



## Overview of the Foster Care System in California

A Fact Sheet Prepared by the Youth Law Center

Foster care, a part of the state child welfare system designed to protect abused and neglected children, provides a 24-hour state supervised living arrangement for children who are in need of temporary substitute care because of abuse or neglect. The foster care system in California is a state supervised, county administered system. The California Department of Social Services provides oversight to 58 county child welfare agencies that provide direct administration and supervision of children in the foster care system.

### How does a child get into foster care?

Children are most often placed in foster care after they have been removed from their home by a county child welfare agency, and a juvenile court has found their parents cannot care for them. A child who has been declared a “ward” of the court for committing a violation of law may also be placed in foster care if the court finds that returning the child home would be contrary to the child’s welfare. For additional information, see the Youth Law Center’s Fact Sheet: **Overview of the Juvenile Justice System.**

Every county child welfare agency must maintain a 24-hour response system to receive and investigate reports of suspected child abuse or neglect.<sup>1</sup> Once a call is received, the agency pursuant to an emergency response protocol must determine if the allegations require an in person investigation and, if so, whether that investigation must be immediate.<sup>2</sup> Upon completion of the investigation, the agency must determine whether the allegations are substantiated, inconclusive or unfounded. Based on the risk posed to the child, the agency in all three cases may close the case with or without providing the family with referrals to community organizations for services. If the allegations are substantiated or inconclusive, the agency may keep the case open and offer the family voluntary services to remedy and prevent future abuse or neglect without court intervention<sup>3</sup>. Voluntary services include in home emergency services for up to thirty days or family maintenance services for up to 6 months without removing the child, or voluntary foster care placement services for up to 6 months.<sup>4</sup> If the allegations are substantiated, the agency may seek court intervention and either:

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<sup>1</sup> Cal. Welf. & Inst. Code § 16504; California Department of Social Services Manual of Policy and Procedures (MPP) §§ 31-010 to 31-015 (Available at: <http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws1.pdf>).

<sup>2</sup> Cal. Welf. & Inst. Code § 16504; MPP § 31-105.

<sup>3</sup> Cal. Welf. & Inst. Code § 16506; MPP § 31-125

<sup>4</sup> Cal. Welf. & Inst. Code §§ 16506 & 16507; MPP § 31-125

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- (1) Keep the child in the home, file a petition in juvenile court to declare the child dependent, and provide the family with court supervised family maintenance services; or
- (2) Remove the child from the home and file a petition in juvenile court (within 48 hours of the child's removal excluding non-judicial days) to declare the child dependent.

### What happens once a child is removed from the parents' home?

If the child is removed from his or her parents' home, the social worker will file a petition with the juvenile court requesting that the court become involved in the child's life because the child is alleged to be abused or neglected.<sup>5</sup> The parents must be given notice of the removal, a telephone contact for the child, and the date, time and place of the detention hearing upon filing of the petition in juvenile court.<sup>6</sup> The child will be placed in a foster care setting until the court determines whether the child should remain in placement or should be returned to the parent's home.

### What is the role of the courts?

The juvenile court dependency process involves a series of hearings within specified periods. Judges rely on assessments and information from social workers, service providers, and others to reach decisions about the child's well being.

Within 48 hours of removal (excluding non judicial days), a **Petition** to declare the child dependent must be filed in juvenile court.<sup>7</sup> By the end of the next judicial day after the petition is filed, an **Initial (Detention) Hearing**, must take place.<sup>8</sup> At this hearing, the judge will either approve or deny the child's temporary removal from the home.<sup>9</sup>

Within 15 days of the Initial Hearing the juvenile court must conduct a **Jurisdiction Hearing**<sup>10</sup> to determine whether neglect or abuse has occurred.<sup>11</sup> The petition is dismissed and the child is released from care if the court does not sustain the allegations in the petition of abuse or neglect. If the court does find that abuse or neglect has occurred, it must hold a **Disposition Hearing**.

Within 10 days of the Jurisdiction Hearing, the juvenile court must conduct a **Disposition Hearing**<sup>12</sup> to determine the child's placement and to establish a plan for services, either family maintenance or family reunification. The state has an obligation

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<sup>5</sup> Cal. Welf. & Inst. Code § 300 .

<sup>6</sup> Cal. Welf. & Inst. Code §§ 308, 311.

<sup>7</sup> Cal. Welf. & Inst. Code § 313.

<sup>8</sup> Cal. Welf. & Inst. Code § 315.

<sup>9</sup> Cal. Welf. & Inst. Code § 319.

<sup>10</sup> Cal. Welf. & Inst. Code § 334 (within 30 days of the filing of the petition if the child is not removed from home); Cal. Ct. R. 5.670(f).

<sup>11</sup> Cal. Welf. & Inst. Code § 355 .

<sup>12</sup> Cal. Welf. & Inst. Code § 358 .

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to make “reasonable efforts” to help children remain safely with their families before removal or return to their parents’ home after removal.

Within 6 months of the Disposition Hearing, the juvenile court must conduct a **Dependency Status Review**<sup>13</sup> to evaluate completion of the child’s case plan and to determine if the child can be returned to the parents’ home. The social worker must file a court report regarding progress of the child’s situation in out-of-home care. The child and his or her attorney are entitled to review the report at least 10 days before each status review hearing.<sup>14</sup> If the court determines that the parents have successfully completed the reunification plan, the child may be returned to the parents’ home with continued supervision of the juvenile court for a determined period. If the plan is not successfully being completed, the child will continue in foster care and another hearing will be set.

Within 12 months of the Disposition Hearing, the juvenile court must conduct a **Permanency Planning Hearing**<sup>15</sup> to determine if the child can be reunited with his or her parents at all, and if not, to identify the long-term plan alternative (either adoption, legal guardianship, or a planned permanent living arrangement). This hearing may take place at the 6-month mark if the child is under the age of 3 years old. If the court is uncertain about reunification, it can make a one-time extension of an additional 6 months for the parent to complete the plan.<sup>16</sup>

Throughout this court process, the child, the parents, and the child welfare agency will have legal representation. The juvenile court judge must appoint an attorney to represent the interests of the child throughout the court proceedings unless the court finds, and states the reasons on the record, that the child would not benefit from representation.<sup>17</sup> The court may also appoint a special child advocate (CASA) to represent the best interests of the child to the court and provide the court with independent information regarding the case.<sup>18</sup> The parent can retain, or will be appointed if they cannot afford, an attorney to represent them at the court hearings.<sup>19</sup> County counsel will usually represent the child welfare agency.

### What is the role of the child welfare agency?

The child welfare agency’s role is to provide the child and family with supervision and case management services. A social worker is assigned to each case and has the direct responsibility for providing these services.<sup>20</sup> A comprehensive case plan must

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<sup>13</sup> Cal. Welf. & Inst. Code §§ 364, 366(a).

<sup>14</sup> Cal. Welf. & Inst. Code §§ 366.21(c).

<sup>15</sup> Cal. Welf. & Inst. Code §§ 366.21(f).

<sup>16</sup> Cal. Welf. & Inst. Code §§ 366.21(g)(1).

<sup>17</sup> Cal. Welf. & Inst. Code §§ 317(c), 349.

<sup>18</sup> Cal. Welf. & Inst. Code § 102.

<sup>19</sup> Cal. Welf. & Inst. Code § 317.

<sup>20</sup> See MPP §§ 31-000 – 31-530 for child welfare services regulations.

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be completed within 60 days of the child's removal from the parents' home.<sup>21</sup> The case plan<sup>22</sup> is a written document that sets out specific steps that the social services agency and the child's family must take to try to return the child to his or her parents' home. The case plan must include the long-term placement goal for the child, the recommended foster care placement, a plan of services for the child and his/her family, a visitation schedule for the parents and siblings of the child and a transitional independent living plan if the child is 16 years old or older.

The child welfare agency is also responsible for choosing the foster care placement, monitoring the child's well being (making, with few exceptions, at least monthly face-to-face contact with the child) and overseeing the implementation of the case plan.

In addition, if more than one child is being placed in foster care, the social services agency should attempt to place the siblings together in a foster care placement.

### **What are the different types of foster care placements? How is the determination made about where to place a child?**

Children in foster care are required to be placed in the least restrictive or most family-like setting that will meet their needs.<sup>23</sup> Placement, in order of preference from least to most restrictive, includes:

- (1) Approved Relative or Kinship Home
- (2) Licensed Foster Family Home
- (3) Foster Family Agency Certified Home
- (4) Group Care

Relative or Kinship Home is a home of a relative or a non-related extended family member that has been approved as a foster care placement for a related child. For more information on this type of placement, see the Youth Law Center's Fact Sheet: **Relative Caregivers**.

Foster Family Home refers to a licensed family residence that provides 24-hour care for no more than six children (eight if sibling groups).<sup>24</sup> The California Department of Social Services (CDSS) is responsible for licensing and monitoring a foster home's compliance with the licensing standards.<sup>25</sup> CDSS has delegated the licensing function for foster homes in several counties to the county child welfare agency.<sup>26</sup>

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<sup>21</sup> Cal. Welf. & Inst. Code §§ 16501(a), 16501.1(d).

<sup>22</sup> Cal. Welf. & Inst. Code §§ 16501(a), 16501.1(a) – (c).

<sup>23</sup> Cal. Welf. & Inst. Code § 16000(a).

<sup>24</sup> Cal. Health & Safety Code § 1502 (a)(5).

<sup>25</sup> Cal. Health & Safety Code §§ 1509 & 1533.

<sup>26</sup> Cal. Health & Safety Code § 1511. See, CDSS' Community Care Licensing Division website for list of counties. <http://cclid.ca.gov/PG878.htm>

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Foster Family Agency (FFA) Certified Homes refers to family homes that are recruited and certified by the FFA (a licensed private non-profit organization).<sup>27</sup> The FFA provides social work and other supports to their certified homes. CDSS licenses and monitors the FFA and has authority to investigate complaints about certified homes<sup>28</sup>.

Group Care refers to congregate care facilities licensed as group homes that provide 24-hour care and supervision using paid staff.<sup>29</sup> Group homes can range from small homes of six foster children to larger institutional settings that house more than 100 children.

Foster youth age 18 and older will also be able to live in supervised independent living arrangements as of January 1, 2012.<sup>30</sup> The California Fostering Connections to Success Act, signed into law September 30, 2010, through Assembly Bill (AB) 12, extends for some youth the age eligibility for foster care (as well as Kin-GAP and AAP). Beginning January 1, 2012, an extension of eligibility up to age 21 will be phased in over 3 years for youth who meet certain education or work related requirements or youth that have a medical related condition that prevents them from meeting the education or work requirements.<sup>31</sup>

### Who pays for the child's basic care while in foster care?

The county, state and federal governments fund the payments for a child in foster care.<sup>32</sup> Parents may be billed and are liable for the reasonable care and supervision costs of a child in foster care if the parents have the ability to pay.<sup>33</sup> When a child is placed in any of the above listed foster care placements, the placement is eligible to receive monthly payments on behalf of each child to cover the costs of basic care for the child. An annual clothing allowance is also paid per child for children placed in a foster family home.<sup>34</sup> The rate of the monthly payment for children is based on the type of foster care placement and the age of the child. The monthly foster family home payment may also include a specialized care allowance for children with special needs.<sup>35</sup>

### What are a foster child's rights while in out-of-home care?

California has a "Foster Youth Bill of Rights" that provides children in care with a variety of protections for their health, safety and general well being.<sup>36</sup> In addition to the Bill of

<sup>27</sup> Cal. Health & Safety Code §§ 1502(a)(4) & 1506.

<sup>28</sup> Cal. Health & Safety Code §§1509 & 1538.

<sup>29</sup> 22 C.C.R. §84001(g)(1).

<sup>30</sup> Cal. Welf. & Inst. Code §§11400(w) & 11402(i).

<sup>31</sup> Cal. Welf. & Inst. Code §11403.

<sup>32</sup> Cal. Welf. & Inst. Code §§11401 & 15200.

<sup>33</sup> Cal. Welf. & Inst. Code §§ 903, 903.4.

<sup>34</sup> Cal. Welf. & Inst. Code § 11461;MPP 11-4201.1

<sup>35</sup> Id. A transportation supplement may also be available if the child will continue to attend a school attended prior to placement. See. § 11460(b).

<sup>36</sup> Cal. Welf. & Inst. Code § 16001.9(a) (enumerates rights).

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Rights, foster youth have additional protections under other state statutes and regulations, most notably the Community Care Licensing regulations under Title 22 of the California Code of Regulations<sup>37</sup>.

Safety – Each child in foster care has a right to live in a safe, healthy, and comfortable home where they will be treated with dignity and respect. They have a right to be free from physical, sexual, or mental abuse, and from discrimination based on race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. Each child in foster care also has the right to be provided healthy food, adequate clothing, and individual storage space and not to be locked in any room, building, or facility premises.

Visitation & Contact – Children in foster care have the right to visit with parents,<sup>38</sup> grandparents,<sup>39</sup> siblings,<sup>40</sup> and other important family members **unless** there is some reason why visitation is not in the child's best interest. In addition, children age 10 and older who have been in foster care for least six months are required to have identified in their case plan individuals important to the child and the actions necessary to maintain contact with such individuals.<sup>41</sup> Foster children also have a right to make and receive confidential phone calls, to send or receive unopened mail and to have contact with their social worker or probation officer, attorney, or CASA.<sup>42</sup>

Education – A foster child has a right and a responsibility to go to school.<sup>43</sup> They also have a right to the same school resources, services, and extracurricular activities as other students in the same school.<sup>44</sup> A foster child has the right to stay in his or her original school (or attend its feeder school when transitioning between school levels), if the foster care placement changes, so long as it is in the child's best interest.<sup>45</sup> California law requires that each county and each school district have a Foster Care Education Liaison to ensure proper school placement, transfer of a foster child's educational records and assistance with foster youth's enrollment in school.<sup>46</sup>

The child's legal parents or legal guardian retain the right to make decisions about the child's education **unless** the juvenile court specifically appoints another responsible adult to make educational decisions on behalf of the child. The appointed adult will most likely be the child's foster parent, relative caregiver, or court appointed special

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<sup>37</sup> 22 C.C.R. §§ 80072, 84072 and 89372.

<sup>38</sup> Cal. Welf. & Inst. Code §§ 362.1(a), 16001.9(a)(6), 16501.1(f)(5) .

<sup>39</sup> Cal. Welf. & Inst. Code §§ 16507(a), 16001.9(a)(6) .

<sup>40</sup> Cal. Welf. & Inst. Code §§ 362.1(a), 16001.9(a)(7), 16501.1(f)(8) .

<sup>41</sup> Cal. Welf. & Inst. Code §§ 366(a)(1)(B), 366.1(g) .

<sup>42</sup> Cal. Welf. & Inst. Code § 16001.9(a).

<sup>43</sup> Cal. Welf. & Inst. Code § 16001.9(a)(13) .

<sup>44</sup> Cal. Educ. Code § 48853(g); Cal. Welf. & Inst. Code §§ 361(a)(5), 726(b)(5) .

<sup>45</sup> Cal. Educ. Code § 48853.5. Foster care providers may be eligible for a transportation allowance for transportation to the school of origin. See, Cal. Welf. & Inst. Code § 11460(b).

<sup>46</sup> Cal. Educ. Code § 48853.5(b).

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advocate. It cannot be the child's social worker, probation officer, or anyone else who works for the child's current group home placement or school.<sup>47</sup>

**Health Care** – Children in foster care have a right to basic health care, which includes medical, dental, vision, and mental health services.<sup>48</sup> All youth, including foster youth, in California age 12 and older, have the right to access "sensitive health care services" without an adult's permission. These services include any services having to do with preventing or treating pregnancy (including birth control, an abortion, or having a baby), services related to treatment of STD's drug or alcohol use, rape, or sexual assault.<sup>49</sup> A child may also obtain outpatient treatment of mental conditions without an adult's permission if the doctor finds the child mature enough and if the child presents a danger to themselves or others without the treatment.<sup>50</sup>

Medical services are covered by Medi-Cal or the county's substitute health insurance program as long as the child is in or covered by the foster care system in California<sup>51</sup>.

### What if a child is being mistreated in Foster Care?

If a child in foster care, or an advocate, believes there is something wrong with the child's foster care placement, care, or services, or believes the child is being discriminated against based on their gender, race, color, religion, sexual orientation, or for any other reason, they may contact the child's social worker or county child welfare agency or any of the following:

#### **Office of the State Foster Care Ombudsman**

This office can assist the child with a complaint and may start an investigation, depending on the circumstances. Toll free helpline: 1-877- 846-1602. Additional information available at: <http://www.dss.cahwnet.gov/ombudsman/>

#### **Community Care Licensing Division**

CCLD ensures compliance with foster care licensing requirements and may conduct investigations into complaints of mistreatment in licensed foster care placements. Contact information available at: <http://ccl.dss.cahwnet.gov/>

#### **County Ombudsman Offices**

In addition to the state office, most counties in California have their own Ombudsman offices, which may be contacted to informally attempt to resolve the

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<sup>47</sup> Cal. Welf. & Inst. Code § 361(a).

<sup>48</sup> Cal. Welf. & Inst. Code § 16001.9(a)(4).

<sup>49</sup> Cal. Fam. Code §§ 6925 – 6929.

<sup>50</sup> Cal. Fam. Code § 6924.

<sup>51</sup> Foster youth who emancipate from foster care on or after their 18<sup>th</sup> birthday may continue to receive Medi-Cal coverage up to age 21. Cal. Welf. & Inst. Code § 14005.28.

problem. Contact information for the counties may be found at:  
<http://www.fosteryouthhelp.ca.gov/contacts.htm>

### **County Child Welfare Agency - Grievance Procedures<sup>52</sup>**

Foster parents, legal parents, guardians and children in foster care can file a grievance with the county child welfare agency concerning the placement or removal of a child from a foster home with certain limitations. A complaint must be filed within 10 calendar days of the action complained of in the complaint. Unless the child is in immediate danger, they will remain with the foster parent(s) pending the county's decision when removal is the basis for the complaint.

### **What are the long-term, permanent options for a child when reunification is not possible?**

Once it is determined that reunification with the child's parent will not happen, the juvenile court must conduct a **Selection and Implementation Hearing** within 120 days after reunification services have ended. The court must determine whether the child is likely to be adopted and whether parental rights should be terminated. At this hearing, the court can order one of the following options as the child's Permanency Plan.

- (1) **Adoption** – Adoption is legally permanent. Once a child is adopted, they cannot be removed from their adoptive home unless the court determines that the adoptive parents are not taking proper care of the child. Because of this permanency, adoption requires termination of the legal parents' rights or their consent to the adoption.<sup>53</sup> Adoptive parents who adopt a foster child can receive financial assistance through the Adoption Assistance Program.<sup>54</sup> For more information on this program, see the Youth Law Center's Fact Sheet: **Adoption Assistance Program**.
- (2) **Guardianship** – A guardianship temporarily suspends the rights and responsibilities of the child's parent and gives legal authority and responsibility to care for the child to a responsible adult who becomes the child's legal guardian. Unlike a foster parent, a legal guardian has legal custody of the child and stands in place of the child's parent in providing physical needs, such as food, clothing, shelter, medical care, and education.

Guardianship is not legally permanent as it only suspends the rights of the parents. Guardianship can be terminated by the court upon petition of the parent, guardian, or child and automatically terminates upon the child's 18<sup>th</sup> birthday.

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<sup>52</sup> MPP § 31-020.

<sup>53</sup> Cal. Fam. Code §§ 8604 – 8606.

<sup>54</sup> Cal. Welf. & Inst. Code § 16115 – 16124.



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Relative caregivers who become legal guardians to a foster child may be eligible to receive Kin-GAP funds, at the foster care rate the child would have received in a county foster home.<sup>55</sup> For more information on this program, see the Youth Law Center's Fact Sheet: **Kinship Guardianship Assistance Program—Kin-GAP.**

- (3) Planned Permanent Living Arrangement – This is generally long-term foster care and is the least preferred option under the law. The court may order this permanent plan only after considering, and ruling out, each of the other permanent plan options listed above. In order to provide this type of placement, the court must state a compelling reason for determining that a plan of termination of parental rights and adoption is not in the best interest of the child.<sup>56</sup>

The court will hold a **Post Permanency Planning Hearing** within 6 months to monitor progress of the child's long-term plan. A review hearing must be held at least every 6 months until the dependency case is closed.

### **Are there other ways children can become part of the foster care system?**

Yes. If a child or adolescent is made a "ward" (a delinquent or status offender) by the Juvenile Court, placement in foster care, such as a group home, is a dispositional option within the juvenile justice system. If a child is removed from his parents' home and placed in foster care, the probation agency is required to meet the foster care requirements the social services agency must meet in the dependency system. Juveniles under the supervision of probation in foster care placements have the same rights in placement as youth in foster care placements under the supervision of a child welfare agency.

For more information on youth in the juvenile justice system, please see the Youth Law Center's Fact Sheet: **Overview of the Juvenile Justice System.**

### **Resources:**

Diane F. Reed, M.P.H. & Kate Karpilow, Ph.D., *Understanding the Child Welfare System in California, A Primer for Service Providers & Policy Makers*, California Center for Research on Women & Families (2002)

<http://www.ccrwf.org/publications/index.html>

The California Department of Social Services, Children and Family Services, *Foster Youth Rights* (2007).

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<sup>55</sup> Cal. Welf. & Inst. Code §§ 11364 & 11387.

<sup>56</sup> Cal. Welf. & Inst. Code § 366.3(g).

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<http://www.dss.cahwnet.gov/forms/english/pub395net.pdf>

Western Center on Law & Poverty, *Foster Care Manual- A Guide to Benefits and Services to Children in Foster Care* (2008)

<http://www.wclp.org/Resources/WCLPManualPublications/tabid/1047/Default.aspx>

The Youth Law Center, *Legal Rights of Teens in Out-Of-Home Care* (January 2011)

<http://ylc.org/pdfs/teenmanual2011.pdf>

For information about health care issues in foster care see:

Health Consumer Alliance, *Health Care for Foster Children* (2006)

<http://healthconsumer.org/cs043FosterCareRights.pdf>

Rebecca Gudeman, *Consent to Treatment for Foster Youth*, National Center for Youth Law (2008) and other publications available at the NCYL "Teen Health Law" website:

[http://www.teenhealthlaw.org/dependentdelinquent\\_youth](http://www.teenhealthlaw.org/dependentdelinquent_youth)