferences, family team meetings, and family group decision-making. When these models are most effective, they give the family members an opportunity to discuss the situation privately without a social worker or other state representative in the room with them, which may lead to greater transparency and more open discussions amongst the family.

Social workers also must inform the relatives about the visitation that will be available for the parents and other relatives should there be placement with a relative. Inadequate family time

27 The family finding and engagement model was developed by Kevin Campbell to address the needs of children and youth who lacked important connections and who were languishing in foster care. Using a search engine, family finding can locate relatives and kin quickly.

28 See Goldstein, J., Freud, A., & Solnit, A., *Beyond the Best Interests of the Child*, The Free Press, N.Y. 1973, 1979.

29 This can happen when the agency knows a warrant for the removal of a child has been issued by a judicial officer. See *supra*, footnote 3 at section 102.

30 Rejecting relatives because of old convictions has been an enduring problem in some states. See Newman, A., “They Wanted to Foster Their Great-Grandson. Why Did New York Say No?,” *New York Times*, 11/11/21. National, p.A12. Available at: <https://www.nytimes.com/2021/11/10/nyregion/foster-care-lawsuit-nyc.html>.

31 See, *supra*, footnote 6.

32 California Welfare and Institutions Code section 361.2. (West, 2022).

33 These statistics come from Los Angeles County.

34 See, *supra*, footnote 3 at section 3.

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is one of the failures in our foster care system. Parents and relatives too often have minimal contact with the child placed in foster care.<sup>35</sup> Relative placement enables the parents and other relatives to see the child in a more relaxed atmosphere.<sup>36</sup>

The role of the judge and attorneys starts at or before the first court hearing. The judge should make it clear that any interested relative should be invited to attend the hearing. In the hearing, the judge should question the social worker or probation officer about the steps they have taken to locate relatives and engage them in the placement decision-making. In every hearing the judge should ask what intensive and ongoing steps the agency has been making to identify a permanent placement for the child. By questioning about the search for relatives, the court and attorneys set the bar for future cases by letting the social workers know the court's expectations. The court and attorneys should also question the parents about available relatives and emphasize the importance of placing the child with relatives and avoiding placement with strangers.

The federal mandate for “intensive, ongoing, unsuccessful efforts” includes children already placed in congregate care.<sup>37</sup> Social workers must work with children placed in congregate care by using family finding and other search techniques to move them to a permanent placement, preferably relative care. Reconnecting these children with family may strengthen their family relationships and lead to a kinship placement. The New Jersey court system used this strategy to place many of their children in the dependency and delinquency systems living in congregate and foster care.<sup>38</sup>

### Conclusion

Congregate care is harmful for children and should be avoided in child welfare and juvenile justice cases. Studies reveal that relative care has the best long-term results for children removed from parental care. Social service agencies in several jurisdictions have implemented best practice protocols that place children with relatives over twice as frequently as the national average. Judges and attorneys can work with social service agencies to implement these protocols locally. Judges have a legal mandate to hold the agency accountable for their efforts to find a permanent placement for a child in congregate care. Our most at-risk children deserve the best placements we can identify, and the sooner these protocols are introduced, the better for those children and their families. ■

35 Edwards, *Reasonable Efforts: A Judicial Response*, 2nd Edition, NCJFCJ, Reno, NV, 2022, at pp. 62-71. (Family Time – Visitation).

36 See, *supra*, footnote 6.

37 See, *supra*, footnote 13.

38 The Orphans Project resulted in thousands of children finding permanent homes. Casey Family Programs. “Promising Court Practices: Strategies to Achieve Timely Permanency.” November 2009, at p. 10. Available at: [https://ocfcpacourts.us/wp-content/uploads/2020/06/Promising\\_Court\\_Practices\\_000408.pdf](https://ocfcpacourts.us/wp-content/uploads/2020/06/Promising_Court_Practices_000408.pdf).