



## RESEARCH EXCERPT

# Child Welfare & Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policy Makers

### *Introduction*

Every year, thousands of unaccompanied children flee to the United States to escape abuse and persecution. Children who arrive without a parent or legal guardian are classified as “unaccompanied” and transferred to the custody of the Office of Refugee Resettlement (“ORR”), where they remain detained until they are released to sponsors.<sup>1</sup> Although the *Flores Settlement Agreement* provides basic standards for the treatment and release of detained immigrant children,<sup>2</sup> there are few federal laws that codify child welfare protections for this population.

### *The Use of Extended Institutional Care for Immigrant Children in Federal Custody*

Immigrant children in federal custody may be placed in state-licensed child welfare facilities (“shelters”), residential treatment centers, varying levels of secure juvenile facilities, or federal foster care. From January 2018 to October 2019, an overwhelming number of unaccompanied immigrant children were detained in large-scale congregate care facilities for prolonged amounts of time, in spite of the well-established harmful effects of institutionalization and congregate care on children’s health and welfare.<sup>3</sup> During those years:

- More than half of the unaccompanied children in ORR facilities were detained in facilities that held over two hundred children.<sup>4</sup>
- Thirty-three ORR facilities regularly held more than one hundred children at a time. By contrast, in the state child welfare context, foster care group homes typically house between seven and twelve children.<sup>5</sup>

1 See *Child Welfare & Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policy Makers*, p. 3 (hereinafter “Guide”).

2 See *Flores Settlement Agreement*, Case No. 85-4544-DMG-AGRx, C.D. Cal.

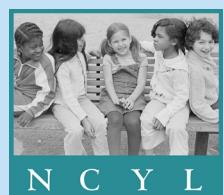
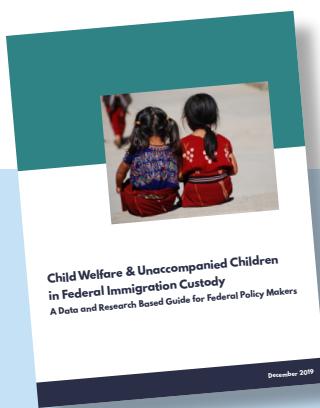
3 See Guide, *supra*, note 1, at 9, 12.

4 *Id.* at 9.

5 *Id.*

### **FOR THE COMPLETE REPORT, SEE:**

Neha Desai, Melissa Adamson, Elizabeth Pirrotta, Lewis Cohen & N. Ewen Wang, [Child Welfare & Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policymakers](#), National Center for Youth Law, Dec. 2019.





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There was significant variation in children's average length of detention amongst different ORR shelters, and a substantial number of children were placed in multiple ORR facilities during their time in detention. Between January 2018 and October 2019:

- For different ORR shelters, the average length of detention varied from a low of 31.4 days to a high of 96.2 days.<sup>6</sup>
- In comparison, children who had any placement in staff-secure or secure facilities were detained an average of 198 days, and children who had any placement in residential treatment centers or therapeutic placements were detained an average of 243 days.<sup>7</sup>
- Excluding children who were stepped up to more restrictive placements, 1,463 children were placed and transferred to three or more facilities, and 228 children were placed and transferred to four or more facilities. Guide p. 7.

Over the past six months, the number of children in federal immigration custody has decreased dramatically. However, this number is artificially low, as the Trump Administration has unlawfully expelled almost 9,000 unaccompanied children under the guise of public health protection.<sup>8</sup> Under this order, thousands of children have been expelled from the United States, and at least a few hundred children have been detained in unlicensed facilities instead of being transferred to ORR custody.<sup>9</sup> It is expected that the number of children in federal immigration custody will sharply increase once this executive order is lifted.

**A New Guide for Federal Policy Makers**

*Child Welfare & Unaccompanied Children in Federal Immigration Custody: A Data and Research Based Guide for Federal Policy Makers* ("Guide") examines the detrimental impact of federal policies which increased the total number of immigrant children detained in ORR custody as well as the overall length of these children's detention from January 2018 to October 2019. The Guide outlines principles and recommendations regarding (1) where children should be placed, (2) the length of time children spend in custody, (3) what services children need, and (4) specific compliance measures to ensure that child welfare standards are meaningfully implemented.

Using new data analysis, child welfare research, and two decades of lessons learned from implementing the *Flores Settlement Agreement*, this Guide identifies seven recommendations based on child welfare principles to guide federal policymaking:

- Children must be released from government custody as quickly as possible.

6 *Id.* at 6.

7 *Id.* at 16.

8 See Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 26, 2020) (effective March 20, 2020).

9 Camilo Montoya-Galvez, *ICE held 660 migrant kids set for expulsion in hotels, independent monitor reveals*, CBS, Aug. 27, 2020. <https://www.cbsnews.com/news/migrant-children-hotels-expelled-ice-flores-agreement-monitor/> ("[A]t least 577 unaccompanied minors were detained in more than 25 hotels between March and July while officials worked to expel them. Another 83 children have been held in hotels with their families during the same time period...").



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- Children must be placed in the most home-like setting possible.
- Children must be placed in state licensed facilities, and facility contracts must be routinely re-evaluated for performance, including average length of time that children are detained before release.
- Children must not be transferred to restrictive facilities without a compelling justification and meaningful due process.<sup>10</sup>
- Children must have access to meaningful, trauma-informed mental health services in ORR shelters.
- Children must have access to quality education and regular recreation.
- Children's rights must be protected through robust independent monitoring and data collection requirements.

A child's health, safety, and welfare are best protected by their family, not the state. This truth is borne out by well-established child welfare research as well as decades of experiences of child welfare systems throughout the United States. For the period of time in which unaccompanied children are in federal immigration custody, our country must do better. We must use data and research to provide for this vulnerable population in a way that, at the very least, does no further harm, and ideally, promotes their best interests. ■

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10 Ideally, ORR would not be permitted to place a child in a secure facility unless the child had been adjudicated delinquent by a state juvenile court.

*This Guide was co-authored by the National Center for Youth Law and the Social Emergency Medicine and Population Health Program at Stanford University. National Center for Youth Law's Immigration Team uses a combination of litigation, policy, training, and education to protect the rights of children in federal immigration custody as well as immigrant children in the child welfare and juvenile justice systems. The Social Emergency Medicine and Population Health Program at Stanford University is dedicated to medically caring for and promoting programs to serve vulnerable populations, researching social inequities at a population level, and disseminating findings in order to provide outcome-driven solutions.*