

THE NEGLECTED PROBLEM IN THE CHILD WELFARE SYSTEM:
THE INSTABILITY IN FOSTER CARE PLACEMENTS

*Madison Wurth**

I. INTRODUCTION

Prior to group care, my brother, like so many of us in foster care, had foster parents repeatedly tell him, “I love you.” “You are family.” “You are safe with us.” But each move brought a new home, new rules, new people, betrayed trust, and a broken heart. There is something that fundamentally messes with the core of your being when you believe people love you, when they take you in, when they make you promises, and then they dispose of you. Then, the system moves you, and asks you to trust and love again.¹

This testimonial is only one of many traumatic experiences American children face after removal from their homes and families following Child Protective Services’ [CPS] intervention. Children are often suddenly removed from their homes, separated from their siblings, and placed in a home or group facility with unfamiliar people. Emotional instability is sustainable for no one, especially a child. Interviews of children living in congregate care, conducted simultaneously during a study of its detrimental effects, revealed that some children shuffled through the child welfare system have actually found institutions to be a welcome break from this exhausting cycle.² “It is not that institutions are better, it’s that kids don’t want to perpetually go into a family that they don’t feel a part of....[U]nlike the foster family system, institutions provided a *reliable*, consistent placement for them.”³ One individual indicated that a group home was the only foster care she lived in for more than a year, echoing well-established research

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¹ Sarah Fathallah & Sarah Sullivan, *Away from Home: Youth Experiences of Institutional Placements in Foster Care*, THINK OF US 7 (July 21, 2021), https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf [https://perma.cc/Z6TF-WRX2].

² *See id.* at 113.

³ *Id.* at 114 (emphasis added).

emphasizing placement instability in foster care.⁴ A 2020 study found that one-third of the youth who had aged out of the child welfare system at the age of majority had lived in at least three different placements, with 20% of the youth studied having experienced four or more placement changes.⁵ These stories highlight the instability of the foster family system and its volatile environment being used to “protect” children from experiencing abuse and neglect. The irony is self-evident.

In a response to several studies demonstrating the harmful, long-term effects of a home removal, child welfare systems recently have shifted the focus of family intervention efforts toward family preservation programs.⁶ However, recent shifts in federal funding incentives, state legislation, and social service programs have failed to provide protection from the trauma and long-term emotional, psychological, and cognitive harm children can experience from multiple placement changes.

Part I of this Note will begin with a historical analysis of the purpose and development of the child welfare system. Part II will describe the current state and structure of the child welfare system, highlighting the pitfalls and lack of adequate protections within it.⁷ Part III will provide a comparison among states with various rates of home removal, placement instability, and recidivism rates demonstrates several effective strategies, which have been implemented to increase placement stability among children removed from home.⁸ Part IV of this note will demonstrate that for more consistent results nationally, a multi-tier approach for states to utilize federal funding from the Family First Prevention Services Act (“FFPSA”) available under Title IV of the Social Security Act is necessary to implement these, or similar effective strategies such as screening procedures for at-risk children and policy reforms for CPS caseworkers tasked with determining child placements.⁹ These changes would provide a better focus in preventing placement instability and yield more consistent results to decrease the trauma experienced with child welfare involvement.

To support a proposed placement stability solution, this Note will analyze the factors and considerations state statutes require in child placement determinations, the amount of deference granted to the family case managers

⁴ *Id.*

⁵ *Older Youth Housing, Financial Literacy and Other Supports*, NAT’L CONF. OF STATE LEGISLATURES (Apr. 23, 2020), <https://www.ncsl.org/research/human-services/supports-older-youth.aspx> [<https://perma.cc/H9HP-JXWY>].

⁶ *See generally Family First Prevention Services Act*, NAT’L CTR. ON SUBSTANCE ABUSE AND CHILD WELFARE, <https://ncsacw.acf.hhs.gov/topics/family-first-prevention-services-act.aspx> [<https://perma.cc/97MB-MAR7>].

⁷ *See infra* Parts II–III.

⁸ *See infra* Section III C; Part IV.

⁹ *See infra* Part V.

in a child's placement decisions, whether any screenings are conducted to determine what additional needs a child may require in his or her home environment, and how case law has been interpreted to protect children's well-being in placement decisions. Finally, this Note engages in a brief analysis of the efficiency of such an approach to demonstrate why this resolution is the most appropriate solution to ensure placement stability for children that have been removed.

II. BACKGROUND

A. Origins of the Child Welfare System

The Children's Bureau within the U.S. Department of Health and Human Services' Administration for Children and Families identifies three components to its mission statement: (1) strengthening families and preventing child abuse and neglect; (2) protecting children when abuse or neglect has occurred; and (3) ensuring that every child and youth has a permanent family or family connection.¹⁰

Since its earliest days, public policy in the United States has demonstrated an interest in the well-being of children within the given cultural and social norms of the time. As early as 1642, government-authorized intervention into the family occurred in the Massachusetts Colony, enabling magistrates to remove children from parents who did not raise their children "acceptably."¹¹ Additionally, criminal prosecution of child abusers began as early as 1809.¹² In fact, even absent statutory authorization, judges were assumed to be an inherent authority to stop child abuse.¹³ Justice Joseph Story wrote in 1886:

For although in general parents are entrusted with the custody of the persons and the education of their children, yet this is done upon the natural presumption that the children will be properly taken care of . . . But whenever this presumption is removed, whenever (for example) it is found that a father is guilty of gross ill treatment or cruelty towards his infant children . . . in every such case the Court of

¹⁰ *CB Fact Sheet*, CHILD'S BUREAU (June 29, 2021), <https://www.acf.hhs.gov/cb/fact-sheet> [<https://perma.cc/224L-7KG2>].

¹¹ John E.B. Myers, *A Short History of Child Protection in America*, 42 *FAM. L. Q.* 449, 450 (2008).

¹² *Id.* at 449. See LAURA BRIGGS, *TAKING CHILDREN: A HISTORY OF AMERICAN TERROR* (2021).

¹³ Myers, *supra* note 11, at 450.

Chancery will interfere and deprive him of the custody of his children.¹⁴

The early twentieth-century produced state-level departments of social services, and on April 9, 1912, under President Taft, the federal Children's Bureau was born.¹⁵ By 1935, as part of the New Deal, Congress enacted the Social Security Act, authorizing the Children's Bureau "to cooperate with State public-welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, [child welfare] services for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent."¹⁶

Largely due to national attention in the medical field regarding abused children in the 1960s, Congress decided to take a more involved role in state child welfare systems by utilizing its spending power under Article 1, Section 8 of the U.S. Constitution.¹⁷ The 1962 amendments to the Social Security Act re-emphasized child protection for the first time by "identif[ying] Child Protective Services as part of all public child welfare" and requiring states to make child welfare services available statewide, which prompted massive expansion of government child welfare programs around the country.¹⁸ This spark ignited the fire which has produced the prominent child protective programs seen today, which annually affect approximately half a million children.¹⁹

B. *The Emergence of a More Prominent System Nationally*

Despite the 1962 Social Security Act amendments, the federal government did not truly assume a leadership role in child welfare programs until the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974.²⁰ CAPTA allowed states to use federal funding for their child welfare services and trainings, and it still plays a major role today in the nationwide system of government child welfare systems.²¹ Its stated purpose initially was to provide financial assistance for a demonstration program to

¹⁴ *Id.* at 451.

¹⁵ *Id.* at 452–53.

¹⁶ *Id.* at 453; *see also* Social Security Act, Pub. L. No. 74-271, § 521(a), 49 Stat. 620, 633 (1935).

¹⁷ Myers, *supra* note 11, at 455; CONG. RSCH. SERV., RL31201, FAMILY LAW: CONGRESS'S AUTHORITY TO LEGISLATE ON DOMESTIC RELATIONS QUESTIONS 13 (2012).

¹⁸ Myers, *supra* note 11, at 455.

¹⁹ *The State of America's Children*, CHILD.'S DEF. FUND (2021), <https://www.childrendefense.org/state-of-americas-children/soac-2021-child-welfare/> [<https://perma.cc/VWG6-PEDY>].

²⁰ Myers, *supra*, note 11, at 457.

²¹ *Id.*

prevent, identify, and treat child abuse and neglect.²² Congress has expanded and reauthorized these purposes numerous times to give CAPTA its prominent role seen today.²³ This Note will only discuss the impact this funding had on child welfare systems. CAPTA created national data collection on incidences of child abuse and created a national definition of child abuse.²⁴

C. *The Transition of the Foster Care System in Response*

With the rapidly growing child welfare programs throughout the states, there was a significant increase in child removals from the home as well.²⁵ This unprecedented problem created a new demand for foster homes as states had to navigate how to care for the children they were seeking to protect by removing them from home.²⁶ The federal government's response to this issue was the Adoption Assistance and Child Welfare Act of 1980, which established "a program of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children."²⁷ This was the first federal legislation that conditioned funding on the states' "reasonable efforts" to prevent child removal from the home and to return those who had been removed as soon as possible.²⁸

Despite some federal initiatives to increase the size of foster care, many state foster care programs simply were not equipped to handle the demand required by the state and/or the child's caretaker in responding to the child's needs.²⁹ As a result, states often turned to congregate care placements when

²² Child Abuse Prevention and Treatment Act, Pub. L. No. 93-247, 88 Stat. 4, 4 (1974).

²³ See generally CAPTA Reauthorization Act of 2010, Pub. L. No. 111-320, 124 Stat. 3459; CAPTA Reauthorization Act of 2021, S. 1927, 117th Cong. (2021).

²⁴ CAPTA defines child abuse as "the physical and mental injury, sexual abuse, neglected treatment or maltreatment of a child under age 18 by a person who is responsible for the child's welfare under circumstances which indicate the child's health and welfare is harmed and threatened." Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5101 (1974).

²⁵ See Chapter 5: *The Child Welfare System: Removal, Reunification, and Termination*, NAT'L COUNCIL ON DISABILITY, <https://www.ncd.gov/publications/2012/Sep272012/Ch5> [<https://perma.cc/PJU5-4Z4X>].

²⁶ Kasia O'Neill Murray & Sarah Gesiriech, *A Brief Legislative History of the Child Welfare System*, MASS LEGAL SERVS. 3, <https://www.masslegalservices.org/system/files/library/Brief%20Legislative%20History%20of%20Child%20Welfare%20System.pdf> [<https://perma.cc/5AZL-7JSH>].

²⁷ Adoption Assistance and Child Welfare Act, Pub. L. No. 96-272, 94 Stat. 500, 500 (1980).

²⁸ *Id.* at 503.

²⁹ See generally Adoption and Safe Families Act, Pub. L. No. 105-89, 111 Stat. 2115 (1997); see also Robert M. Gordon, *Drifting Through Byzantium: The Promise and Failure of the Adoption and Safe Families Act of 1997*, 83 MINN. L. REV. 637 (1999) (discussing how the act has been highly criticized for contributing to the failing foster system today but, when originally passed, was considered a civil rights victory for children).

family-structured placements were not available, for whatever reason, for the child removed from home.³⁰

D. *A New Emphasis on Removal Prevention and Family-Centered Placements*

One of the recent trends in child welfare system reform is a push toward less intrusive tactics which promote infrequent removals from home and more implementation of family-focused preservation services.³¹ Research demonstrating the additional harm that foster care and other out-of-home placements can inflict on a child's emotional, psychological, and cognitive well-being led the federal government to create the Family First Prevention Services Act ("FFPSA"), introduced as part of the Bipartisan Budget Act of 2018.³² The Family First Prevention Services Act enables states to use federal funds to provide enhanced protections, support, and preventative services to children and families at risk of going into foster care.³³ Furthermore, this act places new emphasis on the placement of children in a family foster setting when removal does occur.³⁴ The new funding limited Title IV-E payments to child care institutions and reauthorized the Adoption Incentive Program through 2021 with a renewed focus on family-structured placements for children.³⁵ Most relevant to this Note, it expanded federal funding of competitive grants that support "the recruitment and retention of *high-quality* foster families," thus increasing capacity to place more children in family settings.³⁶ The act offers a variety of creative approaches states can take when utilizing the funding to implement placement stability efforts, such as creating specific task forces to make placement determinations, utilizing technological evaluation systems, implementing additional placement trainings, integrating behavioral health programs, and creating emergency response services for families in crisis.³⁷

³⁰ See generally *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2014-2019*, NAT'L CONF. OF STATE LEGISLATURES (Oct. 30, 2020), <https://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx> [https://perma.cc/VZN5-ULY5].

³¹ See generally *Family First Prevention Services Act*, *supra* note 6.

³² *Id.*; see also Bipartisan Budget Act of 2018, Pub. L. No. 115-123, §§ 50701-82, 132 Stat. 64 (2018).

³³ See *Family First Prevention Services Act*, *supra* note 6.

³⁴ See *id.*

³⁵ *Major Federal Legislation Index and Search*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/systemwide/laws-policies/federal/search/?CWIGFunctionsaction=federallegislation:main.getFedLedgDetail&id=163> [https://perma.cc/DA5V-Y5FF].

³⁶ *Id.*

³⁷ See *Family First Prevention Services Act*, *supra* note 6.

III. EVALUATING CURRENT FOSTER CARE PLACEMENT DETERMINATIONS AND STABILITY

Part III will begin by explaining the various roles that affect a family's experience with child welfare systems. Next, it will present new research demonstrating the harm a child risks when experiencing instability within the foster care system. Finally, Part III will explore how the Federal government has responded to some of this research by creating new funding to promote enhancing the foster care system, then compare three states which have poor placement stability statistics with three states who rank high in placement stability for foster care youth.

A. The Complexity of the Child Welfare System

State child welfare systems are complex and interdisciplinary institutions affected by federal involvement, state legislatures, court decisions, and chief executive officers all the way to local family case managers and judges. The involvement of these different players shapes a family's experience in the child welfare system. This complex system can easily hinder widespread systemic changes as a variety of parties, roles, considerations, and obligations must be considered. Each plays an important role in the current instability of placement determinations and the successful future implementation of systemic changes.

1. A Power Reserved for the States?

Through the Tenth Amendment and the enumerated powers clause of Article I, Section 8 of the U.S. Constitution, states have primary control of the child welfare system, bearing the public responsibility of ensuring the well-being of their children and families.³⁸ Nevertheless, the federal government continues to influence the system through its financial incentivization to states by funding specific programs and adopting proposed

³⁸ CONG. RSCH. SERV., *supra* note 17; EMILIE STOLTZFUS, CONG. RSCH. SERV., IF10590, CHILD WELFARE: PURPOSES, FEDERAL PROGRAMS, AND FUNDING 1 (2022); *In re Burrus*, 136 U.S. 586, 593–94 (1890) (“The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.”); *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904) (discussing that when state family law comes into conflict with a federal statute, federal courts have review limited under the Supremacy Clause to a determination of whether Congress has “positively required by direct enactment” that state law shall be preempted).

legislation.³⁹ In fiscal year 2021, the federal government provided approximately \$12.6 billion wholly dedicated to child welfare, totaling 26% of state child welfare agency spending.⁴⁰ An additional 18% of federal funding came from programs not solely child welfare-focused, such as the Social Services Block Grant and Temporary Assistance for Needy Families.⁴¹ Specifically, the federal government proposed the Children's Bureau, an office within the U.S. Department of Health and Human Services' Administration for Children and Families since 1935, to implement federal child and family legislation, compelling states to adopt these or similar programs that specifically meet enumerated criteria by conditioning federal funding on such requirements.⁴² A prominent example requires permanency plans for all children removed from home.⁴³ While the federal government designed its involvement in child welfare programs to promote uniformity between the states, each state still has its own governing laws, definitions, programs, and procedures, often resulting in child welfare programs that vary drastically among states.⁴⁴

2. The Interdisciplinary Operations Within

Within each state's child welfare system, laws define abuse and neglect, individual reporting obligations, and required state and local CPS agency interventions.⁴⁵ State administrations implement these laws and interventions to maintain their child welfare systems.⁴⁶ They also work with the Children's Bureau and state and local governments to find funding for their programs and to ensure that each program meets all statutory requirements.⁴⁷ These state administrations create regional and county-administered programs.⁴⁸ The state agency supervises the programs, but the local level handles the

³⁹ *How the Child Welfare System Works*, CHILD'S BUREAU 2 (Oct. 2020), <https://www.childwelfare.gov/pubpdfs/cpswork.pdf> [https://perma.cc/TG7X-FPMJ]; see also *Family First Prevention Services Act*, *supra* note 6; but see Nat'l Fed'n of Indep. Bus. V. Sebelius, 567 U.S. 519, 581 (2012) (criticizing incentives to states and arguing that Medicaid "is a gun to the head.").

⁴⁰ STOLTZFUS, *supra* note 38, at 1.

⁴¹ *Id.*

⁴² *How the Child Welfare System Works*, *supra* note 39, at 2.

⁴³ *Id.* at 6. "Permanency" is another name for the closing of child welfare services for a family as a result of the child returning home, being permanently placed with a guardian, or being adopted. See also Jennifer Pokempner, *Rights Related to Family & Permanency*, KNOW YOUR RIGHTS GUIDE 1 (May 13, 2020), <https://jlc.org/sites/default/files/attachments/2020-06/1.pdf> [https://perma.cc/Z8NL-2639].

⁴⁴ *Id.* at 1.

⁴⁵ *Id.* at 2.

⁴⁶ STOLTZFUS, *supra* note 38, at 1.

⁴⁷ *Id.*

⁴⁸ *Id.*

individual cases and state intervention efforts throughout that region.⁴⁹ County-administered programs implement specific tasks, such as investigative teams, on-going caseworkers, and legal teams.⁵⁰ Investigative teams receive and screen reports of abuse and neglect, and they may respond to a report with an initial investigation to further assess whether state intervention is necessary.⁵¹ If the investigative team opens a case following the initial investigation, it assigns a caseworker to assess family strengths and needs, as well as oversee any necessary intervention efforts through the family's involvement in the child welfare system.⁵² Finally, the legal team consists of lawyers who represent the state agency in various court proceedings that ensue following state child welfare intervention.⁵³

The importance of a caseworker in this web of players cannot be over-emphasized, as it is the caseworker who is tasked with (1) investigating the allegations of abuse or neglect; (2) visiting with the frightened, hurt, and angry children who have been harmed; (3) discussing sensitive issues with the family; (4) making life-altering decisions about the placement of a child; (5) testifying in court about the case; (6) making referrals to programs and services to help the child and family; (7) making collateral contacts with service providers; (8) enforcing compliance with service plans; and (9) making recommendations on permanency.⁵⁴ A caseworker conducts many of these activities while visiting the family in their home (usually during evenings, weekends, or holidays), without access to sufficient data or information on the family, and within strict and short timeframes.⁵⁵ Completion of each task is necessary for each child of each family assigned to the caseworker, despite many caseworkers being assigned far more than the recommended caseload.⁵⁶ Due to this demanding work, child welfare

⁴⁹ See 42 U.S.C. § 677(b)(2) (noting a state agency must “administer, supervise, or oversee the programs” to receive federal funding).

⁵⁰ See, e.g., DIANE COMEAUX, STATE OF NEV. DEP'T OF HEALTH AND HUM. SERVS., ANNUAL PROGRESS AND SERVICE REPORT 14 (2010), https://dcfs.nv.gov/uploadedFiles/dcfsnv.gov/content/Tips/Reports/2010_APSR.pdf [<https://perma.cc/4A5B-L9HY>].

⁵¹ See *How the Child Welfare System Works*, *supra* note 39, at 3.

⁵² *Id.* at 4.

⁵³ See *id.*

⁵⁴ James Payne, *Caseworkers Are First Responders. They Deserve the Same Professionalization as Other Essential Personnel*, BEYOND QUICK FIXES: WHAT WILL IT REALLY TAKE TO IMPROVE CHILD WELFARE IN AMERICA? 2 (2014), https://www.publicconsultinggroup.com/media/1352/caseworkers_are_first_responders_whitepaper.pdf [<https://perma.cc/NY77-YC65>].

⁵⁵ *Id.*

⁵⁶ *Id.*

professionals, particularly those on the front lines, “are susceptible to burnout, compassion fatigue, and secondary traumatic stress.”⁵⁷

While interconnected, each of these terms is distinguishable. Burnout refers to a “state of physical, mental, and/or emotional exhaustion *caused* by excessive or prolonged stress. It can lead to a sense of reduced accomplishment and loss of personal identity.”⁵⁸ Compassion fatigue, however, “refers to the physical and mental exhaustion and emotional *withdrawal experienced* over an extended period of time by those in the helping professions. It can lead to apathy or indifference toward the suffering of others[,]” detrimental to the important work required of state child welfare professionals.⁵⁹ Compassion fatigue contrasts with the idea of compassion satisfaction or “the fulfillment experienced from helping others.”⁶⁰ Perhaps most seriously, child welfare professionals are susceptible to secondary traumatic stress which occurs “when a professional experiences high stress or symptoms of trauma that mimic posttraumatic stress disorder symptoms when working with people who have experienced trauma.”⁶¹

Research demonstrates that burnout plays a central role in disengagement among frontline caseworkers and their supervisors in child welfare systems.⁶² “Job burnout adversely influences work-related engagement . . . and high turnover rates[,]” and further correlates with absenteeism and job performance.⁶³ Work withdrawal can result in work behaviors that seemingly reflect a decision to limit work-related activities, leading to “reduction in motivation or an increase in frustration with the job[,]” which may foster attitudes and behaviors reflecting disengagement and psychological withdrawal.⁶⁴ In a system designed for a trauma-informed care approach to be utilized, reducing burnout and corresponding compassion fatigue is critical to ensuring a successful child welfare program. A 2016 study indicated that “emotional exhaustion is an indirect and direct threat to engagement, highlighting the importance of further examining the development of job burnout among social workers in child welfare settings

⁵⁷ *Burnout, Compassion Fatigue, and Secondary Traumatic Stress*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/management/workforce/workforcewellbeing/burnout/> [<https://perma.cc/KJM7-CBTB>].

⁵⁸ *Id.* (emphasis added).

⁵⁹ *Id.* (emphasis added).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Joni Handran, *Trauma-Informed Systems of Care: The Role of Organizational Culture in the Development of Burnout, Secondary Traumatic Stress, and Compassion Satisfaction*, 3 J. SOC. WELFARE & HUM. RTS. 1, 2 (2015).

⁶³ Dnika J. Travis et al., *'I'm So Stressed!': A Longitudinal Model of Stress, Burnout and Engagement Among Social Workers in Child Welfare Settings*, 46 BRIT. J. SOC. WORK 1076, 1080 (2016).

⁶⁴ *Id.*

and administrative strategies that may mitigate potential obstacles to optimal organizational effectiveness.”⁶⁵

3. Additional Third Parties Involved

Public child welfare agencies also work with a variety of public and private entities to carry out their mission. State courts are the most important public stakeholder. If, after a report and an initial investigation, the agency determines that the child is so unsafe that the family requires additional intervention, the agency will initiate a court action with the juvenile dependency court in that state.⁶⁶

a. The Court’s Role and Considerations—Statutory Guidance v. Court’s Discretion

Courts issue temporary placement orders when the child is not safe to remain in the home, order specific services, and even issue no-contact orders with the child.⁶⁷ Many of these actions take place at the initial dependency proceeding.⁶⁸ Courts also hold adjudicatory hearings where they hear evidence and the judge determines whether maltreatment occurred and whether the child should remain under the continuing jurisdiction of the court.⁶⁹ If the child does remain under the court’s jurisdiction, it conducts a permanency hearing, and the selected permanency plan will serve as a guide to determine what other services are needed.⁷⁰ For example, if the permanency plan is family reunification—the most common plan for children—services will focus on efforts to ensure the child can return home without being subjected to maltreatment. Conversely, if the permanency plan is adoption, services may focus on finding an adoptive home for the child or preparing the child for the transition to adoption.

Simply put, courts generally supervise the process of state intervention actions, services, and orders that will best serve a child and identify a person who is best suited to care for the child.⁷¹ Most states follow what is known as the “best interest of the child” standard, which seeks to promote the welfare

⁶⁵ *Id.* at 1091.

⁶⁶ *How the Child Welfare System Works*, *supra* note 39, at 4.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 6.

⁷¹ *Determining the Best Interests of the Child*, CHILD WELFARE INFO. GATEWAY 2 (June 2020), https://www.childwelfare.gov/pubPDFs/best_interest.pdf [<https://perma.cc/BQR6-M4MR>].

of the child in question.⁷² However, state statutory factors and principles that determine what is in the child's "best interest" significantly vary among the states.⁷³ Twenty-eight states instruct courts to make determinations with a focus on the "importance of family integrity and preference for avoiding removal of the child from his/her home[.]" while others opt to focus on the "health, safety, and/or protection of the child."⁷⁴ Notably, only twelve states suggest a guiding principle that focuses on ensuring that children removed from home are given services that will aid in their development and well-being into adulthood.⁷⁵

States opting to provide more general guidance yield more discretion in court determinations.⁷⁶ Whether this is a more appropriate approach is a topic for debate. Supporters argue that this discretion allows judges to craft and cater individualized decisions for each family unit rather than following a pre-determined plan.⁷⁷ However, critics point out that this also reduces a family's ability to successfully appeal a trial judge's decision.⁷⁸ In more than forty states, appellate courts review determinations as to a child's best interest under an "abuse of discretion standard," merely requiring a finding that the trial court was not clearly erroneous as to the factual findings cited in its decision.⁷⁹ When statutes mandate judicial consideration of specific factors, families have more arguments to demonstrate that a court's decision was not supported by substantial evidence.⁸⁰ However, general guidance leaves more discretion to the trial court, as only one or two factors may influence a judge's decision, which leaves the appellate court with a narrow analysis and, ultimately, a finding that no abuse of discretion occurred by the trial court.⁸¹ Nevertheless, about half of the states in the United States require one or more statutorily enumerated factors for courts to consider in deciding what is in the specific child's "best interest," e.g., the individual family's interpersonal roles and relationships, the child's physical and mental needs, the parents' mental and physical health, or the presence of domestic violence.⁸² Fourteen of these states instruct courts to consider all relevant factors, as opposed to

⁷² *Id.* at 1.

⁷³ *Id.* at 2.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 3.

⁷⁷ See generally LINDA D. ELROD, CHILD CUSTODY PRACTICE AND PROCEDURE § 14:28 (2022).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See, e.g., KY R. CIV. P. 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986).

⁸¹ See, e.g., *Chesser-Witmer v. Chesser*, 117 P.3d 711, 719 (Alaska 2005).

⁸² *Determining the Best Interests of the Child*, *supra* note 71, at 2.

eight states which mandate that courts consider all *statutorily* enumerated factors.⁸³

In addition to statutory factors, state courts must also consider the federal and/or state constitutional protections in place for each of the parties involved, and they may also prioritize maintenance of sibling and other close family bonds, or in some situations, the wishes of the child whose interests are in question.⁸⁴ Importantly, state child welfare statutes give significant deference to the recommendation of the caseworker assigned to the family.⁸⁵ Facially, this case-by-case determination appears to allow the child welfare system to cater to each family's unique situation and individualized needs.⁸⁶ Practically, however, it often leads to inconsistent, unstable, and unclear standards not only among the states, but also between the local family courts within each state.⁸⁷

b. Third-Party Service Providers

Private child welfare agencies and community-based organizations are other prominent parties in child welfare systems.⁸⁸ These organizations often contract with state child welfare systems to provide additional required services for families experiencing state intervention.⁸⁹ These services include in-home family preservation services, foster care, residential treatments, mental health care, housing assistance programs, substance abuse programs, parenting skills classes, domestic violence services, employment and childcare assistance, and supervised visitation between the parent and children.⁹⁰

These third-party service providers experience much of the traumas and anxieties first-hand with families and caseworkers. What many outside individuals do not realize, and what many scholarly articles fail to highlight, in relation to these essential third-party service providers is the extend of CPS's utilization of its services, the significant differences these services have, and the overwhelming lack of third-party service providers' role in court determinations.

⁸³ *Id.* at 3.

⁸⁴ *Id.* at 3–4.

⁸⁵ Bruce A. Boyer, *Jurisdictional Conflicts Between Juvenile Courts and Child Welfare Agencies: The Uneasy Relationship Between Institutional Co-Parents*, 54 MD. L. REV. 377, 409 (1995).

⁸⁶ *Id.* at 401.

⁸⁷ *Id.* at 417–18.

⁸⁸ *How the Child Welfare System Works*, *supra* note 39, at 1.

⁸⁹ *Id.*

⁹⁰ *Id.*

For example, in Indiana, once children are removed from the home, the parent is entitled to regular visitation with them.⁹¹ At a minimum, absent extreme circumstances such as sexual abuse of the child, visits are closely supervised, taking place once a week for one to two hours at a time. Most frequently, parents visit under close supervision for six hours weekly, either three hours twice each week or two hours three times a week. A specific visit supervisor, employed by these third-party service providers, provides the transportation for visits and makes detailed objective reports of the interactions between the parent and child during the visit, intervening when necessary. Visit supervisors regularly spend over twenty-four hours a month with the family, observing the parent's parenting techniques and how the child responds and interacts with the parent. Visit supervisor oversight provides regular and updated knowledge of the family's current progress. That oversight drastically differs from the Indiana DCS on-going family caseworkers, whose workload is often so dense they can only afford a handful of short-lived, individual check-ins with the parties to a case to gauge the family's progress.⁹² It also prevents the family case workers, also known as family case managers ("FCMs"), from witnessing parent and child interactions. This experience is not unique, as many other states' child welfare programs merely require that a child in an out-of-home placement have face-to-face visits with his or her caseworker *at least twice per month* during the first two months of an initial placement and thereafter *at least once per month* throughout the child's placement.⁹³

B. Research Proves the Salient Need for Stability

"A lot of kids in foster care, they're put in boxes, and moved around like packages, and their case numbers are like their tracking numbers. Foster kids are made to feel like commercial products."⁹⁴

⁹¹ See IND. DEP'T OF CHILD SERVS., INDIANA CHILD WELFARE POLICY MANUAL, ch. 8, § 12 (2022), https://www.in.gov/dcs/files/Child_Welfare_Policy_Manual.pdf [<https://perma.cc/T8F3-CXMN>] (DCS policy ensures face-to-face contact occurs between the child and parent within forty-eight hours of removal and "regularly while the child remains in out-of-home care.").

⁹² *Evaluation of the Indiana Department of Child Services*, CHILD WELFARE POL'Y & PRAC. GRP. 24 (June 18, 2018), <https://www.in.gov/dcs/files/IndianaEvaluationReportCWGFinal.pdf> [<https://perma.cc/7VG5-FZYR>] ("There is nothing in the policy that suggests that the FCM should schedule a meeting with parents that is not incidental to a child and family visit, court hearing, or other event that has another primary focus."); see also IND. DEP'T OF CHILD SERVS., *supra* note 91, at ch. 7, § 3 ("DCS will have at least monthly contact with the children and their custodial parent."); *id.* at ch. 8, § 10 ("Family case managers must see children in their placements at least every other month.").

⁹³ See, e.g., N.J. Admin. Code § 3A:12-2.7 (2022).

⁹⁴ Fathallah & Sullivan, *supra* note 1, at 85.

“[C]hildren need consistency, predictability, and attachment to a caring adult to thrive. ... These secure attachments can best be assured in stable placements that help young people transition in and out of care and into permanency without delay.”⁹⁵ Moving children around keeps them in limbo, increasing the chances of extending their time in care, as well as the likelihood of aging out to adulthood without the support of a lifelong family.⁹⁶ There is ample research to support this conclusion; for example, children with multiple placement changes have a significantly greater risk (36%–63%) of developing behavioral challenges than children in stable placements.⁹⁷ “Multiple placements have also been found to lead to delayed permanency outcomes, academic difficulties, and struggles to develop meaningful attachments.”⁹⁸

“[P]lacement instability also impacts a child’s chances for permanency through reunification, adoption, or guardianship.”⁹⁹ This correlation stems from the lack of bonding opportunities between potential permanent placements and the child, as evidenced by the testimonials cited in the aforementioned study that stated that the more times children changed placements, the less effort they put into bonding with the new family.¹⁰⁰ It also produces an increased likelihood of involvement with the child welfare system as an adult with their own children.¹⁰¹ This cycle illustrates the failure of child welfare systems to effect long-term societal change with their interventions.

C. *A New Focus on Family—State Reform in Response to New Federal Incentive*

Motivated by federal funding programs, such as the Family First Prevention Services Act, state child welfare systems have reformed their

⁹⁵ *What Impacts Placement Stability?*, CASEY FAM. PROGRAMS 1–2, https://caseyfamilypro.wpenginepowered.com/media/SF_Placement-stability-impacts_2021.pdf [<https://perma.cc/2NKQ-JFDR>] (last updated Aug. 2018).

⁹⁶ *Id.* at 2.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 3.

¹⁰⁰ Cynthia G. Hawkins & Taylor Scribner, *Serving-Up the ACE: Understanding Adverse Childhood Experiences (“ACE”) in Dependency Adoption Through the Lens of Social Science*, 54 U. MICH. J. L. REFORM CAVEAT 1, 29 (2020) (“If trauma is not addressed properly in these children before adulthood, there is a high probability that these individuals will experience the juvenile justice system again as parents.”).

¹⁰¹ *Id.*

statutes, budgets, policies, programs, and practices.¹⁰² However, many states still lack adequate policies to ensure that children receive stable placements from the moment of removal.

1. States Struggling to Provide Placement Stability

Most illustrative of placement instability in the United States is the current crisis in Kansas, which was ranked as the third highest state experiencing placement instability in 2019 with 26.1% of children removed from home experiencing at least three placement changes within the first twelve months of removal.¹⁰³ This is 10.1% higher than the still astoundingly high national average, which the U.S. Department of Health & Human Services Children's Bureau's Child Welfare Outcomes Report found to be 16% in 2019.¹⁰⁴ However, while these statistics serve as a window into Kansas placement stability, a more in-depth example is found in a 2018 class action suit brought in Kansas Federal District Court against state officials on behalf of the state's foster children—*M.B. v. Howard*.¹⁰⁵ While this case resulted in a federal civil rights settlement agreement rather than a final judgment, its effects and subsequent settlement publicized placement instability and resulted in fundamental changes in the operation of Kansas' child welfare system through “declarative and injunctive relief compelling Defendants to remedy known dangerous practices and specific structural deficiencies in the Kansas foster care system.”¹⁰⁶

The amended complaint tells the story of several Kansas children who were shuffled through placements after their removal from home at truly horrifying rates.¹⁰⁷ The complaint alleged that:

Children in DCF custody needlessly move from placement to placement more than fifteen or twenty times, and some children even move more than fifty or one hundred times.

¹⁰² *System Reform*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/management/reform/> [https://perma.cc/GAM2-C2S4].

¹⁰³ *Foster Care Instability in Kansas*, UNITED HEALTH FOUND. (2022), https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/Foster_Stability/state/KS [https://perma.cc/XM3F-TT23].

¹⁰⁴ *Foster Care Instability in United States*, UNITED HEALTH FOUND. (2022), https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/Foster_Stability [https://perma.cc/2T5J-7UNE].

¹⁰⁵ *M.B. v. Howard*, No. 18-2617-DDC-GEB, 2021 WL 295882 (D. Kan. Jan. 28, 2021).

¹⁰⁶ First Amended Complaint, *M.B. v. Howard*, No. 18-2617-DDC-GEB (D. Kan. Sept. 6, 2019), ¶ 10, https://www.kansasappleseed.org/uploads/2/1/9/2/21929892/m.b.-v.-howard-amended_complaint.pdf [https://perma.cc/B3WK-E25N].

¹⁰⁷ *Id.* ¶ 2.

Alarming, DCF frequently subjects children to “night-to-night” or short-term placements. In a repetitive, destabilizing cycle, children are regularly forced to sleep for a night or several nights anywhere a bed, couch, office conference room, shelter or hospital can be found. For days, weeks, or even months at a time, they spend their nights in these short-term placements and their days in agency offices waiting to find out where they will sleep next, only to repeat the same cycle again. DCF’s practice of extreme housing disruption inherently deprives children of basic shelter and effectively renders them homeless while in state custody.¹⁰⁸

Kansas, like many other states, used “churning” as a short-term solution when it was unable to find long-term, stable placements for the children it already removed from home.¹⁰⁹ “Churning” is the practice of moving children through multiple night-to-night or otherwise short-term, transient placements which only last for up to a week or a month at a time.¹¹⁰ Not only does churning force children to face the trauma of placement instability, but it also “often delays or disrupts mental health screens, diagnostic services, and treatment,” which become increasingly important with each placement change as the trauma induced by the churning itself increases the need for prompt mental health services.¹¹¹ In turn, the lack of adequate mental health services can further contribute to the child’s risk of future instability because “foster families are frequently unable and unprepared to meet children’s unidentified and/or untreated mental health needs” on their own.¹¹² The complaint contained seventeen pages detailing the named plaintiffs’ experiences with placement instability in Kansas.¹¹³ The following are summaries of some of the most traumatic stories of placement instability suffered by the plaintiffs in this action.

M.B. and S.E. were immediately separated from their older sister at removal, then subjected to extreme housing disruption, including night-to-night placements for nearly a week. The children did not receive any diagnostic services to assess the trauma suffered from the removal, which later resulted in further separation of the siblings and one child requiring

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* ¶¶ 2, 5.

¹¹⁰ *Id.* (Research demonstrates that churning causes and exacerbates both attachment and behavioral disorders as well as “direct physical harm to children’s normal brain development; a child’s brain, central nervous system, and endocrine system.”).

¹¹¹ *Id.* ¶ 7.

¹¹² *Id.*

¹¹³ *Id.* ¶ 14–104.

hospitalization for mental health concerns.¹¹⁴

By 2018, M.J. had been in state custody for ten years and subjected to more than eighty placement changes, including group homes, shelters, psychiatric residential treatment facilities (“PRTFs”), and multiple night-to-night placements. Some of these placements were so temporary that they changed nightly. Importantly, during these night-to-night placements, M.J. was not attending school at all, forcing M.J. to stay in a third party service provider’s offices during the day.¹¹⁵

In 2018, R.R. had only been in state custody for two years but, during these two years, experienced over 100 placements ranging from acute hospitalizations to group homes and even overnights at a third-party service provider’s Olathe office. During her first ten months in CPS custody, R.R. was placed in more than thirty night-to-night and short-term placements and third-party service provider office stays, none of which lasted more than two months. At one point, R.R. was the only female resident in a male-only unit of a group shelter, where she was subjected to unprotected sexual intercourse with a male peer to which she lacked the capacity to consent. Like other named plaintiffs, there were many times that this instability resulted in her not attending school and, despite a significant need for mental health services, any services provided were inconsistent, and she often did not receive them at all.¹¹⁶

R.M. experienced more than 130 placement changes in the six years he was in state custody. This instability not only took a significant toll on his mental health, but the continuous disruptions also caused him to fall behind in his education.¹¹⁷

J.P. never lived at any placement for more than six months in her first two years of being in state custody. During those two years, she was shuffled through twenty-one different placements.¹¹⁸

Kansas’ own placement statistics supported the portrait of instability painted in *M.B. v. Howard*, which as of March 2020, found that nearly 63% of the children in state custody experienced 4.4 or fewer placement moves, while over 25% of the children experienced an average of 8.6 or more moves.¹¹⁹ The consent decree had several important effects on Kansas’

¹¹⁴ *Id.* ¶ 17–20.

¹¹⁵ *Id.* ¶ 28–34.

¹¹⁶ *Id.* ¶ 38–46.

¹¹⁷ *Id.* ¶ 52–54.

¹¹⁸ *Id.* ¶ 75.

¹¹⁹ KAN. DEP’T FOR CHILD. & FAMS., TITLE IV-B CHILD AND FAMILY SERVICES PLAN ANNUAL PROGRESS AND SERVICES REPORT 40 (2020), <http://www.dcf.ks.gov/services/PPS/Documents/Other/TITLE%20IV-B%20APSR%202021%20August%202020.pdf> [https://perma.cc/UC5S-XMMM].

placement practices. The most unique provision created an interdisciplinary “independent advisory group” designed to “inform action planning and program improvement and assist in implementation of this Settlement Agreement.”¹²⁰ The agreement provided a specific structure for the advisory group composition; namely, at least one-third of the advisory group must consist of “stakeholders who are foster care providers, relative care providers, parents, or youth who are experiencing or have experienced alternative placements within their families,” at least 50% of professional stakeholders must be those directly servicing families, and no more than 20% of the group may consist of Kansas state employees.¹²¹ This advisory committee is permitted to make written recommendations to Kansas’ child welfare system, which Kansas must at least comment upon and notify the advisory committee whether it accepted the recommendations.¹²² The agreement also increased statistical reporting, redefined agency placement practices, and numerically defined outcome goals which must be achieved by 2024.¹²³

The settlement agreement addressed five outcomes which must be accomplished by 2024.¹²⁴ First, over a twelve-month period, Kansas’ placement rate cannot exceed more than 4.44 moves per 1,000 days.¹²⁵ Second, at least 90% of children in state custody “shall have had their mental and behavioral needs addressed.”¹²⁶ Third, at least 90% of children in state custody will be in a stable placement at the time of review.¹²⁷ Fourth, at least 90% of children in state custody “shall have one (1) or fewer Placement moves in the twelve (12) months immediately preceding the last date of that reporting period.”¹²⁸ Finally, at least 90% of children in state custody must

¹²⁰ Settlement Agreement § 2.1.2, M.B. v. Howard, No. 18-2617-DDC-GEB (D. Kan. July 8, 2020), https://www.kansasappleseed.org/uploads/2/1/9/2/21929892/final_filed_settlement_agreement.pdf [<https://perma.cc/P3QC-F5ZN>].

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* § 2.1.3, 2.5, 2.6.

¹²⁴ *Id.* § 2.9.

¹²⁵ *Id.* § 2.9.1.

¹²⁶ *Id.* § 2.9.2.

¹²⁷ *Id.* § 2.9.3. This outcome is measured based on the Child & Family Services Reviews (CFSR) Permanency Outcomes which determines placement stability by answering the question: “[o]f all children who enter foster care in a 12-month period, what is the rate of placement moves per day of foster care?” *CFSR Round 3: Statewide Data Indicator Series*, CHILD’S BUREAU 1, <https://dcyf.ri.gov/sites/g/files/xkgbur416/files/documents/data-evaluation/cfsround3-placementstability.pdf> [<https://perma.cc/25LE-YJZ7>]. During CFSR, moves per day of foster care are assessed and only those moves that occur during the monitoring period are counted. *Id.* The initial placement is not counted. *Id.* This measure also “counts each move, so it continues to hold States accountable for children who have already moved several times” prior to the monitoring period. *Id.* The national standard is 4.12 moves per 1,000 days in care. *Id.*

¹²⁸ Settlement Agreement, *supra* note 119, § 2.9.4 (“The measure shall be the number of Placement Moves in the twelve (12) months immediately preceding the last date of the reporting period, i.e., only

have “received a timely Initial Mental Health and Trauma Screen within thirty (30) days upon each entry into the foster care system.”¹²⁹

In compliance with the consent decree, new provisions in Kansas’ child welfare policies for its staff were implemented.¹³⁰ The 2021 policy update states “[s]everal studies have revealed the relationship between stability of foster care placement and permanency.”¹³¹ “This connection makes enhancing placement stability part of the state’s focus on achieving permanency.”¹³² Despite this identified goal, few other changes occurred. One added requirement was that when a child has needs which require the placement to be a non-family setting, the “need for continued placement in that setting should be periodically re-assessed.”¹³³ Interestingly, Kansas also has a policy requiring that when siblings are not placed together, a plan will be made to move them into the same placement as soon as possible.¹³⁴ While this policy may seem ideal in theory as it promotes sibling bonds, it requires the state to recommend another placement change for at least one of the children. As a critic of a similar Indiana policy has remarked, these mandates can omit:

[C]onsideration of other factors that may have critical implications for children’s emotional health and development, such as . . . the length of the child’s placement and/or his/her level of attachment to the substitute caregivers, other aspects of the child’s placement and placement alternatives, and their advantages or disadvantages given his individual needs and aspirations.¹³⁵

Indiana also experiences serious placement instability throughout its child welfare systems. 26% of children removed from home for twelve to twenty-four months experienced three or more placement changes.¹³⁶

moves occurring during the reporting period will be considered for this measure.”).

¹²⁹ *Id.* § 2.9.5.

¹³⁰ See generally KAN. DEP’T FOR CHILD. & FAMS., SUMMARY OF CHANGES (Feb. 2022), http://content.dcf.ks.gov/PPS/robohelp/PPMGenerate/CFS_PPM2.htm#t=PPM_Summary_of_Changes.htm [https://perma.cc/DY4K-G72Q].

¹³¹ KAN. DEP’T FOR CHILD. & FAMS., *supra* note 118, at 39.

¹³² *Id.*

¹³³ KAN. DEP’T FOR CHILD. & FAMS., PREVENTION AND PROT. SERVICES POL’Y AND PROC. MANUAL § 5232 (2022), https://www.dcf.ks.gov/services/PPS/Documents/FY2023DataReports/PPM/Policy_and_Procedure_Manual_Sept282022.pdf [https://perma.cc/FJ3C-HALJ].

¹³⁴ See *id.* § 5237(A)(2).

¹³⁵ *Evaluation of the Indiana Department of Child Services*, *supra* note 92, at 24–25.

¹³⁶ *Child Welfare Outcomes Report Data*, CHILD’S BUREAU, <https://cwoutcomes.acf.hhs.gov/cwodatasite/sixOneLessThan12/index> [https://perma.cc/HER7-JV7P].

Notably lacking from Indiana's long and short-term goals is anything related to providing placement stability for children removed from home.¹³⁷ Perhaps this is because it was not until June of 2020 that Indiana's child welfare program launched its family preservation services in an effort to correct the trend of increasing numbers of children entering out-of-home care.¹³⁸ As of 2017, "Indiana's rate of children in out-of-home care was about 13 children for every 1,000 in the state and [was] over twice the national average" of 5.6%.¹³⁹ Some have identified Indiana's current challenges as a "high rate of child abuse and neglect referrals and broad mandates for child welfare involvement relative to surrounding states and nationally."¹⁴⁰ One interesting problem in placement stability is due to Indiana's Child Welfare Manual, which states that DCS *will* recommend to the court a change in placement if either of the following exists: (1) any substantiated child abuse or neglect (CA/N) in a resource home by the resource parent(s) or any household member; or (2) the child can be placed with his or her siblings.¹⁴¹ This approach has been criticized because:

While these provisions point to situations in which a change in placement *may* be warranted, the directive that "DCS *will* recommend to the court a change in placement" omits consideration of other factors that may have critical implications for children's emotional health and development, such as the nature and extent of any substantiated maltreatment in the resource home and any measures taken or that could be taken to remedy it, the length of the child's placement and/or his/her level of attachment to the substitute caregivers, other aspects of the child's placement and placement alternatives, and their advantages or disadvantages given his individual needs and aspirations.¹⁴²

Finally, "[i]n 2019, Tennessee had the highest rate of foster care instability in the nation,"¹⁴³ with kids typically placed in three or more homes

¹³⁷ See generally IND. DEP'T OF CHILD SERVS., ANNUAL PROGRESS AND SERV. REP. (2021–2022), https://www.in.gov/dcs/files/Annual_Progress_and-Services_Report_APSR_2021-2022.pdf [<https://perma.cc/EG6Q-Q4UB>].

¹³⁸ *Evaluation of the Indiana Department of Child Services*, *supra* note 92, at 3.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 5.

¹⁴¹ IND. DEP'T OF CHILD SERVS., *supra* note 91, at ch. 8, § 38.

¹⁴² *Evaluation of the Indiana Department of Child Services*, *supra* note 92, at 24–25 (emphasis added).

¹⁴³ *Kids Count: State of the Child*, TENN. COMM'N ON CHILD. & YOUTH 29 (2021), <https://www.tn.gov/content/dam/tn/tccy/documents/State%20of%20the%20Child%202021.pdf>

within a year.¹⁴⁴ In fact, 31% of children removed from home for only twelve months or less experienced three or more placement changes.¹⁴⁵ In 2019, 42% of children in Tennessee state custody saw at least two placement changes.¹⁴⁶ Tennessee has credited the workforce turnover rate in its child welfare system as having a major impact on children's placement stability.¹⁴⁷ Tennessee also recognizes that much of its placement instability is a result of using temporary placements upon removal "due to not having an identified placement resource."¹⁴⁸ Similar to Kansas, Tennessee's Child Welfare System often uses its own facilities for temporary placements following removal, particularly for delinquent and behaviorally difficult children.¹⁴⁹ More than 8,900 children in state custody were awaiting placements in August 2021.¹⁵⁰ Another identified issue is that, while the total number of foster homes in a county may match the number of homes needed for youth care in that region, additional research shows that the homes in many counties do not adequately provide for the unique needs of the children in that county.¹⁵¹ Notably, only about 15% of Tennessee children in state custody are in kinship placements.¹⁵²

2. States with "Successful" Placement Programs

Georgia is a state which agrees with the national vision and mission of child welfare programs, namely to protect children, strengthen families, and ensure every child has a permanent family,¹⁵³ but that state feels "an adjustment should be made to the guiding principles and values to more clearly reflect [a] commitment to aligning primary prevention efforts; reasonable efforts to prevent removal and achieve permanency; and efforts

[<https://perma.cc/32K9-XFT3>].

¹⁴⁴ Nadia Ramlagan, *Foster Care Instability Continues to Impact Tennessee Kids*, PUB. NEWS SERV. (Dec. 27, 2021), <https://www.publicnewsservice.org/2021-12-27/youth/foster-care-instability-continues-to-impact-tennessee-kids/a77149-1> [<https://perma.cc/ULJ6-H2PH>].

¹⁴⁵ *Kids Count*, *supra* note 142, at 29.

¹⁴⁶ *Id.*

¹⁴⁷ TENN. DEP'T OF CHILD.'S SERVS., CHILD AND FAM. SERV. PLAN 14 (June 30, 2020), https://www.tn.gov/content/dam/tn/dcs/documents/quality_improvement/cfsr/TN_Child_Family_Service_Plan%202020-2024.pdf [<https://perma.cc/3YJM-WTJY>].

¹⁴⁸ *Id.*

¹⁴⁹ See Natalie Neysa Alund, 'Emergency Situations': 27 Children in State Custody Forced to Sleep at State Office Building, TENNESSEAN (Aug. 2, 2021), <https://www.tennessean.com/story/news/local/2021/08/02/tennessee-department-of-childrens-services-sleep-office-space/5452993001/> [<https://perma.cc/NJF3-FRXX>].

¹⁵⁰ *Id.*

¹⁵¹ TENN. DEP'T OF CHILD.'S SERVS., *supra* note 146, at 14–15.

¹⁵² *Id.* at 16.

¹⁵³ See *CB Fact Sheet*, *supra* note 10.

to improve the foster care experience.”¹⁵⁴ These prevention measures focus on the new national mission established by the Family First Preservation Services Act of safely preventing removals from the home to foster care, but recognize that this tertiary prevention should be extended to prevention measures at the primary and secondary levels as well.¹⁵⁵ By “focusing efforts further upstream,” they will support a “broader shift in the system towards promoting primary and secondary prevention.”¹⁵⁶ Primary, secondary, and tertiary maltreatment prevention efforts aid local communities in promoting safe, *stable*, nurturing relationships and environments for all families.¹⁵⁷ Secondary prevention efforts target minimizing the number of moves for children when a placement change is warranted, as well as how to best minimize the trauma to the child and support the increased capacity for the caregiver.¹⁵⁸ Georgia’s re-focused efforts have demonstrated success in improving placement stability, with a 12% decrease from 2015 to 2019 in children removed from home between twelve and twenty-four months experiencing more than two placement changes.¹⁵⁹ In 2019, 83.2% of Georgia’s children removed for less than a year experienced two or fewer placement changes.¹⁶⁰ However, Georgia should consider additional measures as it still had, as of 2019, approximately 4,137 children removed from the home for more than two years experiencing three or more placement changes during that time.¹⁶¹

New Jersey offers an alternative, but equally successful, approach to providing stability for children removed through state child welfare involvement. New Jersey focuses on making sure that children remain with extended family or family friends and has made “preserving kinship connections” a transformational goal and priority in its strategic plan.¹⁶² Illustrative of this commitment is “the 63% reduction in the number of children entering out-of-home placement from the onset of the [CPS] reform in 2006 with over 13,000 children in placement to 4,799 as of September 2019.”¹⁶³ In 2019, 87.4% of New Jersey’s children removed from home

¹⁵⁴ GA. DIV. OF FAM. & CHILD. SERVS., CHILD & FAM. SERVS. PLAN 7 (Sept. 2020), <https://dfcs.georgia.gov/document/document/2020-2014-georgia-child-family-services-plan-and-report-cfsp/download> [https://perma.cc/6ZND-36CE].

¹⁵⁵ *Id.* at 9.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 10.

¹⁵⁸ *Id.* at 95.

¹⁵⁹ *Child Welfare Outcomes Report Data*, *supra* note 135.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Newark Kids Count 2020*, ADVOC. FOR CHILD. OF N.J. 43 (2020), <https://files.eric.ed.gov/fulltext/ED616481.pdf> [https://perma.cc/JM6H-DMXP].

¹⁶³ N.J. DEP’T OF CHILD. & FAMS., 2021 ANNUAL PROGRESS AND SERVS. REP. (APSR) 17 (2020),

experienced two or fewer placement changes within the first year of their removal.¹⁶⁴ This high level of stability has remained consistent over time even as the number of children entering out-of-home placement continues to decline.¹⁶⁵ Notably, New Jersey's child welfare program "has identified practice issues related to concurrent planning and kinship placements that are negatively influencing permanency outcomes for children."¹⁶⁶ "N[ew] J[ersey] continues to struggle . . . to establish timely and appropriate permanency goals for children in out-of-home care and to achieve those identified goals in a timely fashion."¹⁶⁷

IV. ANALYSIS

Part IV will demonstrate the various ways that state child welfare systems have created placement stability for foster youth. This includes focusing efforts on preventative measures, creating guidelines and support within the systems, decreasing workloads, utilizing new technologies, and offering continuous support for children and families. It will conclude by demonstrating how many of these successful techniques have been or commonly are limited by a state's available funding through federal means—which accounts for a majority of their funding.

A. Distinguishing Successful Placement Practices

There are a variety of distinguishable differences between states with successful child welfare programs and unsuccessful state programs as they relate to placement stability. Statutory protections, court involvement in decision-making, deference to caseworkers, logistical structuring, training and education, allocation of funding, and consistent statistical evaluations demonstrate just a few of the numerous preventative protections which could be implemented more consistently to ensure high placement stability rates.¹⁶⁸ Some of the most effective strategies state child welfare programs can implement are discussed below.

<https://www.nj.gov/dcf/childdata/nj/federal/NJ.DCF.2021.ASPR.pdf> [<https://perma.cc/A5FZ-XK8D>].

¹⁶⁴ *Child Welfare Outcomes Report Data*, *supra* note 135.

¹⁶⁵ *See id.*

¹⁶⁶ N.J. DEP'T OF CHILD. & FAMS., *supra* note 161, at 23.

¹⁶⁷ *Id.* at 22.

¹⁶⁸ *See* Amy Cook, *State-by-State Analysis of Child Welfare Systems*, LAMBDA LEGAL, <https://www.lambdalegal.org/child-welfare-analysis> [<https://perma.cc/AMH2-A7J8>].

1. Preventative, Not Reactive

Children in foster care receive multiple benefits from a system that plans its placements, compared to a system that primarily operates in crisis and responds to emergency placements.¹⁶⁹ States which have implemented preventative programs, such as “Georgia’s Pre-Removal Staffing, New Jersey’s Pre-Placement Conference, and Polk County, Iowa’s Pre-Removal Conference[,] are all models for meeting with the family prior to removing a child, with the goal of including the family in the removal process.”¹⁷⁰

Georgia’s solution to ensuring placement stability for children removed from home includes secondary prevention measures.¹⁷¹ The state’s pre-removal staffings mandate that every placement change receives a “PAUSE call.”¹⁷² By requiring a collaborative meeting with the family case managers, the parents, the judicial decision maker, the current placement, and the relevant service providers, the agency can ensure that “all possibilities are tried prior to any move.”¹⁷³ In turn, this will “stabilize placements, minimize placement moves, promote reasonable efforts to achieve permanency, and support caregivers.”¹⁷⁴ It will also aid the family case managers and the judicial decision makers in identifying the family’s relevant needs, which can be utilized in the family’s required services.¹⁷⁵ Georgia’s Safety Resources policy has an additional effort to ensure stability at the primary level by preventing unnecessary removals from the home entirely.¹⁷⁶ This policy “allows parents to voluntarily place a child with a relative for 45 days as parents work to resolve any safety concerns.”¹⁷⁷ Other states have implemented emergency foster homes, available at a moment’s notice, “so that children are placed in family homes, even on weekends, after hours, or in the middle of the night.”¹⁷⁸

¹⁶⁹ *How Can We Ensure a Child’s First Placement Is with a Family?*, CASEY FAM. PROGRAMS (Dec. 20, 2018), <https://www.casey.org/first-placement-family-placement/> [<https://perma.cc/8HL4-ZQZH>].

¹⁷⁰ *Id.*

¹⁷¹ *See* GA. DIV. OF FAM. & CHILD. SERVS., *supra* note 152, at 10.

¹⁷² GA. CODE ANN. § 15-11-215 (2022).

¹⁷³ GA. DIV. OF FAM. & CHILD. SERVS., *supra* note 152, at 95.

¹⁷⁴ *Id.*

¹⁷⁵ *See id.*

¹⁷⁶ *How Can We Ensure a Child’s First Placement Is with a Family?*, *supra* note 167.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

2. Developing Infrastructure to Guide Placement Decisions

States seeking to improve placement stability recognize that an increased infrastructure to guide placement decisions is necessary.¹⁷⁹ Some states reserve up to thirty days to contact the relatives to inform them of the child's removal from home and to explain the options that they have to participate in the care and placement of the child.¹⁸⁰ This longer duration of time is a key component to numerous placement changes. The child, needing immediate removal from home, will need to be temporarily placed somewhere while this potential relative placement is pending contact, acceptance of placement, background checks, and any other state-implemented safety provisions. States with high placement stability have guidelines and support in place to aid with placement determinations. For example, “[b]oth Idaho and New Jersey have foster parent peer mentor programs, and New Jersey operates a foster parent peer support helpline as well.”¹⁸¹ Alternatively, “Georgia utilizes regional Resource Development teams to identify available state-licensed foster homes, as well as a Placement Resource Operations unit when specialized expertise is needed to place children who have more acute or special needs.”¹⁸² Ensuring a child can be placed in an appropriate setting to meet his or her individualized needs—at the beginning of the removal process—aids in eliminating unforeseen issues or conflicts which may otherwise occur when a placement is not equipped or aware of the child's unique needs.¹⁸³

Georgia has established a goal of “ensuring caregivers with lived experience are engaged and have an integrated voice and presence in decision making processes.”¹⁸⁴ Additionally, the state has partnered with third-party agencies to assist with placement and support for youth with higher-end needs to create “comprehensive, individualized care for adolescents 12–17 diagnosed with psychiatric, addiction, or dual diagnosis disorders.”¹⁸⁵

New Jersey has a Children in Court Improvement Committee (CICIC) in each of its local regions which works with the state department to guide placement determination practices.¹⁸⁶ “[C]omprised of representatives from

¹⁷⁹ Mary Myslewicz & Kamlia Yeh Garcia, *Effective Practices in Foster Parent Recruitment, Infrastructure, and Retention*, CASEY FAM. PROGRAMS 7 (Dec. 2014), https://calswec.berkeley.edu/sites/default/files/effective_practices_in_foster_parent_recruitment_and_retention.pdf [<https://perma.cc/GZ7K-E5G5>].

¹⁸⁰ *Id.* at 24.

¹⁸¹ *How Can We Ensure a Child's First Placement Is with a Family?*, *supra* note 167.

¹⁸² *Id.*

¹⁸³ *See id.*

¹⁸⁴ GA. DIV. OF FAM. & CHILD. SERVS., *supra* note 152, at 11.

¹⁸⁵ *Id.* at 95.

¹⁸⁶ N.J. DEP'T OF CHILD. & FAMS., *supra* note 161, at 6.

the judiciary and all the legal stakeholders involved in litigated child protection cases,” the department meets quarterly “to share information about new and ongoing initiatives, discuss the availability of services, and resolve conflicts related to local court procedures.”¹⁸⁷ Recently, this department has shifted focus toward improving timely permanency statewide.¹⁸⁸ This initiative collects specific data and reports on children residing in placements for over three years, which is analyzed during case reviews to create and “submit action plans to address the areas where the delays in permanency appear to be occurring.”¹⁸⁹ This work has previously “led to the development of a structured model to ensure primary and preventive health care needs of children entering out-of-home placement are met” from the time they enter placement until they exit care.¹⁹⁰ This model increased “engagement of biological [families] in health care planning and follow-up, as well as the appropriateness and timeliness of mental and behavioral health care services.”¹⁹¹

Conversely, in states with poor stability placement rates, such as Indiana, too much discretion is left to the case managers and too few resources are in place to aid in placement determinations. A study of Indiana’s placement instability found that “[b]ased on staff responses, the greatest external influence over placement decisions appears to be the courts.”¹⁹² This factor is thought to be “the main variable in placement decisions, illustrating the need for better communication and a clearer understanding of decision options between [CPS] and the courts.”¹⁹³ Because policy and law allow “for FCMs to remove children without court orders, or even without the presence of law enforcement if ‘exigent circumstances’ as defined by statute are believed to exist,” this section of Indiana policy “seems to encourage removal over consideration of other options that might protect the child while avoiding the trauma associated with his or her placement outside of the family.”¹⁹⁴ Other identified structural problems with Indiana’s placement determinations are that the data system “does not allow for staff at all levels to easily assess performance in relation to key safety, permanency and well-being outcomes for children and families served by [CPS]” and there is

¹⁸⁷ *Id.* at 103.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 114–15.

¹⁹¹ *Id.* at 115.

¹⁹² *Evaluation of the Indiana Department of Child Services*, *supra* note 92, at 19.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 24 (“FCMs are empowered to make a unilateral determination of exigent circumstances but supervisory consultation is required for all decisions to remove. Policy also contains a statement that a child and family team should be formed when a child appears at imminent risk of removal.”).

“uneven interpretation and implementation of policies across counties.”¹⁹⁵ Importantly, other jurisdictions strongly try “to prevent removal and/or to [implement] additional levels of review and authorization (e.g., higher administrative authorization, emergency judicial orders, etc.).”¹⁹⁶

3. Decreasing the Workload

More support for the FCMs designated to work with families and oversee their cases could solve the problems many FCMs experience with placement determinations, which do not yield stable placements for children removed from home. “When caseworkers are familiar with the strengths, skills, and preferences in their agency’s network of foster parents, they can more quickly match children with appropriate homes that meet their needs.”¹⁹⁷ In Indiana, significant numbers of “case managers generally report a lack of support from the Department of Child Services and these feelings are one of the most significant predictors of turnover intentions.”¹⁹⁸ Research has shown that there are significant differences in organizational climate and culture across local agencies in Indiana, which has contributed to low morale and may affect turnover, performance, and child/family outcomes.¹⁹⁹ Further, Indiana case managers and agency attorneys in many local regions experience uneven, heavy workloads which far exceed caseload standards.²⁰⁰

Research has demonstrated “the importance of developing structural mechanisms to support worker engagement at all levels.”²⁰¹ It is recommended that policies and practices inadvertently contributing to burnout and disengagement should be evaluated based on their impact on employee job performance, business results, and client outcomes.²⁰² Additionally, programs should develop “timely organisational-level [sic] interventions to deal with conflict associated with work-family fit and competing demands of work roles.”²⁰³ This can include helping workers express concerns and learn to implement active coping strategies, such as mechanisms for increasing engagement and dealing with job stress.²⁰⁴ To prevent burnout and disengagement, leaders should consider *what* helps employees thrive, particularly in child welfare settings where workers

¹⁹⁵ *Id.* at 6.

¹⁹⁶ *Id.* at 24.

¹⁹⁷ *How Can We Ensure a Child’s First Placement Is with Family?*, *supra* note 167.

¹⁹⁸ *Evaluation of the Indiana Department of Child Services*, *supra* note 92, at 19.

¹⁹⁹ *Id.* at 6.

²⁰⁰ *Id.* at 17.

²⁰¹ Travis et al., *supra* note 63, at 1090.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 1090–91.

frequently experience emotional exhaustion but are otherwise satisfied with their jobs.²⁰⁵ Through this strengths-based lens, agencies can identify best practices and leverage organizational resources to create innovative solutions, build resilience, increase job longevity, and improve foster engagement.²⁰⁶ Agency climate and culture factors that undermine worker morale could be amended by providing additional supports to case managers, such as increasing flexible scheduling, utilizing telecommuting options, creating opportunities for professional development and recognition, or using tools and resources to ensure reasonable workloads.²⁰⁷

Massachusetts had one of the worst performances of all states regarding the percentage of children experiencing four or more placement changes but has made significant strides in placement stability over the past five years.²⁰⁸ While the national average of four or more placement changes has remained consistently around 22% (from 2015–2019), Massachusetts saw a 38% average, which was an increase from 31% in 2015.²⁰⁹ Additionally, 26.5% of children removed from home for only twelve months or less experienced at least three placement changes.²¹⁰

Massachusetts demonstrated awareness of its placement stability issue in its 2021 annual report and is working “to minimize a child’s placements through the provision of community-based individual and family supportive services.”²¹¹ This has proven successful as a larger share of the children entering care in 2021 experienced “placement stability.”²¹² In fact, placement stability increased to 79.5% in 2021, a 16.9% improvement from the 2018 rate (68%).²¹³ Some of the notable changes made in Massachusetts’s child welfare program to improve placement instability rates were an increase in staffing,²¹⁴ a significant decrease in caseload ratios to no more than fifteen

²⁰⁵ *Id.* at 1091.

²⁰⁶ *Id.*

²⁰⁷ *How Can We Improve Placement Stability for Children in Foster Care?*, CASEY FAM. PROGRAMS (Oct. 3, 2018), <https://www.casey.org/strategies-improve-placement-stability/> [<https://perma.cc/UT7S-T9H9>].

²⁰⁸ *Failing Our Kids: Measures of the Broken Child Welfare System in Massachusetts*, FRIENDS OF CHILD. (2021), <https://friendsofchildreninc.org/failing-our-kids/> [<https://perma.cc/7VKZ-9XYX>].

²⁰⁹ *Child Welfare Outcomes Report Data*, *supra* note 135.

²¹⁰ *Id.*

²¹¹ MASS. DEP’T OF CHILD. & FAMS., ANNUAL REPORT FY 2021 xii (Dec. 2021), <https://www.mass.gov/doc/DCF-annual-reportfy2021/download> [<https://perma.cc/5J4J-VVDU>] (“Placement instability tends to increase the amount of time it takes to achieve permanency (i.e., reunification, adoption, guardianship, and permanent care with kin).”).

²¹² *Id.* (defining placement stability as “no more than two placement settings within the first 12 months of out-of-home care”).

²¹³ *Id.*

²¹⁴ *Id.* at xvi (“DCF staffing has significantly increased relative to July 2015 staffing levels. Social Worker staffing levels have increased by 21% and staffing levels for all other bargaining units have

families per worker, and an increase in service expenditures focused toward foster care and placements.²¹⁵

The relationship between caseload capacity and informed placement determinations is a focal point for states' improvement in placement stability. "Foster parents also are more likely to accept placement of children if they know that staff have engaged in a kind of matching up front, and that they will be supported in caring for the child following placement."²¹⁶ For example, New Jersey has a matching tool in the agency's Statewide Automated Child Welfare Information System, "available to help caseworkers match a child's characteristics with an appropriate foster family."²¹⁷ Other states have implemented Every Child a Priority (ECAP) which also matches children and foster families.²¹⁸ Matching tools such as these allow FCMs to make educated placement decisions, taking into consideration the specific child's needs and whether the available placement has the appropriate knowledge, experience, or resources to meet those needs.

Additionally, more progressive states have divided tasks, specifically creating one department designed to identify available foster homes and engage potential kinship placements in the local area, across the border in another state, and even in another placement unit.²¹⁹ This allows the teams to simultaneously assess the placement options for the child in question.²²⁰ Using this system, FCMs can focus their efforts on identifying the child's and family's needs and history, and on creating an effective permanency plan following an initial investigation, rather than needing to allocate time and effort into finding an appropriate placement for the child as quickly as possible.

Furthermore, pre-service and ongoing training aid a caseworker's understanding of the interaction of factors that result in multiple placement moves and what action can be taken to support placement stability.²²¹ Engaging employees in these pre-service and ongoing trainings requires a year-round focus on changing behaviors, processes, and systems utilized by child welfare programs to anticipate and respond to an organization's

increased by 44%.").

²¹⁵ *Id.* at 44, 46 (demonstrating "a 3% (\$18,544,427.38) increase in service expenditures between FY2017 and FY2021").

²¹⁶ *How Can We Ensure a Child's First Placement Is with a Family?*, *supra* note 167.

²¹⁷ *Id.*

²¹⁸ *How Can We Improve Placement Stability for Children in Foster Care?*, *supra* note 205.

²¹⁹ *See, e.g.,* COLO. DEP'T OF HUM. SERVS., CHILD AND FAM. SERVS. REVIEW: STATEWIDE ASSESSMENT 10 (Jan. 28, 2009), <http://fosteringcourtimprovement.org/CFSR/CFSR2Reports/CO/Statewideassessment2ndRoundCFSR.pdf> [https://perma.cc/2TPF-P3J9].

²²⁰ *See id.*

²²¹ *How Can We Improve Placement Stability for Children in Foster Care?*, *supra* note 205.

needs.²²² From the leadership team to the front-line employees, all levels within an organization must commit to these changes.²²³

4. Innovations in Placement Practices

States have established a variety of technological developments and solicited help from other non-governmental programs in an effort to increase placement stability and to decrease traumatic experiences for children experiencing child welfare involvement. New Jersey is developing an electronic system to assist in expediting the placement of children across state lines through “better tracking and monitoring of cross jurisdictional placements of children so that any challenges to permanency can be quickly resolved and timely permanency can be achieved.”²²⁴ A Person-Centered Intelligence Solution (P-CIS) evaluation system is a newly-developed software to aid child welfare agencies in the assessment and care planning for children’s social, behavioral, and mental health care.²²⁵ P-CIS is catered to each individual, allowing continuous monitoring and evaluation of care.²²⁶ This benefits the child and foster family, who will have an easier transition and additional help with difficult behaviors, and the family case managers, who can make accurate and beneficial service determinations throughout the state involvement with the family.²²⁷ Finally, this system will allow the state to assess the needs and care of children in state custody at a population level, which will provide additional data to determine efficiency and successfulness of services.²²⁸

The federal government has also released several aids for states to use the Family First Preservation Service Act funding. One aid is a planning toolkit for states to develop Title IV-E prevention services.²²⁹ This toolkit provides states with “information and processes to help with assessing needs, opportunities, and potential funding sources in order to comprehensively plan

²²² Travis et al., *supra* note 63, at 1090.

²²³ *Id.*

²²⁴ N.J. DEP’T OF CHILD. & FAMS., *supra* note 161, at 49.

²²⁵ *Opeeka Debuts the Nation's First Software Designed to Help Child Welfare and Foster Agencies Meet New Federal Requirements*, CISION (Mar. 3, 2021), <https://www.prnewswire.com/news-releases/opeeka-debuts-the-nations-first-software-designed-to-help-child-welfare-and-foster-agencies-meet-new-federal-requirements-301239431.html> [<https://perma.cc/JPF6-7FND>].

²²⁶ *Id.*

²²⁷ *See id.*

²²⁸ *Id.*

²²⁹ *Planning Title IV-E Prevention Services: A Toolkit for States*, OFF. OF THE ASSISTANT SEC’Y FOR PLAN. & EVALUATION, <https://aspe.hhs.gov/topics/policy-regulation/planning-title-iv-e-prevention-services-toolkit-states> [<https://perma.cc/S4X5-MZNG>].

prevention services, including those reimbursed by Title IV-E.”²³⁰ The Title IV-E Prevention Services Clearinghouse is also readily available to states and individuals to keep track of which programs and services are supported by data and qualify for federal funding.²³¹

5. The Importance of Continued Support for the Child, Family, and Foster Family

A recent study found that 36% of children who aged out of the child welfare system experienced homelessness at least once before reaching the age of twenty-six, with three-fourths of that population experiencing homelessness four or more times before reaching twenty-six.²³² Foster care placement instability has also proven problematic for adolescents in care, as “[l]ow educational achievement, school drop-out rates, identity confusion, low self-esteem, drug use, juvenile arrest and incarceration rates, increased mental health care needs, and social network disruption” all correlate with placement instability.²³³

Foster placement instability also takes a toll on a child’s ability to make and maintain healthy and meaningful relationships as the home instability often carries over into many other important aspects of the child’s life.²³⁴ One scholar wrote the following:

Some youth are moved without much notice and suffer additional losses with each move. They are not given the opportunity to say good-bye, they are not afforded with methods of keeping in contact with friends or natural mentors after the move, important possessions and keepsakes are lost, and often-times moves disrupt visitation schedules with their parents and siblings and distance them from extended family.²³⁵

This additional instability results in an ambiguous loss as youth are left to internally grieve losses which are not socially recognized.²³⁶ That atmosphere

²³⁰ *Id.*

²³¹ *Welcome, TITLE IV-E PREVENTION SERVS. CLEARINGHOUSE*, <https://preventionservices.abtsites.com/> [https://perma.cc/58VG-GCLW].

²³² *Older Youth Housing, Financial Literacy and Other Supports*, *supra* note 5.

²³³ Tonia Stott, *Placement Instability and Risky Behaviors of Youth Aging Out of Foster Care*, 29 CHILD & ADOLESCENT SOC. WORK J. 61, 63 (2012).

²³⁴ *Id.*

²³⁵ *Id.* at 63–64.

²³⁶ *Id.* at 64.

promotes a sense of lost control over their own lives, undermines their development of self-efficacy, and frequently leads them to become apathetic about their futures.²³⁷

Not only does placement instability correlate with homelessness for a young adult, but research also demonstrates that it increases the youth's likelihood of participating in high-risk behaviors, such as using and abusing illicit substances at much higher frequencies than peers with stable placements.²³⁸ It is hypothesized that young adults who were continually moved "may be using substances to cope with feelings of disconnection and hopelessness."²³⁹ The child-bearing rate of young adults who were subjected to foster care is also significantly higher than the normal rate.²⁴⁰ Coupled with research which found that "the children of parents who experienced childhood maltreatment may be at increased risk of being maltreated either by that parent or by another caregiver[.]" this factor reinforces the social learning theory concept that the childhood experiences of a parent's behavior influences one's parenting style.²⁴¹ Therefore, "[i]f individuals experience abusive or neglectful parenting, then they may develop beliefs that these behaviors are acceptable and/or effective and replicate them with their own children."²⁴²

States with lower placement instability rates have formal integration between child welfare and behavioral health positions and programs.²⁴³ In Oregon, "[t]he Treatment Foster Care Oregon (TFCO) practice model treats adolescents, preschoolers, children, and youth with mental health issues who are in foster care."²⁴⁴ "Designed to decrease negative behaviors while increasing positive social behavior," TFCO has been shown to significantly increase successful placements and to decrease the number of placement changes.²⁴⁵ Other programs, such as Keeping Foster and Kin Parents Supported and Trained (KEEP), train "resource caregivers to cope with challenging behaviors and to help children decrease problem behaviors by

²³⁷ *Id.* (One study found "that youth actively engaged in self-protection mechanisms including a lack of future planning.").

²³⁸ Ronald G. Thompson & Deborah S. Hasin, *Cigarette, Marijuana, and Alcohol Use and Prior Drug Treatment Among Newly Homeless Youth Adults in New York City: Relationship to a History of Foster Care, Drug Alcohol Depend.* 117 (Aug. 1, 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3100368/>.

²³⁹ Stott, *supra* note 231, at 76.

²⁴⁰ *Id.* at 77.

²⁴¹ *Intergenerational Patterns of Child Maltreatment: What the Evidence Shows*, CHILD.'S BUREAU 2-3 (Aug. 2016), <https://www.childwelfare.gov/pubPDFs/intergenerational.pdf> [<https://perma.cc/KYY5-4Y2R>].

²⁴² *Id.* at 2.

²⁴³ *How Can We Improve Placement Stability for Children in Foster Care?*, *supra* note 205.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

setting limits and encouraging positive behaviors.”²⁴⁶ Parent Child Interaction Therapy (PCIT) is also a newly-developed “parent-training program based on attachment and social learning theory that can be used in the foster care context for young children with emotional and behavioral challenges.”²⁴⁷

While placement stability is a recognized strength for Georgia, the state recognizes that it could make continued improvements in placement stability, stating:

The majority of placements disrupted mainly due to the child’s behavior. However, in many of these, the Agency did not provide services to either address the child’s behavioral/mental health needs (consistent counseling, behavioral intervention, specialized treatment) or failed to provide supportive services to the caregivers to assist in meeting the needs of the child (respite, in home behavioral intervention).²⁴⁸

New Jersey has implemented Mobile Response and Stabilization Services (MRSS) to correct these types of placement disruptions.²⁴⁹ MRSS, available twenty-four hours a day, seven days a week, delivers needed services into the home to help children and youth who are experiencing emotional or behavioral crises.²⁵⁰ “The services are designed to defuse an immediate crisis, to keep children and their families safe, and to maintain the children in their own homes or current living situation . . . in the community.”²⁵¹ All children and youth placed in state care receive behavioral health MRSS at the time of placement to provide increased support to children and resource parents during the transition into a new home.²⁵²

When the service is initiated, a . . . behavioral health worker meets the child(ren) in the resource home, screens for and attends to child behavioral health issues, assists resource parents to develop plans to support positive child/youth

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ GA. DIV. OF FAM. & CHILD. SERVS., *supra* note 152, at 32.

²⁴⁹ *Mobile Response and Stabilization Services*, N.J. DEP’T OF CHILD. & FAMS., <https://www.nj.gov/dcf/families/csc/mobile/> [<https://perma.cc/UD6Q-YP5B>].

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² N.J. DEP’T OF CHILD. & FAMS., *supra* note 161, at 102.

behavior in the home, and authorizes access to continued behavioral health care support . . . if needed.²⁵³

Through this collaborative process, the state was also able to identify “opportunities to adapt current services to more effectively and seamlessly meet the needs of dually served youth.”²⁵⁴ MRSS integrates components of crisis stabilization and assessment services, care management services, and community-based treatment in a resource home setting and supports “a clinically appropriate delivery of services, adjusting the intensity and scope as needed, while sustaining the child and youth in a family resource setting.”²⁵⁵ This program has proven tremendously effective, having consistently maintained over 94% of children in their placement at the time of service.²⁵⁶

“Domestic violence, housing issues, financial issues, and child mental health challenges affected over one-third of children in out-of-home placement.”²⁵⁷ The New Jersey Department of Children and Families identified “housing, transportation, childcare, healthcare assistance/insurance, financial assistance, and employment assistance” as challenges for placement stability.²⁵⁸ In Indiana, “[f]oster parents do not receive daycare/childcare payments,” as they are expected to use their small per diem to pay for such services.²⁵⁹ Indiana foster parents thus “have voiced this expectation as a disincentive for recruitment and retention of child placement resources, as well as a financial challenge.”²⁶⁰ That challenge also affects kinship placement availability because kinship caregivers must take on childcare payments after the first six months of the child’s placement.²⁶¹

B. The Struggle to Find Funding

The financial circumstances of each state must also be considered. States often do not have enough money to fund new programs, which is why federal programs such as the Family First Preservation Services Act are integral to implementing support programs needed to increase placement stability.²⁶² For example, the Adoption Assistance Program, authorized under Title IV-E

²⁵³ *Id.*

²⁵⁴ *Id.* at 99.

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 111.

²⁵⁷ *Id.* at 94.

²⁵⁸ *Id.*

²⁵⁹ *Evaluation of the Indiana Department of Child Services*, *supra* note 92, at 18.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *How the Child Welfare System Works*, *supra* note 39, at 2.

of the Social Security Act, provides federal funds to states to facilitate the adoption of children from foster care whose special needs or circumstances would otherwise make them difficult to place with adoptive families.²⁶³ “From fiscal years 2015 through 2019, states collectively reinvested \$516 million of the \$843 million they accrued in ‘adoption savings.’”²⁶⁴ Through the Family First Preservation Services Act, “states are potentially able to claim federal reimbursement for adoption assistance payments they make to more families, resulting in savings for the states.”²⁶⁵ States must also “reinvest any such savings . . . in their child welfare programs by spending an equivalent amount on any child welfare services that may be provided under title IV-B and title IV-E of the Social Security Act.”²⁶⁶ According to the Children’s Bureau, “states accrued about \$843 million in cumulative adoption savings over the five-year” fiscal period but only “spent approximately 61 percent of these adoption savings, or about \$516 million.”²⁶⁷ While “states have flexibility in the types of services they may count toward the 20 and 30 percent [reinvestment] requirements,” many found that “state budget constraints and other spending priorities created challenges to meeting the requirements to spend adoption savings.”²⁶⁸

V. RESOLUTION—UTILIZING FEDERAL FUNDING FOR REFORM

An efficient solution to improve placement stability for children in state custody at a national level is to rethink or expand the current federal funding for foster care through the Title IV-E funding authorized by the Preventing Sex Trafficking and Strengthening Families Act (PSTSFA)²⁶⁹ and the Family First Preservation Services Act.

Currently, each state, tribe, or territory with an approved Title IV-E plan is entitled to partial federal reimbursement for every eligible cost related to providing foster care to eligible children, and all fifty states have an approved Title IV-E plan.²⁷⁰ Eligible costs include maintenance payments for foster

²⁶³ Adoption Assistance and Child Welfare Act, Pub. L. No. 96-272, 94 Stat. 500, 500 (1980).

²⁶⁴ U.S. GOV’T ACCOUNTABILITY OFF., GAO-22-6, CHILD WELFARE: BETTER DATA AND GUIDANCE COULD HELP STATES REINVEST ADOPTION SAVINGS AND IMPROVE FEDERAL OVERSIGHT (2021), <https://www.gao.gov/products/gao-22-6> [<https://perma.cc/7NFS-ZR7Z>].

²⁶⁵ *Id.* at 2.

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 9.

²⁶⁸ *Id.* at 12, 25.

²⁶⁹ Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014).

²⁷⁰ *Title IV-E Foster Care Eligibility Reviews Fact Sheet*, CHILD’S BUREAU, <https://www.acf.hhs.gov/cb/fact-sheet/title-iv-e-foster-care-eligibility-reviews-fact-sheet#:~:text=Title%20IV%2DE%20foster%20care%20funds%20are%20awarded%20to%20the,grants>

homes, training and recruitment efforts for foster care providers, and other administrative costs.²⁷¹ Federal support for these costs is 75% of a state's IV-E program training costs, 50% of all other eligible program administration costs, and between 50% and 83% of eligible foster care maintenance payment costs.²⁷² States rely on this federal funding to continue their programs. The statutorily eligible costs do not explicitly allow for federal reimbursement of supportive services for the foster family, but they do focus on creating a stable placement for the child.²⁷³ However, the statutes do allow for funding related to foster youth support and training for foster families, which may include support services needed to ensure placement stability.²⁷⁴

However, as demonstrated by the Family First Preservation Services Act, the federal government can condition funding for state child welfare services, such as implementing limitations on states' use of congregate care.²⁷⁵ The government influences the child welfare system on the national level when requiring states to meet certain child welfare requirements through provisions in their federal support. Of the estimated \$8.9 billion of federal funding allocated to child welfare efforts, the largest share is provided for support of children in foster care and adoption.²⁷⁶

Congress has two options to fund increased placement stability. First, it could expand new Family First Preservation Service Act funding to include funding for supportive programs for children who have been removed from home and placed in family-foster home settings. This expansion of funding would support the goals of the new act, particularly because the current act places additional emphasis on state use of family-foster homes as a result of much-needed limitations on congregate care use.²⁷⁷ Such expansion would not curtail the federal government's goal of reducing the number of children

%20through%20single%20year%20appropriations [https://perma.cc/K3X6-C48R].

²⁷¹ *Id.*

²⁷² *Title IV-E for Youth in the Juvenile Justice System*, YOUTH L. CTR. 1 (Aug. 2021), https://www.ylc.org/wp-content/uploads/2018/12/Fact-Sheet_-Title-IV-E-for-Youth-in-the-Juvenile-Justice-System-Final-August-2021.pdf [https://perma.cc/7K6D-MLW2].

²⁷³ *Title IV-E Foster Care*, CHILD.'S BUREAU, <https://www.acf.hhs.gov/archive/cb/grant-funding/title-iv-e-foster-care> [https://perma.cc/9U23-ZD4F] (last updated July 1, 2022).

²⁷⁴ 42 U.S.C. §§ 672(h), 674(a)(3)(B), 1396a(a)(10)(A)(i)(I).

²⁷⁵ Sheila Malloy Huber, *The Influence of Federal Laws on State Child Welfare Proceedings*, FAM. & YOUTH JUST. PROGRAMS, <https://www.wacita.org/benchbook/chapter-1-the-influence-of-federal-law-on-state-child-welfare-proceedings/> [https://perma.cc/63UY-4RJR] (last updated Dec. 2017).

²⁷⁶ CONG. RSCH. SERV., R43458, CHILD WELFARE: AN OVERVIEW OF FEDERAL PROGRAMS AND THEIR CURRENT FUNDING 3 (2018), https://www.everycrsreport.com/files/20180102_R43458_9a7c2ce137b54096617803ba8c171c543c4575b0.pdf [https://perma.cc/B5LZ-F84C].

²⁷⁷ *Family First Prevention Services Act*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> [https://perma.cc/PNF3-PUQ4].

removed from home, which is addressed through the Family First Preservation Act funding offered for preventative and in-home services.²⁷⁸ Instead, this expansion ensures that children who cannot remain safely at home receive adequate support services to reduce experienced trauma and the need for multiple placement changes after home removal.

A second available option is to re-design the Title IV-E funding authorized through the PSTSFA to require states to adopt statutory guidelines and placement stability requirements in return for federal funding of the state's foster care. Importantly, the re-design must also include an explicit provision for federal funding of support services for placement practices (i.e., parent-child interaction therapy, placement matching programs) and stability efforts (i.e., stabilization and emergency response services). This economically efficient option for the federal government further curtails funding of inadequate placement determinations that invariably increase the federal government's costs when additional funding accompanies each placement change. Again, as written, the PSTSFA provides maintenance payments for all eligible foster placements, regardless of the stability provided to the children being fostered.²⁷⁹ Therefore, to ensure that states make active efforts to increase placement stability rates among the child welfare population, Congress should create new conditions for the federal foster care funding offered through Title IV-E.

A. A Uniform Child Placement Bill of Rights Act

To ensure placement stability, Congress must create a Uniform or Model Act that all states must ratify and follow in order to receive federal funding. As demonstrated, state statutory guidelines for placement decisions and changes vary drastically among the states, leading to inconsistent and unstable standards and outcomes throughout the country.²⁸⁰ New Jersey's Child Placement Bill of Rights Act serves as a wonderful example,²⁸¹ but specific revisions should be made for a Uniform Act adopted by Congress. A proposed Uniform Act is set out below.

ARTICLE 1. Preamble

The Uniform Child Placement Bill of Rights Act (herein "UCPBA") recognizes the harmful effects of placement

²⁷⁸ Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 50702, 132 Stat. 64, 232 (2018).

²⁷⁹ *Title IV-E Foster Care Eligibility Reviews Fact Sheet*, *supra* note 268.

²⁸⁰ *How the Child Welfare System Works*, *supra* note 39, at 1.

²⁸¹ N.J. REV. STAT. §§ 9:6B-1-6 (2013).

instability on youth as demonstrated through extensive research, and expressly declares that it is in the public interest to promote the preservation of families at the primary, secondary, and tertiary levels. In light of this, the Legislature finds and declares that:

- a. A child placed outside his home by the state child welfare department or an agency or organization with which the applicable department contracts to provide services has specific rights separate from and independent of the child's parents or legal guardian, by virtue of his placement in another residential setting;
- b. The state has an affirmative obligation to recognize and protect these rights through articulation of a clear and specific bill of rights that reflects the best interests of the child, whereby the safety and stability of the child is of paramount concern and constitutes an affirmation and commitment by the state to enforce these rights in order to protect and promote the welfare of the child placed outside his home; and
- c. The obligation of the state to recognize and protect the rights of the child placed outside his home shall be fulfilled pursuant to a clear and consistent policy to promote the stability of placement determinations and promote the child's timely return to his home or placement in an alternative permanent setting, which this Legislature is expressly declaring to be in the public interest.²⁸²

ARTICLE 2. THE PLACEMENT RIGHTS OF THE CHILD.

A child placed outside his home has the following rights, consistent with the health, safety, and physical and psychological welfare of the child and as appropriate to the individual circumstances of the child's physical or mental development:

- a. To a placement outside his home only after the applicable department has made every reasonable effort, including the provision or arrangement of

²⁸² Influenced by *id.* § 9:6B-4 (2013).

- financial or other assistance and services as necessary, to enable the child to remain in his home;
- b. To use the best efforts of the applicable department, including the provision or arrangement of financial or other assistance and services as necessary, initially, to place the child with a relative;
- c. To use the best efforts of the applicable department, including the provision or arrangement of financial or other assistance and services as necessary, to place the child in an appropriate setting in his own community;
- d. To use the best efforts of the applicable department to place the child in the same setting with the child's sibling, if the sibling is also being or already has been placed outside his home;
- e. To use the best efforts of the applicable department, including the provision or arrangement of financial or other assistance and services as necessary, to place the child in a stable setting and ensure a supportive transition for all parties involved.
- f. To visit with the child's biological parents or legal guardian immediately after the child has been placed outside his home and on a regular basis thereafter, and to otherwise maintain contact with the child's parents or legal guardian, and to receive assistance from the applicable department to facilitate that contact, including the provision or arrangement of transportation as necessary;
- g. To visit with the child's sibling on a regular basis and to otherwise maintain contact with the child's sibling if the child was separated from his sibling upon placement outside his home, including the provision or arrangement of transportation as necessary;
- h. To a placement in the least restrictive setting appropriate to the child's needs and conducive to the health and safety of the child;
- i. To be free at all times from physical or psychological abuse and from repeated changes in placement before the permanent placement or return home of the child;

- j. To have regular contact with any caseworker assigned to the child's case who is employed by the applicable department, or any agency or organization with which the applicable department contracts to provide services, and the opportunity, as appropriate to the age of the child, to participate in the planning and regular review of the child's case, and to be informed on a timely basis of changes in any placement plan which is prepared pursuant to law or regulation and the reasons therefor in terms and language appropriate to the child's ability to understand;
- k. To have a hearing prior to any placement changes and to which the child's caseworker, parent or legal guardian, temporary caretaker, the child, as appropriate, or a court-appointed representative, and relevant service providers have been provided adequate notice and an opportunity to be heard at such hearing.
- l. To have a placement plan, as required by law or regulation, that is developed collaboratively, reflects the child's best interests, and is designed to facilitate the permanent placement or return home of the child in a timely manner that is appropriate to the needs of the child;
- m. To social and other support services of the highest quality that are designed to maintain and advance the child's mental and physical well-being;
- n. To be represented in the planning and regular review of the child's case, including the placement and development of, or revisions to, any placement plan which is required by law or regulation and the provision of services to the child, the child's parents or legal guardian and the temporary caretaker, by a person other than the child's parent or legal guardian or temporary caretaker who will advocate for the best interests of the child and the enforcement of the rights established pursuant to this act, which person may be the caseworker, as appropriate, or a person appointed by the court for this purpose;
- o. To receive an educational program which will maximize the child's developmental potential;

- p. To receive adequate, safe and appropriate food, clothing and housing;
- q. To receive adequate, professional and appropriate medical care; and
- r. To be free from unwarranted physical restraint and isolation.²⁸³

This Uniform Act develops infrastructure in each adopting state through multiple facets proven to increase placement stability. First, it establishes a uniform right for each child removed to be entitled to these basic, humane provisions. It prioritizes placement setting choice for placement decision makers by ensuring that all efforts are exhausted prior to home removals and placement changes. Further, it applies a hierarchy of placement choices by first looking to kinship and community placements to prevent additional disturbance to the child's daily life. The Act also establishes a right to a stable placement and entitles multiple parties to be heard before a placement determination or change is made. Finally, this Act provides a right to transitional and mental health services, to minimize trauma experienced and facilitate the child's transition in placements.

B. Conditioned Funding for the Development of New Programs

While the federal government already provides funding for foster care recruitment and training,²⁸⁴ additional provisions must be included to expand training efforts to adequately prepare potential placements for integration of a traumatized child into their home. Programs such as "Keeping Foster and Kin Parents Supported and Trained," which focus training on these efforts, can serve as models and, in turn, eliminate or reduce the tensions that frequently lead to placement changes.²⁸⁵

Additionally, under the Family First Preservation Act funding currently offered, Parent-Child Interaction Therapy is an authorized program, but that funding is limited to therapy used in a preventative manner or to support kinship placements.²⁸⁶ With funding expansion, broadened supportive programs offered to parents to prevent removal will enable state child welfare systems to use these same programs for subsequent foster home placements. In doing so, a state would not have to allocate the additional funds toward

²⁸³ Influenced by *id.*

²⁸⁴ See *Major Federal Legislation Index and Search*, *supra* note 35.

²⁸⁵ See *How Can We Improve Placement Stability for Children in Foster Care?*, *supra* note 205.

²⁸⁶ *Parent-Child Interaction Therapy*, TITLE IV-E PREVENTION SERVS. CLEARINGHOUSE, <https://preventionservices.abtsites.com/programs/258/show> [https://perma.cc/WV7E-PXGE] (last updated Feb. 2020).

program development specifically targeted at foster parents, thereby easing children's transition by ensuring the new placement is well-versed in attachment and social learning theory, especially for young children with emotional and behavioral challenges.²⁸⁷ Interaction therapy will also benefit children in forming safe and healthy attachments in an unfamiliar home.²⁸⁸ An equally important effort should focus on child-placement matching programs and other new technologies to properly assess a child's needs and identify a stable placement. These efforts will provide accurate placement determinations and allow family case managers to identify the child's needs while creating the family's case plan after child removal.

Emergency foster support programs, such as New Jersey's MRSS,²⁸⁹ similarly should be authorized so that continuous support is available to help children who experience emotional or behavioral crises. By addressing those crises immediately in the current placement, there is a reduced risk of hospitalization or a placement in advanced congregate care, which further supports the current Family First Preservation Services Act vision.²⁹⁰ Implementing programs to provide for a smoother transition for the foster family will have a positive impact on the child's stability in that placement setting.

C. *Ensuring Effective Funding and Programs Through Specific Outcome Goals*

Finally, to ensure effectiveness of new funding and state programs, federal funding should require states to accomplish specific outcomes within five years of receiving the funding. One example, as the Kansas settlement agreement in the case *M.B. v. Howard*, demonstrates that under current child welfare reporting standards, permanency outcomes and stability are already being measured by states through the Child and Family Services Review (CFSR), so that defined outcome goals can be easily measured through existing data.²⁹¹ An ideal recommendation should require states to have: (1) a placement rate that does not exceed more than 4.44 moves per 1,000 days; (2) at least 90% of children in state custody in a stable placement at the time

²⁸⁷ Christina Marie Danko, *The Effect of Parent-Child Interaction Therapy on Strengthening the Attachment Relationship with Foster Parents and Children in Foster Care 8* (Aug. 22, 2014) (Ph.D. dissertation, DePaul University), https://via.library.depaul.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1070&context=csh_etd [https://perma.cc/ZZ2L-PCLL].

²⁸⁸ *Id.* at 2.

²⁸⁹ *Mobile Response and Stabilization Services*, *supra* note 247.

²⁹⁰ *Family First Prevention Services Act*, *supra* note 275.

²⁹¹ *See* Settlement Agreement, *supra* note 119, at § 2.9.1.

of review; (3) at least 90% of children in state custody with their mental and behavioral needs addressed; and (4) at least 90% of children in state custody with one “or fewer Placement Moves in the twelve (12) months immediately preceding the last date of that reporting period.”²⁹²

States should also consider the creation of local interdisciplinary committees, such as the Children in Court Improvement Committee used in New Jersey,²⁹³ to collect specific data reports on children to identify areas where delays in permanency appear. States could use the federal funding in the most effective manner by targeting current problem areas rather than reinventing already effective mechanisms.

D. Promote Training Efforts, Increased Pay, and Supports for Child Welfare Workers

These proposed expansions of federal funding will enable states to provide much needed support for local caseworkers tasked with overseeing a family’s journey with the child welfare system. The system cannot overlook the detrimental effects of burnout and work-withdrawal, particularly in light of the required, systemic design for a trauma-informed care approach. The overworked and underpaid workers in child welfare agencies often lead to poor, inadequate, untimely, and unsupported placement determinations. By separating departmental tasks, providing more placement assessment assistance, implementing continual training programs, and necessitating quick, but effective, placement determinations, FCMs are better equipped to make informed and educated placement decisions for children, leading to less placement instability.

VI. CONCLUSION

There is no question that American society places a high value on the welfare of its children. Yet, even with overwhelming research demonstrating long-term, harmful effects for children who experience foster care and placement instability, the current and frequent placement instability experienced by children in state custody necessitates a long overdue change to truly effectuate the mission of strengthening families, protecting children, and most importantly, ensuring that every child and youth has a permanent family or family connection. Furthermore, with the implementation of the Family First Preservation Services Act, the federal government has shown that it recognizes the importance of child welfare reform and is prepared to

²⁹² *Id.* at § 2.9.4.

²⁹³ N.J. DEP’T OF CHILD. & FAMS., *supra* note 161, at 6.

aid in those efforts. The proposed expansion to current federal funding to increase placement stability at a national level is the next logical step for effectuating substantial change for children exposed to the child welfare system. The expansion is synonymous with the funding's purpose to provide children with a stable home environment, rather than overuse child removal and congregate care to minimize the overburdened foster care system as is currently employed by many states.