

AMENDED IN ASSEMBLY APRIL 23, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 900

Introduced by Assembly Member Levine
(Coauthor: Assembly Member Alejo)
(Coauthor: Senator Hall)

February 26, 2015

An act to amend ~~Section 1600~~ *Sections 1490, 1600, and 1601* of, and to add Section 1510.1 to, the Probate Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 900, as amended, Levine. Juveniles: special immigrant juvenile status.

Existing federal law, the Immigration and Nationality Act, establishes a procedure for classification of certain aliens as special immigrants who have been declared dependent on a juvenile court, and authorizes those aliens to apply for an adjustment of status to that of a lawful permanent resident within the United States. Under federal regulations, an alien is eligible for special immigrant juvenile status if he or she is under 21 years of age. Existing state law provides that the juvenile, probate, and family divisions of the superior court have jurisdiction to make judicial determinations regarding the custody and care of juveniles within the meaning of the federal Immigration and Nationality Act. Existing law also requires the court, upon request, to make the necessary findings regarding special immigrant juvenile status if there is evidence to support those findings, as specified.

Existing law also establishes the jurisdiction of the probate court. Existing law regulates the establishment and termination of guardianships in probate court, and specifies that a guardian has the care, custody, and control of a ward.

Existing law provides that a relative or other person on behalf of a minor, or a minor if he or she is 12 years of age or older, may file a petition for the appointment of a guardian of the person or estate of the minor. Existing law also provides that a guardianship of the person or estate terminates when the ward attains majority or dies, or is adopted or emancipated, as specified.

This bill would authorize a court to appoint a guardian of the person of an unmarried individual who is ~~older than 18 years of age and younger than 18 years of age or older, but who has not yet attained 21~~ years of age in connection with a petition to make the necessary findings regarding special immigrant juvenile status, as specified, if the proposed ward consents. This bill would also authorize a court to ~~continue extend~~ a guardianship of the person of a ward beyond 18 years of age, as specified, if the ward *so requests or consents*. ~~This~~ *The* bill would also provide that a guardianship of the person terminates after the ward attains majority unless the ward consents ~~to the continuation of to, or requests the extension of,~~ the guardianship of the person until he or she is 21 years of age, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. (a) ~~The Legislature finds and declares all of the~~
- 2 ~~following:~~
- 3 ~~(1) California law recognizes that superior courts have~~
- 4 ~~jurisdiction to make judicial determinations regarding the custody~~
- 5 ~~and care of children within the meaning of the federal Immigration~~
- 6 ~~and Nationality Act, including the juvenile, probate, and family~~
- 7 ~~court divisions of the superior court. These courts are empowered~~
- 8 ~~to make the findings necessary to enable a child to petition the~~
- 9 ~~United States Citizenship and Immigration Services for~~
- 10 ~~classification as a special immigrant juvenile under federal law.~~
- 11 ~~(2) The findings necessary to enable a child to petition for~~
- 12 ~~classification as a special immigrant juvenile include, among other~~
- 13 ~~things, a finding that reunification is not viable with one or both~~

1 parents due to abuse, neglect, abandonment, or a similar basis, and
2 that it is not in the child's best interest to be returned to his or her
3 country of origin.

4 ~~(3) Despite recent changes to law that eliminate ambiguity
5 regarding the jurisdiction of superior courts to make the findings
6 necessary to petition for special immigrant juvenile status,
7 misalignment between state and federal law continues to exist.~~

8 ~~(4) Federal law allows a person under 21 years of age, who
9 otherwise meets the requirements for special immigrant juvenile
10 status, to file for relief as a special immigrant juvenile. In
11 California, however, individuals who are older than 18 years of
12 age and younger than 21 years of age have largely been unable to
13 obtain the findings from the superior court necessary to seek special
14 immigrant juvenile status and the relief that it was intended to
15 afford them, solely because probate courts cannot take jurisdiction
16 of individuals 18 years of age or older by establishing a
17 guardianship of the person.~~

18 ~~(5) Given the recent influx of unaccompanied immigrant
19 children arriving to the United States, many of whom have been
20 released to family members and other adults in California and have
21 experienced parental abuse, neglect, or abandonment, it is necessary
22 to provide an avenue for these unaccompanied children to petition
23 the probate courts to have a guardian of the person appointed
24 beyond reaching 18 years of age. This is particularly necessary in
25 light of the vulnerability of this class of unaccompanied youth,
26 and their need for a custodial relationship with a responsible adult
27 as they adjust to a new cultural context, language, and education
28 system, and recover from the trauma of abuse, neglect, or
29 abandonment. These custodial arrangements promote permanency
30 and the long-term well being of immigrant children present in the
31 United States who have experienced abuse, neglect, or
32 abandonment.~~

33 ~~(6) Guardianships of the person for persons older than 18 years
34 of age and younger than 21 years of age may be necessary and
35 convenient for individuals petitioning the court for a guardianship
36 of the person in conjunction with a request for the findings
37 necessary to enable the child to petition United States Citizenship
38 and Immigration Services for classification as a special immigrant
39 juvenile.~~

1 ~~(b) It is the intent of the Legislature to give the probate court~~
2 ~~jurisdiction to appoint a guardian over a person older than 18 years~~
3 ~~of age and younger than 21 years of age in connection with a~~
4 ~~special immigrant juvenile status petition. It is further the intent~~
5 ~~of the Legislature to provide an avenue for a person older than 18~~
6 ~~years of age and younger than 21 years of age to petition to have~~
7 ~~a guardian of the person appointed beyond 18 years of age in~~
8 ~~conjunction with a request for the findings necessary to enable the~~
9 ~~person to petition the United States Citizenship and Immigration~~
10 ~~Services for classification as a special immigrant juvenile.~~

11 *SECTION 1. (a) The Legislature finds and declares all of the*
12 *following:*

13 *(1) California law grants the superior courts jurisdiction to*
14 *make judicial determinations regarding the custody and care of*
15 *children within the meaning of the federal Immigration and*
16 *Nationality Act, including the juvenile, probate, and family court*
17 *divisions of the superior court. These courts are empowered to*
18 *make the findings necessary for a child to petition the United States*
19 *Citizenship and Immigration Services for classification as a special*
20 *immigrant juvenile under federal law.*

21 *(2) Special immigrant juvenile status, under the federal*
22 *Immigration and Nationality Act, offers interim relief from*
23 *deportation to undocumented immigrant children under 21 years*
24 *of age, if a state juvenile court has made specific findings.*

25 *(3) The findings necessary for a child to petition for*
26 *classification as a special immigrant juvenile include, among*
27 *others, a finding that reunification with one or both parents is not*
28 *viable due to abuse, neglect, abandonment, or a similar basis*
29 *under state law, and a finding that it is not in the child's best*
30 *interest to be returned to his or her country of origin.*

31 *(4) Despite recent changes to law that eliminate ambiguity*
32 *regarding the jurisdiction of superior courts to make the findings*
33 *necessary to petition for special immigrant juvenile status,*
34 *misalignment between state and federal law continues to exist.*

35 *(5) Federal law allows a person under 21 years of age, who*
36 *otherwise meets the requirements for special immigrant juvenile*
37 *status, to file for relief as a special immigrant juvenile. In*
38 *California, however, individuals who are between 18 and 21 years*
39 *of age have largely been unable to obtain the findings from the*
40 *superior court necessary to seek special immigrant juvenile status*

1 *and the relief that it was intended to afford them, solely because*
2 *probate courts cannot take jurisdiction of individuals 18 years of*
3 *age or older by establishing a guardianship of the person. This is*
4 *true despite the fact that many unaccompanied immigrant youth*
5 *between 18 and 21 years of age face circumstances identical to*
6 *those faced by their younger counterparts.*

7 (6) *Given the recent influx of unaccompanied immigrant children*
8 *arriving to the United States, many of whom have been released*
9 *to family members and other adults in California and have*
10 *experienced parental abuse, neglect, or abandonment, it is*
11 *necessary to provide an avenue for these unaccompanied children*
12 *to petition the probate courts to have a guardian of the person*
13 *appointed beyond reaching 18 years of age. This is particularly*
14 *necessary in light of the vulnerability of this class of*
15 *unaccompanied youth, and their need for a custodial relationship*
16 *with a responsible adult as they adjust to a new cultural context,*
17 *language, and education system, and recover from the trauma of*
18 *abuse, neglect, or abandonment. These custodial arrangements*
19 *promote permanency and the long-term well-being of immigrant*
20 *children present in the United States who have experienced abuse,*
21 *neglect, or abandonment.*

22 (7) *Guardianships of the person may be necessary and*
23 *convenient for these individuals between 18 and 21 years of age,*
24 *although a youth for whom a guardian has been appointed retains*
25 *the rights that an adult may have under California law.*

26 (b) *It is the intent of the Legislature to give the probate court*
27 *jurisdiction to appoint a guardian for a person between 18 and*
28 *21 years of age in connection with a special immigrant juvenile*
29 *status petition. It is further the intent of the Legislature to provide*
30 *an avenue for a person between 18 and 21 years of age to have a*
31 *guardian of the person appointed beyond 18 years of age in*
32 *conjunction with a request for the findings necessary to enable the*
33 *person to petition the United States Citizenship and Immigration*
34 *Services for classification as a special immigrant juvenile.*

35 SEC. 2. *Section 1490 of the Probate Code is amended to read:*

36 1490. ~~When~~ *Except as set forth in Section 1510.1, when used*
37 *in any statute of this state with reference to an adult or to the person*
38 *of a married minor, “guardian” means the conservator of that adult*
39 *or the conservator of the person in case of the married minor.*

1 ~~SEC. 2.~~

2 SEC. 3. Section 1510.1 is added to the Probate Code, to read:

3 1510.1. (a) (1) With the consent of the proposed ward, the
4 court may appoint a guardian of the person for an unmarried
5 individual who is ~~older than 18 years of age and younger than 18~~
6 *years of age or older, but who has not yet attained 21 years of age*
7 in connection with a petition to make the necessary findings
8 regarding special immigrant juvenile status pursuant to subdivision
9 (b) of Section 155 of the Code of Civil Procedure.

10 (2) A petition for guardianship of the person of a proposed ward
11 who is ~~older than 18 years of age and younger than 18 years of~~
12 *age or older, but who has not yet attained 21 years of age* may be
13 filed by a relative or any other person on behalf of the proposed
14 ward, or the proposed ward.

15 (b) (1) ~~With~~ *At the request of, or with the consent of* of, the
16 ward, the court may ~~continue the~~ *extend an existing* guardianship
17 of the person for ~~the ward beyond a ward past~~ 18 years of age, for
18 purposes of allowing the ward to complete the application process
19 with the United States Citizenship and Immigration Services for
20 classification as a special immigrant juvenile pursuant to Section
21 1101(a)(27)(J) of Title 8 of the United States Code.

22 (2) A relative or any other person on behalf of a ward, or the
23 ward, may file a petition to ~~continue~~ *extend* the guardianship of
24 the person for a period of time not to extend beyond the ward
25 reaching 21 years of age.

26 (c) *This section does not abrogate any other rights that a person*
27 *who has attained 18 years of age may have as an adult under state*
28 *law. Notwithstanding Sections 2352 and 2353, a ward who has*
29 *attained 18 years of age retains all of his or her legal*
30 *decisionmaking authority as an adult.*

31 ~~(e) Notwithstanding Section 6500 of the Family Code, for~~

32 (d) For purposes of this part, the terms “child,” “minor,” and
33 “ward” include an unmarried individual who is younger than 21
34 years of age and ~~who~~ *who, pursuant to this section, consents to*
35 *the appointment of a guardian or* ~~continuation~~ *extension* of a
36 guardianship after he or she attains 18 years of age ~~pursuant to this~~
37 ~~section.~~ *age.*

38 ~~(d)~~

39 (e) The Judicial Council ~~shall~~ *shall, by July 1, 2016,* adopt any
40 rules and forms needed to implement this section.

1 ~~SEC. 3.~~

2 SEC. 4. Section 1600 of the Probate Code is amended to read:

3 1600. (a) A guardianship of the person or estate or both
4 terminates when the ward attains majority ~~unless~~ *unless, pursuant*
5 *to Section 1510.1, the ward requests the extension of, or consents*
6 *to the ~~continuation of extension of,~~ the guardianship of the person*
7 *until the ward attains 21 years of age pursuant to Section 1510.1.*
8 *age.*

9 (b) A guardianship of the person terminates upon the death of
10 the ward, the adoption of the ward, or upon the emancipation of
11 the ward under Section 7002 of the Family Code.

12 SEC. 5. *Section 1601 of the Probate Code is amended to read:*

13 1601. Upon petition of the guardian, a parent, the ward, or, in
14 the case of an Indian child custody proceeding, an Indian custodian
15 or the ward's tribe, the court may make an order terminating the
16 guardianship if the court determines that it is in the ward's best
17 interest to terminate ~~the guardianship.~~ *the guardianship, or in the*
18 *case of a guardianship of a ward who is 18 years of age or older,*
19 *if the ward requests that the guardianship be terminated.* Notice
20 of the hearing on the petition shall be given for the period and in
21 the manner provided in Chapter 3 (commencing with Section 1460)
22 of Part 1.