

# Caring for Someone Else's Child: Informed Caregiver Decision-Making

## Materials

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2. Overview of the Foster Care System Fact Sheet
3. Resources for Advising Caregivers
4. PowerPoint Presentation (2 Slides per page)

Pathways to Justice Conference  
San Francisco, CA  
June 5, 2019

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## Caregiver Intake Questionnaire

### General/Family Information

Name of Caregiver: \_\_\_\_\_

Name of Child: \_\_\_\_\_

Child's DOB: \_\_\_\_\_

Caregiver's relationship to child: \_\_\_\_\_

Describe caregiver's relationship with child's parent(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is the child's parent alive? \_\_\_\_\_ Is the child's parent a veteran? \_\_\_\_\_

How long does caregiver plan to care for the child? \_\_\_\_\_

### Family Autonomy

Does the caregiver have any concerns about limitations on parenting the child, including making decisions about visitation with the parent, discipline, education, religion, travel, participation in activities, where the child lives, who can live in the household, or who can temporarily care for the child?

\_\_\_\_\_  
\_\_\_\_\_

Is the caregiver and everyone in the household willing to engage with the social services agency to obtain services and support for the child? \_\_\_\_\_

Is the caregiver willing to make parenting decisions, share parenting decisions with the parent, or share parenting decisions with the social services agency and/or the court?

\_\_\_\_\_  
\_\_\_\_\_

Names, ages, and relationship to caregiver of other individuals residing with caregiver: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Do any of the individuals residing in the home have criminal records? If so, describe: \_\_\_\_\_

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**Economic Supports**

Does caregiver need additional financial support to care for the child? \_\_\_\_\_

Is the child presently receiving any benefits (e.g. SSI/survivor's benefits)? If so, describe:

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Is a parent available to provide financial support? \_\_\_\_\_

Does the caregiver need child care support? \_\_\_\_\_

**Health Care**

Client's current health insurance:

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Child's current health insurance: \_\_\_\_\_

Is the child able to access health insurance through a parent? \_\_\_\_\_

Describe any medical needs of the child (e.g. any chronic or recurring condition): \_\_\_\_\_

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Describe any mental or behavioral health needs of the child: \_\_\_\_\_

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Describe medical, mental, and behavioral health treatment child is currently receiving: \_\_\_\_\_

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Are the child's medical and mental health care needs currently being met? If not, describe unmet needs and any additional services caregiver believes child would benefit from: \_\_\_\_\_

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Describe any barriers caregiver has encountered in meeting child's medical needs: \_\_\_\_\_

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**Education**

Is the child enrolled in school? \_\_\_\_\_ If so, where? \_\_\_\_\_

Child's current grade level: \_\_\_\_\_

Child's educational goals: \_\_\_\_\_

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Does the child have an IEP/504 plan/receive special education services? If so, describe: \_\_\_\_\_

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Child's extracurricular activities and interests: \_\_\_\_\_

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Describe any barriers caregiver has encountered in meeting child's educational needs: \_\_\_\_\_

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**Immigration**

Child's immigration status and country of origin: \_\_\_\_\_

Parent(s)' immigration status and country of origin: \_\_\_\_\_

Caregiver's immigration status and country of origin: \_\_\_\_\_

Are the child's parents detained? If so, when? \_\_\_\_\_

Have the child's parents been deported? If so, when and to where? \_\_\_\_\_

\_\_\_\_\_

Have the child's parents created a family preparedness plan? If so, describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe caregiver's concerns regarding immigration status, if any: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## **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 the Emergency Response Protocol of the department must determine if the allegations require an in person investigation and, if so, whether that investigation must be immediate.<sup>2</sup> There is always an in-person response pursuant to California Welfare and Institutions Code §11254.<sup>3</sup> If the incident requires an in-person investigation, within 20 days of the referral a social worker will determine if the safety of the child is jeopardized if the child stays in the same residence as their current guardian.<sup>4</sup> Upon completion of the investigation, the agency must determine whether the allegations are substantiated, inconclusive, or unfounded. Risk evaluation includes collateral contacts, review of previous referrals, and other relevant information. 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.<sup>5</sup>

If the allegations are not unfounded, the agency may keep the case open and offer the family voluntary services to remedy and prevent future abuse or neglect without court

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<sup>1</sup> Welf. & Inst. Code § 16504(a); see California Department of Social Services Manual of Policy and Procedures (MPP) §§ 31-010 to 31-015, see [www.cdss.ca.gov/ord/entres/getinfor/pdf/cws1.PDF](http://www.cdss.ca.gov/ord/entres/getinfor/pdf/cws1.PDF) and [www.cdss.ca.gov/ord/entres/getinfo/pdf/cws2.PDF](http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws2.PDF).

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

<sup>3</sup> Welf. & Inst. Code § 16504(b).

<sup>4</sup> Welf. & Inst. Code § 1650(b).

<sup>5</sup> Welf. & Inst. Code § 328.

## Overview of the Foster Care System in California

intervention.<sup>6</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>7</sup> If the allegations are substantiated, the agency may seek court intervention and either:

- (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.

Dependency proceedings may also be initiated by any person through an application to the county child welfare agency.<sup>8</sup> The agency must immediately investigate to determine whether a dependency petition should be filed in juvenile court and notify the applicant within three weeks after the application of its filing decision and the reasons for the decision.<sup>9</sup> If the agency fails to file a petition, the applicant may, within one month after the initial application, seek review of the decision by the juvenile court.<sup>10</sup>

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

There are a variety of situations that could lead to the removal of a child.<sup>11</sup> 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. The parents must be given notice of the removal, their procedural rights, 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>12</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.<sup>13</sup>

### **How will family members know if a child has been taken into foster care?**

When a child is removed from home, the social worker or probation officer must conduct an investigation to identify and locate the child's grandparents, parents of a sibling of the child (if the parent has legal custody of the sibling), adult siblings, and other adult relatives of the child, including relatives suggested by the parent.<sup>14</sup> Within 30 days of removal, the social worker or probation officer must provide the located relatives with notice that the child has been removed from home and information about the various

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<sup>6</sup> Welf. & Inst. Code § 16506; MPP § 31-125.

<sup>7</sup> See Welf. & Inst. Code §§ 16506 & 16507.3 (for a list of conditions that result in eligibility).

<sup>8</sup> Welf. & Inst. Code § 329.

<sup>9</sup> MPP § 31-135.

<sup>10</sup> Welf. & Inst. Code § 331.

<sup>11</sup> Welf. & Inst. Code § 300.

<sup>12</sup> Welf. & Inst. Code §§ 307.4 & 308.

<sup>13</sup> Welf. & Inst. Code § 309.

<sup>14</sup> Cal. Welf. & Inst. Code §§ 309(e)(1), 628(d)(2).

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options to participate in the care and placement of the child and support for the child's family, including any options that may be lost by failing to respond, as well as how to become a caregiver for the child, the supports and services available for a child in out-of-home placement, and other options for maintaining contact with the child.<sup>15</sup> Notice does not have to be given to any relative with a history of family or domestic violence that would make such notice inappropriate.<sup>16</sup>

### How does one become a relative caregiver to a child?

The child welfare agency should contact relatives for placement, but if a relative is willing to take care of a child, they should let the child's social worker and the juvenile court know of their interest as soon as possible. The child welfare agency and the court must give preferential consideration to **requests** by relatives, regardless of the relative's immigration status.<sup>17</sup> Preferential consideration means that the relative requesting placement must be the first placement to be considered and investigated.<sup>18</sup> Preferential consideration does not guarantee that placement will be with that relative. The child welfare agency and the court must still consider whether placement with the relative would be appropriate to meet the child's needs.<sup>19</sup>

### 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.<sup>20</sup> There is also a review of the social worker's evidence to ensure that they did due diligence in investigating the matter.<sup>21</sup>

When the child is in custody:

Within 48 hours of removal (excluding non-judicial days), a **Petition** to declare the child dependent must be filed in juvenile court.<sup>22</sup> By the end of the next judicial day after the petition is filed, an **Initial (Detention) Hearing** must take place or the child will be released from custody.<sup>23</sup> At this hearing, the judge will either approve or deny the child's temporary removal from the home.<sup>24</sup>

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<sup>15</sup> Cal. Welf. & Inst. Code §§309(e)(1)(A)–(B), 628(d)(2)(A)–(B).

<sup>16</sup> Cal. Welf. & Inst. Code §§309(e)(1), 628(d)(2).

<sup>17</sup> Cal. Welf. & Inst. Code § 361.3(a), (c)(2) ("relatives" defined as within the 5<sup>th</sup> degree of kinship).

<sup>18</sup> Cal. Welf. & Inst. Code § 361.3(c)(1).

<sup>19</sup> Cal. Welf. & Inst. Code § 361.3(a)(1)–(7).

<sup>20</sup> Welf. & Inst. Code §§ 319 & 358.

<sup>21</sup> Welf. & Inst. Code § 358.

<sup>22</sup> Welf. & Inst. Code § 313.

<sup>23</sup> Welf. & Inst. Code § 315.

<sup>24</sup> Welf. & Inst. Code § 319(b).

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Within 15 days of the Initial Hearing the juvenile court must conduct a **Jurisdiction Hearing**<sup>25</sup> to determine whether neglect or abuse has occurred.<sup>26</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.<sup>27</sup> If the court does find that abuse or neglect has occurred, it must hold a **Disposition Hearing**.<sup>28</sup>

Within 10 days of the Jurisdiction Hearing, the juvenile court must conduct a **Disposition Hearing** to determine the child's placement and to establish a plan for services, either family maintenance or family reunification.<sup>29</sup> The state has an obligation to make "reasonable efforts" to help children remain safely with their families before removal or return to their parents' home after removal.<sup>30</sup>

Within 6 months of the Disposition Hearing (and no less frequently every six months thereafter), the juvenile court must conduct a **Dependency Status Review**<sup>31</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 parents and their respective attorneys are entitled to review the report at least 10 days before each status review hearing.<sup>32</sup> Unless the court determines that by a preponderance of evidence, they child would be at risk or detriment, the child may be returned to the parents' home with continued supervision of the juvenile court for a determined period.<sup>33</sup> If the plan is not successfully being completed, the child will continue in foster care and another hearing will be set.<sup>34</sup>

Within 12 months of the Disposition Hearing, the juvenile court must conduct a **Permanency Planning Hearing**<sup>35</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).<sup>36</sup> This hearing may take place at the 6-month mark if the child is under the age of 3 years old.<sup>37</sup> 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>38</sup>

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<sup>25</sup> Welf. & Inst. Code § 334 (within 30 days of the filing of the petition if the child is not removed from home); Cal. Rules of Court 5.670(f).

<sup>26</sup> Welf. & Inst. Code § 355.

<sup>27</sup> Welf. & Inst. Code § 356.

<sup>28</sup> Welf. & Inst. Code § 358(a).

<sup>29</sup> Welf. & Inst. Code § 358(a)(1).

<sup>30</sup> Welf. & Inst. Code § 319(b)(4)(1).

<sup>31</sup> Welf. & Inst. Code § 366(a)(1).

<sup>32</sup> Welf. & Inst. Code § 366.05. See Welf. & Inst. Code § 366.21(c) (listing the requisite contents of the report).

<sup>33</sup> Welf. & Inst. Code § 366.21(e)(1).

<sup>34</sup> Welf. & Inst. Code § 366(e)(8).

<sup>35</sup> Welf. & Inst. Code § 366.21(f).

<sup>36</sup> Welf. & Inst. Code §§ 366.21(g), 366.26.

<sup>37</sup> Welf. & Inst. Code § 366.21(e)(3).

<sup>38</sup> Welf. & Inst. Code § 366.21(g)(1).

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Throughout this court process, the child, the parents, and the child welfare agency will have legal representation. The child has a right to be represented by counsel of his or her choosing.<sup>39</sup> If the child is not represented by counsel, 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>40</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>41</sup> The parents can retain, or will be appointed if they cannot afford, an attorney to represent them at the court hearings.<sup>42</sup> County counsel will usually represent the child welfare agency.

**Caregivers** are entitled to notice of and may attend status review and permanency hearings.<sup>43</sup> The social worker is required to provide the caregiver with a summary of his or her recommendations contained in the court report 10 days before the hearing.<sup>44</sup> Caregivers are permitted to file their own report containing their recommendations.<sup>45</sup> These recommendations should be submitted to the juvenile court before the review hearing in order to be considered.

### 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 direct responsibility for providing these services.<sup>46</sup> A comprehensive case plan must be completed within 60 days of the child's removal from the parents' home.<sup>47</sup> The case plan 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.<sup>48</sup> 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.<sup>49</sup> The social worker must convene a Child and Family Team (CFT) meeting to get input in the development of the case plan.<sup>50</sup>

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<sup>39</sup> Welf. & Inst. Code § 349(b).

<sup>40</sup> Welf. & Inst. Code § 317(c)(1).

<sup>41</sup> Welf. & Inst. Code §§ 102, 102 (c)(3), 103(g), 103(h)

<sup>42</sup> Welf. & Inst. Code § 317(b).

<sup>43</sup> Welf. & Inst. Code § 291(a), and 16010.4 (b).

<sup>44</sup> Welf. & Inst. Code § 366.21(c).

<sup>45</sup> Welf. & Inst. Code § 366.21(d) and 16010.4 (b).

<sup>46</sup> See MPP §§ 31-000 – 31-530 for child welfare services regulations.

<sup>47</sup> Welf. & Inst. Code §§ 16501(a)(2), 16501.1(e).

<sup>48</sup> Welf. & Inst. Code §§ 16501(a)(2), 16501.1(a) – (c).

<sup>49</sup> Welf. & Inst. Code § 16501.1.

<sup>50</sup> Welf. & Inst. Code § 16501.1.

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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.<sup>51</sup>

In addition, if the child has siblings, the social services agency should attempt to place all siblings in foster care together in one placement and, if not, provide for ongoing and frequent interaction among siblings.<sup>52</sup>

### What are the different types of foster care placements?

Children in foster care are required to be placed in the least restrictive or most family-like setting that will meet their needs.<sup>53</sup> The selection must consider, in order of priority: 1) placement with relatives, nonrelated extended family members, and tribal members; 2) foster family homes/ resource families, and nontreatment certified homes of foster family agencies; 3) treatment and intensive treatment certified homes of foster family agencies or multidimensional treatment foster care homes or therapeutic foster care homes; and 4) group care placements in the order of short-term residential therapeutic programs, group homes, community treatment facilities, and out-of-state residential treatment.<sup>54</sup>

The least restrictive placement options for youth age 16 and older include supervised independent living environments in licensed Transitional Housing<sup>55</sup> and approved Supervised Independent Living Placements (SILPs) (limited to foster youth age 18 to 21).<sup>56</sup> The Transitional Housing Placement Program ("THPP") is licensed housing for foster youth age 16 to 18.<sup>57</sup> Transitional Housing Placement Program Plus-Foster Care ("THP Plus-FC") is supported independent living housing designed for foster youth age 18 to 21. Supervised Independent Living Placement (SILP) refers to an independent living setting that is approved by the social worker or probation officer who provides ongoing case management and supervision to a non-minor dependent (NMD).<sup>58</sup> SILPs may include apartments, college dorms, a rented room or other shared living arrangements.<sup>59</sup>

### What is Extended Foster Care?

The **California Fostering Connections to Success Act** (Assembly Bill 12, 2010) commonly referred to as "AB 12" extended the age eligibility requirements for foster

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<sup>51</sup> Welf. & Inst. Code §§ 16501(a)(1), (5), 16501.1(g)(4).

<sup>52</sup> Welf. & Inst. Code §§ 361.2 (j) and 16002.

<sup>53</sup> Welf. & Inst. Code § 16501.1(d)(1). See Welf. & Inst. Code § 16000(a),

<sup>54</sup> *Id.*

<sup>55</sup> Welf. & Inst. Code § 11400(r).

<sup>56</sup> Welf. & Inst. Code §§ 11400(w), 11403(i), 16501.1(d)(3).

<sup>57</sup> Cal. Health & Safety Code § 1559.110; Welf. & Inst. Code § 11400(r). A third program, THP-Plus provides transitional housing for former foster youth age, 18 to 24 who have emancipated from care. See Welf. & Inst. Code §§ 11400(s) & 11403.2(a)(2).

<sup>58</sup> Welf. & Inst. Code § 11400(w).

<sup>59</sup> Welf. & Inst. Code §§ 11400(x), 16522.1.

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care as well as Kin-GAP and AAP for certain youth. Foster youth who meet certain education- or work-related participation requirements or youth that have a medical condition that prevents them from meeting the education or work requirements may remain in foster care until age 21.<sup>60</sup> However, participation in foster care after the youth has turned 18 is completely voluntary. After age 18, foster youth can choose to leave foster care and reenter care at any time and as many times as they wish before their 21<sup>st</sup> birthday.<sup>61</sup> There are four basic requirements for a youth age 18 or older to participate in foster care:

- (1) Must have a foster care placement order on his or her 18<sup>th</sup> birthday<sup>62</sup>
- (2) Must currently be a dependent child of the juvenile court, a ward of the juvenile court, or a nonminor under transition jurisdiction<sup>63</sup>
- (3) Must meet one or more of the five participation conditions<sup>64</sup> and
- (4) Must agree to live in a supervised licensed or approved placement.<sup>65</sup>

### Who pays for a foster youth's basic care while in foster care?

The county, state and federal governments fund the payments for a young person in foster care.<sup>66</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 equal to the basic foster care rate at the child's assessed level of care which may include a level of care rate to meet the child's special needs.<sup>67</sup> The California Department of Social Services issues, at least annually, an All- County Letter on current foster care rates.<sup>68</sup>

Parents may be billed and are liable for the reasonable care and supervision costs of a child in foster care, but in determining liability for costs, the court will evaluate a family's ability to pay.<sup>69</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>70</sup> In addition to the Bill of 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>71</sup>

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<sup>60</sup> Welf. & Inst. Code §§ 11403, 16501(d)(3).

<sup>61</sup> Welf. & Inst. Code § 11403(e).

<sup>62</sup> Welf. & Inst. Code § 11400(v)(1).

<sup>63</sup> Welf. & Inst. Code § 11400(v).

<sup>64</sup> Welf. & Inst. Code § 11403(b)(1)-(5).

<sup>65</sup> Welf. & Inst. Code § 11401(g)(3)(A).

<sup>66</sup> Welf. & Inst. Code §§ 11401 & 15200; Cal. Health & Safety Code § 1511.

<sup>67</sup> Welf. & Inst. Code § § 11460-11463; School of origin transportation supplement may also be available if the child will continue to attend a school attended prior to placement. See Welf. & Inst. § 11460(b).

<sup>68</sup> See e.g. ACL 17-75 (July 13, 2017).

<sup>69</sup> Welf. & Inst. Code §§ 903, 903.4.

<sup>70</sup> Welf. & Inst. Code § 16001.9(a) (enumerates rights).

<sup>71</sup> 22 C.C.R. §§ 80072, 83072, 84072 and 89372.

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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, and 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. A child has a right not to be locked in any room, building, or facility premises.

Normalcy - Foster youth are entitled to participate in age-appropriate extracurricular, enrichment, and social activities. State and local policies related to normalcy should promote and protect the ability of foster youth to participate in age-appropriate extracurricular, enrichment, and social activities. State law also provides that no state or local regulation or policy may prevent, or create barriers to, participation in those activities.<sup>72</sup>

Visitation & Contact – Children in foster care have the right to visit with parents,<sup>73</sup> grandparents,<sup>74</sup> siblings,<sup>75</sup> and other important family members **unless** there is some reason why visitation is not in the child's best interest. In addition, for children age 10 and older who have been in foster care for least six months, the social worker is required to ask the child to identify in their case plan individuals important to the child and take the actions necessary to maintain contact with such individuals.<sup>76</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>77</sup>

Education – A foster child has a right and a responsibility to go to school.<sup>78</sup> They also have a right to the same school resources, services, and extracurricular activities as other students in the same school.<sup>79</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>80</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>81</sup>

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<sup>72</sup> Welf. & Inst. Code §§362.05, 727(a)(4)(F) and §16001.9(a) (13).

<sup>73</sup> Welf. & Inst. Code §§ 362.1(a), 16001.9(a)(6), 16501.1(g)(5).

<sup>74</sup> Welf. & Inst. Code §§ 16507(a), 16001.9(a)(6).

<sup>75</sup> Welf. & Inst. Code §§ 362.1(a), 16001.9(a)(7), 16501.1(g)(6).

<sup>76</sup> Welf. & Inst. Code §§ 366(a)(1)(B), 366.1(g).

<sup>77</sup> Welf. & Inst. Code § 16001.9(a)(9).

<sup>78</sup> Welf. & Inst. Code § 16001.9(a)(13) .

<sup>79</sup> Welf. & Inst. Code §§ 361(a)(5), 726(c)(2).

<sup>80</sup> Cal. Educ. Code § 48853(a)(1), 48853.5(f). Foster care providers may be eligible for a transportation allowance for transportation to the school of origin. See Welf. & Inst. Code § 11460(b).

<sup>81</sup> Cal. Educ. Code § 48853.5(c).

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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.<sup>82</sup> The appointed adult will most likely be the child's foster parent, relative caregiver, or court-appointed special advocate.<sup>83</sup> It cannot be the child's social worker, probation officer, or anyone else who works for the child's current group care placement or school.

**Health Care** – Children in foster care have a right to basic health care, which includes medical, dental, vision, and mental health services.<sup>84</sup> All youth, including foster youth, in California age 12 and older,<sup>85</sup> have the right to access “sensitive health care services” without an adult's permission. These services include any having to do with preventing or treating pregnancy (including birth control, an abortion, or having a baby), and services related to treatment of STDs, drug or alcohol use, rape, or sexual assault.<sup>86</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>87</sup>

Every child in California's foster care system is covered by Medi-Cal.<sup>88</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, 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://www.cclcd.ca.gov/contact.htm>

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<sup>82</sup> Welf. & Inst. Code § 361(a).

<sup>83</sup> Welf. & Inst. Code § 361(a)(3).

<sup>84</sup> Welf. & Inst. Code § 16001.9(a)(4).

<sup>85</sup> Cal. Fam. Code §§ 6925 – 6929.

<sup>86</sup> Cal. Fam. Code §§ 6925 – 6929.

<sup>87</sup> Cal. Fam. Code § 6924(b).

<sup>88</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 26. Welf. & Inst. Code § 14005.28.

### 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 problem. Contact information for the counties may be found at: <http://www.fosteryouthhelp.ca.gov/pdfs/CountyContacts.pdf>

### County Child Welfare Agency - Grievance Procedures<sup>89</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.<sup>90</sup> The court must determine whether the child is likely to be adopted and whether parental rights should be terminated.<sup>91</sup> At this hearing, the court can order one of the following options as the child's Permanency Plan.

- (1) **Adoption**<sup>92</sup> – 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>93</sup> It also requires consent of the child, if over 12 years-old.<sup>94</sup> Adoptive parents who adopt a foster child can receive financial assistance through the Adoption Assistance Program.<sup>95</sup> For more information on this program, see the Youth Law Center's Fact Sheet: **Adoption Assistance Program**.
- (2) **Guardianship**<sup>96</sup> – 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

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<sup>89</sup> MPP § 31-020.

<sup>90</sup> Welf. & Inst. Code §§ 361.5(f), 366.21(g)(4), 366.22(a)(3), 366.25(a)(3).

<sup>91</sup> Welf. & Inst. Code § 366.26(c).

<sup>92</sup> Welf. & Inst. Code § 366.26(b)(1).

<sup>93</sup> Cal. Fam. Code §§ 8604 – 8606.

<sup>94</sup> Cal. Fam. Code § 8602.

<sup>95</sup> Welf. & Inst. Code § 16115, 16118-16125.

<sup>96</sup> Welf. & Inst. Code §§ 366.26(b)(3), (5).

## Overview of the Foster Care System in California

in place of the child's parent in providing physical needs, such as food, clothing, shelter, medical care, and education.<sup>97</sup>

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.

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>98</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<sup>99</sup> – This is generally long-term foster care and is the least preferred option under the law. The court may order this permanent plan for youth age 16 and older 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>100</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.<sup>101</sup>

### **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.<sup>102</sup> 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.**

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<sup>97</sup> More information on the rights and responsibilities of a legal guardian for a dependent of the juvenile court, see: <http://www.courts.ca.gov/1206.htm>.

<sup>98</sup> Welf. & Inst. Code §§ 11364 & 11387.

<sup>99</sup> Welf. & Inst. Code § 366.26(b)(7).

<sup>100</sup> Welf. & Inst. Code § 366.3(h)(1).

<sup>101</sup> Welf. & Inst. Code § 366.3(d).

<sup>102</sup> Welf. & Inst. Code § 727(a)(4).

## Overview of the Foster Care System in California

### Resources

#### CDSS Website

##### **Resource Family Approval (RFA) page**

<http://www.cdss.ca.gov/inforesources/Resource-Family-Approval-Program>

Contains links to statutory authority (WIC 16519.5); CDSS All County Letters and Notices; RFA Written Directives (approval standards); Forms; Background Assessment Guide; FAQs; Training Materials; and other resources on the RFA process.

##### **Foster Care Rates**

<http://www.cdss.ca.gov/inforesources/Foster-Care/Foster-Care-Audits-and-Rates/Foster-Care-Rate-Setting>

Contains links to CDSS All County Letters and Notices regarding foster rates.

##### **California Dependency Online Guide**

<https://cdependencyonlineguide.info/>



## Resources for Advising Caregivers

### Custodial Arrangements

#### Foster Care

- [Youth Law Center, Overview of the Foster Care System](#)
- [CDSS Foster Care](#) (Links to ACLs, ACINs, FAQs, Training & Other Resources)
- [CDSS Resource Family Approval](#) (Links to ACLs, ACINs, Written Directives (RFA Approval Standards), Forms, Background Assessment Guide, and more).
- [CDSS Foster Care Rates](#) (Links to current rates ACL), ACINs, FAQs, & more)..
- [The Step Up Coalition, Resource Family Approval Guide](#)
- [California Dependency Online Guide](#)
- [Foster Care Ombudsman Program](#)

#### Guardianship

- [Guardianship Overview](#)
- [Guardianship Forms](#)
- [GC-205: Guardianship Pamphlet](#)
- [GC-248: Probate Guardian Duties](#)
- [GC-505: Forms You Need to Ask the Court to Appoint A Guardian of the Person](#)

#### Informal Alternatives

- [Alternatives to Guardianship](#)
- [Caregiver's Authorization Affidavit](#)
- [California Courts, What is a Caregiver's Authorization Affidavit?](#)
- [Public Counsel, Caring for Another Person's Child: A Guide for Non-Parent Caregivers in Los Angeles County](#)
- [Sample Guardianship Authorization](#)

### Health and Medical Decision-Making

- [Child Welfare Information Gateway Issue Brief: Health Care Coverage for Youth in Foster Care -- And After](#)
- [National Center for Youth Law, Consent to Medical Treatment for Foster Children: California Law: A Guide for Health Care Providers](#)
- [Medi-Cal Manual for Katie A. Services](#)

### School and Education Decision-Making

- [Parents' Rights, California Education Code Sections 51100-51102](#)
- [California Compilation of School Discipline Laws and Regulations \(CDE\)](#)
- [CRLA's Education Manual: A Basic Guide to Students' Rights for Parents and Advocates](#)
- [California Foster Youth Education Task Force Resources and Publications](#)
  - [California Foster Care Education Law Fact Sheets](#)
  - [California College Pathways](#)
- [Alliance for Children's Rights, Foster Youth Education Toolkit](#)
- [Community Alliance for Special Education Handbook](#)

### Immigration

- [American Bar Association \(ABA\), Promising Practices when Working With Immigrant Kinship Caregivers](#)
- [ABA Center on Children and the Law, Immigrant Caregivers: The Implications of Immigration Status on Foster Care Licensure](#)
- [ABA Center on Children and the Law, The Reuniting Immigrant Families Act](#)
- [Generations United, Love Without Borders: Grandfamilies and Immigration](#)
- [Immigrant Legal Resource Center \(ILRC\), Immigration Options for Undocumented Immigrant Children](#)
- [ILRC, Family Preparedness Plan](#)
- [ILRC, Immigration Enforcement and the Child Welfare System](#)
- [ILRC, An Overview of Public Charge](#)

# PARENTING SOMEONE ELSE'S CHILD

## INFORMED CAREGIVER DECISION-MAKING

Pathways to Justice  
June 5, 2019  
San Francisco

Maria F. Ramiu, Senior Staff Attorney  
Virginia Corrigan, Staff Attorney

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# AGENDA

- A • Introduction & Overview
- G • Common Issues & Advocacy Strategies
- E • Case Study Exercise
- N • Q & A
- D • Resources
- A

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# INTRODUCTION & OVERVIEW

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## CUSTODIAL ARRANGEMENTS: AN OVERVIEW

- Informal Custody Arrangements: Power of Attorney, Caregiver Authorization
- Probate Guardianship
- Foster Care
- Adoption

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## COUNSELING CAREGIVERS: THINGS TO CONSIDER

- The particular needs of the child
- Relationship and ability to communicate with the parent
- Parenting goals of parent and caregiver
- Duration of caregiving relationship
- Desired level of interaction with government/systems
- Need or desire for supports and services
- Impact on family and household

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## ADVOCACY KEYS

- Identify applicable law and policy
- Leverage internal and external agency processes (informal reviews and redeterminations, CFTs, case management conferencing, state and local ombudsman)
- Utilize formal forums when necessary - Local Grievances, State Administrative Hearings, State Agency Complaint Processes, Juvenile Court, Writs & Appeals

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# COMMON ISSUES & ADVOCACY STRATEGIES

## PARENTAL DECISION-MAKING AND FAMILY AUTONOMY

### Key Considerations:

- Housing and Household Composition
- Parenting, Discipline, and Training
- Responsibility and Liability for Child
- Permanency goals for child

## PARENTAL DECISION-MAKING AND FAMILY AUTONOMY

Achieving caregiver's goals through:

- Written Agreements, Affidavits, Powers of Attorney
- Criminal Records Clearances and Exemptions
- RFA Documented Alternative Plans
- State Administrative Hearings

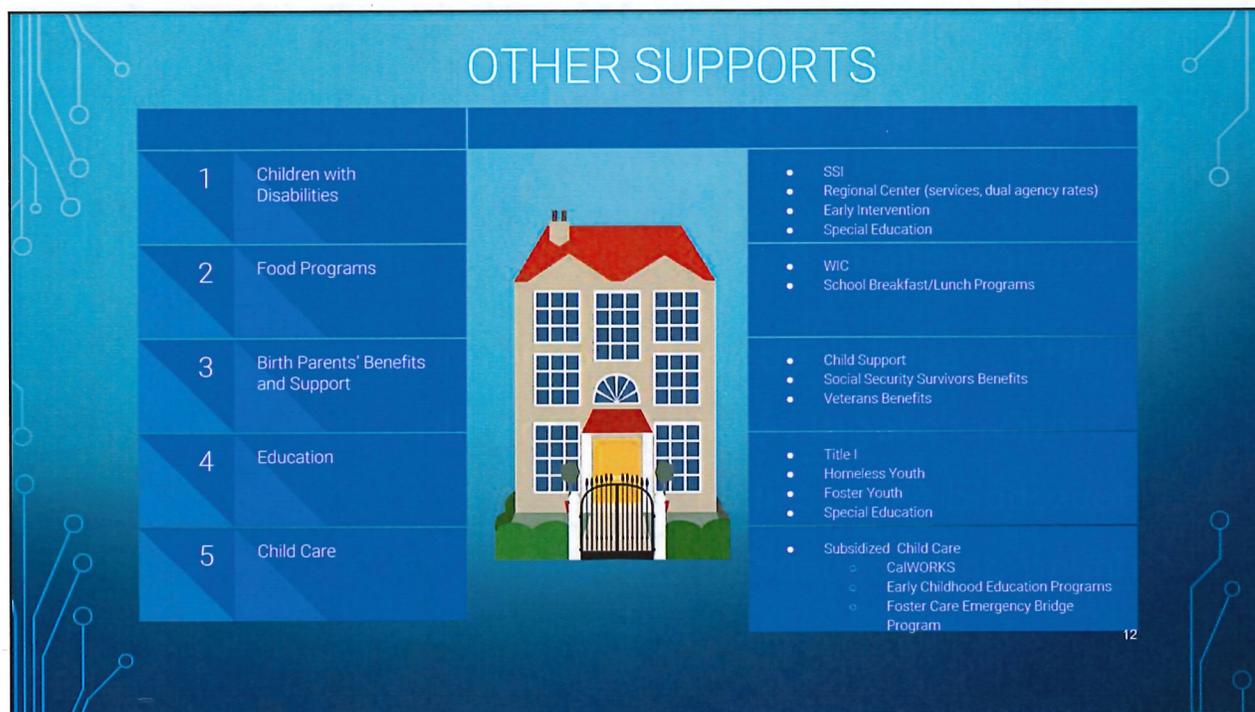
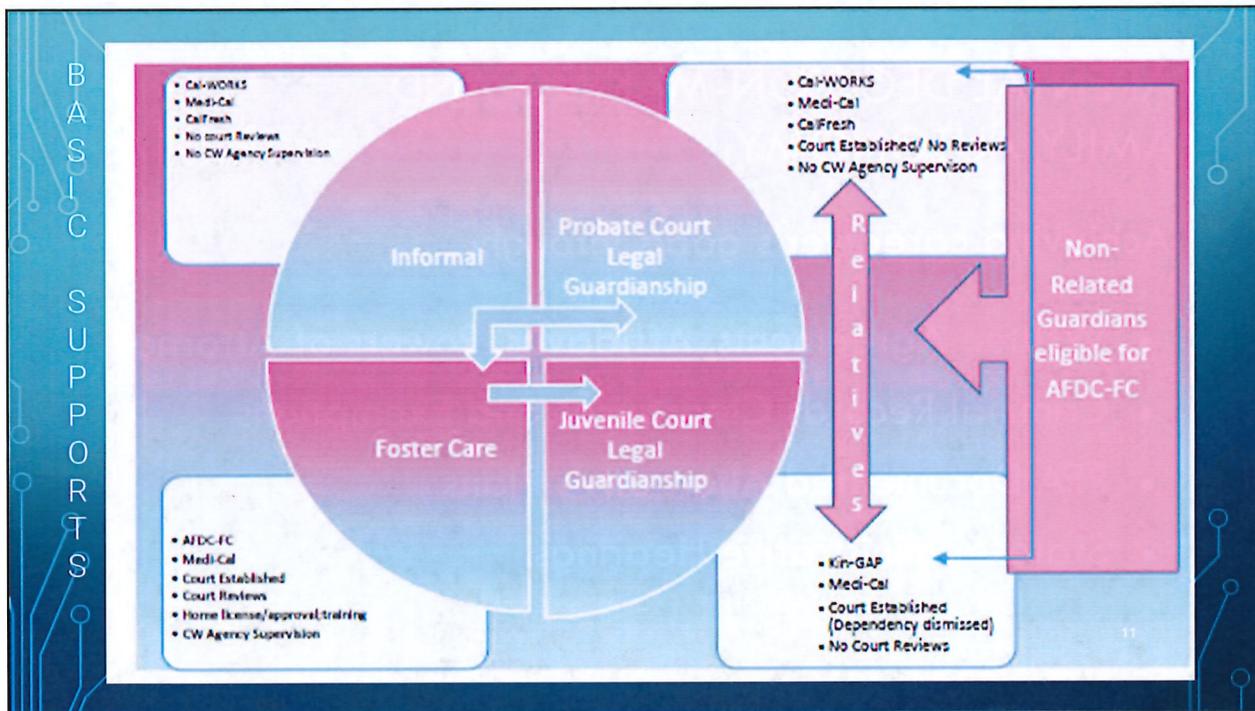
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## ECONOMIC SUPPORTS

Key Considerations:

- Child's special needs and circumstances
- Caregiver's legal relationship to child
- Household Composition
- Timing and Sequencing Options

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## HEALTH AND MEDICAL DECISION-MAKING

Key considerations include:

- Access to health insurance
- Access to care and services
- Ability to make medical decisions on child's behalf
- Health care and school

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## HEALTH AND MEDICAL DECISION-MAKING

- Informal Arrangements: Family Code 6550
  - Caregiver's Authorization Affidavit:
    - relative vs. nonrelative
    - parental authority
  - Difficulties obtaining medical insurance or services
- Probate Guardianship: Probate Code 2535; 2356
  - Responsible for medical and dental care
  - Ability to add child to insurance
  - Surgery: additional requirements
  - Mental health and involuntary commitment

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## HEALTH AND MEDICAL DECISION-MAKING

- Foster Care
  - Medicaid/EPSDT/Katie A. eligibility
  - Fractured decisionmaking responsibility
    - Parents retain decisionmaking ability unless removed by court order
    - County social workers can consent when minor is in temporary custody, in an emergency, or pursuant to court order
    - Court can order upon recommendation and in case of psychotropic medication
    - Caregiver can consent to routine medical and dental care
    - Relative caregivers can be court-authorized to provide parent-level consent where child is in a planned permanent living arrangement
    - Minors 12 and older can consent to HIV testing, infectious disease testing and treatment, mental health treatment, pregnancy care, substance abuse treatment
    - Minors of any age can consent to treatment and testing related to sexual assault

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## SCHOOL AND EDUCATION DECISION-MAKING

Key considerations include :

- Caregiver's education related goals, objectives, and preferences
- Child's needs and interests
- Family's circumstances, including the availability of and relationship with the parent

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## SCHOOL AND EDUCATION DECISION-MAKING

Understanding and establishing caregiver's authority to act as parent for commonly encountered issues regarding:

- School Enrollment
- Field Trips & Extracurriculars
- Access to Records
- Special Education

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## IMMIGRATION

Key issues to consider include:

- Access to legal status for undocumented children
- Access to legal status for caregiver
- Parents' rights when parents are detained or removed
- Particular concerns and fears of undocumented populations

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## IMMIGRATION

When a parent is undocumented:

- Informal caregiving agreements vs. formal arrangements
  - Caregiver's Authorization Affidavit: ability to plan
- Reuniting Immigrant Families Act:
  - Protections for detained and removed parents
  - Details reasonable efforts
  - Extended reunification period

When a child is undocumented:

- May be eligible for Special Immigrant Juvenile Status with a state court order (probate guardianship or foster care).
- Child welfare agencies should provide assistance and guidance with certain forms of relief.

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## IMMIGRATION

When a caregiver is undocumented:

- Caregivers may have concerns about interacting with government entities, including courts, schools, child welfare agency.
- Undocumented caregivers CAN become resource parents in California.
- Formal adoption of a citizen child may lead to ability to obtain legal status in some circumstances.

When a caregiver is a documented noncitizen:

- Public charge rule concerns
- Adjustment of status/naturalization concerns
  - Family unity and positive discretion
  - Household size

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## CASE STUDY/HYPOTHETICAL

- Alicia and Jon are caring for their 5-year-old niece, Sasha, and 12-year-old nephew, Martin. Sasha and Martin are the children of Alicia's sister, Patricia, with whom Alicia is in intermittent contact.

Sasha is currently in preschool, but Alicia and Jon are hoping to enroll her in a kindergarten closer to their home in the fall. Sasha has asthma for which she takes daily medication and carries an inhaler. She has had two asthma attacks at preschool.

Martin is in sixth grade and is experiencing some issues in school. His teacher reports that he is distracted in class and often struggles to complete timed assignments. Martin loves biology class and is a member of his school's track team.

Alicia and Jon are dedicated to caring for their niece and nephew, but are experiencing some financial difficulties. They are concerned about seeking government assistance because they are undocumented, and they have heard that they could be at risk for negative immigration consequences.

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## CASE STUDY/HYPOTHETICAL

**Carol Smith is raising her three godchildren. The children's mother is addicted to alcohol and heroin and left the children, Julius, age 2, Sarah age 5, and Tony, age 12, in Carol's care. Julius suffers from Fetal Alcohol Syndrome. Carol lives in a four-bedroom house with her 65-year-old grandmother, her cousin Vinny, and his girlfriend, Mary who was released from prison five months ago after serving 3 years for embezzlement. The children's father is dead. The children's mother drops by occasionally, but does not provide any support and has not provided Carol with any documentation regarding the children or her approval of the arrangement. Carol is concerned about not having health insurance, daycare, or enough money to adequately support the children. Schools, doctors, and other agencies have questioned Carol's authority to act on behalf of the children and have in some instances refused to provide services. Carol has concerns about asking the foster care system for help and fears the children will be placed with someone else because she's not a relative.**

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## RESOURCES

### Education

- [Parents' Rights \(Ed Code 51100-51102\)](#)
- [California School Discipline Laws and Regulations](#)
- [CRLA'S Education Manual: A Basic Guide to Students' Rights For Parents and Advocates](#)
- [Foster Youth Education Task Force -- Resources/Publications](#)
- [Foster Youth Education Toolkit, Alliance for Children's Rights](#)
- [Community Alliance for Special Education \(CASE\) Handbook](#)

### Health

- [DHCS Health Care Program for Children in Foster Care](#)
- [Child Welfare Information Gateway Issue Brief: Health Care Coverage for Youth in Foster Care -- And After](#)

### Immigration

- [Immigrant Legal Resource Center \(ILRC\), Immigration Options for Undocumented Immigrant Children](#)
- [ILRC, Immigration Enforcement and the Child Welfare System](#)

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## CONTACT US



**youth law center**

standing up for children at risk

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