



BAY AREA LEGAL AID

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SAFETY AT HOME: DEMANDING CHILD WELFARE SERVICES FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM

How to Use Case Plans and Child
and Family Teams to Advocate for
Family Preservation, Foster Care
Entry, and Permanency within the
Delinquency System

An Advocacy Guide for Juvenile Defenders

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I. Introduction

This resource is a follow-up to our September 2017 guide, titled "Combating Youth Incarceration: How to Leverage Continuum of Care Reform for Placement Instead of Custody"¹ and addresses some of the important child welfare obligations probation departments and juvenile courts owe to justice-involved youth. It aims to provide practical arguments and options for obtaining appropriate services and maintaining youth in their homes, in their communities, and in the least restrictive settings. It also highlights some of the key goals of the child welfare system (family preservation, reunification, and permanency) and the importance of achieving permanency for youth in the delinquency system. This guide is informed by dozens of technical assistance requests from delinquency attorneys across the Bay Area and, we hope, will serve as a starting point for advocacy within the Juvenile Court to enable more delinquency-involved youth to access child welfare services and achieve reunification or permanency.

Underpinning this guide is Continuum of Care Reform (CCR) and the Family First Preservation and Services Act (FFPSA) which represent transformational shifts in the delivery of child welfare services at the state and federal levels respectively. While both of these new laws aim to sharply curb the use of institutional care, they also represent more fundamental shifts in the prioritization and delivery of child

¹ See Forte & Desautels, *Combating Youth Incarceration: How to Leverage Continuum of Care Reform for Placement Instead of Custody*, Bay Area Legal Aid (Sept. 2017) <https://baylegal.org/wp-content/uploads/2017/10/Advocacy-Guide-Leveraging-CCR-for-Placement-Instead-of-Custody.pdf> (as of Jan. 29, 2019).

welfare services. California is still in the process of developing a state plan to implement the newly enacted FFPSA, but thus far it appears likely that the law will continue the trends we've seen or expect from CCR. For a discussion of these trends see our prior resource guide: "Combating Youth Incarceration."²

We predict that FFPSA will have a significant impact on juvenile justice involved youth, and this makes it even more important that advocates are familiar with the laws described below. For an overview of the new federal law and its possible effects on juvenile justice systems across the country see, "Family First Prevention Services Act: Opportunities and Risks for Youth Justice and Campaigns to End Youth Incarceration."³

Whatever changes lie ahead with FFPSA, the fact remains that California's child welfare system is already in the midst of a major culture change. While CCR is often described as group home reform, that is far too narrow a term to adequately describe the scope of the reforms. CCR is not a single legal reform. Rather, it represents a philosophical shift towards a child and family centered practice that utilizes teaming to build case plans and deliver services. CCR aims to "reduce reliance on group homes as a long-term placement setting by narrowly defining the purpose of group care, and by increasing the capacity of home-based family care to better address the individual needs of all children, youth and caregivers."⁴ It is not solely about reducing group care; the ultimate goal is to ensure that every child lives with a committed, permanent, nurturing family.

Meeting this enormous goal requires more than just closing group homes and changing the standards for placing youth in congregate care settings. In order to rise to the challenge, agencies must fully embrace the new Child and Family Team (CFT) approach to assessment, planning, monitoring, and service delivery. The belief that teams should guide decision-making, and the acceptance of children and families as partners in assessment and planning, are not new to California's child welfare system. These approaches have been evolving into the fabric of our child welfare

²Id.

³Pilnik, *Family First Prevention Services Act: Opportunities and Risks for Youth Justice and Campaigns to End Youth Incarceration*, Act 4 Juvenile Justice, http://www.act4jj.org/sites/default/files/resource-files/Family%20First%20Act_and_JJFinalForPosting.pdf (as of Jan. 29, 2020).

⁴ Cal. Dept. of Social Services, *California's Child Welfare Continuum of Care Reform* (Jan. 2015) p. 8 https://www.cdss.ca.gov/cdssweb/entres/pdf/CCR_LegislativeReport.pdf. (as of Jan. 29, 2020).

philosophy for over two decades, and became a real part of the landscape with the inception of wraparound services in 1997. However, these concepts are relatively foreign to the juvenile justice system.

Reforms in the delinquency system have tended less toward trauma-centered supports for families, and more toward the construction of custodial facilities to incarcerate children closer to home. The delinquency system still utilizes its placement array to mete out punishment, and delivers services through a paternalistic lens it calls rehabilitation. Adjusting to a teaming model that values the voices of parents and children more highly than the voices of probation officers will not come naturally.

This does not mean that CCR and its attendant processes are of less importance to youth in the juvenile justice system. Quite the opposite is true. These reforms and philosophical changes have now been codified in law and developed in written policy and guidance. It is critical for advocates to understand the new tools and learn how they can be employed to keep children at home, with families, in their own communities, and in the least restrictive and most home-like settings. When meaningfully utilized, these services – too often dismissed as social work in defense communities – can be powerful tools to combat custody, detention, removal, unnecessary probation conditions, and other harmful approaches.

II. Understanding Child Welfare Services in the Context of Juvenile Justice

Most people reading this will already be aware that California generally prohibits concurrent dependency and delinquency jurisdiction. However, delinquency-involved youth must still be afforded necessary and appropriate child welfare services in California. This ultimately means that probation is responsible for the provision of child welfare services to youth who are under the supervision of the juvenile court pursuant to WIC § 601 and § 602.

California's ban on dual jurisdiction initially developed to overcome a supposed confusion in service delivery between probation departments and child welfare agencies; a "confusion" which often resulted in youth receiving duplicative services

or no services at all.⁵ To address inadequate communication and prevent youth from falling through the gaps, the legislature added WIC § 241.1 in 1989.⁶ The statute created a protocol for determining whether a youth who appeared to come under both jurisdictions would be supervised under the dependency or delinquency system. Thus, the 241.1 report and hearing were born.

The state maintained its complete ban on dual jurisdiction for over a decade. This policy effectively created a one-way flow of youth from the dependency system to the delinquency system. The passage of AB 129 in 2004 finally created a mechanism for dual status in the state.⁷ By the time California began experimenting with dual jurisdiction, it was one of only two states that maintained such a prohibition.⁸ In fact, recently, an entire body of social science and legal research has evolved highlighting the importance of dual status and best practices for managing service delivery to crossover youth.⁹

The move to allow dual status in California began as a pilot, and drew a handful of early adopters, including one Bay Area jurisdiction, Santa Clara County. The Judicial Council's 2017 report to the legislature regarding dual status youth indicated that 18 out of 58 counties had dual jurisdiction protocols, which accounted for 67 percent of the population.¹⁰ Most Bay Area counties are still single jurisdiction counties, and Santa Clara County remains the exception. However, even under Santa Clara's protocol, if a youth who is a 602 ward or who has a pending 602 petition is at risk of parental abuse or neglect, probation must recommend that the Court order a 241.1 report, which may result in dismissal of the delinquency case and transfer to

⁵ For a discussion as to the issues perceived to exist with dual jurisdiction see, *In re Donald S.*, 206 Cal.App.3d 134 (1998).

⁶ Welf. & Inst. Code § 241.1.

⁷ Assem. Bill No. 129 (2003-2004 Reg. Sess.).

⁸ Dunlap, *Dependents Who Become Delinquents: Implementing Dual Jurisdiction in California Under Assembly Bill 129*, 5 Whittier J. Child & Fam. Advoc. 507, 508 (2006) ("This bill allows California to pursue the national trend of dual jurisdiction, followed in some form by forty-eight other states.").

⁹ For an example of this trend see Georgetown University Center for Juvenile Justice Reform & American Public Human Services Association, *Bridging Two Worlds: Youth Involved in the Child Welfare and Juvenile Justice Systems A Policy Guide for Improving Outcomes* (2008)

[https://cjjr.georgetown.edu/wp-](https://cjjr.georgetown.edu/wp-content/uploads/2015/03/BridgingTwoWorlds_2008.compressed.pdf)

[content/uploads/2015/03/BridgingTwoWorlds_2008.compressed.pdf](https://cjjr.georgetown.edu/wp-content/uploads/2015/03/BridgingTwoWorlds_2008.compressed.pdf) (as of Jan. 30, 2020).

¹⁰Judicial Council of Cal., Center for Families, Children & the Courts, Dual-Status Youth Data Standards (AB 1911): 2017 Report to the Legislature (2017) p. 4.

the 300 system.¹¹ Thus, in most situations there remains a choice between the systems rather than a mechanism for the systems to operate simultaneously.

While this document focuses on obtaining child welfare services for youth while they remain under delinquency jurisdiction, the option of serving a youth through the dependency system will be preferable in many cases. **Whenever it appears your client is at substantial risk or there are allegations of parental abuse or neglect, consider advocating for a 241.1 proceeding as a first step.** All too often, youth whose needs are best met in the dependency system are forced to remain subject to delinquency jurisdiction. This may be particularly harmful for youth with competency issues or who otherwise lack the cognitive ability to meaningfully engage with the limited services available in custody or through probation.

To the extent that advocacy for the dependency system to take jurisdiction has been exhausted (including enlisting the help of a civil legal services attorney to file formal applications for investigation into allegations of parental abuse, abandonment or neglect if necessary), there remains an opportunity for the delinquency system to meet the youth's child welfare needs.¹²

We do not mean to suggest that advocating for probation to meet its child welfare obligations will be simple. It will not. Several recent cases in which delinquency attorneys tried to realize the goals of CCR for their clients were met with opposition bordering on the absurd. A few of these cases remain pending on appeal. We are confident more absurdity lies ahead as advocates force courts to address these issues.

Even though it is likely to be met with time-consuming opposition, advocates should zealously pursue the services available through CCR. **A significant percentage of justice-involved youth require and would benefit from child welfare services, but, for a variety of reasons, child welfare agencies will refuse to provide services to these youth. Delinquency attorneys will need to force probation and the courts to meet their obligations and provide these services instead.** To do this, advocates will need to familiarize themselves with the array of child welfare

¹¹ For an example of the joint protocol developed for a dual jurisdiction county, see Dual Status Protocol Santa Clara County Welfare and Institutions Code Section 241.1 (Jan. 2012) https://www.courts.ca.gov/documents/Santa_Clara_Dual_Status_Protocol.pdf (as of Jan. 29, 2020).

¹² Welf. & Inst. Code § 329; Welf. & Inst. Code § 331.

services available, and the legal hooks that can be used to access these services within the delinquency system.

Child welfare services include a broad array of supports and interventions beyond foster care placements

Broadly, “child welfare services” are intended to protect and promote the welfare of all children; prevent or remedy problems that may result in neglect, abuse, exploitation, or delinquency; prevent separation of youth from their families; restore children who have been removed back to their families; and ensure adequate care of children away from their homes when they cannot be returned home.¹³

For youth who have been subjected to abuse, neglect, or exploitation, a continuum of available services must include emergency response, family preservation, family maintenance, family reunification, and permanent placement (e.g., adoption and guardianship). In implementing these services, child welfare agencies will commonly utilize case management, counseling, emergency shelter care, parenting training, and substance abuse testing, among other services.

Some services like respite care and specialty mental health services are not understood by most people to be child welfare services, but are. Specialty mental health services, for instance, are commonly referred to as “Katie A.” services or “Pathways to Well-Being.” “Katie A.” refers to a 2002 class action lawsuit that was filed on behalf of youth in California who were in foster care or at imminent risk of being in foster care.¹⁴ The suit resulted in a settlement agreement requiring the state to establish a framework to provide intensive mental health services to these youth in a community setting.¹⁵ These services include Intensive Care Coordination (ICC), Intensive Home Based Services (IHBS), and Therapeutic Foster Care (TFC).

¹³ Welf. & Inst. Code § 16501; see also, generally, Welf. & Inst. Code § 16500 et seq.

¹⁴ For a general overview of Katie A. and Pathways to Well Being see Cal Dept. of Social Services, Pathways to Well-Being <https://www.cdss.ca.gov/inforesources/foster-care/pathways-to-well-being> (as of Jan. 29, 2020).

¹⁵ *Katie A. v. Bonta*, No. CV02-05662-AHM (SHx), 2011 U.S. Dist. Lexis 140036 (C.D. Cal. Dec. 1, 2011) (Order granting proposed settlement agreement); For a copy of the Stipulated Judgement and Settlement Agreement see <http://www.bazelon.org/wp-content/uploads/2017/03/Katie-A-Stipulated-Judgement.pdf> (as of Jan. 29, 2020).

Together, these services offer youth and their families a higher level of treatment planning, individualized evidence-based interventions, and wraparound therapeutic services that can be provided at home, school, or another community setting that is safe for the youth.¹⁶ Utilizing these services can help stabilize youth in their homes or placements such that removal or change of placement can be prevented.

County probation departments are placing agencies and are responsible for the provision of child welfare services to justice-involved youth and their families

The California Department of Social Services (CDSS) is the single state agency responsible for the provision of child welfare services.¹⁷ While child welfare services are administered at the county level, CDSS remains responsible for overseeing the uniform and adequate provision of services to all foster youth in the state.¹⁸ As the responsible agency, CDSS sets policy for all placing agencies in the state and has the authority to demand compliance of any agency administering Title IV-E foster care services. This includes probation departments.¹⁹ County probation departments are contracted as placing agencies. Each probation department providing child welfare services has an MOU with the county child welfare agency that outlines their respective roles within the county.²⁰

As a contracted child welfare agency, a probation department is supervised by CDSS and bound to follow the state's child welfare policies as set out by the Department. Acting in this role, probation must comply with all requirements to provide child welfare services²¹ to children *in foster care* or identified as *candidates for foster care*. Advocates should identify youth who meet these criteria and use judicial, administrative, or informal mechanisms to ensure young people receive necessary supports.

¹⁶ For more details explaining Katie A. see Young Minds Advocacy, Fulfilling Medi-Cal's Promise: Fact Sheet 2 (Feb. 2016) <https://www.youngmindsadvocacy.org/wp-content/uploads/Fulfilling-Medi-Cals-Promise-Katie-A.-Background-Fact-Sheet-2.pdf> (as of Jan. 30, 2020).

¹⁷ See Welf. & Inst. Code § 10600; Cal. Dept. of Social Services, Manual of Policies & Procedures § 10-051; 42 U.S.C. § 671(a)(2).

¹⁸ Welf. & Inst. Code § 10605.

¹⁹ Id.; see also Welf. & Inst. Code § 10605.2.

²⁰ Welf. & Inst. Code § 11404(a); Cal. Dept. of Social Services, Manual of Policies & Procedures § 29-400; ACL 00-22, <https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl00/pdf/00-22.PDF> (issued March 27, 2000).

²¹ For a definition of "child welfare services" see Welf. & Inst. Code § 16501.

Youth who are “in foster care” includes young people who are dependents when a wardship petition is filed. These young people remain dependent foster youth until a court makes a wardship determination.²² Youth also become foster youth, whether or not they were previously dependents, when subject to a placement order pursuant to WIC 727(a)(3), as well as when they are under the transition jurisdiction of the court pursuant to WIC 450.

Determining which youth are candidates for foster care is more complicated. Federal law defines a candidate as a child who is at “imminent” or “serious” risk of removal from home and placement into foster care. Not every youth who is supervised by or otherwise in contact with a probation department meets this definition. However, it is incumbent upon the probation department to make a determination as to whether a youth is a candidate. CDSS policy requires the probation department to complete an “Evaluation of Imminent Risk and Reasonable Candidacy” screening for each youth at risk of removal.²³ This tool is designed to assist probation departments with identifying youth who are at risk for foster care versus those whose removal may be sought solely on the basis of their delinquency action.

When probation or the district attorney seeks to detain a youth, they should automatically be considered at imminent risk of removal, and a candidacy determination should be made. The same is true of any youth actually detained pursuant to WIC 636. In fact, for a youth who is actually detained, probation should be assessing whether the child is at risk of entering foster care to ensure compliance with its obligations under WIC 636.1.

Once a youth is identified as a candidate for foster care, probation must determine what, if any, services for the parent, child, or family would eliminate the need to remove the child from home.²⁴ When candidacy determinations are made in the early stages of a delinquency case, there is a far greater chance that appropriate services will be identified and in place in advance of disposition. It may even be possible to implement a service plan prior to a jurisdiction hearing—thereby

²² Cal. Rules of Court, rule 5.502(9).

²³ ACL 14-36, <https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2014/14-36.pdf> (issued May 20, 2014) p. 4 (Note the requirement to complete an evaluation for all youth at risk of *removal*, not risk of *removal and entry into foster care*. This is because the evaluation determines whether a youth falls into the latter category.).

²⁴ Welf. & Inst. Code § 628(b).

increasing the chances of a case being sent back to diversion, handled through informal probation, or receiving a deferred entry of judgment. Early case planning may prove particularly useful in cases stemming from a youth's mental health challenges or that result from incidents between family members in the home. Because many of the services at probation's disposal are child welfare services or specialty mental health services, they are available once a youth is established as a candidate for foster care or is in foster care. While it may be standard practice to implement a service plan after disposition, in some cases, youth can actually begin receiving child welfare-linked services far sooner. It is critical that probation engage in a case planning process as soon as possible and implement the plan immediately.

All youth in foster care or identified as candidates for foster care are entitled to case planning because it is the “central unifying tool” through which child welfare services are delivered

The case planning process is the foundation of child welfare service delivery. Both state and federal law mandate that each child in foster care must have a case plan.²⁵ In order to meet federal requirements, a case plan must be a written document, and it must be a discrete part of the case record.²⁶ Advocates may routinely see documents labeled as case plans appended to court reports and social studies prepared for dispositional hearings. Case plans may arrive in such ordinary course that they seem like just another item on probation's checklist. But a case plan is far more than a perfunctory document provided to the court. While it may exist in written form, it is not a static plan. Each case plan represents a current iteration in a process designed to meet the needs of a child and family. As such, **case plans are “evolving documents that should be updated and modified as the needs of the child or youth and family change.”²⁷ Every youth entitled to a case plan is therefore entitled to an ongoing case planning process.**

²⁵ Welf. & Inst. Code §§ 16501.1(a)(1), (3); ACL 14-36, <https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2014/14-36.pdf> (issued May 20, 2014) p. 4 (“If the child or youth is clearly identified as a candidate, then a Case Plan must be developed and documented within it that the plan for the child or youth is placement into foster care unless preventive services are provided and effective.”).

²⁶ 45 C.F.R. § 1356.21(g)(1).

²⁷ ACL 14-36, <https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2014/14-36.pdf> (issued May 20, 2014) p. 7.

Probation must complete a case plan for every youth the court detains if probation recommended detention. Whenever probation has reason to believe that a minor is at risk of entering foster care it must produce a written report to the court pursuant to WIC § 635. The report must indicate the reasons necessitating removal, any history of dependency court involvement or referrals for abuse or neglect, a description of services that might alleviate the need for continued removal, and whether there exist any relatives who are able and willing to provide care for the minor.²⁸ If the probation department recommends detaining a minor, it must provide the court with this report along with pursuant to under WIC § 636(c). If the court detains a youth it must make a finding that “continuance in the home is contrary to the minor’s welfare” and must do so no later than the day it initially orders the youth detained.²⁹ The court’s finding, combined with probation’s submission of a report evidencing risk of foster care entry, trigger the case planning requirement pursuant to WIC § 636.1.³⁰ The conditions requiring a case plan under WIC § 636.1 will always be present when probation recommends that a youth be detained and the court orders detention.

The timeline for completion of an initial case plan is clearly defined in state law and federal regulation. At a minimum, the probation department must produce a case plan within 60 days of a child’s removal from the home or by the disposition hearing, whichever is sooner.³¹ This is the timeline for producing a completed, written document; therefore, probation will need to begin the case planning process much sooner in order to ensure compliance with statutory case planning requirements.

The completed case plan must meet the requirements of WIC § 706.6(c), but it is important to note that the requirements listed in that statute are not exhaustive of

²⁸ Welf. & Inst. Code § 635(d).

²⁹ Welf. & Inst. Code § 636(a)(requiring the court find that “continuance in the home is contrary to the minor’s welfare”); Welf. & Inst. Code § 636(d)(Requiring that a finding that return to the home is contrary to the minor’s welfare must be made on a case-by-case basis prior to detaining a minor); Welf. & Inst. Code § 636(d)(4)(Requiring the court to find that a continuance in the home is contrary to the minor’s welfare at the initial petition hearing or release the youth regardless of whether the hearing must be continued for any other reason.).

³⁰ Welf. & Inst. Code § 636.1(a) (“When a minor is detained pursuant to Section 636 following a finding by the court that continuance in the home is contrary to the minor’s welfare and the minor is at risk of entering foster care, the probation officer shall, within 60 calendar days of initial removal, or by the date of the disposition hearing, whichever occurs first, complete a case plan.”).

³¹ 45 C.F.R. § 1355.21; Welf. & Inst. Code §§ 636.1, 706.6, 16501.1.

all state and federal case plan requirements. Advocates should familiarize themselves with the additional mandates, and argue for their inclusion in the case planning process and document. However, ultimately, CDSS is responsible for the administration and supervision of probation case planning.

As discussed, CDSS is the state agency responsible for ensuring compliance with federal foster care laws as well as the state plan implementing those laws.³² In order to meet its administrative and supervisory obligations, CDSS creates regulations and policies that bind the placing agencies.³³ Policy guidance, issued in the form of All County Letters and All County Information Notices, provide detailed interpretations of relevant laws and lay out specific steps placing agencies must follow. These explicit directives can be effective tools when advocating with the probation departments, and advocates should familiarize themselves with the letters and notices issued by the Department concerning the case planning process and requirements.³⁴ Defenders may also find the rules of court³⁵ and Judicial Council resources³⁶ related to probation foster youth useful in supporting their arguments.

Each case plan and case planning process should reflect the ultimate vision of CCR – that every child live with a committed, permanent, nurturing family. To that end, plans should focus on the maintenance or reunification of the child’s family. Indeed, if the probation department believes that specific supports and services would allow a child to live at home, then the case plan must focus on the needs of the family and the specific services that will meet those needs.³⁷

If the probation department intends to recommend out-of-home placement, it must include a pre-placement assessment of the child and family’s strengths and service needs, and describe the reasonable efforts made to address those needs and prevent removal. The case plan must also contain “[a] description of the type of home or institution in which the minor is to be placed, and the reasons for that placement decision, including a discussion of the safety and appropriateness of the

³² 42 U.S.C. § 671(a)(2); Welf. & Inst. Code § 10600.

³³ Welf. & Inst. Code § 10554.

³⁴ California Department of Social Services, Letters and Notices, <https://www.cdss.ca.gov/inforesources/letters-and-notices> (as of Jan. 29, 2020).

³⁵ Cal. Rules of Court, <https://www.courts.ca.gov/cms/rules/index.cfm?title=five>

³⁶ Judicial Council of Cal., <https://www.courts.ca.gov/cfcc-juvenile.htm>

³⁷ Welf. & Inst. Code § 636.1(b).

placement.”³⁸ In order for a placement to be appropriate, it must be “the least restrictive, most family-like environment that promotes normal childhood experiences, in closest proximity to the minor’s home, that meets the minor’s best interests and special needs.”³⁹ The statutory requirements go so far as to mandate that probation consider placements in a set order of priority,⁴⁰ which, in our experience, probation does not follow. See box listing mandatory order for considering placement alternatives.

Case plans must also contain a variety of other information and documentation related to a child’s education, school setting, the appropriateness of the school setting, and efforts made to maintain the appropriate school setting; the child’s siblings, sibling relationships, and plan for visitation with siblings; a parental visitation plan and schedule; services to be provided to the parent to alleviate any issues related to their caretaking and to help them prepare to provide for their child’s needs; information about the rights of children in foster care and a signed certification that the child received a written copy of the rights; a determination as to whether the child may qualify for Supplemental Security Income and assistance submitting the application; a copy of the child’s consumer credit reports; the child’s most up to date health and education records; and various other components.⁴¹

Order of Priority for Placement Selection
(A) Placement with relatives, nonrelated extended family members, and tribal members.
(B) Foster family homes and certified homes or resource families of foster family agencies.
(C) Treatment and intensive treatment certified homes or resource families of foster family agencies, or multidimensional treatment foster homes or therapeutic foster care homes.
(D) Group care placements in the following order: <ul style="list-style-type: none">(i) Short-term residential therapeutic programs.(ii) Group homes.(iii) Community treatment facilities.(iv) Out-of-state residential treatment.

A case plan is only compliant if it is created in deep consultation with the child and the family. The federal case planning requirements state that a case plan for a child 14 years of age or older “shall be developed in consultation with the child and,

³⁸ Welf. & Inst. Code §706.6(c)(3)(A).

³⁹ Welf. & Inst. Code §706.6(c)(3)(B).

⁴⁰ Welf. & Inst. Code §706.6(c)(3)(B)(d).

⁴¹ Welf. & Inst. Code §§, 706.6, 16501.1; see also U.S. Department of Health and Human Services, Children’s Bureau, Child Welfare Information Gateway: Case Planning for Families Involved with Child Welfare Agencies, <https://www.childwelfare.gov/pubPDFs/caseplanning.pdf> (2018).

at the option of the child, with up to 2 members of the case planning team who are chosen by the child” other than a foster parent or caseworker.⁴²

CDSS also mandates engagement with the child and the family in order to complete a case plan. This includes all components of the plan, from the determination as to whether out-of-home placement is necessary to the services required to support the family. State guidance on case plan development makes clear that children and families are to be centered in the decision-making process. **“During the development of a case plan, professionals should consider the family’s ideas before making their own suggestions. Children, youth, and their families are the best experts about their own lives and preferences and their natural supports have valuable information and resources to share.”**⁴³

As wonderful as this sounds, we know that it doesn’t describe the reality of case plan development for delinquency-involved youth. It has been our experience that it is difficult to get a minor’s voice to be heard, much less have it drive placement decisions, case planning, and care coordination. Without the youth and family’s voices at the center, the case plan goes back to being just a document. That is why it is critically important that advocates familiarize themselves with the new service delivery model at the heart of CCR: the Child and Family Team.

The Child and Family Team (CFT) drives case planning, placement, and service coordination

In general, a Child and Family Team (CFT) includes all or some of the following: the child, parent or guardian, caregiver, other members of the child’s family, the placing caseworker, a representative of the program at which the child is placed, a county mental health representative, a Court-Appointed Special Advocate (CASA) if the youth has one, a representative of the Regional Center if the youth is a consumer, a representative of the child or youth’s tribe or Indian custodian, as applicable, and anyone else the child or their family specifically request to be there.⁴⁴ It can also include treatment and educational professionals as well as more informal support to the child or family, including friends and coaches.⁴⁵

⁴² 42 U.S.C. § 675(1)(B).

⁴³ ACL 16-84, <https://www.courts.ca.gov/documents/BTB25-4E-01.pdf> (issued Oct. 7, 2016), p. 6.

⁴⁴ Welf. & Inst. Code § 16501.

⁴⁵ Id.

CFTs are intended to embody a collaborative, non-adversarial, team-based approach to ensuring that youth, nonminor dependents, and their families achieve positive outcomes.⁴⁶ Meetings are generally convened by probation with the purpose of identifying the strengths and needs of the child or youth and their family. The purpose of the CFT is to include children and families in defining and reaching identified goals.⁴⁷

The CFT process is “based on the belief that children, youth, and families have the capacity to resolve their problems if given sufficient support and resources to help them do so.”⁴⁸ Using this process to center assessments and service delivery around the individual needs of a youth and family can radically shift the outcome.

A CFT and a CFT meeting are not the same. “The CFT is a group of people; a CFT meeting is a functional structure and process of engaging the family and their service team in thoughtful and effective planning.”⁴⁹ This may seem like a distinction that splits hairs, but it is actually very important. A CFT is established for long-term planning and support. It does not begin or end with a meeting. Understanding that, and educating probation and the courts about the distinction, will help ensure fidelity to the CFT process and result in the most meaningful planning.

A CFT process should commence as soon as case planning is required.⁵⁰ In the rare circumstance when a probation-involved youth is placed in foster care without previously qualifying as a candidate, the first CFT meeting must occur within 60

⁴⁶ ACL 18-23, <https://www.cdss.ca.gov/Portals/9/ACL/2018/18-23.pdf?ver=2018-06-01-160245-447> (issued June 1, 2018); ACL 16-84, <https://www.courts.ca.gov/documents/BTB25-4E-01.pdf> (issued Oct. 7, 2016).

⁴⁷ ACL 16-84, <https://www.courts.ca.gov/documents/BTB25-4E-01.pdf> (issued Oct. 7, 2016), p. 6; ACL 18-23, at 2, <https://www.cdss.ca.gov/Portals/9/ACL/2018/18-23.pdf?ver=2018-06-01-160245-447> (issued June 1, 2018)

⁴⁸ California Department of Social Services, Child and Family Teams (CFTs), <https://www.cdss.ca.gov/inforesources/foster-care/child-and-family-teams> (as of Jan. 29, 2020).

⁴⁹ ACL 16-84, <https://www.courts.ca.gov/documents/BTB25-4E-01.pdf> (issued Oct. 7, 2016), p. 3.

⁵⁰ ACL 16-84, <https://www.courts.ca.gov/documents/BTB25-4E-01.pdf> (issued Oct. 7, 2016), p. 8 (“Best practice dictates that meetings should occur as soon as possible for, but not limited to, case planning purposes, placement determination, emancipation planning and/or safety planning.”); see also ACL 17-104, , <https://www.cdss.ca.gov/Portals/9/ACL/2017/17-104.pdf?ver=2017-12-13-144229-463> (issued Dec. 4, 2017), p. 2 (“The requirement to use CFTs for case planning purposes is fundamental to CDSS’s Continuum of Care Reform. . .”).

days of the placement order,⁵¹ but in practice it must occur much sooner because the initial case plan must be complete within 60 days and include the recommendations of the CFT.⁵² Probation must convene CFT meetings for all youth in foster care at least every 6 months – or every 90 days if the youth is receiving specialty mental health services in an STRTP or in therapeutic foster care.⁵³ The Department of Social Services allows counties to use their discretion in deciding the membership of CFTs. While it is the custom in some counties for probation to invite delinquency attorneys to the CFT, that practice is not the case in every jurisdiction.

Delinquency attorneys and associated social workers may sometimes face challenges when trying to participate in CFT meetings. There is no specific prohibition on attorneys or social workers associated with attorneys participating. While they are not allowed to participate for the purpose of engaging in adversarial tactics, they may participate as a support whenever the youth requests. Recall that probation must allow a youth to identify at least two members of the case planning team, and the CFT meeting is the fundamental case planning meeting.

Practitioners should ensure that children and their families receive the benefit of a CFT. Youth may not be initially inclined to engage in the process—particularly when probation acts as the facilitator. Advocates should encourage youth and their families to participate, and assist them in identifying other appropriate participants such as mentors, relatives, treating mental health professionals, and other important individuals. Youth and families should also be prepared for the CFT meeting. The CFT brochures listed in the resources section may prove useful in helping youth and families understand and meaningfully participate in the CFT.

The ultimate goal of child welfare is that every child end up in a safe, nurturing, permanent home

Planning and service coordination don't end with a case plan or even with disposition. A case plan must identify each youth's permanency goal and describe the specific

Order of Priority for Permanency Goals
(1) Reunification with a Parent or Guardian
(2) Adoption
(3) Juvenile Court Guardianship
(4) Placement with a fit and willing relative
(5) Another permanent living arrangement
NOTE: Each permanency goal triggers an additional set of case plan requirements.

⁵¹ ACL 16-84, <https://www.courts.ca.gov/documents/BTB25->

⁵² Welf. & Inst. Code § 706.6.

⁵³ ACL 16-84, <https://www.courts.ca.gov/documents/BTB25->

services needed to meet the goal. Permanency planning is triggered as soon as a youth is removed and identified as a candidate. Generally, the permanency plan for a youth following an initial removal will be reunification with a parent. Even if this goal is clear, the case plan must still identify the goal because this is how the court will later determine whether the agency made reasonable efforts to effectuate the plan. When a juvenile court makes an out-of-home placement order, it is then required to establish a "permanent plan" that prioritizes permanent home-based family care.⁵⁴

Permanency planning effectuates CCR's directive to place wards of the juvenile court into home-based, family settings wherever possible. Specifically, through this process, probation and the court must "monitor the safety and well-being of every minor in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 and... ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her home or to establish an alternative permanent plan for the minor."⁵⁵

Courts must review a youth's permanency goal at prescribed intervals. For delinquency-involved youth, permanency goals are reviewed at status review hearings pursuant to WIC 727.2 and permanency hearings pursuant to WIC 706.6. These hearings present an opportunity to lessen the length of a client's placement in congregate care and ensure planning for a timely exit to permanency. Advocates should carefully review the reasonable efforts made by probation to meet a client's goals since the last hearing, and also request specific orders regarding the efforts to be made before the next hearing.

Terminating a delinquency case for a youth on an out-of-home placement order requires an exit to permanency.⁵⁶ Unless a youth is returning to a parent or legal guardian, a court must make additional orders to finalize a permanent plan.⁵⁷ This may include a return to dependency jurisdiction or the commencement of dependency proceedings. For youth who were dependents at the time a court made a wardship determination, the mechanism for returning to dependency jurisdiction pursuant to WIC 607.2 is relatively straightforward. When dependency jurisdiction

⁵⁴ Welf. & Inst. Code §§ 727.2, 727.3, 727.4; Cal. Rules of Court, rules 5.810 and 5.815.

⁵⁵ Welf. & Inst. Code § 727.2.

⁵⁶ Welf. & Inst. Code § 607.2

⁵⁷ Id.

must be established for the first time, the process is far more complicated. Advocates unfamiliar with commencing dependency proceedings under WIC 329 and WIC 331 should consult an attorney familiar with the process.

For youth on placement orders who have identified permanency resources other than a parent—and certainly for youth who have been placed with a resource family through probation—advocates should also consider juvenile court guardianships or adoptions as mechanisms for establishing permanency.

The processes for finalizing guardianships and adoptions are prolonged because they incorporate various due process protections for parents and family members. These are important aspects of the proceedings that cannot be circumvented, and attorneys should therefore assess cases for these options early and plan accordingly. In order to set the process in motion, advocates should request a change to the youth's permanent plan as soon as it becomes clear that guardianship or adoption may be the most appropriate option. While only a court can order a change to a child's permanent plan, it has been our experience that the burden is very much on defenders and probation officers to request and provide support for a change. A request to change the permanency goal for a child placed with a fit and willing relative or in another planned permanent living arrangement can be made at any regularly scheduled review hearing or by filing a motion pursuant to WIC 778.⁵⁸ If the minor is placed with a guardian the motion must be filed in accordance with WIC 728.

Adoption

An adoption requires a permanent termination of parental rights and responsibilities – a finalized adoption establishes a new parent. This is a significant alteration of a child's life circumstances. Potential adoption should be carefully counseled with support from individuals who deeply understand the adoption process and the legal implications.

Adoption may come with certain benefits and resources to assist with the long-term care of a child. These benefits are administered through the Adoption Assistance Program (AAP).⁵⁹ To be eligible, a child must have "special needs," meaning they are hard to place for adoption and would otherwise not be adoptable without AAP

⁵⁸ WIC 727.3(e)

⁵⁹ Welf. & Inst. Code § 16115 et seq.

payments.⁶⁰ Generally, almost all youth in the delinquency system would be able to meet these criteria. Factors used in assessing the difficulty of placing a child for adoption include the child's ethnicity, age, parents' background, and medical, mental, or physical conditions.⁶¹ Additional benefits may be available for youth with heightened emotional, behavioral, or physical needs, and also for youth who are Regional Center consumers.⁶²

Adoptions are not common in the delinquency system but we have seen them successfully completed. It is important to be aware that many of the long-term benefits available to a family must be set up prior to finalizing an adoption, otherwise they are lost. Advocates working with youth whose permanent plan is adoption should consult an attorney with experience in foster care and adoption benefits as soon as the goal is identified.

Guardianship

A juvenile court guardianship is a far more common permanent plan for probation supervised youth. Like an adoption, it creates a legal relationship between the child and a caregiver. However, it does not require a termination of parental rights. A guardianship places the child in the guardian's custody and gives the guardian caregiver rights and responsibilities to make almost all parental decisions on behalf of the child. Specifically, guardians assume rights and responsibilities with respect to determining a minor's domicile, making decisions about the minor's medical care and education, and ensuring the minor's safety and physical and emotional growth. Parents still retain rights to reasonable visitation with their child. After finalization of a juvenile court guardianship, youth remain under the general jurisdiction of the juvenile court for the life of the guardianship. This does not mean that the youth or guardian is subject to court orders or continuous interference. However, if the

⁶⁰ Cal. Code Regs., tit. 22 § 35326.

⁶¹ Id.

⁶² Counties have discretion to apply a Specialized Care Increment (SCI) rate in addition to the Level of Care (LOC) rate for the same conditions or needs. In cases of Regional Center Consumers, the Dual Agency Rate may also apply. ACL 17-11 <https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2017/17-11.pdf> (issued Jan. 31, 2017), pp. 11-12; ACL 18-48, <https://www.cdss.ca.gov/Portals/9/ACL/2018/18-48.pdf?ver=2018-04-30-150030-057> (issued Apr. 30, 2018); ACL 18-89, <https://www.cdss.ca.gov/Portals/9/ACL/2018/18-89.pdf?ver=2018-07-24-161030-737> (issued July 20, 2018).

guardianship fails or some other tragedy occurs, a youth may petition to return to foster care or for assignment of a successor guardian.⁶³

There are long-term benefits, including potential financial supports, associated with juvenile court guardianships as well. Which benefits apply may depend on whether the proposed guardian is a relative or non-relative and may also require that a youth be living with a guardian for a specific period of time prior to finalization. Like adoption, additional benefits may be available for youth with heightened emotional, behavioral, or physical needs or who are also Regional Center consumers.⁶⁴

Even though juvenile court guardianships are more common than adoptions, advocates should still consult an attorney with experience in foster care and permanency benefits as soon as it becomes apparent that a youth may require a guardianship. This will both ensure that a youth receives the appropriate benefits and services after the finalization of the guardianship, and also reduce the chances of a delay in terminating the wardship to complete the guardianship requirements.

When youth achieve permanency through either a juvenile court guardianship or adoption, they retain the right to reenter extended foster care if

circumstances warrant after they turn 18.⁶⁵ Eligibility is not automatic though.

How and when the guardianship or adoption is finalized will determine whether a young person is able to reenter foster care as a nonminor dependent in the future. Advocates should contact an attorney familiar with the guardianship process and extended foster care eligibility to ensure the right is maintained, and do so prior to the guardian signing any of the funding agreements—this is very important if the client is close to age 16. Extended foster care is a critical safeguard for young people trying to establish permanency at a late age. Advocates should make sure that youth understand this right and that they know who to contact should it become necessary to reenter in the future.

Additionally, we and other youth advocates have noted that children and families who require child welfare services are increasingly diverted by child welfare

⁶³ Welf. & Inst. Code § 388.

⁶⁴ See ACL 18-48, <https://www.cdss.ca.gov/Portals/9/ACL/2018/18-48.pdf?ver=2018-04-30-150030-057> (issued Apr. 30, 2018); ACL 18-89, <https://www.cdss.ca.gov/Portals/9/ACL/2018/18-89.pdf?ver=2018-07-24-161030-737> (issued July 20, 2018).

⁶⁵ Welf. & Inst. Code § 388.1.

agencies into probate court guardianships instead. While probate court guardianships may afford families a greater degree of control over the placement of a child, the probate court was not designed to deal with child welfare issues, and lacks the core family preservation, reunification, and supportive services that define the child welfare system. Defenders should be aware that probate court guardianships also do not carry the same long-term benefits as guardianships established through juvenile court. For example, young people who turn 18 with probate court guardianships in place are categorically ineligible for extended foster care.

III. Advocacy Strategies for Individual Cases

Juvenile defense attorneys should advocate for candidacy determinations, challenge reasonable efforts, and make case plan requests at detention hearings

Whenever probation recommends that a youth be detained, advocates should consider requesting an order directing probation to complete the candidacy evaluation described above. Courts may be unwilling to order probation to complete the candidacy evaluation, but the mere request will educate the court and parties as to probation's obligation. It can also put probation on notice that service provision will be closely monitored, and set up a challenge to reasonable efforts should probation continue recommending detention without completing the assessment and offering services.

If the court detains a youth, advocates should request the immediate commencement of a case planning process. Even where a court declines to issue an order, the request gives advocates the opportunity to cite the statutory authority obligating probation to begin case planning. It is critical that attorneys begin requesting the case plan at detention in order to establish a record of timely and consistent requests. Advocates should also request notice of any case planning meetings or convenings of the CFT, and can cite to their client's right to participate in case plan development and to name additional participants.

It is important to begin requesting case planning as soon as probation (or the court or district attorney) indicates the possibility of a removal. Whenever the court is actually considering detention, advocates should also demand a showing of reasonable efforts. Probation is obligated to make these efforts—which must be

geared towards maintaining a youth at home—and to provide an explanation of the efforts made to the court whenever recommending detention. If probation does not recommend detention then it has no such obligation, but the court must still make a finding of reasonable efforts if it detains a youth. Litigating reasonable efforts may not keep a client out of detention, but it can highlight efforts that should be made prior to the next court appearance in order to make release possible. If successfully challenged in a handful of cases, it may also force probation to make changes in initial case assessments and provision of services in a county. This is because Title IV-E funding is contingent upon a finding of reasonable efforts.⁶⁶

Request a family find whenever a youth is detained

As early as detention, probation must conduct a "family find": "If the child is detained or at risk of entering foster care, the court must consider and determine whether the probation officer has exercised due diligence in conducting the required investigation to identify, locate, and notify the child's relatives."⁶⁷

Delinquency attorneys can assist in family finding by providing information to the probation department about supportive relatives who would be able to care for the child and with whom the child wants to live, including relatives in nearby counties, family friends, or other trusted adults. If a delinquency attorney has access to social work support, the social worker is often an appropriate person to have a conversation with family members or non-relative supports about the requirements for becoming a resource family. In addition to helping identify caregiver resources, a family find can help identify appropriate members for the CFT.

It has been our experience that the probation department will sometimes stall on investigating a particular family option if they have doubts that prospective resource families will pass Resource Family Approval (RFA). However, the perception of what causes a family to not qualify for RFA is often inaccurate.⁶⁸

⁶⁶ 45 C.F.R. § 1356.21.

⁶⁷ Welf. & Inst. Code § 628(d); Cal. Rules of Court, rule 5.790(g).

⁶⁸ For a good overview of the process and rules related to RFA see Alliance for Children's Rights & The Step Up Coalition, Resource Family Approval Guide, <https://kids-alliance.org/wp-content/uploads/2019/12/RFAToolkit MasterWithAppendix 12-2019.pdf> (Dec. 2019).

In addition, many of the initial concerns that a probation department might have about the ability of a particular familial resource to manage a youth's needs can be addressed when the family find is combined with the case planning and CFT process. Using these processes together will allow for the identification of placement resources, supportive individuals, in-home services, and other community-based support systems that can bolster a potential RFA placement.

Utilize the CFT and case planning process to effectuate a release from detention, develop dispositional alternatives, and contest dispositions

Placement recommendations made by a CFT are more likely to be individualized and honor the least restrictive environment mandate. Delinquency attorneys, and social workers who are working with delinquency attorneys, should participate in the CFT to support youth whenever possible. Attorneys should also demand that probation recommendations follow the CFT recommendations or provide an explanation for any deviation. The CFT meeting is an opportunity to discuss the likely outcomes of particular service choices for your client, and to help your client agree to services that are most likely to keep them in the community. It is also an opportunity to share with the CFT any positive information learned about clients and families. Remember that CFTs include the treatment and services professionals with the most direct experience working with a particular young person. Therefore, the CFT recommendations and reasoning can carry significant weight with a court. The process can also identify individuals whose testimony may be useful in a contested disposition hearing. Since the CFT is an ongoing process, it also presents an important vehicle for assessing permanency options such as guardianship and adoption throughout the case.

V. Conclusion

In conclusion, juvenile defenders can meaningfully engage in the processes established by Continuum of Care Reform and the Family First Preservation and Services Act to advocate for their clients to be in the safest, least restrictive, and most home-like environments possible, as well as hold county stakeholders accountable for providing the full array of services more commonly provided to youth in the dependency system. Delinquency-involved youth are no less entitled to these supports, and their outcomes may change dramatically because of the advocacy of their defenders.

VI. Additional Resources

❖ Manuals, Guides, and Other Publications

➤ **The Integrated Core Practice Model for Children, Youth, And Families (ICPM)**

The ICPM is a framework for service provision to children and families. The CFT is central to the model and is discussed at length in this guide. This guide is jointly issued by CDSS and Department of Health Care Services (DHCS). The ICPM covers children involved with the child welfare, juvenile probation, and/or behavioral health system. It is described as "intended to provide practical guidance and direction to support county child welfare, juvenile probation, behavioral health agencies, and community partners to improve delivery of timely, effective, and integrated services to children, youth, and families."

<https://www.cdss.ca.gov/Portals/9/CFT/ICPM%20document%20with%20CDSS%20and%20DHCS%2012-17-2018%20FINAL.pdf?ver=2019-03-07-095448-867>

➤ **Medi-Cal Manual for Intensive Care Coordination (ICC), Intensive Home Based Services (IHBS), & Therapeutic Foster Care (TFC)**

This is a guide to the collection of services often referred to as Katie A. services. They provide critical resources for maintaining children in their homes and communities.

[https://www.dhcs.ca.gov/Documents/ChildrensMHContentFlaggedForRemoval/Manuals/Medi-Cal Manual Third Edition.pdf](https://www.dhcs.ca.gov/Documents/ChildrensMHContentFlaggedForRemoval/Manuals/Medi-Cal%20Manual%20Third%20Edition.pdf)

➤ **Advocating for the Most Connected Placement: A Guide to Reducing the Use of Group Care**

This guide includes practical questions advocates can ask when building a case for community or family placement over group placement. It references federal laws, and some state laws, that support case planning for the least restrictive, and most connected, placement. It also includes some of the applicable social science research.

<https://ylc.org/wp-content/uploads/2019/05/Connected-Placements-Toolkit.pdf>

➤ **Child Welfare Information Gateway**

--Case

Planning: <https://www.childwelfare.gov/pubPDFs/caseplanning.pdf>

--Concurrent Planning for

Permanency: <https://www.childwelfare.gov/pubPDFs/concurrent.pdf>

--Reasonable Efforts - Preserve, Reunify, Achieve

Permanency: <https://www.childwelfare.gov/pubPDFs/reunify.pdf>

❖ **All County Letters and Agency Guidance**

➤ **ACL 14-36 California Department of Social Services (CDSS) Title IV-E Foster Care Candidacy Policy and Procedures**

<https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2014/14-36.pdf>

➤ **ACL 18-23 The Child and Family Team (CFT) Process Frequently Asked Questions and Answers**

<https://www.cdss.ca.gov/Portals/9/ACL/2018/18-23.pdf?ver=2018-06-01-160245-447>

➤ **ACL 16-84 MHSUDS 16-049 Requirements and Guidelines for Creating and Providing a Child and Family Team**

[https://www.dhcs.ca.gov/formsandpubs/Documents/MHSUDS%20Information%20Notices/ACL16-84_MHSUDSIN16-049_CFTGuidelines\(4\).pdf](https://www.dhcs.ca.gov/formsandpubs/Documents/MHSUDS%20Information%20Notices/ACL16-84_MHSUDSIN16-049_CFTGuidelines(4).pdf)

➤ **ACL 17-122 Short-term Residential Therapeutic Programs (STRTPS) Placement Criteria, Interagency Placement Committees (IPCS), Second Level Review for Ongoing Placements Into Group Homes and STRTPs**

<https://www.cdss.ca.gov/Portals/9/ACL/2017/17-122.pdf?ver=2018-01-10-151213-733>

❖ Useful Charts and Databases

- CCR Infographic:
<https://www.cdss.ca.gov/Portals/9/CCR/CCRInfographic.pdf?ver=2017-10-18-161318-400>
- STRTP Infographic:
<https://www.cdss.ca.gov/Portals/9/CCR/STRTP/STRTP%20Infographic%20FINAL.pdf?ver=2019-07-26-155009-923>
- CFT Brochures:
Parent Participant:
<https://www.cdss.ca.gov/Portals/9/CFT/Parent%20Brochures/TEMP%203011.pdf?ver=2018-12-06-133401-253>
Child Participant:
<https://www.cdss.ca.gov/Portals/9/CFT/Youth%20Brochures/TEMP%203012.pdf?ver=2018-12-06-133906-010>
Professional Participant:
<https://www.cdss.ca.gov/Portals/9/CFT/Professional%20Brochures/TEMP%203013.pdf?ver=2018-12-06-133539-970>
Available in multiple languages at:
<https://www.cdss.ca.gov/inforesources/foster-care/child-and-family-teams/resources>