

CONCURRENCE IN SENATE AMENDMENTS

AB 1663 (Maienschein)

As Amended August 22, 2022

Majority vote

SUMMARY

Revises how probate conservatorships are investigated, established, and terminated; revises who may serve as conservator for individuals with developmental disabilities; requires the Judicial Council, subject to an appropriation, to establish a conservatorship alternatives program within each self-help center; establishes voluntary supported decisionmaking as a way to help individuals with disabilities; and requires the State Council on Developmental Disabilities, subject to an appropriation, to administer a statewide Supported Decisionmaking Technical Assistance Program.

Major Provisions

- 1) Requires the Director of Developmental Services, no later than January 1, 2024, to develop guidelines to mitigate conflicts that may arise when a regional center acts as a designee of the Director for a conservatee and also is responsible for service coordination activities, as provided.
- 2) Requires the court, when determining whether a conservatorship is the least restrictive alternative available, and whether to grant or deny a conservatorship petition, to consider the person's abilities and capacities with current and possible supports, including but not limited to supported decisionmaking agreements, powers of attorney, designations of health care surrogates, and advance health care directives.
- 3) Gives preference for selection of a conservator who is preferred by the conservatee or proposed conservatee, as provided.
- 4) Requires that in the petition requesting appoint of a conservator, the alternatives to conservatorship considered by the petitioner or proposed conservator be included and why those alternatives are not suitable, alternatives tried and details on the length and duration of attempted alternatives, and the reasons why those alternatives did not meet the needs of the conservatee. Provides that alternatives to conservatorship include, but are not limited to, supported decisionmaking agreements, powers of attorney, advance health care directives, and designations of health care surrogates.
- 5) Requires every court, within 30 days of establishment and annually thereafter, to provide all conservatees with written information listing their specific rights.
- 6) Requires Judicial Council, upon appropriation by the Legislature, to establish a conservatorship alternatives program within each self-help center in each superior court. Sets forth the purpose of the conservatorship alternatives program, including providing information relating to less restrictive alternatives could be used to avoid the conservatorship and educating interested individuals in conservatorship proceedings on less restrictive alternatives. Requires each program to include staff to provide information and resources to interested individuals about less restrictive alternatives to conservatorships. Sets out rules for the operation of the conservatorship alternatives program.

- 7) Requires that the court investigator, when possible at the annual visit to the conservatee, discuss with the conservatee less restrictive alternatives to conservatorship and report to the court whether the conservator or conservatee wishes to modify or terminate the conservatorship and whether less restrictive alternatives could be tried. Requires the court, if indicated by the report, to promptly consider terminating or modifying the conservatorship.
- 8) When a petition for termination of a limited conservatorship is filed, requires the court to terminate the conservatorship unless it makes a required finding on the record. If a petition to terminate a limited conservatorship is uncontested and shows that both the conservator and conservatee wish to terminate and that the conservatorship is no longer the least restrictive alternative, allows the court to terminate the conservatorship without a hearing.
- 9) Requires the court, on receipt of communication from a conservatee that the conservatee wishes to terminate the conservatorship, to appoint counsel for the conservatee and set a hearing for termination of the conservatorship when either there has not been a hearing for termination within the preceding 12 months or the court believes there is good cause to set the hearing.
- 10) Requires that a conservator, to the greatest extent possible, inform the conservatee on a regular basis of decisions made on their behalf. Requires the conservator, when determining the desires of the conservatee, to consider stated or previously expressed preferences, as provided.
- 11) Allows an adult with a disability, as defined, to choose to enter into supported decisionmaking with one or more supporters, which is an individualized process of supporting and accommodating an adult with a disability to enable the adult to make life decisions without impeding their self-determination.
- 12) Allows an adult with a disability to have present one or more adults, including supporters, in any meeting or communication, or participate in any written communication. Only allows a third party to refuse the presence of another person, including a supporter, if they have a reasonable belief that there is fraud, coercion, or abuse as provided. States that this is declaratory of existing law.
- 13) Provides that a supporter is one or more adults who meet certain criteria and who enter into a supported decisionmaking agreement. Sets forth requirements for supporters. Prohibits a supporter from coercing an adult with a disability. Unless explicitly authorized, prohibits a supporter from engaging in certain things, including participating in life decisions in which the supporter has conflict of interest.
- 14) Prohibits a person from being a supporter in certain situations, including if the adult with a disability has obtained an order of protection for abuse or if the person is the subject of a civil or criminal order prohibiting contact with the adult with a disability.
- 15) Provides that a supporter is bound by all existing obligations and prohibitions otherwise applicable by law that protect people with disabilities and the elderly from fraud, abuse, neglect, coercion, or mistreatment. Provides that this does not limit a supporter's civil or criminal liability for prohibited conduct against the person with a disability, including liability for fraud, abuse, neglect, coercion, or mistreatment, including liability under the Elder Abuse and Dependent Adult Civil Protection Act.

- 16) Establishes requirements for a supportive decisionmaking agreement, including that it be in writing. Sets forth information that must be included in the agreement. Sets forth when it expires.
- 17) Requires the State Council on Developmental Disabilities, upon appropriation by the Legislature and in consultation with specified groups, including the UC Davis MIND Institute, to administer a statewide Supported Decisionmaking Technical Assistance Program (SDM-TAP) to provide support, education, and technical assistance, and to administer grants to expand and strengthen the use of supported decisionmaking across California. Requires the State Council on Developmental Disabilities, in coordination and consultation with specified groups, to establish and staff a centralized SDM-TAP to provide guidance, assistance, and training to educational entities, families, service providers, professionals, people with disabilities, courts, attorneys, mediators, and others in California who wish to use or expand supported decisionmaking in their professional or personal life. Sets forth duties of SDM-TAP. Requires the State Council on Developmental Disabilities to administer SDM-TAP grant funding to state and local government entities, such as courts and school districts, and to nongovernmental entities, to expand the use of supported decisionmaking and reduce the use of conservatorships.

Senate Amendments

Add a preference for a conservator selected by the conservatee; add requirements for supporters and supported decisionmaking agreements; delete the requirement that a supported decisionmaking agreement may be relied upon by a third party, and that supported decisionmaking be encouraged and used to the maximum extent possible for those under conservatorships; delete the requirement that the State Council on Developmental Disabilities administer a statewide Supported Decisionmaking Technical Assistance Program, and delete the appropriation and make certain provisions contingent on funding.

COMMENTS

In California, if an adult is unable to manage their financial affairs, a conservator of the estate may be appointed by a court to manage those affairs. If the adult is unable to manage their medical and personal needs, a conservator of the person may be appointed to help manage those needs. The appointment process generally requires an investigation by a court investigator and approval by the court. A conservatorship involves a court-appointed third party – the conservator – making far-reaching, life-changing decisions on behalf of their charge – the conservatee.

Unfortunately, the conservatorship system has been riddled with significant and longstanding problems that have not been fully addressed, despite major legislation in the area to overhaul court investigations and oversight and conservatees' rights, including the 2006 Omnibus Conservatorship and Guardianship Reform Act, and last year's AB 1194 (Low), Chap. 417, Chap. 2021, in large part because these bills are not effective until funded, and funding has not yet occurred.

This bill builds on the past reforms and seeks to expand less restrictive alternatives to conservatorships, when appropriate, particularly supported decisionmaking. The bill does so in several ways, including by establishing voluntary supported decisionmaking in statute as a way to help individuals with disabilities; and requiring Judicial Council, upon an appropriation, to establish a conservatorship alternatives program within each self-help center. In addition, the bill revises how probate conservatorships are investigated, established, and terminated to ensure that

courts properly consider alternatives to conservatorship. Finally this bill requires that courts provide conservatees with written information describing their rights and options.

According to the Author

Probate conservatorships are often easy to enter and difficult to end. AB 1663 provides an alternative to this cycle by codifying supported decision-making as a less restrictive option that a court must consider. This bill also provides greater protection to conservatees in existing conservatorships by ensuring they are included in decisions made for them; guaranteeing they know their rights; and providing a mechanism for the conservatee to ask for less restrictive options such as supported decision-making.

Arguments in Support

This bill is supported by a broad coalition of advocacy organizations and individuals, including advocates for the elderly and those with disabilities, including California Advocates for Nursing Home Reform, which writes:

AB 1663 introduces the valuable concept of supported decisionmaking (SDM) to California law. SDM is a process for decisionmaking that, to varying extents, formalizes how every adult makes important decisions: using the advice of trusted family members, friends, and experts. No conservatorship should ever be granted without a court's careful deliberation about the availability of SDM, as with any other common alternative to conservatorship. . . .

Conservatorships can sometimes be a necessary option for decisionmaking on behalf of a person with a cognitive disability. But law and policy must strongly reinforce the extraordinary nature of conservatorships. Conservatorships strip citizens of their civil rights, effacing the notion of personhood. AB 1663 attempts ensure that personhood is better nurtured in the conservatorship process.

Arguments in Opposition

The National Council on Severe Autism writes in opposition that although the bill as amended addresses "many shortcomings of the original bill, . . . several significant and serious concerns remain and should be addressed in further amendments." These suggested changes include:

- 1) People should be informed about, but not directed to, the courts' conservatorship alternatives program;
- 2) Determining a conservatee's wishes should only include *evidence-based* alternative or augmentative communication methods;
- 3) Supports considered when assessing capacity should be "based on evidence-based methods found in standard clinical practice"; and
- 4) Supported decisionmaking agreements must be in writing, supporters are not required to participate in meetings if a third party suspects fraud or coercion, and supported decisionmaking should not be used within a conservatorship.

FISCAL COMMENTS

According to the Senate Appropriations Committee, ongoing cost pressures, likely in the tens of millions of dollars to fund SDM-TAP and the conservatorship alternatives program (General Fund).

VOTES:**ASM JUDICIARY: 10-0-0**

YES: Stone, Cunningham, Davies, Holden, Kalra, Kiley, Maienschein, Reyes, Robert Rivas, Wicks

ASM APPROPRIATIONS: 15-0-1

YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

ABS, ABST OR NV: Megan Dahle

ASSEMBLY FLOOR: 75-0-3

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

ABS, ABST OR NV: Berman, O'Donnell, Patterson

UPDATED

VERSION: June 23, 2022

CONSULTANT: Leora Gershenzon / JUD. / (916) 319-2334

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