

Crossover Issues Between Probate, Dependency and Delinquency Courts: Which Court is Right for a Minor

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Legal Services for Children

Free legal and social work services for Bay Area children in guardianship, dependency, immigration, and education matters.

Warm line and in-person clinics

- Warm Line – M, W, Th 1:30-4:30PM
- Clinic – Wed 4-6pm & Thu 3-5pm



Roadmap for Today's Training

The Basics: Probate Legal Guardianship of the Person vs. Dependency through Juvenile Court

Context

The legal standards

What are the advantages and disadvantages of each system

- Benefits for caregivers
- Placement considerations
- System involved

How do the different courts interact?

What happens when a delinquency petition is filed?



What are the two systems?

Dependency System – Welfare and Institutions Code 300

Probate Guardianship – Probate Code 1500



What is a Legal Guardianship?

Suspends parents' rights to custody of their child

- Does NOT permanently terminate parental rights

Places custody with another adult

Right and responsibility to make almost all decisions affecting the care and supervision of that minor

Parents retain the right to petition for visitation or to terminate the guardianship

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Legal Standard



If the Parents Consent

- 1. "Necessary or Convenient"
- 2. Establishing guardianship is in the child's best interest

If the Parents do not Consent

- 1. Continued custody with parent would be detrimental to the child
- 2. Establishing guardianship is in the child's best interest

What is Dependency?

Welfare and Institutions Code **Section 300**

- **A Highly structured system in which the state can petition the court to remove children from their parents due to abuse or neglect**
- When children are removed, *“reunification of the minor with his or her family shall be the primary objective.” WIC 202.*
 - CPS must make reasonable efforts to achieve this goal
- If a child is removed, preferential treatment is given to placement with a relative. **WIC 317(f) & WIC 361.3.**



Legal Standards



Different standards for out of home placement at different stages of the proceedings

Prior to declaring a child a dependent, must find by preponderance of the evidence that child comes under Section 300

Periodic review hearings

Parents entitled to reunification services

Agency must make reasonable efforts to reunify

Benefits for Caregivers



Financial benefits (i.e. Money):

- Foster care payments are generally available to relatives and non-relative foster parents if minor placed with caregiver through the dependency case
 - RATE: \$960/month – basic foster care rate
 - These benefits will continue if they caregiver eventually adopts the minor or becomes their guardian (if ordered by the dependency judge)

Benefits for Caregivers continued

- Nonrelative legal guardianships ordered through Probate Court also can receive foster care payments
 - \$960/month
- Relative legal guardianship
 - CalWorks as a Non-Needy Caregiver
 - Only eligible if the minor is a citizen or LPR and enrolled in school
 - Rate starts at around \$380/per month
 - www.cdss.ca.gov/inforesources/CalWORKs



Benefits

FOSTER CARE

- Respite care
- Social work support
- Foster Care Mental Health
- Extended foster care

LEGAL GUARDIANSHIP

- Kinship navigator services (coming soon)
- Other community Supports



Placement Considerations

Legal Guardianship

- No set standards for determining that the guardian's home is appropriate
 - Court will receive criminal and CPS background checks for every person over age 18 living in the home
 - Court Investigator will visit the home and include information on the living environment in their report
- The court has discretion to allow the guardianship if the court is satisfied that the home is appropriate.



Placement Considerations

- Foster Care
 - Resource Family Approval
 - Specific requirements for the living environment
 - Each child must have their own bed, minors may not share a bedroom with an adult, specific requirements when there are multiple children in one room
 - Criminal background check
 - Any conviction other than a minor traffic violation must be waived by the child welfare agency
 - Must have substantial and convincing evidence to support a reasonable belief that the application is of present good character – Health and Safety Code 1522(g)(2)(B)
 - Health and Safety Code Section 1522(g)(2)(A) contains a list of convictions that are an absolute bar to approval
 - CPS background check
 - Can deny approval if CPS history shows that placement would pose a risk or threat to the health and safety, protection, or well-being of the child
 - These factors can all be found in the Resource Family Approval Written Directives

System Involvement

- Legal Guardianship
 - Court Investigator's Report
 - Must include a social history of the proposed guardian and minor as well as a description of the relationship between the minor and the guardian **Prob. C. § 1513(a)**.
 - Will contain a recommendation on whether the guardianship should be allowed
 - After a guardianship is granted, the guardian must submit an annual Confidential Guardianship Status Report (GC-251) with an update on the minor's health, well-being, parent involvement/visitation, living situation and include report cards
 - California Rules of Court 7.1003

System Involvement

- Dependency
 - The purpose of the dependency system is to provide for the protection and safety of the public and each minor and to preserve and strengthen the minor's family ties whenever possible. If removal is necessary, reunification of the minor with his or her family shall be a primary objective. **WIC § 202.**
 - In most cases, the child welfare agency must make reasonable efforts to reunify the child with their parent
 - Parents will receive services intended to achieve reunification and the court will likely order visitation between the minor and their parent
 - The social worker will meet with the minor at least once per month.

What are the advantages and disadvantages of each system



You can't always choose your system – but you can try

- Temporary Guardianship
 - **Probate Code Section 2250** allows the probate court to appoint a temporary guardian while the petition for permanent guardianship is pending
 - Must show good cause – which includes when the minor needs immediate protection from child endangerment or neglect
- Child welfare agencies often encourage diverting cases towards probate court when there is a fit and willing relative to care for a child who may otherwise come under **Section 300**



You can't always choose your system – but you can try

- Child welfare agencies do not always open a case after receiving a report
 - Can challenge through **WIC § 329 & 331**
 - Any person may serve an affidavit (form JV-210) on the local child welfare agency alleging that the minor is described by **WIC § 300**
 - Within 3 weeks, the County must investigate the allegation and either open a case or notify the applicant in writing that they will not be opening a case and the justification
 - If the County does not file a petition to commence proceedings, the application may file the affidavit with the juvenile court to seek review.
 - Achieved by filing the JV-210 with the juvenile court.
 - The court must make an independent assessment to determine whether there is a prima facie showing the child comes within section 300. In re Kaylee H., 205 Cal. App. 4th 92 (2012).

You can't always choose your system – but you can try

- The probate court may refer matters directly to the local child welfare agency. **Prob. C. § 1513(b)**
 - If dependency proceedings are not initiated, the probate court retains jurisdiction to hear the guardianship matter
 - However, the court may also seek review under **WIC § 331** if the court disagrees with the social worker's determination by ordering that its referral to the County, along with the County's response, be filed in the juvenile court

How do the Courts interact?



Which Court Takes Jurisdiction: Probate vs Dependency

- After a petition has been filed pursuant to **Section 311**, *no other division of any superior court may hear proceedings regarding the custody of the minor – WIC 304*
 - Any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction shall remain in effect after jurisdiction is terminated

Special circumstances: Delinquency vs. Guardianship in Probate Court (WIC 728)

- What this crossover will look like will depend on whether the minor's disposition was a "non wardship" or "wardship."
- If non-wardship, then the guardianship will remain in place and the legal guardian will continue to have custody rights over the minor.
- If "wardship" then the delinquency court trumps and all placement orders will be determined by the delinquency court

Which Court Takes Jurisdiction: Probate vs Delinquency

- Contact with the juvenile justice system can have many different results
 - **Informal Probation - WIC § 654**
 - Prior to filing the petition
 - If successful for six months the case is closed
 - **Informal Probation - WIC § 654.2**
 - After filing petition, court may order the minor enter a diversion program
 - If successful for six months the case is dismissed
 - **Non-Wardship Probation – WIC 725(a)**
 - Court has found that the minor violated the law either through a trial or a plea
 - Probation may last for six months though can be extended



Which Court Takes Jurisdiction: Probate vs Delinquency



“**Wardship**” where minor is declared a “ward” of the Court and is under the delinquency’s court’s strict supervision (**WIC 725**)

- **Home on Probation** – declared ward of court and placed in home of parent or legal guardian with probation conditions
- **Suitable Placement**
 - If court finds that home of parent OR legal guardian is not suitable, then court can place minor on a suitable placement order. Those minors can be placed in variety of settings including home of someone who is not parent or guardian, a group home or a therapeutic facility.

Which Court Takes Jurisdiction: Probate vs Delinquency

- Options for Probate Court if wardship ensues:
 - Suspend a current guardianship
 - Terminate a guardianship



What if a minor in wardship needs a guardianship with a non-parent?

- The delinquency court is able to make that guardianship order in wardship cases while the Probate Court can make that order in non-wardship cases.
- Note that the Benefits may be different based on which Court makes these orders/findings

What happens when the delinquency system gets involved?

- **Dual Status vs. Non-dual Status**
 - WIC § 241.1 prohibits a youth from being under the jurisdiction of both systems unless the county has developed a dual status protocol
 - “On Hold” or “Lead Agency”
 - If no dual status protocol, the court must determine which system will best serve the minor
 - Requires a joint assessment by the child welfare agency and the probation department which results in a recommendation to the juvenile court

Discussion & Questions

- A guardianship petition is filed in Probate Court and a temporary guardian is appointed. While awaiting the permanent guardianship hearing, a dependency petition is filed.
- What are the Court's options? How does Ventura County handle this? (See Local Rules from Ventura County in handouts)

Thank you- That's a wrap!

