

ASSEMBLY BILL

No. 541

Introduced by Assembly Member Harman

February 16, 2005

An act to amend Section 3041.5 of the Family Code, and to amend Sections 2341 and 2854 of the Probate Code, relating to guardians.

LEGISLATIVE COUNSEL'S DIGEST

AB 541, as introduced, Harman. Guardians.

(1) Existing law, until January 1, 2008, authorizes a court to require any parent who is seeking custody of, or visitation with, a child who is the subject of a custody proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under specified circumstances. Existing law requires the court to order the least intrusive method of testing. Existing law requires that testing be in conformity with certain federal procedures, provides that the results of this testing shall be confidential and maintained as a sealed record, and permits a parent or legal custodian who is tested to contest the test results at a hearing.

This bill would also authorize a court to require any person who is seeking custody of, or visitation with, a child who is the subject of a guardianship proceeding, to undergo drug testing pursuant to the above-described procedures.

(2) Existing law requires the Department of Justice to maintain a Statewide Registry of conservators and guardians, and requires all persons who wish to serve as a conservator or guardian, or who are currently serving as a conservator or guardian, to register and reregister with the Statewide Registry. Existing law excepts certain nonrelated guardians of the person of a minor, appointed under

specified circumstances by the juvenile court or the probate court, from those registration and filing requirements.

This bill would delete the exception applicable to nonrelated guardians.

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. Section 3041.5 of the Family Code is amended
 2 to read:
 3 3041.5. (a) In any custody or visitation proceeding brought
 4 under this part, as described in Section 3021, *or any*
 5 *guardianship proceeding brought under the Probate Code*, the
 6 court may order any ~~parent~~ *person* who is seeking custody of, or
 7 visitation with, a child who is the subject of the proceeding to
 8 undergo testing for the illegal use of controlled substances and
 9 the use of alcohol if there is a judicial determination based upon
 10 a preponderance of evidence that there is the habitual, frequent,
 11 or continual illegal use of controlled substances or the habitual or
 12 continual abuse of alcohol by the parent ~~or~~, legal custodian, *or*
 13 *person seeking guardianship*. This evidence may include, but
 14 may not be limited to, a conviction within the last five years for
 15 the illegal use or possession of a controlled substance. The court
 16 shall order the least intrusive method of testing for the illegal use
 17 of controlled substances or the habitual or continual abuse of
 18 alcohol by either or both parents ~~or~~, the legal custodian, *or*
 19 *person seeking guardianship*. If substance abuse testing is
 20 ordered by the court, the testing shall be performed in
 21 conformance with procedures and standards established by the
 22 United States Department of Health and Human Services for
 23 drug testing of federal employees. The parent ~~or~~, legal custodian,
 24 *or person seeking guardianship* who has undergone drug testing
 25 shall have the right to a hearing, if requested, to challenge a
 26 positive test result. A positive test result, even if challenged and
 27 upheld, shall not, by itself, constitute grounds for an adverse
 28 custody decision. Determining the best interests of the child
 29 requires weighing all relevant factors. The results of this testing
 30 shall be confidential, shall be maintained as a sealed record in the
 31 court file, and may not be released to any person except the

1 court, the parties, their attorneys, the Judicial Council (until
2 completion of its authorized study of the testing process) and any
3 person to whom the court expressly grants access by written
4 order made with prior notice to all parties. Any person who has
5 access to the test results may not disseminate copies or disclose
6 information about the test results to any person other than a
7 person who is authorized to receive the test results pursuant to
8 this section. Any breach of the confidentiality of the test results
9 shall be punishable by civil sanctions not to exceed two thousand
10 five hundred dollars (\$2,500). The results of the testing may not
11 be used for any purpose, including any criminal, civil, or
12 administrative proceeding, except to assist the court in
13 determining, for purposes of the proceeding, the best interest of
14 the child pursuant to Section 3011, and the content of the order or
15 judgment determining custody or visitation. The court may order
16 either party, or both parties, to pay the costs of the drug or
17 alcohol testing ordered pursuant to this section. As used in this
18 section, “controlled substances” has the same meaning as defined
19 in the California Uniform Controlled Substances Act, Division
20 10 (commencing with Section 11000) of the Health and Safety
21 Code.

22 (b) This section shall remain in effect only until January 1,
23 2008, and as of that date is repealed, unless a later enacted
24 statute, that is enacted before January 1, 2008, deletes or extends
25 that date.

26 SEC. 2. Section 2341 of the Probate Code is amended to read:

27 2341. (a) As used in this article, “private professional
28 conservator” means a person or entity appointed as conservator
29 of the person or estate, or both, of two or more conservatees at
30 the same time who are not related to the conservator by blood or
31 marriage, except a bank or other entity authorized to conduct the
32 business of a trust company, or any public officer or public
33 agency including the public guardian, public conservator, or
34 other agency of the State of California. In the case of an entity,
35 all natural persons who are authorized by the entity to perform
36 the functions of a conservator shall comply with this article. The
37 court may, at its discretion, require any person who is the
38 conservator for only one conservatee not related to the
39 conservator by blood or marriage to comply with this article, and

1 in that case, references in this article to a “private professional
2 conservator” includes those persons.

3 (b) As used in this article, “private professional guardian”
4 means a person or entity appointed as guardian of ~~the person or~~
5 ~~estate, or both,~~ of two or more wards at the same time who are
6 not related to the guardian by blood or marriage, except a bank or
7 other entity authorized to conduct the business of a trust
8 company, or any public officer or public agency including the
9 public guardian, public conservator, or other agency of the State
10 of California. In the case of an entity, all natural persons who are
11 authorized by the entity to perform the functions of a guardian
12 shall comply with this article. The court may, at its discretion,
13 require any person who is the guardian for only one ward not
14 related to the guardian by blood or marriage to comply with this
15 article, and in that case, references in this article to a “private
16 professional guardian” includes those persons.

17 ~~As used in this article, “private professional guardian” does not~~
18 ~~include a nonrelated guardian of the person of a minor appointed~~
19 ~~by the court, where the appointment results from the selection of~~
20 ~~a permanency plan for a dependent child or ward pursuant to~~
21 ~~Section 366.26 of the Welfare and Institutions Code. It also does~~
22 ~~not include a nonrelated guardian of the person of a minor~~
23 ~~appointed by the court pursuant to Section 1514 if that child is in~~
24 ~~receipt of AFDC-FC payments and case management services~~
25 ~~from the county welfare department, as evidenced by a Notice of~~
26 ~~Action of AFDC-FC eligibility.~~

27 (c) As used in this article, “private professional trustee” means
28 a nonprofit charitable corporation appointed as trustee pursuant
29 to Section 15604.

30 SEC. 3. Section 2854 of the Probate Code is amended to read:

31 2854. (a) This chapter does not apply to any public
32 conservator or public guardian with regard to his or her official
33 acts in that capacity.

34 (b) This chapter does not apply to any conservator, guardian,
35 or trustee when the person is related to the conservatee, ward, or
36 trustor by blood, marriage, adoption, registered domestic
37 partnership, or a relationship that satisfies the requirements of
38 subdivision (a) and paragraphs (1) to (4), inclusive, and
39 paragraph (6) of subdivision (b) of Section 297 of the Family
40 Code.

1 (c) This chapter does not apply to any trustee who is serving
2 for the benefit of not more than three people or not more than
3 three families, or a combination of people or families that does
4 not total more than three. The number of trust beneficiaries does
5 not count for the purposes of calculating if a trustee falls within
6 this exclusion. A trust excluded under subdivision (a) or (b) does
7 not count for the purpose of calculating if a trustee falls within
8 this exclusion. For the purposes of this subdivision, family means
9 people who are related by blood, marriage, adoption, registered
10 domestic partnership, or a relationship that satisfies the
11 requirements of subdivision (a) and paragraphs (1) to (4),
12 inclusive, and paragraph (6) of subdivision (b) of Section 297 of
13 the Family Code.

14 (d) This chapter does not apply to any conservator or guardian
15 who is not required to file information with the clerk of the court
16 pursuant to Section 2340, to any person or entity subject to the
17 oversight of a local government, including an employee of a city,
18 county, or city and county, or to any person or entity subject to
19 the oversight of the state or federal government, including an
20 attorney licensed to practice law in the State of California who
21 acts as trustee of only attorney client trust accounts, as defined in
22 Section 6211 of the Business and Professions Code.

23 (e) This chapter does not apply to any conservator who resided
24 in the same home with the conservatee immediately prior to the
25 condition or event that gave rise to the necessity of a
26 conservatorship. This subdivision does not create any order or
27 preference of appointment, but simply exempts a conservator
28 described by this subdivision from registration.

29 ~~(f) This chapter does not apply to a nonrelated guardian of the~~
30 ~~person of a minor appointed by the court as the result of the~~
31 ~~selection of a permanency plan for a dependent child or ward~~
32 ~~pursuant to Section 366.26 of the Welfare and Institutions Code.~~
33 ~~It also does not include a nonrelated guardian of the person of a~~
34 ~~minor appointed pursuant to Section 1514 if that child is in~~
35 ~~receipt of AFDC-FC payments and case management services~~
36 ~~from the county welfare department, as evidenced by a Notice of~~
37 ~~Action of AFDC-FC eligibility.~~

38 ~~(g)~~ This chapter does not apply to a trustee who is any of the
39 following:

- 40 (1) Trust companies, as defined in Section 83.

1 (2) FDIC insured institutions, their holding companies,
2 subsidiaries or affiliates. For the purposes of this paragraph,
3 “affiliate” means any entity that shares an ownership interest
4 with or that is under the common control of, the FDIC insured
5 institution.

6 (3) Employees of any entity listed in paragraph (1) or (2)
7 while serving as trustees in the scope of their duties.

O