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AB 260: New Opportunities for Juvenile and Probate Courts to Work Together

ALLIANCE
for **CHILDREN'S**
RIGHTS

Agenda

Overview of court systems that affect the care and custody of children in California

Challenges that arise in navigating different court systems and agencies

AB 260: Role & responsibility of probate investigators

Case studies and practice tips for probate investigators

Presenters

- Juan Guzman, Children's Court Advocacy Project Director, Alliance for Children's Rights
- Sydney Steinkohl, Guardianship Program Director, Alliance for Children's Rights



COURT SYSTEMS

*Understanding the courts
supporting children at risk of
abuse or neglect*

CHILDREN'S COURTS



Juvenile Dependency



Probate



Family

Juvenile Dependency Court:

- Juvenile Dependency Court is the branch of the Superior Court which hears cases involving neglected and/or abused children.

Probate Court:

- Probate Court establishes probate guardianships set up because a child is living with an adult who is not the child's parent, and the adult needs a court order to make decisions on behalf of the child. Generally, probate guardianships are for children under 18.

Family Court:

- Family Court assists families with the litigation of domestic disputes (including divorce and separation), including the health, safety, and welfare of children.



JUVENILE DEPENDENCY COURT

Children

- Focus on family reunification if possible, including visitation
- Appointed counsel
- Assigned caseworker

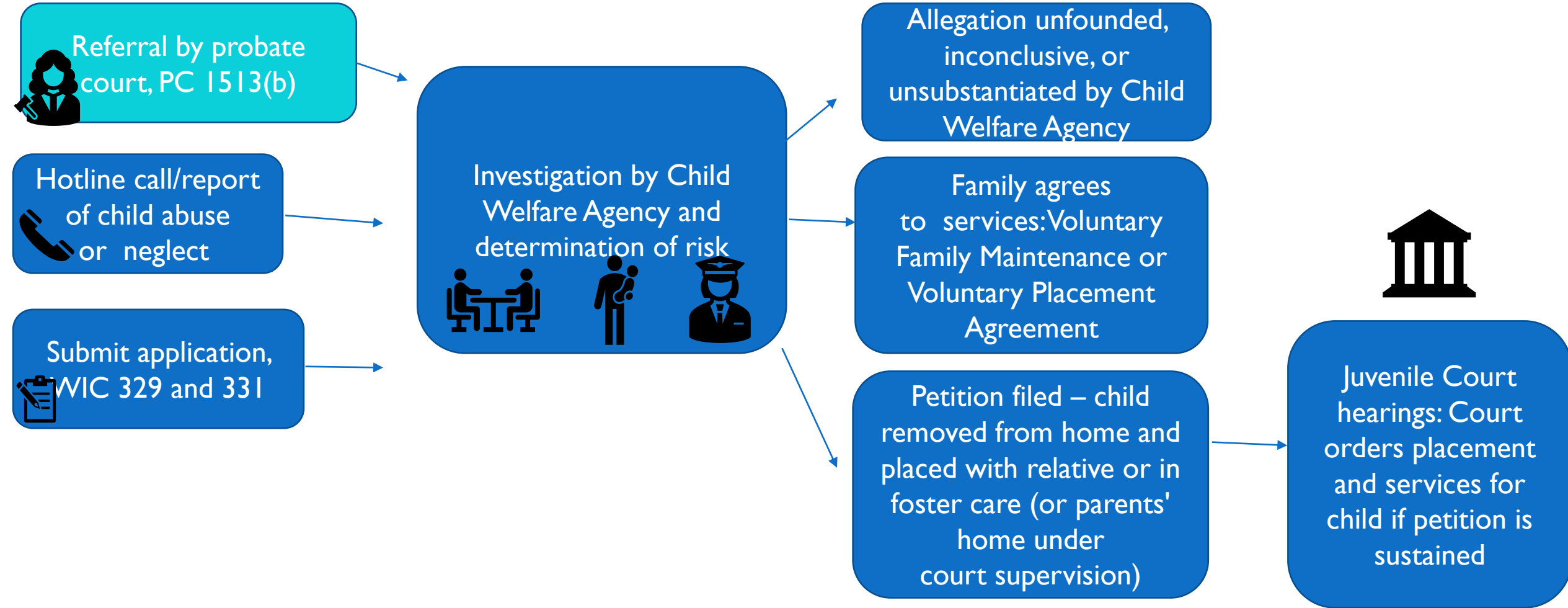
Parents

- Focus on family reunification if possible, including visitation
- Appointed counsel
- Assigned caseworker
- Services may be provided to help remedy the child safety issues that exist in the home
- May retain some decision-making rights subject to court order

Caregivers

- No appointed counsel
- Eligible to receive:
 - Emergency funding at time of placement, and foster care benefits once approved
 - Specialized care support if needed
 - Emergency Childcare Bridge
 - Training
 - Funding to transport child to their school

Entering the Child Welfare System





PROBATE COURT

Children

- No due process rights: children are usually not parties in probate cases
- No automatic right to an attorney
- No right to be heard by the court
- No right to reunification services

Parents

- Receive Notice of Petition for Guardianship (parents must be told that someone is attempting to get guardianship)
- Right to be represented by an attorney but not automatically appointed

Caregivers

- Generally the petitioner in a probate case
- Relative caregivers can receive CalWORKs
- Non-relative caregivers granted guardianship can receive AFDC-FC benefits
- Kinship navigation services may be available depending on county



FAMILY COURT

Children

- No due process rights: children are not parties in family court matters
- No automatic right to an attorney
- No right to be heard by the court
- No right to reunification services

Parents

- Judicial review and orders on their domestic disputes, including child custody orders
- Opportunity to be represented by an attorney, but one is not automatically appointed
- Court mandated family counseling
- Opportunity to advocate for their child's best interests

Caregivers

- Non-parent and relative caregivers may be granted custodial rights (physical custody)
- Services and financial assistance are limited, but can petition for child support or qualify for CalWORKs



Juvenile Court Processes



INITIATING THE FORMAL COURT PROCESS: THE PETITION

WIC 300(a)

- Non-accidental physical harm

WIC 300(b)

- Negligence
- Child has suffered or substantial risk of suffering serious physical harm

WIC 300(c)

- Child has suffered or substantial risk of suffering emotional damage

WIC 300(d)

- Child has been sexually abused or substantial risk child will be sexually abused

WIC 300(e)

- Child 5 and under suffered serious physical abuse

WIC 300(f)

- Parent caused death of another child through abuse or neglect

WIC 300(g)

- Abandonment

WIC 300(h)

- Child surrendered

WIC 300(i)

- Child subjected to act(s) of cruelty

WIC 300(j)

- Child's sibling has been abused or neglected

Navigating the Courts and Challenges for Families



LACK OF INFORMATION

Lack of information provided to families about implications of different court systems or the benefits and services available to support children

- 42% of families stated they received “no information” about different types of legal arrangements
- 40% of families had less than 24 hours notice before the children were placed in their home

- Many families were **unable to identify** whether the child in their home was there as a result of a formal foster care placement or an informal arrangement
 - 24% of caregivers stated they were an informal kinship arrangement but also that they received foster care funding
 - 24% of caregivers stated they had guardianship through Probate Court but received foster care funding
 - 18% of those that indicated they had guardianship through dependency court also said there was no child welfare involvement

Hidden Foster Care

Diversion from
dependency

“Removal”
from parents

Advised to seek
probate legal
guardianship

Josh Gupta-Kagan, America's Hidden Foster Care System, 72 Stan. L. Rev. (April 2020)



Diversion From Dependency

Maternal Grandmother Clarissa receives a call from a Child Protective Services (CPS) social worker notifying her that her adult daughter Mary, gave birth to baby Ana, who was prenatally drug exposed to methamphetamine. Due to Mary and Ana testing positive for methamphetamine, the CPS social worker reports that they will not release the baby to Mary, and since the father's identity is unknown, she will be placed in foster care unless a relative assumes care. When baby Ana was ready for discharge, the CPS social worker met Clarissa at the hospital. Mary begged not to be separated from Ana and said she is willing to enroll in any services, but the CPS social worker said no and allowed Clarissa to take Ana home. A week later, the CPS social worker stopped by Clarissa's home to check on Ana.

Clarissa lives alone in a 2-bedroom apartment and Ana sleeps in her own bedroom. Clarissa has never been arrested, charged, or convicted of any crimes and has never had any prior involvement with CPS. The CPS social worker says the home is fine, but to close their investigation, Clarissa needs to obtain probate guardianship as quickly as possible. Afraid Ana will be removed from her home, Clarissa files a request for temporary and general probate legal guardianship.

FAMILIES STARTING AT PROBATE COURT FIND IT DIFFICULT TO REVERSE COURSE



Probate court is **not** required to refer cases involving child abuse or neglect to child welfare for investigation. (statutes changed after *In re Christian G.* which held that “[t]he Probate Code is intended to work hand in hand with the dependency laws as a cohesive statutory structure that aims to subject all cases alleging parental unfitness to the rigors of a dependency investigation.”)



Even if the probate court refers to child welfare for investigation, there has been no requirement or clear process for the juvenile court to review the decision of the social worker as to whether to file a petition in juvenile court.



If the probate court takes action to protect the child (i.e. orders a temporary guardianship) and then refers the case to child welfare, the juvenile court was limited in its ability to order a petition to be filed due to Court of Appeal decision *In re Kaylee H.*

CONSTITUTIONAL RIGHT TO FAMILY INTEGRITY & THE RIGHT TO COUNSEL

No "State shall deprive any person of life, liberty or property, without due process of law." U.S. Constitution, Amendment XIV, Section I.

Due Process Clause of the Fourteenth Amendment protects parents' rights to the "care, custody and control of their children." *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

If a governmental child welfare agency seeks to place the child in state custody through the dependency court system, the parent is entitled to procedural protections including the right to an attorney. (Welf. & Inst. Code, § 317, subd. (c).)

	Probate Court	Dependency Court
Funding for Caregiver?	Limited funding available - for most families, only CalWORKs	Full foster care funding, emergency childcare bridge funding and training, access to specialized care, clothing allowance, infant supplements, etc.
Duration of services?	None	Length of reunification services determined by the court; can include up to 15 months of post-reunification services
Permanency funding?	Not eligible to receive Kin-GAP or reunification funding	AAP, Kin-GAP, or continued foster care funding for kin families if not reunified
Supports for TAY?	Not eligible to receive extended foster care, independent living services, or Education or Training vouchers	Eligible to receive Extended Foster Care, independent living skill services, or Education and Training vouchers depending on age in care
Education rights?	No funding or education rights	Right to attend school of origin, including funding for transportation

COMPARING FUNDING AND SUPPORTS

AB 260

(Chapter 578,
Statutes of 2021)

Chaptered in 2021 and went into
effect January 1, 2022.



Amends several sections of code:

Government
Code 68511.1

Probate Code
1511 and 1513

Welfare and
Institutions Code
329 and 331

Purpose

“It is the intent of the legislature that the guardianship laws in this code and the juvenile court laws in the [WIC] operate together as a cohesive statutory structure that ensures all cases referred by the probate court for child welfare investigation are subject to review by the juvenile court without limiting the probate court's ability to take immediate action to protect the child while the child welfare investigation and juvenile court review are pending. The purpose of this statutory structure is to ensure the protection of every child's health, safety and welfare and to provide due process to every child, parent and family.” Probate Code 1513(I)

Changes Under Assembly Bill 260

1. Requires the **development of a Judicial Council form explaining the rights, duties, and obligations of the person serving as the guardian of a minor, and information about the services and supports available to a probate guardian and how they differ from the services and supports available to caregivers in the child welfare system, for use by the superior court and petitioners.**
2. **If the child in a probate guardianship case is or may be described by WIC 300, the probate court may refer the matter to the local child welfare agency to investigate.** The agency shall report its findings within three weeks. If the child welfare agency has not filed a petition within three weeks, the probate court or minor's counsel request the juvenile dependency court's review of the agency's decision.
3. **The probate court may take reasonable steps to protect the child's safety (e.g. temporary guardianship) pending a referral to the child welfare agency or dependency court but may not otherwise hear or determine the guardianship petition.**

Gov. Code 68511.1: Updating Forms for Prospective Guardians and Caregivers

“The Judicial Council shall develop a form explaining the nature of a guardianship of a minor, the ***rights, duties, and obligations*** of a person serving as guardian of a minor, and information about the ***services and supports available to a probate guardian and how they differ from the services and supports available to a caregiver in the child welfare system or a guardian appointed by the juvenile court.*** The form shall be prepared in English and Spanish in language ***easily understood by a lay person*** not trained in law and shall be distributed to the superior courts in the state for use in guardianships established pursuant to Section 1514 of the Probate Code and Sections 360 and 366.26 of the Welfare and Institutions Code and for any other purposes as may be directed or permitted by the Judicial Council.”

Form GC-207-INFO/ JV-352-INFO

- Compares different voluntary and court-ordered caregiving arrangements across various topics: rights and duties, available financial supports and services, and appointment/approval processes.
- Designed to inform both prospective guardians and parents and must be included in the notice given pursuant to Probate Code 1511(a).
- Cross-references three additional forms: GC-205-INFO, GC 206-INFO, and JV-350-INFO
- GC-208-INFO: <https://selfhelp.courts.ca.gov/jcc-form/GC-207-INFO>



Signature

Who receives the form GC-207-INFO/JV-352-INFO?

- Probate Code section 1511(a) requires notice of the hearing on the petition for guardianship to be sent with a copy of the petition and a copy of form GC-207-INFO/JV-352-INFO *Comparison of Guardians With Other Nonparent Caregivers*.
- Probate Code section 1511(b)(4) requires any person nominated as a guardian for the proposed ward under Probate Code section 1500 or 1501 to be given notice of a hearing on a petition for guardianship.



Changes to Guardianship Proceedings: Referral to Child Welfare Agency

- "If the proposed ward is or may be described by Section 300 of the Welfare and Institutions Code, the court may refer the matter in writing, to the local child welfare agency to initiate an investigation pursuant to Section 329 of the Welfare and Institutions Code." Probate Code 1513(b)
 - The referral must include a summary of the reasons and may include the guardianship petition and other material information.
 - The child welfare agency must follow the timelines in WIC 329.
 - The court shall not make orders on the petition to appoint a guardian until the CW investigation has been completed and submitted to the probate court.
- "...pending completion of the child welfare investigation, the probate court may take any reasonable steps it deems appropriate to protect the child's safety, including but not limited to appointing a temporary guardian or issuing a temporary restraining order." Probate Code 1513(b)(3)

Investigations Pursuant to Probate Code: 1513(a) v. 1513(b) - Citing the Correct Statute

- **“Unless waived by the court for good cause, a court investigator, probation officer, or domestic relations investigator shall make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate. . . Investigations where the proposed guardian is a nonrelative shall be made by the county agency designated to investigate potential dependency.” Probate Code 1513(a)**
- **“If the proposed ward is or may be described by Section 300 of the Welfare and Institutions Code, the court may refer the matter in writing, to the local child welfare agency to initiate an investigation pursuant to Section 329 of the Welfare and Institutions Code.” Probate Code 1513(b)**

*Does the Probate Court Need to
Make any Findings of Fact to
Request a Child Abuse Investigation?*



Yes or no?

Does the Probate Court Need to Make any Findings of Fact to Request a Child Abuse Investigation?

- No. Probate Code 1513(b) does not require the court make any findings of fact before requesting that the child welfare agency investigate allegations of abuse or neglect.
- The child welfare agency has a duty to investigate all reports of child abuse or neglect.
- The child welfare agency may file a petition to commence dependency court proceedings if they believe they have prima facie evidence to support a finding under any subsection of WIC 300.

WIC 329: Commencement of Proceedings

- Available for both individual applicants and the probate court.
- Upon receiving a written affidavit, social worker must immediately investigate whether proceedings in juvenile court should be commenced. The timeline for the social worker to investigate and notify the applicant of the department's determination is **three weeks** following receipt of the referral.
- Under WIC 329(b)(2), if the probate court made the application, the social worker must report the findings and conclusions of the investigation, along with any decision made and accompanying reasons, to the probate court.

Form JV-210: Application to Commence Juvenile Court Proceedings



Revised for a probate court's use: <https://selfhelp.courts.ca.gov/jcc-form/JV-210>



Last section is left blank for social worker to respond to the application following an investigation.

When the probate court makes a referral under PC 1513(b), can it be via a minute order instead of the JV-210?

The JV-210 is approved for optional use, so a probate court can use its own local form to make the referral. If the court uses a local form to make the referral, Probate Code section 1513(b) requires the referral to include a summary of the reasons for the referral. The court may include a copy of the petition for probate court guardianship, the investigator's report filed pursuant to Probate Code section 1513(a), and any other material information.

Is the Form JV-210 confidential?

- Form JV-210 allows probate courts to attach reports that are required to be filed under Probate Code section 1513. Probate Code section 1513(d) makes all reports authorized by section 1513 confidential. These reports shall only be made available to persons who have been served in the proceedings or their attorneys. The court clerk shall make provisions to limit access to the reports exclusively to persons entitled to receipt.
- **The fact that the reports themselves are confidential is important** because form JV-210 is approved for optional use, so courts can use their own local forms to refer a prospective ward to a child welfare agency for investigation and attach the confidential reports authorized by Probate Code section 1513.

Changes to Guardianship Proceedings— Referral to Juvenile Court

- If the child welfare agency has not, within 3 weeks of the referral, notified the probate court that it has commenced juvenile court proceedings, the probate court, or counsel appointed pursuant to Section 1470 to represent the minor may apply to the juvenile court, pursuant to WIC 331 for an order directing the agency to commence juvenile dependency proceedings. Probate Code 1513(b)(4)
 - If the juvenile court commences dependency proceedings, the guardianship proceedings are stayed pursuant to WIC 304.
 - If the juvenile court does not commence dependency proceedings, the probate court retains jurisdiction to hear and determine the guardianship petition.

WIC 331: Commencement of Proceedings

Following an application under WIC 329, if the social worker has not filed a juvenile dependency petition within three weeks, the applicant may, within one month after making the application, apply to the juvenile court to review the social worker's decision not to file a petition.



The juvenile court may:

Affirm the decision of the social worker, or

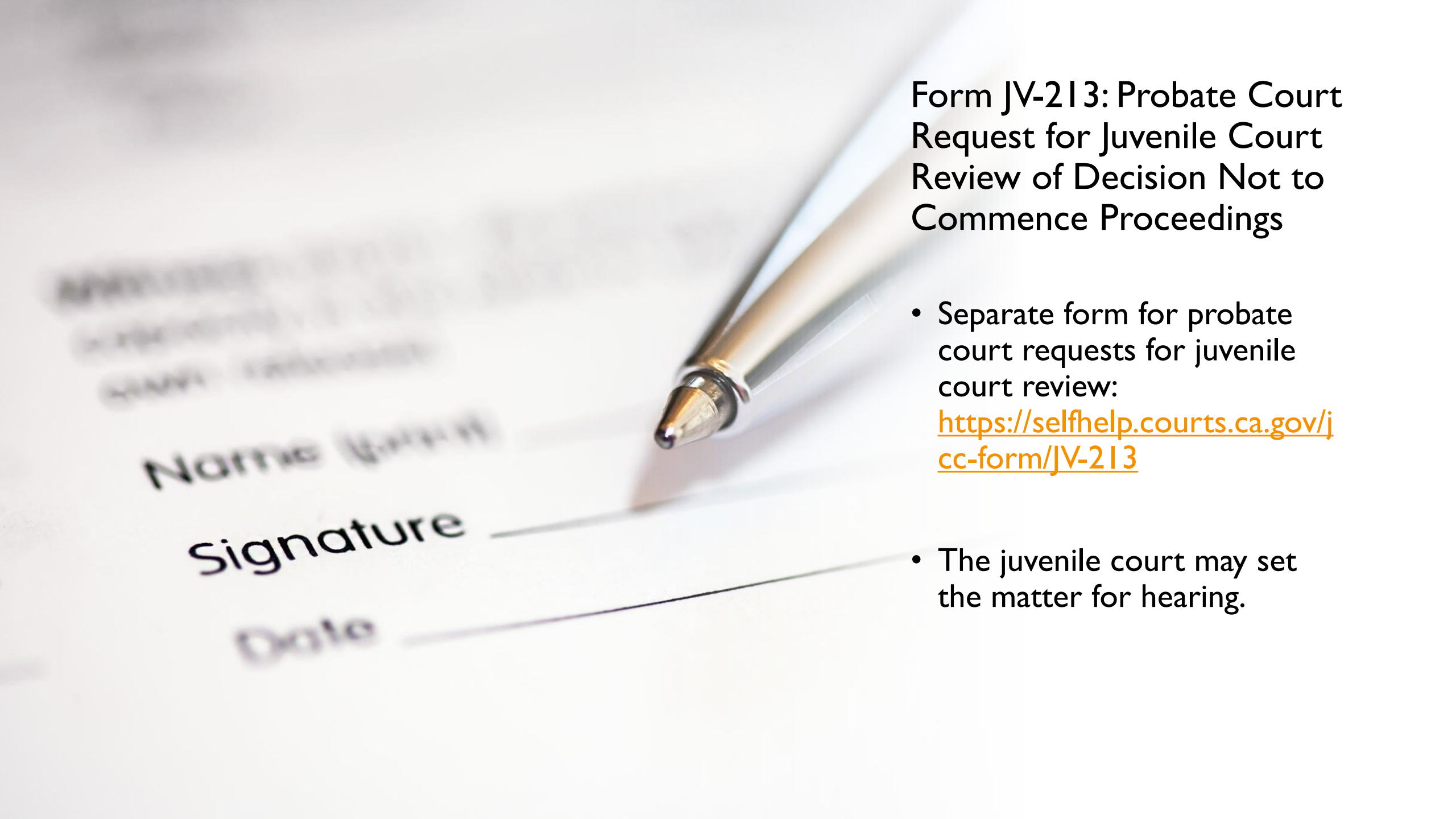
Make a finding that the child is, prima facie, described by Section 300, and order the social worker to commence juvenile court proceedings.



Within five days of completing its review, the juvenile court shall transmit its decision in writing to the probate court.

Best Practice: How to Request Timely Judicial Review of Child Welfare Agency Decision Not to Commence Proceedings

- Set an Order to Show Cause hearing no later than 30 days from the date Probate Code 1513(b) referral to Child Welfare Agency was made.
- Appoint legal counsel for the child pursuant to Probate Code 1470 and order they assess and use their discretion to file an application for juvenile court review of Child Welfare Agency's decision not to commence proceedings.
- **Minute Order should specifically require the completion and filing of form JV-213 by a finite date.**



Form JV-213: Probate Court Request for Juvenile Court Review of Decision Not to Commence Proceedings

- Separate form for probate court requests for juvenile court review:
<https://selfhelp.courts.ca.gov/jcc-form/JV-213>
- The juvenile court may set the matter for hearing.

What is the process if the juvenile court orders the social worker to initiate juvenile court proceedings?

- If a juvenile court is asked to review a social worker's decision not to file a petition, Welfare and Institutions Code section 331 states that the court may order the social worker to commence juvenile court proceedings. The social worker commences proceedings by filing a petition pursuant to Welfare and Institutions Code sections 300 and 332. The court will set a hearing (initial hearing) on the petition.

Temporary Guardianship **Not** a Bar to Commencing Dependency

- To address the opinion in *Kaylee H.*, WIC 331(b)(1) clarifies that the juvenile dependency court can order the social worker to file a dependency petition even if the probate court previously ordered a temporary guardianship to maintain the child's safety pending further proceedings.

Utilizing Authority: Probate Code 1513(b) - *Sample Language To Include In Reports*

It is the recommendation that the Court refer the matter to the {County Child Welfare Agency} pursuant to Probate Code 1513(b) based on allegations of parental abuse/neglect.

It is further recommended that the Court order the appointment of court appointed counsel to follow up on Probate Code 1513 (b) referral; and that the Court order a temporary guardianship pending the outcome of the Probate Code 1513 (b) referral.



Diversion From Dependency

Maternal Grandmother Clarissa receives a call from a Child Protective Services (CPS) social worker notifying her that her adult daughter Mary, gave birth to baby Ana, who was prenatally drug exposed to methamphetamine. Due to Mary and Ana testing positive for methamphetamine, the CPS social worker reports that they will not release the baby to Mary, and since the father's identity is unknown, she will be placed in foster care unless a relative assumes care. When baby Ana was ready for discharge, the CPS social worker met Clarissa at the hospital. Mary begged not to be separated from Ana and said she is willing to enroll in any services, but the CPS social worker said no and allowed Clarissa to take Ana home. A week later, the CPS social worker stopped by Clarissa's home to check on Ana.

Clarissa lives alone in a 2-bedroom apartment and Ana sleeps in her own bedroom. Clarissa has never been arrested, charged, or convicted of any crimes and has never had any prior involvement with CPS. The CPS social worker says the home is fine, but to close their investigation, Clarissa needs to obtain probate guardianship as quickly as possible. Afraid Ana will be removed from her home, Clarissa files a request for temporary and general probate legal guardianship.

Diversions From Dependency

- Angela, mother to baby Michael, has left Michael in the care of his paternal grandmother Phyllis. After a few weeks of no contact from Angela, Phyllis called CPS to find out what she should do. The social worker at DCFS instructed Phyllis to file for Probate legal guardianship of baby Michael. Michael has special needs and was diagnosed with Down syndrome at birth. Angela showed up one night and tried to take Michael, but Phyllis refused and told her to call the social worker. The worker advised Angela that CPS would file a petition against her if she tried to take Michael.
- After Phyllis was appointed the legal guardian for Jim and Dwight and the dependency case closed, Phyllis' sister, Pam, the children's paternal great aunt, moved in with Phyllis after suffering a stroke. Pam has a past conviction for welfare fraud from 1992. Though Jim and Dwight now have a permanent plan, through which Phyllis will receive ongoing supports and services via dependency court, Phyllis has been asked by CPS to seek a permanent plan for Michael through probate court and warns that if she doesn't move quickly, Michael will be placed in foster care with a stranger.
- Phyllis has now filed for temporary and permanent guardianship of Michael. At the temporary hearing, Angela appeared and objected to the guardianship. Phyllis is appointed as the temporary guardian of Michael and minor's counsel is appointed for baby Michael.
- Eventually, the matter is set for an evidentiary hearing. Angela asks minor's counsel if there are any attorneys appointed for parents in probate guardianship proceedings.

Resources

- CDSS All County Letter 22-47: <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2022/22-47.pdf?ver=2022-08-19-102526-420>
- Judicial Council GC-207-INFO/JV-352-INFO: [gc207info.pdf \(SECURED\) \(ca.gov\)](#)
- Alliance for Children's Rights Hidden Foster Care Report: <https://allianceforchildrensrights.org/resources/hiddenfostercare/>
- Changes to Juvenile and Probate Courts Under AB 260 <https://allianceforchildrensrights.org/resources/changes-to-juvenile-and-probate-courts-under-ab-260/>

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