



Judge Leonard Edwards  
Santa Clara Superior Court (Ret.)

## Congregate Care for Children

### HISTORY

Approximately 100 years ago most children placed in out-of-home care by the state resided in orphanages, almshouses, abandonment houses, and refuge homes. When children were removed from abusive or neglectful families, orphanages were the preferred placement. In 1909 at the White House Conference on the Care of Dependent Children, policy makers concluded that it was preferable to place these children with their own families, if possible, but, if not, with another family. As a result the concept of foster care was introduced in the United States. If the child could not be placed in foster care, social service agencies and courts continued to place them in congregate care settings such as institutions, orphanages, or group homes. In the late 20th Century, relatives were added as a placement preference. Current studies affirm the preference for a family setting over congregate care. For judges the legal placement preferences now start with home to a parent, adoption after termination of parental rights, then guardianship, placement with a relative, foster care, and, finally, congregate care including group homes, shelter care facilities, and private institutions. But this, too, is changing.

### POLICY CHANGES

Today in California approximately 6,000 children are placed in congregate care and over 21,000 placed with relatives. This is a dramatic reversal from placement patterns only a few decades ago. Moreover, both the federal and state governments have agreed with social scientists and concluded that congregate care is the least favored placement and should be further reduced. Both now agree that most children fare better in a family setting and that the cost of congregate care is far greater than family care.

These shifts in policy will have a significant impact on judges serving in the juvenile court. From the federal perspective, the passage of the Preventing Sex Trafficking and Strengthening Families Act of 2014 spells out actions that the juvenile court must take to move children from congregate care to family care. Section 475A of that act adds additional case plan and case review requirements for the judge. If the case plan is for “another planned permanent living arrangement,” (congregate care) the plan must contain (1) documentation of intensive, ongoing, unsuccessful efforts for family placement. Moreover,

the judge must make a determination explaining why “another planned permanent living arrangement” is the best permanent plan for the child and provide compelling reasons why it continues to be in the best interests of the child to – (i) return home; (ii) be placed for adoption; (iii) be placed with a legal guardian; or (iv) be placed with a fit and willing relative (emphasis added). The federal statute also requires the judge to (1) ensure that a youth aging out of foster care has the documents specified in the statute; (2) provide oversight of the quality of congregate care provided for dependent youth, and (3) provide oversight of what the local social services agency has done to provide services for children who have been the victims of sexual trafficking.

The State of California likewise has developed policies that are aimed at more oversight regarding the quality of congregate care. Responding to the legislature’s request for recommendations to reduce the use of out-of-home care the California Department of Social Services issued an extensive report, California’s Child Welfare Continuum of Care Reform.

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The CDSS concluded that “children should live in their communities in home-based family care settings.” Their report states that more has to be done to “limit congregate care to only situations in which adequate services cannot safely be provided while a child/youth lives in a family, and then for only the minimum time required for stabilization.” The report concludes that all children should live with a committed, permanent and nurturing family and that when needed, congregate care should be a short term, high quality, intensive intervention.

In order to implement these policies the CDSS report recommends creation of Short Term Residential Treatment Centers as a substitute for group homes. These Centers would provide intensive services that will enable the child/youth to transition to a family placement. They would not be intended to be long-term in nature. These Centers would be certified by county mental health plans in order to receive mental health services and accredited by a national body in order to receive foster care funds. The California legislature has taken up the recommendations of the CDSS publication and AB 403 (Stone) was signed into law by the Governor this year.

#### WHAT THIS MEANS FOR JUVENILE COURT JUDGES

Juvenile court judges already have significant oversight responsibilities for the children and youth placed by the court in out-of-home care, but there is more to be done. In addition to the duties listed in the federal and state statutes mentioned above, the Los Angeles Juvenile Court under

the leadership of Presiding Judge Michael Nash (ret.) developed a list of issues and questions that judges should be addressing when reviewing placements in congregate care.

Judges should ensure that they are:

1. Informed in a timely manner when a child/youth is placed in a group home;
2. Informed why a group home is selected rather than a less restrictive family setting.
3. Informed why the particular group home was selected.
4. Informed of the child/youth’s comprehensive case plan along with its goals and timelines.
5. Informed about the group home including its name and location, the number of youth in its care, their age range, their gender, the name and contact information for the director, the ratio of staff to children/youth in the home, the average length of stay for youth currently in the home, the number of children/youth who have returned to their homes or were moved to a less restrictive placement in the past 12 months, the number of runaways in the past 12 months, the number of children/youth residing in the home who were arrested in the past 12 months, the number of youth identified as victims of commercial sexual exploitation, and what precautions the group home has to prevent this type of victimization.
6. Informed if the child/youth is receiving psychotropic medication(s) and how the home will monitor the effects of that medication.
7. Informed of the child/youth’s school status, whether a school

change is necessary, whether school records have been transferred, the effect, if any, on school credits, and whether any special services will be continued or offered.

8. Informed about other services the child/youth is receiving and whether additional or new services will be provided.

9. Informed of the impact on family reunification, permanency, family visitation including sibling visitation and contact.

10. Informed of the efforts by the social service agency and/or the probation department to promote permanency by using techniques such as family group conferences to engage family members and seek a less restrictive placement.

Finally, the judge should establish a schedule of progress reports provided to the judge that monitor the child/youth’s progress at the group home, in school, and the implementation of the case plan.

Both federal and state laws have addressed congregate care. These laws conclude that congregate care is the least favored placement for children in out-of-home care. They mandate that judges oversee placements of children and youth in congregate care. Good practice includes careful oversight of placement decisions, the conditions children and youth live in when in congregate care, and efforts to move them to a family-like setting. The recommendations outlined in this paper along with the new federal and state laws, if effectively implemented, should improve outcomes for these young people. 🌟

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#### Endnotes:

At 1900 there were over 1,000 orphanages and other forms of congregate care in the United States. Myers, J.E.B., *A History of Child Protection in America*, Xlibris, (2004) at pp. 35-44.

The benefits of family care have been confirmed in current research. See Barth, R., *Institutions vs. Foster Homes: The Empirical Base for a Century of Action*, University of North Carolina, 2002.

For the history of the preference for relative care see Edwards, L., “Relative Placement in Child Protection Cases,” *Juvenile and Family Court Journal*, NCJFCJ, Vol. 61, No. 2, Spring, 2010, at pp. 1-44.

Dozier, M. et.al. “Consensus Statement on Group Care for Children and Adolescents: A Statement of Policy of the American Orthopsychiatric Association,” *American Journal of Orthopsychiatry*, (2014) Vol. 84, No. 3, 219-225; Ryan, J.P. et.al., “Juvenile Delinquency in Child Welfare; Investigating Group Home Effects,” *Children & Youth Services Review*, Vol. 30, Issue 9, September 2008, at pp 1088-1099.

California Child Welfare Indicators Project, University of California at Berkeley, April 1, 2015.

Barth, op.cit. footnote 2 at pp. i-ii. P.L. 113-183.

CDSS, *California’s Child Welfare Continuum of Care Reform*, Sacramento, January, 2015, at p. 5.

Id. at p. 30.