

ASSEMBLY BILL

No. 260

Introduced by Assembly Member Stone

January 15, 2021

An act to amend Section 1513 of the Probate Code, and to amend Sections 331, 360, 366.4, and 11363 of the Welfare and Institutions Code, relating to guardianship.

LEGISLATIVE COUNSEL'S DIGEST

AB 260, as introduced, Stone. Guardianships.

Existing law establishes the jurisdiction of the juvenile court, under which a minor may be adjudged to be a dependent of the court if the minor has been abused or neglected, as specified. Other existing law, the Guardianship-Conservatorship Law, authorizes a probate court, upon hearing of a petition by a parent, relative, or other person, to appoint a guardian of a minor in accordance with specified provisions of law governing the custody of a minor child. Existing law authorizes a court hearing a guardianship petition, if the proposed ward is or may be abused or neglected, to refer the matter to the local child welfare services agency to initiate an investigation to determine whether proceedings in juvenile court should be commenced.

This bill would require the court to have good cause to waive the investigation and would prohibit the guardianship proceedings from being completed until the investigation is completed and a report is provided to the juvenile court.

Existing law requires a proceeding in the juvenile court to declare a child to be a dependent child of the court to be commenced by a social worker's filing of a petition with the court. Under existing law, if a person applies to a social worker to commence juvenile court

proceedings and the social worker fails to file a petition within 3 weeks after the application, the person may, within one month after making the application, 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.

If the probate court has referred the matter to juvenile court, this bill would require the juvenile court to review the decision of a social worker not to file a petition within 3 weeks of the referral.

Existing law authorizes a juvenile court, if the court finds that the child is abused or neglected, and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, in addition to or in lieu of adjudicating the child a dependent child of the court, to order a legal guardianship and appoint a legal guardian, as specified. Existing law establishes the state-funded Kinship Guardianship Assistance Payment Program (Kin-GAP), which provides aid on behalf of eligible children who are placed in the home of a relative guardian. Existing law requires aid in the form of state-funded Kin-GAP to be provided on behalf of any child under 18 years of age and to any eligible youth under 19 years of age who has had a kinship guardianship established, as described above, and who meets other requirements, including that the child or youth has been adjudicated a dependent child or ward of the juvenile court, has been residing for at least 6 consecutive months in the approved home of the prospective relative guardian, and has had the dependency jurisdiction or wardship terminated, as specified.

This bill would require the state-funded Kin-GAP aid to be provided on behalf of any child under 18 years of age and to any eligible youth under 21 years of age who has had a kinship guardianship established as described above. The bill would, for purposes of providing this aid, eliminate the requirements that the child has also been adjudicated a dependent child or ward of the juvenile court, has been residing for at least 6 consecutive months in the approved home of the prospective relative guardian, and has had the dependency jurisdiction or wardship terminated, as specified. The bill would repeal obsolete cross-references and make other technical changes. By imposing a higher level of service on county officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1513 of the Probate Code is amended to
2 read:

3 1513. (a) Unless waived by the ~~court~~, *court for good cause*, a
4 court investigator, probation officer, or domestic relations
5 investigator shall make an investigation and file with the court a
6 report and recommendation concerning each proposed guardianship
7 of the person or guardianship of the estate. Investigations where
8 the proposed guardian is a relative shall be made by a court
9 investigator. Investigations where the proposed guardian is a
10 nonrelative shall be made by the county agency designated to
11 investigate potential dependency. The report *of the investigation*
12 ~~for the a~~ guardianship of the person shall include, but need not be
13 limited to, ~~an investigation and a~~ discussion of all of the following:

- 14 (1) A social history of the *proposed* guardian.
- 15 (2) A social history of the proposed ward, including, to the
16 extent feasible, an assessment of any identified developmental,
17 emotional, psychological, or educational needs of the proposed
18 ward and the capability of the ~~petitioner~~ *proposed guardian* to
19 meet those needs.
- 20 (3) The relationship of the proposed ward to the *proposed*
21 guardian, including the duration and character of the relationship,
22 ~~where applicable~~, the circumstances ~~whereby~~ *under which the*
23 *proposed guardian took* physical custody of the proposed ~~ward~~
24 ~~was acquired by the guardian~~, *ward*, and a statement of the
25 proposed ward’s attitude concerning the proposed guardianship,
26 unless the ~~statement of the attitude is affected by the~~ proposed
27 ward’s developmental, physical, or emotional ~~condition~~. *condition*
28 *prevents the proposed ward from forming or stating an attitude*
29 *concerning the proposed guardianship.*
- 30 (4) The ~~anticipated~~ duration of the guardianship ~~and the plans~~
31 ~~of both natural~~ *anticipated by the* parents and the proposed guardian
32 ~~for the~~ *and the plans of each parent and the proposed guardian*

1 *to provide a stable and permanent home for the child. The court*
2 *may waive this requirement for cases involving relative guardians.*

3 (b) *If the investigative report indicates that the proposed ward*
4 *is or may be described by Section 300 of the Welfare and*
5 *Institutions Code, the court may refer the matter to the local child*
6 *welfare services agency to initiate an investigation of the referral*
7 *pursuant to Sections 328 and 329 of the Welfare and Institutions*
8 *Code and to report the findings of that investigation to the probate*
9 *court. Pending completion of the investigation, the court may take*
10 *any reasonable steps it deems appropriate to protect the child's*
11 *safety, including, but not limited to, appointment of a temporary*
12 *guardian or issuance of a temporary restraining order. If*
13 *dependency proceedings are initiated, the guardianship proceedings*
14 *shall be stayed in accordance with Section 304 of the Welfare and*
15 *Institutions Code. Nothing in this section shall affect the*
16 *applicability of Section 16504 or 16506 of the Welfare and*
17 *Institutions Code. If a dependency proceeding is not initiated, the*
18 *probate court shall retain jurisdiction to hear the guardianship*
19 *matter.*

20 (1) *Guardianship proceedings shall not be completed until the*
21 *investigation required by Sections 328 and 329 of the Welfare and*
22 *Institutions Code is completed and a report is provided to the*
23 *juvenile court for review pursuant to subdivision (b) of Section*
24 *331 of the Welfare and Institutions Code.*

25 (2) *Pending completion of the child welfare investigation, the*
26 *probate court may take any reasonable steps it deems appropriate*
27 *to protect the child's safety, including, but not limited to,*
28 *appointing a temporary guardian or issuing a temporary*
29 *restraining order.*

30 (3) *Appointment of a temporary guardian by the probate court*
31 *does not limit the authority of the juvenile court to order the*
32 *commencement of juvenile court proceedings under Section 331*
33 *of the Welfare and Institutions Code.*

34 (4) *If dependency proceedings are initiated, the guardianship*
35 *proceedings shall be stayed in accordance with Section 304 of the*
36 *Welfare and Institutions Code. This section does not affect the*
37 *applicability of Section 16504 or 16506 of the Welfare and*
38 *Institutions Code. If a dependency proceeding is not initiated, the*
39 *probate court shall retain jurisdiction to hear the guardianship*
40 *matter.*

1 (c) Prior to ruling on the petition for guardianship, the court
2 shall read and consider all reports submitted pursuant to this
3 section, which shall be reflected in the minutes or stated on the
4 record. ~~Any~~ A person who reports to the court pursuant to this
5 section may be called and examined by any party to the proceeding.

6 (d) All reports authorized by this section are confidential and
7 shall only be made available to persons who have been served in
8 the proceedings or their attorneys. The clerk of the court shall
9 make provisions to limit access to the reports exclusively to persons
10 entitled to receipt. The reports shall be made available to all parties
11 entitled to receipt no less than three court days before the hearing
12 on the guardianship petition.

13 (e) For the purpose of writing either report authorized by this
14 section, the person making the investigation and report shall have
15 access to the proposed ward's school records, probation records,
16 and public and private social services records, and to an oral or
17 written summary of the proposed ward's medical records and
18 psychological records prepared by any physician, psychologist, or
19 psychiatrist who made or who is maintaining those records. The
20 physician, psychologist, or psychiatrist shall be available to clarify
21 information regarding these records pursuant to the investigator's
22 responsibility to gather and provide information for the court.

23 (f) This section does not apply to guardianships resulting from
24 a permanency plan for a dependent child pursuant to Section 366.26
25 of the Welfare and Institutions Code.

26 (g) For purposes of this section, a "relative" means a person
27 who is a spouse, parent, stepparent, brother, sister, stepbrother,
28 stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first
29 cousin, or any person denoted by the prefix "grand" or "great," or
30 the spouse of any of these persons, even after the marriage has
31 been terminated by death or dissolution.

32 (h) In an Indian child custody proceeding, any person making
33 an investigation and report shall consult with the Indian child's
34 tribe and include in the report information provided by the tribe.

35 (i) *It is the intent of the Legislature that the guardianship laws*
36 *in this code and the juvenile court laws in the Welfare and*
37 *Institutions Code operate together as a cohesive statutory structure*
38 *that ensures all cases referred by the probate court for a child*
39 *welfare investigation are evaluated by the dependency court*
40 *without limiting the probate court's ability to take immediate action*

1 *to protect the child during the period of the investigation and*
2 *evaluation. The purpose of this statutory structure is to ensure the*
3 *protection of every child's health, safety, and welfare and to*
4 *provide due process to every child, parent, and family.*

5 *(j) On or before September 1, 2022, the Judicial Council shall*
6 *develop or revise any rules necessary to implement this section.*

7 SEC. 2. Section 331 of the Welfare and Institutions Code is
8 amended to read:

9 331. ~~When any~~ *(a) If a person has applied to the social worker,*
10 *pursuant to Section 329, to commence juvenile court proceedings*
11 *and the social worker fails to file a petition within three weeks*
12 *after the application, the person may, within one month after*
13 *making the application, apply to the juvenile court to review the*
14 *decision of the social worker, and the court may either affirm the*
15 *decision of the social worker or order ~~him or her~~ the social worker*
16 *to commence juvenile court proceedings.*

17 *(b) If the probate court has referred the matter pursuant to*
18 *Section 1513 of the Probate Code, and the agency has failed to*
19 *file a petition to commence juvenile court proceedings within three*
20 *weeks of the referral, the juvenile court shall, without further*
21 *referral or application, review the decision of the social worker*
22 *not to file a petition. The court may either affirm the decision of*
23 *the social worker or order the social worker to commence juvenile*
24 *court proceedings.*

25 *(1) The appointment of a temporary probate guardian shall not*
26 *limit the authority of the juvenile court to order commencement*
27 *of dependency proceedings or to hear and determine a petition*
28 *alleging that the child is described by Section 300.*

29 *(2) The passage of time from the filing of the petition for*
30 *guardianship to review by the juvenile court pursuant to this*
31 *section, shall not limit the authority of the juvenile court to order*
32 *the social worker to commence proceedings or to make a*
33 *jurisdiction finding pursuant to Section 356.*

34 *(3) If the juvenile court does not order the social worker to*
35 *commence juvenile court proceedings, the juvenile court shall,*
36 *within five days of making the decision, transmit the decision, in*
37 *writing, to the probate court. The probate court shall make a copy*
38 *of the decision available to the persons who have been served in*
39 *the guardianship proceedings or their attorneys.*

1 SEC. 3. Section 360 of the Welfare and Institutions Code is
2 amended to read:

3 360. (a) *It is the intent of the Legislature to ensure that*
4 *children who must be separated from a parent as a result of abuse*
5 *or neglect have access to funding any time they are placed in a*
6 *guardianship by the juvenile court.*

7 (b) *It is further the intent of the Legislature that permanent*
8 *placement of a child is not delayed solely to ensure that the child*
9 *will be able to receive critical funding.*

10 (c) After receiving and considering the evidence on the proper
11 disposition of the case, the juvenile court may enter judgment as
12 follows:

13 ~~(a)~~

14 (1) Notwithstanding any other ~~provision~~ of law, if the court
15 finds that the child is a person described by Section 300 and the
16 parent has advised the court that the parent is not interested in
17 family maintenance or family reunification services, it may, in
18 addition to or in lieu of adjudicating the child a dependent child
19 of the court, order a legal guardianship, appoint a legal guardian,
20 and issue letters of guardianship, if the court determines that a
21 guardianship is in the best interest of the child, provided the parent
22 and the child agree to the guardianship, unless the child's age or
23 physical, emotional, or mental condition prevents the child's
24 meaningful response. The court shall advise the parent and the
25 child that ~~no~~ reunification services will *not* be provided as a result
26 of the establishment of a guardianship. The proceeding for the
27 appointment of a guardian shall be in the juvenile court.

28 ~~Any~~

29 (2) *An* application for termination of guardianship shall be filed
30 in juvenile court in a form ~~as may be~~ developed by the Judicial
31 Council pursuant to Section 68511 of the Government Code.
32 Sections 366.4 and 388 shall apply to this order of guardianship.

33 ~~No~~

34 (3) A person shall *not* be appointed a legal guardian under this
35 section until an assessment as specified in subdivision (g) of
36 Section 361.5 is read and considered by the court and reflected in
37 the minutes of the court.

38 ~~On~~

39 (4) (A) *On* and after the date that the director executes a
40 declaration pursuant to Section 11217, if the court appoints an

1 approved relative caregiver as the child’s legal guardian, the child
 2 has been in the care of that approved relative for a period of six
 3 consecutive months under a voluntary placement agreement, and
 4 the child otherwise meets the conditions for federal financial
 5 participation, the child shall be eligible for aid under the Kin-GAP
 6 Program as provided in Article 4.7 (commencing with Section
 7 11385) of Chapter 2. ~~The nonfederally eligible child placed with~~
 8 ~~an approved relative caregiver who is appointed as the child’s legal~~
 9 ~~guardian shall be eligible for aid under the state-funded Kin-GAP~~
 10 ~~Program, as provided for in Article 4.5 (commencing with Section~~
 11 ~~11360) of Chapter 2.~~

12 *(B) A child placed with a relative caregiver who is appointed*
 13 *as the child’s legal guardian pursuant to this section shall be*
 14 *eligible for aid under the state-funded Kin-GAP Program, as*
 15 *provided for in Article 4.5 (commencing with Section 11360) of*
 16 *Chapter 2.*

17 ~~The~~

18 (5) A person responsible for preparing the assessment may be
 19 called and examined by any party to the guardianship proceeding.

20 ~~(b)~~

21 (d) If the court finds that the child is a person described by
 22 Section 300, it may, without adjudicating the child a dependent
 23 child of the court, order that services be provided to keep the family
 24 together and place the child and the child’s parent or guardian
 25 under the supervision of the social worker for a time period
 26 consistent with Section 301.

27 ~~(e)~~

28 (e) If the family subsequently is unable or unwilling to cooperate
 29 with the services being provided, the social worker may file a
 30 petition with the juvenile court pursuant to Section 332 alleging
 31 that a previous petition has been sustained and that disposition
 32 pursuant to subdivision ~~(b)~~ (d) has been ineffective in ameliorating
 33 the situation requiring the child welfare services. Upon hearing
 34 the petition, the court shall order either that the petition shall be
 35 dismissed or that a new disposition hearing shall be held pursuant
 36 to subdivision ~~(d)~~ (f).

37 ~~(d)~~

38 (f) If the court finds that the child is a person described by
 39 Section 300, it may order and adjudge the child to be a dependent
 40 child of the court.

1 SEC. 4. Section 366.4 of the Welfare and Institutions Code is
2 amended to read:

3 366.4. ~~(a) Any~~ A minor for whom a guardianship has been
4 established resulting from the selection or implementation of a
5 permanency plan pursuant to Section 366.26, or for whom a related
6 guardianship has been established pursuant to Section 360, or, on
7 and after the date that the director executes a declaration pursuant
8 to Section 11217, a nonminor who is receiving Kin-GAP payments
9 pursuant to Section 11363 or 11386, or, on or after January 1,
10 2012, a nonminor former dependent child of the juvenile court
11 who is receiving AFDC-FC benefits pursuant to Section 11405,
12 is within the jurisdiction of the juvenile court. For those minors,
13 Part 2 (commencing with Section 1500) of Division 4 of the
14 Probate Code, relating to guardianship, ~~shall~~ *does* not apply. If no
15 specific provision of this code or the California Rules of Court is
16 applicable, the provisions applicable to ~~the administration of estates~~
17 *guardianships* under Part 4 (commencing with Section 2100) of
18 Division 4 of the Probate Code govern ~~so far~~ *insofar* as they are
19 applicable to like situations.

20 ~~(b) Nonrelated legal guardians of the person of a guardianship~~
21 ~~pursuant to Section 360 or 366.26 shall be exempt from the~~
22 ~~provisions of Sections 2850 and 2851 of the Probate Code.~~

23 SEC. 5. Section 11363 of the Welfare and Institutions Code is
24 amended to read:

25 11363. (a) Aid in the form of state-funded Kin-GAP shall be
26 provided under this article on behalf of any child under 18 years
27 of age and to any eligible youth under 19 years of age, as provided
28 in Section 11403, who satisfies all of the following conditions:

29 (1) Has been adjudged a dependent child of the juvenile court
30 pursuant to Section 300, or, effective October 1, 2006, a ward of
31 the juvenile court pursuant to Section 601 or 602.

32 (2) Has been residing for at least six consecutive months in the
33 approved home of the prospective relative guardian while under
34 the jurisdiction of the juvenile court or a voluntary placement
35 agreement.

36 (3) Has had a kinship guardianship established pursuant to
37 Section ~~360~~ or 366.26.

38 (4) Has had ~~his or her~~ *their* dependency jurisdiction terminated
39 after January 1, 2000, pursuant to Section 366.3, or ~~his or her~~ *their*
40 wardship terminated pursuant to subdivision (e) of Section 728,

1 concurrently or subsequently to the establishment of the kinship
 2 guardianship.

3 (b) *Aid in the form of state-funded Kin-GAP shall be provided*
 4 *under this article on behalf of any child under 18 years of age and*
 5 *to any eligible youth under 21 years of age, as provided in Section*
 6 *11403, who has had a kinship guardianship established pursuant*
 7 *to Section 360.*

8 ~~(b)~~

9 (c) If the conditions specified in subdivision (a) *or* (b) are met
 10 and, subsequent to the termination of dependency jurisdiction, ~~any~~
 11 a parent or person having an interest files with the juvenile court
 12 a petition pursuant to Section 388 to change, modify, or set aside
 13 an order of the court, Kin-GAP payments shall continue unless
 14 and until the juvenile court, after holding a hearing, orders the
 15 child removed from the home of the guardian, terminates the
 16 guardianship, or maintains dependency jurisdiction after the court
 17 concludes the hearing on the petition filed under Section 388.

18 ~~(c)~~

19 (d) A child or nonminor former dependent or ward shall be
 20 eligible for Kin-GAP payments if ~~he or she~~ *the child or nonminor*
 21 meets one of the following age criteria:

22 (1) ~~He or she~~ *The child or nonminor* is under 18 years of age.

23 (2) ~~He or she~~ *The child or nonminor* is under 21 years of age
 24 and has a physical or mental disability that warrants the
 25 continuation of assistance.

26 (3) Through December 31, 2011, ~~he or she~~ *the child or nonminor*
 27 satisfies the conditions of Section 11403, and on and after January
 28 1, 2012, ~~he or she~~ satisfies the conditions of Section 11403.01.

29 (4) ~~He or she~~ *The child or nonminor* satisfies the conditions as
 30 described in subdivision ~~(d)~~ (e).

31 ~~(d)~~

32 (e) Commencing January 1, 2012, state-funded Kin-GAP
 33 payments shall continue for youths who have attained 18 years of
 34 age and who are under 19 years of age, if they reached 16 years
 35 of age before the Kin-GAP negotiated agreement payments
 36 commenced, and as described in Section 10103.5. Effective January
 37 1, 2013, Kin-GAP payments shall continue for youths who have
 38 attained 18 years of age and are under 20 years of age, if they
 39 reached 16 years of age before the Kin-GAP negotiated agreement
 40 payments commenced, and as described in Section 10103.5.

1 Effective January 1, 2014, Kin-GAP payments shall continue for
2 youths who have attained 18 years of age and are under 21 years
3 of age, if they reached 16 years of age before the Kin-GAP
4 negotiated agreement payments commenced. To be eligible for
5 continued payments, the youth shall satisfy one or more of the
6 conditions specified in paragraphs (1) to (5), inclusive, of
7 subdivision (b) of Section 11403.

8 (e)

9 (f) (1) Termination of the guardianship with a kinship guardian
10 shall terminate eligibility for Kin-GAP unless the conditions in
11 Section 11403 apply. However, *if* an alternate guardian or
12 coguardian is appointed pursuant to Section 366.3 who is also a
13 kinship guardian, the alternate or coguardian shall be entitled to
14 receive Kin-GAP on behalf of the child pursuant to this article. A
15 new period of six months of placement with the alternate guardian
16 or coguardian shall not be required if that alternate guardian or
17 coguardian has been assessed pursuant to Section 361.3,
18 subdivision (a) of Section 361.4, and paragraph (2), and the court
19 terminates dependency jurisdiction. If a nonminor former
20 dependent is receiving Kin-GAP after 18 years of age and the
21 nonminor former dependent's former guardian dies, the nonminor
22 former dependent may petition the court for a hearing pursuant to
23 Section 388.1.

24 (2) (A) In addition to the state-level criminal records check
25 described in paragraph (2) of subdivision (a) of Section 361.4, the
26 county welfare department shall require each prospective alternate
27 guardian or coguardian, and any other person over 18 years of age
28 living in the home, to be fingerprinted, and shall secure from an
29 appropriate law enforcement agency any criminal record of that
30 person to determine whether the person has ever been convicted
31 of a crime other than a minor traffic violation.

32 (B) If the criminal records check indicates that the prospective
33 alternate guardian or coguardian has been convicted of an offense
34 described in subparagraph (A) of paragraph (2) of subdivision (g)
35 of Section 1522 of the Health and Safety Code, the case shall not
36 be eligible for Kin-GAP funding.

37 (C) If the prospective alternate guardian or coguardian has been
38 convicted of a crime other than a minor traffic violation or arrested
39 for an offense specified in subdivision (e) of Section 1522 of the
40 Health and Safety Code, except for the civil penalty language, the

1 criminal background check provisions specified in subdivisions
2 (d) to (g), inclusive, of Section 1522 of the Health and Safety Code
3 shall apply, and an exemption shall be issued prior to issuance of
4 any Kin-GAP funding. Exemptions from the criminal records
5 clearance requirements set forth in this section may be granted by
6 the county using the exemption criteria specified in subdivision
7 (g) of Section 1522 of the Health and Safety Code and any
8 applicable written directives or regulations adopted by the
9 department.

10 (3) A prospective alternate guardian or coguardian shall not be
11 required to be approved as a resource family pursuant to Section
12 16519.5 for the sole purpose of receiving Kin-GAP funding on
13 behalf of an eligible child in the care of the prospective alternate
14 guardian or coguardian.

15 SEC. 6. To the extent that this act has an overall effect of
16 increasing the costs already borne by a local agency for programs
17 or levels of service mandated by the 2011 Realignment Legislation
18 within the meaning of Section 36 of Article XIII of the California
19 Constitution, it shall apply to local agencies only to the extent that
20 the state provides annual funding for the cost increase. Any new
21 program or higher level of service provided by a local agency
22 pursuant to this act above the level for which funding has been
23 provided shall not require a subvention of funds by the state or
24 otherwise be subject to Section 6 of Article XIII B of the California
25 Constitution.