**SENATE JUDICIARY COMMITTEE**
**Senator Thomas Umberg, Chair**
**2021-2022 Regular Session**

AB 2309 (Friedman)
Version: June 2, 2022
Hearing Date: June 14, 2022
Fiscal: Yes
Urgency: No
AWM

## SUBJECT

Guardianships

## DIGEST

This bill simplifies the procedures for a juvenile court to appoint a guardian for a child under its jurisdiction when the parent has informed the court that they are not interested in reunification services and the relevant parties agree to the appointment; and requires the California Department of Social Services (CDSS) to submit a report to the Legislature relating to child welfare voluntary placement agreements and care plans by July 1, 2025.

## EXECUTIVE SUMMARY

California's dependency court system is designed to protect the health and safety of minor children who are subject to, or at risk of, abuse or neglect. The preferred outcome of dependency court proceedings is to reunite children with their parents, if such reunification is in the best interest of the child. But where a parent has declined reunification services, it is the goal of the dependency court to identify the most suitable alternative placement for each minor child as soon as possible. Often, there are family members or non-relative extended family members who are ready, willing, and able to care for the minor child as their legal guardian.

While there is a current dependency court procedure to appoint a legal guardian for a minor child, the Alliance for Children's Rights, the sponsor of the bill, has raised concerns that the process as currently structured discourages families from utilizing it. This bill is intended to address that concern and increase the ease of the appointment of a guardian at an early stage in a dependency case. Specifically, this bill would allow dependency courts to issue an order of guardianship under the Welfare & Institutions Code at any point in the proceedings after the dispositional hearing, and would require the court to appoint a parent's proposed guardian where the child and proposed guardian are in agreement and absent evidence of the proposed guardian's

unsuitability. Finally, the bill requires CDSS to report to the Legislature on child welfare voluntary placement agreements and care plans in order to provide additional information on how the dependency system can be improved. The author has agreed to certain technical amendments relating to the procedures set forth in the bill and the jurisdiction of the juvenile court.

This bill is sponsored by the Alliance for Children's Rights and the California Alliance of Caregivers and is supported by John Burton Advocates for Youth, Los Angeles Dependency Lawyers, Inc., Legal Services for Children, and the National Association of Social Workers – California Chapter. There is no known opposition. If this bill is passed by this Committee, it will be heard by the Senate Human Services Committee.

## PROPOSED CHANGES TO THE LAW

Existing law:

1) Provides that a child may become a dependent of the juvenile court and be removed from their parents or guardian on the basis of abuse or neglect, as specified. (Welf. & Inst. Code, § 300.)

2) Requires, whenever a social worker has cause to believe that a child is a victim of abuse or neglect, to immediately make any investigation they deem necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced. (Welf. & Inst. Code, § 328.)

3) Requires a juvenile court to hold a jurisdictional hearing within 15 judicial days of the filing of a petition to take the child into temporary custody to determine whether the court has jurisdiction to adjudicate the child a dependent of the court. (Welf. & Inst. Code, § 334.)

4) Requires, if a court finds that the juvenile court has jurisdiction over a child due to the substantial risk or presence of abuse or neglect, a juvenile court to hold an evidentiary hearing to determine the proper disposition to be made of the child. The hearing must be held within 10 days if the child is detained, or within 30 days otherwise, of the jurisdictional hearing. (Welf. & Inst. Code, § 358.)

5) Allows a juvenile court, after hearing evidence at the dispositional hearing, to order a guardianship for the child in addition to or in lieu of adjudicating the child a dependent child of the court, if all of the following circumstances are met:
    a) The court finds that the parent is not interested in family maintenance or family reunification services.
    b) The court determines that the guardianship is in the best interest of the child.

   c) The parent and child agree to the guardianship, unless the child's age or physical, emotional, or mental condition prevents the child's meaningful response.
   d) The court advises the parent and the child that no reunification services will be provided as a result of the establishment of a guardianship.
   e) If the child is an Indian child, a specified assessment has been performed and considered by the court. (Welf. & Inst. Code, § 360(a).)

6) Requires the court, at a dispositional hearing, to order a social worker to provide child welfare services to a child who has been removed from their parents' custody and the parents in order to support the goal of reunification, for a specified time period, except under certain circumstances. Children and families in the child welfare system should typically receive at least six months of reunification services if the child is under three years of age, and at least twelve months if the child is over three years of age, which may be extended up to 18 or 24 months, as provided. These services need not be ordered if the parent has voluntarily relinquished the child or the court has ordered a guardianship pursuant to 5). (Welf. & Inst. Code, § 361.5(a).)

7) Provides that a court, when making a final order to terminate parental rights or establish guardianship of a child for a child adjudged a dependent of the juvenile court, may appoint a relative or nonrelative as the guardian of the child. (Welf. & Inst. Code, § 366.26.)

This bill:

1) Requires CDSS to submit a report to the Legislature on or before July 1, 2025, that includes all of the following data, to be collected beginning no later than January 1, 2024:
   a) The number of children in the care and custody of all county placing agencies placed pursuant to a voluntary placing agreement, as defined.
   b) The number of child welfare agency investigations that resulted in a written plan for the care of a child outside the home of the parent that is not a voluntary placement agreement.
   c) The number of children in 1)(a) and (b) for whom a subsequent report is made by child protective services within one year of initial contact with the county agency, including whether the reports were substantiated, unsubstantiated, or inconclusive.
   d) The number of children identified in 1)(a) and (b) for whom a dependency court petition is filed within one year of the date of the voluntary placement agreement or written plan for care.

2) Requires CDSS's report pursuant to 1) to include the data stratified by a variety of demographic characteristics, including, at a minimum, by race and income level to the extent allowable to protect confidentiality.

3) Provides that if a parent has advised the court through counsel that the parent is not interested in family reunification services and wishes to designate a guardian pursuant to section 360(a), and the minor has been placed with the prospective guardian pending the dispositional hearing, the court shall not order a continuance of the dispositional hearing except for the limited purpose of preparing an assessment as specified.

4) Provides that, if a parent has advised the court that they are not interested in family reunification services and designates a specific person to be the child's guardian, the child does not object to the appointment, and the proposed guardian agrees to appointment, the court must appoint the proposed guardian after hearing evidence at the dispositional hearing unless the court finds by a preponderance of the evidence that the appointment would be contrary to the best interests of the child. If the child is an Indian child, existing specified placement preferences apply.

## COMMENTS

1. Author's comment

According to the author:

> Research demonstrates that children who have experienced abuse or neglect and cannot immediately return home to a parent have better educational and behavioral health outcomes when they live with relatives, compared to children placed in non-family settings. Relative caregivers (including "non-relative extended family members," who are not related to the child but have a family-like role in the child's life) help children to grow up more connected to community and cultural identity.
>
> AB 2309 allows the juvenile court to order a guardianship with a caregiver of the family's choice earlier in a juvenile court case instead of ordering a child into foster care placement. In addition, the bill requires the Department of Social Services to collect demographic and outcome data of children living with relative caregivers in and out of the juvenile court system, so that we can have a better understanding of all types of kinship settings statewide.

2. This bill is intended to remove obstacles to the appointment of a guardian for a child who is a dependent of the juvenile court when the parent is not interested in reunification services

California's child welfare system is responsible for ensuring the protection and safety of children at risk of abuse, neglect, or abandonment.[1] When it is necessary for the state to remove a child from their parent's custody, the primary objective of the child welfare system is to reunify the child with their family, if doing so is consistent with the best interests of the child. To that end, in most cases a juvenile court orders reunification services before making a final determination regarding parental rights.[2]

In some cases, however, a parent informs the court early in the process that they are not interested in reunification services or regaining custody of the child. Current law authorizes the court in such a circumstance to order a guardianship for the child at that point rather than require the parent to engage in reunification services they do not want.[3] Specifically, the court may order a guardianship after a dispositional hearing if the court determines that a guardianship is in the best interest of the child and the parent and child agree on the guardianship (provided that the child is not prevented from responding due to age or other factors).[4]

Ordering a guardianship at this point allows a child to avoid placement in the foster system. Unfortunately, there is significant evidence that children in foster care are significantly more likely than nonfoster children to experience mental and physical health issues.[5] While foster care may be an improvement over remaining with the disinterested parent, the ability to avoid foster care through a quick placement with a guardian who is a relative of the child or close family friend seems likely to be the superior option in many cases.

According to the author and sponsor of the bill, this third option is often overlooked by courts, resulting in unnecessary foster placements for children who could easily be placed with a familiar guardian. This bill is intended to avoid such unnecessary placements by removing roadblocks to the streamlined guardianship placement procedure. In cases where the parent has notified the court, in connection with a dispositional hearing, that the parent does not wish to pursue reunification and the parent and child are in agreement about the appointment of the proposed guardian in lieu of the parent, this bill would prohibit the court from continuing the matter except in limited circumstances. This provision will speed up resolutions in cases where everyone consents to the guardianship. As discussed in Part 3, the author has agreed to

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[1] Welf. & Inst. Code, §§ 300, 300.2.
[2] *Id.*, § 361.5.
[3] *Id.*, § 360(a).
[4] *Ibid.*
[5] *E.g.*, Turney & Wildeman, *Mental and Physical Health of Children in Foster Care*, Pediatrics (2016).

amendments to clarify the procedures for using this procedure and slightly extending the timeline.

Additionally, the bill provides that, when the parent does not wish to pursue reunification and the parent, child, and proposed guardian are in agreement about the appointment, the court must order the appointment of the guardian unless it finds by a preponderance of the evidence that the appointment is not in the best interest of the child. While this does remove the discretion of the court in some cases, the relatively low "preponderance of the evidence" standard gives the court leeway to determine that the appointment should not go forward. And in cases where there is no reason not to move forward with the appointment, this provision will ensure that the guardian is appointed as soon as possible rather than allowing the case to linger and potentially resulting in an unnecessary foster placement. The author has agreed to amend this provision, as set forth in Part 3, to clarify the court's jurisdiction and ensure the guardian is knowingly consenting to all the rights and responsibilities of guardianship.

Finally, this bill requires CDSS to gather certain data relating to children placed outside their home under voluntary placement agreements and not under voluntary placement agreements. CDSS must provide the report to the Legislature no later than July 1, 2025. The report is intended to provide CDSS and the Legislature with a better understanding of how the voluntary placement agreement process is working and whether changes are necessary to better protect all of the interested parties.

3. Amendments

As noted above, the author has agreed to certain technical amendments after discussions with stakeholders, to strengthen and clarify the streamlined procedure addressed in this bill. The amendments will read as follows, subject to any nonsubstantive changes Legislative Counsel may make:

Amendment 1

Change lines 5-13 on page 5 to read:

(4) If the parent has advised the court through counsel that **they will proceed pursuant to Section 360(a), and the parent has completed a written waiver of any family maintenance or reunification services** ~~**the parent is not interested in family maintenance or family reunification services**~~ and wishes to designate a guardian pursuant to **that section** ~~**subdivision (a) of Section 360**~~, and the minor has been placed with the prospective guardian pending disposition, the court shall not order a continuance except for the limited purpose of preparing an assessment pursuant to subdivision (g) of Section 361.5. A continuance ordered under this paragraph shall not exceed ~~**10**~~ **20** days.

Amendment 2

Change lines 21-33 on page 7 to read:

(a) (1) Notwithstanding any other law, if the **court finds that the child is a person described by Section 200 and the** parent has advised the court that the parent is not interested in family maintenance or family reunification services **and has executed a written waiver of any of those services, the court** ~~**it may,**~~ in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, if the court determines that a guardianship is in the best interest of the child, provided the parent and the child agree to the guardianship, unless the child's age or physical, emotional, or mental condition prevents the child's meaningful response. The court shall advise the parent and the child that reunification services will not be provided as a result of the establishment of a guardianship. The proceeding for the appointment of a guardian shall be in the juvenile court.

Amendment 3

Change lines 24-40 on page 7 and lines 1-3 on page 8 to read:

(2) If the parent designates a specific person to be the child's guardian, **and** the child **or child's counsel if the child is under the age of 12** does not object to that person's appointment, and the proposed guardian **is found by the court to agree to the** ~~**agrees to**~~ appointment as the child's guardian **as well as all rights and responsibilities of being a legal guardian**, the court shall appoint the proposed guardian, unless it finds by a preponderance of the evidence that the person's appointment would be contrary to the best interests of the child. **The assessment under subdivision (g) of Section 361.5 shall be considered in determining the best interest of the child.** If the child is an Indian child, as defined in Section 224.1, placement preferences shall be applied according to Section 361.31.

3. Arguments in support

According to the Alliance for Children's Rights, the sponsor of the bill:

> Welfare and Institutions Code section 360(a) (hereafter Section 360(a)) provides an opportunity early in a juvenile court case to ensure that a child can live with a relative or other known caregiver of the family's choice. Specifically, Section 360(a) permits the juvenile court to order guardianship in lieu of ordering a child into foster care placement when parents do not wish to receive reunification services and want an alternative plan for their child.

> Typically, a Section 360(a) guardianship is with a relative or other adult who is known to the child. A large body of research shows that children who live with relatives and non-relative extended family members have better outcomes than children who are placed into foster care settings with strangers. When placed in kinship care, children have better educational and behavioral outcomes, and they are more likely to grow up with strong connections to their community and cultural identity…
>
> Although Section 360(a) guardianships were created "to give some deference to the parent's own plan for his or her child at an early stage of the dependency proceedings,"[6] this intent is not fully realized in practice. There is no requirement that the court consider the parents' choice of guardian prior to ordering a Section 360(a) guardianship. Without this protection, the parents' proposed guardian often gets overlooked, and the children are placed in foster care even though a safe and permanent family option is available…
>
> AB 2309 addresses families' reported challenges with the Section 360(a) guardianship process in three ways:
> - Allowing parents to designate an individual of their choice to serve as the guardian if the child's safety is not jeopardized;
> - Requiring the juvenile court to hold a dispositional hearing on an expedited timeline when the parent requests a Section 360(a) guardianship and the child is already placed in the home of the proposed guardian; and
> - Requiring the Department of Social Services to collect demographic and outcome data of children living with relative caregivers in and out of the juvenile court system.

**SUPPORT**

Alliance for Children's Rights (co-sponsor)
California Alliance of Caregivers (co-sponsor)
John Burton Advocates for Youth
Los Angeles Dependency Lawyers, Inc.
Legal Services for Children
National Association of Social Workers – California Chapter

**OPPOSITION**

None known

[6] *In re Summer H.* (2006) 139 Cal.App.4th 1315, 1334, fn. 11 (emphasis added).

## RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 788 (Calderon, Ch. 201, Stats. 2021) specified that, for purposes of a juvenile court deciding that reunification services need not be offered to a parent, a parent can be found to have "resisted" services when the parent or guardian refused to participate meaningfully in a prior court-ordered treatment program but not when the parent passively refused services, as specified.

AB 670 (Calderon, Ch. 585, Stats. 2021) provided additional protections to parents under the jurisdiction of the juvenile court, including by providing that specified exemptions to reunification services do not apply to parents when reunification services or parental rights were terminated for a previous child when the parent was in foster care.

AB 260 (Stone, Ch. 578, Stats. 2021) among other things, probate court or minor's counsel may apply to the juvenile court for an order directing the agency to commence juvenile dependency proceedings, if the child welfare agency fails to notify the probate court that it has done so.

AB 2124 (Stone, 2020) would have required the referral of a probate guardianship case to the child welfare services agency and juvenile court if a child appears to have been neglected or abused by their parent, clarified the considerations to be made when determining whether a case is more appropriately adjudicated in the juvenile court, and increased services and supports for relative caregivers appointed as legal guardians in juvenile court. AB 2124 was held in the Assembly Judiciary Committee due to COVID-19-related bill limits.

## PRIOR VOTES:

Assembly Floor (Ayes 71, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Human Services Committee (Ayes 7, Noes 0)
Assembly Judiciary Committee (Ayes 9, Noes 0)

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