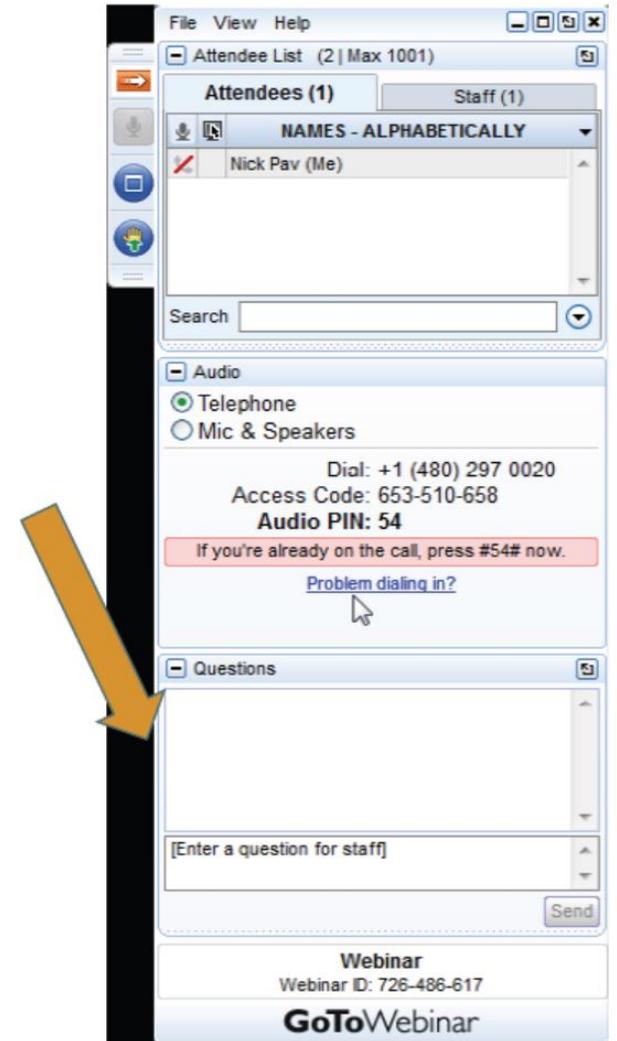




THE HUMAN IMPACT OF BYPASSING FOSTER CARE FOR AT-RISK CHILDREN

LOGISTICS

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Today's Agenda

- Linda's Story
- Overview and national perspective
- How does hidden foster care occur in California?
- Why does hidden foster care occur?
- Impact of hidden foster care
- Supporting the child, parent and the caregiver – recommendations for reform
- Ana's Story

Presenters

- Linda Leighton, Relative Caregiver
- Josh Gupta-Kagan, Associate Professor, University of South Carolina School of Law
- Carolyn Griesemer, Executive Director, Children's Legal Services of San Diego
- Angie Schwartz, Vice President, Policy and Advocacy, Alliance for Children's Rights
- Ana Lora, Relative Caregiver

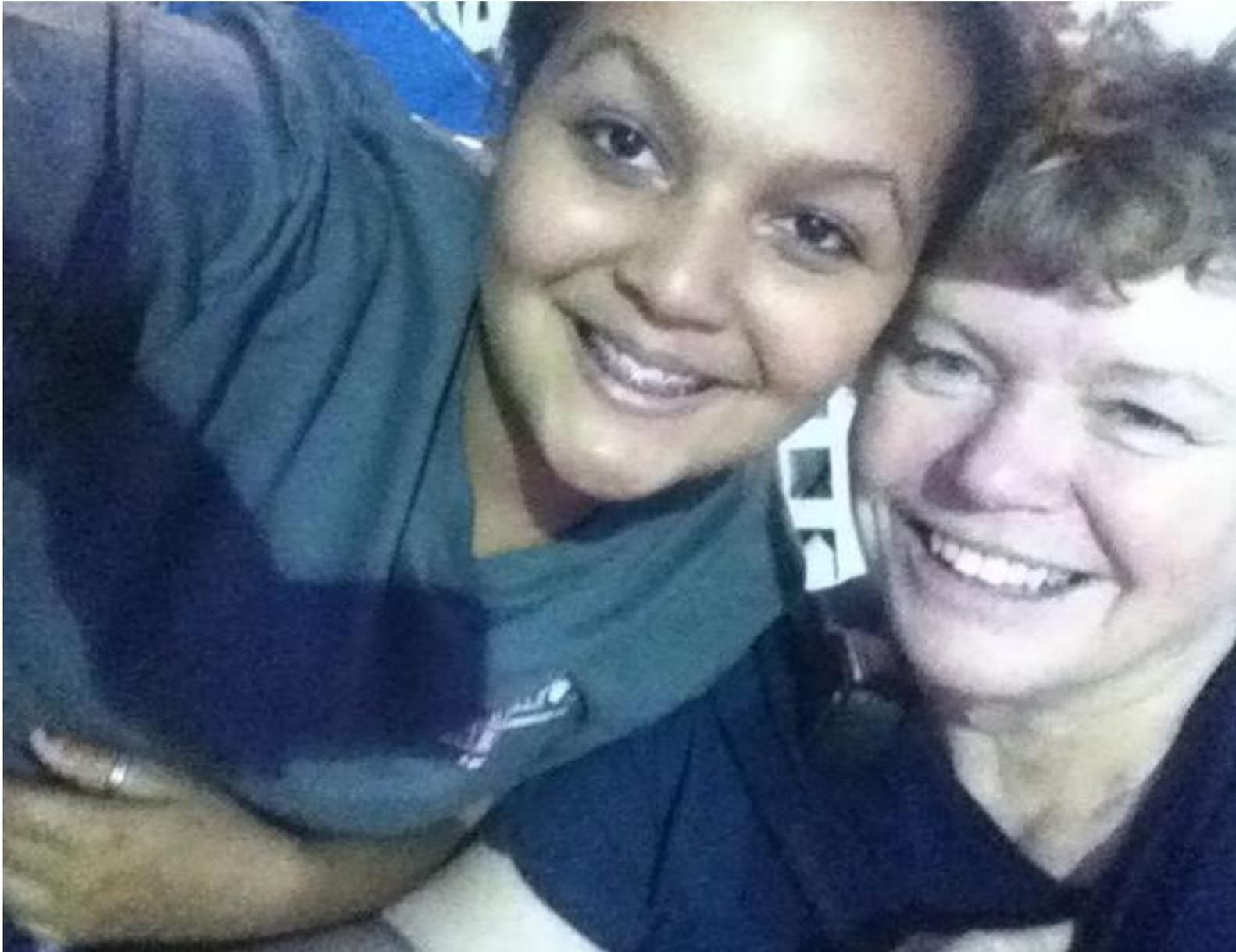
LINDA'S STORY

Hidden Foster Care

“My entire family has dealt with the impact of the child welfare system essentially dropping my grandchildren at my house and urging guardianship as opposed to providing supports and services to my grandchildren and my daughter to help them reunify.”







***“My daughter
felt like if she
had been given
the opportunity
to reunify, she
would have
reunified.”***

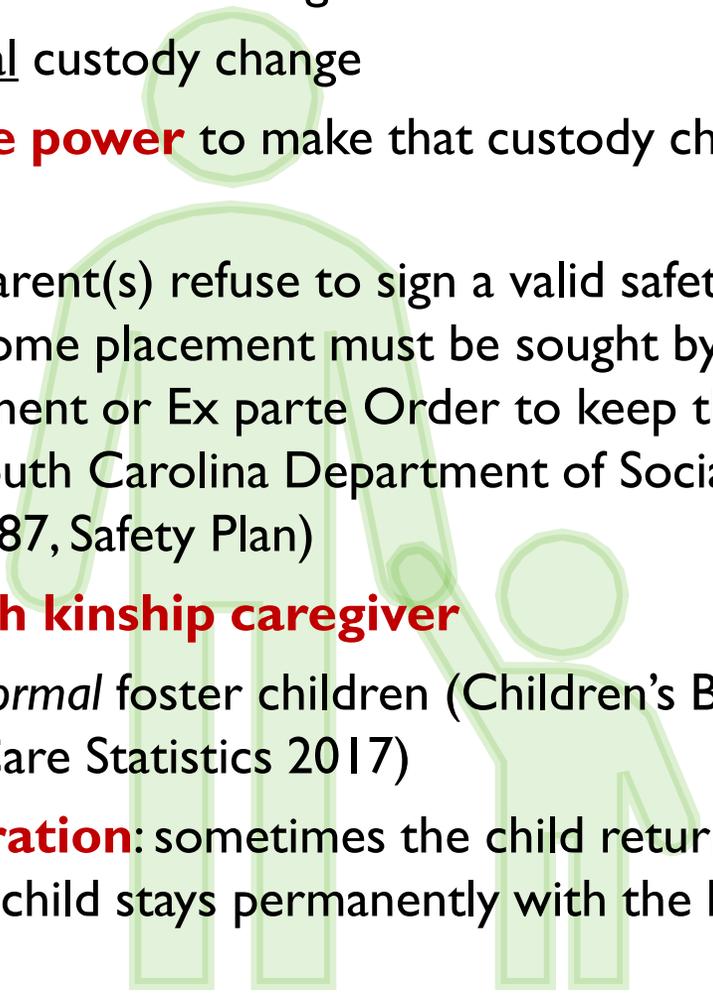
AMERICA'S HIDDEN FOSTER CARE SYSTEM

OVERVIEW AND NATIONAL
PERSPECTIVE

JOSH GUPTA-KAGAN,
*AMERICA'S HIDDEN FOSTER
CARE SYSTEM*, STANFORD L.
REV, VOL 72,
FORTHCOMING 2020.

HIDDEN FOSTER CARE OCCURS WHEN RELATIVES ARE ENCOURAGED BY THE CHILD PROTECTION AGENCY TO **BYPASS JUVENILE COURT** AND CARE FOR AT-RISK CHILDREN OUTSIDE OF FORMAL FOSTER CARE, LEAVING THEM WITHOUT FINANCIAL SUPPORT, SERVICES, LEGAL REPRESENTATION OR REUNIFICATION SERVICES.

HIDDEN FOSTER CARE SYSTEM

- CPS seeks a **change in custody** to protect a child
 - During or after an investigation
 - But no legal custody change
 - CPS **uses state power** to make that custody change happen
 - “If the parent(s) refuse to sign a valid safety plan, an out of home placement must be sought by Law Enforcement or Ex parte Order to keep the child safe” (South Carolina Department of Social Services, Form 3087, Safety Plan)
 - Child **lives with kinship caregiver**
 - 32% of *formal* foster children (Children’s Bureau, Foster Care Statistics 2017)
 - **Unknown duration**: sometimes the child returns home, sometimes the child stays permanently with the kinship caregiver
 - Texas: 40% reunified within one year, 12% were petitioned
- 



HIDDEN FOSTER CARE SYSTEM: HOW BIG IS THIS, REALLY?

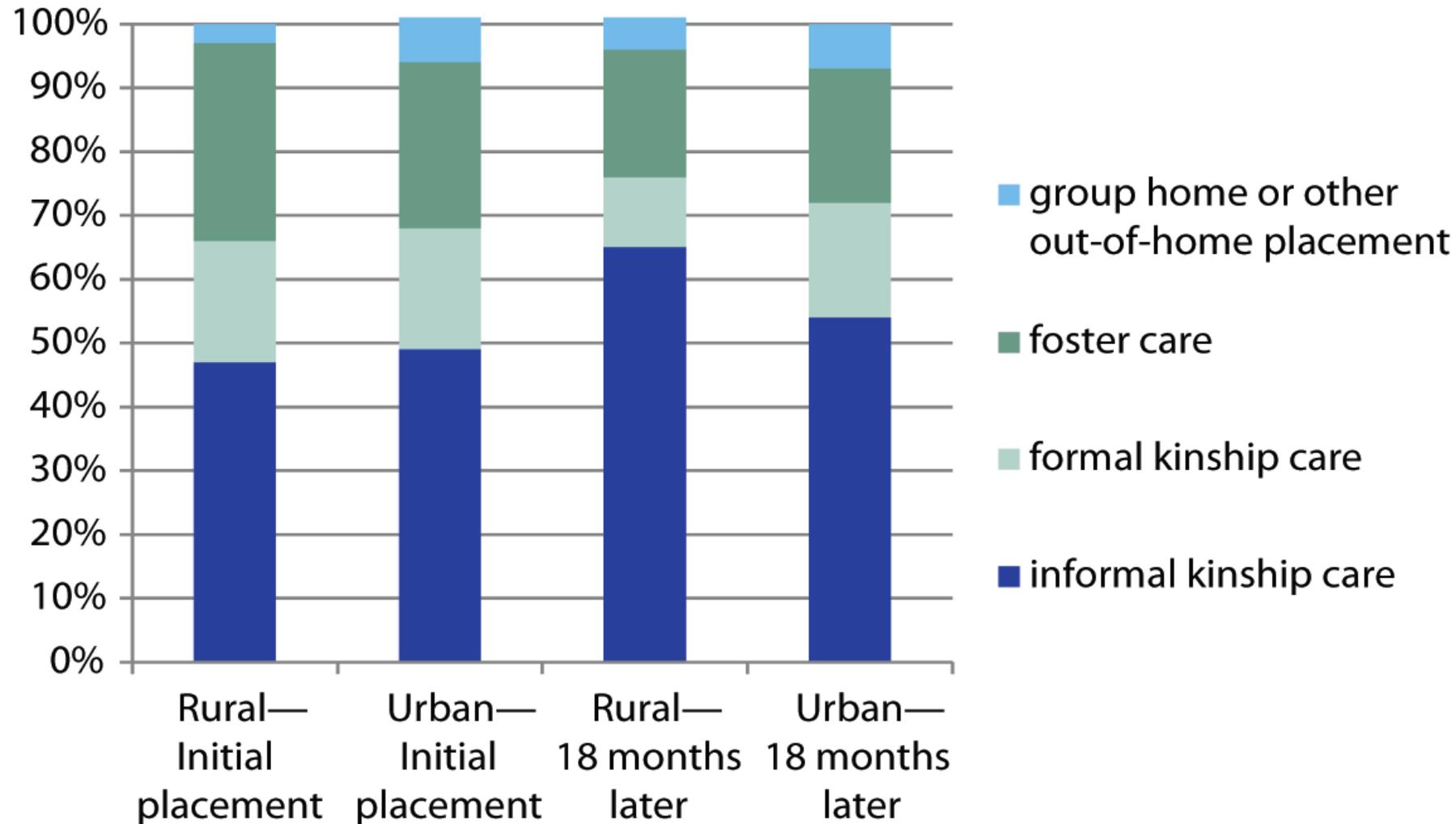
- “We compared the frequency of kinship diversion to the frequency of entry to foster care. In some jurisdictions, for every 10 children entering foster care, an additional 7 were diverted, while in others there was an equal split – for every child entering foster care, another child was diverted.”

Child Trends, Variations in the use of kinship diversion among child welfare agencies (2019)

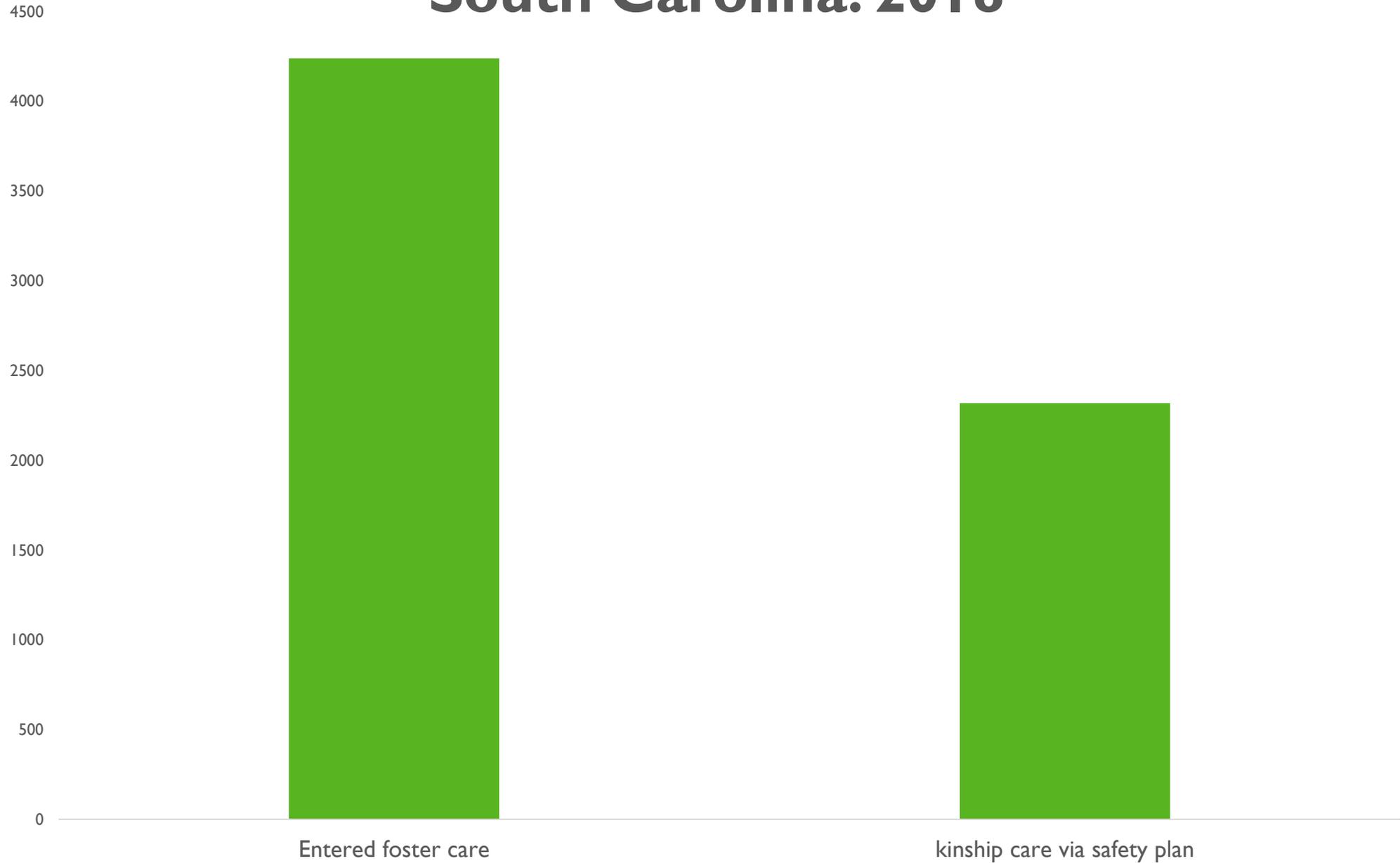
- “quite common,” “increasing,” “often,” “increasingly important”

Child & Family Social Work, Child Trends, Journal of Family Social Work, Child Welfare

Out-of-home placement settings after maltreatment report and 18 months later (2008-09)

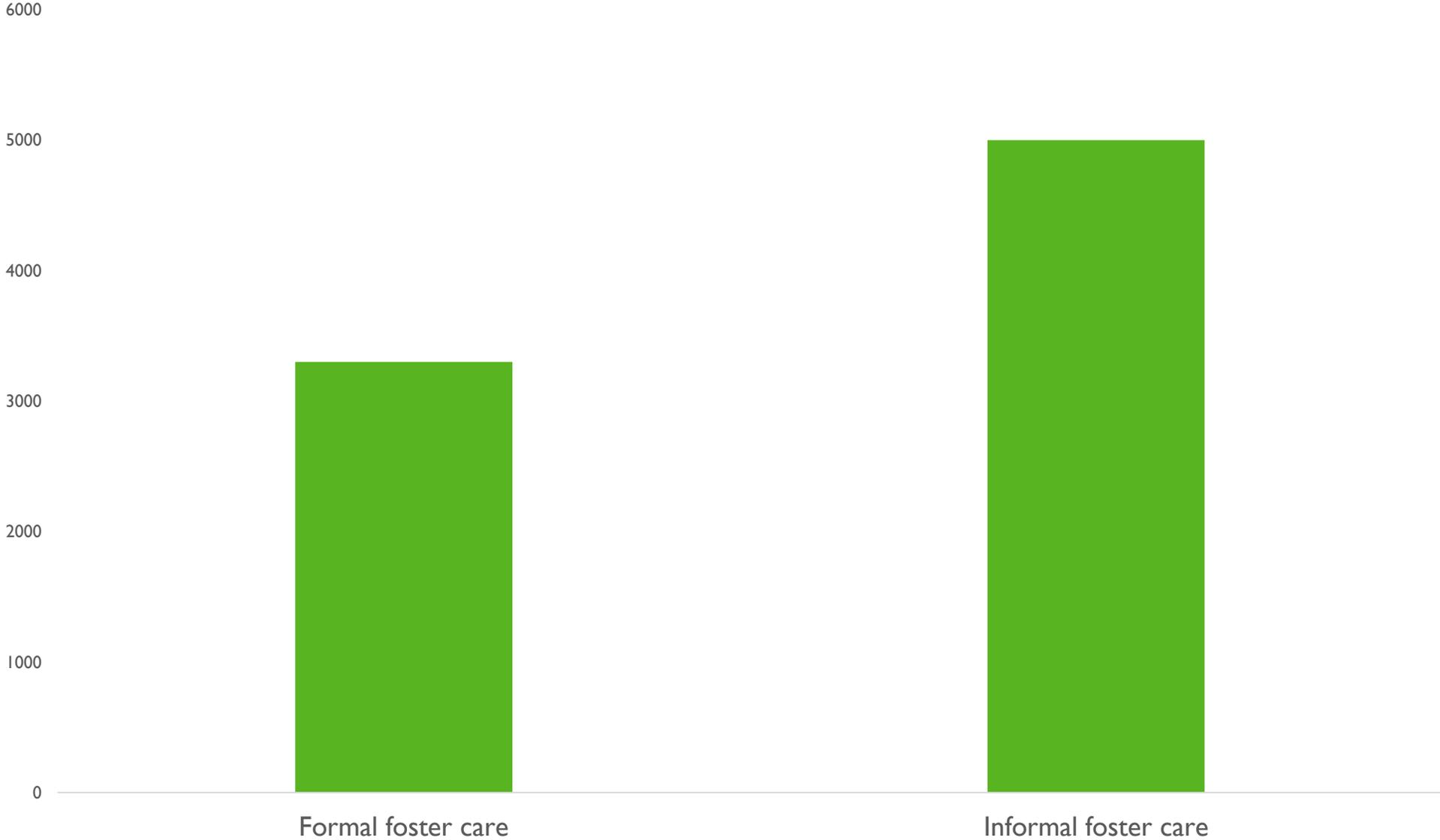


South Carolina: 2018



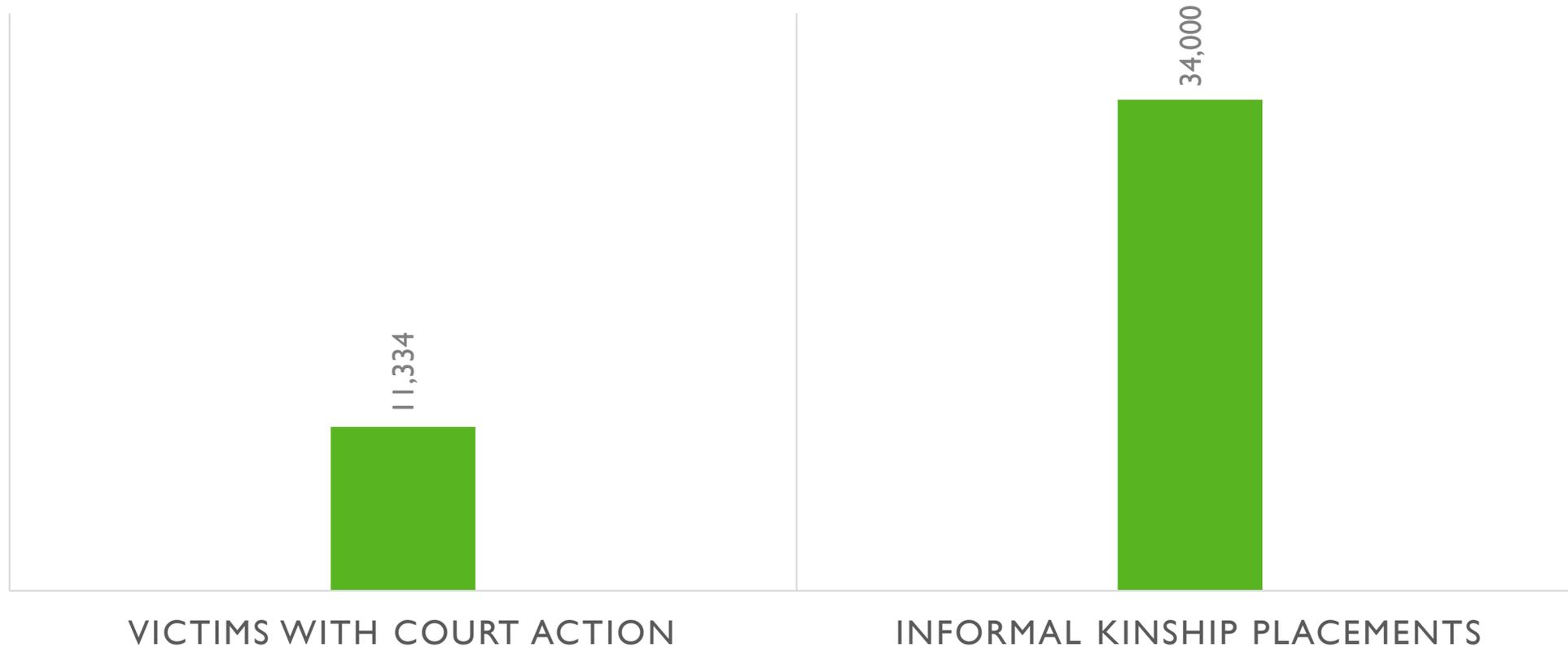


Virginia: July 2016-December 2017



EVERYTHING'S BIGGER IN TEXAS

TEXAS: 2014



HOW HAVE THE COURTS CONSIDERED HIDDEN FOSTER CARE: “LAWFUL THREAT” OR COERCION?

- *Croft v. Westmoreland County CYS* (3d Cir.):
“Defendants repeatedly have characterized Dr. Croft’s decision to leave as ‘voluntary.’ This notion we explicitly reject. The threat that unless Dr. Croft left his home the state would take his four-year-old daughter and place her in foster care was blatantly coercive. The attempt to color his decision in this light is not well taken.”



Due Process: “Lawful threat” or Coercion?

Dupuy v. Samuels (7th Cir.):

- It is not a forbidden means of “coercing” a settlement to threaten merely to enforce one's legal rights....This just notifies the parents of the lawful measures that may ensue from their failure to agree to a planThere is no suggestion that the agency offers a safety plan when it has no suspicion at all of neglect or abuse, and even in that case ... if a child is actually taken, the parents have a very prompt legal remedy.
- We can't see how parents are made worse off by being given the option of accepting the offer of a safety plan. It is rare to be disadvantaged by having more rather than fewer options.

“If you tell a guest that you will mix him either a Martini or a Manhattan, how is he worse off than if you tell him you'll mix him a Martini?”



Safety Plan



Foster Care



“Lawful threat” vs. coercion under *Dupuy*

- *Dupuy*: There would be a due process problem if “it was a threat the agency had no right to make.”
- “For the lynchpin of voluntariness to turn on whether a state actor has the legal authority to execute an emergency removal, is to suggest that parents looking down the barrel of the state's gun ought to know whether its chamber is loaded.”

Ryan Shellady, *Martinis, Manhattans, and Maltreatment Investigations*, 104 Iowa Law Review 1613 (2019)

HOW MUCH DO YOU TRUST CPS?

- Did abuse or neglect occur? If so, can the child stay safely at home? What reasonable efforts are required?
- If the child must be removed, where should she stay?
- What must be done for the child to return home?
- Has the parent done enough to reunify?
- If the child does not return home quickly, what should happen?





Follow the Money

What is cheaper?



Formal foster care

- Foster care subsidies
- Adoption & guardianship subsidies
- Staff and administrative costs
- *Partial* federal reimbursement for *some* families

Hidden foster care

- No foster care subsidies
- No permanency subsidies
- Limited staff and administrative costs

Miller v. Youakim (U.S. Supreme Court 1979)

- If states bring children into foster care, states may not exclude kinship families from foster care funding.
 - *Incentive to avoid foster care*
- If otherwise, “the State would have no obligation to justify its removal of a dependent child if he were placed with relatives, since the child could not be eligible for Foster Care benefits. But the same child, placed in unrelated facilities, would be entitled under the Foster Care program to a judicial determination of neglect. The rights of allegedly abused children and their guardians would thus depend on the happenstance of where they are placed.” Congress “meant to protect from unnecessary removal” all children, regardless of with whom they are placed.

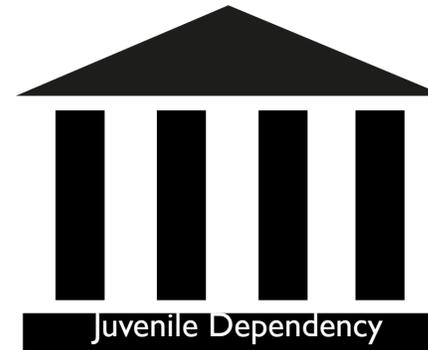


OPEN QUESTION:
REGULATION OR
PROHIBITION?

HOW DOES HIDDEN FOSTER CARE OCCUR IN CALIFORNIA?

UNDERSTANDING INTERPLAY &
LOOPHOLES BETWEEN THE COURT
SYSTEMS THAT CONTROL CHILD
CUSTODY DECISIONS

A TALE OF FOUR 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 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 DELINQUENCY COURT



Purpose of Juvenile Court

Provide for the protection and safety of the public and the child

Provide children who need protective services receive care, treatment, and guidance consistent with their best interest and the best interest of the public

Hold children accountable for their behavior that is appropriate for their circumstances.



What do parents receive?

No automatic right to an attorney unless one is appointed by the court upon its own motion or motion of the parties, even if a child is being removed from their care.

If a youth is removed from the parent's home, the parent is entitled to receive reunification services.

A parent may have financial responsibility for any damage caused by their child and may have to pay the victim if the court orders "restitution."



What do children receive?

Children are appointed counsel representing their stated/express interests. That attorney is required to have the education and training necessary to represent a child in juvenile court.

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?

Protect, give guidance to, and rehabilitate children who commit delinquent acts

Protect the community

Strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public

JUVENILE DEPENDENCY 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.

IS HIDDEN FOSTER CARE AUTHORIZED IN STATUTE?

- 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 can require child welfare to investigate 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)**

THREE OPTIONS WHEN A COUNTY IS SEPARATING A CHILD FROM A PARENT

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

- After receiving and considering evidence for disposition of the case
- 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

WHEN CAN A COUNTY USE A SAFETY PLAN?

Critical components of a safety plan (ACL 17-107):

- Considered least restrictive method **to keep children in their home or in their current placement**
- Counties shall ensure that safety plans are **not used in lieu of opening cases** when caregivers and their safety network do not possess the protective capacity to mitigate safety threats
- A safety plan differs from a case plan in that a safety plan permits a child to **remain in the home or placement** during the course of an emergency response investigation by listing specific, immediate action steps that mitigate immediate safety threats.

Voluntary Placement Agreements

Definition	“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(o)
County Discretion in Creating VPAs or Safety Plans?	No. The VPA must be in accordance with the state regulations promulgated by CDSS and must utilize the VPA form created by CDSS. WIC 16507.4(b).
Who consents?	Agreement between parent/guardian and child welfare agency utilizing the SOC 155 (or the SOC 155C for an Indian Child)
Care, custody & control	Child’s placement into a VPA and care, custody and control transfers to child welfare agency
Funding	Children placed in a VPA are eligible for federal foster care maintenance payments or state foster care payments when the child is not federally eligible
Time limits	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
Right to terminate	Parent has right to terminate or withdraw from the VPA at any time

How do VPAs End?

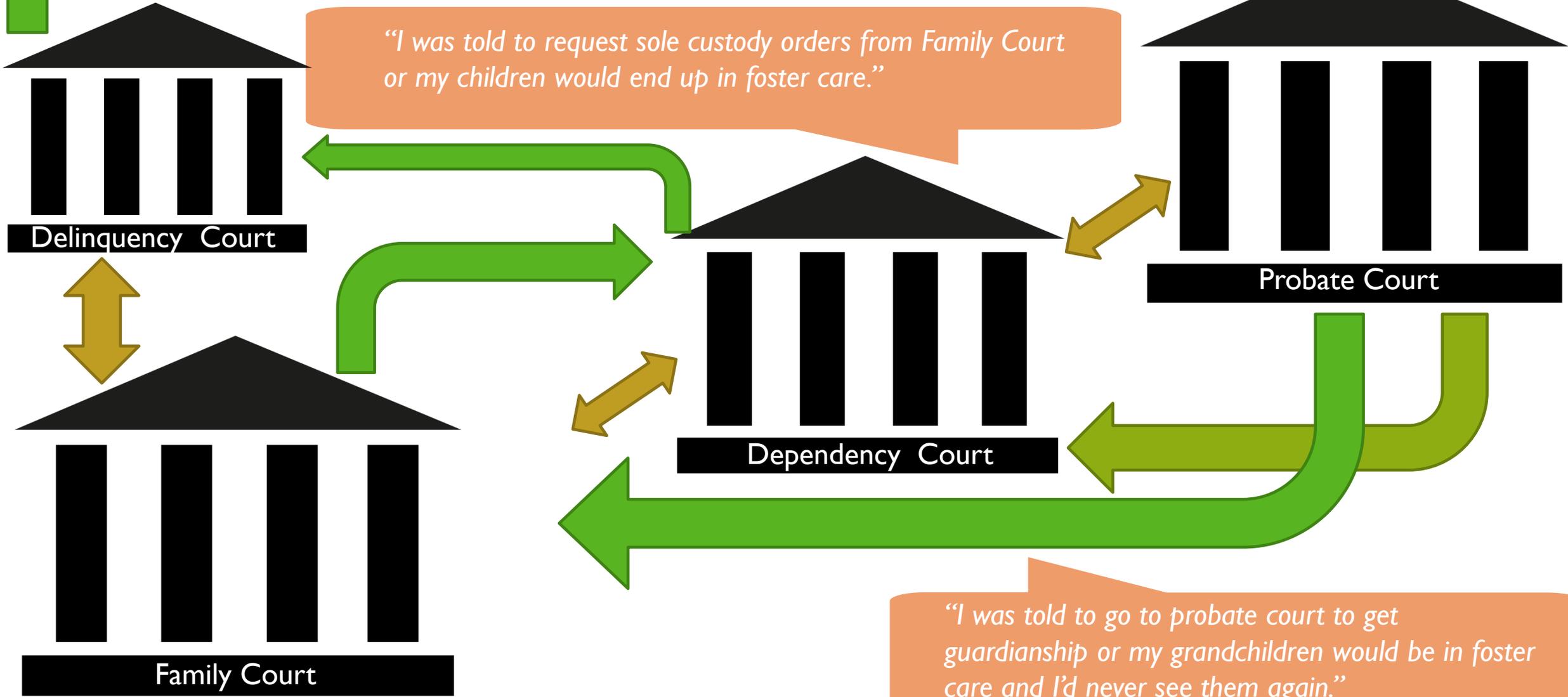
If a minor has been voluntarily placed and the minor has remained out of their physical custody for a consecutive period not to exceed 180 days or at least 90 days before the minor attains 18 years of age, the department shall do one of the following:

- Return minor to the physical custody of their parents or guardians.
- Refer minor to a licensed adoption agency for consideration of adoptive planning and receipt of a permanent relinquishment of care and custody rights from the parents pursuant to § 8700 of the Family Code.
- Apply for a petition pursuant to § 332 and file the petition with the juvenile court to have the minor declared a dependent child of the court under § 300, in that return to the parental home would be contrary to the best interests of the child. The petition shall be filed, and the juvenile court shall issue a dispositional order in the case, if appropriate, prior to the minor attaining 18 years of age.
- Refer minor to an interagency administrative review board. One member of the board shall be a licensed mental health practitioner. The review board shall review the appropriateness and continued necessity of six additional months of voluntary placement, the extent of the compliance with the voluntary placement plan, and the adequacy of services to the family and child. If the minor cannot be returned home by the 12th month of voluntary placement services, the department shall proceed pursuant to subdivision (b) or (c).
- Refer minor to an administrative review board. If the minor cannot be returned home by the 12th month of voluntary placement services, the department shall proceed as described in subdivision (b), (c), or (d).



The End.

CALIFORNIA'S HIDDEN FOSTER CARE SYSTEM

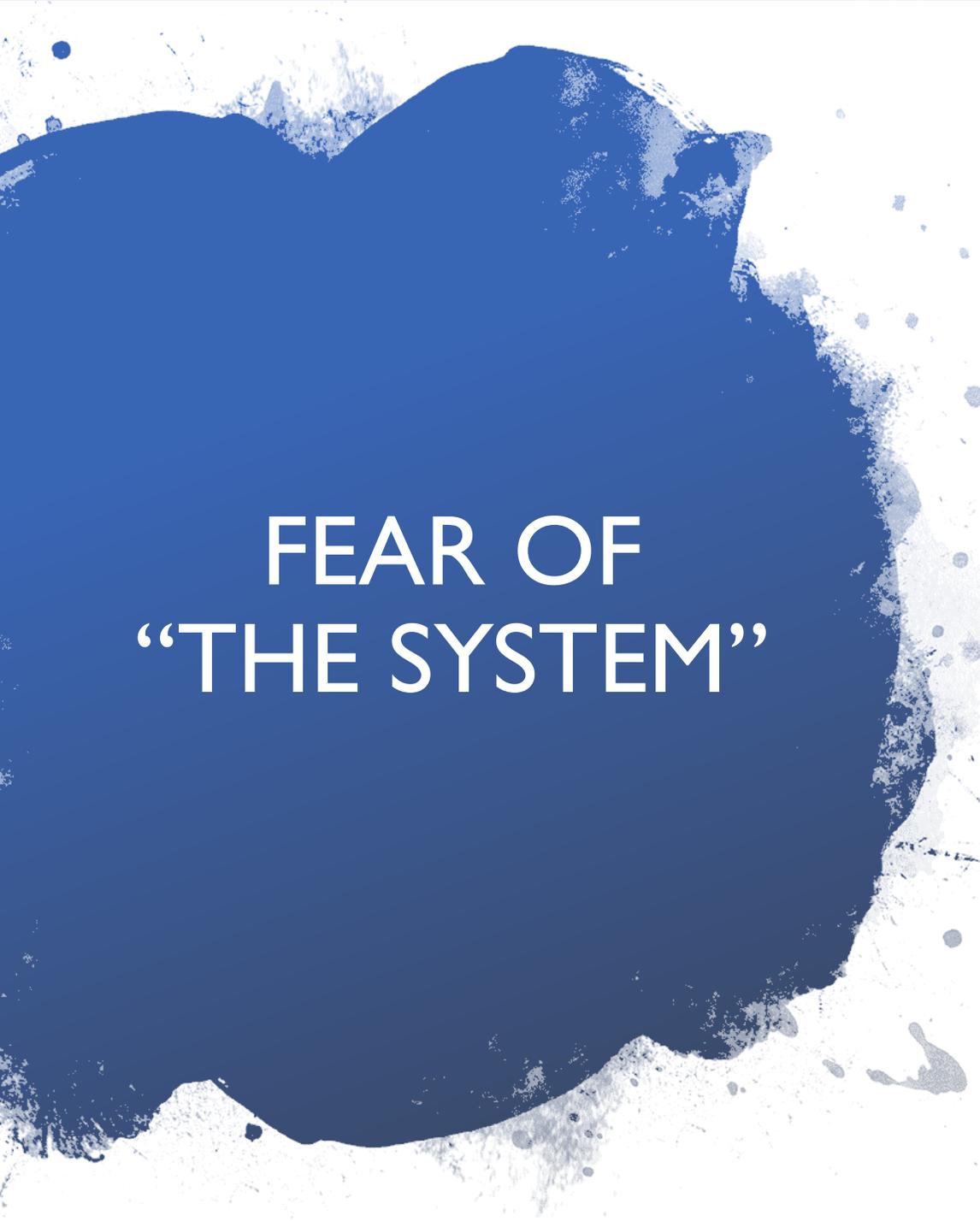


"I was told to request sole custody orders from Family Court or my children would end up in foster care."

"I was told to go to probate court to get guardianship or my grandchildren would be in foster care and I'd never see them again."

WHY DOES HIDDEN FOSTER CARE OCCUR?

SHIFTING POLITICAL LANDSCAPE



FEAR OF “THE SYSTEM”

“The worker threatened me that if I didn’t take them, they would take them away from me.”

“We put our son through rehab. No system involvement. When we took the girls from him, we didn’t want them to go through the system. We were fearful of that. Dreadful things happen there. We didn’t want any part of it.”

“As a family member caring for a young child there is a fear of the child being removed to someone you don’t know and the long drawn out process.”

“They have the power. They hold the power of taking away the kids from the grandparents. The grandparents are really afraid. They don’t tell them what is right. They just tell them what is wrong.”

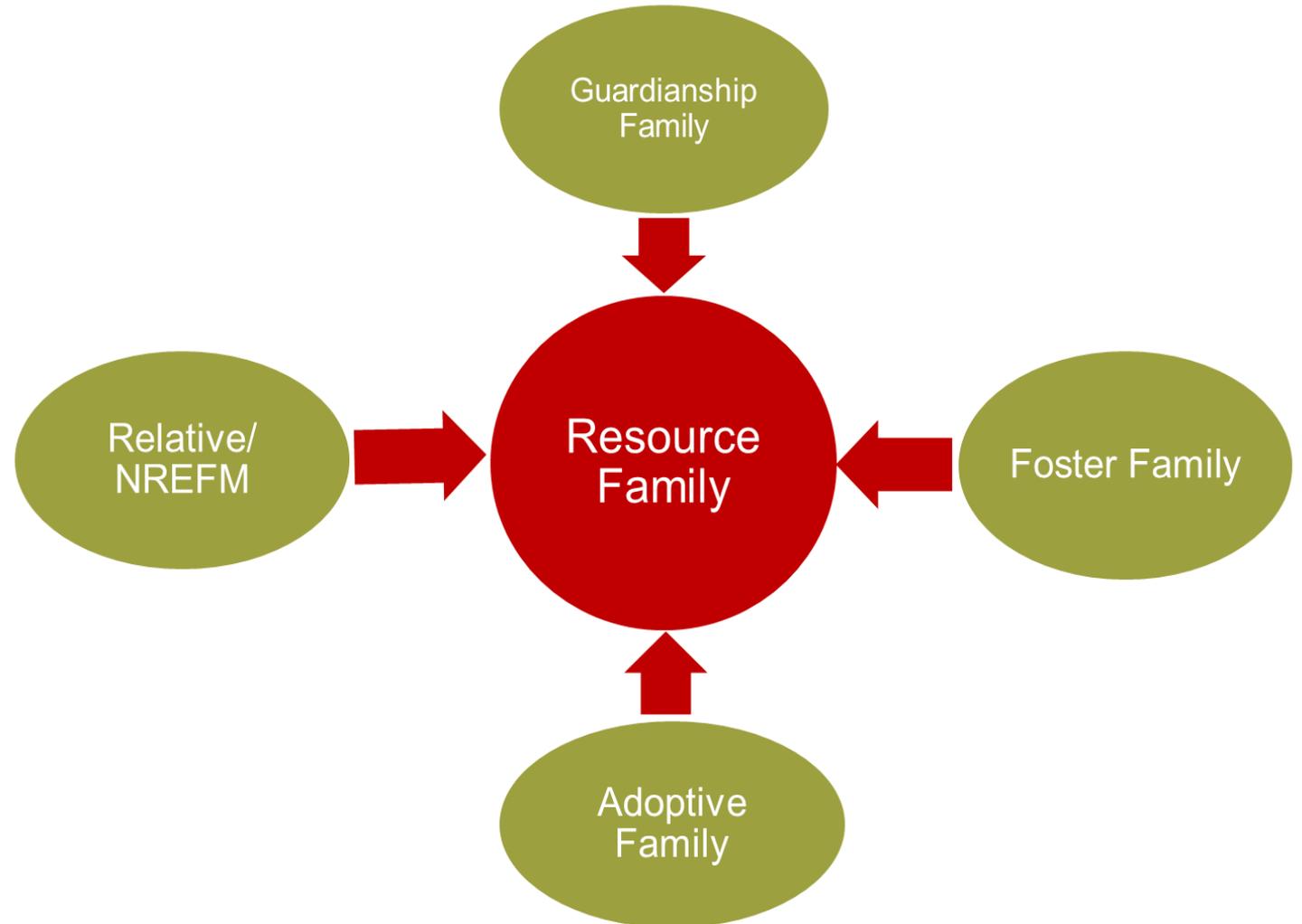
“That’s our fear – if mom ever gets her act together – she is in jail now. I’m afraid if she starts seeing the baby he is going to be retraumatized.”

“The fear of the unknowns is right below every one of these problems. We don’t know what we don’t know. The fear crosses over everyone.”

“Speaking from personal experience. You don’t know what you don’t know. All I knew was that I was the person that got the call. There were a lot of fears and protective instincts that came into play when I got the call.”

CONTINUUM OF CARE REFORM: NEW FOCUS KINSHIP PLACEMENTS

- Equal funding for relatives
- Emergency Caregiver funding
- Foster parent recruitment and retention
- Resource Family Approval



Approval Standards

	Adoption (Pre-RFA)	Relative/NER FM (Pre-RFA)	Foster Home (Pre-RFA)	RFA
Criminal Records/Child Abuse Review	✓	✓	✓	✓
Standardized Criteria for Criminal Record Exemptions		✓	✓	✓
Home Health and Safety Assessment	✓	✓	✓	✓
Training Required			✓	✓
Family Evaluation	✓			✓
Screen for Risk Factors	✓		✓	✓
Applicant References	✓			✓
Yearly (minimum) Updates on all families		✓		✓

FAMILIES THAT START AT PROBATE COURT FIND IT DIFFICULT TO REVERSE COURSE



Probate court is not required to refer cases involving child abuse or neglect to child welfare for investigation. (statutes changed after In re Christian G. which held that “[t]he 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.”)



Even if the probate court refers to child welfare for investigation, there is not requirement that the juvenile court review the decision of the social worker as to whether to file a petition in juvenile court



If the probate court takes action to protect the child (i.e. orders a temporary guardianship) and then refers the case to child welfare, the juvenile court is limited in its ability to order a petition to be filed due to Court of Appeal decision In re Kaylee H.

FAMILIES LACK INFORMATION TO MAKE INFORMED DECISIONS



- **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
- 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

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

IMPACT OF HIDDEN FOSTER CARE

DENIAL OF DUE PROCESS PROTECTIONS AVAILABLE THROUGH FOSTER CARE



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

OPPORTUNITY FOR REUNIFICATION LIMITED

- Family Code § 3041 was amended to require a finding that parental custody would be detrimental to the child before an order giving custody to a nonparent only if the parent objected (had been required in the absence of parental consent). Also created the presumption of detriment if the child had been in the custody of a nonparent for a substantial period.
 - Fam Code § 8804 allows option of placing a child whose parent did not place the child for adoption or consent to an adoption in the custody of a nonparent under FC 3041.
- Probate Code § 1601 was amended to preclude the court from terminating a guardianship because the guardianship was no longer necessary. Best interest of the child is now the sole ground.
- Probate Code §§ 1610 and 1611 were added to make it riskier to petition to terminate a guardianship by authorizing the court to determine that a person who files a petition for visitation, termination of the guardianship, or instructions to the guardian that is “unmeritorious, or intended to harass or annoy the guardian” is a vexatious litigant if the person has previously filed such a petition in the same guardianship proceeding.
- Probate Code § 1516.5, added authorized a proceeding to terminate parental rights for a child who had been in the physical custody of a guardian for at least two years if the child would benefit from adoption by the guardian.



CHILD SAFETY CONCERNS

“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.”

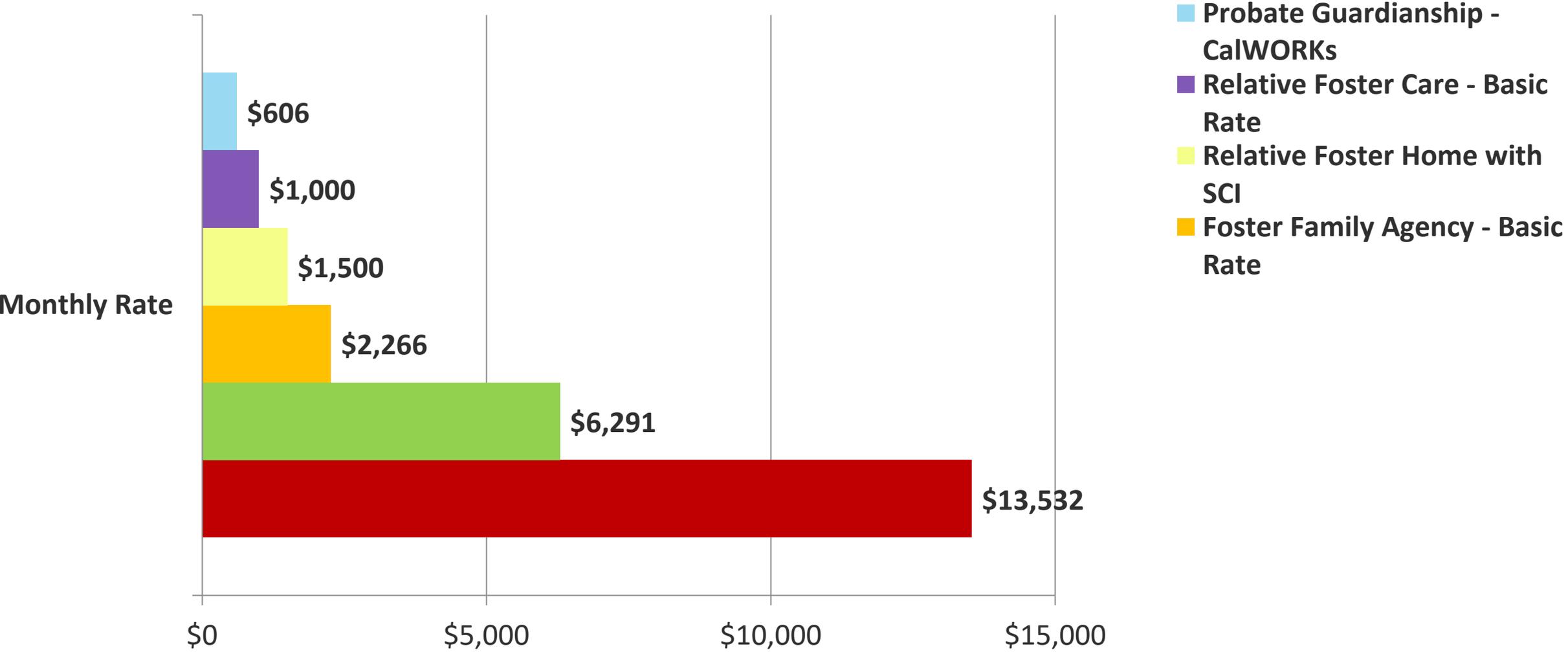
Josh Gupta-Kagan, *America's Hidden Foster Care System*, 77 Stan. L. Rev. (forthcoming 2020)



Two Paths for Children in Kinship Families

	Informal Kinship Care (probate court)	Foster Care Placement with Relative (dependency court)
Funding for Caregiver?	Limited funding available to support kin caregiver – for most families, only CalWORKs	Full foster care funding – in CA this includes access to specialized care, clothing allowance, infant supplements, etc
Who receives services?	No requirement for services to be provided or to assign counsel to parent or child. No eligibility for respite, emergency child care funding, training, etc.	Reunification services and legal representation for parent. Child receives legal representation and case management services . Caregiver can receive respite, emergency child care bridge funding, and training
Duration of services?	N/A	No limitation reunification services while child is in foster care + 15 months of post-reunification services
Reunification options and funding for permanency?	No reunification services and opportunity for reunification is limited . No funding : Relatives who get guardianship outside of juvenile court are not eligible for Kin-GAP	Child is either reunified or can remain with relative through adoption, guardianship, or as a Fit and willing relative continued funding for kin families (AAP, KinGAP, or continued foster care funding) – all options offer
Supports for TAY?	No eligibility to receive extended foster care, independent living services, or Education and Training Vouchers	Eligible 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

Huge Expense if Family Placements Fail and Children Are Placed in Residential Care



Funding to Support Permanency

	Kin-GAP	AFDC-FC	AAP	CalWORKs
Non-Related Legal GUARDIANSHIP through PROBATE	Not eligible	<ul style="list-style-type: none"> Eligible for AFDC-FC until youth turns 18 NO re-entry 	Not eligible	Not eligible
Non-Related Legal GUARDIANSHIP through DEPENDENCY	<ul style="list-style-type: none"> If youth meets federal requirement eligible for KinGAP until youth is 18 (and in some cases 21) Re-entry rights 	<ul style="list-style-type: none"> Whenever the youth is not eligible for Kin-GAP, they are eligible for AFDC-FC until 21 Re-entry rights 	Not eligible	Not eligible
Relative GUARDIANSHIP: Through PROBATE	Not eligible	Not eligible	Not eligible	<ul style="list-style-type: none"> Eligible until youth turns 18 or, in some cases, age 19 or HS graduation No re-entry
Relative GUARDIANSHIP: Through DEPENDENCY	<ul style="list-style-type: none"> Youth eligible for federal or state Kin-GAP until age 18 and, in some cases, until age 21. Re-entry rights after 18. 	Not eligible	Not eligible	<ul style="list-style-type: none"> Eligible for CalWORKs if not receiving Kin-GAP (but these kin should get Kin-GAP)
ADOPTION through Family Court or private adoption agency (relatives or non-relatives)	Not eligible	Not eligible	Not eligible UNLESS child meets criteria for SSI	<ul style="list-style-type: none"> Relatives can receive CalWORKs until youth turns 18 or, in some cases, until 19 or HS graduation No re-entry
ADOPTION through DEPENDENCY court (relatives or non-relatives)	Not eligible	Not eligible	<ul style="list-style-type: none"> Youth eligible for federal or state AAP until age 18 and, in some cases, until age 21. Re-entry rights after 18. 	<ul style="list-style-type: none"> Relatives can receive CalWORKs if not receiving AAP (but these kin should get AAP)

SUPPORTING THE CHILD, PARENT AND CAREGIVER

RECOMMENDATIONS FOR REFORM

GOAL OF OUR RECOMMENDATIONS

- 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:
 - Supporting Children and Families: Ensuring Services and Resources are Provided to the Child and Family
 - Avoiding Legal Limbo, Safeguarding the Child, and Promoting Family Integrity
 - Tracking Progress and Moving Toward Holistic Reform

CFT to Identify Relative
 Child and family voice regarding which relative is the preferred placement – include navigators

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

Identify relative
 Expand kinship navigation services and develop best practices model

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


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

Juvenile Court Review
 Require juvenile court to independently review CWS investigation

Temporary Guardianship Not a Bar to Dependency
 granting a temporary guardianship through probate is not considered to be the establishment of a suitable custodian

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

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

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

Funding for Guardianships
 Ensure any guardianship ordered through dependency court receives Kin-GAP or AFDC-FC

Ensure Kin Approval
 Improve RFA process, streamline emergency placements, increase training of RFA workers

Data
 Collect targeted data and implement mechanism within probate court to track CPS cases

Children's Court




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

- 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.

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



Counsel for Candidates

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

- 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.

ATTORNEYS ARE EFFECTIVE

- A multi-year study of child welfare cases brought in the New York City courts to determine whether the kind of legal representation provided to parents can make a difference in the outcome of cases.
- A few key findings included:
 - Multidisciplinary representation reduced children's time in foster care by nearly 4 fewer months during the 48 months following the petition filing, through faster early reunification outcomes, as compared to Panel representation. This amounts to up to nearly \$40 million annual savings in foster care board rates for NYC.
 - The family defense offices allowed children to be permanently released to relatives more than twice as often in the first year of a case and 67% more often in the second year. These families may otherwise have been permanently dissolved or the children may have spent their childhood separated from their family and aged out.
 - 27 % more children would be reunified with their families within six months if their parents had multidisciplinary representation than if their parents had panel attorneys.
 - Of those children who could not be returned to their families, 40% more children ended up with a permanent disposition of guardianships when their parents had multidisciplinary representation than children whose parents were represented by panel lawyers.

Jurisdictions can now seek federal reimbursement for the cost of legal representation for eligible children and their parents.



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 foster care

IV-E FUNDING FOR COUNSEL FOR CHILDREN & PARENTS



Identify relative

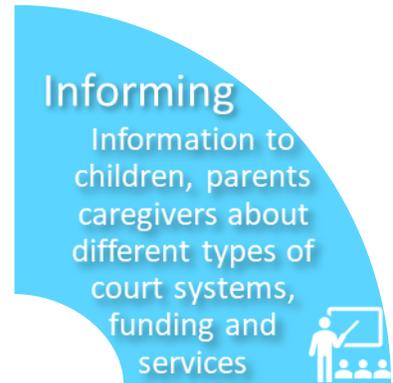
Expand kinship navigation services and develop best practices model



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

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**

- Talk to families about Voluntary Placement Agreements
- Utilize the SOC 155 any time the parent and child welfare agency are agree to a plan for temporary care of the child outside the parent's home

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

Temporary Guardianship Not a Bar to Dependency

granting a temporary guardianship
through probate is not considered
to be the establishment of a
suitable custodian

To address impact of Kaylee H., clarify that granting a temporary guardianship through probate court is not considered to be the establishment of a suitable custodian or a determination that the temporary guardian is able to protect the child from the risk posed by the parents' behavior permanently.



Avoiding Legal Limbo and Safeguarding Children While Promoting Family Choice



- In the juvenile court's independent review, require the court to determine:
 - Whether the child comes with § 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.



Avoiding Legal Limbo and Safeguarding Children While Promoting Family Choice

- Talk to families about § 360(a) guardianships
- Utilize VPA for six months prior to the § 360(a) guardianship to ensure the kinship caregiver can receive Kin-GAP support

Juvenile Guardianship

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



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



\$ Funding for Guardianships

Ensure any guardianship
ordered through dependency
court receives Kin-GAP or
AFDC=FC

- Amend § 360(a) to allow for the provision of state-only Kin-GAP benefits to any child who has a guardianship established under § 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.

- 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

Ensure Kin Approval

Improve RFA process, streamline emergency placements, increase training of RFA workers

- Increase training of RFA workers and county welfare workers across the state to improve understanding of the options to approve a relative's home
- Develop timelines for court hearing to consider relative's request for placement
- Clarify capacity alone cannot be used to deny placement of siblings together



Tracking Progress and Moving Toward 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 Toward 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.



ANA'S STORY

Hidden Foster Care

“My oldest niece came to live with us, but was never placed in our home through foster care. I was willing to provide a home to all of them and didn't understand the ramifications of the different ways they came to live with us at the time.”



“The lack of a formal foster care placement was devastating for my oldest niece. As soon as she graduated from high school, I was told by our social worker that she had to move out because the county considered her a risk to the other children... Because she was not in foster care, she did not qualify for extended foster care and she lost her Medi-Cal. It was a terrible feeling to be helpless to do anything for her.”



“He was signed up in his school as a homeless student because the school did not consider us to be his caregiver. We didn’t really have any rights to advocate for his needs because we were not actually the parents and there was no formal placement.”





“What happened to my oldest niece and nephew shouldn’t have happened.

But, because the dependency system never opened a case for my niece, likely because they thought she was too close to turning 18, and because the delinquency system treated us as a parent and refused to place in our home, they were both denied services and supports they needed for years.”



Understanding Hidden Foster Care

<https://vimeo.com/392297199>

DISCUSSION

