

2011 New Laws Workshop
Tier 1 Bills

Probate and Juvenile

AB 458 (Atkins)
Chapter 102, Statutes of 2011
Guardianship

Effective: 01/01/2012

Summary Description of New Law

Prohibits a court from appointing a minor's parent as a guardian of the person of the minor, except as specified. Establishes requirements for transferring a proceeding to another court in circumstances in which a proceeding that concerns custody or visitation of a minor child is pending in one or more counties at the time the petition for guardianship is filed, and specifies circumstances under which the court in a guardianship proceeding would maintain exclusive jurisdiction to determine issues of custody or visitation. Requires the court in which a guardianship proceeding is filed to communicate with each court where a custody or visitation proceeding is pending prior to making a determination on maintaining or transferring the guardianship proceeding. Requires the Judicial Council, on or before January 1, 2013, to adopt rules of court to implement the bill's inter-court communication provisions.

	Existing Law	New Law	Impact on Court
1	<p>Guardianship of a minor</p> <p>Authorizes a court, upon hearing of a petition, to appoint a guardian of a person or estate of the proposed ward in accordance with specified provisions of law governing the custody of a minor child.</p> <p>Probate Code § 1500 et seq.</p>	<p>Guardianship of a minor</p> <p>Prevents a parent from forum shopping following a child custody order by prohibiting a court from appointing a minor's parent as a guardian of the person of the minor in most circumstances.</p> <p>Probate Code § 1514(b)(2)</p>	<p>Alert judges and judicial officers, research attorneys, court investigators, probate examiners, and self-help center staff of this change in the law.</p> <p>Procedures will need to be developed to assist the court in determining if child custody or visitation proceedings are pending locally or in other counties.</p>

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Existing Law	New Law	Impact on Court
<p>2 Venue</p> <p>Provides, pursuant to case law, that the proper venue for a guardianship proceeding involving a minor who had been the subject of an earlier custody proceeding in a dissolution action between the minor’s parents is the county where the dissolution was filed, not the county where the minor and the petitioner and proposed guardian resided when the guardianship action was filed.</p> <p><i>Greene v. Superior Court</i> (1951) 37 Cal.2d 307</p>	<p>Venue</p> <p>Specifies, in cases where a guardianship proceeding is filed in one county and a custody or visitation proceeding has already been filed in one or more other counties, the following procedures for determining venue:</p> <p>Creates a presumption that if a proceeding for guardianship is filed in the county where the proposed ward and proposed guardian has resided for at least six months prior to the commencement of the proceeding, the court in that county is the proper venue;</p> <p>Probate Code § 2204(a)(1)</p> <p>Creates an opposite presumption if the proposed ward and proposed guardian have resided in the county</p>	<p>Alert judges, judicial officers, research attorneys, court investigators, probate examiners, and self-help staff of this change in the law.</p> <p>Procedures will need to be developed to assist the court in determining if child custody or visitation proceedings are pending locally or in other counties.</p> <p>This will add a residency checklist item to the court investigator’s review.</p>

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	<p>for less than six months;</p> <p>Probate Code § 2204(a)(2)</p> <p>Allows the court to exercise its discretion in making the ultimate decision based on the court's determination of which venue location would be in the best interest of the minor.</p> <p>Probate Code § 2204(a)(1) and (2)</p>	
<p>3 Inter-court communications</p> <p>Provides that a guardianship or conservatorship proceeding may be transferred to another county upon petition to the court.</p> <p>Probate Code §§ 2211 and 2212</p> <p>Does not specify procedures for communications between courts to facilitate the determination of appropriate guardianship venue.</p>	<p>Inter-court communications</p> <p>Specifies the following scheme governing communications between the courts in these cases:</p> <p>Provides that the court where the guardianship proceeding is commenced must communicate concerning the proceedings with each court where a custody or visitation proceeding is on file prior to making its venue decision, including a determination of a petition to transfer filed before the</p>	<p>Procedures will need to be developed to assist the court in determining if child custody or visitation proceedings are pending in other counties. Questionnaires regarding custody or visitation issues may need to be developed to accompany petitions for guardianship.</p> <p>Procedures need to be developed for transmittal of a copy of the order appointing a guardian to each court where a custody or visitation</p>

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	<p>appointment of a temporary or general guardian of the child's person.</p> <p>Probate Code § 2204(b)(1)</p> <p>Provides that if a petitioner or respondent, who is authorized to petition to transfer under Section 2212, petitions the court where the guardianship proceeding is filed for transfer of the guardianship after the appointment of a guardian, including a temporary guardian, the court in the guardianship proceeding may communicate with each court where a custody or visitation proceeding is on file before determining the petition for transfer.</p> <p>Probate Code § 2204(b)(2)</p> <p>Specifies that if the court in the guardianship proceeding appoints a guardian of the person of the minor, including a temporary guardian, the</p>	<p>proceeding is on file.</p> <p>Procedures need to be developed for processing a transmittal received from another court to ensure a guardianship order received from another county is filed in the case file for the custody or visitation proceeding.</p>

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	<p>court must transmit a copy of the order appointing a guardian to each court where a custody or visitation proceeding is on file, and each of those courts shall file the order in the case file for its custody or visitation proceeding.</p> <p>Probate Code § 2204(b)(3)</p> <p>Specifies that the provisions of subdivisions (b) to (e), inclusive, of Section 3140 of the Family Code shall apply to communications between courts under this subdivision.</p> <p>Probate Code § 2204(b)(4)</p> <p>Requires the Judicial Council, on or before January 1, 2013, to adopt rules of court to implement these provisions.</p> <p>Probate Code § 2204(b)(5)</p>	<p>NOTE: The reference to Section 3140 of the Family Code as stated in this bill is incorrect. It should be Section 3410. Clean-up legislation to correct this cross-reference may be pursued in 2012.</p>

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Existing Law	New Law	Impact on Court
<p>4 Exclusive jurisdiction</p> <p>Establishes, through case law, the principle that when a court has appointed a guardian of the person of a child, no other court may interfere with the guardian’s custody so long as the guardianship appointment is in effect.</p> <p><i>Greene, supra</i>, 37 Cal.2d at 311; <i>Browne v. Superior Court</i> (1940) 16 Cal.2d 593, 597–598</p>	<p>Exclusive jurisdiction</p> <p>Codifies this principle by explicitly authorizing the court that appointed the guardian to have exclusive jurisdiction over all custody or visitation matters involving the minor until the guardianship proceeding is terminated.</p> <p>Probate Code § 2205(a)</p> <p>Clarifies that the above new provision does not impact current law governing the consolidation of probate guardianship and adoption proceedings.</p> <p>Probate Code § 2205(b)</p>	<p>Alert judges, judicial officers, research attorneys, court investigators, probate examiners, and self-help staff of this change in the law.</p>

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Probate

AB 1288 (Gordon)

Effective: 01/01/2012

Chapter 370, Statutes of 2011

Public guardians and conservators: authority: property held in trust

Summary Description of New Law

Extends the authority of a public guardian or conservator to take temporary possession of property, and the corresponding obligation of a financial institution or other person to provide property, as specified, to property held in trust for a potential ward or conservatee. Also extends from 15 to 30 days the period that the written certification issued for purposes of taking possession or control of such property is effective.

	Existing Law	New Law	Impact on Court
1	<p>Temporary possession of property Authorizes a county public guardian or conservator to take temporary possession or control of real and personal property of a person in the county who requires a guardian or conservator, if the property is subject to loss, injury, waste, or misappropriation. Probate Code § 2900</p>	<p>Temporary possession of property Extends the authority of the public guardian or conservator to take temporary possession or control of real and personal property to include property held in trust for a potential ward or conservatee and extends the corresponding obligation of a financial institution or other person to provide such property. Probate Code § 2900</p>	<p>Notify judges and judicial officers, court investigators, and probate examiners of change.</p>
2	<p>Certification by public guardian or conservator</p>	<p>Certification by public guardian or conservator</p>	<p>Notify judges and judicial officers, court investigators, and probate</p>

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Existing Law	New Law	Impact on Court
<p>Authorizes a public guardian to issue a written certification for purposes of taking possession or control of property in this regard, which may be recorded.</p> <p>Probate Code § 2901</p>	<p>Prescribes a certification form that may be recorded in the case of real property and which may be provided to a financial institution.</p> <p>Probate Code § 2901</p>	<p>examiners of change.</p>
<p>3 Notice period</p> <p>Provides a 15 day effective period for a written certification issued by a public guardian for purposes of taking possession or control of property.</p> <p>Probate Code § 2901(a)</p>	<p>Notice period extension</p> <p>Extends from 15 to 30 days the effective period for a written certification issued by a public guardian for purposes of taking possession or control of property.</p> <p>Probate Code § 2901(a)</p>	<p>Notify judges and judicial officers, court investigators, and probate examiners of change.</p>

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Probate

AB 1305 (Huber)
Chapter 117, Statutes of 2011
Decedents' estates: smaller estates

Effective: 01/01/2012

Summary Description of New Law

Increases the size of estates that may be administered outside of the formal probate process. Increases, from \$100,000 to \$150,000, the maximum value of a decedent's estate for which (1) an affidavit or declaration to collect decedent's personal property, and (2) a simplified petition to collect an interest in real property, outside the formal probate process may be used. Increases, from \$20,000 to \$50,000, the maximum value of all real property in a decedent's estate for which an affidavit to transfer decedent's interest in real property may be used outside the formal probate process. Increases, from \$5,000 to \$15,000, the amount of salary or other compensation owed to the deceased spouse by an employer that a surviving spouse can collect outside of the formal probate process, and eliminates the cost-of-living adjustment.

Existing Law	New Law	Impact on Court
<p>1 Eligibility of estates</p> <p>Establishes simplified procedures for addressing a decedent's estate valued under \$100,000, including authorizing the successor of the decedent to collect property due to the decedent without letters of administration or awaiting probate of a will.</p> <p>Probate Code § 13100</p>	<p>Eligibility of estates</p> <p>Increases the value of specified personal property that can be collected without letters of administration from \$100,000 to \$150,000.</p> <p>Probate Code § 13100</p>	<p>Anticipate reduction in number of new filings of formal probate proceedings with a corresponding increase in the number of new filings of summary probate matters.</p> <p>Judicial Council forms may need to be modified.</p> <p>Alert judges, judicial officers, court staff, law librarians, and self-help centers of this change in the law.</p> <p>Web site information, FAQs, self-help</p>

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	Existing Law	New Law	Impact on Court
			brochures, practice guides, and local forms may need to be updated.
2	<p>Exclusions</p> <p>Excludes certain property from the determination of the value of the estate, including salary or other compensation owed to the decedent, not to exceed \$5,000.</p> <p>Probate Code § 13050</p>	<p>Exclusions</p> <p>Increases the amount of salary or other compensation owed to the decedent that may be excluded from the determination of the value of the decedent's estate from \$5,000 to \$15,000.</p> <p>Probate Code § 13050</p>	Notify judges, judicial officers, research attorneys, and probate examiners of change. Could affect allowable evidence in litigated matters.
3	<p>Succession</p> <p>Permits a court, pursuant to a petition, to determine succession to real property in an estate valued under \$100,000, as specified.</p> <p>Probate Code § 13151</p>	<p>Succession</p> <p>Increases from \$100,000 to \$150,000 the value of estates subject to a petition to determine succession.</p> <p>Probate Code § 13151</p>	<p>Anticipate an increase in the volume of new filings of summary probate matters.</p> <p>Modification of Judicial Council forms is needed.</p>
4	<p>Affidavit procedure</p> <p>Establishes an affidavit procedure by which a person may be designated as a successor to a decedent to a particular item of real property</p>	<p>Affidavit procedure</p> <p>Increases from \$20,000 to \$50,000 the value of a particular item of real property for which a person may be designated as a successor to a</p>	<p>Alert staff to this change in the law.</p> <p>Modification of Judicial Council forms may be needed.</p>

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Existing Law	New Law	Impact on Court
valued at no more than \$20,000. Probate Code § 13200	decedent by affidavit. Probate Code § 13200	
<p>5 Affidavit procedure for surviving spouse</p> <p>Establishes an affidavit procedure by which a surviving spouse may collect salary or other compensation owed the deceased spouse when the amount does not exceed \$5,000, as specified.</p> <p>Probate Code §§ 13600-13602</p>	<p>Affidavit procedure for surviving spouse</p> <p>Increases from \$5,000 to \$15,000 the amount of salary or compensation owed the decedent that a surviving spouse may collect by affidavit.</p> <p>Probate Code §§ 13600-13602</p>	<p>Notify judges and judicial officers of change.</p>

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Civil, Juvenile, and Probate

**SB 647 (Committee on Judiciary)
Chapter 308, Statutes of 2011
Civil law: omnibus bill**

Effective: 01/01/2012

Summary Description of New Law

Among other things, amends the law governing the process for obtaining a subpoena in connection with an out-of-state proceeding by requiring the first page of the pleading to state whether or not the person filing the document is a party to the out-of-state case. Makes clarifying amendments to recently enacted legislation (AB 131[Evans], Stats. 2009, ch. 413) to allow courts to collect the costs of providing court appointed counsel in dependency cases from those parents who have the ability to pay. Requires the Judicial Council to adopt policies and procedures allowing a court to recover from the money collected the costs associated with implementing the reimbursements program. Makes technical changes to provisions in the Small Claims Act by deleting erroneous cross-references.

	Existing Law	New Law	Impact on Court
1	<p>Interstate and International Depositions and Discovery Act</p> <p>Provides that if an initial petition has been filed, or another dispute arises in the same out-of-state proceeding, under the Interstate and International Depositions and Discovery Act, different fees are imposed for a party to the proceeding than to a petitioner that is not a party to the proceeding, and the petition must contain all of the</p>	<p>Interstate and International Depositions and Discovery Act</p> <p>Requires that any petition filed under the Interstate and International Depositions and Discovery Act in an out-of-state proceeding include whether or not the person filing the document is a party to the out-of-state case on the first page. Further provides that if such petition has been filed and another dispute arises in the same</p>	<p>Review and revise procedures for filing petitions under the Interstate and International Depositions and Discovery Act to have clerks review the first page of the petition to determine the party status in the out-of-state proceeding in order to charge the filing party the proper fee.</p>

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Existing Law	New Law	Impact on Court
<p>following: (a) the caption and case number of the out-of-state case; (b) on the first page, the name of the court in which the document is filed; and (c) on the first page, the case number assigned by the court.</p> <p>Code of Civil Procedure §§ 2029.610 and 2029.620</p>	<p>out-of-state proceeding, then any document filed in the case must include on its first page whether or not the person filing the document is a party to the out-of-state case.</p> <p>Code of Civil Procedure §§ 2029.610 and 2029.620</p>	
<p>2 Juvenile: collection of fees and costs for appointed counsel in dependency proceedings</p> <p>Authorizes the Franchise Tax Board to collect specified court-ordered debt imposed by a superior court, totaling no less than one hundred dollars.</p> <p>Revenue and Taxation Code § 19280</p> <p>Authorizes the Judicial Council to establish a program to collect reimbursements for costs of counsel appointed to represent parents and minors in dependency proceedings,</p>	<p>Juvenile: collection of fees and costs for appointed counsel in dependency proceedings</p> <p>Authorizes the Franchise Tax Board to collect fees associated with the costs incurred by the county or court for the appointment of counsel to represent parents or minors in dependency proceedings. Deletes a reference to “delinquent reimbursements” and instead would allow courts to recover costs associated with implementing the program for cost reimbursement of counsel appointed to represent</p>	<p>Courts will need to develop a process to recover, from the money collected to reimburse for the costs of appointed counsel, the costs associated with implementing the reimbursement program as a whole, including the costs of assessing a parent’s ability to pay for court-appointed counsel.</p>

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Existing Law	New Law	Impact on Court
<p>and allows courts to adopt policies and procedures to recover costs associated with collecting delinquent reimbursements.</p> <p>Welfare and Institutions Code Section 903.47</p>	<p>parents and minors in dependency proceedings.</p> <p>Revenue and Taxation Code § 19280; Welfare and Institutions Code Section 903.47</p>	
<p>3 Small Claims Appeal Judgments</p> <p>Provides that a small claims court shall give the final judgment after a judgment rendered by the superior court after a hearing on appeal except, for good cause and where necessary to achieve substantial justice between the parties, the superior court may award an appealing party with attorney’s fees and costs, as specified, and actual loss of earnings and expenses, as specified.</p> <p>Code of Civil Procedure § 116.780</p> <p>Provides that a judgment of the superior court after a hearing on appeal, and after transfer to the small</p>	<p>Small Claims Appeal Judgments</p> <p>Deletes obsolete cross-references in Code of Civil Procedure sections 116.780 and 116.820, relating to rules applicable to a judgment that is entered on a small claims appeal.</p> <p>Code of Civil Procedure §§ 116.780(b) and 116.820(a)</p>	<p>No operational impact.</p>

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Existing Law	New Law	Impact on Court
<p>claims court, may be enforced like other judgments of the small claims court.</p> <p>Code of Civil Procedure § 116.820.</p>		
<p>4 Bank levies</p> <p>Provides that a deposit account or safe-deposit box standing in the name of a person other than the judgment debtor is not subject to levy unless authorized by a court order. Further provides that a court order is not required as a prerequisite to levy on a deposit account or safe-deposit box standing in the name of: (1) the judgment debtor; (2) the judgment debtor's spouse; (3) a fictitious business name, as specified; and (4) the additional name of a defendant judgment debtor listed on a writ of execution, as specified.</p> <p>Code of Civil Procedure § 700.160</p>	<p>Bank levies</p> <p>Clarifies an erroneous reference to a “defendant” in Code of Civil Procedure section 700.160, relating to levying of safe-deposit accounts, referring instead to the “judgment debtor.”</p> <p>Code of Civil Procedure § 700.160(b)(3)</p>	<p>No operational impact.</p>

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	Existing Law	New Law	Impact on Court
5	<p>Petition to appoint humane officer</p> <p>Requires a humane society or a society for the prevention of cruelty to animals that seeks confirmation of a humane officer’s appointment to comply with the following: (1) prior to filing a Petition for Order Confirming Appointment of a Humane Officer, submit fingerprints and related information of all humane officer applicants to the Department of Justice; (2) prior to filing a petition, serve a copy of the petition on specified individuals; and (3) file the petition in superior court, as specified. Provides that any party served with a copy of the petition may file an opposition to the petition.</p> <p>Corporations Code § 14502</p>	<p>Petition to appoint humane officer</p> <p>Provides that a humane society or a society for the prevention of cruelty to animals that seeks confirmation of a humane officer’s appointment must serve the Petition for Order Confirming Appointment of a Humane Officer upon the local animal control agency, provided, however, that if the sheriff’s department or police department entitled to notice provides animal control services for the city, no separate notice is required. Clarifies that service of the petition upon all entities required to be served occurs when (but not before) the petition is filed with the court, and fixes a previous drafting error.</p> <p>Corporations Code § 14502</p>	<p>No operational impact. Judicial information only.</p>
6	<p>California Tort Claims Act</p> <p>Requires an aggrieved person, pursuant to the California Tort</p>	<p>California Tort Claims Act</p> <p>Clarifies that service of notice of denial of a claim by mail does not</p>	<p>No operational impact. Judicial information only.</p>

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Existing Law	New Law	Impact on Court
<p>Claims Act, to present claims for money or damages to a local public entity prior to filing an action in court, and requires any suit against a public entity to be commenced within six months after written notice of rejection of the claim is personally delivered or deposited in the mail.</p> <p>Government Code § 945.6</p> <p>Provides that any period of notice and any duty of a public entity to respond after receipt of service of a claim, amendment, application, or notice is extended five days upon service of mail, as specified.</p> <p>Government Code § 915.2</p>	<p>extend by five days the statute of limitations for a person to file a complaint against a public agency pursuant to the California Tort Claims Act.</p> <p>Government Code § 915.2</p>	
<p>7 Probate: disposition of remains</p> <p>Specifies the list of the person or persons who, in an order of priority, have the right to control and duty of disposition of the remains of a</p>	<p>Probate: disposition of remains</p> <p>Adds the conservator of the person and conservator of the estate, with priority below all persons who are in any degree of kinship with the</p>	<p>No operational impact. Inform judges and judicial officers and probate examiners of the change in the law.</p>

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Existing Law	New Law	Impact on Court
<p>deceased person if other directions have not been given by the decedent. Health and Safety Code § 7100</p>	<p>deceased person and only above that of the public administrator, to the list of persons who have the right to control and the duty of disposition of the decedent's remains. Health and Safety Code § 7100</p>	
<p>8 Probate: financial abuse Provides that any person found to have been liable by clear and convincing evidence of fiduciary abuse of a decedent shall not receive any property, damages, or costs that are awarded to the decedent's estate. Probate Code § 259(a)(1) Further provides that, when determining whether to authorize or require a conservator to take a proposed action, the court may consider whether a beneficiary has committed fiduciary abuse against the conservatee. Probate Code § 2583(m)</p>	<p>Probate: financial abuse Replaces the term “fiduciary abuse” with the correct term of “financial abuse” and provides the appropriate cross-reference for the proper issuance of a summons in three sections of the Probate Code, as specified. Probate Code §§ 259(a)(1), (d)(4), and 2583(m).</p>	<p>No operational impact. Inform judges and judicial officers and probate examiners of the change in the law.</p>

2011 New Laws Workshop
Tier 3 Bills

Probate

New Law	Why New Law is Significant to Trial Courts / Actions to Consider
<p>AB 354 (Silva) Effective: 01/01/2012 Chapter 55, Statutes of 2011 <u>Estates and trusts: property: wrongful taking</u></p> <p>Provides that if a person takes, conceals, or disposes of property by the use of undue influence committed in bad faith or through the commission of financial abuse under the Elder Abuse and Dependent Adult Protection Act, that person will be liable for the twice the value of the property taken.</p>	<p>Notify judges, judicial officers, research attorneys, and probate examiners of this change. Could affect allowable evidence in litigated matters.</p>
<p>AB 905 (Pan) Effective: 01/01/2012 Chapter 321, Statutes of 2011 <u>Disposition of remains: authorized agent</u></p> <p>Specifies that the designation of a person authorized to direct disposition (PADD) on a United States Department of Defense Record of Emergency Data, DD Form 93, as that form exists on December 31, 2011, or its successor form if approved by the State Registrar, shall take first priority and be used to</p>	<p>Notify judges and judicial officers of change.</p>

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Probate

New Law

**Why New Law is Significant to Trial Courts /
Actions to Consider**

establish an agent who has the right and duty of disposition for a decedent who died while on duty in any branch or component of the Armed Forces of the United States, as defined. Makes this bill operative only if the form and a specified federal statute are amended to allow a service member to designate any person, regardless of the relationship of the designee to the decedent, as the agent who has the right of disposition of a service member's remains.
