

Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Lisa Calderon, Chair

AB 260 (Stone) – As Introduced January 15, 2021

SUBJECT: Guardianships

SUMMARY: Requires, in the event that a probate court investigation is waived, the investigation be waived for good cause; prohibits, if the probate court has made a child welfare referral for a child who is subject to a guardianship petition and who may have been abused or neglected, guardianship proceedings from being completed until an investigation is complete and a report has been provided to the juvenile court for review; expands eligibility for the state-funded Kinship-Guardian Assistance Payment (Kin-GAP) Program to include youth who are placed with a relative caregiver who is appointed as the child's legal guardian; and, expands state-funded Kin-GAP eligibility to include nonminor dependents (NMDs) who are under 21 years of age and who have had a kinship guardianship established. Specifically, **this bill:**

- 1) Declares that an investigation and recommendation of a proposed guardianship by a court investigator, probation officer, or domestic relations investigator may only be waived by the probate court if there is good cause to do so.
- 2) Requires, in order for the probate court to refer a matter to a child welfare agency, as permitted by current law, an investigative report to find that the proposed ward in a probate court guardianship case is at risk of abuse or neglect.
- 3) Prohibits guardianship proceedings from being completed until a child welfare services agency investigation is completed and a report is provided to the juvenile court for review.
- 4) Declares that the appointment of a temporary guardian by the probate court does not limit the authority of the juvenile court to order the commencement of juvenile court proceedings, as specified.
- 5) States Legislative intent that guardianship laws related to probate and juvenile court procedures operate together as a cohesive statutory structure that ensure all cases referred by the probate court for a child welfare investigation are evaluated by the dependency court without limiting the probate court's ability to take immediate action to protect the child during the period of the investigation and evaluation. Further, state that the purposes of the statutory structure implemented by the provisions of this bill is to ensure the protection of every child's health, safety, and welfare and to provide due process to every child, parent, and family.
- 6) Requires, on or before September 1, 2022, the Judicial Council to develop or revise any rules necessary to implement certain provisions of this bill, as specified.
- 7) Requires, if the probate court has referred a matter to the juvenile court, as specified, and the child welfare agency failed to file a petition to commence juvenile justice proceedings within three weeks of the referral, the juvenile court to, without further referral or application, review the decision of the social worker to not file a petition. Further, permits the court to

either affirm the decision of the social worker or order the social worker to commence juvenile court proceedings.

- 8) Prohibits the appointment of a temporary guardian from limiting the authority of the juvenile court to order commencement of dependency proceedings or to hear and determine a petition alleging that the child is within the jurisdiction of the juvenile court, as specified.
- 9) Prohibits the passage of time from the filing of the petition for guardianship to review by the juvenile court from limiting the authority of the juvenile court to order the social worker to commence proceedings or to make a jurisdiction finding, as specified.
- 10) Requires, if the juvenile court does not order the social worker to commence juvenile court proceedings, the juvenile court to, within five days of making the decision, transmit the decision, in writing, to the probate court. Further, requires the probate court to make a copy of the decision available to the persons who have been served in the guardianship proceedings or their attorneys.
- 11) States Legislative intent to ensure that children who must be separated from a parent as a result of abuse or neglect have access to funding any time they are placed in a guardianship by the juvenile court, and that permanent placement of a child is not delayed solely to ensure that the child will be able to receive critical funding.
- 12) Deletes the designation that a nonfederally eligible child placed with an approved caregiver who is appointed as the child's legal guardian as eligible for Kin-GAP, as defined in current law, and, instead, deems a child placed with a relative caregiver who is appointed as the child's legal guardian as eligible for aid under the state-funded Kin-GAP program, as specified.
- 13) Expands eligibility for state-funded Kin-GAP from eligible youth under 19 years of age to any eligible youth under 21 years of age who has had a kinship guardianship established pursuant to provisions of this bill.
- 14) Makes technical and conforming changes.

EXISTING LAW:

- 1) Requires a court investigator, probation officer, or domestic relations investigator, unless waived by the court, to make an investigation and file with the court a report and recommendation concerning each proposed guardianship of a person, or guardianship of an estate, and, further, requires the report for the guardianship of a person to include, but not be limited to, an investigation and discussion of: a social history of the guardian; a social history of the proposed ward, including an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward, and the capability of the petitioner to meet those needs; and, the anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child, among other components, as specified. (Probate Code Section [PROB] 1513(a))
- 2) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Welfare and Institutions Code Section [WIC] 202)

- 3) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)
- 4) Designates a child as within the jurisdiction of the juvenile court, which may adjudge that person to be a dependent child of the court, if the child comes within certain descriptions, including, but not limited to: the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian; the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of the child's parent or guardian to adequately supervise or protect the child; the child is suffering serious emotional damage; the child has been sexually abused, or there is a substantial risk that the child will be sexually abused; or, the child's parent or guardian caused the death of another child through abuse or neglect, among other descriptions, as specified. (WIC 300 *et seq.*)
- 5) Provides for extended foster care funding for youth until age 21, as well as adopts other changes to conform to the federal Fostering Connections to Success Act. (WIC 241.1, 303, 366.3, 388, 391, 450, 11400, 11402, 11403)
- 6) Requires a social worker, whenever the social worker has cause to believe that there was or is within the county a person described in WIC 300, to immediately make any investigation they deem necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced. Further, requires the social worker, if they determine that it is appropriate to offer child welfare services to the family, to make a referral to those services, as specified. (WIC 328(a))
- 7) Allows any person who has applied to a social worker to commence juvenile court proceedings, when the social worker fails to file a petition within three weeks after the application, to apply, within one month after making the application, to the juvenile court to review the decision of the social worker, and, further, allows the court to either affirm the decision of the social worker, or order them to commence juvenile court proceedings. (WIC 331)
- 8) Allows the juvenile court, if it finds that a child is a person described by WIC 300, and the parent has advised the court that they are not interested in family maintenance or family reunification services, in addition to, or in lieu of adjudicating the child a dependent of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, if the court determines that a guardianship is in the best interest, provided that the parent and the child agree to the guardianship, unless the child's age or physical, emotional, or mental conditions prevents the child's meaningful response. (WIC 360(a))
- 9) Describes requirements for an investigation of a potential guardianship by the probate court. If a probate guardianship investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, allows but does not require, the probate court to refer the case to the social services agency designated to investigate potential dependencies. (PROB 1513)
- 10) Deems a child as eligible for aid under the Kin-GAP program if the court appoints an approved relative caregiver as the child's legal guardian, the child has been in the care of that

approved relative for a period of six consecutive months under a voluntary placement agreement, and the child otherwise meets the conditions for federal financial participation. Further, deems the nonfederally eligible child placed with an approved relative caregiver who is appointed as the child's legal guardian as eligible for state-funded Kin-GAP, as defined. (WIC 360(a))

- 11) Instructs CDSS to exercise its option under federal law, as specified, to enter into kinship guardian assistance agreements to provide federally funded Kin-GAP on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as approved relative caregivers and for whom they have committed to care on a permanent basis. (WIC 11385(a))
- 12) Establishes the eligibility criteria for youth to receive federal Kin-GAP payments. (WIC 11386)
- 13) Requires CDSS to establish a state-funded Kin-GAP program. (WIC 11360 *et seq.*)
- 14) Deems as eligible for initial intake and evaluation of risk services any child reported to the county child welfare services department to be endangered by abuse, neglect, or exploitation, and, further, requires an immediate in-person response to be made by a county child welfare services department social worker in emergency situations. Further, requires the person making any initial response to a request for child welfare services to consider providing appropriate social services to maintain the child safely in their home. (WIC 16504)
- 15) Requires family maintenance services be provided or arranged for by county welfare department staff in order to maintain a child in their own home. Further, limits these services to six months, but allows for the extension of services in periods of six-month increments if it can be demonstrated that the objectives of the service plan can be achieved within the extended time period and provided within the county's allocation. (WIC 16506)

FISCAL EFFECT: Unknown

COMMENTS:

Child welfare services system: The goal of California's Child Welfare Services (CWS) system is ultimately to protect children from abuse and neglect, and provide for their health, safety, and overall well-being. When a child is identified as being at risk of abuse or neglect, county juvenile courts hold legal jurisdiction and the CWS system appoints a social worker to ensure the needs of the child are met. Through the CWS system, multiple opportunities arise for the judicial system to evaluate, review, and determine the custody of the child, or determine the best out-of-home placement for the youth. Together, the judicial system and the child's social worker ensure that the best possible services are provided to the child. The CWS system, when appropriate, also works to place children who have been removed from the custody of their parents or guardians with individuals they consider to be family in order to maintain familial bonds wherever possible. As of January 1, 2021, there were 59,716 youth placed in California's child welfare system.

Dependency court procedure: Children who have been removed from the custody of their parents are temporarily placed within the jurisdiction of the child welfare system pending a decision regarding their health and safety. Within 48 hours of removing a child from their

parent(s) custody, a social worker is required to file a petition with the court requesting a detention hearing be conducted in order to determine whether further detention of the child is warranted. If the social worker petitions to declare the child a dependent of the court, current law requires that the detention hearing be held within 48 hours of the petition being filed.

It is at the detention hearing that the social worker is required to outline the allegations of abuse or neglect filed against the parent(s) of the child, as well as the rationale for removing the child from the parent(s). If the court determines that it is in the best interest of the child that they be removed from their parent's or parents' custody, the child is removed and permanent placement of the child is determined at a later date. Within 15 days of the child being removed from their parent's or parents' custody, a jurisdictional hearing must occur to determine whether the allegations of abuse or neglect are true and whether the juvenile court holds jurisdiction.

If the allegations are found to be true, a dispositional hearing determining where the child will be placed must occur within 60 days. It is at the dispositional hearing that the court determines the parameters of the family reunification plan and makes a determination as to where and with whom the child will reside.

Probate guardianships: While the CWS system may grant guardianships, so too may the probate court, which grants guardianships in instances where the child's parents are unable to care for them, due to serious illness, military duty, substance use disorders, incarceration, or death. In these instances, a child may already be living with an alternate caregiver, and the caregiver can petition the probate court to become the child's legal guardian. Current law allows the parent or the child, if the child is 12 years of age or older, to object to the creation of a guardianship, or may ask to terminate an existing guardianship. A probate court investigator conducts a report upon which the judge makes a decision about the guardianship based on what is in the best interests of the child.

There exist several distinct differences between the probate court and the juvenile court. Specifically, one of the goals of the juvenile court is to maintain familial ties whenever possible; this is demonstrated by the provision of family maintenance and reunification services, conducting searches for able and willing relatives to serve as placement options for youth placed in the custody of the juvenile court, and prioritizing placement with relatives and nonrelative extended family members as caregivers. In probate court, the parents and children do not have the right to legal counsel (though a judge may choose to appoint counsel), meaning that parental rights may be suspended against the wishes of the parent who may not have legal representation. Unlike the juvenile court, the probate court does not provide family reunification services, and, while non-relative guardians established by the probate court may receive some financial assistance, relative guardians established by the probate court are only eligible for financial support if they qualify for the CalWORKs program, which provides cash aid to eligible families on behalf of children. Additionally, if a child's biological parent faces certain barriers, such as a substance use disorder or lack of access to housing, that contributed to the need for a guardianship, under the probate court, the biological parent would not be eligible to receive the supportive services to which they would be eligible under the juvenile court.

Kinship Guardian Assistance Payment Program: California first established a state-funded Kin-GAP program with the adoption of SB 1901 (McPherson) Chapter 1055, Statutes of 1998, in order to provide relative caregivers with the financial support they need to properly care for a child and to eliminate financial barriers to creating guardianships for youth in the CWS system.

In 2010, the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, allowed states to opt into the Title IV-E federally subsidized guardianship assistance program, which allowed California to draw down federal funds to support the care of children discharged from foster care to legal guardianship if certain eligibility criteria is met.

In order to conform with the requirements set forth by the federally subsidized guardianship assistance program, as well as implement other changes to law, including the expansion of foster care benefits to eligible youth until the age of 21, California adopted AB 12 (Beall), Chapter 559, Statutes of 2010. AB 12 made conforming changes to both implement the federal Kin-GAP program, as well as ensured that California's existing state-funded Kin-GAP program provided for the needs of youth who were otherwise ineligible for federal Kin-GAP.

Eligibility for federal Kin-GAP: In order to be eligible for federally-funded Kin-GAP payments, an eligible child under the age of 19 years of age must meet a number of conditions, including:

- Have been removed from their home pursuant to a voluntary placement agreement, or as a result of a judicial determination, to the effect that continuation in the home would be contrary to the welfare of the child; and,
- Have been eligible for federal foster care payments while residing for at least six consecutive months in the approved home of the prospective relative guardian while under the jurisdiction of the juvenile court or a voluntary placement agreement, among other requirements.

Eligibility for state Kin-GAP: In order to be eligible for state-funded Kin-GAP payments, an eligible youth under the age of 19 years of age must meet all of the following conditions:

- Have been adjudged a dependent child or ward of the juvenile court;
- Have been residing for at least six consecutive months in the approved home of the prospective relative guardian while under the jurisdiction of the juvenile court or a voluntary placement agreement;
- Have had a kinship guardianship established; and,
- Have had their dependency jurisdiction terminated after January 1, 2000, concurrently or subsequently to the establishment of the kinship guardianship.

The provisions of this bill would permit a child placed with a relative caregiver who is appointed as the child's legal guardian to be eligible for state-funded Kin-GAP, and, in these instances, would remove the requirement that the youth be in an approved placement for at least six months in order receive state-funded Kin-GAP payments. Additionally, this bill would expand state-funded Kin-GAP program eligibility to include eligible youth under 21 years of age who has had a kinship guardianship established by the provisions of this bill.

Need for this bill: The provisions of this bill seek to ensure that, when appropriate, children who are subject to a guardianship petition and who may have suffered abuse or neglect are referred to the juvenile court, which could ultimately allow for the provision of supportive service to the child, caregiver, and in some cases, the parent. Current law requires the probate court to conduct an investigation for proposed guardianships; in the event that the child is or may have suffered

abuse or neglect, the probate court is permitted to make a referral to the local child welfare agency for investigation. This bill would require the child welfare investigation be completed, and a report be provided to the juvenile court for review, before guardianship proceedings in the probate court can be completed. Additionally, if the court chooses not to refer the case to the juvenile court, this bill requires the probate court have good cause to waive the investigation. Because guardianships under the probate court are not accompanied by the same supports provided by the juvenile court, it is important that, prior to the establishment of a guardianship, children who may have been abused or neglected are referred to the appropriate services and supports.

This provisions of this bill also seek to provide additional financial supports to children by expanding eligibility for the Kin-GAP Program to include children who are placed with a relative caregiver who has been appointed as the child's legal guardian. Current law requires a youth be in approved placement for six consecutive months prior to the establishment of a guardianship in order to qualify for state-funded Kin-GAP; in instances where permanency through guardianship is possible before six months is reached, permanency is delayed for the sake of qualifying for additional financial supports. The provisions of this bill would remove the requirement that a youth be in a placement for six consecutive months in order to qualify for state-funded Kin-GAP, and would instead declare youth placed with a relative caregiver who is appointed as the child's legal guardian as eligible for the state-funded Kin-GAP Program.

According to the author, "Some abused or neglected children who would qualify for the protections of the child welfare system are being diverted by the child welfare system to probate court to seek guardianships with willing relative caregivers. By bypassing the dependency court, there are very likely no attorneys to protect the interests of the child, the parents, and the prospective guardians; no support or services for the parents, including reunification services; no financial assistance for the prospective guardian; and no ongoing services for the children or their family.

"This bill seeks to limit these hidden foster care cases by ensuring that guardianship laws and the probate court operate seamlessly with juvenile court laws and the dependency court so that those cases the probate court refers for a child welfare investigation are evaluated by the dependency court without limiting the probate court's ability to take immediate action to protect the child during the period of the investigation and evaluation. This will help protect children's health, safety, and welfare and provide due process to children, parents, and guardians."

Double referral: This bill passed out of the Assembly Judiciary Committee on March 23, 2021, with an 11-0 vote.

PRIOR AND RELATED LEGISLATION:

AB 2124 (Stone) of 2020, was substantially similar to this bill and would have required probate courts to refer cases alleging child abuse or neglect to the county child welfare agency for an investigation and expanded Kin-GAP services to children ordered into a guardianship through dependency court. AB 2124 was referred to the Assembly Judiciary and Human Services committee but was not heard.

AB 1757 (Fletcher), Chapter 638, Statutes of 2012, amended Probate Code to permit, rather than require, the probate court to refer cases involving parental neglect and abuse to the juvenile court.

AB 1712 (Beall), Chapter 846, Statutes of 2012, expanded the definition of “relative” for purposes of the federal Kin-GAP Program only.

AB 212 (Beall) (Chapter 459, Statutes of 2011), authorized certain Kin-GAP recipients to continue to receive Kin-GAP aid after 18 years of age.

AB 12 (Beall), Chapter 559, Statutes of 2010, implemented the federal Kin-GAP Program in California and amended the state Kin-GAP Program, and reduced the amount of time a child has to live with a relative caregiver in order to qualify for Kin-GAP from 12 months to 6 months.

AB 1901 (McPherson), Chapter 1055, Statutes of 1998, established California’s Kin-GAP program.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Children's Rights (Sponsor)
California Alliance of Caregivers (UNREG)
California Youth Connection (CYC)
Children's Legal Services of San Diego
Foster Care Counts
John Burton Advocates for Youth
Lilliput Children's Services DBA Lilliput Families
Lincoln
National Association of Social Workers, California Chapter
Voices Youth Centers
Wayfinder Family Services
YMCA of San Diego County, Youth and Family Services

Opposition

None on file

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