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# Adapting to the Modern Family: Recognizing the Psychological Parent in Child Welfare Proceedings

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## I. Introduction

Children entering foster care increasingly come from non-traditional families. A number of these children have no legal parent present in their lives and the person who has become the psychological parent to the child—the "individual the child perceives, on a psychological and emotional level, to be his or her parent" [1]—has no established legal right to custody of the child. Child welfare laws in many states fail to account for the growing phenomenon of non-traditional family units at the most critical stages of dependency proceedings—first, when the child is removed from his or her home and second, when the court determines whether the circumstances justified the removal. This Article illustrates that when someone else raises a child—perhaps a grandparent, a stepparent,[2] a legal parent's

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[1] *See* James G. O'Keefe, Note, *The Need to Consider Children's Rights in Biological Parent v. Third Party Custody Disputes*, 67 CHI.-KENT L. REV. 1077, 1081 (1991) (defining "psychological parent" as the "individual the child perceives, on a psychological and emotional level, to be his or her parent").

[2] Many states define stepparents as relatives rather than parents. *See, e.g.*, CAL. WELF. & INST. CODE § 361.3(c)(2) (West 2013) ("'Relative' means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is

same-sex partner,[3] or any relative who has assumed a parental role—child welfare laws do not sufficiently protect that relationship unless the adult has legal guardianship of the child. Generally, a psychological parent who is not the legal guardian to the child has no recognized rights during the initial stages of child welfare proceedings, and even if the adult meets certain requirements, only a few rights are protected thereafter. More can be done to protect this relationship when the state intervenes to remove a child from the home of a psychological parent, both for the sake of the psychological parent and, more importantly, for the best interest of the child.

Part II of this Article begins by providing a background of the rights of caregivers in dependency proceedings. Part III describes the growing number of non-traditional families in the United States. Part IV offers a hypothetical case from California's dependency court—the largest dependency system in the country—to illustrate how a psychological parent would be treated under

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preceded by the words 'great,' 'great-great,' or 'grand,' or the spouse of any of these persons even if the marriage was terminated by death or dissolution."); OHIO ADMIN. CODE 5101:2-1-01(212)(b) (2013); WIS. STAT. ANN. § 48.02(15) (West 2013); *see also In re* Jodi B., 278 Cal. Rptr. 242, 246 (Ct. App. 1991) ("A stepparent is not a 'parent' for the purposes of reunification of a child removed from the home in the course of [dependency] proceedings."). Some states exclude stepparents from both the definition of parent and relative. *See, e.g.*, FLA. STAT. ANN. § 39.01(49), (64) (West 2013); TEX. FAM. CODE ANN. § 101.024 (West 2013).

[3] In California, if the same-sex couple files a "Declaration of Domestic Partnership" with the California Secretary of State, they are entitled to the same parental rights and responsibilities as spouses under the California Domestic Partner Rights and Responsibilities Act provided that the child of the partnership is born to either of them after the effective date of the statute, January 1, 2005. CAL. FAM. CODE § 297.5(d) (West 2013). If the same-sex couple has a child outside the context of a domestic partnership or adoption, or the child of a domestic partnership was born prior to December 31, 2004, the non-biological same-sex partner would bear the burden of establishing presumed parent status by a preponderance of the evidence. CAL. FAM. CODE § 7611 (West 2013); *see* Elisa B. v. Superior Court, 117 P.3d 660, 666-67 (Cal. 2005) (applying the concepts for establishing paternity under California Family Code Section 7611 to a member of a same-sex couple without genetic ties to the children).

California's current child welfare laws.[4] Part V describes how California courts have attempted to better protect the relationship of the child and psychological parent through the judicial creation of the de facto parent doctrine. Part V also explains why this doctrine, as currently constructed, is an inadequate remedy, and then offers a simple solution for California. Part VI outlines how other states have adopted the de facto parent doctrine, or an equivalent policy, to address the role of the psychological parent in proceedings impacting non-traditional families. Finally, this Article argues that current child welfare laws do not sufficiently protect the relationship of the psychological parent and child at its most critical point—when the state intervenes to remove the child. Providing greater protections for this unique relationship by allowing psychological parents to participate in dependency proceedings from their onset would better inform courts of children's unique histories and their needs moving forward.

## II. Rights of Caregivers in Dependency Proceedings

Only mothers, presumed fathers, and adoptive parents are considered legal parents within the scope of most states' child welfare statutes.[5] Likewise, in twenty-seven states, individuals who

[4] California was chosen as a focus of this Article for several reasons. First, California has the largest dependency court system in the country. Second, it has a far greater number of children in foster care than any other state. Third, and most importantly, the number of children living in non-traditional families in California increased by fifty percent over the last decade, greatly outpacing every other state. *See infra* Part III. Consequently, the growing phenomenon of non-traditional families is most evident in California and the consequences of failing to recognize psychological parents in dependency proceedings are best exemplified in California's dependency court system.

[5] *Cf.* CAL. FAM. CODE §§ 7500-7507 (West 2013); FLA. STAT. ANN. § 39.01(49) (West 2013); MICH. CT. R. 3.903(A)(7); NEV. REV. STAT. ANN. § 432B.080 (West 2011); TEX. FAM. CODE ANN. § 101.024(a) (West 2013) ("Parent means the mother, a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father."); WIS. STAT. ANN. § 48.02(15) (West 2013). *See also*

obtained their guardianship through probate court—legal guardians—are the only other individuals who share the same rights as parents in dependency proceedings.[6] These rights include: 1) the

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*In re* Merrick V., 19 Cal. Rptr. 3d 490, 507 (Ct. App. 2004) (finding that, under the circumstances of the case, grandmother could not assert status as de facto parent); *In re* Carrie W., 2 Cal. Rptr. 3d 38, 47 (Ct. App. 2003) (limiting standing in dependency cases to parents and "legal" guardians); *In re* Emily R., 96 Cal. Rptr. 2d 285, 292 (Ct. App. 2000) (distinguishing between an alleged biological father and a presumed father under statutory definition as it is relates to standing to request reunification services); *In re* Zacharia D., 862 P.2d 751, 760 (Cal. 1993) (noting that de facto and stepparents are not included in the meaning of the word "parent" in California dependency courts); *In re* Sarah C., 11 Cal. Rptr. 2d 414, 417 (Ct. App. 1992) (treating the word "parent" in statute as "a person upon whom that status has been legally conferred"). Note that, in California, Senate Bill 1476, which was vetoed by Governor Jerry Brown on September 30, 2012, would have authorized courts to recognize more than two legal parents when it is in the best interest of the child. *See Governor Makes Final Decision on Dozens Bills Before Deadline Passes*, SACRAMENTO OBSERVER, Oct. 1, 2012, http://sacobserver.com/2012/10/governor-makes-final-decision-on-dozens-bills-before-deadline-passes/. This article does not contemplate the expansion of the definition of legal parent under California law, rather the extension of the rights that are accorded to legal guardians to psychological parents solely for the purpose of dependency proceedings.

[6] *See* ALASKA STAT. ANN. § 25.23.180(h) (West 2013); ARIZ. REV. STAT. ANN. § 8-221 (2013); ARK. CODE ANN. § 9-27-316(h)(1)(A) (West 2012); CAL. WELF. & INST. CODE § 317(a), (b) (West 2013); COLO. REV. STAT. ANN. § 19-3-202 (West 2013); CONN. GEN. STAT. ANN. § 46b-135(b) (West 2013); DEL. R. FAM. CT. R. CIV. P. 206(a); FLA. STAT. ANN. § 39.013(9)(a) (West 2013); GA. CODE ANN. § 15-11-98(b) (West 2012); IDAHO CODE ANN. § 16-2009 (West 2013); KAN. STAT. ANN. § 38-2202(u)-(v) (West 2012); KY. REV. STAT. ANN. § 620.100(1)(c) (West 2012); LA. CHILD. CODE ANN. art. 608 (2012); MISS. CODE ANN. § 43-21-201(1) (West 2012); MONT. CODE ANN. § 41-3-425(2) (2013); N.H. REV. STAT. ANN. § 169-C:10 II(a) (2013); N.C. GEN. STAT. ANN. §§ 7A-451(a)(12), 7B-602(a) (West 2013); N.D. CENT. CODE ANN. § 27-20-26 (West 2011); OHIO REV. CODE ANN. § 2151.352 (West 2013); OR. REV. STAT. ANN. § 419B.205(1) (West 2013); 23 PA. CONS. STAT. ANN. § 2313(a.1) (West 2013); TENN. R. JUV. P. R. 39; TEX. FAM. CODE ANN. §§ 262.109, 262.201 (West 2013); VT. STAT. ANN. tit. 15A, § 3-201(a) (West 2013); VA. CODE ANN. § 16.1-266(D) (West 2012); WASH. REV. CODE ANN. §§ 26.44.115, 26.44.120 (West 2013); WIS. STAT. ANN. § 938.53 (West 2013). *But see infra* note 8 (listing state laws that allow courts to appoint counsel in child welfare proceedings for parents, guardians, custodians, and other parties who do not have an established legal relationship to the child).

right to notice;[7] 2) the right to appear with counsel;[8] 3) standing to participate fully in all proceedings;[9] 4) the right to physical custody of the child;[10] 5) the right to visitation;[11] 6) the right to appeal;[12] and

[7] *See* CAL. WELF. & INST. CODE § 290.1(a) (West 2013); CAL. WELF. & INST. CODE § 290.1(a)(6) (stating that notice is required solely to parents and then to relatives, only if no parent or guardian is found); *see, e.g.*, MD. CODE ANN., CTS. & JUD. PROC. § 3-815(c)(3) (West 2013) (providing notice of shelter care hearing to parents, guardian, custodian, or relatives, if located); MASS. GEN. LAWS ANN. ch. 119, § 29 (West 2013); N.Y. FAM. CT. ACT § 1023 (McKinney 2013); TEX. FAM. CODE ANN. § 262.109 (West 2013) (providing that notice is only required to the parent, conservator, or legal guardian); WASH. REV. CODE ANN. §§ 26.44.115, 26.44.120 (West 2013).

[8] *See* ALA. CODE § 12-15-210 (2013); ARIZ. REV. STAT. ANN. § 8-221 (2013); CAL. WELF. & INST. CODE § 316 (West 2013); COLO. REV. STAT. ANN. § 19-3-202(1) (West 2013); D.C. CODE § 16-2304(b)(1) (2013); HAW. REV. STAT. § 587A-34 (West 2013); 750 ILL. COMP. STAT. ANN. § 50/13B(c) (West 2013); IND. CODE ANN. § 31-32-4-2 (West 2013); IOWA CODE ANN. § 232.113 (West 2013); KY. REV. STAT. ANN. § 620.100(1)(c) (West 2012); ME. REV. STAT. ANN. tit. 22 § 4005(2) (2013); MD. CODE ANN., CTS. & JUD. PROC. § 3-820 (West 2013); MASS. GEN. LAWS ANN. ch. 119, § 29 (West 2013); MICH. CT. R. 3.915(B)(1)(a)(i); MINN. STAT. ANN. § 260C.163(3)(b) (West 2013); MO. ANN. STAT. § 211.211 (West 2013); NEB. REV. STAT. ANN. § 43-279.01(1) (LexisNexis 2012); NEV. REV. STAT. ANN. § 128.100 (West 2011); N.M. STAT. ANN. § 32A-4-10.B (West 2012); N.Y. FAM. CT. ACT § 1012(a) (McKinney 2013); N.Y. FAM. CT. ACT § 1012(g); N.Y. FAM. CT. ACT § 1033-b (McKinney 2013); OKLA. STAT. ANN. tit. 10, § 24 (West 2013); R.I. GEN. LAWS ANN. § 40-11-7.1(b)(4) (West 2012); S.C. CODE ANN. § 20-7-110 (2012); S.D. CODIFIED LAWS § 26-7A-31 (2012); UTAH CODE ANN. § 78A-6-1111 (West 2012); W. VA. CODE ANN. § 49-2-16 (West 2013); WYO. STAT. ANN. § 14-3-211 (West 2013).

[9] *See supra* note 6.

[10] *See* CAL. WELF. & INST. CODE § 319(b) (West 2013) ("The court shall order release of the child from custody unless a prima facie showing has been made that the child comes within Section 300, the court finds that continuance in the parent's or guardian's home is contrary to the child's welfare," and any one of four circumstances indicating substantial danger exist).

[11] *See* CAL. WELF. & INST. CODE § 362.1(a)(1)(A) (West 2013) (providing that visitation between the parent or guardian and child shall be as frequent as possible, consistent with the well-being of the child).

[12] *See* CAL. WELF. & INST. CODE § 307.4(a)(2) (West 2013); CAL. WELF. & INST. CODE § 366.26 (West 2013); CAL. WELF. & INST. CODE § 395 (West 2013).

7) the right to reunification services.[13] These seven rights, while not universal, are essential to protect the relationship of the child and parent or guardian, and in most states, are enjoyed by legal guardians and parents at every stage of dependency proceedings. Yet, psychological parents who never obtained legal guardianship—perhaps due to financial hardship or for lack of opportunity, understanding, or education—do not share these rights at the preliminary stages of dependency proceedings. As a result, when the state intervenes to remove a child from the psychological parent's care, the psychological parent has no opportunity to be heard and no ability to challenge the righteousness of that decision.

The obstacles to obtaining legal guardianship of a child are real. In California, for example, procuring a legal guardianship through probate court is both complicated and expensive, costing upward of one thousand dollars in court fees alone.[14] The California Courts' website[15] advises that while an individual does not need a

[13] *See* CAL. WELF. & INST. CODE § 358.1 (West 2013); *cf. In re* Merrick V., 19 Cal. Rptr. 3d 490, 500 (Ct. App. 2004) (finding that, under the circumstances of the case, grandmother could not assert status as de facto parent); *In re* Carrie W., 2 Cal. Rptr. 3d 38, 39 (Ct. App. 2003) (limiting standing in dependency cases to parents and "legal" guardians); *In re* Emily R., 96 Cal. Rptr. 2d 285, 292 (Ct. App. 2000) (distinguishing between an alleged biological father and a presumed father under statutory definition relative to standing to request reunification services); *In re* Zacharia D., 862 P.2d 751, 760 (Cal. 1993) (noting that de facto and stepparents are not included in the meaning of the word "parent" in California dependency courts); *In re* Sarah C., 11 Cal. Rptr. 2d 414, 417 (Ct. App. 1992) (treating the word "parent" in statute as "a person upon whom that status has been legally conferred.").

[14] PUB. COUNSEL, GUARDIANSHIP OF THE PERSON AND THE PRO PER GUARDIANSHIP CLINIC 3 (2012), http://www.publiccounsel.org/tools/publications/files/Guardianship-of-the-person-and-the-pro-per-guardianship-clinic.pdf (stating that "[t]he court fees are $1325.00" to file for guardianship over a child but noting that fee waivers are available for certain qualified individuals); *see Guardianship Forms*, CAL. COURTS: JUD. BRANCH CAL., http://www.courts.ca.gov/1214.htm (last visited Aug. 20, 2012) (listing over twenty forms required to ask for guardianship over a child).

[15] *See Guardianship Forms*, *supra* note 14.

lawyer to obtain guardianship through probate court,[16] the individual "must file papers with the court and go through a number of steps leading up to a court hearing. . . . [a]nd most people make mistakes."[17] In Texas, the Texas Guardianship Association advises that an individual seeking guardianship over a child will need the assistance of a family law attorney.[18]

A caretaker who is neither a parent nor an established legal guardian, but who has the financial means and ability to navigate the probate system can obtain legal guardianship over the child. Thereafter, if dependency proceedings are initiated, that caretaker will be afforded with all the same rights as a legal parent in similar proceedings.[19] Conversely, a similarly situated non-parent caretaker who is unable to obtain legal guardianship will have no rights during the preliminary hearings of the child welfare case. Using California's child welfare law as an example, this Article will illustrate the disparity between similarly situated non-parent caretakers. Currently, only psychological parents who qualify as de facto parents—individuals who fulfilled the parental role on a day-to-day basis—under California law[20] are awarded limited rights in dependency proceedings. Moreover, these rights may only be granted during the dispositional and later hearings, which occur well after the crucial initial and adjudicatory hearings.

Non-parent caretakers who have become the psychological parent to the child may share the same degree of kinship to the child, may have assumed the same parental roles for the same period of time, and dependency proceedings may have been initiated for

[16] A probate court is a specialized court that deals in administration of estates and other related matters.

[17] *See Becoming a Guardian*, CAL. COURTS: JUD. BRANCH CAL., http://www.courts.ca.gov/1212.htm (last visited Aug. 20, 2012).

[18] *See* TEX. GUARDIANSHIP ASS'N, http://www.texasguardianship.org (last visited Feb. 15, 2013).

[19] *See supra* note 6.

[20] *See* CAL. RULES OF COURT R. 5.502(10) (defining de facto parent as "a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period"); *see also infra* Part V (for an explanation of the de facto parent doctrine).

exactly the same reasons, but the law will treat the non-parent caretakers differently. This Article argues that it is time to reconsider and expand the rights of psychological parents in order to reflect current mores and to better protect the child in the judicial system.

## III. The Phenomenon of Non-Traditional Families is Growing Nationally

The number of children living in households maintained by grandparents or other relatives is increasing nationwide. While the number of children living in households with no legal parent present has remained at a steady 4 percent over the last fifty years,[21] the number of grandparent-head households—households that may or may not include a legal parent—increased from 3 percent to 5 percent between 1970 and 1992.[22] In 1970, 2.2 million children lived in grandparent-head households, 2.3 million in 1980, and 3.3 million in 1992.[23] This trend became even more noteworthy in 1992, when the U.S. Senate and House of Representatives held hearings on the growing numbers of "grandparents as parents."[24] By 1997, the number further increased to 3.9 million children (5.5 percent), and 31 percent of those children had no legal parent living in the family household.[25] By 2012, the number of grandparent-head households reached 5.4 million,[26] and of that number, 1.45 million children were living in households with no legal parent present.[27] In fact, a total of

[21] *See* U.S. CENSUS BUREAU, LIVING ARRANGEMENTS OF CHILDREN: 1960 TO 2012, http://www.census.gov/hhes/families/files/graphics/CH-1.pdf.
[22] KEN BRYSON & LYNNE M. CASPER, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, SPECIAL STUDIES: CORESIDENT GRANDPARENTS AND GRANDCHILDREN 1 (1999), http://www.census.gov/prod/99pubs/p23-198.pdf.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *See Profile America Facts for Features, Grandparents Day 2012: Sept. 9*, U.S. CENSUS BUREAU NEWS (July 31, 2012), http://www.census.gov/newsroom/releases/pdf/cb12ff-17_grandparents.pdf.
[27] *See America's Families and Living Arrangements: 2012*, tbl.C4, U.S. CENSUS BUREAU, http://www.census.gov/hhes/families/data/cps2012.html (last visited Apr. 28, 2013).

2.6 million children in 2012 were living in households that had no legal parent present but were headed by a grandparent, relative, or other non-parent caretaker.[28]

According to a recent study, families are also relying on kinship care at a much higher rate than in years past.[29] Kinship care describes situations in which children are cared for full time by blood relatives or other adults, such as godparents or close family friends.[30] This arrangement may be formal with state-supervised placement of the child, or informal through a family arrangement and without state supervision or secured legal custody of the child.[31] Today, close family friends and extended family members provide care for more than 2.7 million children in the United States, an increase of almost 18 percent over the past decade.[32] The vast majority of these children live in informal kinship care arrangements without any child protective services involvement, state supervision, or formal legal custody.[33]

California, the nation's most populous state, serves as an example of this phenomenon. In California, almost half a million children under the age of eighteen, approximately 6.4 percent, lived in grandparent-head households in 1990.[34] From 1990 to 2000, there was a 50 percent increase in this type of living situation, more than

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[28] *Id.*

[29] *See* THE ANNIE E. CASEY FOUND., STEPPING UP FOR KIDS: WHAT GOVERNMENT AND COMMUNITIES SHOULD DO TO SUPPORT KINSHIP FAMILIES 4 (2012), http://www.aecf.org/~/media/Pubs/Initiatives/KIDS%20COUNT/S/SteppingUpforKids2012PolicyReport/SteppingUpForKidsPolicyReport2012.pdf (citing Population Reference Bureau's analysis of the 2009, 2010, and 2011 Current Population Survey Annual Social and Economic Survey).

[30] *Id.*

[31] *See id.* at 1.

[32] *See id.* (citing Population Reference Bureau's analysis of the 2009, 2010, and 2011 Current Population Survey Annual Social and Economic Survey and noting that 104,000 of the children in kinship placements have been placed formally as part of a state-supervised foster care system).

[33] *See id.* at 2.

[34] Mary L. Blackburn, *Grandchildren Raised by Grandparents a Troubling Trend*, CAL. AGRIC., Mar.–Apr. 2001, at 10, 11 (citing the U.S. Census).

any other state in the nation.[35] By 2009, almost 300,000 of California's children lived in households headed by a grandparent and 75,349 of those children had no legal parent present in the home.[36] Further, by 2010, almost a quarter of California's 126,000 same-sex headed households were raising children.[37] The growing number of non-traditional families should not be ignored.

As the number of non-traditional families increases, so do their representative numbers in the child welfare system. In 2011, approximately 6.2 million children came into contact with child protective services through 3.4 million referrals of abuse or neglect.[38] In 2011, there were over 400,000 children in foster care nationwide.[39] California's foster care population was the highest of any state in the nation with 55,000 children in foster care placements.[40] The state with the second largest foster care population

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[35] Meredith Minkler & Donna Odierna, *California's Grandparents Raising Children: What the Aging Network Needs to Know as it Implements the National Family Caregiver Support Program* 1 (2001), http://cssr.berkeley.edu/pdfs/CAgrandparents_entire.pdf.

[36] CHILDREN'S DEF. FUND, STATE OF AMERICA'S CHILDREN 2010, at C-5 (2010), http://www.childrensdefense.org/child-research-data-publications/data/state-of-americas-children-2010-report-family-structure.pdf. In 2002, California's Legislature acknowledged the concerning number of children in foster care with the adoption of Welfare & Institutions Code Section 16010.4, which states, "[t]he Legislature finds and declares all of the following: The State of California is guardian to more than 90,000 children in foster care, *more than any other state in the nation*. As of 2002, California has a disproportionately high number of children in foster care. While the state is home to 12 percent of the nation's population, it guards over 20 percent of the nation's children in its foster care system. Thirty-five percent of foster children live with relatives." CAL. WELF. & INST. CODE § 16010.4(a) (West 2013) (emphasis added).

[37] Lanz Christian Bañes, *Vallejo Among the Top Cities in the Bay Area for Gay Couples*, VALLEJO TIMES-HERALD, June 26, 2011, http://www.timesheraldonline.com/news/ci_18356679?source=pkg.

[38] CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT: 2011, at viii (2012), http://www.acf.hhs.gov/sites/default/files/cb/cm11.pdf.

[39] CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., THE AFCARS REPORT 1 (2012), http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport19.pdf.

[40] CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., FOSTER CARE FY 2003-FY 2011 ENTRIES, EXITS, AND NUMBERS OF CHILDREN IN CARE ON THE

was Texas, with 30,000 children.[41] The third, fourth, and fifth largest foster care populations were in New York, Florida, and Illinois, respectively, and each of these three states had nearly 20,000 children in foster care.[42] Undoubtedly, a number of these children came from non-traditional families with no legal parent present in their life. Unless a legal guardianship was already established, the person standing *in loco parentis*[43] has no rights under current dependency law when a child welfare case is initiated.

As the state with the nation's largest foster care population, California provides a compelling example of the problems that occur when the state fails to recognize non-traditional families. An analysis of California's laws demonstrates that the existing system does not do enough to protect these modern families. This example, in conjunction with an explanation of other states' laws that do not grant rights to non-traditional parents, illustrates how current laws fail these modern families at their most critical moment—during the preliminary hearings of child welfare cases when the court first determines whether the state's intrusion and the removal of the child from the home is justified.

## IV. An Illustrative Case in California Dependency Court

Imagine a ten-year-old child who has been raised from the age of two by her maternal grandmother.[44] The child's birth mother is deceased and the biological father listed on the birth certificate has never contacted the child. The grandmother has a high school education and struggles financially but manages month-to-month.

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LAST DAY OF EACH FEDERAL FISCAL YEAR (2012), http://www.acf.hhs.gov/sites/default/files/cb/entryexit2011.pdf.

[41] *Id.*

[42] *Id.*

[43] Latin for "in place of a parent" and meaning "[o]f, relating to, or acting as a temporary guardian or caretaker of a child, talking on all or some of the responsibilities of a parent." BLACK'S LAW DICTIONARY 858 (9th ed. 2009) (citing as an example that, during the school day, a teacher may act *in loco parentis*).

[44] This is a hypothetical case that is loosely based on a fact pattern drawn from numerous cases that the Author has worked on in her dependency practice.

She maintains a small home and always attends to all of the child's needs—medical, educational, or otherwise. A legal guardianship was never established because of the financial burden in hiring a family attorney.

The child understands that her caretaker is her grandmother and not her mother, but she perceives her grandmother to be her parent—a day-to-day caretaker who has always acted in a parental role. One day, an uncle who briefly visits the family home abuses the child. The state's child protective services agency is notified, an investigation is conducted, and the allegations of the referral are substantiated.[45] A risk assessment is then conducted by the child protective services agency to determine whether it is safe to leave the child in the grandmother's home. Because the grandmother has no established legal right to custody of the child, the parents' whereabouts are unknown, and the referral is substantiated, a decision is made to remove the child from the grandmother's home and place her in foster care.[46]

The child protective services agency then files a petition alleging, in part, that the legal parents made an inappropriate plan for the child by leaving her with the grandmother who placed the child at risk.[47] The petition further alleges that the maternal grandmother endangered the child by allowing the uncle access when she reasonably should have known that he posed a risk to the child.[48] At

[45] California's Child Abuse and Neglect Reporting Act defines neglect as harm or threatened harm to the health or welfare of a child, or the failure to protect a child from such harm, by a person responsible for the child's welfare. Abuse includes the endangering of the health of the child, non-accidental physical injury or death, sexual assault or exploitation, and unlawful corporal punishment or injury. CAL. PENAL CODE §§ 11165.2–11165.6 (West 2013).

[46] L.A. CNTY. DEP'T OF CHILD. & FAM. SERVS., PROCEDURAL GUIDE 0070-529.10, ASSESSING ALLEGATIONS OF PHYSICAL ABUSE (2010), http://file.lacounty.gov/dcfs/cms1_171505.pdf.

[47] A petition includes the facts alleging that the child has been abused or neglected as defined in California's Welfare and Institutions Code. *See* CAL. WELF. & INST. CODE §§ 332, 333 (West 2013).

[48] *See, e.g.*, *In re* Bryan D., 130 Cal. Rptr. 3d 821, 821-25 (Ct. App. 2011) (explaining a situation where maternal grandmother was the psychological parent to the child when the Department of Children and Family Services removed the

the initial hearing that is held within seventy-two hours of the child's removal,[49] the grandmother may receive notice that her grandchild was taken into protective custody by child protective services, and notice that a written statement is available to explain the "parent's or guardian's procedural rights and the preliminary stages of the dependency proceedings."[50] The grandmother, however, would not have standing to answer the petition in court even though this is the hearing where the court decides whether continued placement of the child in foster care is necessary.[51]

The next hearing is the jurisdictional hearing, which should occur within fifteen court days of the initial hearing if the child is removed,[52] but due to court congestion, often occurs two or three months later. During the jurisdictional hearing, the court determines the veracity of the petition.[53] While the referral regarding the abuse was investigated and substantiated by child protective services, it is not until the jurisdictional hearing that the court decides whether, in fact, that abuse occurred. Again, the child's grandmother has no right to notice[54] or standing[55] at this hearing. This would also be true for

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child from the home and the maternal grandmother was named in the petition, which alleged that she placed the child at risk).

[49] The initial hearing is often referred to as the "detention hearing" because the court decides whether it is still necessary to detain the child. The hearing must be held within 72 hours of the child's removal from the home and it is at this hearing that parents and legal guardians are informed of the allegations in the petition. *See* CAL. WELF. & INST. CODE §§ 315, 316, 317, 319 (West 2013).

[50] *See* CAL. WELF. & INST. CODE § 307.4 (West 2013).

[51] CAL. WELF. & INST. CODE § 300 (West 2013) (defining 'Guardian' as legal guardian of the child); CAL. WELF. & INST. CODE § 316 (West 2013).

[52] *See* CAL. WELF. & INST. CODE §§ 355, 355.1, 356 (West 2013).

[53] CAL. WELF. & INST. CODE §§ 355, 355.1, 356.

[54] *See* CAL. WELF. & INST. CODE § 290.1(a)(6) (West 2013) (stating that notice is required solely to parents and then to relatives only if no parent is found) ("If there is no parent or guardian residing in California, or if the residence is unknown, then [notice is required] to any adult relative residing within the county or if none, the adult relative residing nearest the court."); *see also* CAL. WELF. & INST. CODE §§ 290.2(a)(6), 309(e)(1) (West 2013) (stating that following the initial removal of the child the social worker is to conduct an investigation to identify and locate grandparents, adult siblings, and other relatives and this investigation is to be

any individual other than a legal parent or legal guardian. If no parent is present, the petition will likely be sustained as pled and the court will declare the child a dependent, meaning the child is formally within the jurisdiction of the court, and under the formal supervision of the court and child welfare services.[56] The child's grandmother, like all non-parent caretakers who are not considered legal parents and do not have standing, would have no opportunity to challenge the truth of the petition and no right to appeal the court's decision.[57]

Two to three months later, at the dispositional hearing, the child's grandmother finally has an opportunity to participate in the proceedings. At the dispositional hearing the court decides the proper disposition of the child—whether the child is released or placed under court supervision, visitation orders, family reunification services, or any other necessary protective orders.[58] The child's grandmother, like all non-parent caretakers, will be allowed to participate in this hearing only if she overcomes the obstacles to establishing de facto parent status,[59] which requires her to prove de

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completed by the disposition hearing unless the relative's history of family violence makes notice inappropriate).

[55] *See* CAL. WELF. & INST. CODE § 316 (West 2013).

[56] *See* CAL. WELF. & INST. CODE § 356 (West 2013) ("After hearing the evidence, the court shall make a finding . . . whether or not the minor is a person described by Section 300 and the specific subdivisions of Section 300 under which the petition is sustained.").

[57] *See generally In re* Miguel E., 15 Cal. Rptr. 3d 530, 539 (Ct. App. 2004) (finding that grandparents do not have standing to appeal decisions by the dependency courts as de facto parents or as relatives).

[58] *See* CAL. WELF. & INST. CODE § 358 (West 2013).

[59] *See* CAL. RULES OF COURT R. 5.502(10) (defining de facto parent as "a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period"); *In re* Merrick V., 19 Cal. Rptr. 3d 490, 505 (Ct. App. 2004); *In re* Leticia S., 111 Cal. Rptr. 2d 810, 813 (Ct. App. 2001); *In re* Matthew P., 84 Cal. Rptr. 2d 269, 273-74 (Ct. App. 1999) (outlining the rights of de facto parents); *cf. In re* Patricia L., 11 Cal. Rptr. 2d 631, 634 (Ct. App. 1992) (describing that factors considered in granting de facto status are: the child's psychological bond to the adult; adult's assumption of the day-to-day parental role; adult's possession of unique information about the

facto parenthood by a preponderance of the evidence.[60] When a person's conduct has contributed to the grounds for dependency jurisdiction, as is the case in this hypothetical, that person is generally prohibited from attaining de facto parent status,[61] meaning that the burden on the grandmother would be significant.[62] Moreover, even as a de facto parent at the disposition and subsequent proceedings, the child's grandmother would only have the right to appear with counsel and present evidence, but no right to reunification services, custody, or visitation with the child.[63]

In California, neither a non-party nor a non-relative would have standing to challenge the detention or removal order, but a relative would at least be able to request that the child be placed in her home[64] and be allowed to appeal the denial of a placement.[65] This right to seek and appeal placement decisions is limited, however, to certain relatives as defined by California law and does not include extended relatives, non-relatives, and other potential psychological parents.[66] Moreover, the child may only be placed with a relative who is a licensed or certified foster parent with no criminal record[67] or, alternatively, with a relative for whom a

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child; adult's regular attendance of court proceedings; and permanent foreclosure of contact between the adult and child as a result of future proceedings).

[60] *See In re* Joshuia S., 252 Cal. Rptr. 106, 109 (Ct. App. 1988).

[61] *See In re* Kieshia E., 859 P.2d 1290, 1296-97 (Cal. 1993) (holding that an individual who abused the child was not entitled to de facto parent status); *In re Leticia S.*, 111 Cal. Rptr. 2d at 813.

[62] *See, e.g.*, *In re Kieshia E.*, 859 P.2d at 1300-11.

[63] *Cf. In re* P.L., 37 Cal. Rptr. 3d 6, 8-9 (Ct. App. 2005) (explaining that while de facto parents are given an opportunity to participate in the proceedings, that status does not give them the same rights accorded to a parent or legal guardian).

[64] CAL. WELF. & INST. CODE § 361.3 (West 2013).

[65] *See* Cesar V. v. Superior Court, 111 Cal. Rptr. 2d 243, 251-52 (Ct. App. 2001).

[66] CAL. WELF. & INST. CODE § 361.3(c)(2) (West 2013) ("[O]nly the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.").

[67] *See* 42 U.S.C.A. § 671(a)(20)(A) (West 2013) (prohibiting states from giving final approval to a potential foster parent who has certain crimes in his or her background); *see, e.g.*, CAL. HEALTH & SAFETY CODE § 1522 (West 2013); D.C. MUN. REGS. tit. 29, § 6007 (2013) (listing multiple requirements kin must meet

criminal records exemption has been granted.[68] If the relative does not meet these specific statutory requirements, the child cannot be placed in his or her home.

So, while the grandmother *could* be considered as a placement for the child,[69] unlike a legal parent or legal guardian, she would not be entitled to placement.[70] Additionally, as a result of the child abuse referral, the child's grandmother would also be listed on California's Child Abuse Central Index ("CACI"),[71] a database of known or suspected child abusers that is available to a broad array of government agencies, employers, and law enforcement agencies. Many public and private entities in California are required to consult

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before licensure); *In re* Summer H., 43 Cal. Rptr. 3d 682, 688 (Ct. App. 2006) (citing CAL. WELF. & INST. CODE § 361.4 (West 2013)).

[68] CAL. CODE REGS. tit. 22, §§ 80040, 89240 (2013) (explaining that when a relative seeking placement has a record of criminal convictions, a social worker for the social services agency may seek an exemption from the Caregiver Background Check Bureau (CBCB) of the Community Care Licensing Division of California's Department of Social Services); *see In re* S.W., 32 Cal. Rptr. 3d 192, 199 (Ct. App. 2005) (citing CAL. HEALTH & SAFETY CODE §§ 1526, 1551 (West 2013)).

[69] "Placement" or "to place a child" in this context means the home where the child resides or to allow the child to reside in that home.

[70] *See* CAL. WELF. & INST. CODE §§ 361.3(a), 361.4, 361.45 (West 2013); *In re* Stephanie M., 867 P.2d 706, 720 (Cal. 1994) (en banc). *But see Cesar V.*, 111 Cal. Rptr. 2d at 251-52 (holding that the grandmother, although not a party, has standing to seek appellate review, which is a petition for extraordinary relief, of the denial of her request for placement under California Welfare and Institutions Code Section 361.3).

[71] *See* CAL. WELF. & INST. CODE § 309(d) (West 2013). California's Child Abuse Central Index (CACI) is necessary for screening caretakers in compliance with the federal Adam Walsh Child Protection and Safety Act of 2006, but must provide for expunction of unsubstantiated or false claims to receive federal funding under Child Abuse Prevention and Treatment Act. CAL. WELF. & INST. CODE § 309(d)(3). A person's fundamental liberty interest in reputation may be violated if inappropriately included on the registry, but the person must prove that inclusion on the registry will damage reputation and that a right or status previously recognized by state law was distinctly altered or ended. *See* Humphries v. Cnty. of L.A., 554 F.3d 1170, 1188 (9th Cir. 2008), *rev'd in part on other grounds*, 131 S. Ct. 447 (2010) (solely on the issue of whether Los Angeles County, as a municipality, is liable for the deprivation, holding that the *Monell v. New York City Dep't of Soc. Services'* "policy or custom" requirement applies in Section 1983 cases irrespective of whether the relief sought is monetary or prospective).

the database before making hiring, licensing, and custody decisions.[72] Further, being listed on CACI, whether the allegation is substantiated or unsubstantiated, often precludes any person, other than a legal parent, from consideration as a potential placement for the child.[73]

Moreover, even if the child's grandmother is not listed on the index, she must still meet the federal requirements of the Adam Walsh Child and Safety Act of 2006[74] and the Adoption and Safe Families Act ("ASFA") of 1997[75] in order to request that her grandchild be placed in her home. This is true for all non-parent caretakers. Under these federal laws, as incorporated in California, if the grandmother was convicted of any crime greater than a minor traffic offense at any point in her life, then the child could not be placed in her home, unless the director of the State Department of Social Services grants an exemption.[76] This exemption is not required when a legal parent seeks the child's placement in his or her home.

In sum, when the child's grandmother is not a party to the initial proceedings and does not have standing, she has no right to

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[72] *See Humphries*, 554 F.3d at 1177-78 (explaining that information in the CACI is made available to the California State Department of Social Services, any county licensing agency, persons "'making inquiries for purposes of pre-employment background investigations for peace officers, child care licensing or employment, adoption, or child placement,'" and to out-of-state agencies in certain circumstances and observing that "it is apparent that the CACI listing plays an integral role in obtaining many rights under California law") (citation omitted).

[73] *See* CAL. WELF. & INST. CODE § 309(d)(1) (West 2013) (noting that the county welfare department shall assess any able and willing relative who requests placement pending detention and the assessment shall include a home inspection for safety and consideration of the results of criminal record check and of allegations of prior child abuse). *See generally Humphries*, 554 F.3d at 1186 (describing the CACI in detail, finding that a listing on the index is "unquestionably stigmatizing," holding that the Fourteenth Amendment required the State to provide those on the list with notice and a hearing, and holding Los Angeles County liable for the deprivation), *rev'd* 131 S. Ct. 447 (2010).

[74] Sex Offender Registration and Notification, 42 U.S.C.A. §§ 16911–16929 (West 2013).

[75] 42 U.S.C.A. § 671(a)(2) (West 2013).

[76] *See* CAL. HEALTH & SAFETY CODE § 1522(a)(4)(B) (West 2013).

challenge the veracity of the petition.[77] If no other biological or legal parent appears, the petition will likely go unchallenged, be sustained as pled, and the grandmother would not have standing to appeal.[78] Consequently, the grandmother would have no meaningful opportunity to reunite with her grandchild, as California law only provides reunification services for the mother, the legal guardian, and the presumed father.[79] The court has discretion to extend reunification services to the non-presumed biological father if he meets certain requirements,[80] but not to former legal guardians,[81] de facto parents,[82] or stepparents.[83]

The child would be removed from the only parent who she knows and, unless the father suddenly comes forward or an appropriate relative is found, the child would be placed in foster care with strangers. What is worse, regardless of whether the child is placed with the father or another relative, the child would have no opportunity to reunify with her only psychological parent. The trauma of severing the secure attachment between a child and caregiver can be profound for the child, altering brain development

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[77] *E.g.*, *In re* Zacharia D., 862 P.2d 751, 759-60 (Cal. 1993); *In re* Miguel E., 15 Cal. Rptr. 3d 530, 539 (Ct. App. 2004); *In re* Merrick V., 19 Cal. Rptr. 3d 490, 507 (Ct. App. 2004); *In re* Carrie W., 2 Cal. Rptr. 3d 38, 49 (Ct. App. 2003); *In re* Emily R., 96 Cal. Rptr. 2d 285, 292 (Ct. App. 2000); *In re* Sarah C., 11 Cal. Rptr. 2d 414, 420 (Ct. App. 1992).

[78] *See In re Miguel E.*, 15 Cal. Rptr. 3d at 539 (stating that grandparents who have not applied for or achieved de facto parent status are merely relatives, not parties entitled to appeal).

[79] *See* CAL. WELF. & INST. CODE § 361.5 (West 2013).

[80] A man who has established that he is the biological father to the child, but who has not established presumed father status, is not entitled to reunification services unless he proves that the reunification services will benefit the child. *See* CAL. WELF. & INST. CODE § 361.5(a); *In re Zacharia D.*, 862 P.2d at 764-65.

[81] If the court removes a child and terminates the guardianship that was established through either probate court or dependency court, the former guardian is no longer the guardian and thus not entitled to services. The court may remove the child, leave the guardianship intact, and offer reunification services. *In re* Alicia O., 39 Cal. Rptr. 2d 119, 123-24 (Ct. App. 1995).

[82] *See* Clifford S. v. Superior Court, 45 Cal. Rptr. 2d 333, 338 (Ct. App. 1995).

[83] *See In re* Jodi B., 278 Cal. Rptr. 242, 245 (Ct. App. 1991).

and causing long-term effects across many domains, including the child's physical, emotional, and mental development.[84]

This scenario is common. A seemingly ever more usual scenario involves a drug-addicted single mother whose whereabouts are unknown. Add an unknown father to the mix, eliminating the possibility of paternal relative placement, and the likelihood of the child's placement with strangers in foster care is even higher. The above hypothetical case demonstrates the need to rethink how the law views psychological parents' rights, in order to reflect the current increase in non-traditional families and provide better protection to the child in the judicial system.

Granting psychological parents the same rights as legal guardians from the onset of a dependency case would be the best means to protect the relationship of the psychological parent and child, but would require significant changes to current child welfare laws in many states. A smaller and more manageable first step would be for courts to treat psychological parents like de facto parents at the beginning of the dependency case—with fewer rights than legal guardians, but at least the opportunity to appear with counsel and present evidence at each hearing. If a psychological parent would otherwise qualify as a de facto parent when the state seeks to

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[84] *See* Erin R. Barnett & Jessica Hamblen, *Trauma, PTSD, and Attachment in Infants and Young Children*, U.S. DEP'T VETERAN'S AFF.: NAT'L CTR. FOR PTSD (Dec. 17, 2009), http://www.ptsd.va.gov/professional/pages/trauma_ptsd_attachment.asp (discussing the importance of the child-caregiver attachment); *see also* CHILD WELF. INFO. GATEWAY, UNDERSTANDING THE EFFECTS OF MALTREATMENT ON BRAIN DEVELOPMENT 9 (2009) [hereinafter UNDERSTANDING THE EFFECTS OF MALTREATMENT ON BRAIN DEVELOPMENT], https://www.childwelfare.gov/pubs/issue_briefs/brain_development/brain_development.pdf (discussing early brain development and the effects of abuse and neglect on that development); UNIV. OF PA. COLLABORATIVE ON CMTY. INTEGRATION, REMOVAL FROM THE HOME: RESULTING TRAUMA 1-2 [hereinafter REMOVAL FROM THE HOME], http://tucollaborative.org/pdfs/Toolkits_Monographs_Guidebooks/parenting/Factsheet_4_Resulting_Trauma.pdf (explaining that removing a child from his or her family can be just as traumatic as exposure to abuse and neglect and can have negative effects that last a lifetime, including psychological and neurobiological effects associated with disrupted attachment).

intervene and remove a child from his or her home, the psychological parent should be treated like a de facto parent from the onset. An analysis of California's de facto parent doctrine shows that this extension of rights to psychological parents is a natural one, consistent with the policy that first led to California's development of the doctrine.

## V. The Judicial Creation of the De Facto Parent Doctrine in California is a Partial Solution

The interest of parents in the care, custody, and control of their children is one of the oldest fundamental liberty interests recognized by the United States Supreme Court.[85] Parents have a basic, presumptive right to the care and custody of their child,[86] and this right should only be disturbed in extreme cases where the person acts incompatibly with parenthood.[87] In California, when dependency proceedings are initiated, seven essential statutory rights protect the parent or legal guardian's right to the care, custody, and control of the child. Only mothers, presumed fathers, adoptive parents, and legal guardians are entitled to these rights under California dependency law.[88] Yet, children in California are not always raised by their mothers, presumed fathers, adoptive parents, or legal guardians. Sometimes, a non-parent caretaker who is a psychological parent to the child raises him or her. California has

[85] Troxel v. Granville, 530 U.S. 57, 65 (2000).

[86] *See In re Kieshia E.*, 859 P.2d at 1300-11.(citing Stanley v. Illinois, 405 U.S. 645, 651 (1972); Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N.C., 452 U.S. 18, 27 (1981)).

[87] *See* GARY C. SEISER & HON. KURT KUMLI, SEISER & KUMLI ON CAL. JUV. COURTS PRACTICE AND PROCEDURE § 2.60(1) (2012) (citing *In re* B.G., 523 P.2d 244 (Cal. 1974)).

[88] *Cf. In re Merrick V.*, 19 Cal. Rptr. 3d at 500 (noting that legal guardians appointed through the probate court under the California Probate Code generally have the same rights as a parent in such proceedings); *In re Carrie W.*, 2 Cal. Rptr. 3d at 47); *In re Emily R.*, 96 Cal. Rptr. 2d at 292; *In re Zacharia D.*, 862 P.2d at 760; *In re Sarah C.*, 11 Cal. Rptr. 2d at 420.

developed a legal doctrine to address this scenario—the de facto parent doctrine.

The de facto parent doctrine is, in fact, judicial recognition of the psychological parent. The California Supreme Court first recognized the de facto parent doctrine in *In re B.G.*:

> The fact of biological parenthood may incline an adult to feel a strong concern for the welfare of his child, but it is not an essential condition; a person who assumes the role of a parent, raising the child in his own home, may in time acquire an interest in the 'companionship, care, custody, and management' of that child. The interest of the 'de facto parent' is a substantial one, recognized by the decision of this court in *Guardianship of Shannon*, (1933) 218 Cal. 490, and by courts of other jurisdictions and deserving of legal protection.[89]

Numerous lower courts in California then integrated the de facto parent doctrine,[90] and years later, California's Judicial Council incorporated the doctrine into the California Rules of Court: "'De facto parent' means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed the role for a substantial period."[91]

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[89] *In re* B.G., 523 P.2d 244, 253 (Cal. 1974) (citing JOSEPH GOLDSTEIN ET AL., BEYOND THE BEST INTERESTS OF THE CHILD 17-20 (1973)); *cf. In re Kieshia E.*, 859 P.2d at 1296 ("The de facto parenthood doctrine simply recognizes that persons who have provided a child with daily parental concern, affection, and care over substantial time may develop legitimate interests and perspectives, and may also present a custodial alternative, which should not be ignored in a juvenile dependency proceeding.").

[90] *See, e.g.*, *In re* Jamie G., 241 Cal. Rptr. 869, 874 (Ct. App. 1987) (citing James v. McLinden, 341 F. Supp. 1233, 1234-35 (D. Conn. 1969)); Charles S. v. Superior Court, 214 Cal. Rptr. 47, 50 (Ct. App. 1985); Katzoff v. Superior Court, 127 Cal. Rptr. 178, 180 (Ct. App. 1976).

[91] CAL. RULES OF CT. R. 5.502(10). Note that the "rules in the California Rules of Court are adopted by the Judicial Council of California under the authority of article VI, section 6, of the Constitution of the State of California, unless otherwise

In designating a de facto parent, the party seeking the status must file a motion with the court and bear the burden of proving de facto parenthood by a preponderance of the evidence.[92] The court, in making its determination, may look to a variety of factors related to the child's bond with that caretaker.[93] Upon a sufficient showing, the court may then grant the de facto parent standing to participate as a party in disposition hearings and any hearing thereafter.[94] In addition, the de facto parent has the right to be present at the hearing; the right to be represented by retained counsel or, at the discretion of the court, by appointed counsel; and the right to present evidence.[95]

*In re B.G.* involved the de facto parents' standing at the dispositional hearing, and the California Supreme Court held:

> [D]e facto parents . . . should be permitted to appear as parties in juvenile court proceedings. Their standing should not depend upon the filing of a petition for guardianship . . . nor should their participation be restricted to the limited role of an amicus curiae; they should be permitted to appear as parties to assert and protect their interest in the companionship, care, custody and management of the child.[96]

*In re B.G.* involved the question of de facto parents' standing specifically at the dispositional hearing, therefore, subsequent courts

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indicated." *See* CAL. RULES OF CT. R. 1.3. Notably, it was not California's legislature but the judicial council, the policymaking body of the California courts, that adopted the definition of a de facto parent. The judicial council relies on California's Administrative Office of the Courts (AOC) to implement its policies.

[92] *See In re* Patricia L., 11 Cal. Rptr. 2d 631, 635 (Ct. App. 1992) (outlining that factors for determining whether the person is a de facto parent should include whether the child is psychologically bonded to the adult, whether the adult assumed the day-to-day parental role for a substantial period of time, whether the adult has unique knowledge about the child, whether the adult regularly attended court hearings, and whether a juvenile court order would permanently foreclose contact between the adult and child).

[93] *Id.*

[94] *See* CAL. RULES OF CT. R. 5.534(e).

[95] *See id.*

[96] *See In re* B.G., 523 P.2d 244, 254 (Cal. 1974).

have held that de facto parents are only granted standing at the dispositional hearing and beyond.[97] The California Rules of Court also limit de facto parent recognition to the dispositional hearing and beyond, and do not recognize that status at the initial hearing or jurisdictional hearing.[98] The language and principle behind the California Supreme Court's holding in *In re B.G.*, however, is broader and states that de facto parents "should be permitted to appear as parties in juvenile court proceedings," not just at dispositional or subsequent hearings, and they "should be permitted to appear as *parties* to assert and protect their interest in the companionship, care, custody and management of the child."[99] Yet, subsequently, courts have not treated de facto parents as full parties to the proceedings, even at the dispositional hearing and later hearings, and have limited the role of de facto parents to little more than amici curiae.[100] The California Rules of Court should be

[97] *See, e.g.*, *In re* Damion B., 135 Cal. Rptr. 3d 742, 744 (Ct. App. 2011); *In re* B.F., 118 Cal. Rptr. 3d 561, 565 (Ct. App. 2010); *In re* P.L., 37 Cal. Rptr. 3d 6, 8 (Ct. App. 2005); *In re* Matthew P., 84 Cal. Rptr. 2d 269, 272 (Ct. App. 1999); *In re* Cynthia C., 69 Cal. Rptr. 2d 1, 8 (Ct. App. 1997); *In re Patricia L.*, 11 Cal. Rptr. 2d at 635.

[98] Note that, in interpreting this rule, the usual rules of statutory construction apply. *See* Conservatorship of Coombs, 79 Cal. Rptr. 2d 799, 801 (Ct. App. 1998). However, as pointed out by the court in *In re Joel H.*, because California's Judicial Council promulgated the rule of court, and not the legislature, inferences cannot be drawn regarding legislative intent. *See In re* Joel H., 23 Cal. Rptr. 2d 878, 883 (Ct. App. 1993). For example, in speaking to whether de facto parents have standing to appeal, the court held that, to the extent the rule of court conflicts with *In re B.G.* and the CALIFORNIA WELFARE AND INSTITUTIONS CODE, the rule of court is void. *See id.* (citing *In re* Rachael C., 1 Cal. Rptr. 2d 473, 479 (Ct. App. 1991); *In re B.G.*, 523 P.2d 244).

[99] *See In re B.G.*, 523 P.2d at 254 (emphasis added).

[100] *See In re Damion B.*, 135 Cal. Rptr. 3d at 744 (stating that de facto parents did not have the right to cross-examine witnesses at 18-month review hearing); *In re B.F.*, 118 Cal. Rptr. 3d at 565; *In re Patricia L.*, 11 Cal. Rptr. 2d at 635 (de facto parent had no right to custody or continued placement, and therefore did not have legal standing to complain of placement of child with new prospective adoptive couple); Clifford S. v. Superior Court, 45 Cal. Rptr. 2d, 333, 337-38 (Ct. App. 1995); *In re Matthew P.*, 84 Cal. Rptr. 2d at 272; *In re* Jamie G., 241 Cal. Rptr. 869, 875 (Ct. App. 1987) (de facto parents are not entitled to reunification services,

modified to reflect the broader principles in *In re B.G.* and, additionally, these principles should apply to all hearings, including the initial hearing.

Currently, de facto parents in California have no right to appear with counsel at the initial hearing or adjudication hearing, no right to challenge the veracity of the State's petition, no right to reunification services, no right to custody, and no right to visitation with the child.[101] This limitation is true even in cases in which the natural parents never appeared, and "the court was placed in the position of simply rubber-stamping the social worker's factual assertions and recommendations."[102] California's de facto parent doctrine, therefore, provides insufficient protection for the rights and relationship of the psychological parent and child.

More can be done to protect the relationship of the psychological parent and child in dependency proceedings. If there is no legal parent present in the child's life when the state intervenes to remove a child from the psychological parent's home and dependency proceedings are initiated, the psychological parent should be recognized as a de facto parent from the onset of the case. A psychological parent who has assumed primary caretaking responsibilities for a child over a significant period of time should have the same rights and protections that a de facto parent is afforded in dependency proceedings.

In other words, if the psychological parent would otherwise qualify as a de facto parent under the law, but for the stage of the proceedings, the court should recognize the psychological parent as a de facto parent. This status would be solely for the purposes of the dependency proceedings and would eliminate dependency law's unequal treatment of otherwise similarly situated caretakers. Moreover, it would be a natural extension of existing case law and,

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and therefore lack standing to challenge the denial of reunification services or contest the reasonableness of services that are offered).

[101] *See In re Damion B.*, 135 Cal. Rptr. 3d at 747 (stating that de facto parents did not have the right to cross-examine witnesses at 18-month review hearing); *In re B.F.*, 118 Cal. Rptr. 3d at 565. *But see In re Matthew P.*, 84 Cal. Rptr. 2d at 274 (stating that de facto parents cannot be completely shut out of the proceedings).

[102] *See In re Rachael C.*, 1 Cal. Rptr. 2d at 478.

similar to the original concept of the de facto parent, could be judicially created and maintained to protect the rights of psychological parents and their children.

Decisional law limiting the rights of de facto parents is, in part, a consequence of weighing legal parents' greater substantive and procedural rights against the interests of de facto parents.[103] However, granting a psychological parent the same rights afforded to a de facto parent, but at the onset of a dependency case, would not diminish the legal parents' rights, especially if the legal parents are absent and not involved in the court proceedings. The court must still enforce the procedural due process protections to which even an absent parent is entitled.[104]

Treating psychological parents like de facto parents at every stage of a dependency case would better serve the interests of the child and better inform the court of the child's history and needs.[105]

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[103] Notably, in cases where the de facto parents raised the child for a significant period of time, the allegations related to the removal of the child from the de facto parents' care, and the natural parents were significantly absent from the child's life, California courts have been more generous conferring due process rights. *See, e.g.*, *In re Jamie G.*, 241 Cal. Rptr. at 874 (citing James v. McLinden, 341 F. Supp. 1233, 1234-35 (D. Conn. 1969)); *Charles S. v. Superior Court*, 214 Cal. Rptr. at 50; *Katzoff v. Superior Court*, 127 Cal. Rptr. at 180). Courts have been less generous in cases where the child was removed from the de facto parent's custody at the onset and there was no prior, significant relationship between the de facto parent and child. *See In re* P.L., 37 Cal. Rptr. 3d 6, 8-9 (Ct. App. 2005) (finding that the de facto parent did not have rights when the de facto parent was the foster parent with no prior relationship to child who was removed from mother's care at initial hearing); *In re Cynthia C*., 69 Cal. Rptr. 2d at 8 (holding that the de facto parents did not have rights when the de facto parents were the caretakers for only a few months and the child was subsequently removed from their home due to violence and prior child abuse referrals relating to the caretakers and their own children); *In re Matthew P.*, 84 Cal. Rptr. 2d at 275 (finding that because the children were removed from the parents' custody at initial hearing and de facto parents were foster parents in whose home the children were subsequently placed, de facto parents had due process interests that should be considered).

[104] *See e.g.*, CAL. WELF. & INST. CODE § 294 (West 2013) (requiring due diligence in attempt to locate and serve absent parent).

[105] *See generally* Josh Gupta-Kagan, *Children, Kin, and Court: Designing Third Party Custody Policy to Protect Children, Third Parties, and Parents*, 12 N.Y.U. J. LEGIS. & PUB. POL'Y 43, 62 (2008) (arguing, in part, that "states should permit

As a small, first step toward protecting the relationship of the child and psychological parent in child welfare proceedings, California's Judicial Council should amend Rule 5.534(e) of the California Rules of Court, that states, in part, "the court may recognize the child's present or previous custodians as de facto parents and grant standing to participate as parties in disposition hearings and any hearing thereafter . . ."[106] By replacing the word "disposition" with "initial," the Judicial Council would allow courts, at their discretion, to grant standing to de facto parents, such as psychological parents, at the initial and adjudication hearings. While they would not be afforded all of the rights of a parent or legal guardian, these psychological parents would at least have standing, the right to counsel, and the right to present evidence during the most critical hearings at the beginning of the case.

Permitting psychological parents—whether a grandparent, a stepparent, an extended relative, or non-relative caretaker—to participate and seek custody of the child in dependency proceedings would go far to protect the relationship of the child and his or her psychological parent, and mitigate any harm to the child that would be caused by severing that attachment. Moreover, by welcoming the participation of and input from the one person who has been the primary caretaker for the child on a day-to-day basis, the court would have a better, more intimate understanding of the child's unique history, individual needs, and best interests moving forward.[107]

## VI. De Facto Parent Doctrine Nationwide

Like California, twenty-two states and the District of Columbia have adopted their own equivalents to the de facto parent doctrine, either by statute or judicial creation, using a variety of terms to refer to their definition of the de facto parent, including

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broad third party standing to seek custody once a neglect case has been opened to help children and families find positive alternatives to and quick exits from the neglect system").

[106] CAL. RULES OF CT. R. 5.534(e).

[107] Gupta-Kagan, *supra* note 105, at 76.

psychological parent, person acting *in loco parentis*, de facto parent, and parent by estoppel.[108] For example, the supreme courts of Colorado,[109] Maryland,[110] South Carolina,[111] Washington,[112] and West Virginia,[113] have all adopted their own versions of the doctrine.

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[108] *See De Facto Parent Recognition*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/de_facto_parenting_statutes (last visited Dec. 20, 2012) (listing Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Indiana, Kentucky, Maine, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Jersey, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Washington, Wisconsin, and West Virginia as having de facto parenting statutes); *see, e.g.*, Kinnard v. Kinnard, 43 P.3d 150, 151 (Alaska 2002) (using the term "psychological parent"); E.N.O. v. L.M.M., 711 N.E.2d 886, 891 (Mass. 1999); Atkinson v. Atkinson, 408 N.W.2d 516, 517 (Mich. Ct. App. 1987) (adopting an "equitable parent" doctrine to describe a person who played parental role but who is not legal parent); V.C. v. M.J.B., 748 A.2d 539, 546 (N.J. 2000) (holding same-sex partner was [de facto] parent and awarded custody of child); Mason v. Dwinnell, 660 S.E.2d 58, 61 (N.C. Ct. App. 2008) (applying de facto standard); Matter of Guardianship & Conservatorship of Nelson, 519 N.W.2d 15, 20 (N.D. 1994); Daley v. Gunville, 348 N.W.2d 441, 447 (N.D. 1984) (awarding grandmother custody of six-year-old she raised since the child was six months of age); State *ex rel.* Juvenile Dep't of Lane Cnty., Children's Servs. Div. v. Lauffenberger, 777 P.2d 954, 959 (Or. 1989) (awarding grandparents custody of seven-year-old that they raised for most of her life, as opposed to awarding custody to the child's father); Middleton v. Johnson, 633 S.E.2d 162, 168 (S.C. Ct. App. 2006); Quinn v. Mouw-Quinn, 552 N.W.2d 843, 848 (S.D. 1996); *In re* Parentage of L.B., 122 P.3d 161, 165 (Wash. 2005) (en banc); *In re* Clifford K., 619 S.E.2d 138, 142 (W. Va. 2005) (using the term "psychological parent"); *In re* Custody of H.S.H.-K, 533 N.W.2d 419, 451 (Wis. 1995); *see also* Jean Maby H. v. Joseph H., 676 N.Y.S.2d 677, 679 (App. Div. 1998) (applying equitable estoppel to protect bond between child and non-biological father).

[109] *In re* E.L.M.C., 100 P.3d 546, 560-61 (Colo. App. 2004).

[110] Janice M. v. Margaret K., 948 A.2d 73, 82 (Md. 2008) (recognizing de facto parent status in "exceptional circumstances").

[111] Marquez v. Caudill, 656 S.E.2d 737, 743-44 (S.C. 2008) (approving the test set forth in *Middleton*, 633 S.E.2d 162, quoting *In re Custody of H.S.H.-K*, 533 N.W.2d at 435-36 that outlined a four-prong test to qualify as a "psychological parent" or de facto parent).

[112] *In re Parentage of L.B.*, 122 P.3d at 177.

[113] *In re Clifford K.*, 619 S.E.2d at 142; *see also In re* Custody of Cottrill, 346 S.E.2d 47, 49 (W. Va. 1986) (awarding grandmother custody of eleven-year-old child that she raised, as opposed to awarding custody to the child's mother).

Additionally, the legislatures of Delaware,[114] District of Columbia,[115] Indiana,[116] and Kentucky[117] have established such a doctrine through statute.

Washington defined the psychological parent, in its adoption of the de facto parent doctrine, as the person who has a parent-like relationship based on day-to-day interaction, companionship, and shared experiences of the child and adult.[118] While Washington's dependency statutes do not include psychological parent within the definition of legal parent, the statutes do allow individuals who meet the definition of psychological parent to intervene in dependency proceedings.[119]

The Alaska Supreme Court, in their adoption of the de facto parent doctrine, also clearly defined a psychological parent:

> [O]ne who, on a day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills a child's psychological needs for an adult. This adult

[114] DEL. CODE ANN. tit. 13, § 8-201 (West 2013).
[115] D.C. CODE § 16-831.01 (2013).
[116] IND. CODE ANN. §§ 31-17-2-8, 31-17-2-8.5 (West 2013) (outlining the threshold requirements for de facto parent status); *see also In re* Guardianship of Stackhouse, 538 N.E.2d 990, 992 (Ind. Ct. App. 1989) (awarding step-grandmother who effectively became child's mother, rather than grandfather, custody of orphaned four-year-old child).
[117] KY. REV. STAT. ANN. § 403.270 (West 2012) (defining "de facto custodian" as a "person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services" and granting the de facto custodian the same standing in custody matters that is given to each natural parent).
[118] *See In re Parentage of L.B.*, 122 P.3d at 177 .
[119] *See In re* Parentage of J.A.B., 191 P.3d 71, 75-76 (Wash. Ct. App. 2008); *In re* Dependency of M.R., 899 P.2d 1286, 1287 (Wash. Ct. App. 1995) (stating that psychological parent does not fit within the definition of "parent" under Washington's statute governing dependency proceedings, but the trial court may allow a psychological parent to intervene). *But see In re* Dependency of J.H., 815 P.2d 1380, 1386 (Wash. 1991) (en banc) (stating that foster parents who allege they are psychological parents have no right to intervene).

> becomes an essential focus of the child's life, for he is not only the source of the fulfillment of the child's needs, but also the source of his emotional and psychological needs . . . .The wanted child is one who is loved, valued, appreciated, and viewed as an essential person by the adult who cares for him . . . . This relationship may exist between a child and any adult; it depends not upon the category into which the adult falls—biological, adoptive, foster, or common-law—but upon the quality and mutuality of the interaction.[120]

The supreme courts of Colorado, West Virginia, and Wisconsin also adopted similar definitions for psychological parents.[121]

Yet, in nineteen states, recognition of de facto parents remains uncertain, and eight states refuse to recognize the doctrine altogether.[122] States that adopted the doctrine, either legislatively or by judicial creation, acknowledged the existence of psychological parents and non-traditional families as well as the importance of

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[120] *See* Evans v. McTaggart, 88 P.3d 1078, 1082 (Alaska 2004).

[121] *See In re E.L.M.C.*, 100 P.3d at 560-61 (explaining that a psychological parent is a person with whom the child has "deep emotional bonds such that the child recognizes the person, independent of the legal form of the relationship, as a parent from whom they receive daily guidance and nurturance"); *In re Clifford K.*, 619 S.E.2d at 156-57 (noting that a 'psychological parent' is someone who has established "such a meaningful relationship with a minor child so as to be entitled to greater protection under the law than would ordinarily be afforded to one who is not the biological or adoptive parent of the child" and "who, on a continuing day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills a child's psychological and physical needs for a parent and provides for the child's emotional and financial support"); *In re Custody of H.S.H.-K.*, 533 N.W.2d at 435-36.

[122] *See De Facto Parent Recognition*, *supra* note 108; *see, e.g.*, Van v. Zahorik, 597 N.W.2d 15, 18 (Mich. 1999); Alison D. v. Virginia M., 572 N.E.2d 27, 29 (N.Y. 1991); Jones v. Barlow, 154 P.3d 808, 816 (Utah 2007) (declining to adopt de facto parent doctrine or psychological parent doctrine); Titchenal v. Dexter, 693 A.2d 682, 688 (Vt. 1997) (declining to adopt the de facto parent doctrine).

protecting the relationship between the child and psychological parent.[123]

As seen in the California context detailed above, most states only recognize mothers, presumed fathers, adoptive parents, and legal guardians as parties in child welfare proceedings and grant rights to de facto parents in limited cases.[124] These states, generally, do not recognize psychological parents outside the context of de facto parents. Consequently, the rights that are essential to protecting the parent-child relationship—the right to notice, the right to appear with counsel, standing to participate fully in proceedings, the right to appeal, and the right to reunification services—are denied to psychological parents who have not yet been designated de facto parents. These caretakers have none of those rights, even at the most critical preliminary stages of child welfare proceedings, unless the state adopts specific statutory exceptions. Further, even in states that *have* adopted the de facto parent doctrine, either statutorily or by judicial creation, it is unclear from a survey of statutes and case law whether psychological parents who qualify as de facto parents have any rights during the initial hearings of child welfare proceedings. In the few states that do recognize third parties, such as psychological parents, there are still arduous standing requirements that must be met.[125]

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[123] *See generally* Lauren Valastro, Comment, *Training Wheels Needed: Balancing the Parental Presumption, the Best Interest Standard, and the Need to Protect Children*, 44 TEX. TECH. L. REV. 503 (2012) (discussing the psychological parent doctrine in Texas and nationwide).

[124] *See e.g.*, FLA. STAT. ANN. § 39.01(49) (West 2013); MICH. CT. R. § 3.903(A)(19) ("Party" includes the petitioner, child, respondent and parent, guardian, or legal custodian); MICH. CT. R. § 3.920; NEV. REV. STAT. ANN. § 432B.080 (West 2011); N.Y. FAM. CT. ACT. §§ 614, 616, 617, 624, 1046(b)(ii) (McKinney 2013); TEX. FAM. CODE ANN. § 101.024(a) (West 2013) ("'Parent' means the mother, a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father."); WIS. STAT. ANN. § 48.02(13) (West 2013).

[125] *See, e.g.*, COLO. REV. STAT. ANN. § 19-3-202 (West 2013) (providing standing, right to counsel, advisement of legal rights, and right to request a jury trial at the first appearance in a child welfare proceeding to the "respondent parent, guardian,

In New York, however, the psychological parent may be awarded the same rights as a legal parent from the onset of child abuse and neglect proceedings if the psychological parent qualifies as the "respondent" in the case.[126] A New York statute broadly defines a "respondent" as "any parent or other person legally responsible for the child's care who is alleged to have abused or neglected the child."[127] The term "person legally responsible" is defined as any individual regularly or continually in the household who has assumed the parenting role.[128] Depending on the specific facts of each case, courts have found the legally responsible person to be individuals, such as a parent's cohabitant or boyfriend,[129] or an

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or legal custodian" only); WASH. REV. CODE ANN. §§ 26.44.115, 26.44.120 (West 2013) (providing notice requirements for "parents" and "noncustodial parent" when child is taken into protective custody); *see also* People in Interest of C.P. v. F.P., 524 P.2d 316, 319 (Colo. App. 1974) (stating that the court at dispositional stage need not give notice to or consider rights of relatives seeking custody if no timely application is made and that joinder of grandmother as "party" to proceedings at disposition is proper when petitioner is seeking custody). *See generally* John W. Ellis, Comment, *Yours, Mine, Ours?—Why the Texas Legislature Should Simplify Caretaker Consent Capabilities for Minor Children and the Implications of the Addition of Chapter 34 to the Texas Family Code*, 42 TEX. TECH. L. REV. 987 (2010) (discussing Texas' legislative amendments to expand informal caregiver authority, including standing to file suit affecting the parent-child relationship). *See generally* Lawrence Schlam, *Children "Not in the Physical Custody of One of [Their] Parents:" The Superior Rights Doctrine and Third-Party Standing Under the Uniform Marriage and Dissolution of Marriage Act*, 24 S. ILL. U. L.J. 405 (2000) (discussing generally superior rights doctrine and the obstacles to third party standing for psychological parents in child custody proceedings in Illinois and several states).

[126] *See* N.Y. FAM. CT. ACT § 1023 (McKinney 2013) (providing notice for "person legally responsible" that temporary protective order would be sought and preliminary hearing held); N.Y. FAM. CT. ACT § 1033-b (McKinney 2013) (providing for advisement and right to court-appointed attorney for indigent respondents at initial hearing).

[127] *See* N.Y. FAM. CT. ACT § 1012(a) (McKinney 2013).

[128] *See* N.Y. FAM. CT. ACT § 1012(g) (defining "person legally responsible" as the person who has assumed the parenting role who may be found in the household continually or at regular intervals).

[129] *See In re* Mikayla U., 699 N.Y.S.2d 145, 146 (App. Div. 1999).

uncle who lives in the family home.[130] In contrast, courts have found that neither a minor sibling[131] nor a grandparent's boyfriend who did not reside in the home[132] is a legally responsible person.

The court's determination depends on an evaluation of the relationship of the person to the child and whether that person assumed a parental role.[133] If the person meets the "legally responsible" standard, he or she is entitled, at the initial hearing and thereafter, to notice, advisement of his or her legal rights, standing as a full party in the proceedings, and court-appointed counsel if he or she is indigent.[134] This statutory scheme protects the relationship of the psychological parent and child when child welfare proceedings are initiated, and adequately addresses the concerns raised in the illustrative case above.

## VII. Conclusion

In California, as in many states, when dependency proceedings are initiated, there are seven essential rights afforded by statute—the right to notice, the right to appear with counsel, standing to participate fully in all proceedings, the right to physical custody of the child, the right to visitation, the right to appeal, and the right to reunification services. Generally, only mothers, presumed fathers, adoptive parents, and legal guardians are entitled to these rights under California dependency law. Until these statutes are expanded to embrace psychological parents and afford them the same rights as legal guardians, dependency courts should take action to cure this

[130] *See In re* Dayquon G., 803 N.Y.S.2d 510, 510 (App. Div. 2005).
[131] *See* Catherine G. v. Cnty. of Essex, 818 N.E.2d 1110, 1112-13 (N.Y. 2004).
[132] *See In re* Brent HH., 765 N.Y.S.2d 671, 674 (App. Div. 2003).
[133] *See generally* Matter of Yolanda D., 673 N.E.2d 1228, 1231 (N.Y. 1996) (recognizing that while parenting functions will not always be performed by a legal parent, determination of whether a person is acting *in loco parentis* is a discretionary decision that will depend on the facts of each individual case).
[134] *See* N.Y. FAM. CT. ACT § 1023 (McKinney 2013) (providing notice for "person legally responsible" that temporary protective order would be sought and preliminary hearing held); N.Y. FAM. CT. ACT § 1033-b (McKinney 2013) (providing for advisement and right to court-appointed attorney for indigent respondents at initial hearing).

problem. If courts, within their discretion, extended these rights to psychological parents who would otherwise qualify as de facto parents, this practice would better protect modern families in California and nationwide.

Acknowledging the psychological parent from the onset of dependency proceedings in the few cases where the psychological parent would otherwise qualify as a de facto parent, and there is no parent present in the child's life, would better protect the interests of child—in relative placement, visitation, continuing connections with extended family members, and critically, in reunification with their psychological parent. As the primary caretaker who has cared for the child on a day-to-day basis for a significant period of time, the psychological parent would have unrivaled insight into the child's recent past and unique needs. Therefore, the psychological parent's participation in the proceedings would better shape the court's understanding of the child.

Moreover, two non-parent caretakers who share the same degree of kinship to a child, whether psychological or by blood, who assume the same parental role for the same period of time, and who appear in dependency court for the same reasons, would be treated equally when dependency proceedings are initiated. It would not matter that one non-parent caretaker obtained legal guardianship before the initial hearing and the other did not. Moreover, any conflict with the legal parents' rights could be resolved under existing dependency law as it currently treats de facto parents.

Extending essential statutory rights to psychological parents in these unique dependency cases creates fundamental fairness where disparate treatment once occurred. Most importantly, it protects the welfare of the child in these families. Severing the secure and significant attachments that form between a child and caregiver can have profoundly traumatic effects on the child. These include altered brain development, and impacted physical, emotional, and mental long-term development.[135] Taking steps to recognize and protect the

[135] Barnett & Hamblen, *supra* note 84 (discussing the importance of the child-caregiver attachment); *see also* UNDERSTANDING THE EFFECTS OF MALTREATMENT ON BRAIN DEVELOPMENT, *supra* note 84 (discussing the effects of abuse and

attachments between the child and psychological parent would mitigate the potential harm to the child and ensure the fair and equal protection of non-traditional families.

As family dynamics evolve, so must child welfare law. Over the last forty years, there has been a significant rise in the number of non-traditional families. The number of children raised by psychological parents is increasing. A judicial rethinking of the psychological parent's role in dependency proceedings or a change in pertinent legislation is necessary for the sake of these children and the modern families in which they are raised.

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neglect on early brain development); REMOVAL FROM THE HOME, *supra* note 84 (explaining that removing a child from his or her family can be just as traumatic as exposure to abuse and neglect and can have negative effects that last a lifetime, including psychological and neurobiological effects associated with disrupted attachment).