

MAY 2021

Understanding the Options for Out of Home Care

Foster Care, Probate
Guardianship, VPAs,
and Other Options to
Support Children

ALLIANCE
for CHILDREN'S
RIGHTS



FREQUENTLY ASKED QUESTIONS

Frequently Asked Questions

Court Procedures

Q: How do I request court documents for the child in my care?

A: In **Juvenile Court**, records are confidential. Only certain people, including the minor and their parent or guardian, can submit a request for case records. Some counties, including Los Angeles County, have additional local rules and forms that they require before the Juvenile Court grants access. Generally, caregivers and resource parents are not entitled to request records. For more information, see Welfare and Institutions Code 827, California Rules of Court, rule 5.552, and JV forms [569](#), [570](#), [571](#), and [572](#).

Probate Court records are available at the courthouse where the probate guardianship petition was filed. Caregivers can contact the court clerk to request copies. There may be an associated fee. Note that appointments may be necessary in order to speak with a court clerk as a result of COVID-19 shutdowns or reduced hours. Please check the court's website for more information.

Q: Are there any circumstances in which an attorney can be appointed for me?

A: In **Juvenile Court**, a caregiver of a foster child generally is not a party to the dependency court case and is not entitled to an attorney. If the caregiver requests de facto parent status (described below), then the caregiver becomes a party to the case and can retain a lawyer at their expense. In some circumstances, the court may deem it appropriate to appoint a lawyer at no cost.

In **Probate Court**, the caregiver is not entitled to an attorney but can retain a pro bono or paid attorney to represent them.

Q: What does reunification look like for the child and their parent(s) in Juvenile Court?

A: When a child is in foster care through the **Juvenile Court**, the county agency is required to provide and arrange family reunification services with the goal of reuniting the child with their parent. Reunification services are available when a child has been placed in foster care or is living with a previously noncustodial parent under **Juvenile Court** supervision. Generally, these services are limited to 12 months, but under certain circumstances (including the child's age and the reasons for removal) the **Juvenile Court** may extend or limit the duration of reunification services. For example, for a child under three years old, the **Juvenile Court** generally limits reunification services to six months.

Reunification services are documented in the family's case plan/reunification services plan and may include counseling, parenting classes, vocational training, visitation, anger

management classes, drug rehabilitation programming, housing navigation, transportation, and anything else meant to alleviate the reasons for removal.

After the court-ordered period of reunification services, the **Juvenile Court** will consider the parents' progress toward their reunification goals and either return the child home, extend the reunification period to give the parent more time to make progress, or terminate reunification services and order a permanent plan—a plan for the child to live outside of the home for the long term, like adoption or guardianship.

Q: How do visitation requirements in Juvenile Court and Probate Court differ?

A: Visitation is critical for ensuring that children maintain family ties and reducing the trauma of separation. For children in foster care, the **Juvenile Court** is required to consider and order visitation between the child and their parents, siblings, and grandparents, except in limited circumstances when visitation would be unsafe for the child. The **Juvenile Court** can continue to make and revise visitation orders even after reunification services have been terminated or the child has exited foster care to legal guardianship. Visits may be supervised or unsupervised. The placing agency is responsible for overseeing visitation and coordinating logistics.

Any parent or person with an interest in a **Juvenile Court** case can request a change in orders under Welfare and Institutions Code section 388(a). Siblings can request visitation under Welfare and Institutions Code section 388(b). For both requests, use the Judicial Council's [JV-180 form](#). For more information on how to request to change a court order, see [Advokids' How to Request a Change in Court Order](#).

In **Probate Court**, legal guardians may facilitate visitation with a parent at their discretion. If a parent wants a formal order for visitation, parents may ask the court to order visitation. Parents must request visitation; the court may not automatically consider it. Visits can be supervised or unsupervised, as determined by the court, and the court may require the parent and guardian to enter into an agreed-upon visitation schedule. If the court later terminates the guardianship, then the former guardian can ask the court to order continued visitation between the child and former guardian. The parent and the guardian are responsible for coordinating visitation.

Q: What is de facto parent status? How do I request it?

A: A de facto parent is a caregiver (either current or recent) of a child who has been placed in foster care. The court can determine that a caregiver has de facto parent status if the caregiver has assumed the role of the child's day-to-day parent for a significant period of time. If the court agrees that a caregiver is a de facto parent and grants de facto parent status, then the de facto parent can participate as a party in the dispositional hearing and any later hearings. De facto parents can retain an attorney and present evidence. De facto parent status, by itself, does not give any automatic rights to reunification services, custody, or visitation. Caregivers can use the Judicial Council Forms [JV-295](#) and [JV-296](#) to request de facto parent status.

Q: How are the court procedures for foster care placement different if the child is a ward of the juvenile delinquency court?

A: In California, **Juvenile Courts** can hear dependency matters (related to alleged abuse or neglect of a child) and delinquency matters (related to alleged violations of the law by a child). Although the majority of youth in foster care have been removed from their homes by the Juvenile Dependency Court, the Juvenile Delinquency Court also has authority to order removal and placement in foster care under Welfare and Institutions Code section 727(a)(3). Following such an order, the Juvenile Probation Department can place the child in a range of foster care settings, including placement with a family member. All the rights and protections that apply to foster youth (including relative preference, reunification services, Resource Family Approval, legal representation, financial support, education rights, and permanency options) apply to these probation-supervised foster youth. However, one key difference is that parents are not appointed legal counsel in Juvenile Delinquency Court.

It is important for kinship caregivers to know that these foster care rights, protections, and services do not attach unless and until the Juvenile Delinquency Court makes a formal placement order under Welfare and Institutions Code section 727(a)(3). If the court makes a “Home on Probation” order with permission to reside with a relative, that is not a formal placement order, and the child will not be considered to be in foster care.

Education

Q: **What K-12 educational supports and services are available to children under each out-of-home care option?**

A: Children and youth in foster care have a right to school stability and can remain in their “school of origin” even if their placement changes. If their juvenile court case closes, elementary and middle school students can stay at their school of origin until the end of the school year, and high school students can stay at their school of origin until they graduate. The decision to stay at the school of origin is made by the youth’s Education Rights Holder (ERH),¹ and caregivers are entitled to financial reimbursement from the child welfare agency for costs related to transporting the child to their school of origin.

These and other education rights, like immediate enrollment in a new school or entitlement to partial credits and state minimum graduation requirements, apply to children who are the subject of a juvenile dependency or delinquency court petition, regardless of where they live. This broad definition includes all children and youth in foster care through the **Juvenile Court**, but it does not include children and youth in probate court guardianships or “informal” kinship care, if they are not otherwise subject to juvenile court jurisdiction. Although children and youth in foster care under a Voluntary Placement Agreement (VPA) are not subject Juvenile Court jurisdiction, caregivers should consult their county about whether certain foster youth education services, such as funding for transportation to their school of origin, are available to families with VPAs.

¹ An Education Rights Holder (ERH) is the person with authority to make education-related decisions on a child’s behalf. Usually, the child’s parent is the ERH, but for children in Juvenile Court, it may be appropriate for the court to appoint a different ERH. The California Rules of Court governing appointment of an ERH can be found [here](#).

For more information, see the Alliance for Children’s Rights’ [Foster Youth Education Toolkit](#).

Q: What postsecondary educational supports and services are available under each out-of-home care option?

A: There are many postsecondary educational supports and services that are available to students who are currently or formerly in foster care. See John Burton Advocates for Youth’s [Financial Aid Guide for California Foster Youth](#) for a comprehensive overview. The definition of a “foster youth” varies depending on the type of support or service. For example:

- Chafee Education and Training Vouchers of \$5,000 are available to youth who were dependents or wards of the **Juvenile Court** who were living in foster care at any point between ages 16-18. Chafee grants are not available to youth who were living with a caregiver subject to a probate court legal guardianship, VPA, or informal caregiving arrangement.
- “Independent Status” for FAFSA and CalGrant, which exempts eligible students from reporting their parents’ or caregivers’ financial information in their financial aid applications, is based on whether the student experienced one of the following at any time since they turned age 13:
 - Both parents were deceased,
 - The student was in foster care,
 - The student was a dependent or ward of the court, or
 - Someone other than the student’s parent or stepparent had legal guardianship over them, as determined by a court in their state of residence.

Therefore, a youth who was in foster care placement (through a court order or a VPA) or a probate court legal guardianship could assert Independent Status for purposes of financial aid. A student in an informal kinship care arrangement would not meet any of the above criteria.

- Campus support programs, such as Guardian Scholars and Extended Opportunity Program and Services (EOPS), exist across the state community college and state university system, and eligibility varies by school/program. Some programs are tied to foster care history or Juvenile Court involvement, while others include a broad population of students who qualify as low-income.

Licensing and Approval

Q: Tell me more about the process of becoming a foster parent for a child in my family.

A: Resource Family Approval (RFA) is California’s process of becoming an approved home for children in foster care. In the past, there were multiple different processes for

licensing different types of foster care providers. Under RFA, all **Juvenile Court** caregivers, including relatives, nonrelatives, legal guardians, and adoptive parents, go through the same approval process. RFA includes:

- A home health and safety assessment;
- A background check on all adults in the home, including obtaining any appropriate exemptions;
- A “family evaluation,” which is a comprehensive inquiry into the applicant’s personal and family history and environment;
- Preapproval training; and
- References and other documentation, such as DMV reports, health screenings, and income and employment information.

A child may be placed with a kinship caregiver prior to completion of the RFA process and is eligible for Emergency Caregiver funding (see below for additional information). Completion of RFA does not entitle a prospective caregiver to placement.

For more information about RFA, the Alliance for Children’s Rights’ RFA Guide & Toolkit can be found [here](#), and CDSS posts updated RFA policies (including flexibilities created in response to COVID-19) on its website [here](#).

Q: If a child is placed in my home on an emergency basis, can I receive financial support while Resource Family Approval is pending?

A: Yes, financial support equivalent to the basic foster care rate is available to caregivers who have a child placed in their home and have applied for Resource Family Approval, and are awaiting full approval. This Emergency Caregiver (EC) funding is available when:

1. The **Juvenile Court** made an emergency or compelling reason placement pursuant to Welfare and Institutions Code section 309(d), 361.45, 727.05, or 16519.5(e);
2. The caregiver’s home has been assessed pursuant to Welfare and Institutions Code 361.4 or 727.05, or has successfully completed the home environment assessment portion of the RFA process;
3. The child is not otherwise eligible for other funding programs, such as Aid to Families of Dependent Children-Foster Care (AFDC-FC) or the Approved Relative Caregiver (ARC) Funding program, while placed in the caregiver’s home;
4. The county has completed an application for the Emergency Assistance Program;
5. The child resides in California; and
6. The caregiver has submitted an RFA application.

In FY 21-22, EC funding is available for up to 120 days and it can be extended up to 365 days, depending on the circumstances. In FY 22-23 and subsequent years, EC funding is available for up to 90 days, consistent with the expected timelines for Resource Family Approval, and it can be extended up to 180 or 365 days, depending on circumstances. EC funding ends once the caregiver is approved or denied as a resource parent or if the

child is no longer placed in the home. The beginning date of aid is the date that the child was placed in the home. For more information, see Welfare and Institutions Code section 11461.36 and [All-County Letter 20-93](#).

Q: Do I need Resource Family Approval to enter a Voluntary Placement Agreement to care for my grandchild?

A: No, caregivers of children under a VPA do not need to be approved as a resource family. If the child welfare agency decides to place a child in a family home under the terms of a VPA, the agency must complete a California Law Enforcement Telecommunications System (CLETS) and Child Abuse Central Index (CACI) background check of all adults in the home and a home health and safety inspection, but no other parts of the RFA process.

Q: Can I become the legal guardian or resource parent of a child in my family who is living in a different county?

A: Yes. Counties may assess a prospective resource parent who lives in a different county from the child. County policies vary as to whether RFA is completed by the county of jurisdiction or the caregiver's county of residence.

Caregivers can also petition to become **Probate Court** legal guardians for children who are living in a different county and should take care to file the guardianship petition in the appropriate county. The appropriate county depends on a few factors, including where the child will be living in the long term and the rules of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). It may be advisable, both for the strength of the guardianship petition and for ease of determining the appropriate county in which to file, that the child live with the prospective legal guardian for at least six months prior to filing the guardianship petition. In that case, the prospective guardian generally would file the guardianship petition in the county where they reside with the child.

Q: Does the immigration status of the caregiver affect their out-of-home care options?

A: Immigration status should not affect the out-of-home care options that are available to a family. For children and caregivers involved in the foster care system, the California Department of Social Services' Resource Family Approval Written Directives prohibits discrimination against any RFA applicant based on citizenship, immigration status, and primary language. For probate court legal guardianships, there is no requirement related to immigration status, and the prospective guardian need not disclose their immigration status. Caregivers should speak with a qualified immigration attorney for advice and assistance if specific concerns about their immigration status arise.

Permanency

Q: What is legal permanency? What are some different pathways to guardianship and adoption?

A: Permanency is a term that is widely used in the **Juvenile Court** system. There are two types of permanency: relational and legal permanency. Relational permanency is a permanent supportive connection that a young person has with a family member or non-relative extended family member (NREFM), without a formal legal status. Legal permanency is a court-ordered legal relationship between child and caregiver. Relational permanency is extremely important for children in foster care, but for purposes of this question, we will focus on legal permanency.

The **Juvenile Court** can order a permanent plan of reunification with parent; adoption; legal guardianship; placement with a fit and willing relative, or “another planned permanent living arrangement.”

- Reunification is the return to the home of the parent after a period of removal and out-of-home placement, leading to the end of the Juvenile Dependency Court case.
- Adoption is a legal process that permanently transfers all rights and responsibility of a child from the biological parent(s) to the adoptive parent(s). The Juvenile Dependency Court case closes at adoption. Note that adoption is also a permanency option for nonminor dependents who turn 18 in foster care.
- Guardianship is a legal relationship created when the court appoints or orders a non-parent to have custody of a child. Birth parent rights are not terminated in a guardianship, and courts can require parent visitation for children in guardianships. The court may choose to close the case or keep the case open after establishing guardianship.
- Placement with a fit and willing relative is a permanent plan for children who are placed with a relative who has demonstrated a commitment to care for the child in the long term but does not want to pursue a legal status like adoption or guardianship for various reasons.
- “Another planned permanent living arrangement” (known as “APPLA”) is a permanent plan that is available if the other, more highly preferred permanency options are not in the child’s best interest, and if the child is age 16 or older.

For children in foster care, permanency discussions begin as early as the first out-of-home placement. The child welfare agency is responsible for developing a concurrent plan if the child and parent do not reunify after the provision of reunification services. Once the period of reunification services elapses (usually around 12 months), the **Juvenile Court** holds permanency hearings and may ultimately order a hearing to select and implement a permanent plan pursuant to Welfare and Institutions Code 366.26 (also known as a “.26”) hearing. At this hearing, the court can order adoption or guardianship.

Kinship caregivers of a child who is not in foster care still have the option of pursuing adoption or guardianship outside of the foster care system. As described throughout this

document, the **Probate Court** can order a legal guardianship. Caregivers can also file for an independent adoption. More information about the difference between foster care (agency) adoptions and independent adoptions can be found on the [California Department of Social Services' website](#).

Kin caregivers should ask about the types of financial support and case management services that are available under each option. In many cases, there are significant differences between the supportive services that prospective guardians or adoptive parents would receive if permanency were established in the **Juvenile Court** compared to what they would receive if permanency were established outside of foster care.

Q: What ongoing services and supports are available to children who exit foster care to legal guardianship vs. adoption? Is there anything that the child would “lose” if adopted?

A: Some key differences between legal guardianship and adoption are:

- Parental rights terminate in adoption; they do not terminate in guardianship.
- Adoptive parents can make decisions about visitation; the **Juvenile Court** can order visitation for families in guardianships.
- A child’s last name may be changed as part of the adoption process, but not for guardianship.
- Birth parents can request to have their child return to them after the child exits to guardianship; this is not an option if a child exits foster care to adoption.

There are also key similarities between guardianship and adoption. Adoptive parents and legal guardians must complete the Resource Family Approval (RFA) process. Typically, adoptions and guardianships are eligible for monthly financial support through the Kinship Guardianship Assistance Payment program (Kin-GAP), the Adoption Assistance Program (AAP), and the Aid to Families with Dependent Children-Foster Care program (AFDC-FC). Children in adoptions and guardianships also may be eligible for certain types of postsecondary financial aid and Independent Living Program (ILP) services, depending on when they were in care and when they exited to guardianship or adoption.

In response to concerns that older youth may lose certain supports and services if they were to exit to permanency (rather than remaining in foster care) during their transition age years, California now allows monthly Kin-GAP and AAP payments to extend up to age 21 if the young person exits to guardianship or adoption at age 16 or older or has a disability that warrants ongoing care. California also allows monthly AFDC-FC payments to nonrelative legal guardianships (established through **Juvenile Court**) to continue up to age 21 regardless of the age the guardianship was established. Although these youth are not eligible to participate in Extended Foster Care after the age of 18, they continue to receive financial support and are eligible for Independent Living Program services.

Q: I have a probate court legal guardianship for the child of a family friend who is not related to me. A child welfare agency case worker told me that I have an “open case” for purposes of foster care benefits only. Does this mean that there is an active child welfare case?

A: No. A **Probate Court**-ordered legal guardianship with a non-relative extended family member (e.g., a family friend) may be eligible for monthly financial support through the state Aid to Families with Dependent Children-Foster Care (AFDC-FC) program. Because the county child welfare agency is responsible for administering AFDC-FC to children and families in their county, they may open an administrative case for purposes of determining the family's eligibility for, and amount of, AFDC-FC payments. Depending on the county, child welfare agency case workers may meet with families in regular intervals to confirm eligibility and may even provide some additional case management support (such as referrals to community resources). This does not mean that the child is in foster care, has a foster care case, or has a child welfare worker. Unless the child welfare agency separately files a dependency petition on the child's behalf, the child is under the jurisdiction of the **Probate Court**, not the **Juvenile Court**.

Other Supports and Services

Q: Tell me more about what a Voluntary Placement Agreement (VPA) is and how I can request one. I am caring for a child in my family but the only options I was given were foster care or getting a probate guardianship.

A: A Voluntary Placement Agreement (VPA) is a written contract between the county child welfare department and the parent(s) or guardian(s) of the child. A VPA must specify the legal status of the child, as well as the rights and obligations of the parent(s) or guardian(s), of the child and of the county child welfare department. In California, [form SOC 155](#) is used as a standard VPA. A VPA is an alternative to informal kinship care that entitles caregivers, children and parent(s) or guardian(s) to receive benefits and supportive services.

The parent(s) or guardian(s) of the child initiate the voluntary placement process by requesting the assistance of the county child welfare department. The child's parent or legal guardian requests the custody change effectuated through a VPA and must agree to the terms of the VPA. **If the parent or legal guardian cannot be located or is not willing to agree to the terms of the VPA, this option may not be available.**

A VPA places a child in out of home care, ideally with a relative or family friend, who is approved by the county. Voluntary placement is a time-limited approach intended to result in the child's safe return to their home without the intervention of the Juvenile Dependency Court. VPA is the only legal mechanism for out of home placement of a minor without juvenile court adjudication in California.

VPAs are limited to a term of six months, while parents are provided with reunification support and services, but can be extended for an additional six months through a formal administrative process. Caseworkers write a services plan for the child, talk to the parent about the plan (including the parent's responsibilities under the plan) and arrange for the services listed in the plan.

Under a VPA, parent(s) or guardian(s) retain legal parent status but agree to give custody and control of the child to the county welfare department and authorize the

county welfare department to give legal consent for medical care, school attendance and other services for the child. Parent(s) or guardian(s) agree to a specific schedule of visitation, which may be supervised or unsupervised depending on the circumstances. Parent(s) also agree to do what their child's service plan requires them to do. A parent may terminate the VPA at any time.

The caseworker places the child in an appropriate home or facility when one is found. Before the child moves in, the county welfare agency does a health and safety check of the caregiver's home and a review of the state criminal records system and the Child Abuse Central Index (CACI). The caregiver is not required to obtain Resource Family Approval.

Caregivers of children subject to a VPA receive monthly payments to feed, clothe, and meet the material needs of children placed in their care. The base rate for resource family placements is currently \$1,037 per month per child and additional funds may be available to support children with specialized needs. Children subject to a VPA also receive full-scope medical and dental coverage through the Medi-Cal program.

The caseworker supporting the family makes monthly visits to the home where the child is placed. Before the VPA expires, the caseworker must do one of the following: (i) return the child to their parents; (ii) refer the child to a licensed adoption agency; (iii) file a formal petition to place the child in foster care (under this option, the child can remain in placement with their current caregiver, including relatives); or (iv) extend the term of the VPA for an additional six months. For more information, see Welfare and Institutions Code sections 11400(o)-(p) and [form SOC 155](#).

Q: Where can kinship caregivers go to get additional training and education to meet the needs of the child in their care?

A: Some resources are available to families in all types of kinship care arrangements, while others are available only to approved resource families.

- The Family Resource Centers Network of California offers a [directory of resources](#) for information on children with disabilities.
- The California Department of Social Services offers a [Kinship Support Services Program](#) to provide non-financial services to relative caregivers and children in their care, designed to help families maintain a stable and supportive environment. These programs are administered by community-based organizations in individual counties.
- The Alliance for Children's Rights provides a wide range of [resources and information](#) for caregivers and advocates.
- The Step Up for Kin Coalition publishes blogs and other informational resources in its [Caregiver Corner](#).
- The California Community Colleges' [Foster & Kinship Care Education](#) Program provides funding to community colleges to offer classes and workshops for current and potential out-of-home caregivers.
- The [California Alliance of Caregivers](#) offers caregiver support webinars with information about policies, services, and resources. To learn more about available resources or for help accessing resources please call the California Kinship Navigator Program at (800) 546-0047.

- Think of Us, in partnership with the California Department of Social Services, provides [virtual support services](#) to kinship caregivers.

Q: What immigration supports are available for unaccompanied minors living with kinship caregivers?

A: Special Immigrant Juvenile Status (SIJS) is a form of immigration relief available to undocumented children under the age of 21 who are not living with their parent(s) due to an order of the **Juvenile Dependency, Juvenile Delinquency, Probate, or Family Court**. SIJS requires the involvement of state courts before a child is eligible to apply for a special immigrant juvenile visa. Youth who are successful in obtaining a special immigrant juvenile visa are then eligible to apply for an adjustment of status to that of lawful permanent resident (a green card). More detailed information on SIJS can be found in the [Kids in Need of Defense SIJS Primer](#) and the [Immigrant Legal Resource Center SIJS Primer for California State Courts](#).

Caregivers who are caring for an undocumented and/or unaccompanied child should consult with an immigration attorney. For more information about SIJS legal services available to caregivers and children in California, please visit the Immigration Advocates Network [Legal Services Directory](#).