

AB 2124 (Stone): Protecting Abused and Neglected Children in Guardianships

SUMMARY:

Some abused or neglected children, who would qualify for the protections of the child welfare system, are being diverted to probate court to seek guardianships with willing relative caregivers. By bypassing the dependency court, there may be no attorneys to protect the interests of the child, the parents, and the prospective guardian; no support or services for the parents, including reunification services; no financial assistance for the prospective guardian; and no ongoing services for the children or their family.

This bill returns California to pre-2011 law requiring probate courts to refer cases alleging child abuse or neglect to the county child welfare agency for an investigation to ensure that 1) the health, safety, and welfare of these children are paramount; 2) the parents' and children's due process rights are protected; and 3) the guardian is supported.

PROBLEM:

Some children who come in contact with child protective services are being inappropriately diverted from the child welfare system to probate court guardianships. Child welfare workers are voluntarily removing children from the care of unfit parents using a "safety plan" and instructing relatives to secure a guardianship through the probate court in order to remove the children from dangerous homes.

When the relative files a petition for guardianship of a child in probate court, the court is required to conduct an investigation. Prior to 2011, if the investigation revealed possible parental abuse or neglect, the probate court was required to refer the case to the child welfare agency for investigation and possible opening of a dependency case, subjecting all of those cases to the rigors of a child welfare investigation and dependency court oversight. Today, however, the referral process is merely discretionary.

The referral to the child welfare agency and dependency system grants children, parents, and families certain rights and services that do not exist in probate guardianships. There is no mandatory right to counsel in probate court, whereas parents and children are both represented in dependency court. Dependency court also provides parents and children with

reunification services, needed supports, and case management, with the primary goal of returning the children to their parents if possible, none of which is offered when children are placed in a probate guardianship with relatives. Children outside of the dependency system also lose out on other rights, including the right to remain in their school of origin and to receive partial credit for their coursework if they are do need to transfer schools. Finally, probate guardians lose out on services offered to caregivers within the child welfare system, including childcare, respite care, funding for school transportation, access to mental health services, and monthly financial support. Probate court guardianships are simply not designed to actively promote the health, welfare, and safety of abused or neglected children; protect their parents' rights; and support relative guardianships.

SOLUTION:

AB 2124 protects children, parents, and guardians by:

1. Reverting to prior law requiring cases alleging child abuse or neglect to be referred to the county child welfare agency for investigation. Ensuring that children who are victims of abuse or neglect receive appropriate support and that the due process rights of children and parents are protected.
2. Clarifying that granting a temporary guardianship through the probate court does not limit oversight by the dependency court.
3. Allows the parent, caregiver and child, if over the age of 12, to elect to remain in probate court if the probate investigator documents knowing and voluntary consent and the judge determines the child is not at risk of abuse in the home of the proposed guardian.
4. Ensuring that children ordered into a guardianship through the dependency court can receive Kin-GAP services and financial support.

SPONSOR:

Alliance for Children's Rights

FOR MORE INFORMATION:

Emily Wonder / Assembly Judiciary Committee
Emily.Wonder@asm.ca.gov / 916-319-2334