

APRIL 2023

Navigating Probate and Dependency Courts Under AB 260

ALLIANCE
for CHILDREN'S
RIGHTS



FREQUENTLY ASKED QUESTIONS

Frequently Asked Questions

Comparing Different Out of Home Care Options

Q: Does a caregiver need legal guardianship to enroll a child in school?

A: If a caregiver has not been appointed legal guardian or established any other legal relationship with the child they can use a [Caregiver's Authorization Affidavit](#) to enroll a child in school. The Caregiver's Authorization Affidavit does not affect the rights of the minor's parents regarding the care, custody, and control of the minor and does not give the caregiver legal custody of the minor.

Q: I see references to an “investigation” that must be conducted before the Probate Court appoints a guardian. Does this investigation include a background check? If so, is it the same background check that a resource parent in the foster care system would have to complete?

A: Yes, the probate court investigation does include a background check. The assigned investigator (the probate investigator's office if the proposed guardian is a relative, the child welfare agency if the proposed guardian is a non-relative) submits a report to the probate court that includes any results from a check of the California Law Enforcement Telecommunications Systems (CLETS) and the Child Abuse Central Index (CACI) for all adults residing in the home. After reviewing the report, the probate court may determine whether the proposed guardian's criminal history, if any, raises concerns about the appropriateness of the guardianship. There is no criminal record exemption process like there is for prospective resource families in the foster care system. The background check required of a prospective resource parent is more extensive and is described in [Section 6-03A of the Resource Family Approval \(RFA\) Written Directives](#).

Q: Do caregivers truly have a “choice” to start a case in Juvenile Dependency Court? They cannot petition for juvenile dependency the way they could for a probate guardianship.

A: While a caregiver cannot file a petition directly in the Juvenile Dependency Court, the caregiver can ask the child welfare agency to investigate to determine whether a petition should be filed. If the child welfare agency says no petition should be filed, then a caregiver also has the ability to request that a Juvenile Dependency Court judge review the child welfare agency's decision and potentially order the child welfare agency to file a dependency petition. None of these procedures guarantee that the case will be opened or moved to Juvenile Dependency Court, but it is important to provide caregivers—and parents—with information and knowledge to make informed decisions.

General Questions about Probate Court Guardianships

- Q: Are there regular court hearings after the Probate Court appoints a legal guardian?**
- A:** Whether the Probate Court holds annual Guardianship Review Hearings will vary by county, and may even vary by judge.
- Q: What happens when a probate legal guardian petitions to terminate the probate guardianship and the child cannot safely return to the parents' home?**
- A:** The guardian would need to find another person who would be an appropriate guardian for the child, then the Probate Court would have the discretion to appoint that new person as the child's guardian. If there is no one else to act as guardian and the child truly cannot safely return home, then the court will likely order the current guardian to remain in that role. If the current guardian refuses or is unable to continue in that role, then the Probate Court may make a referral to the child welfare agency.

Implementing AB 260 in the Probate and Juvenile Dependency Courts

- Q: If a temporary guardianship was established in 2019, is it still possible for the Probate Court to refer the matter to the child welfare agency for investigation, or to the Juvenile Dependency Court for review if the child welfare agency does not file a petition?**
- A:** It is possible. So long as no permanent guardianship was granted, it is possible that the case could be referred to the child welfare agency (and the Juvenile Dependency Court after that).
- Q: If the Juvenile Dependency Court sets a hearing pursuant to Welfare and Institutions Code section 331, can/may the court appoint counsel for a parent?**
- A:** If an individual or the Probate Court has applied to commence juvenile court proceedings pursuant to Welfare and Institutions Code section 329, and a social worker has not filed a petition within three weeks after the application, the person or the Probate Court may, within one month after making the application, apply to the Juvenile Dependency Court to review the decision of the social worker pursuant to Welfare and Institutions Code section 331. Welfare and Institutions Code section 331 does not require the Juvenile Dependency Court to hold a hearing as part of its review of the social worker's decision, nor does section 331 prohibit the Juvenile Dependency Court from holding a hearing as part of its review. There is no statutory requirement that a court appoint counsel for a parent at such a hearing.
- Q: If the child welfare agency declines to file a dependency petition, and the Juvenile Dependency Court orders the agency to file a petition, does anything compel the agency to actually prove up the petition? Must the agency request detention of the**

minor when filing the petition ordered by the Juvenile Dependency Court under Welfare and Institutions Code section 331?

A: If the Juvenile Dependency Court orders a social worker to commence juvenile court proceedings by filing a petition, the child welfare agency is not required to recommend removal of a child from a parent or legal guardian. The agency may file a non-detaining petition if judicial intervention and court supervision are appropriate, but the child does not need to be removed from the custody of a parent or legal guardian in order to be kept safe.

Q: **What can be done to enforce an order from the Juvenile Dependency Court judge to file a petition if the child welfare agency does not comply?**

A: The court may issue an order to show cause (OSC). The court could find the social worker in contempt of the court order and even order sanctions.

Q: **What are the next steps if the Juvenile Dependency Court orders the child welfare agency to initiate juvenile court proceedings by filing a petition? Will an initial hearing be set?**

A: The social worker commences proceedings by filing a petition pursuant to Welfare and Institutions Code sections 300 and 332. The court will set an initial hearing on the petition.

Use of New Probate and Juvenile Court Forms

Q: **Who is required to receive a copy of the form GC-207-INFO/JV-352-INFO?**

A: Probate Code section 1511(a) requires notice of the hearing on the petition for guardianship to be sent with a copy of the petition and a copy of form GC-207-INFO/JV-352-INFO *Comparison of Guardians With Other Nonparent Caregivers*.

Various parts of Probate Code section 1511 describe who is entitled to receive notice of the hearing (and therefore also receive a copy of form GC-207-INFO/JV-352-INFO). Probate Code section 1511(b)(2) requires any person having legal custody or the proposed ward, or serving as guardian of the estate of the proposed ward, to be given notice of a hearing on a petition for guardianship. Probate Code section 1511(b)(3) requires parents of the proposed ward to be given notice of a hearing on a petition for guardianship. Probate Code section 1511(b)(4) requires any person nominated as a guardian for the proposed ward under Probate Code section 1500 or 1501 to be given notice of a hearing on a petition for guardianship.

Q: **Previously there was one informational form for prospective probate legal guardians, the guardianship pamphlet. Now there are multiple forms. What is the purpose of each form?**

A: Information about guardianships and other types of out of home care are divided into different forms that are meant to complement each other. These forms cross-reference each other.

- Form GC-207-INFO/JV-352-INFO, *Comparison of Guardians With Other Nonparent Caregivers*, compares the services and financial supports available in probate guardianship and juvenile court guardianship and the rights and duties of guardians and foster parents/resource families.
- Form JV-350-INFO, *Information on Juvenile Court Guardianship*, explains legal guardianship ordered by the juvenile court as the permanent plan for a child under the court's jurisdiction who cannot return home safely or be adopted. This form provides additional information that could not be included in form GC-207-INFO/JV-352-INFO.
- Form GC-205-INFO, *Information on Probate Guardianship of the Person*, is the former guardianship pamphlet that discussed guardianship of the person and guardianship of the estate. Form GC-205-INFO has updated information and now discusses only guardianship of the person.
- Form GC-206-INFO, *Information on Probate Guardianship of the Estate*, explains guardianships to manage a child's money or other property until the child reaches 18 years of age. This topic was discussed in the former guardianship pamphlet along with guardianship of the estate.

Q: **Is form JV-210 confidential? Probate guardianship proceedings are not confidential whereas juvenile court proceedings are. If there is cross over between Probate Court and Juvenile Dependency Court, how does the court ensure confidentiality for the child?**

A: Form JV-210, *Application to Commence Juvenile Court Proceedings and Decision of Social Worker*, allows probate courts to attach reports that are required to be filed under Probate Code section 1513. Probate Code section 1513(d) makes all reports authorized by section 1513 confidential. These reports shall only be made available to persons who have been served in the proceedings or their attorneys. The court clerk 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.

The fact that the reports themselves are confidential is important because form JV-210 is approved for optional use, so courts can use their own local forms to refer a prospective ward to a child welfare agency for investigation and attach the confidential reports authorized by Probate Code section 1513.

Confidential reports authorized by Probate Code section 1513 include:

- Probate Code section 1513(a) requires an investigation and a report and recommendation to be filed for a proposed guardianship of the person or of the estate unless it is waived by the court for good cause. If the proposed guardian is a relative, the investigation shall be made by a court investigator. If the proposed guardian is a nonrelative, the investigation shall be made by the county agency designated to investigate potential dependency.

- Probate Code section 1513(b) permits the probate court to refer a prospective ward to the local child welfare agency for investigation if the proposed ward is or may be described by Welfare and Institutions Code section 300. The probate court's referral shall include a summary of the reasons for the referral and may include a copy of the petition under Probate Code section 1510, the investigator's report filed pursuant to Probate Code section 1513(a), and any other material information.
- Probate Code section 1513(b)(1) requires the child welfare agency to report the findings and conclusions of its investigation, any decision made as a result, and the reasons for the decision to the probate court pursuant to the timeline in Welfare and Institutions code section 329.

If a probate court requests review by a juvenile court of a social worker's decision not to commence juvenile court proceedings after a referral by the probate court, Welfare and Institutions Code section 331(b)(2) requires the juvenile court, within five days of completing its review, to 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 Probate Code section 1513(d).

Q: When the Probate Court makes a 1513(b) request of the child welfare agency, should it be via minute order or form JV-210? Or should the court use both?

A: If a probate court refers a proposed ward to the local child welfare agency for investigation pursuant to Probate Code section 1513(b), the court may use form JV-210, *Application to Commence Juvenile Court Proceedings and Decision of Social Worker*. This form is approved for optional use, so a probate court can use its own local form to make the referral. If the court uses a local form to make the referral, Probate Code section 1513(b) requires the referral to include a summary of the reasons for the referral. The court may include a copy of the petition for probate court guardianship, the investigator's report filed pursuant to Probate Code section 1513(a), and any other material information.

Q: If form JV-210 is submitted by a private person, is this filed with the Juvenile Dependency Court or submitted to CWS?

A: If an individual uses form JV-210, *Application to Commence Juvenile Court Proceedings and Decision of Social Worker*, to apply to the social worker to commence proceedings in juvenile court pursuant to Welfare and Institutions Code section 329, the individual should submit the form to the social services agency/child welfare agency in the county where the child resides or where the child is present.

Q: GC-207/JV-352 is overwhelming to a non-lawyer. What are your recommendations for a layperson walking through the GC-207/JV-352 for the first time?

A: Don't try to read and understand the entire form in one sitting. Review the form so that you are familiar with the topics it covers. This form has three tables:

- The Rights and Duties of Different Types of Caregivers;

- The Services and Financial Support Available to Different Types of Caregivers; and
- How a Guardian is Appointed and What Happens Afterward.

When you have a specific question in mind, read the section of the form that appears best suited to answer your question. Keep a hard copy of the form or a digital version handy so you can refer to it, because it has a lot of details that are hard to memorize.

If you need more information or more details, additional information can be found in:

- Form JV-350-INFO, *Information on Juvenile Court Guardianship*;
- Form GC-205-INFO, *Information on Probate Guardianship of the Person*; and
- Form GC-206-INFO, *Information on Probate Guardianship of the Estate*.