

Date of Hearing: April 29, 2025

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 1025 (Pellerin) – As Amended March 17, 2025

As Proposed to be Amended

SUBJECT: STANDBY GUARDIANSHIP OF MINORS

KEY ISSUE: SHOULD THE LEGISLATURE ESTABLISH THE STANDBY CARETAKER ACT TO ALLOW A CUSTODIAL PARENT TO NOMINATE ANOTHER ADULT TO ASSUME CARE AND RESPONSIBILITY OF THEIR CHILD IN THE EVENT THAT THE PARENT IS UNAVAILABLE TO PROVIDE CARE FOR THEIR CHILD?

SYNOPSIS

Since President Trump’s inauguration in January, his new administration has made concerted efforts to heighten immigration enforcement actions across the country including at locations previously consider sensitive locations, such as courthouses and schools. In response, the state’s immigrant populations have experienced an understandable sense of fear of potential separation from their families, including their minor children. In an attempt to ensure parents have a variety of tools at their disposal to create necessary contingency plans in the event the worst occurs, and they are forced to leave their child behind, this bill proposes the Standby Caretaker Act (Act). As currently in print the bill would allow a parent to name a standby guardian for their minor child who would assume guardianship duties over their child in the event they are faced with an immigration enforcement action. Opponents of the bill raise a number of concerns with the Act’s current structure. In particular, they contend that the bill unnecessarily highlights an already vulnerable community, has insufficient safeguards for parents and their minor children, and includes timelines that risk overburdening the courts. The author proposes a number of amendments that appears to at least partially address these concerns. The amendments would expand the Act to be accessible by any parent who may be facing an event that separates them from their child, modify timelines to create safeguards for the rights of the parent, and establish confidentiality protections for the forms and orders related to proceedings conducted under the Act. The author also proposes a number of clarifying amendments to streamline the proposed process. These amendments are incorporated into the SUMMARY and discussed in further detail in the COMMENTS section of this analysis.

This bill is sponsored by the County of Santa Clara. It enjoys support from a broad coalition of racial justice and affinity organizations, childrens’ safety and legal rights advocacy groups, and community health coalitions. It is opposed by a coalition consisting of Public Counsel, Survivor Justice Center, Los Angeles Dependency Lawyers Inc., Levittquinn Family Law Center, Legal Services for Prisoners With Children, Legal Aid of Sonoma County, Dependency Legal Services, Bet Tzedek Legal Services, and the Alliance for Children’s Rights.

SUMMARY: Establishes the Standby Caretaker Act (Act). Specifically, **this bill:**

- 1) Establishes that execution of a Standby Caregiver’s Authorization form is sufficient for purposes of a pupil’s residency requirements for school attendance in a school district.

- 2) Defines the following for purposes of the Act:
 - a) “Activating event” means an event that results in a custodial parent’s substantial inability to care for their minor child and whose occurrence permits the person nominated in the Standby Caretaker’s Authorization form to assume the powers and duties of a standby caretaker. An activating event may include, but is not limited to, an adverse immigration action, incarceration, including for pending criminal charges, physical debilitation, mental incapacity, or medical service.
 - b) “Standby caretaker” means a person specified by a Standby Caretaker’s Authorization form to have the care, custody, and control of, and to have charge of the education of, the minor child named in the form.
- 3) Applies the provisions of Division 4 of the Probate Code that apply to a guardianship to a standby caretaker appointed under the Act except as otherwise provided.
- 4) Authorizes a custodial parent of a minor child, by execution of a Standby Caretaker’s Authorization form, to nominate an adult to serve as standby caretaker of the minor child. Authorizes the custodial parent of a minor child, in the same writing, to specify a person to serve as alternate standby caretaker in case the originally nominated standby caretaker is or becomes unwilling or unable to act as standby caretaker.
- 5) Makes validity of the Standby Caretaker’s Authorization form contingent on the following requirements:
 - a) The signatures of the custodial parent or parents and the nominated caretaker are witnessed by an adult who is not a party to the action;
 - b) The nominated standby caretaker is 18 years of age or older;
 - c) The signatures are executed on a document that contains the specified form.
- 6) Provides the Standby Caretaker’s Authorization form which includes all of the following:
 - a) Instructions: A parent who completes this form may nominate a standby caretaker and, if applicable, an alternate standby caretaker, to seek appointment as caretaker and assume the care of a minor child when the custodial parent is subject to the activating event described.
 - b) Requires the custodial parent to provide all of the following:
 - i) Minor’s name and date of birth;
 - ii) Name and home address of each nominating custodial parent;
 - iii) Name of each custodial parent if not nominating the standby caretaker;
 - iv) Name, address, and date of birth of the nominated standby caretaker;
 - v) Name, address, and date of birth of the alternate standby caretaker.

- c) Requires, if only one parent completes the Standby Caretaker's Authorization form, the parent to check one or more of the following, if applicable:
 - i) I have advised the other parent or persons with legal custody of my intent to nominate a standby caretaker and have received no objection;
 - ii) No other person has or shares legal custody of the minor child;
 - iii) No other parent or person with legal custody is available to take legal and physical custody of the child;
 - iv) No other parent or person with legal custody would be required to consent to the adoption of the minor child;
 - v) I have attempted but am unable to contact the parent or other person having legal custody of the minor at this time to notify them of my intended nomination.
- d) Requires the custodial parent or parents, standby caretaker, and, if applicable, alternate standby caretaker, to sign and declare under penalty of perjury that the information provided is true and correct, and, for the standby caretaker and alternate standby caretaker, that they voluntarily assume the role of standby caretaker upon the occurrence of the specified activating event affecting the custodial parent(s).
- e) Provides the following notices:
 - i) This form, if endorsed by the court, confirms that legal custody of the minor has been temporarily transferred to the standby caretaker during the activating event and attendant circumstances affecting the custodial parent;
 - ii) A person who relies in good faith on the form has no obligation to make any further inquiry or investigation beyond verifying the identity of the standby caretaker through any of the following means:
 - (1) A government-issued identification card, including the card number and issuing jurisdiction;
 - (2) A valid California driver's license, or a driver's license issued by another state or by a foreign public agency authorized to issue driver's licenses;
 - (3) A valid consular identification document issued by a consulate of the standby caretaker's country of citizenship, or a valid passport issued by the standby caretaker's country of citizenship.
 - iii) If the circumstances requiring the standby caretaker to act ceases or if the standby caretaker is unable or unwilling to act, the standby caretaker shall notify the court, custodial parent, and any person, school, daycare, health care provider, health care service plan, or other entity that relies on this form.
 - iv) This Standby Caretaker's Authorization form supersedes and invalidates all previous Standby Caretaker's Authorization forms executed by the custodial parent or parents.

Custodial parents may also, without nominating a new standby caretaker, rescind all previous nominations by signing below.

- f) Authorizes a custodial parent or parents to rescind all previous nominations of any standby caretaker by declaring under penalty of perjury that they are the custodial parent or parents and signing the declaration.
- g) Provides the following notices to school officials:
 - i) Paragraph (5) of subdivision (a) of Section 48204 of the Education Code provides that a court-endorsed version of this form constitutes a sufficient basis for a determination of residency of the minor unless the school district determines from facts that the minor is not living with the standby caretaker;
 - ii) The school district may require additional reasonable evidence that the standby caretaker lives at the address provided.
- h) Provides the following notices to health care and other service providers and health care service plans:
 - i) A person who acts in good faith reliance upon a court-endorsed version of the Standby Caretaker's Authorization form to provide medical or dental care, or other services, without knowledge of facts contrary to those stated on this form, is not subject to civil or criminal liability and is not subject to professional disciplinary action for that reliance.
- 7) Invalidates a Standby Caretaker's Authorization form 12 months after its execution.
- 8) Requires the nominated standby caretaker to file the Standby Caretaker's Authorization form and a Confidential Guardian Screening Form with the court upon the occurrence of the activating event specified in the Standby Caregiver's Authorization form.
- 9) Requires a nominated standby caretaker to file the documents described in 6) and also file a statement that the person originally nominated as standby caretaker is unwilling or unable to act as standby caretaker, and the basis of that statement, if the nominated standby caretaker is unable or unwilling to act as standby caretaker.
- 10) Requires the court to set a hearing as soon as practicable, and no later than 15 days from the filing of the Standby Caretaker's Authorization form and the Confidential Guardian Screening Form, to verify the occurrence of the activating event and to provisionally appoint the nominated standby caretaker. Requires notice of the hearing to be personally delivered to the minor child if the child is 12 years of age or older and to any person having a valid visitation order with the minor child unless the court orders otherwise for good cause.
- 11) Requires the court to set another hearing following the provisional appointment of the standby caretaker, unless waived for good cause, to consider whether to formally appoint the nominated standby caretaker. Requires the provisionally appointed standby caretaker to file a petition pursuant to Section 1510 of the Probate Code, give notice as required under Section 1511, and comply with any court investigation that the court may order under Section 1513

of the Probate Code, before that hearing, unless any of these requirements is waived for good cause.

- 12) Grants a nominated standby caretaker the duties and powers of a guardian under Probate Code Section 2351 once appointed by the court for the duration of the activating event and attendance circumstances that require the standby caretaker to act, or until the court terminates the caretaker's appointment.
- 13) Authorizes the court to order a formally appointed standby caretaker to return to court as needed to assess the need for and the capacity of the standby caretaker to continue serving.
- 14) Requires the standby caretaker to notify the court, the custodial parent, and any person, school, daycare, health care provider, health services plan, or other entity that relies on the Standby Caretaker's Authorization if the circumstances requiring the standby caretaker to act cease or if the standby caretaker is unable or unwilling to act.
- 15) Prohibits a court from doing any of the following:
 - a) Appointing a standby caretaker over the objection of a noncustodial parent seeking custody unless the court finds that the noncustodial parent's custody would be detrimental to the minor child, as provided in Section 3041 of the Family Code.
 - b) Appoint a standby caretaker nominated by one parent alone, unless no other person has or shares custody of the child, the parent has notified the other parent and any other person having legal custody of the child of the standby caretaker's nomination, and no other parent or person having legal custody objects to the nomination, or the parent is unable to contact the other parent and any other person having legal custody of the child to notify them of the standby caretaker's nomination.
 - c) Suspend the parental rights of the custodial parent. Requires a standby caretaker to exercise authority jointly with the nominating custodial parent, to the extent that the custodial parent is able to participate in the care, custody, and control of the minor child. Makes the rights of the appointed standby caretaker inferior to the rights of the nominating custodial parent, and limits their exercise only during the activating event and attendant circumstances affecting the custodial parent. Authorizes the custodial parent who nominated the standby caretaker to terminate the standby caretaker nomination at any time by filing a petition to terminate under Probate Code Section 1601. Establishes a presumption that termination is in the child's best interest and that the court shall grant the petition to terminate.
- 16) Clarifies that nomination of a standby caretaker for a child does not, by itself, constitute a basis for a determination that a child is within the jurisdiction of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code or a basis for adjudging the child a dependent of the court.
- 17) Establishes that nothing in the section shall be construed as diminishing, altering, or limiting existing laws intended to protect children, including the duties and authority of law enforcement, courts, child protective services, mandatory reporters, or similarly situated individuals or agencies, or the existing caregiver's authorization form, as provided in Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code.

- 18) Requires all court records and documents related to a proceeding conducted pursuant to this bill's provisions to be confidential, and shall be accessible only to parties to the proceeding and the court, absent a valid court order. Notwithstanding the preceding, requires the court to order that the other parties to the proceeding may share any court order appointing the standby caretaker or terminating the standby caretaker's rights to effectuate the caretaker rights provided for in the Act.

EXISTING LAW:

- 1) Establishes circumstances under which a pupil complies with the residency requirements for school attendance in a school district, including when a pupil lives in the home of a caregiving adult that is located within the boundaries of that school district. Specifies that execution of a caregiver's authorization affidavit is a sufficient basis for a determination that the pupil lives in the home of the caregiver. (Education Code Section 48204 (a)(5).)
- 2) Requires a court, prior to making an order granting custody to a person other than a parent over the objection of a parent, to make a finding that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child. Requires a finding that parental custody would be detrimental to the child to be supported by clear and convincing evidence. (Family Code Section 3041.)
- 3) Authorizes an adult caregiver that completes a caregiver's authorization affidavit to enroll a minor in school and consent to school-related medical care on behalf of a minor. Authorizes an adult caregiver who is a relative who completes a more extensive caregiver's authorization affidavit to have the same rights to authorize medical care and dental care for the minor that are given to guardians under Section 2353 of the Probate Code, and may include mental health treatment subject to the limitations of Section 2356 of the Probate Code. (Family Code Section 6550 (a).)
- 4) Authorizes a parent to nominate a guardian of the person or estate, or both, of a minor child in either of the following scenarios:
 - a) Where the other parent nominates, or consents in writing to the nomination of, the same guardian for the same child;
 - b) Where, at the time the petition for appointment of the guardian is filed, either the parent is dead or lacks legal capacity to consent to the nomination or the consent of the other parent would not be required for an adoption of the child. (Probate Code Section 1500.)
- 5) Authorizes a relative or other person on behalf of the minor, or the minor if they are at least 12 years of age, to petition for appointment of guardianship of the minor. Authorizes a relative to file a petition for appointment of a guardian regardless of their immigration status. (Probate Code Section 1510 (a).)
- 6) Requires notice to be given to the following individuals at least 15 days before the hearing on the petition for the appointment of a guardian filed pursuant to 5) :
 - a) The proposed ward if they are at least 12;

- b) Any person having legal custody of the proposed ward, or serving as guardian of the estate of the proposed ward;
 - c) The parents of the proposed ward;
 - d) Any person nominated as guardian for the proposed ward. (Probate Code Section 1511 (a).)
- 7) Exempts a person from the notice requirement in 6) if either the person cannot with reasonable diligence be given notice or the giving of the notice would be contrary to the interest of justice. (Probate Code Section 1511 (e).)
- 8) Requires proof to be provided to the court that each person entitled to notice has either been given notice as required or has not been given notice as required because the person falls under either category identified in 7) before the appointment of guardian is made. (Probate Code Section 1511 (f).)
- 9) Requires a court investigator, probation officer, or domestic relations investigator to make an investigation and file with a report and recommendation concerning each proposed guardianship with the court. Requires investigations where the proposed guardian is a relative to be made by a court investigator, and where the proposed guardian is a nonrelative by the county agency designated to investigate potential dependency. Identifies specific topics to be included in the report, including a social history of the proposed guardian, the relationship of the proposed ward to the proposed guardian, including the circumstances under which the proposed guardian took physical custody of the proposed ward, and the duration of the guardianship anticipated by the parents and the proposed ward. (Probate Code Section 1513 (a).)
- 10) Authorizes the court, upon petition of the guardian, a parent, minor ward, or Indian custodian or the ward's tribe, to make an order terminating the guardianship if the court determines that it is in the ward's best interest to terminate the guardianship. (Probate Code Section 1601.)
- 11) Grants the guardian or conservator the care, custody, and control of, and charge of the education of, the ward or conservatee. (Probate Code Section 2351 (a).)
- 12) Grants guardians the same right as a parent having legal custody of a child to give consent to medical treatment performed upon the child and to require them to receive medical treatment, subject to specified exceptions. (Probate Code Section 2353.)
- 13) Establishes the juvenile court with jurisdiction over children who are subject to abuse or neglect. (Welfare & Institutions Code Section 300.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: California is home to nearly a quarter of the country's immigrant population, totaling approximately 10.6 million people across the state. Nearly half of California's children have at least one immigrant parent. (Public Policy Institute of California, *Immigrants in California* available at: <https://www.ppic.org/publication/immigrants-in-california/>.) Since the presidential inauguration in January of this year, the Trump Administration has focused on following through on his campaign promises by enacting sweeping new immigration policies.

The lack of discernment from the presidential administration has only increased fears within immigrant communities and families, leading people to keep their children home from school and not go to work. (O'Brien and Jordan, *A Chill Sets In for Undocumented Workers, and Those Who Hire Them*, New York Times (March 9, 2025) available at: <https://www.nytimes.com/2025/03/09/business/economy/immigrant-workers-deportation-fears.html>, see also Carolyn Jones, *'Afraid to go to school': Immigrant families in the Salinas Valley are gripped by fear*, CalMatters (Feb. 20, 2025) available at: <https://calmatters.org/education/k-12-education/2025/02/deportation/>.) At the root of many families' fears is the risk of being separated from their children due to parental detention or deportation. According to the author:

California has the highest share of immigrants of any state, at more than double the share of the rest of the country. There are thousands of families with mixed immigration status in Santa Clara County and many more in the State of California, including families where one or more members are U.S. citizens.

The federal administration's recent actions to increase immigration enforcement have created a lot of fear and anxiety among our immigrant community who worry about doing daily activities such as taking their children to school, going to the grocery store or simply existing.

More worrisome is that immigration enforcement could lead to the sudden and immediate separation of an undocumented parent and their child.

AB 1025 seeks to give families a new planning tool to ensure care for children if the parents are subject to deportation or detention. AB 1025 authorizes parents to use a new tool called "standby guardianship" to choose another adult to take care of their children if they are subject to an adverse immigration action, such as deportation or detention.

Caregiver's Authorization Affidavit (CAA). Family Code Section 6550 provides the Caregivers Authorization Affidavit, which authorizes an adult to enroll a child in school and agree to limited medical care for the child. This affidavit can be executed and is enforceable absent court involvement, an attractive element for many parents who may be unable to go to court. However, arguably because of the lack of close judicial scrutiny, the CAA's authority is extremely limited. Specifically, any adult who completes specified portions of the affidavit is authorized to enroll a minor in school and consent to school-related medical care on their behalf. Any adult who is a relative and completes the specified portions has somewhat greater authority to authorize medical care and dental care awarded guardians under Probate Code Section 2353 which grants the same rights as a parent with legal custody to give consent to medical treatment for a child. The authorizations granted by a CAA, however, end there. A caregiver who executes a CAA would not, for example, be authorized to travel with the child or make any other decisions beyond authorizing medical treatment on their behalf that may arise.

Guardianships. Under a traditional guardianship, the parent's or parents' rights are suspended and someone other than the custodial parent assumes the rights and responsibilities for the duration of the guardianship. Probate Code Section 2250 authorizes a court to issue a temporary guardianship pending the determination of a final determination of a traditional guardianship petition. Additionally, Probate Code Section 2105 authorizes a court to issue an order of joint guardianship where two or more persons assume guardianship over a minor. This section also creates a specific form of joint guardianship that allows a court to issue joint guardianship

between a *parent* and a guardian when the parent has been diagnosed with a terminal illness to allow for the parent to make arrangements for the care of the minor alongside the guardian until their passing.

A joint guardianship is subject to the same procedures as a traditional guardianship – the parent or guardian (or both) file a petition with the court, provide notice to all interested parties (including the other noncustodial parent if the petition is filed by only one), the court completes an investigation conducted by a court investigator, probation officer, or domestic relations investigator which is filed with and read by the court prior to the hearing at which the court would make or decline to make an order establishing the guardianship. In sum, the process for establishing a process is a lengthy one, as it considers the viability of the proposed guardianship and any competing guardianship petitions or claims to custody.

Currently, a parent facing a future circumstance that restricts their ability to provide care for their child has limited options to grant another adult (apart from the other parent) authority to make decisions on their behalf for their child. On one end of the spectrum is a guardianship petition, which any individual can submit to request to assume care and control over a child. However, once granted, a guardianship suspends parental rights for the duration of the guardianship. A parent facing a future absence may not want, and a court may not find a need, for their parental rights to be suspended. In fact, the parent's attempt to provide a contingency care plan for their child arguably lends itself to a finding that the parent is perfectly fit to provide the child care and away from any need to suspend their parental rights. On the other end of the spectrum is the CAA that may permit a caregiver to make immediately necessary decisions related to the child's education and healthcare, but is otherwise limited.

Recognizing a narrow yet impactful gap in existing law, *this bill* proposes a kind of marriage between the CAA and joint guardianship. As currently in print, this bill creates a new form of probate order, called a “standby guardianship,” that would allow parents to share custody of their child or children with a person of their choosing only upon the occurrence of an “adverse immigration action.”

In order to obtain a “standby guardianship,” a parent would first complete the “standby guardianship affidavit.” The affidavit would identify the minor, the custodial parent, the “designated standby guardian” and an “alternate standby guardian.” The parent or parents, nominated standby guardian and alternate standby guardian would all sign the affidavit under penalty of perjury. The signatures would be witnessed by an adult who was not any of the three persons already required to sign, who would also sign the affidavit under penalty of perjury.

The new “standby guardianship” structure proposed by this measure is only available to parents who may be subject to what it identifies as an “adverse immigration action.” Upon the occurrence of the “adverse immigration action,” the designated standby guardian would proceed to file the affidavit with the court along with a Confidential Guardian Screening Form that currently accompanies traditional guardianship petitions. The bill then sets firm timelines: a court must set an initial hearing no later than 15 days to issue and verify the occurrence of the adverse immigration action and issue a provisional standby guardianship. The court is then required to set a hearing no later than 30 days of issuing the provisional guardianship to formally adjudicate the standby guardianship. This process combines the out-of-court element of a CAA with the judicial oversight of a guardianship proceeding.

Proposed author’s amendments to address the distinct nature of the new custodial structure as compared to guardianship. AB 1025 titles this new tool a “Standby *Guardianship*”, implying a suspension of parental rights. On the other hand, there are numerous points throughout the measure expressly assuring parents that their rights *will not be superseded* over those of the appointed guardian. There is an inherent contradiction in this language. In order to avoid unnecessary confusion, the author proposes amendments to replace all references to “guardianship” with “caretaker” throughout the bill. Please note that this analysis discusses numerous amendments to the bill in print and thus may occasionally reference “standby guardianship,” rather than “standby caretaker.” As proposed to be amended, however, there would no longer be any reference to “standby guardian” in the measure.

Opponents of this measure raise concerns that the bill is unnecessary because existing law already allows parents to nominate a proposed guardian and allows informal caregivers to make decisions for the temporary care of children. The opponents appear to point to both the CAA and existing guardianship provisions in making this contention. As discussed above, this measure would establish a new tool that draws on distinct elements of both the CAA and guardianship processes in a manner intended to be tailored to the distinct needs of immigrant parents.

Opponents of the measure additionally contend that the bill “appears to provide no provision of notice to parents of the initial hearing, a troubling failure to recognize the rights of undocumented parents and ensure they have the same access to due process regarding custody of their children that is afforded to parents with legal status.”

Notably, this bill diverges from the traditional guardianship process in that the court proceeding *cannot* be initiated until the parent is absent. Under existing law, a petitioning guardian is statutorily obligated to provide notice to the custodial parent at least 15 days before the hearing on the petition, unless the court finds that they cannot with reasonable diligence be given notice, or providing the notice would be contrary to the interest of justice. (Probate Code Section 1511 (b), (g).) The bill *does not* require notice to be given to the parent prior to the court’s preliminary hearing to appoint a provisional caretaker. While the bill requires notice of the full hearing to be given pursuant to Section 1511, it allows for the requirement to be waived for good cause. In the sole context currently considered by the proposed measure, namely a parent’s detention or deportation by immigration officials, it may be practically impossible for a nominated guardian to provide notice to the parent. Immigration detention centers are far from transparent about who they’re holding or whether and when individuals are transferred. These circumstances risk a parent, despite participating in the initial nomination, having no meaningful opportunity to engage in the court’s determination of who should have the care and custody of their child.

In conversation with the author’s office and the sponsors, it appears that the measure is intentionally structured to shield immigrant parents from unintentional exposure to immigration officials. In light of the presidential administration’s recent actions, this concern is understandable. As discussed earlier in this analysis, immigrant communities throughout the state have responded to the presidential administration’s targeting and increased immigration actions by limiting their movements outside their homes. There is a significant, well-founded fear of interacting with government entities within immigrant communities, and as such this bill attempts to factor in this legitimate concern by providing a tool that would not require a parent to appear at a courthouse prior to any separation from their child, thereby theoretically shielding them from unnecessary exposure to law enforcement.

Nonetheless, there may be situations in which a parent would wish to participate in the court process or their participation would be helpful to the court. Moreover, considering the subject of the court's deliberation – namely who should have authority over a child – it seems advisable to have as much parental involvement and notice as possible. Should the bill move forward, the author may wish to consider amendments that would allow a petition to be filed prior to an activating event to make it feasible for a parent to participate in the court process if they opt to do so, and provide greater procedural protections for parents and their children.

Proposed amendments to expand who may obtain standby caretaker authorization. Opponents to the measure contend that this bill improperly establishes a distinct mechanism for families based on their immigration status. As currently in print, this bill would only be available to parents who are facing the threat of a potential immigration detention or deportation. Recognizing the potentially widespread appeal of a legal process for a parent to obtain a court-approved caretaker for their child in their absence, the author proposes to amend the measure to be available to *any* parent facing a potential separation from their minor child. To achieve this goal, the author proposes amendments that would authorize a nominated caretaker to file the relevant documentation upon the occurrence of an “activating event” defined as follows:

(b) For purposes of this section, the following terms have the following meanings:

(1) “Activating event” means an event that results in a custodial parent’s substantial inability to care for their minor child and whose occurrence permits the person nominated in the Standby Caretaker’s Authorization form to assume the powers and duties of a standby caretaker. Activating events include but are not limited to, an adverse immigration action, incarceration, including for pending criminal charges, physical debilitation, mental incapacity, or military service.

[...]

(d) A custodial parent of a minor child may, by execution of a Standby Caretaker’s Authorization form, nominate an adult to serve as standby caretaker of the minor child. A custodial parent of a minor child may, in the same writing, specify a person to serve as alternate standby caretaker in case the originally nominated standby caretaker is or becomes unwilling or unable to act as standby caretaker.

To the extent this amendment makes the new tool available to any parent, rather than only immigrant parents, the opponents’ concern seems at least partially assuaged.

Proposed amendments to limit the time a Standby Caretaker’s Authorization form is valid in order to increase safeguards for parents and their children. Recognizing that the author and sponsors intent is to provide as much shelter to custodial parents and nominated caretakers as possible in light of the threat of immigration actions in particular, as currently in print this bill arguably skews too far in favor of excusing a custodial parent entirely from the court process, even if that parent wants to participate. Under the language as introduced, a parent could complete a standby guardianship affidavit in 2025 but not experience any adverse immigration action until many years later. In the intervening years, the parent and the nominated guardian could experience changes in their relationship that would render that person inappropriate to assume guardianship of their child. In order to address this particular concern, the author proposes an amendment to limit the time during which a standby caretaker form may be effective to one year from the date of signing. The amendment is as follows:

(f) A Standby Caretaker's Authorization form is invalid after 12 months following its execution.

Proposed author's amendments to increase confidentiality in consideration of the sensitive nature of applicants' circumstances. Opponents argue that the new process proposed by the bill "shines a bright light on these families' vulnerabilities at a time when we should be shielding them." As discussed previously, these concerns are partially addressed through amendments that broaden the availability of the Standby Caretaker's Authorization process to any parent, rather than solely to those who fear potential immigration enforcement. The author additionally proposes amendments to explicitly ensure the confidentiality of all the records and documents related to the Standby Caretaker's Authorization process, and make those documents available only to the parties involved. In order to ensure appointed caretakers can demonstrate their authority to make decisions on behalf of the child as authorized by the court's appointment, and for a parent to demonstrate a termination of the appointment, the amendment also requires the court to allow the parties to share any order "to effectuate the caretakers rights provided for in this section." These amendments read as follows:

(p) All court records and documents related to a proceeding conducted pursuant to this section shall be confidential, and shall be accessible only to the parties to the proceeding and the court, absent a valid court order. Notwithstanding the preceding, the court shall order that the other parties to the proceeding may share any court order appointing the standby caretaker or terminating the standby caretaker's rights to effectuate the caretaker rights provided for in this section.

Proposed author's amendments to facilitate a parent's ability to terminate a standby caretaker's authorization upon the conclusion of the activating event. As currently in print, this bill authorizes a parent to terminate the standby guardianship by filing a petition to terminate a guardianship as provided in Probate Code Section 1601, but specifies that the standard set in 1601 shall not apply, and that the court shall grant the petition absent good cause. Section 1601 authorizes a court to terminate a guardianship if it determines that it is in the best interest of the child to do so. It seems ill-advised to completely eliminate the court's authority to evaluate whether termination is in the best interest of the child. However, the termination of petition contemplated by the current measure is distinct from the process considered in the existing law in that the current measure involves parents who are proactively providing care for their children in the event of their absence. These parents are more than likely the most well equipped to care for their children upon their return. Therefore, the author proposes to amend this provision to create a presumption in favor of termination upon petition by the parent, while still allowing a court to consider the child's best interest. The amendment is as follows:

(m) A court shall not do any of the following:

[...]

(3) Suspend the parental rights of the custodial parent. A standby caretaker shall exercise authority jointly with the nominating custodial parent, to the extent that the custodial parent is able to participate in the care, custody, and control of the minor child. The rights of the appointed standby caretaker are inferior to the rights of the nominating custodial parent, and shall be exercised only during the activating event and attendant circumstances affecting the custodial parent. The custodial parent who nominated the standby caretaker may terminate the standby caretaker nomination at any time by filing a petition to terminate under Section

1601. There shall be a presumption that termination is in the child's best interest and that the court shall grant the petition to terminate.

Proposed author's amendments to revise timelines. Opponents contend the timelines proposed by the measure may be unworkable for the courts to implement. The bill currently requires the court to set a preliminary hearing to provisionally appoint the standby guardian within 15 days from the date the standby guardianship authorization affidavit is filed. The court is then required to set a hearing, unless waived for good cause, within 30 days of provisionally appointing the designated standby guardian. The opposition argues that this proposed timeline "likely will create significant court delays for both these cases and others on the court calendar by creating unreasonably short timelines. The practical impact of the proposed timelines is that courts would have to hold multiple hearings simply to request continuances to meet the requirements laid out in the bill since the required investigations and other processes would not be complete in the short timeline laid out in the bill. This would delay access to the court for both the 'standby guardian' hearings as well as any others on the court calendar."

Balancing the concern identified by the opposition against the time-sensitive need to appoint a caretaker for a child whose parent is suddenly no longer available to care for them, the author proposes to retain the 15-day timeline for the provisional appointment and strike the subsequent 30-day timeline. The amended language reads as follows:

(h) The court shall set a hearing as soon as practicable, and no later than 15 days from the filing of the Standby Caretaker's Authorization form and the Confidential Guardian Screening Form, to verify the occurrence of the activating event and to provisionally appoint the nominated standby caretaker. Notice of the hearing shall be personally delivered to the minor child if the child is 12 years of age or older and to any person having a valid visitation order with the minor child unless the court orders otherwise for good cause.

(i) Following the provisional appointment of the standby caretaker, the court shall set another hearing, unless waived for good cause, to consider whether to formally appoint the nominated standby caretaker. Before that hearing, the provisionally appointed standby caretaker shall file a petition pursuant to Section 1510, give notice as required under Section 1511, and comply with any court investigation that the court may order under Section 1513, unless any of these requirements is waived for good cause.

Proposed author's amendments to streamline bill's language. As currently in print, this bill authorizes a custodial parent *or a legal guardian* to petition for standby guardianship. However, an adult who already has guardianship of a child could not simply transition the guardianship from themselves to another nominated guardian. Instead, the court would need to terminate the original guardianship following procedures relevant to that traditional guardianship, a process which is not incorporated into the new proposed structure. In order to simplify the process, the author proposes to limit its availability to only custodial parents. The author also proposes conforming changes throughout the bill.

The language in print also authorizes a standby guardian to petition for guardian of the person, the estate, or both the person and the estate of the minor child. This mirrors existing language for guardianship petitions. While there may be cases in which a parent may wish to select another adult to oversee their minor's estate in the event of their own absence, this bill already proposes an incredibly complex new mechanism. Including potential guardianships of the estate or

guardianships of the person or the estate seems arguably overly expansive for the subject considered by this bill. Therefore the author proposes to limit the Standby Caregiver's Authorization Act to only petitions for guardianship of the person. The author proposes conforming changes throughout the bill.

Additionally, the bill currently includes definitions for "standby guardian," "designated standby guardian," and "appointed standby guardian," to refer to the same person at different points throughout the process. In order to streamline the bill's provisions, the author proposes amendments that would simplify these references to identify an individual prior to being appointed by a court as a "nominated standby caretaker," and following the appointment as a "standby caretaker," and to make conforming changes throughout the bill.

Third, an affidavit carries legal meaning without court involvement. However, the form required by this measure would only grant authority to the nominated persons after court endorsement. Therefore the author proposes to amend the term "affidavit" to "form," and make conforming changes throughout the bill.

Finally, the author proposes numerous amendments to restructure the measure in order to promote the greatest degree of clarity possible.

ARGUMENTS IN SUPPORT: This bill is sponsored by the County of Santa Clara. It enjoys support from a broad coalition of racial justice and affinity organizations, childrens' safety and legal rights advocacy groups, and community health coalitions. In support of the bill the sponsors submit:

The current political climate in the United States has forced immigrant families to prepare for the unimaginable – potential separation. Under current law, families have limited tools to designate a caregiver in the event of adverse immigration action, including detention or removal, but these options may not be suitable for all families' needs. The County heard these community concerns and is honored to sponsor AB 1025. This bill creates an additional option, called standby guardianship, to support our immigrant families.

The federal administration's actions to increase immigration enforcement has caused fear and anxiety. California has been a beacon of diversity and inclusion, with immigrants playing a vital role across the state. In Santa Clara County, 40% of people are foreign-born and nearly half of California children have at least one immigrant parent. Adverse immigration action, including detention and removal, have unleashed fear and anxiety throughout the community. Families currently have several options to prepare for separation, and this bill will keep all of those options in place.

The existing options for families to establish an alternate caregiver for their children include:

- Caregiver's authorization affidavit grants authority to a chosen individual, but it does not provide full custodial rights. This is effective upon execution.
- Power of Attorney gives another adult the authority to act in specified ways, including more authority than the caregiver's authorization affidavit, but it does not provide full custodial rights.
- Joint guardianship allows caregivers to petition the court for appointment of a legal guardian and provides full custodial rights, but it requires advance court involvement.

- Nomination of a guardian authorizes caregivers to nominate an individual who then petitions for legal guardianship when needed.

AB 1025 provides an additional option for family preparedness and is modeled after standby guardianship policies in New Jersey and Maryland. This addition further upholds the state's commitment to human rights and contributes to the overall stability and well-being of our community. Under this additional legal tool, a custodial parent can specify another adult to serve as a standby guardian. This tool does NOT require court filing prior to an adverse immigration action, which reduces the risk of immigration status disclosure. When the standby guardianship is needed, the designated guardian quickly has full custodial authority as the legal process continues, honoring the custodial parent's wishes and prioritizing the safety of the children. AB 1025 also preserves the superiority of the custodial parents' rights, prioritizing family reunification. These legal tools, including standby guardianship, can reduce re-traumatizing children by allowing custodial parents to choose an adult caregiver in their absence, reducing the number of children entering the County welfare system.

ARGUMENTS IN OPPOSITION: The bill is opposed by a coalition consisting of Public Counsel, Survivor Justice Center, Los Angeles Dependency Lawyers Inc., Levittquinn Family Law Center, Legal Services for Prisoners With Children, Legal Aid of Sonoma County, Dependency Legal Services, Bet Tzedek Legal Services, and the Alliance for Children's Rights. They submit:

The undersigned organizations respectfully oppose your AB 1025, as written, because the undersigned organizations believe that rather than provide additional protections to vulnerable children and families, the bill would undermine legal procedures that already exist for children in need of guardianships, duplicate an already-existing method that allows temporary caregivers to make important day to day decisions pending a court determination of custody, and would likely create court delays and for many, impact access to justice.

The undersigned organizations are concerned that AB 1025 would weaken legal protections for vulnerable children rather than strengthen them by introducing an alternative pathway to obtain a form of guardianship without the due process and other protections that court oversight ensures children and their families receive.

The Standby Guardian's Authorization Affidavit created by AB 1025 is duplicative and discriminatory. Existing law already provides for a way for parents to nominate a proposed guardian in case of their unavailability. Existing law also already provides a way for an informal caregiver to make decisions necessary for the temporary care of children before a court action is initiated. By creating a new process that is to be used only by families who have undocumented household members shines a bright light on these families' vulnerabilities at a time when we should be shielding them. The undersigned organizations strongly oppose the creation of separate procedures for families based on their immigration status and believe the impact of this will be gravely harmful.

The provisions laying out how a caregiver would establish a Standby Guardianship are also troubling as well as unnecessary. A caregiver already can file for a temporary guardianship under Probate Code Section 2250 and file a nomination of guardian, making the provisions for filing the Standby Guardian Authorization Affidavit laid out in proposed subsection (f) unnecessary. Subsection (f) also appears to provide no provision of notice to parents of the initial hearing, a troubling failure to recognize the rights of undocumented parents and ensure

they have the same access to due process regarding custody of their children that is afforded to parents with legal status.

AB 1025 also creates an expedited court process that, while well intentioned, likely will create significant court delays for both these cases and others on the court calendar by creating unreasonably short timelines. The practical impact of the proposed timelines is that courts would have to hold multiple hearings simply to request continuances to meet the requirements laid out in the bill since the required investigations and other processes would not be complete in the short timeline laid out in the bill. This would delay access to the court for both the “standby guardian” hearings as well as any others on the court calendar.

The undersigned organizations share the broader community’s concern with heightened risk of family separations and increased family preparedness planning. However, the undersigned organizations do not think the solution to this is to put these families at even greater risk of separation by creating the type of simplified procedures identified in AB 1025.

The undersigned organizations look forward to working with California legislators to craft legislation which will enhance protections for children and their parents and proposed caregivers.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Santa Clara (sponsor)
Amigos De Guadalupe Center for Justice and Empowerment
Asian Law Alliance
Asian, INC.
California Consortium for Urban Indian Health
Catholic Charities of Santa Clara County
City of Oakland - City Attorney's Office
Community Health Partnership
First 5 California
First 5 Santa Clara County
Gardner Family Health Network, INC.
Homefirst Services of Santa Clara County
Katharine & George Alexander Community Law Center
Kids in Common
Law Foundation of Silicon Valley
Mexican-American Legal Defense and Ed Fund [MALDEF]
Next Door Solutions to Domestic Violence
North East Medical Services (NEMS)
Oasis Legal Services
San Diego City Attorney's Office
Santa Clara County Wage Theft Coalition
Silicon Valley Council of Nonprofits
Step Forward Foundation
Working Partnerships USA

Opposition

Alliance for Children's Rights
Bet Tzedek Legal Services
Dependency Legal Services
Legal Aid of Sonoma County
Legal Services for Prisoners With Children
Levittquinn Family Law Center
Los Angeles Dependency Lawyers, INC.
Public Counsel
Survivor Justice Center

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