

Assembly Bill No. 260

Passed the Assembly September 9, 2021

Chief Clerk of the Assembly

Passed the Senate September 8, 2021

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2021, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL’S DIGEST

AB 260, 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. 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.

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.

By imposing a higher level of service on county officials, this 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.

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

SECTION 1. Section 68511.1 of the Government Code is amended to read:

68511.1. The Judicial Council shall develop a form explaining the nature of a guardianship of a minor, the rights, duties, and obligations of a person serving as guardian of a minor, and 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 form shall be prepared in English and Spanish in language easily understood by a lay person not trained in law and shall be distributed to the superior courts in the state for use in guardianships established pursuant to Section 1514 of the Probate Code and Sections 360 and 366.26 of the Welfare and Institutions Code and for any other purposes as may be directed or permitted by the Judicial Council.

SEC. 2. Section 1511 of the Probate Code is amended to read:

1511. (a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on the petition for the appointment of a guardian, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice shall be accompanied by a copy of the petition and shall include a copy of the form required by Section 68511.1 of the Government Code. The court shall not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be served in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in any manner authorized by the court, on all of the following persons:

- (1) The proposed ward if 12 years of age or older.
- (2) Any person having legal custody of the proposed ward, or serving as guardian of the estate of the proposed ward.
- (3) The parents of the proposed ward.
- (4) Any person nominated as a guardian for the proposed ward under Section 1500 or 1501.

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

- (1) The spouse named in the petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1513. (a) Unless waived by the court for good cause, a court investigator, probation officer, or domestic relations investigator shall make an investigation and file with the court a report and

recommendation concerning each proposed guardianship of the person or guardianship of the estate. Investigations where the proposed guardian is a relative shall be made by a court investigator. Investigations where the proposed guardian is a nonrelative shall be made by the county agency designated to investigate potential dependency. The report of the investigation for a guardianship of the person shall include, but need not be limited to, a discussion of all of the following:

- (1) A social history of the proposed guardian.
 - (2) A social history of the proposed ward, including, to the extent feasible, an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward and the capability of the proposed guardian to meet those needs.
 - (3) The relationship of the proposed ward to the proposed guardian, including the duration and character of the relationship, the circumstances under which the proposed guardian took physical custody of the proposed ward, and a statement of the proposed ward's wishes concerning the proposed guardianship, unless the proposed ward's developmental, physical, or emotional condition prevents the proposed ward from forming or stating their wishes concerning the proposed guardianship.
 - (4) The duration of the guardianship anticipated by the parents and the proposed guardian and the plans of each parent and the proposed guardian to provide a stable and permanent home for the child. The court may waive this requirement when no parent is available.
- (b) If the proposed ward is or may be described by Section 300 of the Welfare and Institutions Code, the court may refer the matter, in writing, to the local child welfare agency to initiate an investigation pursuant to Section 329 of the Welfare and Institutions Code. The referral shall include a summary of the reasons for the referral and may include a copy of the petition under Section 1510, the investigator's report filed pursuant to subdivision (a), and any other material information.

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

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

(3) Notwithstanding paragraph (2), pending completion of the child welfare investigation, 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 or issuing a temporary restraining order.

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

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

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

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

(e) For the purpose of writing either report authorized by this section, the person making the investigation and report shall have access to the proposed ward's school records, probation records, and public and private social services records, and to an oral or written summary of the proposed ward's medical records and

psychological records prepared by any physician, psychologist, or psychiatrist who made or who is maintaining those records. The physician, psychologist, or psychiatrist shall be available to clarify information regarding these records pursuant to the investigator's responsibility to gather and provide information for the court.

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

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

(h) In an Indian child custody proceeding, 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.

(i) It is the intent of the Legislature that the guardianship laws in this code and the juvenile court laws in the Welfare and Institutions Code operate together as a cohesive statutory structure that ensures all 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 purpose of this statutory structure is to ensure the protection of every child's health, safety, and welfare and to provide due process to every child, parent, and family.

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

SEC. 4. Section 329 of the Welfare and Institutions Code is amended to read:

329. (a) When a person applies to the social worker to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a child within the provisions of Section 300, and setting forth facts in support thereof. The social worker shall immediately investigate as necessary to determine whether proceedings in the juvenile court should be commenced.

If the social worker does not take action under Section 301 and does not file a petition in the juvenile court within three weeks after the application, the social worker shall endorse upon the affidavit of the applicant the decision not to proceed further, including any recommendation made to the applicant, if one is made, to consider commencing a probate guardianship proceeding for the child, and the reasons therefor and shall immediately notify the applicant of the action taken or the decision rendered under this section. The social worker shall retain the affidavit and the endorsement thereon for a period of 30 days after notifying the applicant.

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

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

SEC. 5. Section 331 of the Welfare and Institutions Code is amended to read:

331. (a) If a person has applied to the social worker, pursuant to Section 329, to commence juvenile court proceedings and the social worker does not file a petition within three 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, if it finds that the child is, *prima facie*, described by Section 300, order the social worker to commence juvenile court proceedings.

(b) If the probate court has referred a matter to the child welfare agency pursuant to Section 1513 of the Probate Code, and the agency does not file a petition to commence juvenile court proceedings within three weeks of the referral, the probate court or counsel appointed by the probate court pursuant to Section 1470 of the Probate Code to represent the child may, within one month after the referral, request that the juvenile court review the decision of the social worker not to file a petition. The request shall contain the probate court referral made pursuant to subdivision (b) of

Section 1513 of the Probate Code and the social worker's report, if available to the court, and need not contain any additional information. The juvenile court may either affirm the decision of the social worker or, if it finds that the child is, prima facie, described by Section 300, order the social worker to commence juvenile court proceedings.

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

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

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

Approved _____, 2021

Governor