

JUVENILE DEPENDENCY AND PROBATE GUARDIANSHIPS

- OVERVIEW OF TODAY'S PROGRAM:
 - JUVENILE DEPENDENCY
 - CHILD WELFARE INVESTIGATIONS
 - PROBATE GUARDIANSHIPS OF MINORS
 - INTERSECTION BETWEEN THE TWO
 - ADVANTAGES AND DISADVANTAGES OF EACH
 - PENDING LEGISLATION AB 260

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JUVENILE DEPENDENCY

- What is it?
- Legally complex and highly structured system where the state can intervene in families lives, including removing children from their parents/guardians, in order to protect them from abuse or neglect
- Goals:
 - To protect children
 - To preserve families
 - To provide a stable permanent home in a timely manner

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DEPENDENCY LEGAL STANDARDS

- **Jurisdiction:** Child is within the juvenile court's jurisdiction if WIC 300 grounds are found true by preponderance
- **Disposition:** Removal of child from parents/guardians requires proof by clear and convincing evidence that there is substantial danger to the physical health, safety, protection or physical or emotional well-being of child or would be if returned home and that there are no reasonable means to protect child without removal (WIC 361(c)) (at the detention hearing only a prima facie showing is required)
- Reasonable efforts must be made to prevent the need to remove/detain children
- Once removed the child welfare agency must provide the parent/guardian reasonable services to help them reunify with the child

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DUE PROCESS PROTECTIONS

- Indigent parents/guardians are entitled to appointed counsel
- All children are entitled to appointed counsel
- Parents maintain educational and developmental rights of child unless otherwise ordered (WIC 319(j) & 361(a)(1))
- Regular and periodic review hearings

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DEPENDENCY CASE PROCEDURE

- First court hearing = initial/detention hearing (like an arraignment); parents are formally notified of the charges/counts/allegations in the petition; advised of their rights)
- Second court hearing = jurisdiction – are the allegations true?
- Third court hearing = disposition – if the allegations are true, what is going to happen in the future?
- For each hearing there are comprehensive reports prepared by the child welfare social worker

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POST- DISPOSITION COURT HEARINGS

- Status review hearings: If FR services are offered to the parents the court must review their progress every six months and make decisions about what will happen afterwards
- Other court hearings:
 - FM (family maintenance) review hearings
 - WIC 366.26: selection and implementation of permanent plan (adoption, guardianship, etc.)
 - Post-permanency

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DEPENDENCY TIMELINES

- Strict timelines when child detained:
 - WIC 300 Petition must be filed with court within 48 hours of detention of child
 - Detention hearing must occur next court day after filing
 - Jurisdiction hearing must occur within 15 court days of detention
 - Disposition hearing must occur within 60 day of detention hearing
 - Reunification services are available to parents:
 - Children under 3 - six months
 - Children 3 and older - 12 months
 - With the ability under limited circumstances to extend reunification services to 18 and even 24 months

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OTHER POSSIBLE OUTCOMES AT DISPOSITION: VOLUNTARY GUARDIANSHIP

- Parent and child must agree
- Court must find it is in best interest of child
- Not a probate guardianship
- Proposed guardian likely required to meet same requirements as any caregiver in a dependency case, including background clearance* (WIC 361.5(g)(1)(D))
- Should be the exception: does not require removal findings (WIC 361(c)) and denies the possibility of reunification

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WIC 366.26 SELECTION AND IMPLEMENTATION OF PERMANENT PLAN

- Once and if FR terminated, must select alternative permanent plan (WIC 366.26)
- Legally established order of preference of “concurrent” i.e., alternative, permanent plans are:
 - Adoption
 - Guardianship with custodial relative
 - Guardianship with nonrelative
 - Placement with fit and willing relative
 - Remain in foster care

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TERMINOLOGY – DEPENDENCY CAREGIVER

- Formerly a caregiver could be a “relative caregiver” or a “foster family” and there were different requirements for each
- Today all caregivers are called “resource families” and they all must meet the same requirements

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PLACEMENT: WITH WHOM CAN CHILD LIVE

- All prospective placements must submit a Resource Family Approval application
- Child can be placed with a relative or NREFM before RFA occurs and
 - Relatives are entitled to be considered & assessed first (WIC 361.3)
- Resource family

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CAREGIVER REQUIREMENTS

- Living environment must meet standards (WIC 361.4)
 - E.g., child must have own bed, restrictions on how many children in each room
- Adults must pass criminal background checks
 - Currently law prohibits placement for nonexemptible criminal convictions
 - Other convictions require an exemption by the agency (not the court) before child can be placed
 - [Note: AB 354 proposes changes to some of these requirements for child's relatives who have an existing bond with the child and where placement does not pose a risk to the health and safety of the child]

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COURT HAS FINAL SAY ON PLACEMENT

- Juvenile court must use its independent judgment to decide whether to order placement with a relative (*Cesar V. v. Sup. Ct.* (2001) 91 Cal.App.4th 1023, 1033)

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RESOURCES AVAILABLE TO DEPENDENCY CAREGIVERS

Foster care payments

Social worker support

Assistance with accessing services

Respite care

CASAs

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FOSTER CARE PAYMENTS

Rates generally higher than for probate guardians

Will continue if caregivers eventually become dependency guardians or adoptive parents

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CAREGIVER DUTIES

Cooperate	Cooperate with reunification efforts
Meet	Meet with social worker
Make	Make child available for visits with parents, siblings and others
Comply	Comply with child's case plan (e.g., services like therapy)

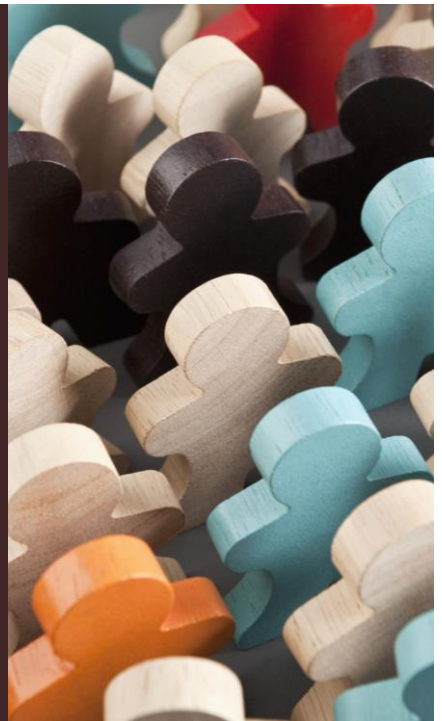
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QUESTIONS ABOUT
DEPENDENCY
CASES?????



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PRE-WIC 300 PETITION:
WHAT DO SOCIAL
WORKERS DO?*



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*DISCLAIMER

I AM NOT AN
EXPERT IN THIS
AREA!

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CHILD WELFARE HOTLINE REFERRAL

- Any person can call to report possible abuse or neglect of a child
- Child welfare agency must assess, and if insufficient facts to support, result is “evaluate out.”
- If not, then child welfare must investigate
- Possible investigation results (Penal C. § 11165.12)
 - Unfounded: false, inherently improbable, accidental injury, or not abuse or neglect
 - Substantiated: child abuse or neglect, per § 11165.6, based upon evidence that makes it more likely than not
 - Inconclusive: not unfounded, but findings are inconclusive and insufficient evidence to determine whether child abuse or neglect, occurred.

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POSSIBLE RESPONSES TO A CHILD WELFARE INVESTIGATION



Voluntary case plan – with social worker oversight



Likely will require parents to participate in services



May include a “safety plan”

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CHILD WELFARE SAFETY PLAN

May look like a formal case plan, e.g. services

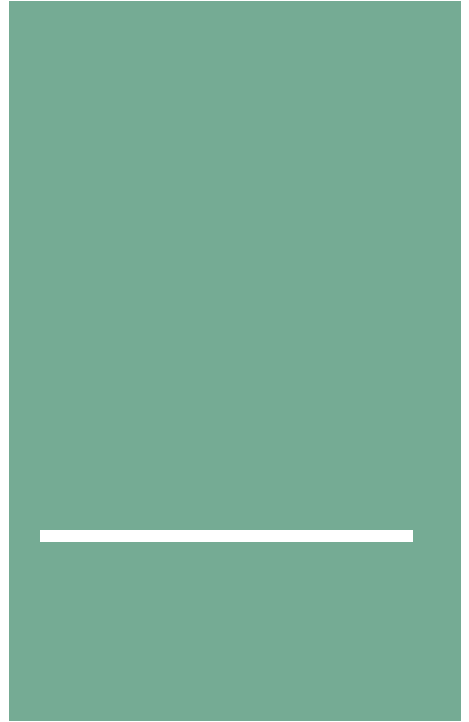
No court involvement

May require child to live with relative/NREFM while parent/guardian completes services

May result in a probate guardianship

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QUESTIONS ABOUT
CHILD WELFARE
SERVICES PRE-WIC 300
PETITION????



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PROBATE
GUARDIANSHIPS

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PURPOSE OF
PROBATE
GUARDIANSHIPS

“[P]rotect and promote the best interest of the child.” (*Suleman v. Superior Court* (2010) 180 Cal.App.4th 1287, 1299)

Provide “an alternative placement for children who cannot safely remain with their parents.” (*Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1122)

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WHO HAS
STANDING TO
FILE?

ANYONE!
(PR. C. 1510(a))

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WHO CAN BECOME A GUARDIAN?

Any adult

Even someone with a criminal
and child welfare history

No minimum requirements for
the home

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LEGAL REQUIREMENTS TO GRANT GUARDIANSHIP



Must be "necessary and convenient" (Pr. C. 1514(a))



Family Code sections 3020 et seq. and 3040 et seq.
apply (Pr. C. 1514(b))



if custody ordered to nonparent (over parents objection)
must find by clear and convincing evidence that custody
to parent is detrimental and custody to nonparent is in
child's best interest (§3041(a))

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DETRIMENT = REMOVAL FROM DE FACTO PARENT

- “Detriment to the child” includes
 - “the harm of removal from a stable placement of a child with a person who has assumed, on a day-to-day basis, the role of the child's parent, fulfilling both the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment does not require a finding of unfitness of the parents.” (Fam. C. 3041(c))

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CLEAR AND CONVINCING EVIDENCE OF DETRIMENT

- (b) Subject to subdivision (d), a finding that parental custody would be detrimental to the child shall be supported by clear and convincing evidence. (Fam. Code, § 3041)

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REBUTABLE PRESUMPTION OF PARENTAL CUSTODY WOULD BE DETRIMENTAL AND GUARDIANSHIP IS IN CHILD'S BEST INTEREST

Notwithstanding subdivision (b), if the court finds by a preponderance of the evidence that the person to whom custody may be given is a person described in subdivision (c), this finding shall constitute a finding that the custody is in the best interest of the child and that parental custody would be detrimental to the child absent a showing by a preponderance of the evidence to the contrary. (Fam. C. 3041(d))



Places the burden on the parent to rebut presumption that guardianship should be granted

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DUE PROCESS PROTECTIONS IN GUARDIANSHIPS



NOTICE AND THE
OPPORTUNITY TO BE HEARD

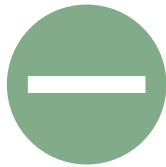


NO RIGHT TO APPOINTED
COUNSEL

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ANY SET TIMELINES OR REVIEWS?



No



Court can require annual reports but only if resources allow (Pr. C. 1513.2)

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NO REUNIFICATION SERVICES

(FAM. C. §3026; GUARDIANSHIP OF ANN S. (2009) 45 CAL.4TH 1110, 1124)

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GUARDIAN FINANCIAL BENEFITS



Nonrelative guardian may qualify for equivalent of foster care payments



Relative guardians may qualify for CalWorks as a Non-Needy Caregiver

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PARENTS' RIGHTS IF GUARDIANSHIP GRANTED

To request visitation

To file to terminate guardianship

"When the court appoints a guardian, the authority of the parent "ceases." (Fam.Code, § 7505, subd. (a).) The court has discretion to grant visitation but otherwise parental rights are completely suspended for the duration of a probate guardianship. The guardian assumes the care, custody, and control of the child." (*Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1123–1124)

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CAN A GUARDIAN ADOPT THE CHILD?

Yes. After two years in the guardianship and if it is in the best interest of the child. (Pr. C. 1516.5)

“Although the finding required by section 1516.5, subdivision (a)(3) is simply that “the child would benefit from being adopted by his or her guardian,” there is no doubt that this requires a determination of the child's best interest.” (*Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1128)

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INTERSECTION OF DEPENDENCY CASES AND PROBATE GUARDIANSHIPS

Informal voluntary child welfare safety plan may result in a probate guardianship

Petition for guardianship may trigger a child welfare investigation and the filing of a petition (Pr. C. 1513(b))

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PROBATE CODE 1513(b)

- If the proposed ward is or may be described by WIC 300,
- the court may refer the matter to the local child welfare services agency to initiate an investigation of the referral pursuant to WIC 328 and 329 and to report the findings of that investigation to the court.
- Pending completion of the investigation, the court may take any reasonable steps it deems appropriate to protect the child' s safety, including, but not limited to, appointment of a temporary guardian or issuance of a temporary restraining order.
- If dependency proceedings are initiated, the guardianship proceedings shall be stayed in accordance with Section 304 of the Welfare and Institutions Code. ...
- If a dependency proceeding is not initiated, the probate court shall retain jurisdiction to hear the guardianship matter.

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A LITTLE BIT OF HISTORY -

Before 2012 Probate Code 1513(c) created a mandatory referral from the probate court to child welfare if any party to the proposed guardianship alleges the minor's parent is unfit, as defined by WIC 300

But The 1513(c) was "honored in the breach" until *Guardianship of Christian G.* (2011) 195 Cal.App.4th 581 where failure to make the referral was deemed reversible error where father was objecting to the guardianship (Cf. *Adoption of Myah M.* (2011) 201 Cal.App.4th 1518 [no referral required when parents consented to guardianship].)

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AFTER 2012

At the behest of the Academy of California Adoption Lawyers, law was changed to make referral to child welfare discretionary – claiming *Christian G.* “lead to an already overburdened child welfare system to be deluged with cases for investigation investigated”

Now the referral authorization can be found under Pr. C. 1513(b):

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Whenever any 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 provision

WIC 329 AND 331

- WIC 329: A person can apply to a local child welfare agency requesting that a WIC 300 petition be filed. (Essentially a written hotline referral.) If the social worker does not file the petition within 3 weeks they must tell the applicant why. (JV-210)
- WIC 331: A WIC 329 applicant can request the juvenile court to order the social worker to file a WIC 300 petition. (JV-212)



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DID PROBATE CODE 1513(b)
REFERRALS MAKE A DIFFERENCE – I.E.,
DID SOCIAL WORKERS FILE WIC 300
PETITIONS WHEN THERE WAS ABUSE
OR NEGLECT?

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- An informal survey of probate courts found much dissatisfaction -
 - Some reported no WIC 300 filed because probate court granted a temporary guardianship which protected the child
 - Some felt that the parties were being denied services that might have helped keep the family together if a WIC 300 petition was filed
 - Some believed parents' rights were not adequately protected when they were asked to agree to a guardianship as part of a safety plan
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IS ONE CASE BETTER AT PROTECTING
CHILDREN AND STRENGTHENING
FAMILIES?

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COMPARISON BETWEEN DEPENDENCY AND GUARDIANSHIPS

	Dependency	Guardianship
Caregiver payments	Yes	Maybe
Caregiver respite care	Yes	No
Caregiver social worker support	Yes	No
Caregiver with criminal/child welfare history	Maybe	No legal bar
Parents' counsel	Yes	No
Child's counsel	Yes	Maybe
Reunification services	Yes	No
Support services	Yes	No
Regular Court oversight	Yes	No
Time limits	Yes	No
Permanency through adoption	Yes	Yes (after two years)

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NMD/EXTENDED FOSTER CARE

- Children who turn 18 in foster care are entitled to request extended foster care until they are 21 as a nonminor dependent (NMD)
- NOT AVAILABLE TO WARDS IN PROBATE GUARDIANSHIPS

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PENDING LEGISLATION – AB 260

- Some child welfare advocates believe that many probate guardianships are essentially “*America’s Hidden Foster Care System.*” Gupta-Kagan, 72 Stan. L. Rev. 841. (See also Weisz & McCormick, *Abandon Probate Court for Abandoned Children: Combining Probate Guardianship of the Person and Dependency into one Stronger, Fairer Children’s Court* (2003) 12 So.Cal.L. & Women’s Studies 191)
- See also <https://allianceforchildrensrights.org/wp-content/uploads/2020/03/Californias-Hidden-Foster-Care-System-3.18.2020.pdf>, <https://allianceforchildrensrights.org/resources/hiddenfostercare/>, <https://centerforhealthjournalism.org/2020/07/17/revealing-hidden-side-foster-care>
- To address this concern they have sponsored AB 260

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AB 260 PURPOSE

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

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AB 260 – PROPOSED AMENDMENTS TO PROBATE CODE 1513

If the probate court makes a referral to the child welfare agency, it must be in writing and it must state the reasons for the referral

Probate court cannot rule on the petition until it received the social worker's report

Social worker's report must be submitted to the probate court within 3 weeks

If no WIC 300 petition filed the probate court or minor's counsel may apply to the juvenile court under WIC 331

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AB 260 – PROPOSED AMENDMENTS TO WIC 331

If a social worker does not file a WIC 300 petition in response to a Probate Code 1513(b) referral and an application is made to the juvenile court under this section, the juvenile court must decide without considering that a temporary guardian has been appointed or that there has been delay due to the 1513(b) investigation

Juvenile court must report back to the probate court its decision, in writing.

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QUESTIONS????

THANK YOU