



ASSEMBLY BILL 900¹

January, 2016

GUARDIANSHIPS/SIJS FOR 18-20 YEAR OLDS IN CALIFORNIA

What is AB 900?²

AB 900 is a new California law that took effect on January 1, 2016 and will provide better support and protections for unaccompanied, undocumented youth ages 18-20 in California.

Why was AB 900 passed?

More than 9,500 unaccompanied immigrant children and youth were released to family members or other adults in the state of California in 2014 and 2015 alone. In light of this ongoing influx of children to the United States, the California legislature was particularly concerned with assisting newcomer youth who have experienced parental abuse, neglect, or abandonment in adjusting to life in the United States.³

AB 900 achieves this in two ways: 1) by giving probate courts jurisdiction to appoint legal guardians for youth ages 18-20 in order to assist these youth in adjusting to a new culture and social structure; and 2) by aligning state law with federal law to allow these youth to access Special Immigrant Juvenile Status (SIJS), a humanitarian immigration benefit that provides a path to legal status for abandoned, abused, or neglected immigrant youth.⁴ The dual goals of AB 900 lead to stability and permanency for immigrant youth who have experienced trauma and hardship.

What does AB 900 do?

AB 900 makes a number of changes to the law governing guardianships of the person in California, including:

- It allows the probate court, with the consent of the youth, to appoint a guardian for an unmarried immigrant youth aged 18-20 in connection with an SIJS petition. Under prior law, there were no guardianships available to youth aged 18-20. Such a petition can be filed by a relative, other person, or the proposed ward.
- It also allows the probate court, with the consent of the ward, to extend an existing guardianship until 21 years of age for the purpose of allowing the ward to complete the SIJS process with United States Citizenship & Immigration Services (USCIS). Such a petition can be filed by a relative, other person, or the ward.

A guardianship of the person grants someone other than the parents the rights to the care, custody, and control of a child. Under prior California law, guardianships were valid only until the youth turned 18.

¹ For questions regarding the content of this advisory, please contact Rachel Prandini at rprandini@ilrc.org.

² AB 900 added Section 1510.1 to the Probate Code, and amended Sections 1490, 1600, and 1601 of the Probate Code.

³ See Assem. Bill No. 900 (2015-2016 Reg. Sess.) § 1(a)(6).

⁴ For more information on Special Immigrant Juvenile Status, see ILRC, *An Overview to Special Immigrant Juvenile Status*, available at <http://www.ilrc.org/resources/an-overview-to-special-immigrant-juvenile-status-updated-march-2015>.

- Such guardianships will not authorize the guardian to take away any of the rights that the ward may have by virtue of his or her status as an adult under other provisions of law, unless the ward expressly consents.⁵ In passing AB 900, the legislature was concerned about protecting the rights of older youth to make important decisions, while at the same time permitting them to have a guardian who can guide and assist them in accessing medical, educational, and other services. In practice, this means that if the ward and guardian disagree about a given decision and are unable to resolve the dispute, they can return to court to address the disagreement, or, if irreconcilable, request termination of the guardianship.
- AB 900 does not change the fact that guardianships terminate by operation of law when the ward turns 18 under Section 1600(a) of the Probate Code, *unless* the ward requests or consents to extension of the guardianship under Section 1510.1(b).
- A ward who is 18 years old or older, however, may petition for termination of the guardianship at any time, and the court “shall” make an order terminating the guardianship under Probate Code Section 1601. In other words, the “best interest” standard that applies to termination of a guardianship when the ward is under 18 does not apply in this context.

How will AB 900 be implemented in the Probate Courts?

Pursuant to AB 900, the Judicial Council has until July 1, 2016 to adopt any rules and forms needed to implement the law. Proposed forms have already been developed by the Probate and Mental Health Advisory Committee of the Judicial Council, and were released for formal comment on December 11, 2015.⁶

Prior to the adoption of mandatory Judicial Council forms in July 2016, there will be no official protocol for how to file these petitions in probate court. Some judges and practitioners have suggested the following potential procedures:

- The guardianship petition or request to extend a guardianship could be accompanied by a declaration from the youth consenting to the post-18 guardianship.
- Any existing forms that may need modification (e.g. GC-248 Duties of Guardian) could be amended by hand as needed.

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| <ul style="list-style-type: none"> ▪ Keep in mind that Probate Code Section 1510.1(d) incorporates unmarried individuals under the age of 21 who consent to an AB 900 guardianship into the terms “child,” “minor,” and “ward,” so it may not be necessary to amend references to “minor” in the forms used to petition for guardianship. ▪ Also note that Cal. Rules of Court 1.42 (8) prohibits a court from rejecting a Judicial Council form that has been “legibly and obviously modified to correct a code section number or to comply with the law under which the form is filed.” |
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What is the role of the guardian in an AB 900 guardianship?

The Probate Code has long provided that a guardian is “responsible for providing for food, clothing, shelter, education, and all the medical and dental needs of the child” and “must provide for the

⁵ This is because Section 1510.1(d) extended the term “minor” for the purposes of Division 4 of the Probate Code, but did not change the age of majority in California.

⁶ See <http://www.courts.ca.gov/documents/W16-14.pdf> for additional information.

safety, protection, and physical and emotional growth of the child” (as outlined in Form GC-248: Duties of Guardian). The responsibilities of a guardian appointed pursuant to Section 1510.1 are the same as those for a guardian of a minor. Nothing in AB 900 changed the powers and duties of guardians of the person, as outlined in Probate Code Sections 2350 through 2360. These powers and duties are important for the protection and support of the ward, whether or not he or she is under 18.

The fact that a youth who is over 18, by virtue of the rights conveyed on him or her by other provisions of law at the age of 18, will have certain decisionmaking authority that minor wards do not have, in most cases will not interfere with the guardian’s ability to perform his or her duties. In the rare case in which an over-18 ward does not consent to, for example, the guardian’s determination about where she should reside and that compromises the guardian’s ability to provide for the safety or basic needs of the ward, then the guardian and ward may return to court to resolve this dispute.

It is also noteworthy that the concept of the ward maintaining certain decisionmaking authority despite the existence of a guardianship is already found under pre-existing California law, which carves out increasing autonomy for older youth. For example, under Section 2353(b) of the Probate Code, if the ward is 14 or older, he or she has the right to consent to or refuse a surgery. Thus, despite the fact that current law includes limitations on the authority of a guardian to make medical decisions for a ward over the age of 14, guardians carry out their duties to wards over the age of 14 every day. It is contemplated that the same will be true for AB 900 guardianships.

Is AB 900 just about getting immigration status?

No. Referring to undocumented, unaccompanied youth who have experienced parental abandonment, abuse, or neglect, the legislative intent language for AB 900 notes that “[g]uardianships of the person may be necessary and convenient for these individuals between 18 and 21 years of age...”⁷ The legislature has recognized that due to the particular vulnerabilities of this class of youth, such as special language and educational needs, mental health issues, medical issues, and the like, having a custodial relationship with a responsible adult will be particularly important.

AB 900’s recognition of the need that some older youth may have for continued support past the age of 18 is also in line with the general trend to extend the jurisdiction of dependency courts beyond the age of 18, as achieved in California by AB 12.⁸ The child welfare system in California, and in an increasing number of states nationwide, has recognized that 18 is not an appropriate age to end services for some youth who have experienced trauma, and whose brains are still developing well beyond that age.⁹

The Immigrant Legal Resource Center is a national, nonprofit resource center that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The mission of the ILRC is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people.

⁷ Assem. Bill No. 900 (2015-2016 Reg. Sess.) § 1(a)(7).

⁸ For more information about Assem. Bill No. 12 (2010), see <http://www.cafosteringconnections.org>.

⁹ See, e.g. Child Welfare Information Gateway, *Helping Youth Transition to Adulthood: Guidance for Foster Parents* (April 2013), available at

https://www.childwelfare.gov/pubPDFs/youth_transition.pdf#page=4&view=Adolescent%20development%20and%20changes%20in%20the%20brain (noting that the part of the brain that will later affect impulse control, planning, and critical thinking does not fully mature until a youth reaches his or her mid-20s, and that for youth who have been abandoned, abused, or neglected, “changes in brain development and impulsive and risk-taking behaviors may be even more pronounced because the limbic system – the brain’s first responder to dangerous situations and perceived threats – may have been especially active.”)