

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
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Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
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DATE: September 7, 2005

SUBJECT: Custody and Visitation: Orders Following Termination of Juvenile Court Proceeding or Probate Court Legal Guardianship Proceeding (Fam. Code, § 3105; Welf. & Inst., Code § 362.4; Prob. Code, § 1602) (adopt Cal. Rules of Court, rules 5.475 and 7.1008) (Action Required)

Issue Statement

Previously a court was not authorized to grant visitation rights to a former guardian upon termination of the guardianship. As of January 1, 2005, Assembly Bill 2292 (Wolk) (Stats. 2004, ch. 301) authorizes the court, upon making a determination that a guardianship should be terminated, to consider whether continued visitation between a ward and his or her guardian is in the best interest of the ward. AB 2292 enacted new Probate Code section 1602 and new Family Code section 3105.

Probate Code section 1602 provides for the filing of visitation orders for former guardians, which are issued by the probate court in a guardianship proceeding, in related family law cases. Family Code section 3105 provides the authority for an independent action for visitation by a former guardian in the absence of an order for visitation. Proposed rules 5.475 and 7.1008 provide procedural guidelines for implementing the new requirements.

Recommendation

The Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee recommend that the Judicial Council, effective January 1, 2006, adopt rules 5.475 and 7.1008 of the California Rules of Court to implement new Family Code section 3105 and new Probate Code section 1602.

The text of the rules is attached at pages 6–8, and the text of AB 2292 is attached at pages 17 and 18.

Rationale for Recommendation

Family Code section 3105(b) and Probate Code section 1602(b) authorize a court to grant reasonable visitation rights to a person who has previously served as the legal guardian of a child if that visitation is determined to be in the child's best interest. These provisions create a new category of parties who may join a pending matter relating to the custody of the former ward or who may initiate a new request for visitation.

Under the two new sections if there has been no prior court order granting or denying visitation between a former legal guardian and his or her former minor ward and a dependency proceeding is not pending, the former legal guardian may maintain an independent action for visitation with his or her former ward. If the child has at least one living parent, visitation must be determined in a proceeding under the Family Code. If the child does not have at least one living parent, visitation must be determined in a probate guardianship proceeding, which may be initiated for that purpose. A guardian petitioning for or opposing termination of a probate guardianship may also request, and the court may order in its order terminating the guardianship, reasonable post-termination visitation between the former guardian and the former ward.

New Probate Code section 1602 provides that a copy of the visitation order must be filed in any court proceeding relating to custody of the former ward. If a prior order has not been filed and a proceeding is not pending in a court of any county relating to the custody of the former ward, the visitation order may be used as the sole basis for opening a file in the court of the county in which the custodial parent resides. When a parent of the child has custody of the child, any modification of the visitation order must be determined in a proceeding under the Family Code.

The Family and Juvenile Law and Advisory Committee and the Probate and Mental Health Advisory Committee recommend adoption of rules 5.475¹ and 7.1008 of the California Rules of Court. Proposed rule 7.1008 is designed to instruct probate court staff concerning their responsibility to transmit post-termination visitation orders entered in guardianship proceedings to appropriate family law courts.

¹ The Family and Juvenile Law Advisory Committee circulated this for comment as proposed rule 5.600, found herein at Attachment A.

Proposed rule 5.475 provides general requirements for family law courts receiving exiting custody or visitation orders and applies to orders from juvenile and probate courts.

Rules 5.475 and 7.1008 would clarify the new statutory requirements permitting visitation by former guardians and would include procedures to instruct probate and family court clerks on the filing of visitation orders in existing custody matters and on creating a family law file when there is no pending custody matter before the family court.

Under proposed rule 7.1008, the clerk of the originating court would promptly transmit the order, after it has been signed, to the superior court of the county where a custody proceeding has been commenced or to the superior court of the county in which the custodial parent resides. Under proposed rule 5.475, the clerk of the receiving court would be required to file the order in an existing nullity, dissolution, legal guardianship, paternity, or other family law proceeding that affects custody or visitation of the former ward, if applicable, or to open a file, without a filing fee, and assign a case number. Within 15 court days after receiving the order, the clerk of the receiving court would mail an endorsed copy of the order showing the case number of the receiving court to the persons whose names and addresses are listed on the order and to the originating court.

AB 2292 did not include specific instructions for clerks. The Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee propose that the procedures for opening a family law file following termination of a probate guardianship matter mirror the procedures used in rule 1457. Rule 1457 details the procedure by which a family law clerk opens a family law file when a juvenile court has issued custody or visitation orders upon termination of juvenile court jurisdiction. The situations are analogous, except that under rule 5.475 a family law clerk opens a family law file when a probate court has issued visitation orders upon termination of probate court jurisdiction. Adoption of uniform procedures for opening a family law case when a probate or juvenile court terminates jurisdiction and issues exit orders could result in more efficiency for clerks who then will have to learn, implement, and maintain only one system for opening files.

Alternative Actions Considered

AB 2292's requirements represent a significant change from the way the courts have conducted business in this area. The proposed rules are necessary to implement the legislative mandate of AB 2292, to ensure compliance with governing law, and to specify procedures to implement the statute.

Comments From Interested Parties

The invitation to comment on the proposal was circulated from April 21, 2005, through June 20, 2005, to the standard mailing list for family and juvenile law proposals, as well as the regular rules and forms mailing list. This distribution list includes judges, court

administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. In addition, this proposal was sent to the Probate and Mental Health Advisory Committee and staff and to probate guardianship law professionals.

Nine comments were received. Six of the commentators agreed with the proposal. Three commentators agreed to the proposal if it was modified and suggested substantive changes. No commentators disagreed.

One commentator posed multiple specific procedural questions and made a general request for clearer guidelines. Because AB 2292, Family Code section 3105, and Probate Code section 1602 do not provide specific procedural guidelines, the proposed rules were modeled in large part on the procedural guidelines of rule 1457. Rule 1457 requires a family law case file to be opened upon the issuance of a custody order at the termination of dependency court jurisdiction. It was used as the model because the two situations are analogous: in both, a family law case file must be opened upon the termination of the jurisdiction of a different court division (in the case of rule 1457, the juvenile court and under rule 5.475, the probate court). Rule 1457 and proposed rule 5.475 describe minimal procedural requirements that address due process concerns such as notice and time requirements but leave room for each court to incorporate its own current operational procedures for filing orders in pending cases or creating new family law case files.

The commentator who requested clearer guidelines asked whether a former guardian would need to file form FL-105/GC-120, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)*. The committee agreed that filing a UCCJEA declaration would be required under Family Code section 3400 et seq., which defines “Child custody determination” as a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. Proposed rules 5.475(c)(3) and 7.1008(c) would require a guardian or former guardian to file a UCCJEA declaration when requesting visitation under these rules.²

Another commentator requested that courts be allowed the option to order the guardian or guardian’s attorney, in addition to the clerk, to transmit the order. The commentator noted that this is the current procedure in rule 1457. The Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee both recommend that the court not have the option to require the guardian to transmit the order because such an obligation would be unduly burdensome on a population of court users who are primarily self-represented litigants.

² The Probate and Mental Health Advisory Committee joins in the Family and Juvenile Law Committee’s response to this public comment and agrees that form FL-105/GC-120 must be filed with a request for visitation by a guardian or former guardian. Its current proposal to revise the guardianship termination petition (form GC-255) to permit a guardian petitioning for termination of the guardianship to request visitation calls for the petitioner to attach a completed copy of form FL-105/GC-120 to the petition for termination.

Two commentators felt that the current visitation petition forms should be modified to accommodate former guardians. Gender-neutral forms will eventually be developed and will include a general category, such as “other,” that may accommodate former guardians who are petitioning for visitation. Such changes would require circulation for comment.

The comments and the committee responses are summarized in the chart attached at pages 9–16.

Implementation Requirements and Costs

Implementation of the rules will require courts to retrain clerks and incur standard reproduction and postage costs for copying and mailing visitation orders or petitions or motions requesting visitation.

Attachments

Rules 5.475 and 7.1008 of the California Rules of Court are adopted, effective January 1, 2006, to read:

Rule 5.475. Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding (Fam. Code, § 3105; Welf. & Inst., Code, § 362.4; Prob. Code, § 1602)

(a) [Custody and visitation orders from other court divisions] A juvenile court or probate court may transmit a custody or visitation order to a family court for inclusion in a pending family law proceeding or to open a new family law case file, upon termination of a juvenile court proceeding or a probate guardianship proceeding under rules 1457 and 7.1008.

(1) Procedure for filing custody or visitation orders from juvenile or probate court

(A) The custody or visitation order of a juvenile court or the visitation order of a former guardian must be filed in any pending nullity, dissolution, paternity, or other family law proceeding, or in any probate guardianship proceeding which affects custody or visitation of the child.

(B) If no dependency, family law, or probate guardianship proceeding affecting custody or visitation of the child is pending, the order may be used as the sole basis to open a file and assign a family law case number.

(C) The clerk must immediately file the custody or visitation order, without a filing fee, in the file of any family law proceeding affecting the custody and visitation of the child.

(2) (Endorsed filed copy—clerk’s certificate of mailing) Within 15 court days after receiving the order, the clerk must send, by first-class mail, an endorsed filed copy of the order showing the receiving court case number to:

(A) The persons whose names and addresses are listed on the order; and

(B) The court that issued the order, with a completed clerk’s certificate of mailing, for inclusion in the sending court’s file.

1 **(b) [Modification of former guardian visitation orders—Custodial parent]**

2 When a parent of the child has custody of the child following termination of a
3 probate guardianship, proceedings for modification of the probate court
4 visitation order, including an order denying visitation, must be determined in a
5 proceeding under the Family Code.

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7 **(c) [Independent action for former guardian visitation]**

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9 (1) If the court terminated a guardianship under the Probate Code and did not
10 issue a visitation order, the former guardian may maintain an independent
11 action for visitation if a dependency proceeding is not pending. The
12 former guardian may bring the action without the necessity of a separate
13 joinder action.

14
15 (2) If the child has at least one living parent and has no guardian, visitation
16 must be determined in a proceeding under the Family Code. If the child
17 does not have at least one living parent, visitation must be determined in a
18 guardianship proceeding, which may be initiated for that purpose.

19
20 (3) Judicial Council form FL-105/GC-120, *Declaration Under Uniform Child*
21 *Custody Jurisdiction and Enforcement Act (UCCJEA)* must be filed with
22 a petition or motion for visitation by a former guardian.

23
24 **Rule 7.1008. Visitation by former guardian after termination of guardianship**

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26 **(a) [Visitation order at time of termination of guardianship]** Subject to the
27 provisions of Welfare and Institutions Code section 304, a guardian may
28 request the court to order visitation with the child under guardianship at the
29 time of termination of the guardianship either in the guardian’s petition for
30 termination or in the guardian’s objections or other pleading filed in response
31 to the petition of another party for termination. The court may then order
32 visitation if it is in the best interest of the child.

33
34 **(b) [Request for visitation after termination of guardianship]** If no order was
35 entered under (a) concerning visitation between the former guardian and the
36 former ward at termination of the guardianship and no dependency
37 proceedings for the child are pending, the former guardian may request the
38 court to order visitation with the former ward after termination of the
39 guardianship as provided in Family Code section 3105, Probate Code section
40 1602, rule 5.475, and this rule, as follows:

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42 (1) If either parent of the former ward is living, in an independent action for
43 visitation under the Family Code; or

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(2) If neither parent of the former ward is living, in a guardianship proceeding under the Probate Code, including a proceeding commenced for that purpose.

(c) [Declaration under UCCJEA] A guardian or former guardian requesting visitation under this rule must file Judicial Council form FL-105/GC-120, Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), with his or her request for visitation.

(d) [Transmission of visitation order] Following the termination of the guardianship the clerk of the superior court issuing the visitation order concerning the guardian or former guardian and the ward or former ward must promptly transmit an endorsed filed copy of the order to the superior court of the county where a custody proceeding under the Family Code is pending or, if none, to the superior court of the county in which the custodial parent resides. An order transmitted to the court in the county where the custodial parent resides may be sent to the receiving court's Court Operations Manager, Family Division, or similar senior manager or clerk responsible for the operations of the family law departments of the court. If the receiving court has more than one location, the order may be sent to the main or central district of the court.

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Custody and Visitation: Orders Following Termination of Juvenile Court Proceeding or Probate Court Legal Guardianship Proceeding (Fam. Code, § 3105; Welf. & Inst., Code § 362.4; Prob. Code, § 1602) (adopt Cal. Rules of Court, rules 5.475 and 7.1008)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Grace Andres Project Manager Superior Court of California, County of Solano	A	N	No comment.	No response required.
2.	Sheila Ballin Family Law Facilitator Superior Court of California, County of San Joaquin	AM	N	Does the order go to the custodial parent’s county even if an older family law case exists in another county or state that is no longer the residence of the custodial parent?	New California Probate Code section 1602(c) provides that a copy of the visitation order must be filed in any court proceeding relating to custody of the child. If a prior order has not been filed, and a proceeding is not pending relating to the custody of the minor in the court of any county, the visitation order may be used as the sole basis for opening a file in the court of the county in which the custodial parent resides. This code section indicates that the order does not have to be filed in the custodial parent’s county if it is filed in an older pending proceeding relating to the custody of the child in another county or state that is no longer the residence of the custodial parent.
3.	Hon. Charles W. Campbell, Jr. Judge of the Superior Court of California, County of Ventura	A	N	No comment.	No response required.
4.	Keri Griffith Court Program Manager Superior Court of California,	AM	N	We would prefer the option of the court ordering the guardian or guardian’s attorney, in addition to the clerk, to transmit the order. This	The requirement for the order to be transmitted by the superior court clerk of the court issuing the order

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	County of Ventura			is similar to rule 1457 regarding juvenile custody orders.	is now provided in proposed rule 7.1008. ¹ The Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee believe that the court should not have the option of requiring the guardian or guardian’s attorney to transmit the order. First this may be an undue burden on guardians who are largely self-represented. Second, this raises court workload concerns because self-represented guardians may require the assistance of court staff in completing this procedural requirement.
5.	Stephen V. Love Executive Officer Superior Court of California, County of San Diego	A	N	1. The <i>Petition for Custody and Support</i> and the accompanying <i>Summons</i> , forms FL-260 and FL-210, should be modified to accommodate the petitions for visitation by former guardians; otherwise, former guardians will need to file a civil summons and a petition on pleading paper. Where family law rules apply, the OSC, etc., forms are adequate as now prepared. 2. Why is the probate or juvenile court case	1. The Family and Juvenile Law Advisory Committee will monitor the number of petitions filed by former guardians requesting visitation to ascertain whether changing the forms is warranted. Public comment would be necessary. 2. The probate or juvenile court

¹ Following the comment period proposed rule 5.600 was separated into two rules. Proposed rule 5.475 is focused on the responsibilities of the receiving court. The second proposed rule 7.1008, is focused on the responsibilities of the sending court. Throughout the chart, references to current rule sections appear in parentheses and the previously circulated section references follow in bold.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				required to be closed if neither parent is living?	case is not required to be closed if neither parent is living. Family Code section 3105(b) provides, “If the child does not have at least one living parent, visitation shall not be determined in a proceeding under the Family Code, but shall instead be determined in a guardianship proceeding which may be initiated for that purpose.”
6.	Superior Court of California, County of Los Angeles	A	Y	The Judicial Council form orders re: custody should have a provision/attachment for the names and addresses of the parties. See paragraph (a)(4) of proposed rule that requires the clerk of the court to send parties “whose names and addresses are listed on the order....”	The committee will consider this modification for a future cycle. Public comment would be necessary. Address information on the parties will also be available to the clerk through the attached <i>Declaration Under the Uniform Child Custody Jurisdiction and Enforcement Act</i> .
7.	Claire Williams Administrator Superior Court of California, County of San Francisco	AM	N	1. Must the Order Terminating Guardianship be certified and placed in the court file for an independent action for visitation by the former guardian?	1. AB 2292 and the statutes engendered by the bill, Family Code section 3105 and Probate Code section 1602, do not state an express affirmative duty for the order terminating guardianship to be certified and placed in the court file for an action for visitation by the former guardian.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>2. What procedures should the court take when a party files an independent action for visitation?</p> <p>3. Will the Judicial Council be creating new forms for former guardian visitation?</p>	<p>2. AB 2292 is silent on the specific procedures a court should use when a former guardian brings an independent action for visitation in the absence of a visitation order issued upon termination of guardianship. The proposal is modeled on the procedures provided rule in 1457. A new family law case file is opened upon issuance of a custody order when dependency court jurisdiction has been terminated. A court may create a new procedure for opening a new family law case with a filing for an independent action for visitation or may use the procedures for opening new family law case files under rule 1457.</p> <p>3. The Family and Juvenile Law Advisory Committee will monitor the number of petitions filed by former guardians. Circulation for public comment will be necessary. Revised Judicial Council forms <i>Petition for Terminating Guardianship</i> GC-255, and GC-260, <i>Order Terminating Guardianship</i> will have a provision</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>4. Will the former guardians and parents participate in mandatory mediation? Family Code section 3171 requires the court to set for mediation requests for visitation filed by stepparents and grandparents. Presumably, former guardians would fall under this same code section as it references visitations, commencing with chapter 5, section 3100, and former guardian visitation, under chapter 5, section 3100.</p> <p>5. How will the court know that the former guardian is filing the request or order for visitation in the custodial parent's county if there is no existing custody matter pending? Will the former guardian need to file Judicial Council form FL-105/GC-120, <i>Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)</i>?</p>	<p>for visitation by a former guardian and his or her former ward.</p> <p>4. Family Code section 3171 specifically refers to stepparents' or grandparents' petitions for visitation and does not include an express affirmative requirement that the court refer a petition for visitation by a former guardian to mediation.</p> <p>5. Probate Code section 1602 provides that a copy of the order must be filed in any court proceeding related to the custody of the minor. If a prior order has not been filed and a proceeding is not pending in a court of any county, the visitation order may be used as the sole basis for opening a file in the court of the county in which the custodial parent resides.</p> <p>Proposed rule 7.1008 and proposed form GC-255, <i>Petition for Termination of Guardianship</i>, require a guardian seeking visitation at the time of termination to file</p>

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Custody and Visitation: Orders Following Termination of Juvenile Court Proceeding or Probate Court Legal Guardianship Proceeding (Fam. Code, § 3105; Welf. & Inst., Code § 362.4; Prob. Code, § 1602) (adopt Cal. Rules of Court, rules 5.475 and 7.1008)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>6. Will orders terminating guardianship be specific as to whether the guardianship court entered visitation orders? Otherwise, how will the family court know whether it has jurisdiction to make visitation orders? Two courts should not be issuing visitation orders between the same former guardian and former ward.</p>	<p>form FL-105/GC-120, <i>Declaration under UCCJEA</i>. Under Family Code section 3400 et seq., a former guardian who did not receive an exit visitation order with a UCCJEA declaration will need to file one if they wish to petition for visitation. Proposed rule 5.475 (5.600)² has been revised by adding section (5.475 (c)(3)) (5.600 (b)(3)) to include a requirement that the form be filed with a petition or motion for visitation by a former guardian.</p> <p>6. Under new Probate Code section 1602, a court, upon making a determination that a guardianship should be terminated under to section 1601, may consider whether continued visitation between the ward and the guardian is in the ward's best interest. This establishes that the court has discretion to make an order for</p>

² The proposed rule was circulated for comment as rule 5.600. For consistency with the anticipated renumbering of the family law rules, the rule has been renumbered as proposed rule 5.475.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>7. If a new case file is opened, what shall the case title be? Who shall be the petitioner and respondent or should the matter proceed in the child's name?</p>	<p>visitation but does not impose an affirmative obligation to do so. New Family Code section 3105 provides for filing an order in an existing custody proceeding, opening a new file with an order, or allowing for an independent action for visitation in the absence of an order. Orders for termination of guardianship may not be specific as to visitation and will have to be reviewed on a case-by-case basis to determine if the court hearing the guardianship matter issued visitation orders.</p> <p>7. AB 2292 is silent as to what the case title should be. The proposal is modeled upon rule 1457, which requires that a family law case file be opened upon issuance of a custody order by a juvenile court upon termination of dependency jurisdiction. A court may wish to use a case title similar to the titles used under rule 1457. If a former guardian is petitioning for visitation, the former guardian is the petitioner. The respondent would be the custodial parent or guardian.</p> <p>8. AB 2292 is silent regarding</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				8. The Judicial Council should provide more procedures and guidelines.	specific operational procedures. To address the lack of procedural guidelines, the proposal is based on rule 1457.
8.	Kim Alexander Yarbor Deputy County Counsel Solano County	A	N	No comment.	No response required.
9.	Dean Zipster President Orange County Bar Association	A	N	No comment.	No response required.

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BILL TEXT

CHAPTER 301
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AMENDED IN ASSEMBLY APRIL 27, 2004
AMENDED IN ASSEMBLY APRIL 12, 2004

INTRODUCED BY Assembly Member Wolk

FEBRUARY 19, 2004

An act to add Section 3105 to the Family Code, and to add Section 1602 to the Probate Code, relating to visitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2292, Wolk. Visitation: former legal guardians.

Existing law authorizes the court to grant reasonable visitation rights to a stepparent or a grandparent of a minor child if the court determines that visitation is in the best interest of the child.

Existing law also authorizes the court to terminate a guardianship if the court determines that it is in the best interest of the minor to terminate the guardianship.

This bill would authorize the court to grant reasonable visitation rights to a person who has previously served as the legal guardian of a child if visitation by the former legal guardian is determined to be in the best interest of the child, and would make other, related changes. The bill would authorize a former legal guardian to maintain an independent action for visitation with his or her former minor ward.

This bill would authorize the court, upon making a determination that a guardianship should be terminated, to consider whether continued visitation between a ward and his or her guardian is in the best interest of the ward. The bill would also authorize the court to issue an order, as part of the order of termination, for visitation between the former guardian and his or her former minor ward after the termination of the guardianship.

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

SECTION 1. Section 3105 is added to the Family Code, to read:

3105. (a) The Legislature finds and declares that a parent's fundamental right to provide for the care, custody, companionship, and management of his or her children, while compelling, is not absolute. Children have a fundamental right to maintain healthy, stable relationships with a person who has served in a significant, judicially approved parental role.

(b) The court may grant reasonable visitation rights to a person who previously served as the legal guardian of a child, if visitation is determined to be in the best interest of the minor child.

(c) In the absence of a court order granting or denying visitation between a former legal guardian and his or her former minor ward, and if a dependency proceeding is not pending, a former legal guardian may maintain an independent action for visitation with his or her former minor ward. If the child does not have at least one living parent, visitation shall not be determined in a proceeding under the Family Code, but shall instead be determined in a guardianship proceeding which may be initiated for that purpose.

SEC. 2. Section 1602 is added to the Probate Code, to read:

1602. (a) The Legislature hereby finds and declares that guardians perform a critical and important role in the lives of minors, frequently assuming a parental role and caring for a child when the child's parent or parents are unable or unwilling to do so.

(b) Upon making a determination that a guardianship should be terminated pursuant to Section 1601, the court may consider whether continued visitation between the ward and the guardian is in the ward's best interest. As part of the order of termination, the court shall have jurisdiction to issue an order providing for ongoing visitation between a former guardian and his or her former minor ward after the termination of the guardianship. The order granting or denying visitation may not be modified unless the court determines, based upon evidence presented, that there has been a significant change of circumstances since the court issued the order and that modification of the order is in the best interest of the child.

(c) A copy of the visitation order shall be filed in any court proceeding relating to custody of the minor. If a prior order has not been filed, and a proceeding is not pending relating to the custody of the minor in the court of any county, the visitation order may be used as the sole basis for opening a file in the court of the county in which the custodial parent resides. While a parent of the child has custody of the child, proceedings for modification of the visitation order shall be determined in a proceeding under the Family Code.