



The Human Impact of Bypassing Foster Care for At-Risk Children — 2023 Update:

Building a Continuum of Support for Families Diverted

ALLIANCE
for **CHILDREN'S**
RIGHTS

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INTRODUCTION



The father is incarcerated, the mother left and never returned, so I filed a missing person report. I was told if I didn't get guardianship she would go to CPS/foster care."¹

In 2019, the Alliance for Children's Rights and Lincoln Families published a report highlighting research and policy recommendations on the phenomenon of hidden foster care, wherein a child welfare agency bypasses the formal foster care process to "place" a child in a relative's home. We developed the recommendations with input from those with lived experience and service providers from across the child welfare system through a series of focus groups, interviews and surveys with families diverted from foster care, child welfare workers, kinship service providers, minors' and parents' counsel, and social services agency staff across California. In the years since, we have used these insights and continued to engage critical stakeholders in conversations to drive reform and raise awareness about hidden foster care, both in California and nationally. This brief provides an update on the progress of our policy recommendations and the integration of those recommendations into the Alliance's broader advocacy to address systemic disproportionalities and disparities in the child welfare system.

¹All quotes emphasized are from primary research through focus groups, surveys, and interviews.

POLICY RECOMMENDATIONS

The following recommendations comprise our holistic vision for enhanced due process protections, greater family decision-making power, and increased access to supports and services for those families currently being diverted from the child welfare system through the practice of hidden foster care. When a child welfare agency diverts a child to a relative’s home, the supports, rights, services, and representation provided through foster care are denied to the child, parent, and caregiver. Diversion means that the child and caregiver do not receive monthly financial support, education rights, case management, and other supportive services, despite having experienced the same kind of trauma and family separation as children in the formal child welfare system. Further, because the diversion process does not include a change in legal custody, hidden foster care creates confusion around whether kinship caregivers hold the authority to make education, healthcare, or other decision for the children in their care. Diversion also interferes with the parent’s and child’s right and ability to work toward reunification, one of the primary goals of child welfare. To effectively resolve the identified challenges, several of the policy recommendations must be implemented simultaneously, which is what the Alliance and our partners have worked to accomplish through our advocacy.

The roadmap to reform is detailed in the graphic below:



To date, policy advocacy by the Alliance and its partners has resulted in the following significant reforms:

- Following the passage of a Board of Supervisors motion in May 2022, Los Angeles County hired Vivek Sankaran, director of the Child Advocacy Law Clinic at the University of Michigan, to lead an effort to assess the feasibility of a countywide pre-petition legal representation model. Preventive legal representation is critical to address the due process concerns implicated by the frequent use of safety plans and other informal family separations that occur outside of the child welfare system. Public Counsel leads the core workgroup charged with implementing this model.
- Assembly Bill 260 (Chapter 578, Statutes of 2021), sponsored by the Alliance, updates probate and dependency court procedures when the probate court believes that a child who is subject to a probate guardianship petition has experienced hidden foster care. AB 260 allows the probate court to refer cases for a child welfare investigation and for juvenile court review without limiting the probate court's ability to take immediate action to protect the child in the interim. Specifically, AB 260 clarifies that a probate court order of temporary guardianship does not limit the juvenile court's ability to commence dependency proceedings.
- The Alliance and partners worked collaboratively with the Judicial Council of California on developing and revising forms to implement AB 260, including informational forms that provide comprehensive information with which families, including potential guardians, can evaluate and make decisions about available out-of-home-care options. For more information, see <https://allianceforchildrensrights.org/resources/navigating-probate-dependency-courts-ab-260/>.

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- Assembly Bill 2309 (Chapter 780, Statutes of 2022), co-sponsored by the Alliance and the California Alliance of Caregivers, requires the dependency court to respect a parent's preferred guardian for their child if the parent(s) does not wish to engage in family reunification and family maintenance services, encouraging the use of dependency court guardianships and promoting family decision making.
 - Senate Bill 354 (Chapter 687, Statutes of 2021), co-sponsored by A New Way of Life Reentry Project, Alliance for Children's Rights, Children's Law Center of California, County Welfare Directors Association of California, Legal Services for Prisoners with Children, Starting Over, Inc., and Underground Scholars at UC Riverside, makes the following changes to the Resource Family Approval (RFA) and relative placement processes:
 - Ensures that any existing relationship between a relative caregiver and a child is considered in decisions regarding home approval and placement;
 - Encourages county child welfare agencies to support relatives in accessing necessary supplies, such as cribs, car seats, and booster seats;
 - Broadens the list of convictions that qualify for exemptions and simplified exemptions;
 - Clarifies the court shall use its independent judgment in placement decisions.
 - Expands the eligibility criteria for the Approved Relative Caregiver (ARC) program.

For more information, see [**The Zepedas' story: How a law change built their future with Selena.**](#)

- Both SB 354 and AB 2309, described above, will improve data collection by requiring counties to report the impact of criminal history on RFA applications and various data points related to child welfare investigations that result in an informal plan for out-of-home care.

SHARING INFORMATION AND RESOURCES

Supplementing our advocacy work, the Alliance proactively engages in information and resources sharing to assist community members, including caregivers, parents, youth and service providers, in understanding and implementing law and policy changes. We have developed training resources and offered multiple trainings on “Understanding the Options for Out of Home Care.” The training focuses on supporting families in making informed decisions about out of home care, including reviewing the out of home care options (foster care, probate guardianship, voluntary placement agreements, and other options including caring for a child without systems involvement) to help caregivers understand those options and the consequences of systems decisions, and to evaluate the respective supports and service including:

- Court Procedures;
- Education;
- Licensing and Approval;
- Permanency, and
- Other Supports and Services.

Resources for community trainers include a trainer’s script, training manual, presentation, and pre- and post-tests. The training includes self-advocacy information to assist caregivers in conversations with child welfare agencies including an out of home care options fact sheet, self-advocacy guide: voluntary placement agreements. These materials can be found at: <https://allianceforchildrensrights.org/resources/options-for-outofhome-care/>.

As well, we have collaborated with partner advocacy organizations on numerous community-based trainings on “Removing Barriers for Relative Placement” focused on the implementation of SB 354 including information on the exemptions process to support families.

LOOKING FORWARD

Considerable overlap exists between the Alliance’s campaign to reform hidden foster care practices and our **Whole Families/Whole Communities Campaign**, which aims to address the racial disproportionality and disparities in the child welfare system. In recent years, some practitioners and advocates have embraced kinship care as a remedy for the harmful effects of family separation and its attendant racially disparate impacts. Though kinship placements can help minimize the trauma of separation, diversion often occurs in the context of threats of coercion by the child welfare system. This reinforces a racialized power dynamic causing families of color—particularly those experiencing poverty—to make decisions that are not truly voluntary. It is imperative for federal and state agencies to uphold their commitment to racial equity by acknowledging the problem of hidden foster care and providing the resources necessary to understand its impact around the country. For more information about the national movement to address hidden foster care, see <https://www.unitedfamilyadvocates.org/hidden-foster-care>.

We will continue to explore and pursue policies that advance our holistic vision for enhanced due process

protections, greater family decision-making power, and increased access to supports and services for those families currently being diverted from the child welfare system through the practice of hidden foster care in concert with our campaign to address racial disproportionality and disparities in California's child welfare system.

In the immediate future, in the 2023 legislative session, the co-sponsors of SB 354, along with the California Tribal Families Coalition, are co-sponsoring **SB 824 (Ashby)**, which would expand on the success of SB 354 to remove barriers and create more opportunities in the foster care system for children to be placed with non-relative extended family member caregivers regardless of a prior criminal conviction, provided that the conviction does not endanger the child; and to ensure that these caregivers receive ongoing support if they subsequently assume guardianship or adopt the child.