

The Guardian

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The Urgency of Placing Children with Relatives

by Judge Leonard Edwards (ret.)



It is urgent that we take aggressive action to reduce the number of children placed in foster and congregate care and place them with relatives. This action is essential for the best interests of our most vulnerable children.

Across the country, states remove thousands of children from parental care each year because of allegations of abuse or neglect. Where should these children be placed? A hundred years ago almost all children were placed in congregate care, including orphanages and almshouses.¹ Policy makers convened at the White House in 1909 to settle a dispute as to whether congregate care or placement with a family was better for children. The attendees concluded that children removed from home should be placed with a family.² Foster care was born. However, it took most of the twentieth century for familial foster care to overtake congregate care as the preferred placement. In the past few decades, government policy has changed again. Relatives are now the preferred placement.³ Indeed, relatives are considered a permanent placement, and foster care and congregate care are not.⁴

The country has been slow to respond to the most recent changes in the law. Today most children are still placed in foster care (46%) while approximately 32% of children removed from parental care are placed with relatives. Another 10% are placed in group homes and institutions while the remaining children are in pre-adoptive homes, in supervised independent living, or have run away.⁵

1 Myers, J.E.B. *A History of Child Protection in America*, Xlibris, 2004, at 43-44.

2 *Id.* at 118-119.

3 Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

4 A permanent placement (return to parents, adoption, guardianship, and placement with relatives) is one which does not require court oversight.

5 Child Welfare Information Gateway, Numbers and Trends, March 2019 and see U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Adoption and Foster Care Analysis and Reporting System (AFCARS) Preliminary FY 2018 data as of August 22, 2010, No. 26. Available at: <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf>.



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Kinship Care – United States

Of all children (under 18) in care on 09/30/2019, what number and percent are placed in kinship care?⁶



State	Number	Percent	State	Number	Percent
Alabama	837	15%	Missouri	4,790	38%
Alaska	708	25%	Montana	1,616	44%
Arizona	6,417	48%	Nebraska	1,027	32%
Arkansas	941	23%	Nevada	1,838	41%
California	16,545	35%	New Hampshire	375	31%
Colorado	1,396	29%	New Jersey	1,566	35%
Connecticut	1,697	44%	New Mexico	556	24%
Delaware	50	9%	New York	4,216	27%
D.C.	173	26%	North Carolina	2,931	27%
Florida	9,945	42%	North Dakota	277	19%
Georgia	3,356	26%	Ohio	3,585	23%
Hawai'i	773	48%	Oklahoma	2,443	29%
Idaho	550	32%	Oregon	2,190	32%
Illinois	7,232	44%	Pennsylvania	5,961	49%
Indiana	5,221	33%	Rhode Island	811	37%
Iowa	2,209	37%	South Carolina	327	7%
Kansas	2,458	31%	South Dakota	456	27%
Kentucky	1,107	12%	Tennessee	1,167	13%
Louisiana	1,246	32%	Texas	9,788	31%
Maine	794	38%	Utah	736	32%
Maryland	1,576	43%	Vermont	297	24%
Massachusetts	2,349	24%	Virginia	309	7%
Michigan	4,556	40%	Washington	3,543	35%
Minnesota	3,516	43%	West Virginia	1,456	20%
Mississippi	1,245	31%	Wisconsin	2,934	38%
			Wyoming	282	29%

Reasons for Prioritizing Placement with Relatives

There are compelling reasons why placing children with relatives should be a high priority for social workers, attorneys, and judges, and that changes in the child welfare system to implement this goal should be made immediately. First, it is the law, both federal and state.⁷

⁶ This chart was prepared by Casey Family Programs. For further information contact Joan Smith at Casey Family Programs. (JSmith@casey.org)

⁷ Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

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Second, placement with relatives is a permanent placement unlike foster care and congregate care. Third, children placed with relatives will be able to spend more time with their parents and family members. Family time (visitation) in the majority of states is inadequate, often once or twice a week and sometimes even less.⁸ If children are placed with relatives, family time can be significantly increased and in a more relaxed atmosphere. For example, in Allegheny County, Pennsylvania, the Director of Placement services stated:

Because we place so many children with relatives, we are able to provide more visitation between parents and their children.⁹

As Regional Administrator, Jennifer Lopez, of the Santa Fe Springs Office in Los Angeles stated:

Because we place so many children with relatives, we are able to be much more flexible with visitation. The parents are able to see their children much more than if the children were placed in foster care. Also, it is much less traumatic for the children and a lot of the fathers who are non-offending have the opportunity to be in their children's lives.¹⁰

Fourth, when family time takes place in the homes of relatives, some time-consuming social worker duties are reduced. No longer does the social worker have to transport parents and the child and supervise the visits. Again, Jennifer Lopez comments:

It saves them lots of time. It also saves them time when they are placing, they don't have to spend hours upon hours looking for foster homes, and driving all over the County as many of the foster homes found are very far away and can take over two hours just to get there. Usually relatives can arrange the visits. In a very small amount of cases, the family members still prefer DFCS to set up the visits as they don't want any problems with the visits. And still the greatest part of this approach is that it brings less trauma and sadness to children who have to be removed, when they are put with familiar faces.¹¹

Fifth, placing a child in foster care or congregate care can have a significantly detrimental effect on that child throughout the child's life. Research now demonstrates that placement in foster care and congregate care have lifetime negative effects on children. Over their lifetime these children will have poorer physical and mental health outcomes and will die sooner than children at home or with relatives.¹²

One study followed over 160,000 children who were placed in non-parental care for a period during their childhood. The researchers followed their lives for thirty years. One of their

⁸ Hess, P.M. & Proch, K., "How States Regulate Parent-Child Visiting," *Public Welfare*, Vol. 64 (1986) at p. 12; see the report of psychologists Amal Barkouki, Ph.D. and William Winter, Ph.D. found in Edwards, L., *Reasonable Efforts: A Judicial Response* at p. 415 (found online at judgeleonardedwards.com).

⁹ Email from Dr. Sharon McDaniel. A copy is available from the author.

¹⁰ Email from Jennifer Lopez. A copy is available from the author.

¹¹ A second email from Jennifer Lopez. A copy is available from the author.

¹² 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.

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conclusions was that children who were placed in out-of-home care reported worse health than children who grew up in a family environment. The authors conclude that “... when non-parental care is required, priority be given to non-residential care, especially the child’s extended relatives and friends.”¹³

Other studies confirm the poor health outcomes for the children placed in stranger care. These children have been found to have higher levels of emotional, psychological, and behavioral problems, such as poor well-being, conduct disorder, attention disorder, aggressiveness, depression, and psychopathology.¹⁴

Two other studies conclude that children in stranger care are, on average, more likely to die earlier than average in their adult lives. One study followed over 353,000 children who were once in care 42 years later. They concluded that these adults on average had a higher risk of mortality long after they had left care, mainly from unnatural causes.¹⁵

Another study followed over 15,000 children for 60 years, 9% of whom had been placed in out-of-home care during their childhood. The study found that children in out-of-home care constitute a high-risk group for subsequent mortality. The study also found elevated risk of mortality was particularly pronounced among those who were placed during adolescence and/or because of their own behaviors. Children who were exposed to out-of-home care had increased likelihood of mortality when compared to those who grew up under similar living conditions but did not experience placement.¹⁶

Recommendations to Increase Relative Placements

Several jurisdictions have demonstrated that relative placement can be dramatically increased through the use of upfront family finding and improved social worker practice. Examples include portions of Los Angeles County, Allegheny County and several other counties in Pennsylvania, and Omaha, Nebraska. Using upfront family finding and accelerated procedures including background checks and waivers, relative placements can be made in a few days rather than weeks or months. These jurisdictions place from 70 – 90% of children with their relatives.¹⁷ The details of the process are described in the cited articles.¹⁸

13 *Id.* at p. 6.

14 McCann JB, J., Wilson, A, Dunn, G., “Prevalence of psychiatric disorders in young people in the care system,” *BMJ*, 1996; 313:1529-30; McMillen JC., Zima, TB, Scott, D.L., et. al. “Prevalence of psychiatric disorders among older youths in the foster care system. *J. Am. Acad. Sci. Child Adolescent Psychiatry*, 2005; 44:88-95.

15 Berlin, M., Vinnerljung, B., Hjern, A., “School performance in primary school and psychosocial problems in young adulthood among care leavers from long term foster care,” *Child Youth Serv. Rev.* 2011, 33: 2489-97; Leslie, I.K., Landsverk J., Ezzer-Lofstrom, R. Tschann, J.M., Slymen, D.J., Garland, A.F., “Children in foster care: Factors influencing out-patient mental health service use,” *Child Abuse Negl.* 2000, 24: 465-76.

16 Gao, M., Brannstrom, L., Almquist, Y., “Exposure to out-of-home care in childhood and adult all-cause mortality: a cohort study,” *International Journal of Epidemiology*, 2016, 1-8; McCann, J.B., Wilson, S., Dunn, G. “Prevalence of psychiatric disorders in young people in the care system,” *BMJ*, 1996, 313:1 529-530.

17 Month by month placement data from ten of the nineteen Los Angeles’ regions is available from the author.

18 Edwards, L., “Relative Placement: The Best Answer for Our Foster Care System,” Winter 2018, *The Bench*, the official magazine of the California Judges Association at pp. 6, 21-23; Edwards, L., “Relative Placement: The Best Answer for Our Foster Care System,” *Juvenile and Family Court Journal*, Vol 69 No 3, 2018 National Council of Juvenile and Family Court Judges.

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Family Finding was highlighted in the Fostering Connections Act as a best practice.¹⁹ The Family Finding model, developed by social worker and family advocate Kevin A. Campbell, offers methods and strategies to locate and engage relatives of children who have been removed from parental care. The goal of Family Finding is to connect each child to the child's own family, so that every child may benefit from the lifelong connections that only a family can provide. Kevin Campbell has written:

- 1) Every child has a family, and they can be found if we try;
- 2) Loneliness can be devastating, even dangerous, and is experienced by most children in out-of-home care;
- 3) A meaningful connection to family helps a child develop a sense of belonging, and
- 4) The single factor most closely associated with positive outcomes for children is meaningful, lifelong connections to family.²⁰

The federal law is clear:

...within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence.²¹

The removal of a child from parental care is a traumatic event in that child's life – a trauma that children remember, regardless of age, throughout their lifetime.²² It should be treated similarly to the response of health care providers when an injured person is admitted to a hospital. It is an emergency. The model jurisdictions listed above recognize this fact. They do not wait for thirty days. Instead, they work on a relative placement immediately, completing background checks in hours, securing waivers for minor criminality, and checking out the relative's homes quickly.²³ The faster they work, the less trauma for a child being placed with strangers.²⁴

To monitor the activities of the local social service agency, judges, attorneys, and advocates should consider whether the agency has exercised “due diligence” to identify and notice the child's relatives and should urge the agency to do so immediately.²⁵ The judge and attorneys

19 Public Law No: 110-351, §102(a)(2).

20 <http://www.familyfinding.org/moreaboutfamilyfinding.html>

21 Pub. L. No. 110-351, § 103 (Oct. 7, 2008) 122 Stat. 3949, 3956, codified at 42 U.S.C. § 671(a)(29). In California the court rule is as follows: Rule 5.637. Family Finding (§§ 309(e), 628(d)): “(a) Within 30 days of a child's removal from the home of his or her parent or guardian, if the child is in or at risk of entering foster care, the social worker or probation officer must use due diligence in conducting an investigation to identify, locate, and notify all the child's adult relatives; (b) The social worker or probation officer is not required to notify a relative whose personal history of family or domestic violence would make notification inappropriate.”

22 On the trauma experienced by a child removed from home see Church, C., Mitchell, M., & Sankaran, V. (2019). “A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families,” 102 *Marq. L. Rev.* 1163.

23 Edwards, L., *op.cit.* footnote 18.

24 *Op.cit.* footnote 22.

25 *Op.cit.*, footnote 18.

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should ask if the agency has used family finding to identify relatives. Efforts to identify and notice relatives should begin immediately when a child has been removed from parental care. If the agency knows they will be removing a child, the work should begin. Failure to do so may be a violation of the reasonable efforts mandates to prevent removal, facilitate reunification, and achieve timely permanency.

Failure to act immediately or waiting even 30 days to contact family members risks those relatives concluding that the child is in a safe home (a foster home) and that their intervention is not necessary. If, however, the relative learns that the removal is an emergency and that the best interests of the child is placement with a relative, the relative may be more likely to accept placement. That has certainly been the experience of the model counties listed above.

If the child is a newborn or an infant, that often presents another problem. After months of court proceedings during the reunification period, the foster family may decide that they want to adopt the child, leading to emotional and difficult court hearings where a judge must decide who will gain custody. Considering the child's needs for a family placement, social workers should be acting quickly and efficiently to engage and place young children with family members.

The conclusion seems clear. The child welfare system must take aggressive, proactive steps to increase relative outreach and placements immediately upon removal from parental care. The best practice is to start the investigation process before the actual removal occurs. The judge must be prepared to hold the agency accountable for using due diligence to identify, notice, and engage relatives and to monitor agency actions to ensure they are timely. Best practices are to insist that social worker reports contain information about relatives the social worker has contacted and their responses and inquire of social workers if they used family finding to locate and notice any absent parent and relatives. The 'reasonable efforts' to prevent removal and facilitate reunification are tools the court can use to ensure agency compliance.²⁶ ■

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²⁶ See Edwards, L., "Reasonable Efforts: Let's Raise the Bar," *The Guardian*, a publication of the National Association of Counsel for Children (NACC), Vol 42 No 01 Spring 2020.