

July 22, 2022

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 22-47

The purpose of this All County Letter is to provide guidance to counties regarding the recent passage of [Assembly Bill 260 \(Chapter 578, Statutes of 2021\)](#), which revises probate court guardianship processes when child maltreatment may be of concern for a child who is subject to a guardianship petition.



KIM JOHNSON
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

July 22, 2022

ALL COUNTY LETTER NO. 22-47

TO: ALL COUNTY WELFARE DIRECTORS
ALL EMERGENCY RESPONSE STAFF
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL CHIEF PROBATION OFFICERS

SUBJECT: ASSEMBLY BILL 260: GUARDIANSHIP PROCEEDINGS

REFERENCE: [ASSEMBLY BILL 260 \(CHAPTER 578, STATUTES OF 2021\);](#)
[GOVERNMENT CODE SECTION 68511.1;](#)
[PROBATE CODE SECTIONS 1511 AND 1513;](#)
[WELFARE AND INSTITUTIONS CODE SECTIONS 300, 329, 331,](#)
[360, 366.26, AND 728](#)

The purpose of this All County Letter (ACL) is to provide guidance to counties regarding the recent passage of [Assembly Bill \(AB\) 260 \(Chapter 578, Statutes of 2021\)](#) which revises probate court guardianship processes when child maltreatment may be of concern for a child who is subject to a guardianship petition. This bill adds provisions for the protection of the child and supports for the parent or guardian.

BACKGROUND

The provisions of AB 260 include several changes to statute to ensure that the guardianship laws in the Probate Code (PROB) and the dependency laws in the Welfare and Institutions Code (WIC) operate together as a cohesive statutory structure that ensures certain cases referred by the probate court for a child welfare investigation are subject to review by the juvenile court without limiting the probate court's ability to take immediate action to protect the child while the child welfare investigation and juvenile court review are pending. The bill also clarifies that a probate court order of temporary guardianship does not limit a juvenile court's ability to commence dependency proceedings. The purpose of this statutory structure is to ensure the protection of every child's health, safety, and welfare and to provide due process rights of every child, parent, and family to ensure families are served within the appropriate court system.

A guardian may be appointed for a child either through probate ([PROB § 1514\(a\)](#)) or the juvenile dependency court ([WIC § 360\(a\), 366.26, or 728](#)). Each court may differ in the rights and services offered to children, parents, and families as well as the level of oversight that is provided by the court. Families seeking guardianship of a child are typically referred to a probate court without any interaction with the juvenile court. While this may be a family's preferred path, families are not often provided with information regarding the differences between the courts and often do not have the aid of legal counsel in determining their preference. There are occasions when a family may need specific supports, interventions, or services to ensure the safety and care of the child and to maintain a child in their parent's custody or foster reunification between the child and parent. Families seeking guardianship in the probate court may not be eligible to receive the level of supportive and reunification services available to children and families who are in juvenile court proceedings. In addition, children may not be entitled to the same levels of financial support for their care, particularly if the probate guardianship is with a relative or if the child needs a higher level of care.

Under [PROB § 1513\(b\)](#), the probate court can refer the matter, in writing, to the local child welfare services (CWS) agency to initiate an investigation if there is concern that a child subject to a guardianship petition is or may be described by Section 300 of the Welfare and Institutions Code. During the course of reviewing a petition for probate guardianship of a minor, the probate court **must** request an investigation unless the investigation is waived. This bill revises the probate court guardianship process by requiring the probate court to have **good cause** to waive an investigation ([PROB § 1513\(a\)](#)). The probate court's investigation can be helpful in identifying whether the proposed ward has experienced abuse and neglect and could be better served in the juvenile court; therefore requiring the probate court to have good cause to waive its investigation further ensures the safety and well-being of children.

If, based on the investigation described in [PROB § 1513](#) or other information, there is any indication that the child may be currently experiencing maltreatment or has in the past prior to entering the proposed guardian's care, the probate court may refer the matter to the county CWS agency for an investigation pursuant to [WIC § 329](#). This bill requires, if the matter is referred to child welfare by the probate court, the social worker to immediately investigate and report the findings and conclusions to the probate court within three weeks of the referral. If the social worker does not file a petition, the probate court may, within one month of the referral, request that the juvenile court review the decision of the social worker to not file a petition and authorizes the juvenile court to either affirm the decision of the social worker or order the social worker to commence juvenile court proceedings ([WIC § 331 \(b\)](#)). Pending completion of the child welfare investigation and/or juvenile court review, the probate court may take any reasonable steps it deems appropriate to protect the child's safety, including, but not limited to, appointing a temporary guardian.

Additionally, AB 260 added changes under [GOVERNMENT CODE § 68511.1](#), requiring the Judicial Council to develop a form explaining the nature of a guardianship of a

minor, including the rights, duties, and obligations of a person serving as a minor guardian. This form must provide information about supports and services available to a probate guardian and how these supports and services differ from those made available to a caregiver in the child welfare system or a guardian appointed by juvenile court. Finally, this form must also accompany the notice provided to the proposed guardian stating the time and place of the probate hearing ([PROB § 1511\(a\)](#)).

The passage of [AB 260](#) ensures that both the probate and juvenile court work together to protect the child in these situations and provides due process for all children, parents and families while making sure services and supports are in place.

PROBATE COURT INVESTIGATIONS

In probate guardianship, a court investigator, probation officer, or a domestic relations officer shall conduct an investigation and file with the probate court a report and recommendation concerning the proposed guardianship ([PROB § 1513\(a\)](#)). With the changes made under AB 260, the probate court must now have good cause to waive this investigation. If the proposed guardian is a relative, this investigation will be made by a court investigator. If the proposed guardian is a non-relative, this investigation will be done by the county agency designated to investigate potential dependency. The report must include, but is not limited to, the following:

- Social history of the proposed guardian;
- Social history of the proposed ward, including, when necessary:
 - Assessments of any identified developmental, emotional, psychological, or education needs of the child and the capability of the proposed guardian to meet those needs.
- Relationship and duration of the child and the proposed guardian; and
- Anticipated duration of the guardianship.

REFERRAL FOR AN INVESTIGATION BY A CHILD WELFARE AGENCY

In juvenile court, a dependency proceeding is initiated by the social worker's filing of a petition as the result of the findings of their child welfare investigation ([WIC § 331\(b\)](#)). The social worker has approximately three weeks from receipt of the probate court's request to conclude the child welfare investigation and report the findings and conclusions of this investigation, as well as any decisions, to the probate court. This requirement will help determine whether a petition for juvenile court proceedings is necessary.

If a person requests a social worker to commence juvenile court proceedings and the social worker does not file a petition within three weeks after that request, the person may, within one month after making the request, apply to the juvenile court to review the decision of the social worker, and the court may either affirm the decision of the social worker or order the social worker to commence juvenile court proceedings.

This bill requires that if an investigative report for a proposed ward in a guardianship probate court proceeding, completed by a court investigator, probation officer, or domestic relations investigator, indicates the child may be at risk of abuse or neglect, the probate court may refer the matter to the local CWS agency to initiate a child welfare investigation. The probate court's request to the CWS agency must be in writing and:

- Include a summary of the reasons for the referral;
- May include the probate guardianship petition under [PROB § 1510](#);
- Include the investigator's report of the proposed guardianship; and
- Include any other pertinent material.

Upon receiving a referral from the probate court, the social worker must immediately investigate to determine the potential for, or the existence of, any condition(s) which places the child at risk and in need of services and would cause the child to be a person described by [WIC § 300 \(a\) through \(j\) \(WIC § 329\)](#). The social worker must submit the investigative report, which includes any findings, conclusions, resulting decisions and supporting reasons. Importantly, the probate court cannot hear any petition to appoint a guardian until the social worker's investigation has been completed and the report submitted to the probate court.

Pending completion of the child welfare agency investigation, the probate court may take any reasonable steps it deems appropriate to protect the child's safety, including appointing a temporary guardian or issuing a temporary restraining order. The intent of this bill is to ensure the probate court is able to establish a temporary guardianship and take any other reasonable steps to safeguard the child's safety. The issuance of orders by the probate court should not impact the investigation by the social worker. The investigation of the social worker should consider whether the child is described by [WIC § 300 \(a\) through \(j\) \(WIC § 329\)](#) in the parental home, not whether the child is safe in the home of the prospective guardian.

Additionally, when these proceedings involve an Indian child, any person making an investigation and report shall consult with the Indian child's tribe and include in the report, information provided by the tribe ([PROB § 1513 \(h\)](#)).

JUVENILE COURT REVIEW OF THE INVESTIGATION

If the county CWS agency finds that a juvenile dependency petition is not necessary, or if the agency fails to notify the probate court within three weeks from receiving the probate court's referral, the probate court may appoint minor's counsel pursuant to [PROB §1513\(b\)\(4\)](#), who may petition the court via [WIC § 331](#), for an order directing the agency to commence juvenile dependency proceedings. The child's counsel may, within one month from the date of the child welfare referral, request the juvenile court to review the social worker's findings.

The juvenile court may either affirm the decision of the social worker or, if it determines that the child is a victim of abuse or neglect, order the social worker to file a petition to commence juvenile court proceedings. This bill also states that a temporary probate guardianship does not limit a juvenile court's ability to begin dependency proceedings. The juvenile court will need to submit to the probate court, the decision of their review within five days of making this decision ([WIC § 331](#)).

If, upon the conclusion of the child welfare investigation, a juvenile court proceeding is petitioned and the juvenile court commences the proceeding, the probate guardianship proceeding will be stayed ([PROB § 1513\(b\)\(5\)](#)). If the dependency proceeding is not commenced, the probate court will retain jurisdiction of the matter and continue with the guardianship proceeding.

If you have any questions or need additional guidance regarding the information in this letter, contact the Family Centered Safety and Support Bureau at (916) 651-6160 or by sending an email to childprotection@dss.ca.gov.

Sincerely,

Original Document Signed By:

ANGIE SCHWARTZ
Deputy Director
Children and Family Services Division