



## TIME TO GET SERIOUS ABOUT PREVENTING CHILD ABUSE?

*A special report on Fair Start legislation and judicial orders*

*By Ashley Berke*

Having Kids' revolutionary Fair Start Model is a framework to address the most significant problems children face: poverty, inequality, and abuse. Our model shifts resources from less effective downstream solutions to making changes at the source with better family planning. While the prevalent family planning method prioritizes a parent's desire for as many children as they please, at any time and place in the parent's life, over a child's most basic needs.

Some of the worst consequences of this parent-centered family planning are the many abused and neglected children it creates and subsequently ignores. These kids do not get anywhere near a fair start in life. They lead lives none of us would choose for our own kids. The abusive and neglectful parents often suffer as well, separated from their children. The rest of us suffer, too, in failing communities funding a failing system of public childcare.

Having Kids developed Fair Start family planning as an answer to the current failing model of isolationist family planning. The Fair Start model is instead child-centered, and breaks down the barrier between family planning and child welfare, linking 1) where and when children enter the world, with 2) the provision of what those kids need for a fair start in life.

Having Kids advocates for proactive child welfare interventions, with measurable changes in our legal regime that actually further children's interest. Specifically, we have developed a non-coercive method of intervention that embodies child-first family planning: the Fair Start Order. These orders can be issued at a judge's discretion in cases of egregious abuse to prevent child abusers from having additional children while they are on probation and undergoing rehabilitative programs. The essential function is that of a restraining order meant to protect future children and allow for genuine rehabilitation of troubled caregivers.

Fair Start Orders are a clear and constitutionally appropriate step toward ending cycles of abuse and demonstrating states' commitment to the rights of children. They would ideally, but not necessarily, be authorized by Fair Start Order legislation-- a complementary state statute.

*I: Ignoring Foreseeable Abuse*

America remains the worst among wealthy democratic nations<sup>1</sup> in child mortality. Child abuse remains underreported, but the records we do have show somewhere between 1,670- 1740 children die from parental or caregiver abuse and neglect every year. In 72% of all child fatalities, the victims are younger than three years old. Fifty percent are under a year old. Almost 30% of child fatalities have at least one prior CPS contact in the three years prior to death.<sup>2</sup>

At what point is the state responsible for the children killed or irreparably harmed by parents who we know are actively harming children? Having Kids believes that states, which are constantly pushing to widen tax bases through population, have an obligation to at least protect the children they encourage residents to have.

And yet, state and federal officials cling to after-the-fact responses to child abuse rather consider proactive policies to prevent abuse in the first place. States cannot fulfill their responsibilities to children without improving family planning models, taking steps identify irresponsible parents, and to prevent child abuse rather than simply react to it by shuffling more children into overwhelmed, underfunded, broken state systems. The result is another generation of children scarred by Adverse Childhood Experiences, who are at a much greater risk of growing up to have chronic health and behavioral issues. Prevent Child Abuse America has [cited](#) the CDC finding that "child abuse and neglect costs the U.S. approximately **\$2 trillion a year in lifetime economic costs associated with investigated and substantiated cases of maltreatment.**"<sup>3</sup>

More information on the legal and philosophical basis for Fair Start Orders, as well as sample order language can be found at <https://havingkids.org/solution-fair-start-orders/>.

## *II: Petitioning Governors to Apply Fair Start Orders in Cases of Extreme Abuse*

Having Kids unveiled the Fair Start Order campaign in late 2017 and began petitioning state agencies to consider Fair Start Orders and legislation in 2018. This campaign has continued up through publication of this report in July 2019. Having Kids monitors the news for child abuse coverage and strategically selects particularly egregious cases to target for Fair Start Orders.

**California** - In early 2018 Having Kids called on then-Governor Brown and the California Bureau of Children's Justice to consider enacting Fair Start legislation inspired by the discovery of a "house of horrors" in Perris, California. Parents David and Louise Turpin were arrested after one of their 13 children succeeded in an escape plan years in the making. Authorities soon

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<sup>1</sup> <https://www.cnn.com/2018/01/08/health/child-mortality-rates-by-country-study-intl/index.html>

<sup>2</sup> <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf#page=69>

<sup>3</sup> Cora Peterson, Curtis Florence, and Joanne Klevens, "The Economic Burden of Child Maltreatment in the United States, 2015," Child Abuse & Neglect No. 86 (December 2018): 178–183

discovered that the children, all homeschooled and between ages 2 and 29, had been starved, abused, shackled and neglected for an untold span of years. These parents are likely to remain behind bars for the duration of their lives, but the Turpins were able to torture their children because of a state-supported culture of familial isolation that trades a child's right to a minimum standard of wellbeing for a parent's right to privacy.

We continued our efforts for Fair Start legislation in California when Gabriel Fernandez's killers were finally sentenced. Gabriel was 8 years old when, after years of torture, he was murdered by his mother and her boyfriend. State agencies were aware of abuse allegations prior to Gabriel's death, but failed to protect him from a gruesome murder. What happened to Gabriel is a heartbreaking reminder that downstream solutions are simply not enough to keep kids safe.

**Indiana** - In April 2018, the Department of Child Service, in response to multiple anonymous phone calls, removed four children from a home in Greenfield, Indiana occupied by Christopher Smith and Chantelle Oliver. Court records show Smith allegedly engaged in regular physical and verbal abuse of the children including punching and slapping, and grabbing them by the hair. Having Kids urged Governor Holcomb and state officials to consider using a Fair Start Order in the event of a conviction in this case.

**Florida** - Throughout 2018, Having Kids reached out to Florida officials to offer assistance in drafting Fair Start Order legislation to help prevent child abuse. Florida's specific struggle with child abuse came to our attention at the beginning of the year when the Department of Children and Family Services went to the home of Shane Samuels on a child welfare check. They found a dirty home and a four-year-old boy with a large red, swollen handprint on the side of his face. Samuels was charged with aggravated child abuse.

Later in the year we again petitioned Florida officials to consider Fair Start Orders after the case of Jacqui Lyne Carter, a 4-year-old brought into the emergency room with severe head trauma. Jacqui's mother explained the injuries as a simple accident, but further medical tests revealed brain bleeds and multiple skull fractures suggesting at least two distinct blows to the head. This young girl and another child in the household were taken out of the mother's custody.

**Tennessee** - In March 2018 Having Kids offered assistance in implementing effective policy to address child abuse and family planning. At the same time that the state was considering legislation regarding court sentencing and unconstitutional, coercive family planning, a disturbing case of child abuse came to light. Sharon Helene Robinson and Bradley Dwight Hill were accused of criminal child neglect after their severely autistic child was found naked and covered in both human and dog feces, which he was eating. Excrement was also found in the

child's bed. While the state was already considering legislation about coercive family planning, it was in an excellent position to make a commitment to preventing child abuse.

**Texas** - In February 2019 law enforcement responded to a domestic dispute and discovered that the couple's four children were held in a shed with electricity but no working toilet and insufficient heat. The children, ages 5, 4, 3, and 1, were malnourished and covered in urine and feces. The older two children, one of whom is autistic, were confined together in a dog crate. Having Kids contacted Governor Greg Abbott and the Texas Department of Family and Protective Services (DFPS) to urge adoption of Fair Start Legislation that could protect future children of these parents, whose alleged behavior clearly demonstrates an unreadiness to parent. We offered Governor Abbott and DFPS, which had already interacted with the abusive family at least once, our assistance in creating state law and policy to better protect children.

**Federally**, Having Kids has continuously campaigned for amendments to CAPTA, the Child Abuse and Prevention Treatment Act.<sup>4</sup> CAPTA allows states to apply for federal grants for child abuse prevention and treatment programs but also enumerates certain "eligibility requirements" that each state must comply with in order to receive funding. Having Kids is petitioning the leaders of the Senate Committee on Health, Education, Labor and Pensions to amend CAPTA to require that states enact legislation that allows judges to issue Fair Start Orders for offenders convicted of certain felonies.

### *III: In the Absence of Fair Start Legislation, Abuse Continues Unabated*

Despite Having Kids' offers to support state agencies and officials in issuing Fair Start Orders and developing complementary legislation, no targets of our efforts have accepted our help.

If states do not change their approach, the results will not change.

In Florida, a woman allegedly put her newborn daughter in a trash bag and left the bag in a dumpster,<sup>5</sup> a father allegedly caused a severe skull fracture in his 2-month old<sup>6</sup>, a teenage mother

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<sup>4</sup> 42 USC § 5116(a)(1) (CAPTA Purpose and Authority)("It is the purpose of this subchapter... to support community-based efforts... to **prevent** child abuse and neglect and to support the coordination of resources and activities, to better strengthen and support families to **reduce the likelihood** of child abuse and neglect.")| 42 USC § 5106i(b) (CAPTA Rule of Construction)("[A] State shall, at a minimum, have in place authority under State law to permit the child protective services system of the State to pursue **any legal remedies**, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is **necessary to prevent or remedy serious harm to the child...**")

<sup>5</sup><https://www.local10.com/news/florida/palm-beach-county/woman-faces-attempted-murder-child-abuse-charges-after-baby-found-alive-in-dumpster>

<sup>6</sup> <https://www.nbc-2.com/story/40574942/cape-coral-father-accused-of-child-abuse>

of a 6-month-old was arrested after allegedly trying to suffocate the baby and making threats on social media<sup>7</sup>. All this nearly a year after we urged Florida to change.

In Texas, the Department of Family and Protective Services' recently-released annual report on Child Maltreatment Fatalities and Near Fatalities notes 211 confirmed child abuse and neglect-related deaths in fiscal year 2018<sup>8</sup>, a significant increase from 2017, and higher than the national average. Placing these statistics alongside the state's deeply troubled foster care system paints a grim picture for children in Texas. The state has a dire need for a better approach to child welfare and family planning, and Fair Start orders are a perfect first step.

In May 2019 it came out that Tennessee's Department of Children's Services investigated 186 child fatalities the previous year. Of those 116 were from families with prior agency contact. Three caseworkers were fired or stepped down because of their actions related to a child fatality.<sup>9</sup>

In California, the details of Gabriel Fernandez's case have revealed that the failures of the state's child welfare system are deeper than most knew<sup>10</sup>. Children continue to suffer. A mother allegedly dropped her infant out of a window, killing the baby.<sup>11</sup> The parents of a 5-week-old were arrested in connection with the newborn's death.<sup>12</sup>

The number of children who suffer abuse in Indiana rises every year, and the state has the second highest rate of victimized children in the country. The rate of child fatality in Indiana is twice the national average at nearly 5 per 100,000 children.<sup>13</sup>

Current policies are demonstrably failing, officials seem more willing to accept child deaths than to accept Having Kids offer to help states meet their obligations to their most vulnerable population.

#### *IV. Holding Decision Makers and Abusers Accountable*

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<sup>7</sup><https://www.clickorlando.com/news/florida-woman-tries-to-suffocate-infant-after-making-facebook-threat-deputies-say>

<sup>8</sup>[https://www.expressnews.com/news/politics/texas\\_legislature/article/More-than-90-Texas-children-died-from-abuse-in-13656428.php](https://www.expressnews.com/news/politics/texas_legislature/article/More-than-90-Texas-children-died-from-abuse-in-13656428.php)

<sup>9</sup><https://www.tennessean.com/story/news/2019/05/05/tennessee-childrens-services-death-investigations-2018/3055436002/>

<sup>10</sup><https://www.theatlantic.com/family/archive/2018/10/la-county-dcfs-failed-protect-gabriel-fernandez/571384/>

<sup>11</sup><https://www.usnews.com/news/best-states/california/articles/2019-02-27/the-latest-mother-detained-in-infant-death-sons-injuries>

<sup>12</sup> <https://ktla.com/2019/03/14/parents-arrested-in-death-of-5-week-old-baby-girl-in-menifee/>

<sup>13</sup> <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>

It is a national tragedy preventable suffering of children continues year after year, and that officials ignore Having Kids' offers to guide them through the process of enacting Fair Start Orders and passing related legislation.

We now have to take a more direct approach. A child's right to a fair start in life is a fundamental human right and overrides anything with which it conflicts. The next phase of our work will identify those in power who are most responsible for, and capable of implementing Fair Start orders to prevent child abuse. If the wellbeing of thousands of children in a state is not compelling enough, we must ask these decision makers to explain. Do they or would they treat their own kids' safety so nonchalantly? Why do their children deserve protections others do not? What costs are you shifting to other agencies and to future generations?

We will also turn our attention directly to the abusers, and the obligation of communities to step in where government has failed to protect children. If we know children are being abused in our communities we have a moral obligation to intervene. We also have an obligation to promote widely - through word and deed - this simple truth: Parents need to be ready before they have kids, and if parents have abused or neglected children, they should be encouraged to take certain steps before having more.

We will focus our efforts in Florida, where for a variety of reasons we are urging lawmakers to pass the [first Fair Start law in the country](#).