



## A MINDFUL LOOK AT PREVENTION, KINSHIP CARE, AND DIVERSION: PRACTICAL IMPLICATIONS

November 2019



### Defining Prevention: Three Prongs of Child Welfare Reform

- **Prevention:** Preventing abuse and neglect so children never come to the attention of the child welfare system (**not a focus of FFPSA**)
- **Intervention/Preventing Foster Care Entries:** Allowing expanded interventions to stem a family crisis so that children can remain safely at home (**focus of Part I of FFPSA**)
- **Family Placements:** Restricting the number of children placed in congregate care/group homes to ensure that all children in foster care are raised in families (**focus of Part IV of FFPSA**)

# FAMILIES FALLING THROUGH THE SAFETY NET

Understanding interplay & loopholes between the court systems that control child custody decisions

## A TALE OF THREE COURTS



## FAMILY COURT



### Purpose of Family Court

Assist families with the litigation of domestic disputes, including the health, safety, and welfare of children.

Ensure children are exposed to frequent and continuing contact with both parents after the dissolution of marriage or end of a relationship.

Encourage parents to share their parental rights and responsibilities as co-parents.



### What do parents receive?

Judicial review and orders on their domestic disputes, including child custody orders.

Due process rights - notice, an opportunity to be represented by an attorney (not court appointed), court mandated family counseling, and the opportunity to advocate for their children's best interest.



### What do children receive?

No Due Process rights as children are not parties to family court matters.

No automatic right to an attorney unless one is appointed by the court upon its own motion or motion of the parties.

No right to be heard on issues that will affect their lives.

No right to services or reunification with a noncustodial parent.



### What do caregivers receive?

Non-parent caregivers, often relatives, may be granted custodial rights.

Services and financial assistance for the children are limited. They may petition for child support and/or qualify for CalWORKs.



### What is the goal of the system?

Establish custodial arrangements between parents and order child support

Do not focus on reunification of the child with their parent(s) nor provide for procedural safeguards such as appointment of counsel for the child and parents.

## PROBATE COURT



### Purpose of Probate Court

Appoint legal guardians for children in cases wherein they are orphans or children of absent parents



### What do parents receive?

Notice of Petition for Guardianship.

Parents are afforded other due process rights, including the right to be represented by an attorney but are not appointed counsel.



### What do children receive?

No Due Process rights as children are not parties to the probate case (kids 12 and over can petition Probate Court for guardianship themselves).

No automatic right to an attorney unless one is appointed by the court upon its own motion or motion of the parties.

No right to be heard on issues that will affect their lives.

No right to services or reunification with their parents.



### What do caregivers receive?

Relative caregivers granted guardianship can receive CalWORKs (they can also receive CalWORKs without the guardianship being established)

Non-relative caregivers granted guardianship through probate can receive AFDC-FC benefits.



### What is the goal of the system?

Establish custodian of child in cases where both parents were deceased or absent. Probate courts do not focus on reunification of the child nor provide for procedural safeguards such as appointment of counsel for the child and parents because probate court guardianships historically were limited to cases where the parents were deceased or absent.

# JUVENILE COURT



## Purpose of Juvenile Court

To provide maximum safety and protection for children who are currently being abused, neglected, or exploited and to ensure their well-being

The focus is on the preservation of the family



## What do parents receive?

Parents receive formal supports including the services of an appointed attorney to enforce their constitutional due process rights, a caseworker and subsidized services tailored to assist them in preserving their family and remedying the child safety issues that exist.



## What do children receive?

Children appointed counsel representing their interests and advocating for their protection, safety, and well-being.

The child's constitutional rights to preserve familial relationships are protected by ensuring reasonable efforts were made prior to their removal, they receive adequate visitation with parents and siblings, and a focus on family reunification.

Statutorily protected rights such as education and mental health services are triggered.



## What do caregivers receive?

Relative caregivers receive emergency caregiver funding until approved as a resource family and then receive foster care benefits including specialized care to support a child's additional needs.

Respite, funding to transport the child to their school of origin, emergency child care bridge, and training.



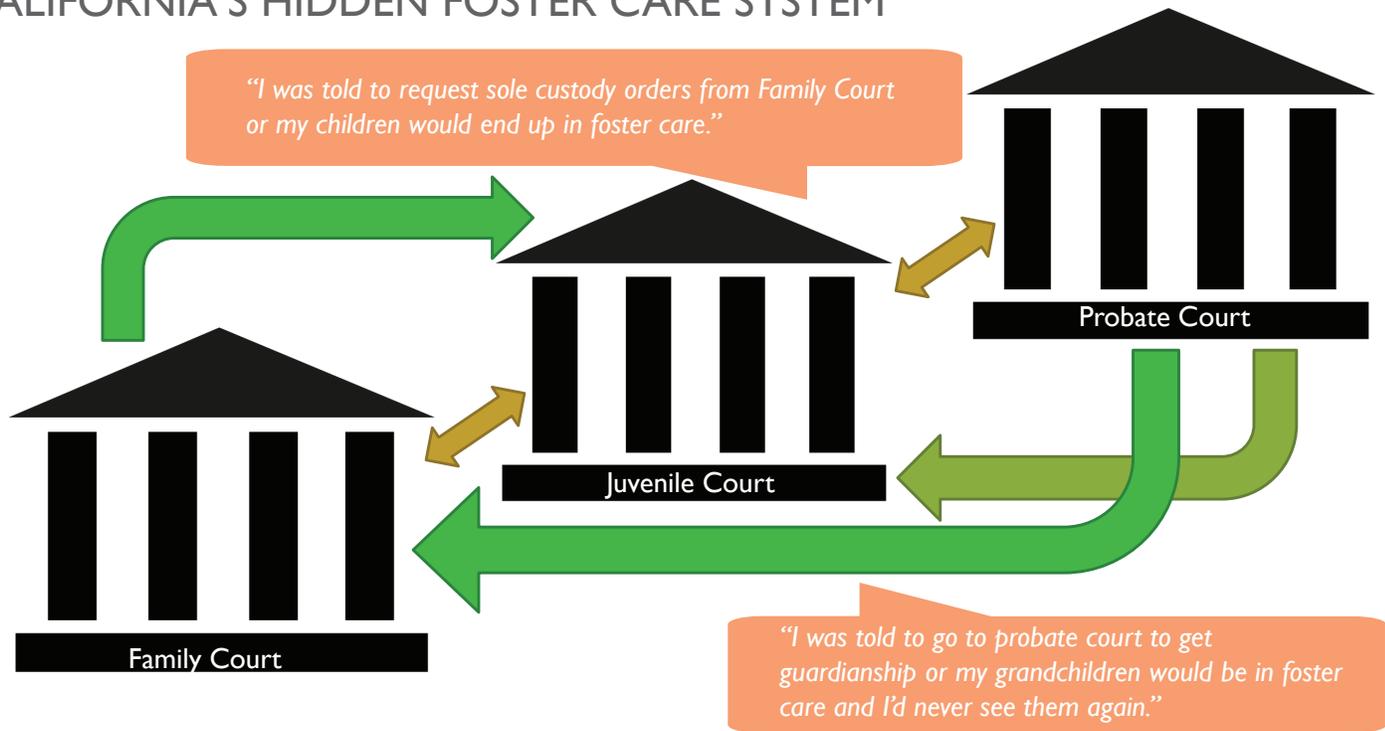
## What is the goal of the system?

Keep minors with their families and make the families stronger.

If the minor is removed from the home to protect safety and well-being, the court will work with the family and the minor to improve the home conditions so the child can move back home.

If the minor is removed from the home, the court will make sure that someone has custody of the minor. The minors will get the care and discipline they need to be safe and protected.

# CALIFORNIA'S HIDDEN FOSTER CARE SYSTEM



# CALIFORNIA CHILD WELFARE LAW: DUE PROCESS PROTECTIONS



A codified system of checks and balances intended to fulfill the twin aims of dependency court: Protect children and preserve the family.



Attorneys appointed to parents and children to enforce these checks and balances and ensure all parties constitutional and statutory rights are fully represented. Counsel also give voice to the children and families that interact with the system and ensure that educational, mental, physical and emotional needs are met.



Accountability via Judicial Review of state action that impinges on the families' constitutional right to association.



Statutory rights for children while in out-of-home placement, including checks ensuring their safety and well-being.



Reunification services

## CALIFORNIA CHILD WELFARE LAW: LEGAL OPTIONS WHEN CHILDREN CANNOT REMAIN SAFELY IN PARENT'S HOME

### Voluntary Placement Agreement

- VPAs limited to 180 days
- Parents provided support/services aimed at reunification while child is placed through VPA
- Funding available to support child/caregiver in a VPA

### 360(a) Guardianship

- Parent must agree and are provided counsel
- Funding through Kin-GAP if guardianship follows 6 months of VPA

### Removal of child by court and placement into foster care

- Reasonable efforts finding
- Parent provided counsel
- Relatives are preferred placement
- Emergency Caregiver funding
- Child-specific approval through RFA

## CALIFORNIA CHILD WELFARE LAW:

### WHEN AND HOW CAN CHILD WELFARE AGENCIES FACILITATE OUT-OF-HOME PLACEMENT OF CHILDREN?

- An out-of-home placement of a minor without adjudication by the juvenile court may occur only when all of the following conditions exist:
  - (1) There is a mutual decision between the child’s parent, Indian custodian, or guardian and the county welfare department in accordance with regulations promulgated by the State Department of Social Services.
  - (2) There is a written agreement between the county welfare department and the parent or guardian specifying the terms of the voluntary placement. The State Department of Social Services shall develop a form for voluntary placement agreements that shall be used by all counties. The form shall indicate that foster care under the Aid to Families with Dependent Children program is available to those children. **WIC §16507.4(b)**
- Probate Courts also can require child welfare to investigate cases in cases that involve allegations of parental unfitness or where the child appears to have suffered or be at risk of abuse or neglect. **Probate Code § 1513(b)**

	<b>Voluntary Placement Agreement – protects rights of child and parent and ensures support for caregiver</b>
<b>Definition</b>	“‘voluntary placement agreement’ means a written agreement, binding on the parties... between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.” WIC 11400(p)
<b>Who consents?</b>	Agreement between parent/guardian and child welfare agency – must use the form developed by CDSS (SOC 155). WIC 16507.4(b)
<b>Care, custody and control</b>	Child’s placement into a VPA and care, custody and control transfers to child welfare agency. WIC 16507.5.
<b>Funding and services</b>	Children placed in a VPA are eligible for federal foster care maintenance payments. WIC 11401. “When a minor is separated, or is in the process of being separated, from the minor’s family under the provisions of a voluntary placement agreement, the county welfare department or a licensed private or public adoption agency social worker shall make any and all reasonable and necessary provisions for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment.” WIC 16507.5.
<b>Time limits</b>	Limited to 180 days unless there is a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) that such placement is in the best interests of the child. WIC 16507.6.
<b>Right to terminate</b>	Parent has right to terminate or withdraw from the VPA at any time. SOC 155.

# FINDINGS FROM FOCUS GROUPS AND SURVEYS

Experiences of families and relatives who care for children in and out of foster care in California

## FINDINGS FROM FOCUS GROUPS AND SURVEYS



- 19 focus groups and 326 surveys completed
  - Many families were **unable to identify whether the child in their home was there as a result of a formal foster care placement or an informal arrangement**
    - 24% of caregivers indicated they were an informal kinship arrangement but also that they received foster care funding
    - 24% of caregivers indicated they had guardianship through probate court but received foster care funding
    - 18% of those that indicated they had guardianship through dependency court also said there was no child welfare involvement
  - **Lack of information** provided to families about implications of different court systems or the benefits and services available to support children
    - 42% of families indicated they received “no information” about different types of legal arrangements
    - 40% of families had less than 24 hours notice before the children were placed in their home

Indicator	Child welfare involved	NO child welfare involvement
Less than 24 hr notice of placement	34.92%	50%
No information about legal arrangements	33.33%	58.33%
Receiving foster care benefits	58.46%	11.11%
Children having multiple placements	46.15%	11.11%
Bio parents not involved in placement decision	38.10%	22.86%
Parenting classes for bio parents	78.43%	43.48%
No training provided to the caregiver	35.94%	62.86%
Kinship families reported financial insecurity	58.07%	75.86%

## Indicators Different When Families Are Involved with Child Welfare

Top 3 threats/challenges by caregivers	1	2	3
Informal	Access to mental health services	Respite (tie)	Boundaries with bio parent (tie)
Probate guardianship	Funds for basic needs (tie)	Boundaries with bio parents (tie)	Respite
Voluntary Placement Agreement	Respite (tie)	Childcare (tie)	Affordable housing
Dependency guardianship	Respite (overwhelmingly)	Access to mental health services (tie)	Boundaries with bio parent (tie)
Formal foster care placement	Respite	Access to mental health services (tie)	Childcare (tie)

## PRIMARY CHALLENGES FAMILIES FACE BY PLACEMENT TYPE

---

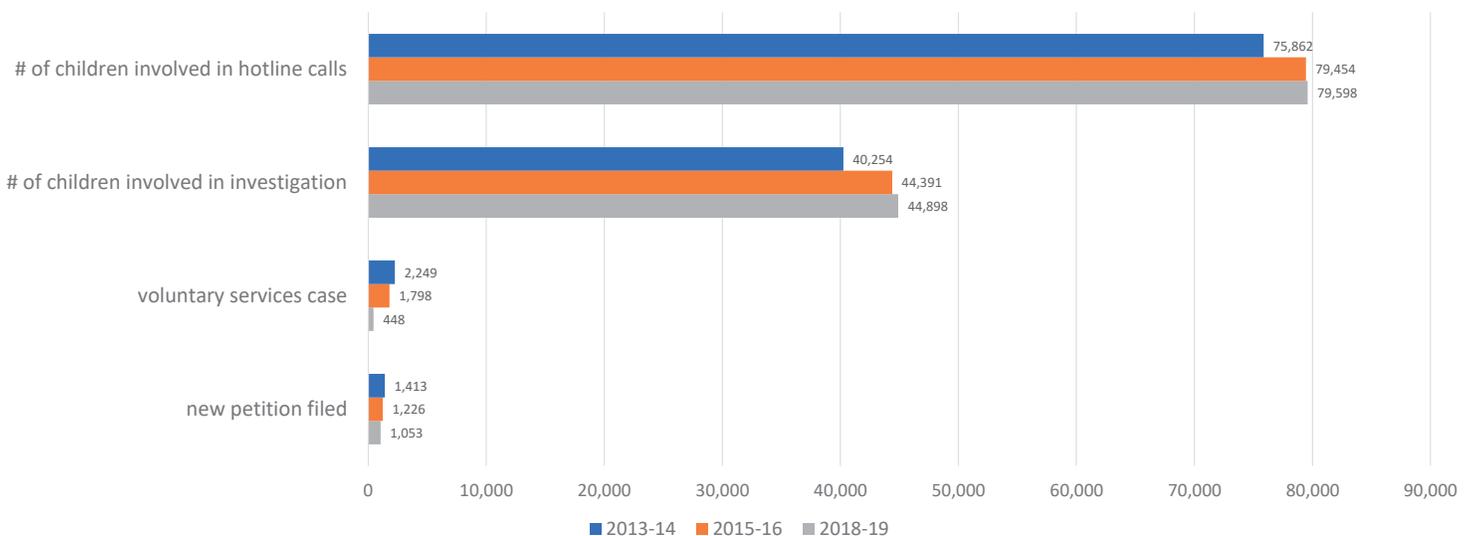
## FINDINGS FROM FOCUS GROUPS AND SURVEYS

- Despite the goal of a child welfare system that is child-centered and family-friendly, **most kin families did not feel valued**
  - 64% of caregivers disagreed with the statement that the child welfare system values kin and non-kin caregivers equally

---

## DIVERSION BY THE NUMBERS

San Diego Data



# SHIFTING POLITICAL LANDSCAPE

## Family First Prevention Services Act

### FFPSA: Entitlement for IV-E Prevention Funding for Eligible Populations

- Open-ended entitlement to claim federal dollars for prevention services, but eligibility is restricted to:
  - **Candidates** for Foster Care, Parent(s) or Relatives Caregiver(s) of Candidates for Foster Care – OR – Expectant and Parenting Foster Youth
  - Prevention Services must fall into one of **three categories**: (a) mental health; (2) substance abuse prevention and treatment; (3) in-home parent skills-based programs
  - **Evidenced-Based Program** that is included in the IV-E Prevention Services Clearinghouse AND 50% of all funding on a well-supported program
  - Title IV-E is **payer of last resort**
  - **Per child** claiming
  - Ongoing continuing **evaluation**



## Definition of “Candidate”

For purposes of this title, “candidate for foster care” means the following:

- A child who is identified in a prevention plan as being at **imminent risk** of entering foster care, but who can remain safely in the child’s home or in a kinship placement as long as services available under the new title that are necessary to prevent the child’s entry into foster care are provided
- Includes a child whose adoption or guardianship arrangement is **at risk of a disruption or dissolution** that would result in a foster care placement

Where can the child be living while preventative services are provided?

In the home of the parent(s)

In the home of kin caregiver until child can be safely reunified

In the home of kin caregiver who child will live with *permanently*

# Prevention vs. Placement When Youth Cannot Remain Safely at Home With a Parent

	Prevention of Foster Care Through Kinship Care	Placement With Kinship Caregiver Who Meets Licensing Standards
Funding for Caregiver?	<b>Limited funding</b> available to support kin caregiver – in most states, TANF is available	<b>Full foster care funding</b> – in CA this includes access to specialized care, clothing allowance, infant supplements, etc
Who receives services?	Prevention services <b>targeted primarily at the bio parent</b> /home of removal	<b>Reunification services</b> offered to the parent while child receives <b>legal representation</b> and <b>case management services</b>
Duration of services?	Prevention services offered <b>limited to 12 months</b>	<b>No limitation</b> reunification services while child is in foster care + <b>15 months of post-reunification services</b>
Permanency options and funding for permanency?	No requirement that the state make a formal placement with the relative if the child is not able to be reunified with the parent – FFPSA allows the prevention strategy to be the <b>permanent home of the relative without any additional services or funding</b>	Child is either reunified or can remain with relative through <b>adoption, guardianship, or as an Fit and Willing Relative</b> – all options offer <b>continued funding for kin families (AAP, KinGAP, or continued foster care funding)</b>
Supports for TAY?	<b>No eligibility</b> to receive extended foster care, independent living services, or Education and Training Vouchers	<b>Eligible</b> to receive extended foster care (if in care at age 18) independent living skill services (if in care at age 14) or Education and Training Vouchers (if either in care at 16 or adopted/guardianship at 14 or older)
Education rights to promote school stability?	No right to school of origin placements or funding, immediate enrollment, partial credits, etc.	Child has the right to attend their school of origin, the ability to utilize partial credit and immediate enrollment laws – these rights attach to foster care

## FFPSA Service Array: Prevention vs. Foster Care Placement

FFPSA services available are largely directed at the parent

- Mental Health Counseling
- Substance Abuse Treatment
- Parenting Skills Training

Children in foster care with a relative receive:

- Foster care payments, including adoption assistance and guardianship assistance
- Reunification services
- Case management
- Representation and advocacy by an attorney who is charged with representing the best interest of the child
- Categorical Medicaid eligibility
- Educational supports and rights

# Due Process Considerations

	<b>Voluntary Placement Agreement</b> – parent and child welfare worker agree to child being placed with kin while parent works to rehabilitate and reunify	<b>Prevention Plan</b> – child welfare worker facilitates prevention plan with a relative outside of foster care
<b>Definition</b>	“voluntary placement agreement’ means a written agreement, binding on the parties... between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.”	Prevention plan must: (i) identify <i>the foster care prevention strategy</i> for the child so that the child may remain safely at home, live temporarily with a kin caregiver until reunification can be safely achieved, or <i>live permanently with a kin caregiver</i> ; (ii) list the services or programs to be provided; and (iii) comply with other requirements as the Secretary establishes
<b>Who consents?</b>	Agreement between parent/guardian and child welfare agency	FFPSA is silent on whether Prevention Plan must be voluntary
<b>Care, custody &amp; control</b>	Child’s placement into a VPA and care, custody and control transfers to child welfare agency	FFPSA is silent on whether the care, custody and control transfers to the state agency or to the caregiver (or if it remains with the parent)
<b>Funding</b>	Children placed in a VPA are eligible for federal foster care maintenance payments	No federal foster care funding for children with a relative through a prevention plan (states can provide funding with state-only dollars)
<b>Time limits</b>	Limited to 180 days unless there is a judicial determination (within the first 180 days) that placement is in the best interests of the child	Prevention plan can be the <b>permanent</b> home of the kin caregiver
<b>Right to terminate</b>	Parent has right to terminate or withdraw from the VPA at any time	FFPSA is silent re: how to challenge or terminate the prevention plan (particularly if the plan is permanent home of relative)

## CALIFORNIA CASE LAW OVERVIEW

Intersection of child welfare and probate laws

## PROBATE CODE – GETTING CASES FROM PROBATE TO JUVENILE DEPENDENCY

- Under Probate Code § 1510, when a guardianship action is contested a court cannot award custody to a nonparent unless it finds that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the child's best interest.
- When a relative files a petition for the appointment of a guardian of a minor, a court investigator is required to conduct an investigation and file a report and recommendation with the court, unless waived by the court. Probate Code § 1513(a)
- The report includes a social history and description of the relationship of the guardian and proposed ward, the circumstances that led to the physical custody of the ward being acquired by the guardian, the plans of both the natural parents and the proposed guardian for the stable and permanent home for the child.
- If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, the probate court can refer the case to the social services agency designated to investigate potential dependencies. Probate Code § 1513(b)

## CHRISTIAN G.

195 CAL.APP.4<sup>TH</sup> 581

### Facts:

- (Uncle) Mark visited his brother John in NC. Found his nephew toddler Chris inside, unattended in his car seat in a van. The conditions of Dad's mobile home: only liveable space was 4 x 4 area due to hoarder conditions, only heater was an open oil-burning stove, and Dad staked Chris in the yard outside via a harness attached to a leash. Chris's hair was so matted that it was unbrushable, his diapers were soaked through his pajamas, and although he was more than 3 years old, he did not speak and was withdrawn.
- A month later, Uncle Mark returned to help clean the mobile home and build a fence. In the mobile home, the stench of human excrement was intolerable due to Dad having used a plastic bag in place of an inoperable toilet.
- Mark called CPS and was informed that if there was an available relative, a guardianship petition could be filed.

## CHRISTIAN G. (CONTINUED)

### Probate Investigator found:

- Chris had been dependent of court at 6 weeks old.
- Mom relinquished rights. Dad had been described as mentally ill, “out of control” but Chris had been returned to John at 18 months old.
- Investigator believed that Dad’s paranoid schizophrenia made him incapable of parenting.
- Uncle Mark was a felon and former meth addict, as was his wife but they both had been sober for a few years and were parenting their 18, 15, 14, and 9 year old children

## CHRISTIAN G. (CONTINUED)

- John, without an attorney, presented 60 pages of Objections and Corrections to the Guardianship report
  - letters praising his parenting ability
  - photos of a happier, cleaner Chris
  - explained that the matted hair was due to Chris’s hair-twisting habit
  - boxes all over the place because they had recently moved in; not a hoarder
  - stake in the yard was to keep Chris safe from neighbor’s lawn mower
  - Mark had greatly exaggerated the facts

## CHRISTIAN G. (CONTINUED)

- Dad claimed was denied due process because the case had not been referred to CPS:
  - He would have been entitled to an attorney
  - He would have had the benefit of family reunification services, periodic reviews of the child's living situation, and a presumption favoring maintenance and reunification of the biological family
  - “The question ultimately presented by this appeal was whether a child who would normally be dealt with under the juvenile dependency laws can be put into a guardianship with fewer formalities simply because his parent's accuser is a family member who files a guardianship petition in probate court.”

## CHRISTIAN G. (CONTINUED)

- “The Probate Code is intended to work hand in hand with the dependency laws as a cohesive statutory structure that aims to subject all cases alleging parental unfitness to the rigors of a dependency investigation. Accordingly, probate courts are expected to send those cases involving abuse or neglect to the county's dependency agency for investigation and provision of services. The statutory scheme appears calculated to ensure that all claims of parental child abuse and neglect are investigated by the same agency—and subjected to the same standards. If the investigation suggests the child must be removed from the parental home, then the interplay of the statutes strongly suggests that reunification services are to be offered to the family. We cannot justify the probate court's failure to request a dependency evaluation in this case.”

---

# STATUTORY CHANGES AFTER CHRISTIAN G.

- Probate Code section 1513 was amended in 2012 – the language of the statute is now permissive:
  - Prior Language: If the [probate] investigation finds that any party to the proposed guardianship alleges the minor’s parent is unfit, as defined by Section 300 of the Welfare and Institutions Code, **the case shall be referred to the county agency designated** to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by Sections 328 and 329 of the Welfare and Institutions Code is completed and a report is provided to the court in which the guardianship proceeding is pending.
  - New Language (and current law): at the initiation of guardianship proceedings, if the child is or may be described by Section 300 of the Welfare and Institutions Code, **the court may refer the matter to the local child welfare services agency** to initiate an investigation of the referral pursuant to Sections 328 and 329 of the Welfare and Institutions Code and to report the findings of that investigation to the court.

- 
- Kaylee, born healthy, to two parents with history of methamphetamine use and involvement with child protective services and the juvenile and criminal courts. Parents had an open dependency case regarding Kaylee’s sister at the time of Kaylee’s birth so they placed one-month-old Kaylee in the care of paternal great-uncle who was granted a temporary guardianship in Probate Court.
  - The guardianship investigator’s report stated the guardianship was being requested because of the parents’ inability to care for Kaylee and meet her daily needs.
  - The Probate Court referred the case to the Agency to investigate a potential dependency petition, pursuant to Probate Court § 1513.
  - The Juvenile Court conducted independent review of the social worker’s decision not to file a Section 300 petition (Section 331) and directed the social worker to file a petition on Kaylee’s behalf.

IN RE KAYLEE H. (205 CAL.APP.4TH 92)

- 
- The Juvenile Court ordered the social worker to file a Section 300 petition finding it was more appropriate to proceed in juvenile court, rather than probate court, for three reasons:
    - Juvenile Court has mechanism to try to help parents reunify with their children
    - If family reunification did not occur, guardianship was not the preferred permanency plan for a child of K's age
    - Parents did not have access to court-appointed legal counsel in probate court to respond to the allegation of parental unfitness

## IN RE KAYLEE H. (CONTINUED)

- 
- The Court of Appeals reversed.
  - “Under Section 331, a juvenile court reviewing a social worker’s decision not to file a dependency petition must first determine whether there is a prima facie showing that the child comes within the parameters of Section 300. If the juvenile court independently finds that showing has been made, it must then determine whether a dependency petition is necessary to protect the child. When, as here, a guardian has been appointed for the child, the parents’ authority over the child ceases: the guardian assumes the care, custody and control of the child.”
  - “If the guardian is a suitable custodian and able to protect the child from the risks posed by the parent’s behavior, the guardianship is sufficient to ensure the child’s safety, protection and well-being. In such cases, the intervention of the juvenile court is not necessary or authorized.”

## IN RE KAYLEE H. (CONTINUED)

# RECONSIDERING PREVENTION: POLICIES TO SUPPORT CHILDREN SEPARATED FROM PARENTS

## RECOMMENDATIONS TO CONFORM PRACTICE

---

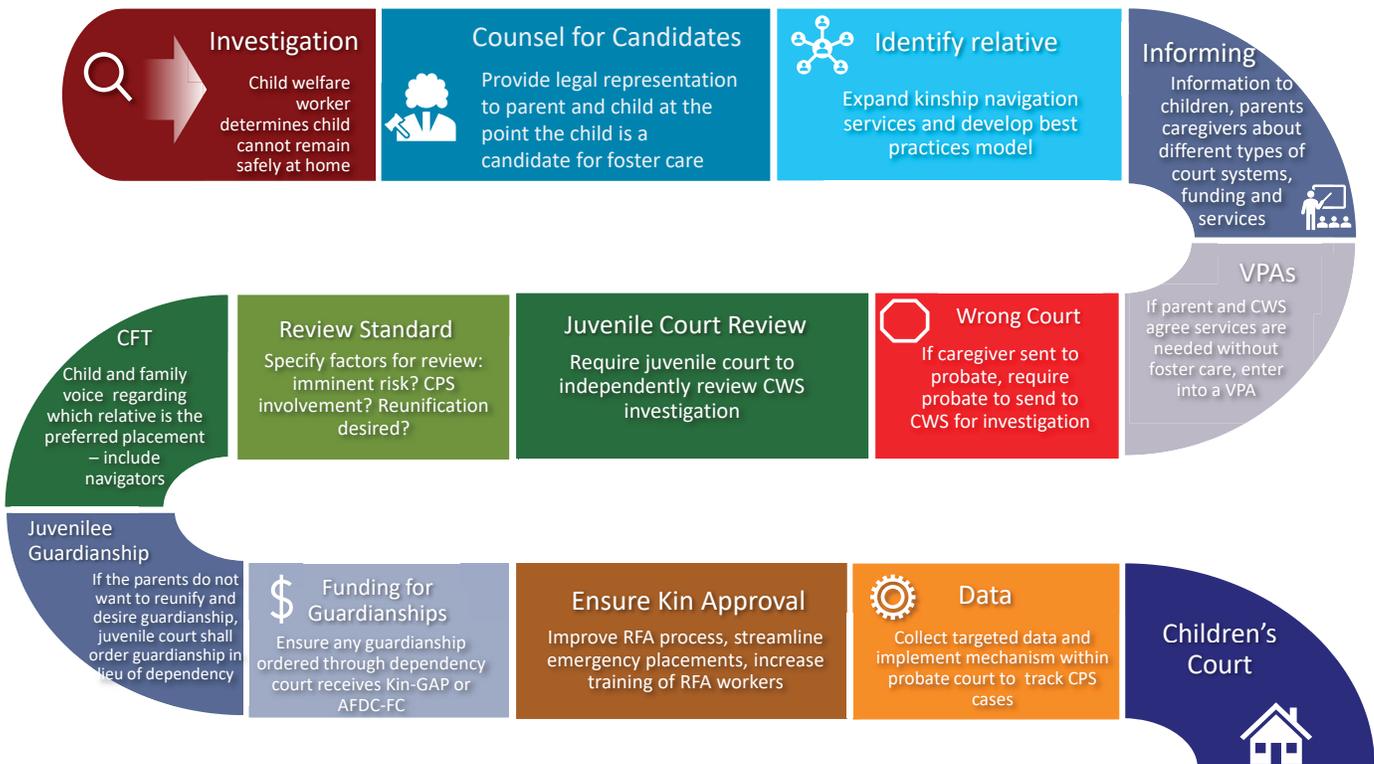
### IMPACT OF PREVENTION STRATEGIES THAT RELY ON KINSHIP

*“Hidden foster care not only follows CPS agency involvement but is usually specifically requested by CPS authorities. Still, legal custody does not transfer, and certainly does not transfer to the state leaving parents, children and kinship caregivers without a clear legal status governing the situation insisted upon by CPS agency.”*

– Josh Gupta-Kagan, *America’s Hidden Foster Care System*, 77 Stan. L. Rev. (forthcoming 2020)

---

- Hidden Foster Care Has Implications for the Child, Parent and the Caregiver
  - Due process for parent and child
  - Opportunity to reunify
  - Lack of understanding of different systems and available supports
  - Little to no supports or services outside of child welfare system
  - Implications for child safety
  - Lack of care, custody and control established
  - No foster care protections for the child
  - No support after legal permanency is established



## Recommendations for Reform: Prevention and Kinship Care

- Intention of the recommendations is to ensure that the child, parent and the caregiver's interests and rights are acknowledged and addressed
- Focused at point in time when the child welfare agency has determined the child cannot remain with the parent. Goals in three areas:
  1. Supporting Children and Families: Ensuring Services and Resources are Provided to the Child and Family
  2. Avoiding Legal Limbo, Safeguarding the Child, and Promoting Family Integrity
  3. Tracking Progress and Moving Toward Holistic Reform
- Many of these are implementation issues

**Counsel for Candidates**



Provide legal representation to parent and child at the point the child is a candidate for foster care

**Supporting Children and Families: Ensuring Services and Resources are Provided to the Child and Family**

- Provide legal representation to the parent and child at the point a child is determined to be a “candidate for foster care”. As a matter of due process, action by the state to facilitate a change of the child’s custody should trigger the right of parents and children to obtain legal counsel (appointed if necessary) to advise them of their rights and negotiate appropriate plans with CPS agencies.

Title IV-E of the Social Security Act is the primary authority for federal funding for foster care. In a recent policy change, the United States Department of Health and Human Services, Children’s Bureau, has interpreted administrative costs for foster care to include costs for children’s and parents’ attorneys. (Child Welfare Policy Manual, Section 8.1B, Question 30) Jurisdictions can now seek federal reimbursement for the cost of legal representation for eligible children and their parents.



States can meet the match requirements with funds that they currently use to support legal representation for children and/or parents. However, the Children’s Bureau has been clear that their preference is that newly available federal funds support improved representation for parents and children – not act as a substitute or state investment. The new federal funds should be used to invest in improved representation.



The title IV-E agency may also claim administrative costs for independent legal representation provided by an attorney for a candidate for title IV-E foster care or a title IV-E eligible child in foster care who is served under the agreement, and the child’s parents, to prepare for and participate in all stages of foster care related legal proceedings.



### Identify relative

Expand kinship navigation services and develop best practices model

## Supporting Children and Families: Ensuring Services and Resources are Provided to the Child and Family

- Increase availability of Kinship Navigator programs across California by leveraging new federal funds (once a kinship navigator program has been included in the new Prevention Clearinghouse) and conform program models to ensure consistency in support and services
- Ensure kin are immediately connected to a navigator at the time a child is moved into their home
- Provide clear, concise and comprehensive information available at time of placement

### Informing

Information to children, parents caregivers about different types of court systems, funding and services



## Supporting Children and Families: Ensuring Services and Resources are Provided to the Child and Family

- Increase availability of information and legal advice across California by leveraging new federal funds for counsel to parents and children
- Require that social workers coming into contact with families provide clear, concise and comprehensive information available at time of any placement of children outside of natural parents' home
- Develop information brochure to be provided to caregivers, natural parents, and children requesting probate guardianships

**Supporting Children and Families: Ensuring Services and Resources are Provided to the Child and Family - AND - Avoiding Legal Limbo and Safeguarding Children While Promoting Family Choice**

- Deem any alternative agreement (including ‘safety plans’ or ‘voluntary family agreements’) utilized by a county as a Voluntary Placement Agreement to afford the parent, children and caregivers the same legal rights, responsibilities and protections as contained in the state’s VPA form
- Permit parents or children to seek court review of any safety plan or informal care arrangement that did not utilize the state-sanctioned VPA form either at the time the safety plan or informal care arrangement is initiated or at any time thereafter.

VPAs  
If parent and CWS agree services are needed without foster care, enter into a VPA

- Require the probate court to refer cases involving allegations of parental unfitness or that involve the abuse or neglect of the minor to the county social services agency designated to investigate potential dependencies.
- Provide annual training to probate judges, child welfare professionals, and juvenile court judges on the obligation to refer cases that involve allegations of parental unfitness or abuse and neglect to child welfare for investigation.

**Avoiding Legal Limbo and Safeguarding Children While Promoting Family Choice**

Wrong Court  
If caregiver sent to probate, require probate to send to CWS for investigation

## Avoiding Legal Limbo and Safeguarding Children While Promoting Family Choice

Juvenile Court Review  
Require juvenile court to independently review CWS investigation

- Amend current law so that the juvenile court has a mandatory duty to independently review the decision of a social worker who determines not to file a petition after an investigation pursuant to PC 1513 (currently the juvenile court is permitted to review the decision, but not obligated to do so).

## Avoiding Legal Limbo and Safeguarding Children While Promoting Family Choice

Review Standard  
Specify factors for review: imminent risk? CPS involvement? Reunification desired?

- In the juvenile court’s independent review, require the court to determine:
  - Whether the child comes with Section 300 parameters
  - Whether the child would be at imminent risk of harm if the child were living in the home of the parent
  - Whether the child welfare agency facilitated the removal of the child to the kinship caregiver’s home within the last 12 months
  - Whether the parent wishes to attempt to reunify (assuming the parent is represented by counsel in making that determination).
- If the child comes under 300, the child is at imminent risk of harm if in the home of the parent, the agency facilitated the placement of the child with the relative within the last 12 months, and the parents desire reunification – order petition for removal to be filed

## CFT to Identify Preferred Relative

### CFT

Child and family voice regarding which relative is the preferred placement – include navigators

- Once child welfare is involved and it is determined that the child will be placed through a VPA, petition with juvenile court, or considered for a 360(a) guardianship, convene a CFT to ensure family is fully informed of options and to ensure child voice in selection of preferred relative

## Avoiding Legal Limbo and Safeguarding Children While Promoting Family Choice

### Family Choice

If the parents do not want to reunify and desire guardianship, juvenile court shall order guardianship in lieu of dependency

If the outcome of the juvenile court's review is that the court determines:

- the child falls within Section 300
- that the child welfare agency facilitated the movement of the child from the parent's home to a relative's home within the last twelve months **but**
- the parent(s) do not desire to reunify and consent to the guardianship (assuming the parent is represented by counsel in making that decision)

THEN order a guardianship pursuant to Welfare and Institutions Code 360(a).

## Supporting Children and Families: Ensuring Services and Resources are Provided to the Child and Family



- Amend section 360(a) to allow for the provision of state-only Kin-GAP benefits to any child who has a guardianship established under section 360(a), regardless of the amount of time the child was residing in the relative's home or whether a VPA was in place prior to the establishment of the guardianship.
- In order to be able to claim federal funds for the subsidized guardian payment, amend Section 360(a) to allow the juvenile court to order a Voluntary Placement Agreement in lieu of guardianship. Then, after six months in a VPA, the juvenile court can order the guardianship pursuant to WIC 360(a) and federal reimbursement for the subsidized guardianship payment would be available.

- Improve RFA processes:
  - Child specific approval
  - Right to appeal denial of relative placement
  - Rebuttal presumption: if the relative was considered a safe home for the child in hidden foster care, presumption that the relative can be approved to care for the same child through a formal foster care placement

## Avoiding Legal Limbo and Safeguarding Children While Promoting Family Choice



- Streamline emergency placement procedures to ensure that children can be connected to a known family member within 24 hours of being separated from a parent.
- Increase training of RFA workers and county welfare workers across the state to improve understanding of the options to approve a relative's home

## Tracking Progress and Moving Towards Holistic Reform

### DATA!

- Track:
  - Children moved to a relative via a Voluntary Placement Agreement
  - Children moved to a relative through other Child Welfare involvement
  - Entry into foster care within 6 months, 12 months, 18 months, and 24 months of a VPA
  - Reunification following Voluntary Placement Agreements
  - Entry into foster care due to a failed guardianship that was not subsidized



### Moving Towards Holistic Reform



- Create a Children's Court to unify probate, family court, and juvenile dependency crossover issues
- Concentrate children's custody and advocacy issues into a single court thereby taking advantage of the expertise of all court-related personnel, including judges, minors' and parent's counsel



---

# DISCUSSION

