FAMILIES OVER FACILITIES:

ENDING THE USE OF HARMFUL AND UNNECESSARY INSTITUTIONS AND OTHER GROUP FACILITIES IN CHILD WELFARE SYSTEMS

CHILDREN'S RIGHTS

PROTECTING KIDS.
PROVIDING HOPE.

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March 2, 2021

For Children's Rights and our partners, putting together Families over Facilities was truly a labor of love—for the over 40,000 thousand children living right now in institutions and other group facilities instead of loving homes.

This report is endorsed by esteemed child advocates and thought leaders. It provides tools for state child welfare agencies, advocates, case workers, educators, nonprofits, service providers, and thought leaders in all child serving sectors and at every level of government, to end the unnecessary institutionalization of children in our nation's child welfare system.

The time to fix this is now. As we awaken to the profound racism in our systems, the burden of institutionalization—including continuing reports of abuse and dangerous conditions—falls disproportionately on Black children. As the public health crisis of COVID-19 roars on, institutions and other group facilities remain inherently dangerous places for children and the adults who care for them. And new federal child welfare laws clearly recognize the importance of family preservation and prioritizing families over facilities.

And it is a fixable problem. Connecticut, for example, has dramatically reduced its use of institutional care. It did so by adopting many of the practices outlined here, including providing preventive services that keep families together and kids out of foster care in the first place and by dramatically increasing the number of children in the system living with relatives.

Families over Facilities sends a message of hope. We can stop the physical, mental and emotional harm done to children unnecessarily housed in institutions. We can stop wasting the billions of taxpayer dollars it costs to keep them there. And we can put an end to practices that violate civil and human rights laws.

My thanks to everyone involved in producing Families over Facilities. It is my privilege to share it with you.

Sincerely,

Sandy Santana
Executive Director
Children's Rights

PART I

DECLARATION OF URGENCY

Introduction

All children deserve the opportunity to grow up in a safe, loving family. Yet the unnecessary placement of children in institutions and other group settings is one of the most pernicious ways that the foster care system itself inflicts violence on children. Institutional care imposes significant human and economic costs and may violate children's civil and human rights. Youth of color, especially Black children, heavily bear these costs because they are disproportionately investigated by child protective services, removed from their families into foster care, and placed in institutional settings. Amidst an overdue urgency to achieve racial equity, a continuing COVID-19 pandemic that renders group settings inherently dangerous, and an explosion of reports of violent and dangerous conditions in these settings, we believe the time is now for child welfare systems to support families over facilities.

As defined here, institutional and group care includes out-of-home foster care placements that are in a setting other than a family home. This includes all group homes, therapeutic group homes, residential treatment facilities, qualified residential treatment facilities, shelters, assessment centers, institutions, or any other "congregate care" setting. In some circumstances, a highly time-limited treatment facility is appropriate to address an acute medical condition, and providers of such care are a necessary part of the system. However, these medically necessary, often lifesaving stays are meant to be physical or mental health *treatments*, not residential *placements*, and therefore are excluded from the institutional and group care settings identified as unnecessary and harmful here.[1] Additionally, any system that fully implements a value proposition to end the use of institutional and group facilities should permit exceptions for older youth already living in such placements who, fully informed and exercising their agency, clearly express their desire to remain in these settings until emancipation.

In terms of human costs, institutional care exposes youth to numerous harms that cause them to deteriorate physically, mentally, and emotionally. Harms include the use of physical and chemical restraints and seclusion; physical and sexual abuse (by staff or child-on-child); punitive rather than trauma-informed, supportive environments; deprivation of family relationships; diminished opportunity for a permanent family; children shipped out of state or far from their community; longer lengths of stay in the system; inadequate education; profound stigmatization; loss of identity; and loneliness. Institutionalized children are denied long-term relationships with trusted adults, which are critical to normal brain development, especially for children with adverse childhood experiences (ACEs). Institutional and other group settings also contribute to the child sex trafficking pipeline, the foster care-to-prison pipeline, and other grave outcomes when youth exit state care, including homelessness, untreated mental illness, and unemployment.

Institutional care also carries significant unnecessary financial costs. Housing children in facilities costs up to *ten times* more than supporting a child in a family. This cost difference can instead be reinvested in services to prevent removal and in community-based services to support youth in family foster homes (preferably with relative/kinship homes). The use of institutional and other group care in child welfare systems imposes *billions* of dollars in indirect costs associated with the abysmal outcomes when youth housed in group facilities "age out" or exit state custody.

Institutional care may also violate children's legal rights in numerous ways. For example, unnecessary institutionalization and dangerous conditions are liberty deprivations that may violate children's constitutional substantive

IN 2019, AT ANY GIVEN TIME THERE WERE APPROXIMATELY

42,823

CHILDREN HOUSED IN INSTITUTIONAL AND GROUP CARE SETTINGS

OLDER YOUTH (AGES 14 TO 17) MAKE UP

64%

OF THE INSTITUTIONAL AND GROUP FACILITIES POPULATION

HOUSING CHILDREN IN FACILITIES COSTS UP TO

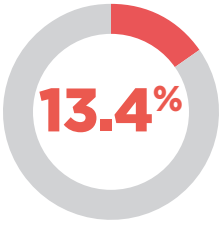
10 TIMES MORE

THAN SUPPORTING A CHILD IN A FAMILY

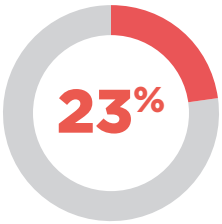
BLACK CHILDREN ARE OVER-REPRESENTED

IN FOSTER CARE, GENERALLY, AS WELL AS IN INSTITUTIONAL AND GROUP CARE.

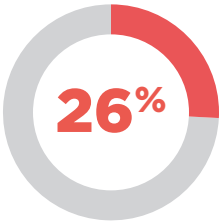
BLACK CHILDREN COMPRISE



OF THE GENERAL U.S. POPULATION OF YOUTH UNDER 18 YEARS OLD



OF THE TOTAL FOSTER CARE POPULATION



OF THE TOTAL INSTITUTIONS AND GROUP FACILITIES POPULATION

due process rights. The destruction of family relationships common to these settings implicates the constitutional right to family integrity. The intentional imposition of institutional housing and harmful conditions on Black youth implicates constitutional rights to equal protection and rights under Title VI of the Civil Rights Act. The unnecessary institutionalization of disabled youth and the failure to provide housing and treatment in integrated community settings implicates the Americans with Disabilities Act. Longstanding and recent federal child welfare laws require placement in the least restrictive, most family-like, and connected setting and set clear expectations for restricting group care. Ignoring these expectations informs the possible violation of legal duties. Children's educational rights are also implicated by poor education practices imposed on children in institutional and group settings. The known harmful conditions of institutional care also implicate international human rights.

Despite the litany of reasons to end the harmful use of institutional and other group facilities, these placements are still used with alarming frequency. In 2019, at any given time approximately 423,997 children in the U.S. were in foster care, including 42,823 children (10%) housed in institutional and group care settings.[2] Jurisdiction-specific utilization of institutions or other group facilities ranges anywhere from 4% to 39%.[3] Black children are overrepresented in foster care, generally, as well as in institutional and group care. Black children comprise 13.4% of the general U.S. population of youth under 18 years old, 23% of the total foster care population, and 26% of the total institutional and group facilities population.[4] Older youth (ages 14 to 17) comprise 20% of the total foster care population, yet they make up 64% of the institutional and group facilities population.[5] Racial disproportionality emerges again here, with Black older youth comprising 29% of older youth in institutional and group facilities.[6] LGBTQ+ youth are also over represented in foster care and disproportionately placed in institutions and group facilities.[7] Studies show that as many as 1 in 3 youth in foster care identify as LGBTQ+.[8] The risks to Black LGBTQ+ youth associated with institutional care are dangerously compounded as a result of their intersectional identities.

Why Now?

New Federal Law. The Family First Prevention Services Act (FFPSA), which became law in 2018, presents an important opportunity to greatly restrict institutional and other group care by ending federal funding for most non-therapeutic group care and providing new funding streams for family and community-based services. State agencies must implement the FFPSA by October 1, 2021. Notably, the FFPSA allows funding for qualified residential treatment programs (QRTPs). QRTPs provide trauma-informed *treatment* to address the clinical needs of children with serious emotional or behavioral disorders or disturbances.[9] Children must receive an assessment demonstrating a need to receive treatment in a residential setting.[10] Agencies should use QRTPs as time-limited *treatment*, not *placements*. Importantly, agencies must not use federal funding to sustain the status quo by simply adding a "Q" to "RTP" and converting existing group care facilities into QRTPs. If agencies and their providers utilize robust assessment tools and other guardrails with fidelity, the implementation of the FFPSA will be a positive step forward and will minimize the risk of the exception swallowing the rule. True QRTPs are a necessary part of the continuum of care and, when used for time-limited treatments, are excluded from the unnecessary and harmful institutional and group care settings described here.

A National Moment of Reckoning to Disrupt Structural Racism. During the last year, outrage over longstanding structural racism in society has swept the nation. The recent death of Cornelius Fredrick, a sixteen-year-old Black youth, who was killed by a prolonged 12-minute face-down restraint hold in a facility—a horrific image caught on video similar to the killing of George Floyd—underscores the urgency to provide all foster youth, disproportionately Black youth, with safe, supportive housing and the opportunity to have a loving family.[11] Now is the time to accelerate efforts to end structural racism in child welfare, including the use of institutions and group facilities.

Heightened Urgency Arising from the COVID-19 Pandemic. The COVID-19 pandemic imposes health risks on youth in facilities that require immediate action. Even as dormitories, juvenile justice facilities, and other co-living environments in the U.S. have been de-populated, youth in the custody of child welfare agencies continue to live in unsafe institutions and group environments which place youth at an unreasonably high risk of exposure. Sustained social distancing and adequate protection from exposure are nearly impossible in institutions and group facilities due to the inherent proximity of group housing conditions (e.g., sleeping, eating, recreation), agencies' movement of youth in and out of facilities, various staff working in shifts, and the inconsistent use of personal protective equipment.[12] Moreover, as state child welfare systems dramatically reduced their in-person visitation and inspection practices for group facilities amidst the pandemic in 2020, system leaders should be hyper-vigilant *right now* to address risks of unaddressed dangerous physical conditions and supervision practices.

Recent Explosion of Reports of Shocking Conditions in Institutions and Other Group Facilities. Reports of egregious abuses and dangerous conditions in institutions and group facilities have proliferated across the country. A recent investigation described extensive maltreatment of youth in institutions and group homes operated by the for-profit provider Sequel Youth & Family Services in more than 40 states, including physical violence, sexual assault, dangerous restraints, and degrading behavioral rules.[13] An investigation into Michigan Sequel facilities after Cornelius Fredrick's murder revealed dozens of illegal physical

restraints that had likely been occurring for years.[14] Another investigation into a Sequel facility in Alabama showed children living in squalid conditions, with broken windows and human fecal matter on the floors of bedrooms.[15] An investigation into group home facilities along the U.S.-Mexico border housing refugee children run by the Department of Health and Human Services' Office of Refugee Resettlement revealed hundreds of reports of sexual assault.[16] A federal court in Iowa struck down the use of a brutal 14-point physical restraint device at a state-run institution for justice-involved children, equating it to torture.[17] These examples are not exhaustive.

Abuses like these coupled with a heightened awareness of structural racism in government systems (including child welfare) and the health risks of the COVID-19 pandemic must catalyze efforts to finally end the use of harmful and unnecessary institutions and other group facilities in child welfare systems. The current national push to rapidly depopulate secure juvenile justice facilities is grounded on many of the same concerns about the human and economic costs of institutional housing for children in child welfare systems laid out in this report, yet real change on the child welfare side has been elusive.[18]

> "There's no sense of family or love.
>
> **Maegan Soll***

THE HUMAN COST

The clinical literature reveals that institutions and group facility placements are inherently harmful to children.[19] They deprive children of meaningful relationships with adults, which is particularly devastating for children who have endured adverse childhood experiences or "ACEs." Facilities expose children to significantly higher rates of physical and sexual violence and maltreatment than those placed in family settings, as well as dangerous restraint and seclusion practices.[20] Facilities are also known pipelines for sex trafficking and incarceration.[21] Compared to children placed in the care of families, children in institutions and group facilities have been found to be less likely to graduate from high school and to be more than twice as likely to be arrested.[22] The experience of living in institutions and group facilities itself is thus tantamount to an ACE. Because of the racial disparities in placements at institutions and other group facilities, children of color, especially Black children, disproportionally suffer the consequences of these ACEs.

*Quotations in the Declaration were provided by young people with lived experience in institutions and other group facilities around the country.

Adverse Childhood Experiences and Their Impact

Psychologists have identified ACEs as specific traumatic events that occur in childhood.[23] Examples of ACEs include actual abuse and physical neglect[24] as well as the trauma of removal from home. ACEs can be single, acute events or sustained over time.[25] Children who endure ACEs experience a unique type of stress known as toxic stress, altering their brain development, creating a number of other negative health consequences, and dramatically reducing life expectancy by up to 20 years.[26] Studies have linked ACEs to chronic physical and mental health problems in adulthood.[27] As the number of ACEs a child experiences increases, so does the likelihood they will suffer from the following health outcomes: heart disease, liver disease, depression, illicit drug use, alcoholism and alcohol abuse, intimate partner violence, sexually transmitted diseases, smoking, suicide attempts, fetal death, and unintended pregnancies.[28]

Relationships with "Buffering" Adults Are Critical

Critically, however, the literature indicates that ACEs and their consequential negative health outcomes can be prevented and remediated.[29] A relationship with a "buffering" and supportive adult is widely recognized to be effective in mitigating the toxic stress from an ACE.[30] With a buffering relationship, youth with ACEs may never experience the consequences of ACEs. For all children, one of the most important factors for healthy development is the ability to form a meaningful relationship with a trusted adult,[31] and this is especially true for children who have experienced ACEs.

For most children, this buffering adult is a parent. For children in foster care, adults in a relative or other family home placement may fill this role. These relationships are key to a child's healthy emotional, psychological, and brain development. Without them, youth are at a much greater risk of a host of health issues.[32] In addition, through relationships with stable parents or other adult caregivers, children learn how to build and maintain trusting relationships, develop skills of self-reliance, follow rules, and evaluate and avoid dangerous risks.[33] The benefits of family relationships extend into adulthood and affect how children as adults will treat their own children.[34]

> I could never get an adult ally or my friends on the approved list to call, but I could send and receive mail. So I wrote letters to everyone who would write me back. I literally had shoeboxes full of them. But, when my therapist found out, she wanted me to give them to her. I destroyed them to protect my privacy. I lost all of those connections to all those people.
>
> **Kayla**

I lost my mother when I was in care, and they held it from me for like two days. The CEO called me to make sure I wasn't going to act out or become a problem. I was 12 or 13. He was more concerned about how I was going to act, than if I was emotionally there.

Dameon Caldwell

I got to tell you, some of the elaborate things that I would come up with to hide the fact that I was in a group home are just so absurd. It really, really affected to the absolute core, my truthfulness, my ability to just be honest with people about what was going on.

Jordan Thompson

Institutional Care Inhibits Relationships with Buffering Adults and Creates New ACEs

Institutions and other group facilities inhibit youth from developing critical "buffering" relationships. They deprive children of the individualized nurturing that experts insist is essential.[35] Youth in institutions and group facilities are often separated from siblings and isolated from friends, family, and any semblance of a familiar environment, and they are often left without their usual community, school, and neighborhood environments and routines.[36] Youth may experience a variety of negative stressors, including low caregiver investment, high child-to-caregiver ratios, and regimented and non-individualized care.[37] They may also experience limited access to language and cognitive stimulation, insufficient caregiving, reduced interaction with adults, and a lack of normal relationships with caregivers due to shift work necessary in institutions and other group facilities.[38] To the extent meaningful relationships between youth and institutional or group facility staff develop, they necessarily terminate when a youth leaves the facility. These troubling features are inherent to the institutional and group facility model and cannot be avoided. In contrast, youth who are able to make and maintain a relationship with a supportive adult in a family environment are less likely to experience the harms associated with ACEs than children in institutions and group facility placements.[39]

Mental health professionals have warned that the lack of relationships reduces social connection and increases loneliness. This results in poorer physical health and can reduce life expectancy.[40] "Lacking social connection carries a risk that is comparable, and in many cases, exceeds that of other well-accepted risk factors, including smoking up to 15 cigarettes per day, obesity, physical inactivity, and air pollution."[41] The lack of a social connection causes chronic stress that elevates cortisol levels.[42] Elevated cortisol results in increased inflammation in the body, damages blood vessels and other tissues, and increases the risk of heart disease, diabetes, joint disease, depression, obesity, and premature death. Toxic stress arising from loneliness also affects the prefrontal cortex, altering emotional regulation, decision-making, planning, analysis, and abstract thinking.[43]

At the same time, institutions and group facilities expose youth to additional ACEs, triggering the identical toxic stress and health consequences that might arise from experiencing abuse, neglect, or removal, in turn compounding the impact of any prior ACEs.

Restraints, Seclusion, and Other Maltreatment in Institutions and Group Facilities

The overall rate of maltreatment of children while in foster care custody—which includes harms from abuse, neglect, or negligent supervision—is significantly higher for children placed in institutions and other group facilities than for children placed in family settings.[44] The physical abuse rates in residential care facilities in one study was almost *double* that of family foster care and *triple* that of the general population of adolescents of the same age.[45]

Many institutions and group facilities continue to use dangerous restraints and seclusion practices on youth in their care, even though many states highly regulate these two practices. These practices harm youth in

foster care physically and emotionally—especially those with trauma histories and other mental health issues.

Physical restraints are dangerous. Many restraint practices used in institutions and group facility settings can cause positional asphyxia, cardiac arrest, aspiration, agitated or excited delirium, cardiac arrhythmia, hyperpyrexia, or death.[46] It is extremely difficult to ensure a young person's safety during restraints.[47] A prolonged facedown restraint hold recently killed 16-year old Cornelius Fredrick in a Michigan facility. Despite these known dangers, institutions and group facility placements frequently subject youth to restraints.[48]

Restraint use is an ACE. Their use is traumatic and may trigger past traumas,[49] and they often traumatize those who witness the restraint.[50] Research conclusively rejects the premise that restraints are necessary for young people in crisis, as they lack therapeutic value.[51] In 2020, a U.S. federal court found that the use of a particularly harmful 14-point prone restraint called "the wrap" in a secure juvenile detention facility violated the constitutional rights of youth and the UN Convention Against Torture.[52]

Solitary confinement—sometimes called "seclusion," "isolation," or "room confinement"—continues to be used in many institutions and group facility settings.[53] Solitary confinement's psychopathological effects include perceptual distortions, illusions, and hallucinations; affective disturbances like intense anxiety and panic attacks; trouble thinking, concentrating, and recalling information; obsessive, intrusive thoughts; and impulsive violence that can be self-directed or directed outward.[54] In young people, these effects are further heightened. Given the effects of acute stress caused by solitary confinement on the developing brain, young people experiencing solitary confinement struggle to maintain goal-directed behavior and instead resort to emotion-driven behavior.[55] A number of prominent groups, including the American Psychological Association,[56] American Medical Association,[57] and American Academy of Child and Adolescent Psychiatry[58] have called for the total elimination of punitive solitary confinement.

Chemical restraints—in the form of psychotropic drugs—are also common in institutions and other group facilities. In such placements, it is common for nearly half of the resident youth to be prescribed at least one psychotropic drug.[59] Data from a National Survey on Child and Adolescent Well-Being, funded and administered by the federal Department of Health and Human Services, found that youth in group settings were most likely to be prescribed psychotropics (67.4%), compared to less than a quarter of children in other foster care settings (15.9% to 23.8%), children who remained in their own homes (10.9%), and informal kin care (11.9%). The precise figures depended on the amount of time the youth had been in the foster care system, but this overall pattern held true for three years after the investigation for child abuse and neglect that brought them into the foster care system.[60]

While psychotropic medications are appropriate in certain circumstances, they are also associated with severe and long-term side effects and are dangerous if not carefully prescribed and monitored.[61] Polypharmacy—the use of two or more psychotropic drugs—is especially risky. Little research supports the safety and efficacy of concurrent psychotropic medications in youth.[62] Yet, at least one study has found that 48% of youth experiencing polypharmacy in a residential program were taking three or more psychotropic medications;[63] another found that approximately 15% of youth in institutional or other group facilities were taking four or more psychotropic medications concurrently.[64] One study found large discrepancies between the percentage of youth in institutional or other group facilities taking, for example, anti-depressants (61.6%) and the percentage of youth with a diagnosed mood disorder for which anti-depressants would typically be prescribed (47.1%), indicating

> I was struggling to learn English. I had a hard time being understood. I thought I would be heard more if I yelled, but it was interpreted as angry. I was 8 years old. They would take you to a separate room. You would be there and 5 staff would stay until you were done.
>
> **Anonymous**

NEARLY HALF

OF RESIDENT YOUTH WERE PRESCRIBED

AT LEAST ONE PSYCHOTROPIC DRUG

> That was also the "cool down method"—someone sits on you, or holds your arms down until you stop fighting. They are threatening you the whole time. I was 9 or 10 and just didn't know how to calm myself down and didn't understand my anger. I would get restrained all the time.
>
> **Anonymous**

> Group homes felt like punishment for being born in the wrong place at the wrong time to the wrong people and I treated myself like someone who didn't deserve anything good because that's what I believed. Group homes created an environment that encouraged and normalized crime, violence, aggression, pain, and isolation. You can't heal in group homes.
>
> **Anonymous**

that youth were being prescribed medications without a diagnosed condition.[65] Discrepancies like these are also concerning because of the serious adverse effects that have been identified with psychotropic medications, including cardiac problems, severe weight gain, gastrointestinal problems, potential for drug-to-drug interactions, and risks of fatal overdose.[66]

Institutions and Group Facilities Feed the Sex Trafficking Pipeline

50-80%

OF SEX TRAFFICKING VICTIMS

HAD PRIOR INTERACTION WITH THE CHILD WELFARE SYSTEM

In 2019, nearly 15,000 victims of sex trafficking were identified in the United States.[67] Most of these victims were first trafficked between the ages of 15 and 17.[68] One study suggests that 50-80% of these victims had prior interaction with the child welfare system and that many were recruited directly out of institutions and group facilities.[69] Traffickers are aware that adolescents in institutions and group facilities are vulnerable and prey on that vulnerability.[70] When a trafficking victim is identified or rescued, "safe harbor" laws appropriately divert victims away from the criminal justice system, and adolescent victims are often referred to the child welfare system.[71] However, sex trafficking survivors are often placed in institutions and group facilities, creating a revolving door of victimization.[72]

Sex trafficking victims have complex needs that institutions and group facilities often cannot meet. Victims have often endured physical and sexual abuse at the hands of their traffickers and may have STIs and/or HIV.[73] Victims may be found in a state of malnutrition with related health complications.[74] Many victims have drug or alcohol dependencies either because their trafficker controlled them with drugs and alcohol or as a coping mechanism.[75] Victims commonly need sustained mental health services and many experience PTSD.[76] Victims may be part of ongoing criminal proceedings against their traffickers and may have a need for increased security. In addition to heightened physical and mental health needs, victims often need assistance with their education and basic life skills.[77] Institutions and group facilities are unable to provide these uniquely traumatized children with the nurturing and supportive environment that they so desperately need to heal.[78]

Institutions and Group Facilities Feed the Foster Care-to-Prison Pipeline

The "Foster Care-to-Prison Pipeline" is a recognized phenomenon within child welfare.[79] Current and former foster youth are much more likely to face incarceration than their peers who did not spend time in foster care.[80] A recent survey found as many as a quarter of people in prisons spent time in foster care.[81] Institutions and group facility placements exacerbate this problem for foster youth. For example, one study found that youth who have a single placement in an institution or other group facility were *two and a half times* more likely to be arrested than youth in other foster care placements.[82] Undertrained staff in institutions and other group facilities often lean on law enforcement as a means of behavior control, when similar behaviors would not result in law enforcement intervention for a youth in a family home.[83]

> A life of crime is normalized. It was so ingrained in us about what life is like in jail and institutions. Any other kind of life did not feel like an option.
>
> **Anonymous**

Institutions and Group Facilities Frequently Impede Education and Normalcy for Youth

Whether taught on-site at the facility or off-site in a community school, youth in institutions and group facilities often experience severely diminished access to education. Within on-site educational systems, structural deficiencies abound. For example, youth in different grades may share classrooms.[84] Daily assignments often consist of worksheets and videos, not structured lesson plans by qualified teachers.[85] Often, only the bare minimum core curricula are available, denying youth the opportunity to participate in elective courses that may be available in a community school.[86] At times, the community school districts refuse to honor academic credit earned by the youth at the on-site school, delaying or preventing graduation.[87] Youth also lack access to regular school activities, such as team sports, music, art programs, and social events—all normal adolescent activities.[88] These deprivations delay their learning and deny youth basic childhood opportunities to support their well-being.

Institutionalized youth who attend school in the community also face hurdles. They are frequently not permitted to attend social events or participate in team sports due to licensing regulations and supervision standards which would, conversely, not apply to a foster child living in a family foster home under the flexible "prudent parent standard."[89] Under this standard, a foster parent may permit a foster child to "have regular, ongoing opportunities to engage in age or developmentally-

> I'm really struggling to think of one kid that I grew up with that did not end up in a jail cell. You see this endless cycle…I was like 15/16 when I realized the staff are not helping these kids.
>
> **Jordan Thompson**

> All the teachers at my high school really knew me. I was kind of a teacher's pet. They were there to lift me up when I fell down. I feel like I wasn't as successful as possible in college simply because I didn't have the guidance from my high school teachers once I went to a group home.
>
> **Justin Kidder**

appropriate activities."[90] This parenting flexibility gives children in foster family homes the ability, for example, to sleep at a friend's house without additional background checks and fingerprinting. It allows youth to travel with a sports team without notifying the child welfare agency in the neighboring county.

Institutions and group facilities do not typically apply prudent parenting standards.[91] Thus, families, rather than facilities, provide an opportunity to engage in age-appropriate socialization and extra-curricular activities that are crucially important to a young person's education and development.

Institutions and Group Facilities Often Deny Children the Opportunity for a Permanent Home

If a child absolutely must be removed, a core purpose of child welfare is to take proactive steps to achieve rapid, safe "permanency"—a permanent family home through reunification or with another relative, or other family home (such as through guardianship or adoption).[92] Children housed in institutional and group care settings have worse prospects for permanency than those raised in families.[93] Research also indicates that the quality of permanency planning in institutions and group facilities is often deficient, due to negative stereotyping by institutional and group facility staff who may view permanency as unrealistic, and a lack of communication between agency caseworkers and those staff.[94] In addition, youth in institutions and group facilities have reported relatively low levels of involvement in the permanency planning process, further impeding progress.[95] Additional logistical obstacles, such as long distances and a lack of transportation between families, communities, and institutional and group facility settings, impede family connections.[96] Multiple studies show that Black children suffer the consequences of these issues at higher rates: they are less likely to reunite with their families, experience greater placement instability, and spend a longer time in foster care before achieving some form of permanency than white children.[97]

Ultimately, there can be no dispute that institutions and group facilities impose a grave human cost and hinder the safety, well-being, permanency, and overall social and emotional development of youth.

> It should not take a child several months to hear back from a person charged with taking care of them.
>
> **Jordan Thompson**

THE ECONOMIC COST OF INSTITUTIONS AND GROUP FACILITIES

The cost of institutions and group facilities manifests not only in the devastating human cost to children and youth, but also as an enormous financial cost and waste of taxpayer funds.[98] Direct financial costs of institutional and group facility placements include housing, services, and related administrative support costs. Even more significantly, institutions and group facilities impose enormous indirect economic costs stemming from the grave outcomes for youth who later exit or age out of the system.

Direct Costs of Facility Housing Wastes Taxpayers Millions of Dollars

Institutions and group facility placements typically cost seven to ten times more for a child than family-based placements.[99] A single state can pay as much as $95 million dollars each year to institutionalize youth.[100] Jurisdictions that reduce their use of institutions and group facilities gain a cost savings and have an immediate reinvestment opportunity to fill gaps in their community-based continuum of care service array to support prevention, preservation, and family placements (especially with kin).[101]

Under the federal Family First Prevention Services Act, child welfare agencies can no longer receive federal reimbursement for non-therapeutic institutions and group facility placements. At the same time, community-based family preservation services are eligible to receive uncapped federal reimbursement for the first time, and federal funds are available for kinship recruitment and retention. The newly available federal funding stream, in conjunction with reinvested cost savings from reducing the use of institutions and group facilities, makes it significantly more feasible for states to build up community-based services that support families and prevent children from entering foster care in the first place.[102] Increased prevention and reliance on kin improves the child welfare agency's foster home capacity to match children that absolutely must be placed in a stranger foster home, thereby eliminating the need for institutions and other group facilities.

A SINGLE STATE CAN PAY AS MUCH AS

$95 MILLION

DOLLARS EACH YEAR TO INSTITUTIONALIZE YOUTH

Indirect Expense of Grave Outcomes After Facility Care Costs Taxpayers Billions of Dollars

$4.1 BILLION

IN COSTS WOULD BE AVOIDED FOR EACH NEW GROUP OF YOUNG PEOPLE AGING OUT OF FOSTER CARE IF THEY HAD OUTCOMES SIMILAR TO THEIR PEERS IN THE GENERAL PUBLIC

The massive indirect economic costs associated with negative outcomes for young people who later exit and "age out" of foster care include lower educational achievement, early parenthood, homelessness, unemployment, and incarceration.[103] These costs include lost income, lost tax revenue, and an increased need to expend social services.[104] By some estimates, $4.1 billion in costs would be avoided for each new group of young people aging out of foster care if they had outcomes similar to their peers in the general public.[105]

Indirect costs to government increase for youth who lived in institutions and group facilities because of the disproportionately negative effects of institutions and group facilities on youth's current and future well-being.[106] Research indicates that young adults who have left institutions and group facilities have worse outcomes than those who leave family-based foster care, in part because group care often fails to provide real life opportunities that youth need to prepare for independent living.[107] These outcomes include low educational achievement as well as increased risk of sex trafficking victimization, incarceration, homelessness, untreated mental illness, and unemployment.[108]

INSTITUTIONS AND GROUP CARE FACILITIES MAY VIOLATE THE RIGHTS OF CHILDREN

The need to protect children and youth from violence and the other poor outcomes identified above is not only an urgent moral and policy issue; it is also a legal one. Unnecessary institutionalization in child welfare settings implicates a host of fundamental federal constitutional and statutory rights as well as international human rights.[109]

Substantive Due Process Rights

Under the Substantive Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, when a state takes a child into its custody, as in the case of a child in foster care who is placed in an institution or other group facility, the state creates a "special relationship" and has assumed a duty, and a corresponding responsibility, to provide for the child's safety and general well-being.[110] When a state institutionalizes a child in foster care unnecessarily, the state almost always exposes the child to physical restraints, seclusion, physical violence and other maltreatment, gross denial of mental health care, harm to normal brain development, and other ACEs identified earlier in this Declaration. These actions may violate the child's substantive due process rights.[111]

The COVID-19 pandemic also implicates this constitutional right. At least one federal court has found that confinement in tight quarters during the pandemic may violate an incarcerated detainee's substantive due process rights.[112] As the Court explained, citing Centers for Disease Control interim guidance, people in detention "live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced" and without the Court's earlier intervention, the detainees would have been packed together in close quarters where social distancing is impossible,[113] much like children and youth in institutions and other group facilities. In June 2020, a federal court in South Carolina found that continued use of institutions and group facilities for children in foster care presented a unique health risk in the context of COVID-19 exposure and ordered the implementation of several remedial strategies to reduce utilization.[114]

A child's fundamental liberty interests extend not only to their health and safety but also to family association and integrity. This right derives from the First Amendment as applied to states through the Fourteenth Amendment, as well as from the substantive due process clause of the Fourteenth Amendment. The First Amendment confers a right to intimate association and to enter into and maintain certain intimate relationships.[115] The right of children to maintain relationships with their families finds grounding in this First Amendment right.[116]

Thus, unnecessary institutionalization that destroys family relationships may violate a young person's constitutional rights to association and family integrity. In other contexts, such as in immigration policy, federal courts have recognized the critical importance of family relationships and appropriate care for children while in government custody.[117]

Right to Least Restrictive Placement

The right to placement in the least restrictive and most connected setting has roots in many other longstanding legal frameworks. For one, under Title II of the Americans with Disabilities Act of 1990 (ADA), states are generally required to place people with disabilities in community settings rather than in institutions.[118] Institutional placement of a child with a disability whose needs could be served with community placement and services is potentially discriminatory and may violate the child's rights under this core federal law.[119] As the Supreme Court has found, "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."[120] Similar to the ADA,

Section 504 of the Rehabilitation Act of 1973[121] prohibits discrimination based on disability in programs that receive federal financial assistance and, along with implementing regulations, the unnecessary segregation of individuals with disabilities.[122] It is therefore essential, and a legal mandate, that states place individuals with disabilities in the most integrated setting.

In addition, under the Adoption Assistance and Child Welfare Act of 1980, Title IV-E of the Social Security Act, states receiving federal funding must ensure that each child has a case plan designed to achieve placement in a safe setting that is the "least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child."[123] The Adoption and Safe Families Act of 1997 (ASFA), which amended Title IV-E, maintained this fundamental requirement. ASFA also required states receiving funding to "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."[124]

Family First Prevention Services Act of 2018

Most recently, through the Family First Prevention Services Act of 2018 (FFPSA), uncapped federal funds are available to support evidence-based preventive services and federal funding for the use of institutional and group care is restricted to very specific treatment-focused care. Additional funding is available to support the recruitment and support of kinship homes. A state's knowing failure to comply with FFPSA and other statutory expectations can inform the constitutional rights identified above.[125] Similarly, a state's knowing failure to comply with well-known standards of care, such as those set forth by the American Orthopsychiatric Association and the American Psychological Association,[126] and the knowing failure to follow state law analogues to federal requirements, as well as each state's own child welfare policies, can all inform the same constitutional inquiry. Additionally, states have direct and ultimate legal responsibility for the rights of children in state foster care, so the direct oversight of largely privatized, contracted providers of institutional and group care—especially when such facilities exhibit a pattern of dangerous conditions—is also relevant to constitutional claims and may be a separate source of liability.[127]

The Constitutional Right to Equal Protection and Title VI of the Civil Rights Act

Unnecessary institutional and group facility placement practices also implicate the Equal Protection Clause of the Fourteenth Amendment, which "commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike."[128] Additionally, Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance.[129] The Equal Protection Clause and Title VI prohibit intentional discrimination based on race, among other things, and states could violate these rights with intentional discriminatory housing policies that knowingly result in disproportionate placement of Black youth and other youth of color in institutional or other group facilities and exposure to dangerous conditions.[130]

Legal Rights Implicated by Education in Institutional Care

The education rights of children are also implicated while in institutional and other group care. The Individuals with Disabilities Education Act requires that children with disabilities be educated in the "least restrictive environment" and that "separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."[131] Moreover, the federal Fostering Connections to Success and Increasing

Adoptions Act of 2008 requires that a child's case plan ensure their "educational stability."[132] Among other things, it must include "an assurance that the State agency has coordinated with appropriate local educational agencies [ ] to ensure that the child remains in the school in which the child is enrolled at the time of each placement."[133] If remaining in the original school is not in the best interests of the child, the case plan must include "assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school."[134]

Institutional Care and the Right to Counsel

The Supreme Court has held that indigent litigants have a right to appointed counsel when they may be deprived of their physical liberty.[135] This principle extends to children: "the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child."[136]

In the child welfare context, the profound liberty interests at stake in unnecessary institutional and group facility placements implicate a child's right to counsel at proceedings where such placement and conditions are at issue. Institutional facilities "greatly restrict" a young person's physical liberty and children in foster care "are often forced to live in such institutional settings because suitable family foster homes are not available."[137] Recognizing these facts, at least one federal court has held that young people have a due process right to counsel in deprivation and termination-of-parental-rights proceedings.[138]

International Human Rights

The United Nations Convention on the Rights of the Child, to which 196 countries are parties with the notable exception of the United States, which is only a signatory, recognizes that children "should grow up in a family environment, in an atmosphere of happiness, love and understanding."[139] Other international human rights treaties prohibit the types of maltreatment that frequently occur in institutional and group facility placements. At least one U.S. federal court found a state to be in violation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (to which the U.S. is a party) for using restraints in an institutional placement.[140]

The Rules for the Protection of Juveniles Deprived of their Liberty also strictly prohibit disciplinary measures constituting cruel, inhuman, or degrading treatment, "including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned" and maintain that juveniles should be allowed to communicate with their families and friends and have adequate communication with the outside world, "which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society."[141]

CONCLUSION AND DECLARATION OF URGENCY

For all of these reasons, we call for ending the use of harmful and unnecessary institutions and other group facilities in child welfare systems. This is a matter of significant human, economic, and legal importance, and must be pursued with great urgency.

Children's Rights
Karen Baynes-Dunning, Former Associate Judge, Fulton County Juvenile Court, Georgia
Gladys Carrión, former Commissioner of the Administration for Children's Services, City of New York
Center for the Study of Social Policy
Children's Advocacy Institute
Children's Defense Fund
Vannessa Dorantes, Commissioner of the Department of Children and Families, State of Connecticut
First Star, Inc.
Lexie Gruber, Child Welfare Advocate
Bonnie Hommrich, former Commissioner, Tennessee Department of Children's Services
The Justice Lab at Columbia University
Juvenile Law Center
Joette Katz, former Commissioner of the Department of Children and Families, State of Connecticut
Rafael López, Former Commissioner of the U.S. Administration on Children, Youth and Families and Former Senior Policy Advisor, The White House
National Association of Counsel for Children
National Center for Youth Law
New America
Public Knowledge
Think of Us
Hon. William A. Thorne, Jr., retired Judge on the State of Utah Court of Appeals and in the Third District Court
Molly McGrath Tierney, former Director of the Department of Social Services, City of Baltimore
Paul Vincent, former Director, Family and Children's Services, Alabama Department of Human Resources
Youth Correctional Leaders for Justice
Youth Law Center

PART II

ADAPTABLE TOOLKIT

The human, economic, and legal implications of institutional and group care settings demand immediate action. This Toolkit presents eight strategies that all child welfare systems can adopt or adapt to their needs to eliminate the unnecessary use of institutions and group facilities. This Toolkit recognizes that child welfare leaders, their staff, and the many providers with whom they contract—including providers of institutional and other group care—are dedicated professionals who want better outcomes for the children and youth they serve. They all must be an intentional part of the solution.

The strategies center around three goals: (1) preventing youth from entering foster care; (2) increasing the use of kinship placements for youth who absolutely must enter care; and (3) depopulating existing institutions and group facility placements for youth. By preventing removals and increasing the use of kin, agencies will have more available foster homes to adequately match youth that must enter a stranger (non-kin) foster home. This Toolkit is intended to be used by senior officials and leaders of child welfare systems who are responsible for maintaining and improving these systems, and providers that support these systems. It is specifically designed to support child welfare leaders in reducing, and ultimately eliminating, the unnecessary use of institutions and group facilities in their jurisdictions.[142]

These goals require a clearly communicated value proposition from agency leadership and a thorough integration of that value proposition throughout a system's practice model. It must include deep engagement and partnership with the provider community, both in embracing the value proposition and practice model and providing opportunities for repurposing physical "brick and mortar" group care facilities; thoughtful programmatic and financial planning and sequencing; and nimble legislative and political advocacy. This system change is urgent and necessary, and the path forward is programmatically and fiscally viable.

A baseline requirement for effecting system change is developing an understanding of the system through rapid assessment and data collection of the population entering care. As agencies learn about the factors forcing children into institutions and group facilities, they can identify and implement necessary structural reforms as well as test new approaches. These should include eliminating inappropriate investigations and removals, significantly improving community-based family preservation services, and increasing the pool of kin placements through effective recruitment, retention, and support strategies. Importantly, in order to address the racial inequities that exist across the entire child welfare continuum effectively and intentionally, including the use of institutional and group care, the disaggregation of data by race is essential. Also vital is the work of developing, testing, and implementing strategies designed to both eliminate racial disproportionality within the system *and* improve actual *outcomes* for children and families.

For many jurisdictions, eliminating unnecessary removals and increasing family preservation and kinship placement and support will require a substantial increase in the community-based resource network. Building up this infrastructure must occur in regular partnership and collaboration with the provider community. Since the passage of the Family First Prevention Services Act in 2018 (FFPSA), systems and their provider partners can utilize federal IV-E funding to expand family preservation and community-based services as well as their support of kinship homes.[143] As the community-based service array increases, the pipeline into institutions and group facilities will decrease. At the same time, efforts to depopulate existing institutions and group facilities will yield short- and medium-term successes and savings that will increase over time. New IV-E funding and cost savings can be re-invested into family preservation, community-based services, and supporting family-based placements for the dwindling population of children and youth for whom placement in foster care remains necessary. Ultimately, the need for and unnecessary utilization of institutions and group facilities can be altogether eliminated.

I. UNDERSTAND YOUR SYSTEM

1. **Preface**
   a. Agency leadership must conduct a real-time evaluation of the current system.[144] All child welfare agencies have their own structural strengths and weaknesses, and these differences lead to a unique set of drivers forcing youth into institutions and group facilities. Understanding those drivers will deeply inform solutions.

2. **Perform a Rapid Assessment**
   a. In order to stop the flow of youth into institutions and group facilities, it is important to know where they are coming from. A rapid assessment serves as a guide on where to focus prevention efforts, as well as a baseline against which to measure progress.
   b. Agencies should seek to understand:
      i. Front-end metrics, including the volume and type of intakes, CPS investigations, substantiations, removal petitions, and emergency removals.
      ii. Where the institutional and group facility referrals are coming from.
      iii. If there is an assessment tool for identifying the least restrictive and most connected placement; and whether the tool includes necessary components, including:
         1) All the factors and service needs that were taken into consideration when deciding the child's placement, and whether those service needs can be met in the community.
         2) A quality assurance process to ensure fidelity to the assessment tools and ensure that placement is made based on the best interest and needs of the child—not on availability.
      iv. Once a placement into an institution or group facility is made, whether there is a process to rapidly get the youth out and into a family home.

3. **Disaggregate the Data**
   a. When performing the rapid assessment, agencies should collect and examine aggregate data for the entire population of young people in the front end of the system, in foster care, and institutions and group facilities.[145]
   b. Disaggregate data by geographic region, race, ethnicity, age, gender, and any other relevant demographic information already collected under current reporting requirements.[146]
   c. Disaggregate data by sexual orientation and gender identity and expression[147] and identify vulnerable populations with intersectional identities.

4. **Assess the Foster Home Placement Array**
   a. Disaggregate available family foster home beds by the same regional and demographic information as the institutions and group facilities data where relevant.

b. Compare the two datasets to identify areas where agencies should focus community-based family preservation services and foster family recruitment retention and support.
c. Perform qualitative reviews or analyses to identify network strengths and deficiencies in services for both family preservation and for youth in out-of-home care.

5. **Survey Young People for Their Experiences to Ensure Policies Are Centered on Youth**
   a. Thoroughly discuss residential options with youth living in institutions or other group facilities. As agencies depopulate them, exceptions should be made for older youth *already living* in such placements who, fully informed and exercising their agency, clearly express their desire to remain in these settings until emancipation. Youth should be fully informed of alternate residential options prior to making this decision.
   b. Conduct program evaluations to youth currently in the system and in transition to gain insight into their lived experiences. The program evaluation should seek information on system strengths and areas in need of improvement.
   c. Review the program evaluations both for individual case decisions and in the aggregate to identify trends and patterns for areas of system improvement.[148]

6. **Models and Promising Practices**
   a. Several program assessment models are available through the Child Welfare Information Gateway.[149]
   b. Washington State recently developed and deployed a network assessment to perform a thorough evaluation of their entire child welfare system.[150]

II. IMPLEMENT STRUCTURAL REFORMS AT THE FRONT END

1. **Preface**
   a. The assumption that children are in foster care because they experienced actual abuse or serious neglect in the home is often false. The reality is that child welfare systems unnecessarily and unjustly remove significant portions of children in foster care because investigation and removal policies conflate poverty with neglect, and reflect and reinforce structural racism.[151]

2. **Perform a Rapid Assessment of the "Front End"**
   a. Agencies should engage in a rapid assessment of needed structural reforms at the "front end" of the child welfare system.[152] The purpose of this assessment is to identify populations for whom removals were and are unnecessary and develop strategies to end such practices. Consequently, this will reduce the number of children in the child welfare system who need removal and placement (both to achieve fairness and equity in the front end of the system and to minimize the potential need for institutions and group facilities).

b. The assessment should specifically identify strategies to address racial disparities in unfairly targeting families for investigation and removal.

3. **Utilize and Assess the Effectiveness of Differential Response Programs**
   a. Ensure the agency has an effective differential response program to safely eliminate unnecessary investigations whenever possible.[153]
      i. When engaging in diversion and family preservation cases, child welfare agencies have an opportunity to create meaningful partnerships with families and communities that may have been harmed by decades of aggressive removal policies, family surveillance, and monitoring.
      ii. Engage with the community to ensure the agency approach is culturally competent and appropriate.[154]
   b. If the agency already has a differential response program, ensure that the agency uses it with fidelity for families who are a low safety risk, especially within communities of color.[155]

4. **Require Investigators to Make "Active Efforts" Prior to Removing a Child**
   a. Agencies should consider and address inconsistent or inequitable application of the "reasonable efforts" standard for removal, ensuring that they make "active efforts" to avoid removal.
   b. Agencies must take the trauma of removal into consideration when determining whether the child is in imminent danger.[156]

5. **Build Up Community Based Services**
   a. Agencies should immediately take advantage of the FFPSA to access newly available IV-E funds to ensure evidence-based family preservation services are available within the communities.[157]
   b. Agencies should use the data collected during the rapid assessment to better inform service gaps and communities where services are most needed.

6. **Utilize a Multidisciplinary Team Prior to QRTP Placement**
   a. In some instances, a time-limited, residential treatment is medically necessary, and a referral to a qualified residential treatment program (QRTP) may be issued. Unless there is a true medical emergency, a multi-member multidisciplinary team should review the assessment and referral.[158]
   b. The multidisciplinary team should review the assessment to verify that community-based treatment options are not appropriate, and may veto the referral if it is determined that a less-restrictive treatment option is more appropriate based on the needs of the youth. The multi-disciplinary team approach helps ensure that QRTPs or other institutional or group care is not being recommended merely because supported family placements are unavailable.
   c. In Rhode Island, a designee of the agency's director must approve every institutional placement. The agency staffs a "Red Team" charged with identifying all alternative options before a placement to a group facility is approved.[159]

7. **Utilize Guardrails to QRTP Placement**
   a. To achieve a significant culture change on the utilization of institutions and other group facilities, enforcement of existing federal and state laws, the use of multidisciplinary reviews, and fidelity to robust assessment models may not be enough.
   b. Create guardrails to guide system change to prevent youth from being placed in QRTP's unless absolutely necessary.
   c. For example, in Connecticut, while initially seeking to reduce reliance on institutions and other group facilities, any new placement in any institutional placement required the affirmative approval of the Child Welfare Commissioner. Over time, as the vision gained traction in practice, that guardrail was no longer necessary.
8. **Models and Promising Practices**
   a. Minnesota was one of the first states to implement a differential response program, and now, it addresses more than half of the agency's intakes through differential response instead of an invasive investigation.[160]
   b. Nebraska used IV-E waiver to fund a pilot program to build up their differential response in 2014.[161]

III. INCREASE RELIANCE ON AND SUPPORT FOR KIN

1. **Preface**
   a. If removal is absolutely necessary, while intensive reunification efforts are underway, agencies should look to relative (kinship and fictive kinship) placements first and foremost.[162] Children in kinship placements are least likely to experience subsequent placement disruptions.[163] Yet in 2019, only 32% of youth in foster care were in kinship placements.[164]
   b. The FFPSA allows agencies to use federal IV-E funding for kinship navigator programs, allowing a new opportunity for agencies to expand the use of kin.[165]
2. **Expand the Legal Definition of Kin**
   a. Kinship should include all adults with whom a child or the child's family had a previous relationship. It should also include adults with whom a child has established a relationship after entering care, such as a teacher or mentor. An overly restrictive definition of kin means children are placed with strangers, or institutions or other group facilities, when willing known adults are available. Restrictive definitions may also reflect racial bias, failing to recognize critical relationships in many communities that may not be legally formalized.
3. **Formally Approve All Kinship Placements**
   a. Youth may temporarily reside in a kinship home as part of a safety plan in some states. However, once placement decision making is effectively in the control of the child welfare agency, the placement is no longer a safety plan and the agency must formally approve the kinship home.

b. Allow placement with kin immediately upon removal subsequent to the kin passing a name-based background check and a fingerprint-based background check within a reasonable timeframe.
c. The agency must provide the approved kinship placement with full and equal maintenance payments and caseworker support.

4. **Streamline the Kinship Approval Process**
   a. Carefully examine each step in the approval and licensing process. Analyze whether each step is critical for the safety of the child.
   b. Remove unnecessary and duplicative steps from the approval process.
   c. For steps that must remain, ensure they are easy to understand and easy to complete. Remove confusing and complex language and processes.
   d. Ensure adequate approval, licensing, and ongoing support staff.

5. **Resource and Require Family-Finding Activities**
   a. Systems must have standard practices to talk with birth parents and youth themselves about kinship connections. These conversations must happen multiple times, as a parent or child may be too overwhelmed at initial removal to consider all options.
   b. Workers must be skilled in using modern technology, including social media, and must have access to such technology, to conduct initial and ongoing family finding efforts.
   c. For each kinship connection identified, even if they are not a placement option, a formal plan for continuing the youth's connection to that person must be written and adopted.
   d. Foster parent training must explicitly cover that foster families are responsible for adhering to youth's plans for connecting with kin.
   e. Break down silos between departments when it comes to family-finding. Everyone—investigators, case workers, licensing workers, foster parents—has a role to play in identifying and strengthening relationships with kin.

6. **Continue Kin Searches on an Ongoing Basis**
   a. Kinship programs can work with both youth entering care *and* youth already in care. The redevelopment and enhancement of kinship placement programs may create placement options for foster youth with family members previously prohibited from fostering.
   b. As youth age and develop, some family members may be in different positions to care for them. For example, a family member may be in a position to care for a teenager but not a child, underlining the importance of continued evaluation and ongoing kinship search programs. This is also why kinship connections need to be maintained from the time a child enters care.
   c. Agencies must track and regularly consider youth placed in non-kin settings for new kin placement opportunities.

7. **Provide Ongoing Support to Kinship Families**
   a. Inform all prospective kinship caregivers of the availability of foster care maintenance payments and all other financial and service supports.[166]
   b. Ensure adequate staff dedicated to kinship families.[167]

8. **Use Data-Driven Recruitment to Keep Youth in Their Communities**
   a. In some situations, a youth entering care may have no available kinship supports, even with an expansive definition of kin.
   b. In these cases, every measure must be taken to keep a youth within their school district and community, and proximate to their birth parents. Systems should capture demographic data about the children entering care (e.g., school district, language spoken, age) and specifically recruit matching families in that community. Agencies can use basic data modeling to proactively recruit to meet a foster youth's individualized needs (e.g., a system may need three Spanish-speaking homes that can take toddler boys in a specific school district).

9. **Models and Promising Practices**
   a. Washington State is piloting a Caregiver Engagement Unit specifically to assist kinship caregivers in correctly and swiftly navigating the approval process, and organized a series of task forces to review and streamline every step of the approval process.[168]
   b. Nebraska, through a combination of an expanded legal definition of kin and expanded resources for family finding, now places more than 60% of youth with kin.[169]
   c. In Connecticut, the child welfare agency decreased reliance on congregate care from 30% of all placements to less than 8% in 8 years, in large part by increasing the emphasis on kin options.[170]
   d. Hawaii can complete same-day child-specific licenses for kin, enabling them to be the first placement.[171]

IV. DEPOPULATE EXISTING INSTITUTIONS AND GROUP FACILITY PLACEMENTS[172]

1. **Preface**
   a. In addition to implementing front-end strategies and preventing congregate placements when youth enter the system, children currently in unnecessary institutions and group facilities must be thoughtfully stepped-down.

2. **Review Each Child's Case and Case Plan, Updating If Necessary**
   a. It is imperative to include youth in this process, especially older youth. Youth must be given full agency to determine if they want to be stepped down or moved.
   b. An "all at once" approach is likely not viable—the case review and depopulation review process can be sequenced or separated among certain stratified congregate populations (e.g., those with health factors that render immediate depopulation necessary due to COVID-19 exposure, youth who identify kin placements, youth with no identified mental health treatment needs, or youth under age 12).

3. **(Re-)Consider Reunification**
   a. During the case review, agencies must critically analyze the reasons for the child's removal to determine if the reasons for removal are still relevant. While agencies should always consider reunification for youth whose parental rights have not been terminated, care should be taken to ensure that adherence to a case plan does not come at the cost of practical solutions. If a child can safely return home, there should not be bureaucratic or artificial barriers preventing them from returning.
   b. Similarly, as front-end policies seek to end inappropriate investigation and removal altogether and are updated to align with evidence-based family preservation models, the new policies must be applied retroactively to children already in out-of-home care. During the case file review, it must be determined if the reasons for the child's removal still apply under the updated policies. If the removal should not have taken place under an agency's new policies, the agency should reunify the child with their family and provide community-based supports to address the trauma of the child's removal.
4. **(Re-)Examine Kinship Options**
   a. If reunification is not an option, the case review should re-examine kinship resources. As the agency decreases barriers for kinship placements, and provides increased and equal kinship supports, family members may be better positioned to take in a child.
5. **Utilize Guardianship**
   a. When reunification is not possible, explore guardianship as a permanency alternative for kin placements without the family trauma of terminating parental rights. As of February 2020, 41 states have access to federal Guardianship Assistance Program (GAP) funding.[173]
   b. Ensure guardianship options are subsidized to allow all willing family members the opportunity to provide permanency.
6. **Include Youth in Planning and Decision-Making**
   a. Include youth in the planning and decisions. Many times, youth know of placement resources that are unknown to the agency members.
7. **Models and Promising Practices**
   a. Connecticut undertook a systematic review of each youth's case at child and family team meetings and re-examined kinship options, not just at entry, but also for youth who were already in an institutional or group facility placement.[174]

V. STRENGTHEN THE COMMUNITY BASED SERVICE ARRAY AND ENGAGE WITH PROVIDERS

1. **Preface**
   a. A robust community-based service array is critical to family preservation, reunification, and avoiding and depopulating institutional and group facility placements. Prevention and in-home services, such as social, mental health, substance abuse, short-term stabilization services, intensive in-home family services and emergency services are critical.[175]

2. **Utilize FFPSA to Build Up Community Based Services**
   a. Design a prevention services plan that utilizes FFPSA IV-E funds for evidence-based family preservation services within the community setting.[176]
   b. Explore supportive measures for community-based mental health services for high-need children and youth who are stepped down into or otherwise placed in family settings. These services may include clinical contacts that occur multiple times a week, expanded use of follow-up services in the home in combination with center-based therapy, day treatment or therapeutic day care, direct support for caregivers, or clinical contacts for a longer duration than local reimbursement rules might typically allow, such as weekly treatment sessions for the duration of the placement.[177]

3. **Collaborate with the Existing Provider Networks**
   a. When exploring ways to build up this infrastructure, agencies should engage and collaborate with the provider community in all aspects of placement and service reform.
   b. Providers who are currently invested in the institutional and group facility physical space now have the opportunity to re-balance their portfolio.[178]
   c. Providers can repurpose brick and mortar structures to fill some of the service gaps, including independent living housing, supportive housing for young mothers, visitation or training centers, and therapeutic or step-down placements.[179]
   d. In addition, ensuring straightforward service authorization processes with minimal bureaucracy will streamline access to services.[180]

4. **Models and Promising Practices**
   a. Uplift Family Services in San Jose, California successfully transitioned from maintaining institutions and group care facilities to community-based and family-centered foster care and reunification services.[181]

VI. ESTABLISH REINVESTMENT OPPORTUNITIES

1. **Preface**
   a. Institutions and group facility placements are more expensive than family placements. As the utilization of institutions and group facilities decreases, agencies will have resources to immediately reinvest in supporting families

over facilities. Moreover, simultaneous front-end strategies will shrink the population entering custody who may otherwise be housed in institutions and group facilities, lifting existing strains on resources.

2. **Reinvest Savings Into Community-Based Services**
   a. Agencies should work with the legislature or other appropriations authorities within the state or jurisdiction to ensure that they reinvest any savings realized from decreased dependence on institutions and group facilities into family support structures. It is important to develop short, medium, and long-term reinvestment strategies.

3. **Models and Promising Practices**
   a. The state of Virginia successfully employed one re-investment strategy. The state came to an agreement with the General Assembly to increase the financial incentives for local agencies to build up community-based services, while simultaneously withdrawing state support for institutions and group facilities. As a result, over a period of 4 years, child welfare spending decreased, community-based care for children increased significantly, the foster care population was reduced, the number of children in institutions and group facilities was cut nearly in half, and permanency rates greatly increased.[182]

VII. SUPPORT CONTINUED DEINSTITUTIONALIZATION

1. **Preface**
   a. The purpose of any system improvement is to make *lasting* change. Agencies must lean into educating all key internal and external stakeholders about the human and economic costs of unnecessary institutions and group facilities, the steps agencies are taking to eliminate them, and the viability of alternatives.
   b. Investment in community-based services is often met with pushback from the general public and requires effective advocacy and public education on the human and economic costs of institutions and group facilities and viable solutions. Those without child welfare expertise may not understand the importance of buffering adults on child development. They also may not understand the high cost of institutions and group facilities compared to family foster homes. Even well-meaning community advocates may not have firsthand understanding of the racist and classist impact of investigations leading to removals, or the racial disparities in the use of institutional and group care settings. For these reasons, reinvesting tax dollars back to families may face resistance. Multiple engagement strategies are essential.

2. **Engage Stakeholders**
   a. Agency leaders should create a value proposition about institutions and group facilities and work with stakeholders to integrate this value proposition into all aspects of an agency's practice model.

3. **Engage the Public**
   a. In order to ensure continued cooperation with the legislature for reinvestment opportunities, it is imperative that communities support deinstitutionalization.
   b. State agencies should engage the public and educate them on what communities will look like after eliminating unnecessary institutional and group facility placements and why the change is so urgent.
   c. Messaging should be clear: institutions and group facilities are actively harming young people and eliminating such placements will allow reinvestment to support a family-centered child welfare system.
4. **Engage Agency Staff**
   a. It is imperative to engage in ongoing conversations with agency caseworkers and staff. Many of the initiatives described in this Toolkit involve substantial practice adjustments. While strong leadership is instrumental in initiating these changes, staff must understand the philosophical principles on which they are based. If leadership fails to include staff in the learning process, the top-down demands may not be embraced or may even be met with hostility, hindering reform efforts. If front-line agency workers do not understand the consequences of holding on to old practices, these reforms will be ineffective and unsustainable.
5. **Engage Youth**
   a. Deinstitutionalization must be supported by the very youth affected. While designing and developing these processes, agencies must engage youth and learn from those with lived experiences in institutions and group facilities.
   b. Program evaluations for young people are informative when assessing the system, throughout the deinstitutionalization process, and afterwards for continued success.[183]
6. **Models and Promising Practices**
   a. In Connecticut, caseworker engagement with families and youth at child and family team meetings was critical to ensure buy-in and support from all members of the team. Agency leaders have dramatically reduced and sustained institution and group facility populations, crediting the success in part to a robust education campaign by agency leaders.[184]

VIII. SET MEASURABLE GOALS AND REVISIT THEM FREQUENTLY

1. **Preface**
   a. Key to any system reform is ensuring meaningful improvement. For example, a system must ensure that reducing institutional placements is not at the cost of increased placement instability or maltreatment in care.
2. **Use Dashboards**
   a. The use of "dashboards" to show successful trend lines on key reforms (such as investigations and removal data or initial institutions and group facilities placement data, depopulation efforts, always disaggregating data

by race) can lift up short term wins and sustain staff and public support and inform a roadmap for further progress or course correction. However, solely measuring the number or percentage of children in institutions and group facility placements, by itself, risks a negative compliance-driven culture of practice, which will not reflect a meaningful value proposition or fidelity to a robust practice model.

3. **Use Multiple Measures**
   a. Measurable goals should include multiple factors that can be used to approximate the appropriateness of placements. This should include administrative data as well as a qualitative review, and should look at factors such as front-end investigation and removal, initial and ongoing institutions and group facilities utilization rates, placement stability, maltreatment in care, and the experiences of youth stepped out of or down from institutions and group facilities. To the extent available, it should also include post-exit outcomes, such as school completion or vocational training, unemployment, and incarceration rates.
   b. Assessing ongoing data from qualitative reviews to ensure fidelity to assessment tools mentioned above is critical to continuous quality improvement.
4. **Set Explicit Race Equity Goals**
   a. An antiracist system explicitly adopts goals and measures that lead to racial equity.[185] Systems must explicitly set goals for equitable outcomes across race and ethnicity lines, and take on the extra work to achieve those outcomes.
   b. The Alliance for Racial Equity in Child Welfare highlights several state initiatives successful in reducing racial disparity in child welfare.[186]
5. **Ensure Transparency**
   a. Finally, public accountability and transparency are critical. Systems engaging in this urgent reform effort must publicly assert the value proposition, the changes needed to effect it, and the ongoing measures of progress or improvements needed.

CONCLUSION

By incorporating these eight strategies, child welfare agencies can effectively eliminate the harmful, costly, and potentially unlawful practice of unnecessarily institutionalizing foster youth, while developing the infrastructure to promote racial equity and family stability now and into the future.

ENDNOTES

1 There are also extremely narrow discrete models of group care, such as facilities for prenatal, postpartum or parenting support for teenage mothers, supervised settings for children 18 or older, and for youth who have been victims of (or are at risk of) sex trafficking. While in certain circumstances these placements may be necessary because family placements cannot be found, extreme caution must be applied to their use because they are often fraught with the same harms for children as other group care facilities.

2 Dep't of Health & Hum. Servs., Admin. for Children & Families, The AFCARS Report No. 27 (2020), at 1, https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport27.pdf. While the overall population of youth in institutional and other group facilities in child welfare systems decreased by 4% as a percentage of the whole child welfare population during the past five years, the current utilization rate continues to be unacceptable. *See generally id.*; Dep't of Health & Hum. Servs., Admin for Children & Families, The AFCARS Report No. 26, https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf; Dep't of Health & Hum. Servs., Admin for Children & Families, The AFCARS Report No. 25, https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf; Dep't of Health & Hum. Servs., Admin for Children & Families, The AFCARS Report No. 24, https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf; Dep't of Health & Hum. Servs., Admin for Children & Families, The AFCARS Report No. 23, https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport23.pdf; Dep't of Health & Hum. Servs., Admin for Children & Families, The AFCARS Report No. 22, https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf.

3 Adoption & Foster Care Analysis & Reporting System 2019 Data Set (analysis by Children's Rights' Policy Department).

4 *QuickFacts United States*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/US/AGE295219 (last visited Nov. 12, 2020); Adoption & Foster Care Analysis & Reporting System 2019 Data Set (analysis by Children's Rights' Policy Department).

5 *See supra* n.3.

6 *Id.*; *see also Keeping Kids in Families: Trends in U.S. Foster Care Placement*, Annie E. Casey Found. (Apr. 2019) at 1, https://www.aecf.org/m/resourcedoc/aecf-keepingkidsinfamilies-2019.pdf ("Systems were least likely to place African-American children in a family.").

7 *See, e.g.*, N.Y.C. Admin. for Child. Servs., LGBTQAI+ Action Plan 5 (2020), https://www1.nyc.gov/assets/acs/pdf/about/2020/LGBTQActionPlan.pdf ("Compared to non-LGBTQAI+ youth, LGBTQAI+ youth were more likely to be placed in group homes or residential care and less likely to be placed in family-based care.").

8 *Id.* ("More than one out of three youths (34.1%), ages 13-20, in New York City foster care identify as LGBTQAI+"); Bianca D.M. Wilson et al., *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles* 6 (2014), https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf (19% of youth in LA county identify as LGBTQ).

9 *Information Memorandum Log No:* ACYF-CB-IM-18-02, Admin. for Child. & Fam. (2018), https://www.acf.hhs.gov/sites/default/files/cb/im1802.pdf.

10 *Information Memorandum Log No:* ACYF-CB-IM-18-02, Admin. for Child. & Fam. (2018), https://www.acf.hhs.gov/sites/default/files/cb/im1802.pdf.

11 Michael Fitzgerald, *Calls Grow to Eliminate 'Face Down' Restraints for Foster Youth After Michigan 16-Year-Old's Death*, Imprint (July 7, 2020), https://imprintnews.org/child-welfare-2/restraint-foster-youth-michigan-prone-death-new-york/45118#:-:text=Following%20the%20horrific%20death%20of,for%20the%20highest%2Dneeds%20children-%2C. In a harrowing parallel to the murder of George Floyd, Cornelius Fredrick is reported to have yelled "I can't breathe" as he was held down.

12 *See Child Welfare and Justice Agencies Report Challenges in Context of COVID-19*, Nat'l Council on Crime & Delinq. (July 2020), https://www.nccdglobal.org/blog/child-welfare-and-justice-agencies-report-challenges-context-covid-19 (citing *Summary of Survey Results on Agency Response to COVID-19*, Nat'l Council on Crime & Delinq. (July 2020), https://www.nccdglobal.org/sites/default/files/Covid%20survey%20findings%20-%20summary.pdf); *see also* Decl. of Dr. Craig W. Haney, Ph.D., *Michelle H. v. McMaster*, No. 2:15-0134-RMG (D.S.C. June 15, 2020), ECF No. 192-1 at 11-20; *Responding to the Needs of Youth Involved With the Justice System During the COVID-19 Pandemic*, Am. Acad. of Pediatrics, https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/responding-to-the-needs-of-youth-involved-with-the-justice-system--during-the-covid-19-pandemic/ (last visited Nov. 14, 2020); Aff. of Barry S. Levy, M.D., M.P.H., Regarding COVID-19 Infections in Congregate Care Facilities of the Mass. Dep't of Children and Families (DCF), *Michelle H. v. McMaster*, No. 2:15-0134-RMG (D.S.C. June 15, 2020), ECF No. 192-1 at 1-10; *Statement of Concern for the Protection and Well-Being of Children Housed in Institutions During the COVID Pandemic*, Case W. Reserve U. Schubert Ctr. for Child Stud. (Apr. 3, 2020), https://case.edu/schubertcenter/sites/case.edu.schubertcenter/files/2020-04/Statement-of-Concern-for-Children-in-Care-Rev-4-3-20.pdf.

13 *See, e.g.*, Curtis Gilbert & Lauren Dake, *'Youth Were Abused Here'*, APM Reports (Sept. 28, 2020), https://www.apmreports.org/story/2020/09/28/for-profit-sequel-facilities-children-abused (outlining extensive maltreatment of youth in institutions and group facilities operated by for-profit provider Sequel, present in more than 40 states).

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15 Letter from Nancy Anderson, Assoc. Dir., Ala. Disability Rts. Grp., Michael J. Tafelski, Senior Supervising Attorney, S. Poverty Law Ctr. & Christina Remlin, Lead Counsel, Children's Rights, to Nancy Buckner, Comm'r, Ala. Dep't of Hum. Res., et al. (July 6, 2020), https://adap.ua.edu/uploads/5/7/8/9/57892141/letter_to_state_re_sequel.pdf.

16 Michael Grabell & Topher Sanders, *Immigrant Youth Shelters: "If You're a Predator, It's a Gold Mine"*, ProPublica (July 27, 2018), https://www.propublica.org/article/immigrant-youth-shelters-sexual-abuse-fights-missing-children (showing extensive sexual abuse in congregate facilities housing immigrant children).

17 *See C.P.X. v. Garcia*, 450 F. Supp. 3d 854, 914 (S.D. Iowa 2020).

18 *See, e.g.*, Eric Ferkenhoff, *Cities, Counties Are Freeing Youth Due to COVID-19, While States Still Slow to Respond*, Juv. Just. Info. Exch. (May 27, 2020), https://jjie.org/2020/05/27/cities-counties-are-freeing-youth-due-to-covid-19-while-states-still-slow/; Decl. of Dr. Craig W. Haney, Ph.D., *Michelle H. v. McMaster*, No. 2:15-0134-RMG (D.S.C. June 15, 2020), ECF No. 192-1 at 11-20.

19 *See* Mary Dozier et al., *Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association*, 84 Am. J. Orthopsychiatry 219, 219-225 (2014), https://www.apa.org/pubs/journals/features/ort-0000005.pdf.

20 *Id.* at 222 (citing Saskia Euser et al., *The Prevalence of Child Sexual Abuse in Out-of-Home Care: A Comparison Between Abuse in Residential and in Foster Care*, 18 Child Maltreatment 221, 221-231 (2013); Saskia Euser et al., *Out of Home Placement to Promote Safety? The Prevalence of Physical Abuse in Residential and Foster Care*, 37 Child. & Youth Servs. Rev. 64, 64-70 (2014)).

21 *See Preventing and Addressing Sex Trafficking of Youth in Foster Care, Hearing Before the Subcomm. on Hum. Res. of the Comm. of Ways and Means*, 113rd Cong. 89-541 (2013) (statement of Rep. David G. Reichert, Chairman, Subcomm. On Hum. Res.), https://www.govinfo.gov/content/pkg/CHRG-113hhrg89541/html/CHRG-113hhrg89541.htm. https://www.childwelfare.gov/pubpdfs/trafficking_agencies.pdf; Joseph P. Ryan, et al., *Juvenile Delinquency in Child Welfare: Investigating Group Home Effects*, 30 Child. & Youth Servs. Rev. 1088, 1088-1099 (2008).

22 *Every Kid Needs a Family: Giving Children in the Child Welfare System the Best Chance for Success*, Annie E. Casey Found. (2015), at 5, http://www.aecf.org/m/resourcedoc/aecf-EveryKidNeedsAFamily-2015.

pdf (hereinafter, "AECF, *Every Kid Needs a Family*"), *citing* Wendy Wiegmann, et. al., *The Invisible Achievement Gap Part 2: How the Foster Care Experiences of California Public School Students Are Associated with Their Education Outcomes* (2014), https://stuartfoundation.org/wp-content/uploads/2016/04/IAGpart2.pdf.

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24 *See, e.g.*, Jennifer S. Middlebrooks & Natalie C. Audage, *The Effects of Childhood Stress on Health Across the Lifespan*, Ctrs. for Disease Control & Prevention (2007), at 5 (noting ACEs examples).

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26 *See supra* n.22; David W. Brown et al., *Adverse Childhood Experiences & the Risk of Premature Mortality*, 37 Am. J. Preventative Medicine 389, 389 ("People with six or more ACEs died nearly 20 years earlier on average than those without ACEs.")

27 *See supra* n.22.

28 Jennifer S. Middlebrooks & Natalie C. Audage, *The Effects of Childhood Stress on Health Across the Lifespan*, Ctrs. for Disease Control & Prevention (2007), at 6; *see also The Truth About ACEs Infographic*, Robert Wood Johnson Found., https://www.rwjf.org/en/library/infographics/the-truth-about-aces.html#/embed (last visited Nov. 15, 2020).

29 *See supra* n.22.

30 *See supra* n.24.

31 *See supra* n.19 at 220 (citing Joseph P. Allen et al., *Attachment & Adolescent Psychosocial Functioning*, 69 Child Dev. 1406, 1406-1419 (1998)); John Bowlby, Attachment & Loss (2nd ed. 1982)).

32 *See* AECF, *Every Kid Needs a Family* at 4 ("Kids need parental figures at all stages of life to support them as they develop mentally, physically and socially. Nurturing families treat children as individuals, building on their strengths, meeting their needs and encouraging appropriate independence within a caring relationship.").

33 *Id.* at 3.

34 *Id.* at 3.

35 *Id.* at 2.

36 *Id.* at 2.

37 *See* Mary Dozier et al., *Institutional Care for Young Children: Review of Literature & Policy Implications*, 6 Soc. Issues & Pol'y Rev. 1, 3 (2012).

38 *See* Ira Lustbader & Elissa Glucksman Hyne, *The Urgent Need To Disrupt Structural Violence Against Children in American Foster Care,* in Violence Against Children: Making Human Rights Real (Gertrud Lenzer ed., 2018) (citing Charles H. Zeanah, Anna T. Smyke & Lisa D. Settles, *Orphanages as a Developmental Context for Early Childhood*, in Blackwell Handbook of Early Childhood Development 424-454 (Kathleen McCartney & Deborah Phillips eds., 2006)).

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40 *See* Julianne Holt-Lunstad, *The Potential Public Health Relevance of Social Isolation & Loneliness: Prevalence, Epidemiology, & Risk Factors*, 27 Pub. Pol'y & Aging Rep. 127, 129 (2019) ("[T]he effects of social disconnection (neglect, strain, isolation) or connection (supportive, stable family environment) that occurred earlier in life will become more apparent later in life. . . . [A] growing body of research shows that health problems in adulthood and older age stem from conditions earlier in life, suggesting the importance of preventative efforts[.]").

41 *Id.* at 128.

42 *See* Vivek Murthy, *Work & the Loneliness Epidemic*, Harv. Bus. Rev. (Sept. 26, 2017), hbr.org/cover-story/2017/09/work-and-the-loneliness-epidemic.

43 *Id.*

44 *See supra* n.19 at 222 (citing Saskia Euser et al., *The Prevalence of Child Sexual Abuse in Out-of-Home Care: A Comparison Between Abuse in Residential & in Foster Care*, 18 Child Maltreatment 221, 221-231 (2014); Sasha Euser et al., *Out of Home Placement to Promote Safety? The Prevalence of Physical Abuse in Residential & Foster Care*, 37 Child. & Youth Servs. Rev. 64, 64-70 (2014)).

45 *Id.* (citing Sasha Euser et al., *Out of Home Placement to Promote Safety? The Prevalence of Physical Abuse in Residential & Foster Care*, 37 Child. & Youth Servs. 64, 64-70 (2014)).

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51 *See* Camille Roy, et al., *The Use of Restraint and Seclusion in Residential Treatment Care for Youth: A Systematic Review of Related Factors and Interventions*, Trauma, Violence, & Abuse (2019).

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63 *Id.* at 799.

64 Alfiee M. Breland-Noble et al., *Use of Psychotropic Medications by Youths in Therapeutic Foster Care & Group Homes*, 55 Psychiatric Servs. 706, 707 (2004).

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66 *Id.*

67 *2019 Data Report: The U.S. National Human Trafficking Hotline*, Polaris Project (2019), at 1, https://polarisproject.org/wp-content/uploads/2019/09/Polaris-2019-US-National-Human-Trafficking-Hotline-Data-Report.pdf. We use the term "victim," here, to conform with the terminology used in most national and state law, such as Safe Harbor Laws, but recognize that victims of sex trafficking are also *survivors*.

68 *Id.* at 2.

69 *Human Trafficking and Child Welfare: A Guide for Child Welfare Agencies*, Child. Bureau (July 2017), at 4, https://www.childwelfare.gov/pubpdfs/trafficking_agencies.pdf; *Preventing and Addressing Sex Trafficking of Youth in Foster Care, Hearing Before the Subcomm. on Hum. Res. of the Comm. of Ways and Means*, 113rd Cong. 89-541 (2013) (statement of Rep. David G. Reichert, Chairman, Subcomm. On Hum. Res.), https://www.govinfo.gov/content/pkg/CHRG-113hhrg89541/html/CHRG-113hhrg89541.htm.

70 *Human Trafficking and Child Welfare: A Guide for Child Welfare Agencies*, Child. Bureau (July 2017), https://www.childwelfare.gov/pubpdfs/trafficking_agencies.pdf; *see also Preventing and Addressing Sex Trafficking of Youth in Foster Care, Hearing Before the Subcomm. on Hum. Res. of the Comm. of Ways and Means*, 113rd Cong. 89-541 (2013) (statement of Sen. Orrin Hatch), https://www.govinfo.gov/content/pkg/CHRG-113hhrg89541/html/CHRG-113hhrg89541.htm.

71 More states are adopting Safe Harbor Laws and more victims are referred for services than incarceration. Stephen Gies et. al., *Safe Harbor Laws: Changing the Legal Response to Minors Involved in Commercial Sex*, U.S. Dep't of Just. (Feb. 2018), at 24, https://www.ncjrs.gov/pdffiles1/ojjdp/grants/253146.pdf.

72 *Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States*, U.S. Dep't of Health & Hum. Serv. Admin. for Child., Youth, & Fam. (June 2013), at 2-3, https://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf /; Heather J. Clawson & Lisa Goldblatt Grace, *Finding a Path to Recovery: Residential Facilities For Minor Victims of Domestic Sex Trafficking. Residential Facilities*, Off. of the Assistant Sec'y for Plan. & Evaluation, U.S. Dep't of Health & Hum. Serv. (2007), at 3, https://aspe.hhs.gov/report/finding-path-recovery-residential-facilities-minor-victims-domestic-sex-trafficking/residential-facilities.

73 *Human Trafficking and Child Welfare: A Guide for Child Welfare Agencies*, Child. Bureau (July 2017), at 9, https://www.childwelfare.gov/pubPDFs/trafficking_agencies.pdf.

74 *Id.*

75 Jessica Reichert & Amy Sylwestrzak, *National Survey of Residential Programs for Victims of Sex Trafficking*, Ill. Crim. Just. Info. Authority (Oct. 2013), at 5, http://www.icjia.state.il.us/assets/pdf/ResearchReports/NSRHVST_101813.pdf .

76 *See supra* n.72, 73.

77 *See supra* n. 75 at 6.

78 *Domestic Minor Sex Trafficking/Commercial Sexual Exploitation of Children*, Foster Family-based Treatment Ass'n (July 2014), at 5, https://library.childwelfare.gov/cwig/ws/library/docs/gateway/Blob/98643.pdf?w=NATIVE%28%27SIMPLE_SRCH+ph+is+%27%27Domestic+Minor+Sex+Trafficking%2FCommercial+Sexual+Exploitation+of+Children%27%27%27%29&upp=0&order=native%28%27year%2FDescend%27%29&rpp=25&r=1&m=1.

79 Laura Bauer & Judy L. Thomas, *Throwaway Kids: 'We are Sending More Foster Kids to Prison than College'*, Kan. City Star (Dec. 15, 2019), https://www.kansascity.com/news/special-reports/article238206754.html.

80 *See generally* Mark E. Courtney, et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26*, Chapin Hall at the U. of Chicago (2011), https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-26.pdf.

81 Dave Helling, *Failing Foster Children: Laura Bauer and Judy Thomas talk about 'Throwaway Kids*,' Kan. City Star (Dec. 18, 2019), https://www.kansascity.com/opinion/opn-columns-blogs/dave-helling/article238512493.html.

82 Joseph P. Ryan et al., *Juvenile Delinquency in Child Welfare: Investigating Group Home Effects*, 30 Child. & Youth Serv. Rev. 1088, 1088 (2008).

83 Brian Rinker, *Cops, Group Homes, and Criminalized Kids*, Imprint (Jan. 21, 2015), https://imprintnews.org/news-2/cops-group-homes-and-criminalized-kids/9109.

84 *See* Sara Woodward, *Cal. Moves to Improve Group Home Schools*, Nat'l Ctr. for Youth Law (2005), https://youthlaw.org/publication/california-moves-to-improve-group-home-schools/; *see also Foster Care & Education Q&A, Law Center for Foster Care & Education*, ABA Ctr. on Child. & the Law, Educ. Law Ctr., & Juv. Law Ctr. (2014), https://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=1988&Command=Core_Download&method=inlin&PortalId=0&TabId=124; *see also* Elissa Glucksman Hyne et al., *Unsafe and Uneducated: Indifference to Dangers in Pennsylvania's Residential Child Welfare Facilities*, at 22, https://www.childrensrights.org/wp-content/uploads/2018/12/2018_Pennsylvania-Residential-Facilities_Childrens-Rights_Education-Law-Center.pdf.

85 *Id.*

86 *Id.*

87 *Id.*

88 *Id.*

89 Preventing Sex Trafficking and Strengthening Families Act, H.R. 4980, 113th Cong. § 111 (2014).

90 Preventing Sex Trafficking and Strengthening Families Act, H.R. 4980, 113th Cong. § 111(c) (2014).

91 Joaquin Sapien, *Congress to Consider Scaling Down Group Homes for Troubled Children*, ProPublica (May 20, 2015), https://www.propublica.org/article/congress-to-consider-scaling-down-group-homes-for-troubled-children.

92 Social Security, 42 U.S.C. § 675(e) (2018).

93 Christian M. Connell et al., *Leaving Foster Care—The Influence of Child and Case Characteristics on Foster Care Exit Rates*, 28 Child. & Youth Serv. Rev. 780, 783, 793-4 (2006) (explaining that "children placed in kinship and group home settings exit to reunification and adoption at a slower rate than children placed in non-relative foster homes," and "[c]hildren in group home placements … were significantly less likely to be adopted than those in a relative foster care placement" and that "[s]etting was the overarching case characteristic associated with likelihood of adoption—rates of adoption from emergency shelter or group home settings were lower than those in foster home settings.").

94 Madelyn Freundlich & Rosemary J. Avery, *Planning for Permanency for Youth in Congregate Care*, 27 Child. & Youth Serv. Rev. 115, 130 (2005).

95 *See generally* Teresa Wiltz, *Finding Foster Families for Teens Is a Challenge in Many States*, Pew Stateline (June 20, 2019), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/06/20/finding-foster-families-for-teens-is-a-challenge-in-many-states; *see also id.* at 115.

96 *See generally id.*; *see also* Madelyn Freundlich & Rosemary J. Avery, *Planning for Permanency for Youth in Congregate Care*, 27 Child. & Youth Serv. Rev. 115, 117, 130 (2005).

97 Alan J. Dettlaff et al., *It Is Not a Broken System, It Is a System that Needs to Be Broken: the upEND Movement to Abolish the Child Welfare System*, 14 J. Pub. Child Welfare 500, 502 (2020).

98 *Future Savings: The Economic Potential of Successful Transitions From Foster Care to Adulthood*, Annie E. Casey Found. (Jan. 30, 2019), at 15.

99 *See supra* n. 22 at 7.

100 *Foster Care Out of Home Placement – Number of Days of Care by Fund Source*, Mich. Dep't of Health & Hum. Serv. (Feb. 15, 2020), www.michigan.gov/documents/mdhhs/Section520-PA67of2019_702599_7.pdf.

101 For example, in New York City, eliminating almost 2,000 of nearly 4,200 beds saved more than $41 million. Connecticut saved nearly $90 million annually by reducing the percentage of children living in an institution from 30% to less than 8%. And in Maine, moving 10% of institutions and group facilities residents into permanent families and home-based placements saved a minimum of $10.4 million. These models not only highlight the financial savings to communities by reducing institutions and group facilities, but also that viable models for doing so exist. *See Rightsizing Institutions and Group Facilities a Powerful First Step in Transforming Child Welfare Systems*, Annie E. Casey Found. (Jan. 1, 2009), at 4-5; Joette Katz, *How We Downsized Congregate Care in Connecticut*, Imprint (Jan. 4, 2019), https://www.fostercarecapacity.com/stories/how-we-downsized-congregate-care-in-connecticut.

102 The FFPSA is one important tool to help end the harmful use of institutional and group care, but states can go much farther. Reinvestment and provider engagement strategies are further addressed in the Tool Kit below.

103 *See supra* n.97 at 503.

104 *See supra* n.97 at 502-3.

105 *See supra* n.98 at 5.

106 *What Are the Outcomes for Youth Placed in Congregate Care Settings?* Casey Fam. Programs (Feb. 5, 2018), https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/.

107 Richard P. Barth, *Institutions vs. Foster Homes: The Empirical Base for a Century of Action*, Sch. of Soc. Work, Jordan Inst. for Fam. (2002), at ii, http://bettercarenetwork.org/sites/default/files/Institutions%20vs%20Foster%20Homes.pdf

108 *See supra* n.97 at 502; *see also id.*

109 While beyond the scope of this Declaration, unnecessary institutional care may also implicate state laws. State law legal protections provide another advocacy tool to protect youth placed, or at risk of placement, in institutional and other group facilities.

110 *See DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 199–200 (1989). In a recent case of brutal condition in a boys' detention center, the Court looked to both the Fourteenth Amendment substantive due process requirements and the Eighth Amendment's prohibition on cruel and unusual punishment. *See C.P.X. v. Garcia*, 450 F. Supp. 3d 854, 902-16 (S.D. Iowa 2020).

111 To determine whether a state has violated these rights, courts have established standards against which to measure a defendant state's conduct. Under *Youngberg v. Romeo*, 457 U.S. 307, 314, 321-322 (1982) (internal citation omitted), the standard is whether the state has taken "such a substantial departure from accepted professional judgment, practice, or standards in the care and treatment of this plaintiff as to demonstrate that the defendants did not base their conduct on a professional judgment." Under a different, earlier Supreme Court case, the touchstone was whether the state had shown "deliberate indifference" to the plaintiff's needs. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Both standards have been expanded upon significantly in subsequent jurisprudence. *See also M.B. by Eggemeyer v. Corsi*, No. 2:17-CV-04102-NKL, 2018 WL 327767, at *10 (W.D. Mo. Jan. 8, 2018) (finding that the specific failure to adequately oversee the administration of psychotropic medication implicates children's substantive due process rights).

112 *See Savino v. Souza*, 459 F. Supp. 3d 317, 329 (D. Mass. 2020).

113 *Id.* at 328.

114 *See Michelle H. v. McMaster*, No. 2:15-cv-00134 (D.S.C. June 23, 2020), ECF No. 200; *see also* ECF No.192-1. The Michelle H. case involves an ongoing settlement (also known as a consent decree) of a federal class action lawsuit alleging the violation of children's federal constitutional and statutory rights for, among other things, the unnecessary use of institutional care. *See id.* ECF No. 152 (discussing "a settlement agreement to address claims of serious, systemic deprivations of the constitutional rights of foster children in South Carolina," including issues related to "undue reliance on congregate care placements rather than family-type placements").

115 *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). The Supreme Court in *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984) cited to a number of due process cases in support of the existence of a right to intimate association. Id. As a result, some courts treat the associational right as originating in the First Amendment, while others treat it as a component of substantive due process. *See generally* Collin O'Connor Udell, *Intimate Association: Resurrecting a Hybrid Right*, 7 Tex. J. Women & L. 231, 241-50 (1998).

116 *Id.* at 619-20; *Trujillo v. Board of County Comm'rs of the County of Santa Fe*, 768 F.2d 1186, 1189 (10th Cir. 1985) (parent, child and sibling relationships); *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353, 1360 (N.D. Ga. 2005) (family relationships); *Aristotle P. v. Johnson*, 721 F. Supp. 1002, 1004-8 (N.D. Ill. 1989) (sibling relationships).

117 *See Flores v. Sessions*, 862 F.3d 863, 869 (9th Cir. 2017) (explaining that the *Flores* settlement "favors family reunification, and states the order of preference for persons into whose custody detained minors are to be released" and "also addresses the appropriate care of those minors who cannot be immediately released, and who therefore remain in federal custody").

118 *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600-601 (1999).

119 *Id.* at 597.

120 *Id.* at 601.

121 The ADA was based in part on Section 504.

122 *See* 29 U.S.C. § 794(a). *See also Rosie D. v. Romney*, 410 F. Supp. 2d 18, 53 (D. Mass. 2006) (EPSDT provisions of the Medicaid statute require adequate in-home behavioral support services for children with serious emotional disturbances, "designed to minimize the need to remove the child from the home" and to avoid "expensive, clinically unnecessary and damaging confinement in a long-term residential program or hospital, far from home and family").

123 42 U.S.C.A. §675(5)(A) (West).

124 42 U.S.C.A. § 671(a)(19) (West).

125 This is because, under Substantive Due Process, the knowing failure to abide by clear existing standards, including those set forth in a statute, informs a possible Constitutional violation. The FFPSA statute provides clear guidance designed to protect children, and a state's failure to comply will, at a minimum, inform whether the state has met the legal threshold for liability under the Constitution.

126 *See supra* n.19.

127 *See, e.g., Henry A. v. Willden*, 678 F.3d 991, 1002 (9th Cir. 2012) (explaining that a "State can also be held liable under the Fourteenth Amendment's Due Process clause for failing to protect an individual from harm by third parties 'where the state action 'affirmatively place[s] the plaintiff in a position of danger,' that is, where state action creates or exposes an individual to a danger which he or she would not have otherwise faced'") (citation omitted). *See also Washington's Out-of-State Youth Plead: Let Us Come Home Report and Recommendation*, Disability Rts. Wash. (Oct. 2018), https://www.disabilityrightswa.org/wp-content/uploads/2018/10/Let-Us-Come-Home-PDF.pdf (report regarding Washington State's failure to oversee the care and treatment of youth at Clarinda Academy and the improper practices that Sequel permitted, including extreme isolation and segregation from society, a punitive culture, and excessive use of restraints, among others); see also [cross-reference to earlier section on Sequel, etc.].

128 *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

129 42 U.S.C.A. § 2000d (West).

130 *Cf. Floyd v. City of New York*, 959 F. Supp. 2d 540, 658-667 (S.D.N.Y. 2013) (New York City violated plaintiff class's Fourteenth Amendment rights where plaintiffs showed, among other things, statistical evidence of racial disparities in police stops that was sufficient to show a discriminatory effect and that they were motivated by a discriminatory purpose); *see also Castaneda v. Partida*, 430 U.S. 482, 495-97 (1977) (a showing that the population of a county was 79.1% Mexican-American, but that, over an 11-year period, only 39% of the persons summoned for grand jury service were Mexican-American, established discrimination against Mexican-Americans in grand jury selection in violation of the Fourteenth Amendment).

131 20 U.S.C.A. § 1412(a)(5) (West).

132 42 U.S.C. § 675(1)(G) (West).

133 42 U.S.C. § 675(1)(G)(ii)(I) (West).

134 42 U.S.C. § 675(1)(G)(ii)(II) (West).

135 *See Lassiter v. Dep't of Soc. Servs. of Durham Cty.*, N. C., 452 U.S. 18, 26–27 (1981); *see also Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.").

136 *In re Gault*, 387 U.S. 1, 41 (1967).

137 *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353, 1360-61 (N.D. Ga. 2005).

138 *Id.* at 1360.

139 *Convention on the Rights of the Child*, 1577 U.N. Treaty Series (Nov. 20, 1989), at 1.

140 *See C.P.X. v. Garcia*, 450 F. Supp. 3d 854, 914 (S.D. Iowa 2020), (citing Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987) (emphasis added)).

141 *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, U.N. Gen. Assemb. Resol. 45/113, (Dec. 14, 1990).

142 This Toolkit is geared towards child welfare leaders, however, there are other tools that can be used by attorneys, jurists, CASAs, healthcare providers, education advocates, medical advocates, and others involved in child welfare to promote deinstitutionalization on a systemic and an individual case-by-case basis.

143 Under the Family First Prevention Services Act of 2018, IV-E funds, which were traditionally only allowed to support youth in foster care, can be used for qualifying community based family preservation services.

144 Adaptable models are available for this type of rapid assessment. See Assessment and Placement Decisions in Group and Residential Care, Child Welfare Info. Gateway, https://www.childwelfare.gov/topics/outofhome/group-residential-care/assessment-placement/ (last accessed Nov. 16, 2020).

145 *Four Principles to Make Advanced Data Analytics Work for Children and Families*, Annie E. Casey Found. (2020), https://www.aecf.org/resources/four-principles-to-make-advanced-data-analytics-work-for-children-and-famil/.

146 *Adoption and Foster Care Analysis and Reporting (AFCARS)* (Rev. March 25, 2019), https://www.ndacan.acf.hhs.gov/datasets/pdfs_user_guides/afcars-foster-care-file-codebook.pdf.

147 Data related to sexual orientation, gender identity, and gender expression is essential to making meaningful steps towards eliminating institutions and group facilities. Shannan Wilber et al., *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, Fam. Builders By Adoption et al. (2013), http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf. As with all new practices and policies, "[c]hild welfare agencies should provide pre-service and ongoing training to all child welfare personnel regarding the agency's policies governing the management of information related to children's sexual orientation, gender identity and gender expression [SOGIE]." *Id.* at 21. In addition, it is critical that all child welfare personnel receive initial and ongoing coaching and training regarding healthy sexual and identity development for youth. This should include training about SOGIE and other issues specific to LGBTQ+ youth. See Christina Wilson Remlin et al., *Safe Havens: Closing the Gap Between Recommended Practice & Reality for Transgender*

& Gender-Expansive Youth in Out-of-Home Care, Children's Rights et al., at 25 (2017), https://www.childrensrights.org/wp-content/uploads/2017/04/TGNC-Policy-Report_2017_final-web.pdf. These issues must be part of basic competency requirements to ensure that young people receive consistent, competent treatment while in out-of-home care. See id.

148 Maria Manuela Calheiros & Joana N. Patrício, *Assessment of Needs in Residential Care: Perspectives of Youth and Professionals*, 23 J. Child & Fam. Stud., 461, 461-474 (2014).

149 *Designing and Conducting Evaluations*, Child Welfare Info. Gateway https://www.childwelfare.gov/topics/management/effectiveness/designing/ (last accessed Nov. 16, 2020).

150 *A Message from the Office of Tribal Relations*, Wash. St. Dep't of Child., Youth & Fam. (May 26, 2020) https://content.govdelivery.com/accounts/WADEL/bulletins/28d764f.

151 A huge segment of the child welfare investigation and removal structures in the U.S. should not exist at all, as there is no basis to investigate many targeted families. Rather than forming partnerships with families in a culturally competent and trauma-informed way, many systems are designed to remove children from their home in the interest of "saving them." In fact, 63% of children are removed for neglect, which is a well-known euphemism for poverty. Additionally, 2% of children are removed because the child has a disability, 8% because of the child's behavior problem, and 14% of children are removed because of the parents' "inability to cope," all of which usually mean that the parent does not have sufficient resources to meet the child's increased level of need in the home. These poverty based removals are traumatic for the child, family and entire community. Dep't of Health & Hum. Servs., Admin. for Child. & Fam., The AFCARS Report No. 27 (2020), at 2, https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport27.pdf. Furthermore, more than 50% of Black children will be the subject of a CPS investigation, even though there is no evidence to suggest that Black children actually experience increased maltreatment. *Racial Disproportionality and Disparity in Child Welfare*, Child Welfare Info. Gateway https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf (last accessed Nov. 16, 2020).

152 Front end primarily refers to child protective service investigations and in-home family preservation services, as well as all other child welfare functions that occur prior to an actual removal. While beyond the scope of this Toolkit, the effective engagement of families at the "front end" with preventive and other supportive services should de-linked from the very systems and structures that threaten families with removal.

153 Differential response, also called alternative response or diversion, encourages child welfare agencies to participate in supporting families who are considered low risk, allowing the child protection services to focus on the more serious case in which abuse and neglect have been confirmed. *Differential Response: A Primer for Child Welfare Professionals*, Child Welfare Info. Gateway (2020) at 2, https://www.childwelfare.gov/pubPDFs/differential_response.pdf/.

154 *Cultural Responsiveness*, Child Welfare Info. Gateway, https://www.childwelfare.gov/topics/systemwide/cultural/ (last accessed Nov. 16, 2020).

155 *See supra* n. 151.

156 In most states, a dependency court must find a child to be in imminent danger in order to grant a removal order. *Chapter 9: Family Court Proceedings*, N.Y.S. St. Child Protective Serv. Manual (2017) at F-1, https://ocfs.ny.gov/main/cps/manual/CPS-ch09-Family-Court-Proceedings.pdf.

157 Resources to find evidence-based services are located on the Title IV-E Prevention Services Clearinghouse, located here: https://preventionservices.abtsites.com/.

158 *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2014-2019*, Nat'l Conf. of St. Legislators (2020), https://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx.

159 *Rhode Island Department of Children, Youth and Families Department Operating Procedure, Policy 700.0255* (Mar. 14, 2016), http://www.dcyf.ri.gov/policyregs/placement_referral_process_2_print.htm; see also Use a Red Team to Prevent Youth from Entering Group Homes, Child Welfare Playbook, www.childwelfareplaybook.com/playbook/use_red_teams_to_prevent_group_homes.

160 *Differential Response and the Safety of Children Reported to the Child Protective Services: A Tale of Six States*, Off. of the Ass't Sec'y of Plan. & Evaluation, Dep't of Health & Hum. Servs., Admin. for Child. & Fam. (June 2016) at 4, https://aspe.hhs.gov/system/files/pdf/204981/DifferentialResponse.pdf.

161 The pilot showed an average savings of $1,300 per family over 3-5 years. *See An Alternative Response to Child Protection in Nebraska*, Voices for Child. in Neb. (2017), https://voicesforchildren.com/wp-content/uploads/2016/06/Alternative-Response-2017.pdf at 6.

162 Currently only 32% of foster youth are in a kinship home, although states vary widely in their utilization of kin. Dep't of Health & Hum. Servs., Admin. for Children & Families, The AFCARS Report No. 26 (2019), at 1, https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport27.pdf. Kinship home is defined in AFCARS as "Foster family home, relative: A licensed or unlicensed home of the child's relatives regarded by the state as a foster care living arrangement for the child." *AFCARS Foster Care Annual File Codebook*, Adoption & Foster Care Analysis & Reporting System, Admin. for Child. & Fam. (2019) at 62.

163 Jeffrey David Waid, *Investigating the Impact of Sibling Foster Care on Placement Stability*, Portland State Univ. (2015), https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=3488&context=open_access_etds.

164 Dep't of Health & Hum. Servs., Admin. for Child. & Fam., The AFCARS Report No. 26 (2019), at 1, https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport27.pdf.

165 "Fiscal Year 2018 Funding Available for Developing, Enhancing or Evaluating Kinship Navigator Programs," ACF Program Instruction, Admin. for Child. & Fam. (2018), https://www.acf.hhs.gov/sites/default/files/cb/pi1805.pdf

166 Fostering Connections to Success and Increasing Adoptions Act of 2008, H.R. 6893, 110th Cong. (2008).

167 *Id.*

168 *DCYF Forming Taskforce Groups*, Office of Tribal Relations, Wash. Dep't of Child., Youth & Fam., 2020, https://content.govdelivery.com/accounts/WADEL/bulletins/28d764f.

169 Kim Phagan-Hansel, *Relative Growth: Three States Increasingly Rely on Kin for Kids in Foster Care*, Imprint, Dec. 4, 2017, https://imprintnews.org/child-welfare-2/28865/28865.

170 Joette Katz, *How Connecticut Moved from Institutions to Families*, Imprint (Oct. 30, 2019), https://imprintnews.org/fostercarecapacity-org/connecticut-makes-move-from-institutions-to-families/38252.

171 *See supra* n.169.

172 For applicable strategies, *see Expansion of JDAI to the Deep End Tool Kit*, Annie E. Casey Found. https://www.aecf.org/work/juvenile-justice/reducing-youth-incarceration/deep-end-tool-kit/ (last accessed Nov. 16, 2020).

173 Title IV-E Guardianship Assistance, Child. Bureau, Admin. for Child. & Fam. (2013) https://www.acf.hhs.gov/cb/resource/title-iv-e-guardianship-assistance.

174 *See supra* n.170.

175 *A Child Welfare Leader's Desk Guide to Building a High-Performing Agency*, Annie E. Casey Found. (2015), at 14, https://www.aecf.org/resources/10-practices-part-one/#summary.

176 *Information Memorandum Log No: ACYF-CB-IM-19-04*, Admin. for Child. & Fam. (2019), https://www.acf.hhs.gov/sites/default/files/cb/im1904.pdf.

177 Using Evidence to Accelerate the Safe and Effective Reduction of Congregate Care for Youth Involved with Child Welfare, Chadwick Ctr. & Chapin Hall (Jan. 2016), https://www.chapinhall.org/wp-content/uploads/effective_reduction_of_congregate_care_0.pdf.

178 *Back on Track: Transforming Virginia's Child Welfare System*, Annie E. Casey Found. (2010), at 11, https://www.aecf.org/resources/back-on-track/.

179 *Id.* at 11.

180 *See supra* n.175 at 14.

181 *Uplift Family Services*, https://upliftfs.org/ (last accessed Nov. 16, 2020).

182 *See generally supra* n.178.

183 Maria Manuela Calheiros & Joana N. Patrício, *Assessment of Needs in Residential Care: Perspectives of Youth and Professionals*, 23 J. Child & Fam. Stud., 461, 461-474 (2014).

184 *See supra* n.170.

185 Ibram X. Kendi, How to Be an Antiracist 56 (2019),.

186 Oronde Miller & Amelia Esenstad, *Strategies to Reduce Racially Disparate Outcomes in Child Welfare: a National Scan*, All. for Racial Equity in Child Welfare (2015), https://files.eric.ed.gov/fulltext/ED561817.pdf.

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