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AB-2309 Guardianships. (2021-2022)

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Assembly Bill No. 2309

CHAPTER 780

An act to amend Sections 328 and 360 of the Welfare and Institutions Code, relating to guardianships.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2309, Friedman. Guardianships.

(1) Existing law establishes the jurisdiction of the juvenile court, under which a minor may be adjudged to be a dependent of the court if the minor has been abused or neglected, as specified. Existing law authorizes a juvenile court, if the court finds that a child is abused or neglected, and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, in addition to or in lieu of adjudicating the child a dependent child of the court, to order a legal guardianship and appoint a legal guardian, as specified.

This bill would require the parent to execute a written waiver of family maintenance or family reunification services prior to the court ordering a legal guardianship and appointing a legal guardian under the circumstances described above. Under the bill, if the parent designates a specific person to be the child's guardian, the child, or the child's legal counsel, as specified, does not object to that person's appointment, and the court finds that the proposed guardian agrees to the appointment as the child's guardian, as well as all rights and responsibilities of being a legal guardian, the court would be required to 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.

(2) Existing law requires a social worker who has cause to believe that a child has been abused or neglected to immediately conduct an investigation to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced.

This bill would require the State Department of Social Services to submit a report to the Legislature that includes specified data regarding the number of children in the care and custody of all county placing agencies pursuant to a voluntary placement agreement and the number of child welfare agency investigations that resulted in a written plan for care of a child outside the home of the parent that is not a voluntary placement agreement. The bill would require the report to be submitted to the Legislature on or before July 1, 2025, or 15 months after the date the department notifies the Legislature that the Child Welfare Services – California Automated Response and Engagement System (CWS-CARES) can perform the necessary automation to implement these new data fields.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 328 of the Welfare and Institutions Code is amended to read:

328. (a) If the social worker has cause to believe that there was or is within the county, or residing in the county, a person described in Section 300, the social worker shall immediately make any investigation the social worker deems necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced. If the social worker determines that it is appropriate to offer child welfare services to the family, the social worker shall make a referral to these services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. An inference regarding the credibility of the allegations or the need for child welfare services shall not be drawn from the mere existence of a child custody or visitation dispute.

(1) This subdivision does not require an investigation by the social worker with respect to a child delivered or referred to any agency pursuant to Section 307.5.

(2) The social worker shall interview any child four years of age or older who is a subject of an investigation, and who is in juvenile hall or other custodial facility, or has been removed to a foster home, to ascertain the child's view of the home environment. If proceedings are commenced, the social worker shall include the substance of the interview in any written report submitted at an adjudicatory hearing, or if no report is then received in evidence, the social worker shall include the substance of the interview in the social study required by Section 358. A referral based on allegations of child abuse from the family court pursuant to Section 3027 of the Family Code shall be investigated to the same extent as any other child abuse allegation.

(b) (1) The State Department of Social Services shall submit a report to the Legislature that includes all of the following data:

(A) The number of children in the care and custody of all county placing agencies pursuant to a voluntary placement agreement, as defined in subdivision (p) of Section 11400.

(B) The number of child welfare agency investigations that resulted in a written plan for care of a child outside the home of the parent that is not a voluntary placement agreement, as described in subparagraph (A).

(C) The number of children identified in subparagraphs (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 subparagraphs (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) The department shall stratify the data required pursuant to paragraph (1) by a variety of demographic characteristics, including, at a minimum, by race and income level to the extent allowable to protect confidentiality.

(3) The report shall be submitted to the Legislature on or before January 1, 2025, or 15 months after the date the department notifies the Legislature that the Child Welfare Services – California Automated Response and Engagement System (CWS-CARES) can perform the necessary automation to implement the new data fields described in paragraph (1). The report shall be submitted to the Legislature in compliance with Section 9795 of the Government Code.

SEC. 2. Section 360 of the Welfare and Institutions Code is amended to read:

360. After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows:

(a) (1) Notwithstanding any other law, if the court finds that the child is a person described by Section 300 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 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.

(2) If the parent designates a specific person to be the child's guardian, and the child, or the child's legal counsel if the child is under 12 years of age, does not object to that person's appointment, and if the court finds that the proposed guardian agrees to the appointment as the child's guardian, as well as all the 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) Any application for termination of guardianship shall be filed in juvenile court in a form as may be developed by the Judicial Council pursuant to Section 68511 of the Government Code. Sections 366.4 and 388 shall apply to this order of guardianship.

(4) A person shall not be appointed a legal guardian under this section until an assessment as specified in subdivision (g) of Section 361.5 is read and considered by the court and reflected in the minutes of the court.

(5) On and after the date that the director executes a declaration pursuant to Section 11217, if the court appoints an approved relative caregiver as the child's legal guardian, the child has been in the care of that approved relative for a period of six consecutive months under a voluntary placement agreement, and the child otherwise meets the conditions for federal financial participation, the child shall be eligible for aid under the Kin-GAP Program as provided in Article 4.7 (commencing with Section 11385) of Chapter 2 of Part 3 of Division 9. The nonfederally eligible child placed with an approved relative caregiver who is appointed as the child's legal guardian shall be eligible for aid under the state-funded Kin-GAP Program, as provided for in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(6) The person responsible for preparing the assessment may be called and examined by any party to the guardianship proceeding.

(b) If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301.

(c) If the family subsequently is unable or unwilling to cooperate with the services being provided, the social worker may file a petition with the juvenile court pursuant to Section 332 alleging that a previous petition has been sustained and that disposition pursuant to subdivision (b) has been ineffective in ameliorating the situation requiring the child welfare services. Upon hearing the petition, the court shall order either that the petition shall be dismissed or that a new disposition hearing shall be held pursuant to subdivision (d).

(d) If the court finds that the child is a person described by Section 300, it may order and adjudge the child to be a dependent child of the court.