

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

AB 260 (Stone)  
Version: May 28, 2021  
Hearing Date: June 15, 2021  
Fiscal: Yes  
Urgency: No  
JT

**SUBJECT**

Guardianships

**DIGEST**

This bill (1) establishes processes to ensure abused or neglected children are not improperly diverted into probate guardianships in lieu of the foster care system, and (2) expands subsidies for certain kinship guardianships ordered by the juvenile court.

**EXECUTIVE SUMMARY**

“The best interest of the child is the fundamental goal of the juvenile dependency system, underlying the three primary goals of child safety, family preservation, and timely permanency and stability.” (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227 [citation omitted].) Parties are represented by attorneys, families are generally provided reunification services, and financial support and other services are available. Still, it is common for child protective services agencies to encourage family members of children to file for guardianship in probate court in order to avoid juvenile court. While a juvenile court can appoint a relative guardian, obtaining the guardianship through probate court cuts off alternatives and denies the child, parents, and caregivers access to the support, rights, services, and representation afforded via the child welfare system.

This bill is sponsored by the Alliance for Children’s Rights and supported by numerous children’s advocacy organizations, who argue that probate guardianships are not designed to protect at-risk children, reunify families when safe, or support caregivers. The bill thus seeks to limit the “hidden foster care system” that has resulted from the practice of inappropriately diverting children to guardianships. Specifically, the bill would make several changes to enhance coordination between probate courts, social workers, and dependency courts in order to ensure that cases involving allegations of abuse or neglect are reviewed by the dependency courts. The bill also expands eligibility criteria for financial support for youths who are ordered into guardianships by the dependency court. The bill is opposed by the National Center for Lesbian Rights.

**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 the 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, whenever a person applies to the social worker to commence proceedings in the juvenile court, that the application be in the form of an affidavit alleging the child is a victim of abuse or neglect. (Welf. & Inst. Code § 329.) The social worker must immediately investigate as they deem necessary to determine whether proceedings in the juvenile court should be commenced. If the social worker does not take action and does not file a petition in the juvenile court within three weeks after the application, they must 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 for the child, and the reason therefor, and must immediately notify the applicant of the action taken or the decision rendered by them. (*Id.*)
- 4) Provides that if a person has applied to the social worker 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 order them to commence juvenile proceedings. (Welf. & Inst. Code § 331.)
- 5) Authorizes a relative or other person on behalf of a minor, or the minor if 12 years of age or older, to file a petition for appointment of a guardian of the minor's estate or person. (Prob. Code § 1510(a), (b).) Requires the petitioner or proposed guardian, if they know of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, to disclose this information in the proceeding. (*Id.* at (g).)
- 6) Requires, unless waived by the court, a court investigator, probation officer, or domestic relations investigator to make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate. If the proposed guardian is a relative, the investigation

must be made by a court investigator; otherwise, the investigation must be made by the county agency designated to investigate the potential dependency. (Prob. Code § 1513(a).) The report must include a social history of the proposed guardian and proposed ward, the relationship between the two, the anticipated duration of the guardianship, and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child (unless the court waives this requirement for a relative guardian). (*Id.* at (a)(1)-(4).)

- 7) Authorizes the probate court, if the proposed ward is or may be a victim of abuse or neglect, to refer the matter to the local child welfare agency to initiate an investigation of the referral, as specified. (Prob. Code § 1513(b).) Pending completion of the investigation, the court may take any reasonable steps it deems appropriate to protect the child's safety, including appointing a temporary guardian or issuing a temporary restraining order. (*Id.*) Provides that if dependency proceedings are initiated, the guardianship proceedings are stayed, as specified; otherwise, the probate court retains jurisdiction to hear the guardianship matter. (*Id.*)
- 8) Provides that, upon hearing the petition, if it appears necessary or convenient, the court may appoint a guardian of the person or estate of the proposed ward, or both. (Prob. Code § 1514(a).) Requires the court to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate, as well as the proposed guardian's concern for and interest in the welfare of the proposed ward. (*Id.* at (e)(1).) Requires the court to give consideration to the ward's preference as to the person to be appointed guardian if the proposed ward is of sufficient age to form an intelligent preference. (*Id.* at (e)(2).)
- 9) Allows for the establishment of legal guardianship through diversion in the juvenile court, provided the parents and child consent and are aware that no maintenance or reunification services will be offered. (Welf. and Inst. Code § 360.)
- 10) Provides a state-funded Kinship Guardianship Assistance Payment (Kin-GAP) program to enhance family preservation and stability for children who have been placed in a relative guardianship by the juvenile court and have been residing for at least six consecutive months in the approved home of the prospective relative guardian while under the jurisdiction of the juvenile court or a voluntary placement agreement, and provides eligibility criteria. (Welf. & Inst. Code §§ 11361, 11363, 11386.)

This bill:

- 1) Requires the probate court to:
  - a. find good cause before waiving the guardianship investigation;

- b. include specified information in a referral of a case involving abuse or neglect to a social worker;
  - c. delay hearing and determining a guardianship petition pending the results of the investigation and report from the social worker; and
  - d. affirm that it has read and considered all reports before ruling on a guardianship petition.
- 2) Requires the social worker to investigate the referral to the same extent as any other child abuse allegation.
- 3) Enables the 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.
- 4) Provides that the juvenile court may either affirm the decision of the social worker or, if it finds a prima facie case that the child is a victim of abuse or neglect, order the social worker to commence juvenile court proceedings. Requires the juvenile court, within five days of completing its review, to transmit its decision, in writing, to the probate court.
- 5) Provides that neither the appointment of a temporary probate guardian, nor any delay attributable to the child welfare investigation, precludes the juvenile court from ordering the social worker to commence dependency proceedings or from hearing and determining a petition alleging that the child is a victim of abuse or neglect.
- 6) Expands Kin-GAP funding eligibility for children ordered into kinship guardianship in lieu of being adjudicated a dependent by eliminating certain requirements and applying it to nonminors between 19 and 21 years of age.

## COMMENTS

### 1. General background

#### *a. The juvenile welfare system*

The child welfare system is intended to achieve a delicate balance of values, including "protecting children from harm, preserving family ties, and avoiding unnecessary intrusion into family life." (*In re R.T.* (2017) 3 Cal.5th 622, 638.) The overarching goal of dependency proceedings is to safeguard the welfare of California's children. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673.) There are approximately 60,000 children in California's foster care system.

A child may be brought within the juvenile court's jurisdiction as a result of the conduct or omission of either or both parents that results in the child being a victim of abuse or neglect, as described by section 300.<sup>1</sup> The jurisdiction is over the child rather than the parents; consequently, there is no requirement that there be jurisdictional allegations regarding conduct by both parents.<sup>2</sup>

Juvenile court proceedings commence when a social worker files a petition under sections 311 and 332. The purpose of the petition is to protect the child from some parental deficiency, not to punish the parent. (See *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) If the child needs immediate care or is in immediate danger, the child may be removed from a parent's physical custody and may be placed in the temporary custody of the social worker, a responsible relative, or guardian. (§§ 305, 306.) If the social worker determines that the child should be detained in custody, the social worker is required to file a petition with the juvenile court. (§ 290.1.) Within two court days, the court must hold a detention hearing to determine whether the child should be further detained. (§ 315.) The petition must establish a prima facie case that the child is a victim of abuse or neglect under specified conditions described in section 300, that continuance in the parent's or guardian's home is contrary to the child's welfare, and that further harm will come to the child or the child does not want to return to the home due to abuse. (§ 319(c).)

If the court orders a child detained, the court must state the facts on which the decision is based, specify why the initial removal was necessary, reference specified evidence, and order that temporary placement and care of the child be vested with the county welfare department pending the subsequent hearing known as the "jurisdictional" hearing under section 355, which must be held within 15 court days. (§§ 319(g); 334.) If appropriate, the court must order services to be provided as soon as possible to reunify the child and their family. (§ 319(g).)

Within 15 court days of a detention hearing or 30 calendar days of an initial petition hearing, the dependency court holds a "jurisdictional" hearing on the petition to determine whether the child is a victim of abuse or neglect under section 300. (§ 355.) Under section 300, the court has jurisdiction to adjudge the child a dependent if a preponderance of the evidence shows that the child has suffered or is at a substantial risk of suffering serious harm.

After sustaining the petition's allegations and establishing jurisdiction over the child, the court holds a "dispositional" hearing to decide where the child will live. (§ 361(a).) A dependent child may not be taken from the physical custody of a parent, guardian, or custodian unless the juvenile court finds clear and convincing evidence that at least one of several specified conditions showing that the child is endangered applies. (*Id.* at (c).)

---

<sup>1</sup> *Seiser & Kumli on California Juvenile Courts Practice and Procedure* (2019 ed.) § 2.84(1) at 2-291.

<sup>2</sup> *Id.*

If the court decides the child should not be with the parents, a review hearing is held at least every six months. (§ 366.21(e) [six-month review]; § 366.21(f) [12-month review]; § 366.22(a) [18-month review].) At a review hearing, the court must return the child to their parents unless the court finds by a preponderance of evidence that the child would be in substantial risk of danger. (§ 366.21(e)(1).) Reunification services generally must be provided. (§§ 364(a); 366(a)(1).) Ultimately, “[t]he goal of dependency court proceedings is not to engineer perfect parents, but to protect children from harm.” (*In re J.M.* (2020) 50 Cal.App.5th 833, 848.)

If the court decides to terminate reunification services without returning the child to parental custody, the focus shifts from preserving the family to choosing a permanent placement for the child. A hearing is held under section 366.26 to terminate parental rights and select a permanent plan for the child – usually adoption, guardianship, or another specified permanent living arrangement. (§ 366.26(b).)

*b. Probate guardianships*

A probate court may appoint a guardian of the estate, of the person, or both, for a minor if it appears necessary and convenient. (Prob. Code § 1514(a).) The court must be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian’s ability to manage and preserve the estate, as well as the proposed guardian’s concern for and interest in the welfare of the proposed ward. (*Id.* at (e)(1).) The court must give consideration to the ward’s preference as to the person to be appointed guardian if the proposed ward is of sufficient age to form an intelligent preference. (*Id.* at (e)(2).)

A guardianship proceeding is commenced when a relative or other person seeking appointment of a guardian files a petition with the court. (*See* Prob. Code §§ 1510, 1511.) Unless waived by the court, a court investigator, probation officer, or domestic relations investigator must make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate. (Prob. Code § 1513(a).) If the proposed guardian is a relative, the investigation must be made by a court investigator; otherwise, the investigation must be made by the county agency designated to investigate the potential dependency. (*Id.*) The report must include a social history of the proposed guardian and proposed ward, the relationship between the two, the anticipated duration of the guardianship, and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child (unless the court waives this requirement for a relative guardian). (*Id.* at (a)(1)-(4).)

On proper showing, the court appoints the guardian by issuing an order appointing the guardian, as well as letters of guardianship. (Prob. Code §§ 2310, 2311.) The authority of a parent ceases during the guardianship. (Fam. Code § 7505(a).) Upon petition of the guardian, parent, or minor ward, the court may terminate the guardianship if it

determines that it is in the ward's best interest. (Prob. Code § 1601.) Otherwise, the guardianship terminates when the ward turns 18, dies, is adopted, or becomes emancipated. (Prob. Code § 1600.)

If a petitioner or proposed guardian knows of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, they must disclose this information in the proceeding. (Prob. Code § 1510(g).) Additionally, if the proposed ward is a victim of abuse or neglect, the court is authorized to refer the matter to the local child welfare agency to initiate an investigation of the referral, as specified. (Prob. Code § 1513(b).) Pending completion of the investigation, the court may take any reasonable steps it deems appropriate to protect the child's safety, including appointing a temporary guardian or issuing a temporary restraining order. (*Id.*) If dependency proceedings are initiated, the guardianship proceedings are stayed, as specified; otherwise, the probate court retains jurisdiction to hear the guardianship matter. (*Id.*)

## 2. The hidden foster care system

According to the CEB Practice Guide on Guardianships, “[i]n most counties in California, the social welfare departments are understaffed and underfunded.”<sup>3</sup> As a result, “in child custody cases where the allegations against the parent of child abuse or neglect are borderline (*i.e.* not substantiated by police or hospital records), child welfare workers may encourage family members to petition the probate court for guardianship rather than bring the case through the social welfare department.”<sup>4</sup> The Guide goes on to describe some of the pitfalls of this practice:

[...] Sometimes, these are uncontested, as the parents agree (affirmatively, or passively by failing to appear). Other times these can be protracted and very bitter court battles. Sometimes, these cases involve failure to protect the child from an environment of domestic violence. More commonly, the alleged problem stems from drug or alcohol abuse by the parent; as the proceeding moves forward, it may involve a *de facto* reunification plan. However, unlike a reunification plan offered in a dependency proceeding, there are no services offered by the court for the benefit of familial reunification; all efforts in a *de facto* plan must be initiated and performed by the individuals without the aid of social services. Further, if a dependency proceeding is initiated, the parents, as well as the minor, are entitled to court-appointed counsel, ensuring representation for all parties.<sup>5</sup>

---

<sup>3</sup> *California Guardianship Practice* (Jan. 2021 Update) Continuing Education of the Bar – California, § 2.4, p. 40.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* § 1.7, p. 8.

The practice of diverting minors into guardianships rather than the dependency system is commonly known as the “hidden foster care system.” The bill’s sponsor, the Alliance for Children’s Rights, states:

When children are diverted from the system to a relative’s home, the supports, rights, services, and representation provided through foster care are denied to the child, parent, and the caregiver. Diversion away from foster care also means that the child and caregiver do not receive support through the child welfare system, including monthly financial support, education rights, case management, and other supportive services. Beyond access to the services, “[t]he absence of a change in legal custody can also raise questions about kinship caregivers’ authority to make health care, educational, or other decisions for children in kinship caregivers’ home.”<sup>6</sup>

“This bill seeks to limit these hidden foster cases,” the author writes, “by ensuring that guardianship laws and the probate court operate seamlessly with juvenile court laws and the dependency court so that those cases the probate court refers for a child welfare investigation are evaluated by the dependency court without limiting the probate court’s ability to take immediate action to protect the child during the period of the investigation and evaluation.” The author argues the bill “will help protect children’s health, safety, and welfare and provide due process to children, parents, and guardians.”

3. Enhances coordination between probate courts, social workers, and juvenile courts

- a. *Establishes processes to help ensure that guardianship cases involving allegations of abuse and neglect are evaluated for dependency jurisdiction*

Before a guardianship may be established, an investigation must be conducted and a report and recommendation must be filed with, and considered by the court, unless it waives the investigation. (Prob. Code § 1513(a).) If the report indicates that the proposed ward is or may be a victim of abuse or neglect, the court may refer the matter to a local child welfare agency to initiate an investigation. (*Id.* at (b).) The social worker must immediately investigate the referral as they deem necessary to determine whether the proceedings in juvenile court should be commenced; if the social worker does not file a petition in the juvenile court within three weeks, they must inform the court of their decision and reasons not to proceed further. (*See* Welf. & Inst. Code § 329.) The social worker’s decision not to commence juvenile proceedings can be appealed one month after the referral, and the juvenile court may affirm the social worker’s decision or order them to commence juvenile court proceedings. (Welf. & Inst. Code § 331.)

---

<sup>6</sup> Quoting Josh Gupta-Kagan, *America’s Hidden Foster Care System* (2020) 72 Stanford Law Review 841, 881.



This bill requires the probate court to find good cause before waiving the investigation. The bill requires the referral to include a summary of the reasons for referral, a copy of the petition, the investigator's report, and any other material information. The referral must be investigated to the same extent as any other child abuse allegation. The child welfare agency, within three weeks of the referral, must report the findings and conclusions of the investigation, and any decision made as a result, and the reasons for the decision, to the probate court. If the child welfare agency fails to notify the probate court that it has commenced juvenile dependency proceedings, the probate court or minor's counsel may apply to the juvenile court for an order directing the agency to commence juvenile dependency proceedings. The juvenile court may either affirm the decision of the social worker or, if it finds a prima facie case that the child is a victim of abuse or neglect, order the social worker to commence juvenile court proceedings. The juvenile court must, within five days of completing its review, transmit its decision, in writing, to the probate court. Before ruling on a guardianship petition, the probate court must affirm that it has read and considered all reports.

The sponsor and several supporters argue these changes "ensur[e] that there is a process for juvenile judges to review decisions by the child welfare agency not to file a petition with the juvenile court after a case is referred by a probate judge for investigation."

*b. Provides that a temporary guardianship does not preclude dependency jurisdiction*

Pending completion of the investigation, the probate court may take any reasonable steps it deems appropriate to protect the child's safety, including appointing a temporary guardian. (Prob. Code § 1513(b).) If dependency proceedings are initiated, the guardianship proceedings are stayed and the dependency proceedings generally take precedence. (*Id.*; Welf. & Inst. Code § 304.) With proper notice, the dependency court may terminate or modify a probate guardianship at any regularly scheduled hearing held in proceedings to declare the minor a dependent child or at any subsequent hearing concerning the dependent child. (Welf. & Inst. Code § 728(a).)

The bill prohibits the probate court from hearing and determining 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. The bill provides that neither the appointment of a temporary probate guardian, nor any delay attributable to the child welfare investigation, precludes dependency jurisdiction.

The provision regarding temporary guardianship is in response to the holding of *In re Kaylee H.* (2012) 205 Cal.App.4th 92 (*Kaylee H.*). In that case, the parents had placed their daughter with her paternal great-uncle while the parents worked to resolve their substance abuse problems. (*Id.* at 97.) With the parents' consent, the uncle filed for and was granted temporary guardianship in the probate court. (*Id.*) Nevertheless, the juvenile court asserted dependency jurisdiction. The appellate court, however, ruled

that the juvenile court abused its discretion because the child was “in the custody of a suitable and protective guardian.” (*Id.* at 107.)

Proponents argue that the *Kaylee H.* decision “makes it nearly impossible for a probate court to provide for the temporary custody of a child while also ensuring the case gets before the appropriate venue, and it undercuts legislative intent to allow the probate court to take all appropriate action to ensure a child’s safety.” This bill ensures that the juvenile court continues to have the discretion to assert dependency jurisdiction when appropriate.

Proponents argue that the changes described in this section “will ensure that probate courts and dependency courts work together in concert and protect the due process interests of parents and children.” In this regard, the bill states:

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.

4. Ensures financial support is available for certain kinship guardianships

The state-funded Kin-GAP program provides cash aid for relative caregivers who become legal guardians of children who are involved in the foster care system in certain circumstances. Welfare and Institutions Code section 360 provides that if a juvenile court finds that a child has been abused or neglected, and the parent has advised the court that the parent is not interested in family maintenance or reunification services, the court may, in addition to or in lieu of adjudicating the child a dependent child of the court, appoint a legal guardian, as specified. A youth under the age of 19 who is in such a guardianship is eligible for Kin-GAP aid, provided that, among other things, they had been residing for at least six consecutive months in the approved home of the prospective relative guardian while under the jurisdiction of the juvenile court or pursuant to a voluntary placement agreement. (Welf. & Inst. Code § 11363(a)(2).) However, since many families that hastily arrange for a relative guardianship do not have a voluntary placement agreement, they may be ineligible for this aid.

The bill would eliminate these requirements for this type of kinship guardianship and would increase the state-funded Kin-GAP eligibility threshold to apply to youths under 21 years of age. The bill states that it is the intent of the Legislature to ensure that children who must be separated from a parent as a result of abuse or neglect have

access to funding any time they are placed in a guardianship by the juvenile court. The bill also states that it is the intent of the Legislature that permanent placement of a child is not delayed solely to ensure that the child will be able to receive critical funding.

## 5. Opposition

The National Center for Lesbian Rights (NCLR) writes:

AB 260 purports to solve the problem of “hidden foster care,” in which families are diverted by child welfare agencies to probate court to seek guardianships. Unfortunately, the bill does not solve that problem, and is likely to create others. The narrative surrounding “hidden foster care” characterizes guardianships as primarily sought in the context of abuse or neglect and at the behest of child welfare agencies. In reality, families have many valid reasons for seeking guardianships – and many guardianships are youth-led. Even in situations involving abuse or neglect, foster care is not necessarily the better course, given that youth in foster care – particularly LGBTQ+ youth – are at greater risk of abuse and neglect once they have entered the system.

Although foster youth who reside with kin have greater stability and better outcomes than youth in stranger placements, regulations frequently preclude kinship placements, even where there are no safety concerns. Many foster youths who could safely reside with kin are instead shuttled between strangers, and community ties which are crucial to their well-being are routinely severed. If seeking guardianships is likely to result in child welfare oversight, parents will be disincentivized from pursuing creative, legal solutions – and youths who feel unsafe at home may hesitate to pursue guardianships, lest they and their siblings become subject to removal and separation.

Although child welfare agencies have sometimes inappropriately diverted families who would benefit from funding and services to probate court, not all such referrals are inappropriate. Clearly, agencies should not coerce families into arrangements that are unwanted or unworkable – but they should not be discouraged from assisting families in finding solutions that are wanted and workable. Rather, agency workers should frankly discuss the benefits and risks of each option with the parent(s), youth, and proposed guardians(s), and consider their views when making that decision.

The author responds to these concerns as follows:

NCLR's core concern—that families who petition for probate guardianship privately and independently will be referred to dependency court—has been addressed by the amendments recently in print. These amendments require the probate court to apply to the dependency court for review of the child welfare agency's decision not to file a petition, rather than making review automatic upon the conclusion of the child investigation. This allows the probate court to once again, with more robust information from the child welfare investigation, determine whether a child may be described by WIC 300 and refer to the dependency court for review if appropriate. We all agree that families should be making informed decisions about what is best for their circumstance: the recent amendments are intended to create a process that will address hidden foster care while allowing private kinship families who do not need supports and services to address abuse and neglect to remain in probate court.

Further, the concerns raised in NCLR's letter—that youth are at risk of abuse and neglect in the foster care system, that child welfare regulations preclude kinship placements, that knowing that a probate guardianship petition may lead to a child welfare investigation can have a chilling effect on families, that families lack information about their options before a court petition is filed—are important ones that are worthy of our attention as a Legislature, but they are long-standing issues that are neither created nor exacerbated by AB 260. AB 260 aims to close gaps in existing processes so that when a guardianship is the result of hidden foster care—a coercive child welfare practice where families are separated involuntarily and without access to counsel—the probate court can access the existing review process established in WIC 331. Under existing law, the probate court already has the authority to order a child welfare investigation if the facts of the probate court petition indicate abuse or neglect. Moreover, under WIC 329 and 331, anyone—a teacher or case manager suspecting abuse, or an adolescent experiencing abuse—can request a child welfare investigation and, within a month of that request, petition the juvenile dependency court to review the child welfare agency's decision not to file a dependency court petition. Although the probate court could, in theory, request review under WIC 331, that process is not set out clearly in statutes or in the court rules and forms. Instead, in practice, probate courts reach a dead end if they make a child welfare referral that does not result in a petition. AB 260 simply sets forth the process for probate courts to have the same ability as a private citizen to request dependency court review of an agency decision under WIC 331 when such review is appropriate.

**SUPPORT**

Alliance for Children’s Rights (sponsor)  
California Alliance of Caregivers  
California Youth Connection  
Children’s Legal Services of San Diego  
Extended Hand of Fresno  
Foster Care Counts  
John Burton Advocates for Youth  
Lincoln  
National Association of Social Workers, California Chapter  
Voices Youth Centers  
Wayfinder Family Services  
Woodland Community College Foster & Kinship Care Education  
YMCA of San Diego County, Youth and Family Services

**OPPOSITION**

National Center for Lesbian Rights

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: AB 2124 (Stone, 2020) was substantially similar to this bill and would have required probate courts to refer cases alleging child abuse or neglect to the county child welfare agency for an investigation. AB 2124 was referred to the Assembly Judiciary and Human Services committees but was not heard due to the COVID-19 pandemic.

**PRIOR VOTES:**

Assembly Floor (Ayes 75, Noes 0)  
Assembly Appropriations Committee (Ayes 16, Noes 0)  
Assembly Human Services Committee (Ayes 8, Noes 0)  
Assembly Judiciary Committee (Ayes 11, Noes 0)

\*\*\*\*\*