

AMENDED IN SENATE AUGUST 26, 2021

AMENDED IN SENATE JUNE 21, 2021

AMENDED IN SENATE MAY 28, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 260

Introduced by Assembly Member Stone

January 15, 2021

An act to amend Section 68511.1 of the Government Code, to amend ~~Section 1513~~ Sections 1511 and 1513 of the Probate Code, and to amend Sections 301, 329, 331, 360, 366.4, and 11363 of the Welfare and Institutions Code, relating to guardianship.

LEGISLATIVE COUNSEL'S DIGEST

AB 260, as amended, 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~~ Existing law authorizes the juvenile court to order a legal guardianship, appoint a legal guardian, or issue letters of guardianship with respect to a minor adjudged to be a dependent. Existing law also authorizes a social worker to undertake a program of supervision of the minor in lieu of filing a dependency petition with the juvenile court, with the consent of the minor's parent or guardian. Existing law requires the Judicial Council to prepare a pamphlet in dependency cases that assists potential legal guardians with understanding their rights, duties, and obligations as a guardian of a minor.

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 revise the probate court guardianship process by requiring, among other things, the probate court to have good cause to waive the investigation and prohibiting the probate court from hearing and determining the petition to appoint a guardian until the child welfare agency has completed its investigation and submitted its report to the probate court. *The bill would instead require the Judicial Council to develop a form for use in both dependency cases and probate guardianships that assists potential legal guardians with understanding their rights, duties, and obligations as a guardian of a minor, and additionally provides information about the services and supports available to a probate guardian and how they differ from the services and supports available to a caregiver in the child welfare system or a guardian appointed by the juvenile court. The bill would require the parent or guardian and any prospective guardian to be provided with a copy of the form prior to a social worker making any arrangement or recommendation as to any custody agreement through the probate court that would include a temporary or permanent voluntary relinquishment of custody by a parent or guardian.*

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 a matter to juvenile court, this bill would require the social worker to immediately investigate and to report the findings and conclusions of the investigation to the probate court. When a probate court has referred a matter to the child welfare agency, the bill would authorize the probate court or appointed counsel, within one month after the referral, to request that the juvenile court review

the decision of the social worker not to file a petition and would authorize the juvenile court to either affirm the decision of the social worker or, if the juvenile court finds that the child is, prima facie, a dependent child of the court, to order the social worker to commence juvenile court proceedings.

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~~ *require, subject to an appropriation of funds for this purpose*, 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 is not otherwise determined to be eligible for federal Kin-GAP and 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 68511.1 of the Government Code is
2 amended to read:
3 68511.1. The Judicial Council shall ~~prepare a pamphlet~~ *develop*
4 *a form* explaining the nature of a guardianship of a ~~minor and~~
5 *minor*; the rights, duties, and obligations of a person serving as
6 guardian of a ~~minor; minor, and information about the services~~
7 *and supports available to a probate guardian and how they differ*
8 *from the services and supports available to a caregiver in the child*
9 *welfare system or a guardian appointed by the juvenile court.* The
10 ~~pamphlet form~~ shall be prepared in English and Spanish in language
11 easily understood by a lay person not trained in ~~law.~~ ~~Pamphlets~~
12 *law and shall be distributed to the superior courts in the state for*
13 use in guardianships established pursuant to ~~Section 366.25~~ *Section*
14 *1514 of the Probate Code and Sections 360 and 366.26 of the*
15 Welfare and Institutions Code and for ~~such~~ *any* other purposes as
16 may be directed or permitted by the Judicial Council.

17 SEC. 2. Section 1511 of the Probate Code is amended to read:
18 1511. (a) Except as provided in subdivisions (f) and (g), at
19 least 15 days before the hearing on the petition for the appointment
20 of a guardian, notice of the time and place of the hearing shall be
21 given as provided in subdivisions (b), (c), (d), and (e) of this
22 section. The notice shall be accompanied by a copy of the ~~petition.~~
23 *petition and shall include a copy of the form required by Section*
24 *68511.1 of the Government Code.* The court shall not shorten the
25 time for giving the notice of hearing under this section.

26 (b) Notice shall be served in the manner provided in Section
27 415.10 or 415.30 of the Code of Civil Procedure, or in any manner
28 authorized by the court, on all of the following persons:
29 (1) The proposed ward if 12 years of age or older.
30 (2) Any person having legal custody of the proposed ward, or
31 serving as guardian of the estate of the proposed ward.
32 (3) The parents of the proposed ward.
33 (4) Any person nominated as a guardian for the proposed ward
34 under Section 1500 or 1501.

1 (c) Notice shall be delivered pursuant to Section 1215 to the
2 addresses stated in the petition, or in any manner authorized by
3 the court, to all of the following:

- 4 (1) The spouse named in the petition.
5 (2) The relatives named in the petition, except that if the petition
6 is for the appointment of a guardian of the estate only the court
7 may dispense with the giving of notice to any one or more or all
8 of the relatives.

9 (3) The person having the care of the proposed ward if other
10 than the person having legal custody of the proposed ward.

11 (d) If notice is required by Section 1461 or 1542 to be given to
12 the Director of State Hospitals or the Director of Developmental
13 Services or the Director of Social Services, notice shall be delivered
14 pursuant to Section 1215 as required.

15 (e) If the petition states that the proposed ward is receiving or
16 is entitled to receive benefits from the Veterans Administration,
17 notice shall be delivered pursuant to Section 1215 to the office of
18 the Veterans Administration referred to in Section 1461.5.

19 (f) Unless the court orders otherwise, notice shall not be given
20 to any of the following:

21 (1) The parents or other relatives of a proposed ward who has
22 been relinquished to a licensed adoption agency.

23 (2) The parents of a proposed ward who has been judicially
24 declared free from their custody and control.

25 (g) Notice need not be given to any person if the court so orders
26 upon a determination of either of the following:

27 (1) The person cannot with reasonable diligence be given the
28 notice.

29 (2) The giving of the notice would be contrary to the interest of
30 justice.

31 (h) Before the appointment of a guardian is made, proof shall
32 be made to the court that each person entitled to notice under this
33 section either:

34 (1) Has been given notice as required by this section.

35 (2) Has not been given notice as required by this section because
36 the person cannot with reasonable diligence be given the notice
37 or because the giving of notice to that person would be contrary
38 to the interest of justice.

39 (i) If notice is required by Section 1460.2 to be given to an
40 Indian custodian or tribe, notice shall be mailed as required.

1 SECTION 1.

2 SEC. 3. Section 1513 of the Probate Code is amended to read:

3 1513. (a) Unless waived by the court for good cause, a court
4 investigator, probation officer, or domestic relations investigator
5 shall make an investigation and file with the court a report and
6 recommendation concerning each proposed guardianship of the
7 person or guardianship of the estate. Investigations where the
8 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 a guardianship of the person shall include, but need not be
13 limited to, 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 proposed guardian to meet those
19 needs.

20 (3) The relationship of the proposed ward to the proposed
21 guardian, including the duration and character of the relationship,
22 the circumstances under which the proposed guardian took physical
23 custody of the proposed ward, and a statement of the proposed
24 ward's wishes concerning the proposed guardianship, unless the
25 proposed ward's developmental, physical, or emotional condition
26 prevents the proposed ward from forming or stating their wishes
27 concerning the proposed guardianship.

28 (4) The duration of the guardianship anticipated by the parents
29 and the proposed guardian and the plans of each parent and the
30 proposed guardian to provide a stable and permanent home for the
31 child. The court may waive this requirement when no parent is
32 available.

33 (b) If the proposed ward is or may be described by Section 300
34 of the Welfare and Institutions Code, the court may refer the matter,
35 in writing, to the local child welfare agency to initiate an
36 investigation pursuant to Section 329 of the Welfare and
37 Institutions Code. The referral shall include a summary of the
38 reasons for the referral and may include a copy of the petition
39 under Section 1510, the investigator's report filed pursuant to
40 subdivision (a), and any other material information.

1 (1) Pursuant to the timeline in Section 329 of the Welfare and
2 Institutions Code, the child welfare agency shall report the findings
3 and conclusions of its investigation, any decision made as a result,
4 and the reasons for the decision to the probate court.

5 (2) The probate court shall not hear and determine the petition
6 to appoint a guardian of the minor until the child welfare agency
7 has completed its investigation and has submitted the report to the
8 probate court.

9 (3) Notwithstanding paragraph (2), pending completion of the
10 child welfare investigation, the probate court may take any
11 reasonable steps it deems appropriate to protect the child's safety,
12 including, but not limited to, appointing a temporary guardian or
13 issuing a temporary restraining order.

14 (4) If the child welfare agency has not, within three weeks of
15 the referral, notified the probate court that it has commenced
16 juvenile dependency proceedings, the probate court or counsel
17 appointed pursuant to Section 1470 to represent the minor may
18 apply to the juvenile court, pursuant to Section 331 of the Welfare
19 and Institutions Code, for an order directing the agency to
20 commence juvenile dependency proceedings.

21 (5) If the juvenile court commences dependency proceedings,
22 the guardianship proceedings shall be stayed in accordance with
23 Section 304 of the Welfare and Institutions Code. This section
24 does not affect the applicability of Section 16504 or 16506 of the
25 Welfare and Institutions Code. If the juvenile court does not
26 commence dependency proceedings, the probate court shall retain
27 jurisdiction to hear and determine the guardianship petition.

28 (c) Before ruling on the petition for guardianship, the court shall
29 read and consider all reports submitted pursuant to this section and
30 shall affirm that it has done so in the minutes or on the record. A
31 person who reports to the court pursuant to this section may be
32 called and examined by any party to the proceeding.

33 (d) All reports authorized by this section are confidential and
34 shall only be made available to persons who have been served in
35 the proceedings or their attorneys. The clerk of the court shall
36 make provisions to limit access to the reports exclusively to persons
37 entitled to receipt. The reports shall be made available to all parties
38 entitled to receipt no less than three court days before the hearing
39 on the guardianship petition.

1 (e) For the purpose of writing either report authorized by this
2 section, the person making the investigation and report shall have
3 access to the proposed ward's school records, probation records,
4 and public and private social services records, and to an oral or
5 written summary of the proposed ward's medical records and
6 psychological records prepared by any physician, psychologist, or
7 psychiatrist who made or who is maintaining those records. The
8 physician, psychologist, or psychiatrist shall be available to clarify
9 information regarding these records pursuant to the investigator's
10 responsibility to gather and provide information for the court.

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

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

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

23 (i) It is the intent of the Legislature that the guardianship laws
24 in this code and the juvenile court laws in the Welfare and
25 Institutions Code operate together as a cohesive statutory structure
26 that ensures all cases referred by the probate court for a child
27 welfare investigation are subject to review by the juvenile court
28 without limiting the probate court's ability to take immediate action
29 to protect the child while the child welfare investigation and
30 juvenile court review are pending. The purpose of this statutory
31 structure is to ensure the protection of every child's health, safety,
32 and welfare and to provide due process to every child, parent, and
33 family.

34 (j) On or before January 1, 2023, the Judicial Council shall
35 adopt, amend, or revise any rules or forms necessary to implement
36 this section.

37 *SEC. 4. Section 301 of the Welfare and Institutions Code is*
38 *amended to read:*

39 301. (a) In any case in which a social worker, after
40 investigation of an application for petition or other investigation

1 ~~he or she~~ *the social worker* is authorized to make, determines that
2 a child is within the jurisdiction of the juvenile court or will
3 probably soon be within that jurisdiction, the social worker may,
4 in lieu of filing a petition or subsequent to dismissal of a petition
5 already filed, and with consent of the child's parent or guardian,
6 undertake a program of supervision of the child. If a program of
7 supervision is undertaken, the social worker shall attempt to
8 ameliorate the situation that brings the child within, or creates the
9 probability that the child will be within, the jurisdiction of Section
10 300 by providing or arranging to contract for all appropriate child
11 welfare services pursuant to Sections 16506 and 16507.3, within
12 the time periods specified in those sections. No further child
13 welfare services shall be provided subsequent to these time limits.
14 If the family has refused to cooperate with the services being
15 provided, the social worker may file a petition with the juvenile
16 court pursuant to Section 332. Nothing in this section shall be
17 construed to prevent the social worker from filing a petition
18 pursuant to Section 332 when otherwise authorized by law.

19 (b) The program of supervision of the child undertaken pursuant
20 to this section may call for the child to obtain care and treatment
21 for the misuse of, or addiction to, controlled substances from a
22 county mental health service or other appropriate community
23 agency.

24 (c) If the parent is a dependent, nonminor dependent, or ward
25 of the juvenile court at the time that a social worker seeks to
26 undertake a program of supervision pursuant to subdivision (a),
27 including a voluntary family reunification program or a voluntary
28 family maintenance program, and if counsel has been appointed
29 for the parent pursuant to subdivision (c) of Section 317, the
30 program of supervision shall not be undertaken until the parent
31 has consulted with ~~his or her~~ *the parent's* counsel. In cases when
32 a ward is not represented by counsel appointed in a dependency
33 proceeding pursuant to subdivision (c) of Section 317, ~~he or she~~
34 *the ward* shall be given the opportunity to confer with counsel
35 appointed in the wardship proceeding pursuant to Section 634 or
36 by counsel retained to represent the ward in the wardship
37 proceeding.

38 (d) *Prior to a social worker arranging or recommending any*
39 *custody agreement through the probate court that would include*
40 *a temporary or permanent voluntary relinquishment of custody by*

1 *a parent or guardian, the parent or guardian and any prospective*
2 *guardian shall be provided with a copy of the guardianship form*
3 *as required by Section 68511.1 of the Government Code.*

4 ~~SEC. 2.~~

5 *SEC. 5.* Section 329 of the Welfare and Institutions Code is
6 amended to read:

7 329. (a) When a person applies to the social worker to
8 commence proceedings in the juvenile court, the application shall
9 be in the form of an affidavit alleging that there was or is within
10 the county, or residing therein, a child within the provisions of
11 Section 300, and setting forth facts in support thereof. The social
12 worker shall immediately investigate as necessary to determine
13 whether proceedings in the juvenile court should be commenced.
14 If the social worker does not take action under Section 301 and
15 does not file a petition in the juvenile court within three weeks
16 after the application, the social worker shall endorse upon the
17 affidavit of the applicant the decision not to proceed further,
18 including any recommendation made to the applicant, if one is
19 made, to consider commencing a probate guardianship proceeding
20 for the child, and the reasons therefor and shall immediately notify
21 the applicant of the action taken or the decision rendered under
22 this section. The social worker shall retain the affidavit and the
23 endorsement thereon for a period of 30 days after notifying the
24 applicant.

25 (b) (1) If a social worker receives a referral from the probate
26 court pursuant to Section 1513 of the Probate Code, the social
27 worker shall immediately investigate as necessary to determine
28 whether proceedings in the juvenile court should be commenced.

29 (2) The social worker shall, within three weeks of the referral,
30 report the findings and conclusions of the investigation, along with
31 any decision made as a result and the reasons for the decision, to
32 the probate court as required by subdivision (b) of Section 1513
33 of the Probate Code.

34 ~~SEC. 3.~~

35 *SEC. 6.* Section 331 of the Welfare and Institutions Code is
36 amended to read:

37 331. (a) If a person has applied to the social worker, pursuant
38 to Section 329, to commence juvenile court proceedings and the
39 social worker does not file a petition within three weeks after the
40 application, the person may, within one month after making the

1 application, apply to the juvenile court to review the decision of
2 the social worker, and the court may either affirm the decision of
3 the social worker or, if it finds that the child is, prima facie,
4 described by Section 300, order the social worker to commence
5 juvenile court proceedings.

6 (b) If the probate court has referred a matter to the child welfare
7 agency pursuant to Section 1513 of the Probate Code, and the
8 agency does not file a petition to commence juvenile court
9 proceedings within three weeks of the referral, the probate court
10 or counsel appointed by the probate court pursuant to Section 1470
11 of the Probate Code to represent the child may, within one month
12 after the referral, request that the juvenile court review the decision
13 of the social worker not to file a petition. The request shall contain
14 the probate court referral made pursuant to subdivision (b) of
15 Section 1513 of the Probate Code and the social worker's report,
16 if available to the court, and need not contain any additional
17 information. The juvenile court may either affirm the decision of
18 the social worker or, if it finds that the child is, prima facie,
19 described by Section 300, order the social worker to commence
20 juvenile court proceedings.

21 (1) Either the appointment of a temporary probate guardian or
22 any delay attributable to the child welfare investigation shall not
23 preclude the juvenile court from ordering the social worker to
24 commence dependency proceedings or from hearing and
25 determining a petition alleging that the child is described by Section
26 300.

27 (2) The juvenile court shall, within five days of completing its
28 review, transmit its decision, in writing, to the probate court. The
29 probate court shall file the decision in question in the guardianship
30 proceeding and shall make it available only to persons entitled to
31 receive reports pursuant to subdivision (d) of Section 1513 of the
32 Probate Code.

33 ~~SEC. 4.~~

34 *SEC. 7.* Section 360 of the Welfare and Institutions Code is
35 amended to read:

36 360. (a) After receiving and considering the evidence on the
37 proper disposition of the case, the juvenile court may enter
38 judgment as follows:

39 (1) Notwithstanding any other law, if the court finds that the
40 child is a person described by Section 300 and the parent has

1 advised the court that the parent is not interested in family
2 maintenance or family reunification services, it may, in addition
3 to or in lieu of adjudicating the child a dependent child of the court,
4 order a legal guardianship, appoint a legal guardian, and issue
5 letters of guardianship, if the court determines that a guardianship
6 is in the best interest of the child, provided the parent and the child
7 agree to the guardianship, unless the child's age or physical,
8 emotional, or mental condition prevents the child's meaningful
9 response. The court shall advise the parent and the child that
10 reunification services will not be provided as a result of the
11 establishment of a guardianship. The proceeding for the
12 appointment of a guardian shall be in the juvenile court.

13 (2) An application for termination of guardianship shall be filed
14 in juvenile court in a form developed by the Judicial Council
15 pursuant to Section 68511 of the Government Code. Sections 366.4
16 and 388 shall apply to this order of guardianship.

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

21 (4) (A) On and after the date that the director executes a
22 declaration pursuant to Section 11217, if the court appoints an
23 approved relative caregiver as the child's legal guardian, the child
24 has been in the care of that approved relative for a period of six
25 consecutive months under a voluntary placement agreement, and
26 the child otherwise meets the conditions for federal financial
27 participation, the child shall be eligible for aid under the Kin-GAP
28 Program as provided in Article 4.7 (commencing with Section
29 11385) of Chapter 2.

30 (B) A child placed with a relative caregiver who is appointed
31 as the child's legal guardian pursuant to this section shall be
32 eligible for ~~aid~~ *aid, subject to an appropriation of funds for this*
33 *purpose in the annual Budget Act or other statute*, under the
34 state-funded Kin-GAP Program, as provided for in Article 4.5
35 (commencing with Section 11360) of Chapter 2.

36 (C) It is the intent of the Legislature to ensure that a child who
37 must be separated from a parent as a result of abuse or neglect has
38 access to funding any time the child is placed in a guardianship
39 by the juvenile court.

1 (D) It is the further intent of the Legislature that permanent
2 placement of a child not be delayed solely to ensure that the child
3 will be able to receive critical funding.

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

6 (b) If the court finds that the child is a person described by
7 Section 300, it may, without adjudicating the child a dependent
8 child of the court, order that services be provided to keep the family
9 together and place the child and the child's parent or guardian
10 under the supervision of the social worker for a time period
11 consistent with Section 301.

12 (c) If the family subsequently is unable or unwilling to cooperate
13 with the services being provided, the social worker may file a
14 petition with the juvenile court pursuant to Section 332 alleging
15 that a previous petition has been sustained and that disposition
16 pursuant to subdivision (b) has been ineffective in ameliorating
17 the situation requiring the child welfare services. Upon hearing
18 the petition, the court shall order either that the petition shall be
19 dismissed or that a new disposition hearing shall be held pursuant
20 to subdivision (d).

21 (d) If the court finds that the child is a person described by
22 Section 300, it may order and adjudge the child to be a dependent
23 child of the court.

24 ~~SEC. 5.~~

25 *SEC. 8.* Section 366.4 of the Welfare and Institutions Code is
26 amended to read:

27 366.4. A minor for whom a guardianship has been established
28 resulting from the selection or implementation of a permanency
29 plan pursuant to Section 366.26, or for whom a related guardianship
30 has been established pursuant to Section 360, or, on and after the
31 date that the director executes a declaration pursuant to Section
32 11217, a nonminor who is receiving Kin-GAP payments pursuant
33 to Section 11363 or 11386, or, on or after January 1, 2012, a
34 nonminor former dependent child of the juvenile court who is
35 receiving AFDC-FC benefits pursuant to Section 11405, is within
36 the jurisdiction of the juvenile court. For those minors, Part 2
37 (commencing with Section 1500) of Division 4 of the Probate
38 Code, relating to guardianship, does not apply. If no specific
39 provision of this code or the California Rules of Court is applicable,
40 the provisions applicable to guardianships under Part 4

1 (commencing with Section 2100) of Division 4 of the Probate
2 Code govern insofar as they are applicable to like situations.

3 ~~SEC. 6.~~

4 *SEC. 9.* Section 11363 of the Welfare and Institutions Code is
5 amended to read:

6 11363. (a) Aid in the form of state-funded Kin-GAP shall be
7 provided under this article on behalf of any child under 18 years
8 of age and to any eligible youth under 19 years of age, as provided
9 in Section 11403, who satisfies all of the following conditions:

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

13 (2) Has been residing for at least six consecutive months in the
14 approved home of the prospective relative guardian while under
15 the jurisdiction of the juvenile court or a voluntary placement
16 agreement.

17 (3) Has had a kinship guardianship established pursuant to
18 Section 366.26.

19 (4) Has had their dependency jurisdiction terminated after
20 January 1, 2000, pursuant to Section 366.3, or their wardship
21 terminated pursuant to subdivision (e) of Section 728, concurrently
22 or subsequently to the establishment of the kinship guardianship.

23 (b) Aid in the form of state-funded Kin-GAP shall be provided
24 under this article on behalf of any child under 18 years of age and
25 to any eligible youth under 21 years of age who is not otherwise
26 determined to be eligible for federal Kin-GAP, as provided in
27 Section 11403, who has had a kinship guardianship established
28 pursuant to Section 360.

29 (c) If the conditions specified in subdivision (a) or (b) are met
30 and, subsequent to the termination of dependency jurisdiction, a
31 parent or person having an interest files with the juvenile court a
32 petition pursuant to Section 388 to change, modify, or set aside an
33 order of the court, Kin-GAP payments shall continue unless and
34 until the juvenile court, after holding a hearing, orders the child
35 removed from the home of the guardian, terminates the
36 guardianship, or maintains dependency jurisdiction after the court
37 concludes the hearing on the petition filed under Section 388.

38 (d) A child or nonminor former dependent or ward shall be
39 eligible for Kin-GAP payments if the child or nonminor meets one
40 of the following age criteria:

1 (1) The child is under 18 years of age.

2 (2) The nonminor is under 21 years of age and has a physical
3 or mental disability that warrants the continuation of assistance.

4 (3) Through December 31, 2011, the child or nonminor satisfies
5 the conditions of Section 11403, and on and after January 1, 2012,
6 satisfies the conditions of Section 11403.01.

7 (4) The child or nonminor satisfies the conditions as described
8 in subdivision (e).

9 (e) Commencing January 1, 2012, state-funded Kin-GAP
10 payments shall continue for youths who have attained 18 years of
11 age and who are under 19 years of age, if they reached 16 years
12 of age before the Kin-GAP negotiated agreement payments
13 commenced, and as described in Section 10103.5. Effective January
14 1, 2013, Kin-GAP payments shall continue for youths who have
15 attained 18 years of age and are under 20 years of age, if they
16 reached 16 years of age before the Kin-GAP negotiated agreement
17 payments commenced, and as described in Section 10103.5.
18 Effective January 1, 2014, Kin-GAP payments shall continue for
19 youths who have attained 18 years of age and are under 21 years
20 of age, if they reached 16 years of age before the Kin-GAP
21 negotiated agreement payments commenced. To be eligible for
22 continued payments, the youth shall satisfy one or more of the
23 conditions specified in paragraphs (1) to (5), inclusive, of
24 subdivision (b) of Section 11403.

25 (f) (1) Termination of the guardianship with a kinship guardian
26 shall terminate eligibility for Kin-GAP unless the conditions in
27 Section 11403 apply. However, if an alternate guardian or
28 coguardian is appointed pursuant to Section 366.3 who is also a
29 kinship guardian, the alternate or coguardian shall be entitled to
30 receive Kin-GAP on behalf of the child pursuant to this article. A
31 new period of six months of placement with the alternate guardian
32 or coguardian shall not be required if that alternate guardian or
33 coguardian has been assessed pursuant to Section 361.3,
34 subdivision (a) of Section 361.4, and paragraph (2), and the court
35 terminates dependency jurisdiction. If a nonminor former
36 dependent is receiving Kin-GAP after 18 years of age and the
37 nonminor former dependent's former guardian dies, the nonminor
38 former dependent may petition the court for a hearing pursuant to
39 Section 388.1.

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

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

14 (C) If the prospective alternate guardian or coguardian has been
 15 convicted of a crime other than a minor traffic violation or arrested
 16 for an offense specified in subdivision (e) of Section 1522 of the
 17 Health and Safety Code, except for the civil penalty language, the
 18 criminal background check provisions specified in subdivisions
 19 (d) to (g), inclusive, of Section 1522 of the Health and Safety Code
 20 shall apply, and an exemption shall be issued prior to issuance of
 21 any Kin-GAP funding. Exemptions from the criminal records
 22 clearance requirements set forth in this section may be granted by
 23 the county using the exemption criteria specified in subdivision
 24 (g) of Section 1522 of the Health and Safety Code and any
 25 applicable written directives or regulations adopted by the
 26 department.

27 (3) A prospective alternate guardian or coguardian shall not be
 28 required to be approved as a resource family pursuant to Section
 29 16519.5 for the sole purpose of receiving Kin-GAP funding on
 30 behalf of an eligible child in the care of the prospective alternate
 31 guardian or coguardian.

32 ~~SEC. 7.~~

33 *SEC. 10.* To the extent that this act has an overall effect of
 34 increasing the costs already borne by a local agency for programs
 35 or levels of service mandated by the 2011 Realignment Legislation
 36 within the meaning of Section 36 of Article XIII of the California
 37 Constitution, it shall apply to local agencies only to the extent that
 38 the state provides annual funding for the cost increase. Any new
 39 program or higher level of service provided by a local agency
 40 pursuant to this act above the level for which funding has been

1 provided shall not require a subvention of funds by the state or
2 otherwise be subject to Section 6 of Article XIII B of the California
3 Constitution.

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