

Assembly Bill No. 900

CHAPTER 694

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

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 900, 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 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 extend a guardianship of the person of a ward beyond 18 years of age, as specified, if the ward so requests or consents. The bill would also provide that a guardianship of the person terminates after the ward attains majority unless the ward consents to, or requests the extension of, the guardianship of the person until he or she is 21 years of age, as specified.

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

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

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

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

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

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

(5) Federal law allows a person under 21 years of age, who otherwise meets the requirements for special immigrant juvenile status, to file for relief as a special immigrant juvenile. In California, however, individuals who are between 18 and 21 years of age have largely been unable to obtain the findings from the superior court necessary to seek special immigrant juvenile status and the relief that it was intended to afford them, solely because probate courts cannot take jurisdiction of individuals 18 years of age or older by establishing a guardianship of the person. This is true despite the fact that many unaccompanied immigrant youth between 18 and 21 years of age face circumstances identical to those faced by their younger counterparts.

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

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

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

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

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

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

1510.1. (a) (1) With the consent of the proposed ward, the court may appoint a guardian of the person for an unmarried individual who is 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 pursuant to subdivision (b) of Section 155 of the Code of Civil Procedure.

(2) A petition for guardianship of the person of a proposed ward who is 18 years of age or older, but who has not yet attained 21 years of age may be filed by a relative or any other person on behalf of the proposed ward, or the proposed ward.

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

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

(c) This section does not authorize the guardian to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the ward’s medical treatment, education, or residence, without the ward’s express consent.

(d) For purposes of this division, the terms “child,” “minor,” and “ward” include an unmarried individual who is younger than 21 years of age and who, pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after he or she attains 18 years of age.

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

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

1600. (a) A guardianship of the person or estate or both terminates when the ward attains majority unless, pursuant to Section 1510.1, the ward requests the extension of, or consents to the extension of, the guardianship of the person until the ward attains 21 years of age.

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

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

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