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**ORANGE COUNTY SOCIAL SERVICES AGENCY  
CFS OPERATIONS MANUAL**

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**Revised: March 10, 2011**

**Revised: June 8, 2011**

**Revised: August 6, 2013**

## **Probate Guardianship**

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<b>Purpose</b>	To provide guidelines regarding Children and Family Services (CFS) involvement in Probate Guardianship proceedings.
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<b>Approved</b>	This policy was approved by Gary Taylor, Director of CFS, on August 6, 2013. <i>Signature on file.</i>
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<b>Most Recent Revision</b>	<p>This revision of the Policy and Procedure (P&amp;P):</p> <ul style="list-style-type: none"><li>• Describes the statutory authority for CFS involvement in Probate Guardianship proceedings</li><li>• Incorporates changes per Assembly Bill (AB) 1757 (2012), as related to 1513(b) investigations (previously referred to as 1513[c] investigations)</li><li>• Clarifies the purpose of non-relative guardianship investigations and 1513(b) investigations</li><li>• Provides suggested guidelines for submission of court reports to Probate Court</li><li>• Revises the process of determining the level of involvement of the Probate Guardianship Investigator in an Emergency Response (ER) investigation</li></ul>
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<b>Background</b>	Per Probate Code section (§) 1514, Probate Court may appoint a legal guardian (LG) for a child when it appears “necessary or convenient”. CFS involvement in Probate Guardianship proceedings is limited to completing:
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- Non-relative guardianship investigations to assess the suitability of a non-relative seeking guardianship (**Note:** In exceptional circumstances, CFS may assess a relative.)
- 1513(b) Investigations to determine whether grounds exist to initiate dependency proceedings
- Background clearances of proposed LGs

**Note:** Per Welfare and Institutions Code (WIC) § 304, if a child involved in Probate Guardianship proceedings becomes the subject of dependency proceedings, custody-related matters will be addressed by Juvenile Court.

**Definitions**

**Probate Guardianship Investigation:** Refers to non-relative guardianship investigations and 1513(b) investigations completed by CFS, for Probate Court.

**Probate Guardianship Investigator:** Refers to the CFS social worker assigned to complete a Probate Guardianship investigation.

**POLICY**

**Referral for Probate Guardianship Investigation**

Requests for Probate Guardianship investigations may be received from Probate Court or another party to the Probate Guardianship proceedings and will include:

- A. A Minute Order requesting completion of the applicable Probate Guardianship investigation.
- B. Other documents related to the Probate Guardianship proceedings, as available.

**Non-Relative Guardianship Investigations**

The purpose of a non-relative guardianship investigation is to determine the suitability of a proposed non-relative LG. In accordance with Family Code §§ 3020 and 3040, the Probate Investigator will consider:

- The health, safety, welfare, and best interest of the child
- Whether the proposed LG:
  - Currently provides a “wholesome and stable” living environment for the child
  - Is able to provide adequate and proper care and guidance for the child

Pursuant to CFS policy, a non-relative guardianship investigation will include:

A. Interviews completed separately and in private with:

1. The proposed LG.
2. The child, as age/developmentally appropriate.
3. Known parent(s), as available.
4. Collateral contacts with information relevant to the investigation.

Refer to CFS P&P [Confidentiality—CFS Client Records \(F-0105\)](#) for guidelines on release of client information to collateral contacts.

**Note:** Per best practice, whenever possible in person interviews will be completed with the proposed LG, child, and parent(s).

Interviews will address those factors necessary to complete the Probate Legal Guardianship Report. Per Probate Code § 1513, this includes, but is not limited to:

- A social history of the proposed LG
- A social history of the child, including an assessment of:
  - The child's identified developmental, emotional, psychological, or educational needs (if any)
  - The capability of the proposed LG to meet the child's needs
- The relationship between the proposed LG and the child
- The circumstances whereby the proposed LG obtained physical custody of the child (as applicable)
- The anticipated duration of the guardianship
- The child's attitude towards the proposed guardianship
- The plans of both the proposed LG and the parent(s) for providing a stable and permanent home for the child

If a party is unable to be interviewed, the Probate Legal Guardianship Report will document efforts made to facilitate the interview.

- B. Review of the guardianship petition and related attachments to verify completion and accuracy of identifying information.
- C. Review and consideration of available records relevant to the investigation, including:
- Child abuse/neglect and criminal clearances (see “Probate Guardianship Clearances” Policy section)
  - Other court records pertaining to the child (e.g., Juvenile Court, Family Law, Probation records)
  - Child’s educational, medical, developmental, and/or psychological records (per Probate Code § 1513)
- D. Provision of a *Guardianship Pamphlet (For Guardianships of Children in the Probate Court) (GC-205)* to the proposed LG.

Per best practice, a proposed LG expressing interest in Adoption may be advised to consult an attorney regarding permanency options and related financial obligations/legal responsibilities.

- E. Indian Child Welfare Act (ICWA) inquiries with the parent(s), as available, and any known tribe (per Probate Code § 1513[h] and California Rules of Court, Rule 7.1015).

**Note:** If the child has (or may have) ICWA standing, advise parent(s) to complete a *Parental Notification of Indian Status (ICWA-020)*.

- F. An assessment of the home environment of the proposed LG to assess:
- Rooms and common living areas
  - Adequacy of available resources to meet the child’s needs
  - Whether potential health/safety hazards exist
  - Household composition

**1513(b)  
Investigations**

The purpose of a 1513(b) investigation is to determine whether grounds exist to initiate dependency proceedings for a child involved in Probate Guardianship proceedings who appears to fall within the provisions of WIC § 300.

Per Probate Code § 1513(b), if Probate Court requests a 1513(b) investigation, the investigation will be completed pursuant to WIC §§ 328 and 329, in a manner the social worker deems necessary. Pursuant to CFS policy, a 1513(b) investigation will include:

A. Interviews completed separately and in private with:

1. The child, if age four years or older, as developmentally appropriate (per WIC § 328).
2. The parent(s). (Efforts will be made to locate a parent whose whereabouts are unknown.)
3. The proposed LG, as necessary.

**Note:** If allegations made by the proposed LG are documented in a report previously submitted to Probate Court, further interview of the proposed LG may not be necessary.

4. Collateral contacts with information relevant to investigation.

Refer to CFS P&P [Confidentiality—CFS Client Records \(F-0105\)](#) for guidelines on release of client information to collateral contacts.

**Note:** Per best practice, whenever possible in person interviews will be completed with the child, parent(s), and proposed LG (as necessary).

Interviews will address those factors necessary to complete the 1513(b) Probate Guardianship Report. Per WIC §§ 328 and 329, this includes, but is not limited to:

- The necessity for child welfare services and/or Juvenile Court intervention
- Allegations regarding the ability of the parent(s) to provide adequate care/protection of the child
- The child's view of the home environment

If a party is unable to be interviewed, the 1513(b) Probate Guardianship Report will document efforts made to facilitate the interview.

B. Review and consideration of available records relevant to the investigation, including:

- The guardianship petition and related attachments
- Reports previously submitted to Probate Court regarding the suitability of the proposed LG
- Other court records pertaining to the child and/or siblings (e.g., Juvenile Court, Family Law, Probation records)
- Child's educational, medical, developmental and/or psychological records (per Probate Code § 1513)
- Records regarding prior child welfare services offered/provided to the family

C. Obtaining and reviewing criminal and child abuse records.

1. Background clearances regarding the parent(s) will be obtained via:

- California Law Enforcement Telecommunications System (CLETS) in accordance with CFS P&P [CLETS \(B-0116\)](#) (per WIC § 16504.5)
- Child Welfare Services/Case Management System (CWS/CMS)

2. Background clearances regarding other adults residing in the home of the parent(s) will be obtained via:

- Public resources, such as:
  - [California Megan's Law Sex Offender Locator Database](#)
  - [Orange County Superior Court of California Criminal and Traffic Cases System](#)
- CWS/CMS (**Note:** Obtain authorization from the individual prior to screening individual through CWS/CMS.)

**Note:** Due to a lack of statutory authority, do not request live scan fingerprinting of parent(s) or other adults in the home.

D. ICWA inquiries with the parent(s), as available (per Probate Code § 1513[h] and California Rules of Court, Rule 7.1015).

E. An assessment of the home environment of the parent(s) to assess:

- Rooms and common living areas
- Adequacy of available resources to meet the child's-needs
- Whether potential health/safety hazards exist
- Household composition

**Probate  
Guardianship  
Clearances**

Pursuant to Probate Code § 1516 and WIC § 361.4, CFS will complete background clearances regarding the suitability of proposed LGs seeking Probate Guardianship.

A. **Non-Relative Clearances:**

The Probate Guardianship Investigator (or designee) will complete clearances on a non-relative seeking LG and other adults residing in their home using:

1. CWS/CMS.
2. Live scan fingerprinting per CFS P&P [Live Scan Fingerprinting \(B-0115\)](#).

Clearance results will be incorporated into the Probate Legal Guardianship Report.

B. **Relative Clearances:**

At the request of Probate Court Services or the Probate Court Clerk's Office, the Child Abuse Registry (CAR) Clearing Line will complete child abuse/neglect clearances on a relative seeking LG and the child on behalf of whom guardianship is sought.

A search for prior child abuse referrals, will be completed using:

- CWS/CMS
- Case Data System (CDS)
- California Welfare Information Network (CalWIN)

Prior to releasing clearance information, the CAR Clearing Line will verify the requesting party's identification. Clearance results will be forwarded to the requesting party pursuant to CAR Clearing Line protocols.

**Note:** If a child abuse investigation is pending, provide assigned social worker's name/phone number. If a child abuse referral was investigated in another county, advise requesting party to contact that child welfare agency.

**Writing/Filing  
the Probate  
Court Report**

Pursuant to Probate Code § 1513, a court report will be prepared applicable to the Probate Guardianship investigation completed. The format of each court report is detailed in:

- [Attachment 1—Probate Legal Guardianship Report](#)
- [Attachment 2—1513\(b\) Probate Legal Guardianship Report](#)

Per CFS policy, the report will be written in complete, concise sentences, and incorporate pertinent, accurate, and objective information obtained during the Probate Guardianship investigation, including exculpatory evidence. Objectivity and accuracy on behalf of the Probate Guardianship Investigator is paramount. This ensures a factual representation for Probate Court to make a determination regarding the Probate Guardianship proceedings and lends credibility to the recommendations of the Probate Guardianship Investigator.

Pursuant to Probate Code 1513(d), the report will be made available to Probate Court no less than three judicial days prior to the scheduled hearing date.

Refer to [Attachment 3—Suggested Guidelines for Filing Probate Court Reports](#) for guidance on preparation and submission of court reports for Probate Guardianship proceedings.

**Probate  
Guardianship  
Case File**

CDSS Division 31 Regulations § 31-075 outlines requirements for development and maintenance of a case record (case file). CFS will create and maintain a case file for Probate Guardianship investigations, which includes:

- Probate Court Minute Order
- *Petition for Appointment of Guardian of Minor (GC-210)* and related forms/attachments
- Documentation of contacts made during the investigation
- Reports/assessments/clearance information obtained during the investigation
- A copy of the court report submitted to Probate Court

The case file will be retained by the Probate Investigator (or designee), pursuant to program protocol.

**Note:** Case record information regarding Probate Guardianship investigations will not be entered into CWS/CMS.



**Reporting  
Suspected  
Child Abuse**

In accordance with SSA Administrative P&P [Mandated Suspected Abuse Reporting \(D 16\)](#), the Probate Guardianship Investigator will immediately report incidents of suspected child abuse/neglect to CAR.

Per CFS policy, if a child abuse referral is opened during a Probate Guardianship investigation, the referral will be assigned to Emergency Response (ER). The ER SSSS and supervisor of the Probate Guardianship Investigator will determine the level of involvement of the Probate Guardianship Investigator in the ER investigation.

**Note:** See CFS P&P [Abuse Investigations—Open Case \(A-0402\)](#) for collaborative/joint child abuse investigation guidelines.

A. **Non-Custody:**

In accordance with WIC § 827.10, the Probate Guardianship Investigator will notify Probate Court if a child abuse referral is investigated during the Probate Guardianship investigation.

B. **Custody:**

If a protective custody petition is filed with Juvenile Court, the Probate Guardianship Investigator will, in accordance with WIC § 827.10, notify Probate Court of:

1. The child abuse investigation.
2. The child's current dependency status.

No further reports will be submitted to Probate Court, unless requested.

**Compliance  
with Probate  
Court Orders**

Staff completing a Probate Guardianship investigation will adhere to orders issued by Probate Court.

If clarification to an existing court order is necessary:

- Consult assigned SSSS
- Consult County Counsel
- Contact Probate Court bench officer and/or Manager of Probate/Mental Health Department

**Availability for Court Dates** In accordance with Probate Code 1513(c), staff completing a Probate Guardianship investigation will, upon receiving a personal appearance subpoena:

- Appear in Probate Court on the date/time specified
- Or–
- Make alternate arrangements (e.g., request to be placed on-call) with the person requesting their presence

**Note:** Refer to CFS P&P [Confidentiality—CFS Client Records \(F-0105\)](#) for further guidance regarding personal appearance subpoenas.

**Case Closure** When a Probate Guardianship investigation concludes, and the applicable report is filed with Probate Court, the case will be closed, pursuant to program protocol.

In accordance with WIC § 827.10 and Miscellaneous Order 543.2, following case closure the Probate Guardianship Investigator may, upon request of the Probate Court, provide updates regarding a family’s involvement with CFS and/or other related child welfare information.

**Ongoing Financial Assistance** Following a Probate Guardianship investigation, ongoing CFS involvement may be necessary if a non-relative LG requests CFS assistance to obtain TANF-Foster Care funding.

The non-relative LG will be advised to schedule a “walk-in” appointment with Foster Care Intake to determine eligibility for financial assistance.

**Termination of Probate Guardianship** Generally, Probate Guardianship terminates when a child reaches 18 years of age and/or emancipates. However, Probate Guardianship may be terminated, in accordance with Probate Code § 1601, if the guardianship is no longer in the best interest of the child.

A. **Non-Dependency Case:**

A LG (appointed in Probate Court) contacting CFS to request termination of guardianship will be advised that a *Petition for Termination of Guardianship (GC-255)* needs to be filed with the Probate Court.

**Note:** If child abuse/neglect is suspected (e.g., WIC § 300[g] no provision for support/abandonment), immediately contact CAR.

B. **Dependency Case:**

Per WIC §§ 304 and 728, Juvenile Court may terminate or modify a guardianship previously established by Probate Court. To ensure compliance with statutory procedures and notice requirements, refer to CFS P&P [Legal Guardianship Dependents \(K-0402\)](#).

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## REFERENCES

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### Attachments and Data Entry Standards

Hyperlinks are provided below to access attachments to this P&P and any CWS/CMS Data Entry Standards that are referenced.

- [Attachment 1—Probate Legal Guardianship Report](#)
  - [Attachment 2—1513\(b\) Probate Legal Guardianship Report](#)
  - [Attachment 3—Suggested Guidelines for Filing Probate Court Reports](#)
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### Hyperlinks

Users accessing this document by computer may create a direct connection to the following references by clicking on them.

- CFS P&P [Abuse Investigations—Open Case \(A-0402\)](#)
  - CFS P&P [CLETS \(B-0116\)](#)
  - CFS P&P [Confidentiality—CFS Client Records \(F-0105\)](#)
  - CFS P&P [Family Law Court Liaison \(M-0108\)](#)
  - CFS P&P [Legal Guardianship Dependents \(K-0402\)](#)
  - CFS P&P [Legal Guardianship Non-Dependents \(K-0404\)](#)
  - CFS P&P [Live Scan Fingerprinting \(B-0115\)](#)
  - SSA Administrative P&P [Mandated Suspected Abuse Reporting \(D 16\)](#)
  - [California Megan’s Law Sex Offender Locator Database](#)
  - [County of Orange Probate website](#)
  - [Orange County Superior Court of California Criminal and Traffic Cases System](#)
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### Other Sources

Other printed references include the following:

None.

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## FORMS

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**Online Forms** Forms listed below may be printed out and completed, or completed online, and may be accessed by clicking on the link provided.

Form Name	Form Number
<a href="#">Children and Family Services Termination</a>	F063-25-117
<a href="#">Fax Cover Sheet for Criminal Clearances (CII)</a>	F063-28-306

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**Hard Copy Forms** Forms that may be completed in hard copy (including multi-copy NCR forms) are listed below. **For reference purposes only**, links are provided to view these hard copy forms, where available.

Form Name	Form Number
<a href="#">Authorization for Release of Information</a>	F063-25-228
<a href="#">Confidential Guardian Screening Form</a>	GC-212
<a href="#">Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act</a>	GC-120
<a href="#">Guardianship Petition-Child Information Attachment</a>	GC-210CA
<a href="#">Indian Child Inquiry Attachment</a>	ICWA-010A
<a href="#">Parental Notification of Indian Status</a>	ICWA-020
<a href="#">Petition for Appointment of Guardian of Minor</a>	GC-210
<a href="#">Petition for Termination of Guardianship</a>	GC-255

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**CWS/CMS Forms** Forms that may **only** be obtained in CWS/CMS are listed below. **For reference purposes only**, links are provided to view these CWS/CMS forms, where available.

Form Name	Form Number
None.	

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**Brochures** Brochures to distribute in conjunction with this policy may include:

Brochure Name	Brochure Number
<a href="#">Guardianship Pamphlet (For Guardianships of Children in the Probate Court)</a>	GC-205

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## LEGAL MANDATES

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[Welfare and Institutions Code \(WIC\) section \(§\) 304](#) provides once a dependency petition is filed, and until that petition is dismissed or dependency terminated, all custody related issues will be heard by Juvenile Court.

[WIC §§ 328 and 329](#) detail the investigation to be completed pursuant to Probate Code 1513(b).

[WIC § 361.4\(b-c\)](#) authorize background clearances of a proposed LG and any other adult residing in the home.

[WIC § 728](#) and [California Rules of Court, Rule 5.620\(e\)](#) provide Juvenile Court may terminate or modify a guardianship previously established by Probate Court.

[WIC § 827](#) and [Penal Code § 11167.5\(b\)\(2\)](#) authorize disclosure of child abuse record information to Probate Court (investigators) for purposes of Probate Guardianship.

[WIC § 827.10](#) authorizes disclosure of CFS records to specific parties of a Probate Court proceeding involving child custody.

[WIC § 16504.5\(a\)\(1\)\(A\)](#) authorizes background clearances of a parent when investigating whether a child comes within the jurisdiction of Juvenile Court.

[Probate Code § 1510](#) details the content of the petition filed with Probate Court to request appointment of legal guardianship.

[Probate Code § 1513\(a\)](#) provides CFS complete an investigation of a non-relative seeking Probate Guardianship. Also details content of the court report filed to address the proposed guardianship.

[Probate Code § 1513\(b\)](#) provides if a child involved in Probate Guardianship proceedings is or may be described by WIC § 300, Probate Court may refer the matter to CFS for investigation pursuant to WIC §§ 328 and 329.

[Probate Code § 1513\(c\)](#) provides the author of a report prepared to address a Probate Guardianship investigation may be called to testify in the Probate Guardianship proceeding.

[Probate Code § 1513\(h\)](#) and [California Rules of Court, Rule 7.1015](#) require ICWA inquires by the Probate Guardianship investigator, in Probate Guardianship proceedings.

[Probate Code § 1514](#) and [Family Code §§ 3020](#) and [3040](#) govern appointment of a LG.

[Probate Code § 1514.5](#) provides for the release of Family Law case records to a guardianship investigator.

[Probate Code § 1516](#) mandates CFS complete child abuse/neglect clearances for Probate Guardianship proceedings.

[California Rules of Court, Rule 7.1004](#) details termination of Probate Guardianship.

Orange County Juvenile Court Miscellaneous Order 522.5 authorizes disclosure of child abuse records (except Reporting Party) and Juvenile Court case information to mediators involved in Probate Guardianship investigations.

Orange County Juvenile Court [Miscellaneous Order 543.2](#) details the Probate Court personnel who may inspect and copy a Juvenile case file without a court order.

[California Department of Social Services \(CDSS\) – Eligibility and Assistance Standards \(EAS\) Manual § 45-203](#) authorizes payment of Temporary Aid to Needy Families (TANF-Foster Care) assistance to non-related legal guardians.

[CDSS Division 31 Regulations § 31-075](#) details the contents of a case record.

*Guardianship of Christian G.* (2011) 195 Cal. App. 4<sup>th</sup> 581 finds if a party to probate guardianship proceedings alleges a child falls within under WIC § 300, a referral to the local child welfare services agency is mandated. AB 1757 (2012), which revised Probate Code § 1513(b), provides this referral is discretionary.