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INVITATION TO COMMENT

LEG12-03

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Title	Action Requested
Probate Guardianships: Referral of Proposed Ward in a Guardianship Proceeding to County Child Welfare Department for an Investigation of the Ward's Status as a Dependent Child Under the Juvenile Court Law	Review and submit comments by July 27, 2012
Proposed Rules, Forms, Standards, or Statutes Amend Probate Code § 1513 and add § 1513.5; amend Welfare and Institutions Code § 329	Proposed Effective Date January 1, 2014
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Proposed by Probate and Mental Health Advisory Committee Hon. Mitchell L. Beckloff, Chair	
Family and Juvenile Law Advisory Committee Hon. Kimberly J. Nystrom-Geist and Hon. Dean T. Stout, Co-chairs	

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**Executive Summary and Origin**

An important interface between probate guardianships and juvenile court dependency proceedings has been a focus of three recent appellate decisions. These decisions reflect divisions within the courts concerning the responsibility of a guardianship court to refer the proposed ward to the county child welfare department responsible for investigating the need for the assistance of that department and, where indicated, for commencing dependency proceedings for the proposed ward in the juvenile court, especially when the guardianship filing follows communications concerning the proposed ward between the guardianship petitioner or proposed guardian and the child welfare department.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

The Probate and Mental Health Advisory Committee and the Family and Juvenile Law Advisory Committee propose legislation to reconcile the recent appellate court decisions and clarify the respective responsibilities of guardianship and juvenile courts, and county child welfare departments concerning proposed wards who also may qualify as dependent children of the juvenile court.

## **Background**

### **Probate Code section 1513(c)**

Probate Code section 1513(c), part of the code section that prescribes the duty of court or county guardianship investigators to investigate and report to the court on the suitability of the proposed guardian and the circumstances of the proposed ward upon the filing of a probate guardianship petition, requires the case to be referred to the county agency designated to investigate potential dependencies under the juvenile court law for an investigation under sections 328 and 329 of the Welfare and Institutions Code<sup>1</sup> if the guardianship investigation finds that any person has alleged that the proposed ward's parent is unfit "as defined in Section 300" of that code. The guardianship proceedings are not to be completed until the child welfare department's investigation has concluded and a report from that department has been provided to the guardianship court.

Two recent appellate decisions discussed and applied section 1513(c). The first reversed an order appointing a guardian of a young child because the superior court failed to refer the case to the child welfare department when required by the section to do so. The second declined a request by a child's parent to make the same ruling, although the circumstances indicated that section 1513(c) applied to the case and no referral was made. A third, and the most recent, appellate decision considered the aftermath of a referral to the child welfare department under section 1513(c) and the actions of the juvenile court after the department declined to file a dependency petition.

The three decisions, in order of their filing dates, are *Guardianship of Christian G.* (2011) 195 Cal.App.4th 581 (*Christian G.*); *Guardianship of H. C.* (2011) 198 Cal.App.4th 160 (*H. C.*); and *In re Kaylee H.* (2012) 205 Cal.App.4th 92 (*Kaylee H.*). Descriptions of each case follow.

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<sup>1</sup> Section 328 requires a county social worker to conduct an investigation to determine whether child welfare services should be provided to a child's family and whether dependency proceedings should be commenced in the juvenile court concerning the child if the worker has cause to believe that the child is described in section 300 of that code. Section 329 calls for such an investigation upon the application to the social worker of any person for commencement of a dependency proceeding. Section 300 describes a dependent child: a child who may be subject to the jurisdiction of the juvenile court in a dependency proceeding. See sections 101(e) and 215 of that code for the definitions of the terms "dependent" as applied to a child, and "social worker" under the juvenile court law, chapter 2 of part 1 of division 2 of the Welfare and Institutions Code, sections 200–987. County departments responsible for services to children who are or may be dependent children of the juvenile court are referred to here as child welfare departments; social workers in these departments are referred to as child welfare caseworkers.

**Christian G.**

On May 31, 2011, Division 2 of the First District Court of Appeal filed its modified opinion in *Christian G.* The trial court appointed a young boy's uncle and aunt as the temporary and general guardians of his person. The guardianship petitioner's allegations about the child's father, the boy's sole custodial parent, included charges of neglect and provision of an unsuitable living arrangement and unsafe environment (*Christian G. supra*, 195 Cal.App.4th at p. 604.). These allegations amounted to a charge that the father was an unfit parent within the meaning of section 1513(c) because the allegations described a dependent child within the meaning of Welfare and Institutions Code section 300 (*id.* at p. 605).

Despite these facts, the trial court did not refer the case to the county child welfare department for an investigation and report under section 1513(c). The Court of Appeal reversed the trial court's order appointing the child's aunt and uncle as his general guardians and remanded the case for compliance with the referral requirement (*Christian G., supra*, 195 Cal.App.4th at p. 611).

The Court of Appeal also determined that failure of the trial court to refer the matter to the child welfare department was not harmless error; the guardianship investigation was not equivalent to a referral and investigation by the department under section 1513(c) because the referral could have led to the provision of social services for the child and his father not available in a guardianship case, including a possible juvenile court dependency filing with the potential of family reunification services provided through that court if the child were removed from the father's home (*Christian G., supra*, 195 Cal.App.4th at p. 608).

The court also held that failure to make the referral was also prejudicial as a miscarriage of justice under article VI, § 13 of the California Constitution because (1) the standard for appointment of a guardian of the person of a child over the objection of a parent is less rigorous than the standard for a determination that a child should be removed from the parent's home in a dependency proceeding; (2) the parent would have been eligible for reunification services in a juvenile court dependency proceeding; and (3) neither the child nor the parent were represented by counsel in the trial court guardianship proceeding, whereas in a dependency proceeding both would have been entitled to appointed counsel (*Christian G., supra*, 195 Cal.App.4th at pp. 609–611).

In making these determinations, the Court of Appeal concluded that Probate Code section 1513(c)'s reference to parental unfitness is an obsolete reference to a pre-1988 version of Welfare and Institutions Code section 300 that had identified a dependent child as including one whose home is an "unfit place" as a result of the actions or neglect of the child's parents, guardian, or custodian. The court construed section 1513(c) to require a referral to child welfare when the proposed ward is described in section 300 and therefore falls within the dependency jurisdiction of the juvenile court (*Christian G., supra*, 195 Cal.App.4th at pp. 602–603 & fns 15 and 16).

The Court of Appeal was also concerned about section 1513(c)'s identification of the guardianship investigation's finding as the triggering event for the referral to child welfare required by the section. The court concluded that the referral must be a judicial decision, in part because section 1513(c) requires the referral on an allegation that a proposed ward's parent is unfit, whether from the investigator's report or from the pleadings in the case. Evaluation of the legal effect of an allegation is a judicial function, not the responsibility of a guardianship investigator (*Christian G.*, *supra*, 195 Cal.App.4th at p. 604).

### **H. C.**

The court's opinion in *Guardianship of H. C.* was filed on August 9, 2011, followed by a modified opinion on September 1, 2011.<sup>2</sup> This case, like *Christian G.*, came from the First District Court of Appeal, but from Division 3 of that court. Also like *Christian G.*, this case was a guardianship in which the appellant, the ward's mother, claimed that the order appointing guardians for the ward should be reversed because a referral to the child welfare department under section 1513(c) was required and had not been made. She also contended that the order should be reversed because she had a Constitutional right to appointed counsel at public expense in the guardianship proceeding and no counsel for her had been appointed.<sup>3</sup>

The ward was a 16-year-old girl who had been living with her mother in a home owned by her maternal uncle. The ward's adult brother petitioned for and was appointed, along with his wife, temporary guardian and, after a trial, general guardian, of his sister's person. The appointment was based on a guardianship investigator's investigation and report, supported by testimony at trial, which showed the ward's drug experimentation; increased school absence and academic problems; and an unsuitable home life with her mother, who had a history of methamphetamine use. The ward also claimed that her uncle had molested her (*H. C.*, *supra*, 198 Cal.App.4th at pp. 163–168).

Child welfare became involved after the ward and the proposed guardians reported the ward's molestation to the sheriff but before the guardianship case was filed. The child welfare caseworker concluded that placement of the ward with a guardian or in foster care was necessary. Child welfare could not place the ward with her brother under a dependency because of his own prior criminal history, but the caseworker noted that the ward's brother was the only person who had demonstrated any concern for her and placement with him and his wife would be preferable to foster care (*H. C.* *supra*, 198 Cal.App.4th at pp. 164–165).<sup>4</sup>

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<sup>2</sup> The modification was certification for publication of the portion of the opinion discussing section 1513(c).

<sup>3</sup> See Probate Code section 1470(a), which authorizes the court to appoint counsel for a ward or proposed ward in a guardianship case, but does not provide for the appointment of counsel for the ward's parents.

<sup>4</sup> There was also pre-filing contact between one of the guardianship petitioners and a county child welfare department in *Christian G.* The child welfare caseworker apparently recommended a guardianship because the petitioner in that case was the child's uncle. The petitioners and proposed guardians in *Christian G.* also had criminal histories, although the record in the case does not show that the child welfare department knew of this history, advised that either or both petitioners would be ineligible for the child's placement in a dependency case because of that history, or preferred that placement to some other disposition. There is also no indication in the appellate opinion that the trial court's failure to refer the matter to the child welfare department was based on that

The guardianship investigator recommended against appointment of the ward's brother and his wife as guardians because of his criminal history, current probationary status, failure to support one of his own children, and his wife's own pending criminal case. However, the investigator concluded that a guardianship was necessary because of the ward's mother's dangerous lifestyle and failure to protect her daughter from her uncle. The investigator inquired of the child welfare caseworker whether that department would intervene if a guardian was not appointed. The caseworker replied that the department would not intervene unless it received another referral (*H. C.*, *supra*, 198 Cal.App.4th at p. 167).

The Court of Appeal held that the ward's mother did not have a Constitutional right to appointed counsel. Its analysis and discussion of this issue is found at 198 Cal.App.4th, pages 169–174. One of the factors leading to the court's decision was its recognition that a guardianship case, unlike a juvenile dependency proceeding, does not involve state action beyond the judicial function; the state's resources are not pitted against the ward's parent in a guardianship.

The court also concluded that the referral requirement of section 1513(c) was satisfied despite the apparent lack of an express referral to child welfare or a written report to the court from that department. The court held that section 1513(c) was satisfied because the child welfare department had previously conducted an investigation under Welfare and Institutions Code section 328 following contact between the guardianship petitioners, the ward, and the sheriff; and the child welfare caseworker's investigation and recommendations were reported to the guardianship investigator and included in the latter's report to the court. (See *H. C.*, *supra*, 198 Cal.App.4th at p. 174.)

### ***In re Kaylee H.***

The newest case touching on the relationship between a probate guardianship and a juvenile dependency proceeding is *In re Kaylee H.* (April 20, 2012, Fourth Appellate District, Division 1). The case is an appeal from orders of the trial court in a juvenile dependency proceeding concerning a one-year-old girl following the appointment of her paternal great-uncle as temporary guardian in the probate department of the court on a petition filed with the consent and support of the child's parents. The matter was referred to child welfare by the probate department under section 1513(c). In response to the referral, the department declined to file a dependency petition, instead recommending that the guardianship matter proceed and that the child's great-uncle be appointed her general guardian (*id.*, 205 Cal.App.4th at pp. 97–98).

The juvenile court undertook a review of the child welfare department's declination to file a dependency petition. It directed the department to file such a petition for three reasons. First, the juvenile court has the mechanisms to help the parents reunify with their child. Second, if family reunification does not take place, guardianship would not be the preferred permanency plan for a

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department's prior involvement and recommendation to the petitioner. No reason for that failure is identified in the opinion. See *Christian G.*, *supra*, 195 Cal.App.4th at pages 589, 592.

very young child. Third, the child's mother did not have court-appointed counsel in the probate department to respond to the allegations of parental unfitness in the guardianship matter, "as discussed in *Christian G.*" The child welfare department complied with the court's direction. Its petition for dependency alleged the parents' drug history, their voluntary placement of the child in her great-uncle's home soon after birth, his attempt to establish a guardianship, and the department's recommendation in favor of the guardianship and return of the matter to the probate department (*Kaylee H., supra*, 205 Cal.App.4th at pp. 97–98, 105 & fn 11).

At the detention hearing, the child's parents moved to challenge the legal sufficiency of the petition. The child welfare department submitted on the motion. The court denied the parents' motion, noting that the dependency petition alleged drug use by the child's parents and their placement of the child in the care of a person who was seeking guardianship, and that the court had directed the department to file the proceeding. The court concluded that if these allegations were true, they would demonstrate a substantial risk of future harm to the child if she were in her parents' care. The juvenile court terminated the soon-to-expire temporary guardianship and ordered detention of the child with her great-uncle, the former temporary guardian (*Kaylee H., supra*, 205 Cal.App.4th at p. 108).

The trial court eventually sustained the dependency petition, removed the child from parental custody, and placed her with her great-uncle and his wife, with family reunification services. The appeal was pursued by the child's father; neither child welfare nor the child appealed the rulings of the juvenile court. However, as respondents they filed briefs concurring with the father's arguments. The father claimed that the juvenile court's actions directing the child welfare department to file a dependency petition and denying his motion attacking the legal sufficiency of that petition and the court's finding in support of dependency jurisdiction were erroneous because there was no evidence that the child was a dependent child under section 300 (*Kaylee H., supra*, 205 Cal.App.4th at p. 100 & fn 3).

The Court of Appeal reversed the orders of the juvenile court. It ordered the temporary guardianship reinstated and remanded the case to the probate department of the court (*Kaylee H., supra*, 205 Cal.App.4th at pp. 109–110). Its decision was based on its conclusions that there was no evidence that the child was at risk of present harm if placed under the guardianship sought by the child's great-uncle and supported by her parents and that a dependency petition was therefore not necessary to protect her. Such necessity is a requirement. Moreover, a guardianship is a legitimate mechanism for determining child custody; the parents' decision to support that mechanism should have been accepted despite the fact that counsel for them was not provided by the probate department of the court (*id.*, 205 Cal.App.4th at pp. 106–109 & fn 14).

*Kaylee H.* is important here not because of its ultimate holding, but for its discussion of the juvenile court's authority to compel the child welfare department to file a dependency petition despite its decision not to do so in response to a referral from the probate department. The Court of Appeal stated that if the child welfare department has not filed a dependency petition within three weeks of a request to do so under Welfare and Institutions Code section 329, the juvenile

court has authority under section 331 to independently review the department's decision not to file, citing *In re M. C.* (2011) 199 Cal.App.4th 784, at pages 813–815, for that proposition (*Kaylee H.*, *supra*, 205 Cal.App.4th at p. 102).<sup>5</sup>

In *Kaylee H.*, the probate department made the referral to child welfare for an investigation required by Probate Code section 1513(c), which is in turn the investigation required by Welfare and Institutions Code sections 328 and 329. The Court of Appeal treated the referral from the probate department to child welfare as a request for a dependency filing under section 329, which it concluded the juvenile court could independently review under section 331 if the child welfare department declined to file even though the probate department had not asked the juvenile court to do so.<sup>6</sup>

The proposal described below would clearly establish the probate department's authority to request the child welfare department to file a dependency petition for a proposed ward under section 329 and apply to the juvenile court to review the department's decision not to do so under section 331, confirming the authority found to exist by the court in *Kaylee H.*

## **The Proposal**

The proposal would:

- Add a new paragraph (5) to Probate Code section 1513(a), concerning the contents of the guardianship investigator's report authorized by the section. The new paragraph would require the investigator's report to disclose any pre-filing contacts between the guardianship petitioner or proposed guardian and the county child welfare department concerning the proposed ward, including any recommendations made by child welfare to the petitioner or proposed guardian and the guardianship investigator.

This provision, together with a change in Welfare and Institutions section 329, discussed below, would apply the holding of the *H. C.* case statewide: when a child welfare department recommendation concerning the proposed ward is made to a guardianship petitioner or proposed guardian before the case is filed and that recommendation is fully disclosed to the guardianship investigator and, through the investigator's report, to the court, a referral to child welfare under section 1513(c) and a report from child welfare to the probate department may be unnecessary.

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<sup>5</sup> *In re M. C.* held that the juvenile court's authority under section 331 to order a reluctant child welfare department to file a dependency petition is not a violation of the separation of powers doctrine. (See 199 Cal.App.4th at pp. 802–803, 813–814.) This holding was in response to a challenge by the department to the court's power under section 331.

<sup>6</sup> See *Kaylee H.*, *supra*, 205 Cal.App.4th at p. 104 fn 9: "In cases such as this one, where there is no private party seeking review of . . . [child welfare's] decision [not to file a dependency proceeding] under section 329, the probate court is by implication the person who has applied to . . . [child welfare] to commence juvenile court proceedings." Section 331 says that the person who requested the child welfare department to file a dependency petition "pursuant to Section 329" may apply to the juvenile court to review the decision of the department not to file the case.

- Subdivision (c) of section 1513 would be rewritten as follows:
  - A referral to the child welfare department would be required if the investigation or the court determines that the child is described in Welfare and Institutions Code section 300. In all cases, the referral must be made by the court, not by the investigator.

The alternative determination by the court would address the situation where an investigation under section 1513 has been waived. Current section 1513(c) does not provide for the possibility that a guardianship investigation may be waived, although that option is provided in section 1513(a); the entire obligation to make a referral to child welfare is tied to the investigation and thus may not exist if the investigation has been waived. The referral obligation should exist in all cases where the facts support it. In cases where there is a guardianship investigation, the phrase “investigation finds” would be replaced by “investigation determines.” A finding is a judicial act.

Placing the responsibility on the court to make the referral to child welfare under section 1513(c) would cure the uncertainty in the current provision about which government actor—judicial officer or guardianship investigator—is charged with that responsibility, an uncertainty that was described in *Christian G.* as unfortunate.<sup>7</sup> This change would confirm in the statute the conclusion of the Court of Appeal in that case that the referral is properly a judicial act.

- The reference to an unfit parent in current section 1513(c) would be deleted and replaced by “the proposed ward is or may be a child described in Section 300 of the Welfare and Institutions Code.”

This change would modify section 1513(c) to conform to the court’s interpretation of its proper meaning in light of changes in section 300 made after the last revision of section 1513(c) in *Christian G.*, *supra*, 195 Cal.App.4th at page 603 and footnote 15.

- The reference to an allegation as the source of facts supporting a referral to child welfare under section 1513(c) would be deleted.

Current section 1513(c) requires a referral to child welfare if the guardianship investigation described in section 1513 finds that any party *alleges* that the proposed ward’s parent is unfit. The court in *Christian G.* interpreted this language literally: a referral is required based on a party’s allegations of facts in a pleading filed in the case showing that the proposed ward is described in Welfare and Institutions Code section 300.<sup>8</sup> Deletion of the word “alleges” from section 1513(c) would restore the apparent original intended purpose of that section: to require some evidence supporting the referral to be developed in the guardianship investigation before a mandatory duty arises to make the referral.

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<sup>7</sup> See *Christian G.*, *supra*, 195 Cal.App.4th at page 604.

<sup>8</sup> *Christian G.*, *supra*, 195 Cal.App.4th at page 604.



This proposal also includes a new section 1513.5(b), discussed below, which would provide authority for a probate department to order child welfare to conduct an investigation of potential dependency under Welfare and Institutions Code sections 328 and 329, in effect the same as a referral under section 1513(c), based on allegations or other untested sources of information that a proposed ward is or may be a dependent child described in section 300. Thus in any case in which the probate judicial officer is concerned about the proposed ward's situation because of the allegations made by the guardianship petitioner and does not want to wait for confirmation by the guardianship investigator (or if the guardianship investigation has been waived), the court would have clear authority to order a child welfare department dependency investigation.

- Two new paragraphs would be added to section 1513(c). The first paragraph would confirm the holding of *Guardianship of H. C.* that the guardianship court may determine that a referral to child welfare is unnecessary if the guardianship investigator's report shows that the petitioner or proposed guardian requested that department to file a dependency proceeding for the proposed ward, the department considered the request but declined to either file a dependency proceeding or to implement a program of supervision of the child, two of the three options available to child welfare in response to a request to file a dependency under section 329 of that code.<sup>9</sup>

The second new paragraph would authorize the guardianship court to make interim orders, including the appointment and supervision of a temporary guardian of the proposed ward's person, during the time between the referral to child welfare and delivery of the latter's report to the referring court.<sup>10</sup>

The current provision states only that during the time between a referral to the child welfare department and delivery of the department's report "guardianship proceedings shall not be completed." This is an undefined phrase that most likely means determination of the petition for appointment of a general guardian, but could also refer to interim measures to protect the child, such as the appointment of a temporary guardian, before that determination. The phrase could also mean the entire administration of the guardianship after the appointment of a guardian until its termination by operation of law or by court order.

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<sup>9</sup> The third option is to decline to take any action. If the child welfare caseworker chooses that option, he or she must endorse on the application the decision not to take action and the reasons for that decision, and must notify the applicant of the decision. The second option, a program of supervision of the child by child welfare without a juvenile court filing with the consent of the child's parents, is described in Welfare and Institutions Code section 301.

<sup>10</sup> The court's power to retain in place a previously-appointed temporary guardian during the period between a referral under section 1513(c) and receipt of the report from child welfare was impliedly approved by the Court of Appeal in *Christian G.* The court in that case vacated the order appointing the general guardians of the child, revoked their general Letters of Guardianship, and remanded the case to the trial court with directions to refer the case to child welfare before any further disposition of the guardianship petition. However, the court also directed that the order appointing the same persons as temporary guardians was to remain in effect pending further proceedings in the trial court (*Christian G.*, *supra*, 195 Cal.App.4th at pp. 610–611).

- A new Probate Code section 1513.5 would be added.
  - Subdivisions (a) and (b) of the new section are modeled after Family Code section 3027, which authorizes courts responsible for child custody matters under the Family Code to take all reasonable interim steps to protect a child and to request child welfare to conduct a dependency investigation under Welfare and Institutions Code section 328 if allegations of child abuse concerning the child are made in the custody proceeding.

Sections 1513.5(a) and (b) would not be linked to or require allegations of child abuse. Instead, they would be operable if the court becomes aware, through the pleadings or from any other source of information or evidence, that the proposed ward is or may be a dependent child described in Welfare and Institutions Code section 300. These sections are similar to the referral procedure under section 1513(c) but they are not redundant. The referral under section 1513(c) is mandatory and is tied to the guardianship investigator's report. Section 1513.5 would be discretionary with the court and would not be linked to a guardianship investigation and report; the section could be used before an investigation has been completed or if it had been waived.

- Subdivision (c) of the proposed new section would expressly provide authority for a probate department of a court to request the child welfare department to file a dependency proceeding for the proposed ward in a guardianship and to petition the juvenile court to review the department's declination to do so. This express grant of authority would confirm the presumed authority found and approved by the Court of Appeal in *Kaylee H.*
- Welfare and Institutions Code section 329, concerning the application of any person to the child welfare department for a dependency filing for a child, would be amended as follows:
  - The reference to section 330 would be changed to section 301.

Former Welfare and Institutions Code section 330 was renumbered as section 301 in 1991 (Stats. 1991, ch. 1203 (Sen. Bill 125), § 4). See footnote 9 above.

- The requirement of a statement from the child welfare department of its decision (in the form of an endorsement on the application to that department) and the reasons for that decision would be modified to include any recommendation made to the applicant to consider a probate guardianship for the child.

Coupled with the proposed addition of Probate Code section 1513(a)(5) and the amendment of section 1513(c), discussed above, this change would implement the conclusion of the Court of Appeal in *Guardianship of H. C.*, and ensure that recommendations of child welfare workers to

persons seeking possible dependency filings for at-risk children to consider probate guardianships instead become part of the record of any guardianship cases that are later filed. This would result in fewer unnecessary section 1513(c) referrals to child welfare departments and duplicate investigations and reports back from those departments to guardianship courts that merely confirm the advice given to the guardianship petitioners or proposed guardians.

- Written notification to the applicant of the child welfare department's decision and the reasons for it would be required.

Section 329 requires the child welfare department to endorse its decision and the reasons for it on the application and retain the endorsed application for 30 days, and to notify the applicant of that decision. But there is no requirement that the agency deliver a copy of the endorsed application or any other written statement of the decision and the reasons for it to the applicant. This change would require the notification to be in writing.

It is contemplated that the writing would consist of a copy of the endorsed application, particularly if the optional Judicial Council form for the application under section 329 is used. That form, the *Application to Commence Proceedings and Decision of Social Worker* (form JV-210) includes space on the application for a statement of the child welfare department's decision and the reasons for that decision, and fields for the caseworker's name, agency, address, and telephone number, and a place for the caseworker's signature.

This proposal should fully implement and harmonize the recent decisions of the Courts of Appeal discussed above. It should clarify the authority of child welfare caseworkers to refer an applicant for a dependency filing to the alternative of a probate guardianship in an appropriate case and require caseworkers to make these recommendations explicitly and on the record. This change should reduce the number of redundant and unnecessary referrals from probate departments to child welfare departments and duplicative reports from those departments back to referring courts.

The proposal also would empower guardianship courts in appropriate cases to order dependency investigations immediately without linking the requests to the recommendations of guardianship investigators, and to seek juvenile court review of the decisions of child welfare departments to decline to file dependency proceedings. This enhanced authority should provide additional protection to potentially endangered children yet preserve the juvenile courts' exclusive authority to oversee dependency matters.

### **Alternatives Considered**

No alternatives to legislation were considered because nothing else within the power of the Judicial Council could affect the application of the holdings of *Guardianship of Christian G.* and *Guardianship of H. C.* The approach contained in this proposal is intended to harmonize the holdings in the three cases without making policy changes outside the purview of the Judicial Council.

## **Implementation Requirements, Costs, and Operational Impacts**

The sponsoring Judicial Council advisory committees are proposing this legislation because they have concluded that its adoption, over time, would reduce, not increase, costs incurred by courts and child welfare departments because the changes would eliminate or at least reduce unnecessary section 1513(c) referrals and duplicative investigations and reports that mirror child welfare department recommendations to proceed in probate court.

Courts already are developing strategies for addressing the issues raised in *Guardianship of Christian G.* The juvenile court's actions in *In re Kaylee H.* represent one court's attempt to implement such a strategy.<sup>11</sup> Other courts rely, when appropriate, on appointed counsel for proposed wards to apply to the juvenile court for review of a child welfare department's declination to file a dependency petition in response to a section 1513(c) referral. This proposal would augment these and other local efforts by providing clarity on a statewide basis that guardianship courts may request dependency filings and juvenile court review of county child welfare department decisions not to file them in all cases involving proposed wards in guardianship cases. Such clarity should enable probate and juvenile departments of the same court, and child welfare departments that regularly appear in that court, to develop greater understanding and appreciation of each other's concerns and requirements. That greater understanding should reduce the number of disagreements between these important participants and improve the outcomes for all at-risk children in probate and juvenile departments of the courts.

### **Request for Comments**

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on whether the proposal appropriately addresses its stated purpose.

The advisory committees seek comments from *courts* on the following cost and implementation matters:

- Will the proposal provide cost savings? If so, please quantify.
- What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would additional time from legislative enactment of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

## **Attachments**

The text of the proposed legislation is attached at pages 13–15.

<sup>11</sup> See *Kaylee H.*, *supra*, 205 Cal.App.4th at p. 105 & fn 11.

## Legislative Proposal

Section 1513 of the Probate Code would be amended, section 1513.5 of the Probate Code would be added, and section 329 of the Welfare and Institutions Code would be amended, effective January 1, 2014, to read as follows:

1 Sec. 1. Section 1513 of the Probate Code is amended to read as follows:  
2

3 (a) Unless waived by the court, a court investigator, probation officer, or domestic relations  
4 investigator may make an investigation and file with the court a report and  
5 recommendation concerning each proposed guardianship of the person or guardianship of  
6 the estate. Investigations where the proposed guardian is a relative shall be made by a court  
7 investigator. Investigations where the proposed guardian is a nonrelative shall be made by  
8 the county agency designated to investigate potential dependency. The report for the  
9 guardianship of the person shall include, but need not be limited to, an investigation and  
10 discussion of all of the following:

11  
12 (1)-(4) \* \* \*

13  
14 (5) Any contacts between the petitioner or proposed guardian and representatives of the  
15 county agency designated to investigate potential dependency concerning the proposed ward  
16 before commencement of the guardianship proceeding, including the identities, contact  
17 information, and positions held by the representatives, and any recommendations made to the  
18 petitioner or the proposed guardian by the representatives, and any reasons given for those  
19 recommendations. The report shall also include any recommendations made by the  
20 representatives directly to the investigator, and any reasons given for those recommendations.

21  
22 (b) \* \* \*

23  
24 (c) ~~If the investigation or the court determines that any party to the proposed guardianship~~  
25 ~~alleges the minor's parent is unfit the proposed ward is or may be a child described in, as~~  
26 ~~defined by Section 300 of the Welfare and Institutions Code, the court shall refer the case~~  
27 ~~shall be referred to the county agency designated to investigate potential dependency~~  
28 ~~dependencies. Guardianship proceedings shall not be completed until the for an~~  
29 investigation required by Sections 328 and 329 of the Welfare and Institutions Code and a  
30 report of that investigation to the court in which the guardianship proceeding is pending.

31  
32 (1) If the court or county guardianship investigator's report shows that before  
33 commencement of the guardianship proceeding a guardianship petitioner or  
34 proposed guardian requested the county agency designated to investigate potential  
35 dependency to commence a dependency proceeding for the proposed ward and the  
36 agency considered but declined to take action under Section 301 of the Welfare and  
37 Institutions Code or commence a dependency proceeding, and the agency's reasons

1 for that decision have been fully disclosed and discussed in the investigator's report;  
2 the court may determine that a referral to and a report from the county agency is  
3 unnecessary.

4  
5 (2) Except as provided in paragraph (1), upon a referral under this subdivision, no  
6 general guardian of the person of the minor shall be appointed until the investigation  
7 is completed and a report from the county agency is provided to the court. During  
8 the period between the referral to the county agency and the court's receipt of the  
9 agency's report, the court may make interim orders, including the appointment and  
10 supervision of temporary guardians of the person.

11  
12 (d)-(h) \* \* \*

13  
14 Sec. 2. Section 1513.5 of the Probate Code is added, to read as follows:

15  
16 (a) If the court becomes aware, from allegations in a pleading filed in the case, a  
17 guardianship investigation under Section 1513, or any other source of information or evidence,  
18 that the ward or proposed ward is or may be a child described in Section 300 of the Welfare and  
19 Institutions Code as the result of the conduct or failure of the ward's parent or guardian, and the  
20 court has concerns regarding the child's welfare, the court may take the action or actions  
21 described in either or both subdivisions (b) and (c), and may also take any reasonable, temporary  
22 steps as the court, in its discretion, deems appropriate under the circumstances to protect the  
23 child until the actions taken are completed. Nothing in this section shall affect the applicability of  
24 Section 16504 or 16506 of the Welfare and Institutions Code.

25  
26 (b) The court may order the county agency designated to investigate potential dependency to  
27 conduct an investigation pursuant to Sections 328 and 329 of the Welfare and Institutions Code  
28 and report its findings to the requesting court.

29  
30 (c) The court may apply to the county agency designated to investigate potential dependency  
31 to file a juvenile dependency proceeding for the child, within the meaning of Section 329 of the  
32 Welfare and Institutions Code. If the county agency fails to file a juvenile dependency pursuant  
33 to the court's application within the time provided in Section 329, the court may petition the  
34 juvenile court to review the decision of the agency pursuant to Section 331 of the Welfare and  
35 Institutions Code.

36

1 Sec. 3. Section 329 of the Welfare and Institutions Code is amended to read as follows:

2

3 329.

4

5 Whenever any person applies to the social worker to commence proceedings in the juvenile  
6 court, the application shall be in the form of an affidavit alleging that there was or is within the  
7 county, or residing therein, a child within the provisions of Section 300, and setting forth facts in  
8 support thereof. The social worker shall immediately investigate as he or she deems necessary to  
9 determine whether proceedings in the juvenile court should be commenced. If the social worker  
10 does not take action under Section ~~330~~ 301 and does not file a petition in the juvenile court  
11 within three weeks after the application, he or she shall endorse upon the affidavit of the  
12 applicant his or her decision not to proceed further, including any recommendation made to the  
13 applicant to consider commencing a probate guardianship proceeding for the child, and his or her  
14 reasons therefore and shall immediately notify the applicant in writing of the action taken or the  
15 decision rendered by him or her under this section, and the reasons for that action or decision.  
16 The social worker shall retain the affidavit and his or her endorsement thereon for a period of 30  
17 days after notifying the applicant.

18

19