

Senate Bill No. 1612

Passed the Senate July 2, 2008

Secretary of the Senate

Passed the Assembly June 23, 2008

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 372 of the Code of Civil Procedure, to amend Section 7635 of the Family Code, and to add Section 326.7 to the Welfare and Institutions Code, relating to guardians ad litem.

LEGISLATIVE COUNSEL'S DIGEST

SB 1612, Kuehl. Guardian ad litem.

Existing law permits a court in which an action or proceeding is prosecuted to appoint a guardian ad litem to represent a minor, incompetent person, or person for whom a conservator has been appointed, even if the person may have a guardian or conservator of the estate and may have appeared by means of the guardian or conservator of the estate. Existing law permits a minor 12 years of age or older to appear in court without a guardian, counsel or guardian ad litem for specified purposes. Existing law establishes a procedure for the determination of a father and child relationship and permits a natural mother to be made a party and given notice of the action.

This bill would permit a minor child who is the parent of a child who is the subject of certain proceedings, including those involving child dependency, parentage, and guardianship, to appear in court without a guardian ad litem. The bill would require a court to appoint a guardian ad litem in these circumstances if the court finds that the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case.

The people of the State of California do enact as follows:

SECTION 1. Section 372 of the Code of Civil Procedure is amended to read:

372. (a) When a minor, an incompetent person, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. A guardian ad litem may be appointed in any case when it is deemed

by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to appoint a guardian ad litem to represent the minor, incompetent person, or person for whom a conservator has been appointed, notwithstanding that the person may have a guardian or conservator of the estate and may have appeared by the guardian or conservator of the estate. The guardian or conservator of the estate or guardian ad litem so appearing for any minor, incompetent person, or person for whom a conservator has been appointed shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to that compromise. Any money or other property to be paid or delivered pursuant to the order or judgment for the benefit of a minor, incompetent person, or person for whom a conservator has been appointed shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code.

Where reference is made in this section to “incompetent person,” such reference shall be deemed to include “a person for whom a conservator may be appointed.”

Nothing in this section, or in any other provision of this code, the Civil Code, the Family Code, or the Probate Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of his or her constitutional rights in any proceedings under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(b) (1) Notwithstanding subdivision (a), a minor 12 years of age or older may appear in court without a guardian, counsel, or guardian ad litem, for the purpose of requesting or opposing a request for any of the following:

(A) An injunction or temporary restraining order or both to prohibit harassment pursuant to Section 527.6.

(B) An injunction or temporary restraining order or both against violence or a credible threat of violence in the workplace pursuant to Section 527.8.

(C) A protective order pursuant to Division 10 (commencing with Section 6200) of the Family Code.

(D) A protective order pursuant to Sections 7710 and 7720 of the Family Code.

The court may, either upon motion or in its own discretion, and after considering reasonable objections by the minor to the appointment of specific individuals, appoint a guardian ad litem to assist the minor in obtaining or opposing the order, provided that the appointment of the guardian ad litem does not delay the issuance or denial of the order being sought. In making the determination concerning the appointment of a particular guardian ad litem, the court shall consider whether the minor and the guardian have divergent interests.

(2) For purposes of this subdivision only, upon the issuance of an order pursuant to paragraph (1), if the minor initially appeared in court seeking an order without a guardian or guardian ad litem, and if the minor is residing with a parent or guardian, the court shall send a copy of the order to at least one parent or guardian designated by the minor, unless, in the discretion of the court, notification of a parent or guardian would be contrary to the best interest of the minor. The court is not required to send the order to more than one parent or guardian.

(3) The Judicial Council shall adopt forms by July 1, 1999, to facilitate the appointment of a guardian ad litem pursuant to this subdivision.

(c) (1) Notwithstanding subdivision (a), a minor may appear in court without a guardian ad litem in the following proceedings if the minor is a parent of the child who is the subject of the proceedings:

(A) Family court proceedings pursuant to Part 3 (commencing with Section 7600) of Division 12 of the Family Code.

(B) Dependency proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(C) Guardianship proceedings for a minor child pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code.

(D) Any other proceedings concerning child custody, visitation, or support.

(2) If the court finds that the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case, the court shall, upon its own motion or upon a

motion by the minor parent or the minor parent's counsel, appoint a guardian ad litem.

SEC. 2. Section 7635 of the Family Code is amended to read:

7635. (a) The child may, if under the age of 12 years, and shall, if 12 years of age or older, be made a party to the action. If the child is a minor and a party to the action, the child shall be represented by a guardian ad litem appointed by the court. The guardian ad litem need not be represented by counsel if the guardian ad litem is a relative of the child.

(b) The natural mother, each man presumed to be the father under Section 7611, and each man alleged to be the natural father, may be made parties and shall be given notice of the action in the manner prescribed in Section 7666 and an opportunity to be heard. Appointment of a guardian ad litem shall not be required for a minor who is a parent of the child who is the subject of the petition to establish parental relationship, unless the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case.

(c) The court may align the parties.

(d) In any initial or subsequent proceeding under this chapter where custody of, or visitation with, a minor child is in issue, the court may, if it determines it would be in the best interest of the minor child, appoint private counsel to represent the interests of the minor child pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8.

SEC. 3. Section 326.7 is added to the Welfare and Institutions Code, to read:

326.7. Appointment of a guardian ad litem shall not be required for a minor who is a parent of the child who is the subject of the dependency petition, unless the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case.

Approved _____, 2008

Governor