

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1663 (Maienschein)
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Fiscal: Yes
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AWM

SUBJECT

Protective proceedings

DIGEST

This bill implements several reforms of the conservatorship system for adults unable to care for their own affairs and codifies requirements for supported decisionmaking as a less restrictive alternative to a conservatorship.

EXECUTIVE SUMMARY

In California, if an adult is unable to manage their affairs – which may be medical, personal, financial, or all of the above – a conservator may be appointed to manage the adult’s affairs on their behalf.¹ 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).

Following a 2005 *Los Angeles Times* investigative series that exposed numerous abuses by probate conservators, a major reform effort was undertaken. While some important changes were made, the Great Recession scuttled much of the effort’s momentum, leaving numerous potential reforms unrealized, including some reforms related to judicial oversight of conservatorships that were enacted in 2006 but defunded in 2011. Last year, the Legislature enacted AB 1194 (Low, Ch. 417, Stats. 2021), which was intended to implement significant new conservatorship reforms, but many of its measures remain unfunded.

This bill builds on the past reforms and seeks to expand less restrictive alternatives to conservatorships, when appropriate, particularly supported decisionmaking. The bill

¹ This procedure is set forth in the Probate Code, and is distinct from the procedure for establishing a conservatorship for “gravely disabled” persons under the Lanterman-Petris-Short Act. This bill and this analysis address only the former.

does so in several ways, including by establishing the process of supported decisionmaking in statute as a way to help individuals with disabilities, requiring Judicial Council to establish a conservatorship alternatives program within each self-help center, requiring the State Council on Developmental Disabilities to administer a statewide Supported Decisionmaking Technical Assistance Program (SDM-TAP), and appropriating \$10 million from the general fund for those purposes. In addition, the bill revises how probate conservatorships are investigated, established, and terminated to ensure that courts properly consider alternatives to conservatorship. The bill also revises who may serve as conservator for individuals with developmental disabilities. Finally the bill requires that courts provide conservatees with written information describing their rights and options. The author has agreed to a number of amendments to strengthen and clarify the supported decisionmaking portions of the bill.

This bill is sponsored by California Advocates for Nursing Home Reform, the California Community Living Network, the California State Council on Developmental Disabilities, Disability Rights California, the Disability Rights Education and Defense Fund, Disability Voices United, and Free Britney LA and is supported by a number of organizations dedicated to disability rights and conservatorship reform. This bill is opposed by Autism Society San Francisco Bay Area, the California Association of Public Administrators, Public Guardians, and Public Conservators, the National Council on Severe Autism, and The Arc and United Cerebral Palsy California Collaboration. If this bill is passed by this committee, it will be heard by the Senate Human Services Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes a court to appoint a conservator of the person or estate of an adult, or both, provided that the conservatorship is the least restrictive alternative necessary for the protection of the conservatee. (Prob. Code, § 1800.3.)
- 2) Provides that a conservator may be appointed as follows:
 - a) A conservator of the person may be appointed for a person who is unable to provide properly for their personal needs for physical health, food, clothing, or shelter. (Prob. Code, § 1801(a).)
 - b) A conservator of the estate may be appointed for a person who is substantially unable to manage their own resources or resist fraud or undue influence; substantial inability may not be proved solely by isolated incidents of negligence or improvidence. (Prob. Code, § 1801(c).)
- 3) Requires the court, in the selection of a conservator, to be guided by what appears to be the best interests of the proposed conservatee, and sets forth an order of

preference for persons to be appointed based on their relationship to the proposed conservatee. (Prob. Code, § 1812.)

- 4) Allows the Director of Developmental Services be appointed as a guardian or conservator of a developmentally disabled person who is eligible for regional center services or is a patient in any state hospital; while the procedures for the establishment of a conservatorship under the Probate Code generally apply to such an appointment, the order of preferences for the person to be appointed does not. When the Director of Developmental Services is appointed as a conservator, the services rendered must be performed through the regional centers or other agencies or individuals designated by the regional centers. (Health & Saf. Code, div. 1, pt. 1, ch. 2, art. 7.5, §§ 416 et seq.)
- 5) Sets forth the procedures for establishing a conservatorship and appointing a conservator, including the requirements of a petition requesting appointment of a conservator and an investigation by an investigator of the probate court. (Prob. Code, §§ 1821, 1826.)
 - a) Several contemplated portions of the investigation, however, are contingent upon an appropriation by the Legislature identified for that purpose. (Prob. Code, § 1826(h).)
- 6) Requires a court to provide all private conservators with written information concerning a conservator's rights, duties, limitations, and responsibilities in materials developed by the Judicial Council. (Prob. Code, § 1835.)
- 7) Requires a court to periodically review a conservatorship as follows:
 - a) When an appropriation has been made by the Legislature for that purpose, six months after the establishment of a conservatorship and annually thereafter; the conservatorship must be terminated unless the court determines, by clear and convincing evidence, that the conservatee continues to meet the criteria. (Prob. Code, §§ 1850, 1863.)
 - b) When no specific appropriation has been made, after the first year, and biannually thereafter. (Prob. Code, §§ 1850, 1863.)
- 8) Provides that a court may find that a conservatee lacks capacity to, among other things, enter into a marriage or domestic partnership or vote, and authorizes a conservator to file a petition for the appointment of a limited conservator for the purpose of consenting to the sterilization of the conservatee. (Prob. Code, §§ 1901, 1910, 1952.)
- 9) Provides that a conservatorship continues until the death of the conservatee or an order of the court terminating the conservatorship. (Prob. Code, § 1860.)

- 10) Authorizes the creation of a limited conservatorship, as an alternative to a full conservatorship when the person's needs do not require a full conservatorship, that allows the conservatee to retain all legal and civil rights except those granted by the court to the limited conservator. A limited conservatorship continues until the death of the limited conservatee, an order of the court terminating the conservatorship, or where the order appointing the limited conservator contained a set termination date. (Prob. Code, §§ 1801(d), 1860.5.)
- 11) Requires a conservator to accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the conservatorship estate. (Prob. Code, § 2113.)

This bill:

- 1) Modifies the procedures for when the Director of Developmental Services may be appointed as a guardian or conservator for a minor or adult developmentally disabled person, as follows:
 - a) The order of preferences for the individuals to be appointed as a conservator set forth in the Probate Code will apply to the appointment of a conservator in this circumstance.
 - b) When the Director acts as a conservator or guardian, they must work with regional centers and the conservatee or ward, to the greatest extent possible, to develop and implement less restrictive alternatives to conservatorship.
 - c) A regional center shall not act as a guardian or conservator for a person if that regional center is also providing service coordination activities pursuant to an individual program plan under Welfare and Institutions Code section 4647.
- 2) Modifies the statement of legislative intent for the establishment of conservatorships under the Probate Code, to state that the chapter is additionally intended to:
 - a) Provide that the periodic review of the conservatorship by the court investigator shall consider the best interests and expressed wishes of the conservatee; whether the conservatee has regained or could regain abilities and capacity with or without supports; and whether the conservatee continues to need a conservatorship; and
 - b) Ensure that the conservatee is able to understand, make, and communicate their own informed choices to the greatest possible extent while under conservatorship.
- 3) Requires a court, in determining whether a conservatorship is the least restrictive alternative available and whether to grant or deny a petition for conservatorship, to consider the person's abilities and capacities with current and possible supports, including, but not limited to, supported decisionmaking, powers of attorney, and advance health care directives.

- 4) Provides that if a court becomes aware that a proposed conservatee has a developmental disability, and the proposed conservator is not seeking authority to act under provisions for a person with a major neurocognitive disorder (Prob. Code, § 2356.5), the court must deem the proceeding to be seeking a limited conservatorship.
- 5) Modifies the provisions setting forth the order of preference for the person to be appointed as a conservator to provide that an appointment of the Director of Developmental Services may be made only if the court determines that another qualified person is not chosen and preferred by the proposed conservatee who is willing to act as conservator, the appointment presents no substantial risk of a conflict of interest, and the appointment is in the best interest of the proposed conservatee; and to provide that a regional center may not itself act as a conservatee, but may act as the designee of the Director of Developmental Services.
- 6) Requires the petition requesting the appointment of a conservator, in setting forth the less restrictive alternatives to a conservatorship that were considered, to set forth which alternatives were actually tried by the petitioner, including, where applicable, the number and duration of attempted alternatives and the reasons why the alternatives do not meet the proposed conservatee's needs; and specifies that less restrictive alternatives include, but are not limited to, all of the following:
 - a) Supported decisionmaking;
 - b) Powers of attorney;
 - c) Advanced health care directives; and
 - d) Designations of a health care surrogate.
- 7) Eliminates the option to include in a petition requesting the appointment of a conservator, to satisfy the requirement of establishing the existence and degree of the proposed conservatee's developmental disability, reports submitted pursuant to the provisions authorizing the Director of Developmental Services to serve as a conservator, and eliminates the provision providing that supplemental reports are not required in such conservatorships.
- 8) Expands the court's requirement to provide written information to conservators to apply to private, as well as public, conservators, and requires the written information to additionally include:
 - a) How to assess the preferences of the conservatee;
 - b) Procedures to petition to terminate or modify the conservatorship; and
 - c) The conservator's obligation to support the conservatee to maximize their autonomy, support and respect their preferences, use supported decisionmaking as far as possible, and support their development and learning to obviate the need for conservatorship.

- 9) Requires a court to provide all conservatees with information written in plain language describing the conservatee's options within the conservatorship, which must include, but need not be limited to:
 - a) The name and contact information of the conservator;
 - b) A description of the conservatorship, including the rights the conservatee retains under the conservatorship;
 - c) The role, duties, and contact information, including name, telephone number, address, and email address of the court investigator and the court alternatives program;
 - d) The person to petition to end or change the conservatorship and contact information for the person to contact to begin that process; and
 - e) A personalized list of rights that the conservatee retains, even under the conservatorship, including the rights to do all of the following: directly receive and control their own salary; make or change their will; get married, unless expressly withheld by the court; receive mail; have visits from family and friends, unless expressly withheld by the court; have a lawyer; ask a judge to change conservators; ask a judge to end the conservatorship; vote, unless expressly withheld by the court; control personal spending money, if a judge permits an allowance to be paid directly to the conservatee; make their own health care decisions, unless expressly withheld by the court; enter into business transactions to provide for the conservatee's basic needs and those of their children; and participate in other activities the court allows when the conservator is appointed, or when the court order later grants the right at the conservatee's request.

- 10) Requires the Judicial Council to establish a conservatorship alternatives program within each self-help center in every state Superior Court, as follows:
 - a) The purposes of the conservatorship alternatives program are to (1) identify petitions for conservatorships for which less restrictive alternatives, including supported decisionmaking, could be used to avoid the conservatorship; (2) educate parties in conservatorship proceedings on less restrictive alternatives that may be appropriate, and provide assistance and guidance in considering and implementing those alternatives; and (3) reduce the number of people who lose their rights under conservatorships.
 - b) Each court's conservatorship alternatives program shall include staff who provide information and resources to potential petitioners and potential conservatees about options that could avoid conservatorships to the maximum extent practical.
 - c) Persons who call the court self-help center to inquire about conservatorship proceedings or to request related documents shall be directed to the conservatorship alternatives program, and the program shall be available to other potential or present conservators, conservatees, attorneys, and others involved in the conservatorship system.

- d) Staff of the program shall be trained in less restrictive alternatives and meet with potential conservators or conservatees to provide guidance, information, resources, and technical support relating to alternatives to conservatorship.
 - e) Communication with the conservatorship alternatives program staff shall be confidential.
 - f) Participation in the conservatorship alternatives program is not mandatory.
- 11) Requires the Judicial Council, in coordination with the Supported Decisionmaking Technical Assistance Program (SDM-TAP, set forth in greater detail in 38), to ensure judges are provided with education on alternatives to conservatorships, including supported decisionmaking; the education may include, but is not limited to, training courses, continuing education, and informational materials.
- 12) Requires the court investigator, when conducting its annual investigation into whether the conservatorship is still appropriate, to include in its investigation, when possible, a discussion with the conservatee about less restrictive alternatives to conservatorship and to report to the court whether the conservatee or conservator wishes to modify or terminate the conservatorship and whether less restrictive alternatives could be tried. If the investigator's report indicates that the conservator or conservatee wishes to modify or terminate the conservatorship, the court must consider a prompt modification or termination.
- 13) Requires a court, when finding by clear and convincing evidence that a conservatee continues to meet the criteria for limited conservatorship so as to avoid terminating the conservatorship, to make its findings on the record.
- 14) Provides that, if a petition for termination of a limited conservatorship is uncontested and states facts showing that both the limited conservator and limited conservatee wish to terminate the limited conservatorship, and the conservatorship is no longer the least restrictive alternative for the limited conservatee's protection, the court may terminate the limited conservatorship without a hearing.
- 15) Requires the court, upon receipt of a communication from a conservatee that the conservatee wishes to terminate their conservatorship, the court to appoint counsel for the conservatee and set a hearing for the termination of the conservatorship when either of the following conditions apply:
- a) There has not been a hearing for the termination of the conservatorship within the 12 months preceding the communication; or
 - b) The court believes there is good cause to set a hearing for the termination of the conservatorship.
- 16) Provides that, if a petition for termination of a conservatorship is uncontested and states facts showing that both the conservator and conservatee wish to terminate the conservatorship and the conservatorship is no longer the least restrictive alternative

for the conservatee's protection, the court may terminate the conservatorship without a hearing.

- 17) Provides that a conservator, as part of their duty to accommodate the desires of the conservatee where possible, must, to the greatest extent possible, on a regular basis, inform the conservatee of decisions made on their behalf; and that, in determining the desires of the conservatee, the conservator must consider stated or previously expressed preferences, including preferences expressed by speech, sign language, alternative or augmentative communication, actions, facial expressions, and other spoken and nonspoken methods of communication.
- 18) Adds Part 10 to Division 4 of the Probate Code, establishing supported decisionmaking for adults with disabilities.
- 19) Makes findings and declarations relating to the importance of maintaining the greatest degree of autonomy possible for adults with disabilities and the effectiveness of supported decisionmaking for adults with disabilities.
- 20) Provides the following definitions:
 - a) "Adult with a disability" includes an adult with any disability, including, but not limited to, an intellectual or developmental disability, cognitive disability, communication disability, psychiatric disability, age-related disability, physical disability, sensory disability, learning disability, dementia, cognitive impairment, Alzheimer's disease, major neurocognitive disorder, or chronic illness or condition.
 - b) "Life decision" means any decision, whether minor or major, that affects the adult with a disability, including, but not limited to, a decision regarding any medical, psychological, financial, educational, residential, social, sexual, religious, and occupational matter. Life decisions include decisions about institutional, residential, and community-based services such as those provided by a regional center, In-Home Supportive Services, a nursing home, or a skilled nursing facility.
 - c) "Supported decisionmaking" means an individualized arrangement in which an adult with a disability chooses one or more people they trust as supporters to help them understand, make, communicate, implement, or act on, their own choices. Supported decisionmaking recognizes and accepts the preferences of the adult with a disability, as expressed with the supports and supporters they choose.
 - d) "Supporter" means another adult who agrees to help the adult with a disability in using supported decisionmaking. A supporter agrees to help the adult with a disability as requested, which may include providing assistance to the adult with a disability to understand, make, communicate, implement, or act on, their own life decisions. Unless the adult with a disability explicitly

delegates decisionmaking, a supporter is not entitled to substitute their judgment for the decision of the adult with a disability.

- 21) Permits an adult with a disability to choose to enter into supported decisionmaking with one or more chosen supporters and to request that the supporter provide assistance in any or all of the following ways:
 - a) Participate in supported decisionmaking, including assistance in understanding information, options, responsibilities, and consequences of the life decisions of the adult with a disability.
 - b) Assist the adult with a disability in accessing, collecting, obtaining, and understanding information that is relevant to a given life decision from any person or entity, and information about how supporters and supported decisionmaking is used.
 - c) Assist the adult with a disability in understanding information related to a life decision.
 - d) Assist the adult with a disability in communicating the adult's life decisions to appropriate persons, and advocate or assist to ensure that the adult's preferences and decisions are implemented.

- 22) Provides that supported decisionmaking can take many forms and may be informal, and that an adult with a disability is not required to enter into a written supported decisionmaking agreement to participate in supported decisionmaking.

- 23) Provides, notwithstanding any other provision in the new Part 10, that an adult with a disability may request, and is entitled to have present, one or more other adults, including supporters, in any meeting or communication, including, but not limited to, all of the following:
 - a) An individualized education plan meeting;
 - b) An individual program plan meeting;
 - c) A service planning meeting;
 - d) A care plan and hospital discharge planning meeting;
 - e) A financial planning meeting;
 - f) A communication or meeting with a bank or other financial institution;
 - g) An employment planning meeting; and/or
 - h) A medical appointment.

- 24) Provides that, when an adult with a disability indicates that they wish to have one or more other adults present in any meeting or communication, any entity or third party shall permit the other adult or adults to attend with the adult with a disability; and this indication may be communicated through oral statement, gesture, or any augmentative or alternative communication method used by the adult with a disability.

- 25) Finds and declares that 23) and 24) are declarative of existing law.

- 26) Provides that a supporter is an adult identified by a person with a disability to participate in supported decisionmaking and who agrees to do so, and that an adult with a disability may have multiple supporters.
- 27) Provides that each supporter shall do all of the following:
- a) Support and implement the will and preferences of the adult with a disability;
 - b) Respect the values, beliefs, and preferences of the adult with a disability;
 - c) Act honestly, diligently, and in good faith;
 - d) Act within the scope identified by the adult with a disability; and
 - e) Avoid, to the greatest extent possible, disclose, minimize, and manage conflicts of interest.
- 28) Prohibits a supporter from coercing the adult with a disability, and, unless explicitly authorized, from:
- a) Making decisions on behalf of the adult with a disability;
 - b) Signing documents on behalf of the adult with a disability;
 - c) Substituting their own judgment for the decision or preference of the adult with a disability;
 - d) Obtaining information that is not reasonably related to matters with which the supporter may assist the adult through supported decisionmaking; and
 - e) Using or disclosing information acquired for the purpose of supporting the adult with a disability for another purpose that does not support the adult with a disability.
- 29) Provides, with respect to potential conflicts of interest of the supporter:
- a) To minimize conflicts of interest, the supporter must avoid, to the maximum extent possible, providing support on life decisions for which the supporter has a financial or other tangible stake in the outcome, such as decisions related to an employment relationship between the adult with a disability and the supporter.
 - b) Where feasible, the supporter must work diligently with the adult with a disability to find other trusted supporters who can provide support with life decisions for which the first supporter has a financial or other tangible stake in the outcome.
 - c) If a supporter does provide support on decisions in which the supporter has a financial or other tangible stake, the supporter must disclose and discuss any conflicts with the adult with a disability.
 - d) A supporter who is paid solely to provide paid supported decisionmaking services does not have a conflict of interest.
- 30) Prohibits a person from being a supporter if the adult with a disability has obtained an order of protection for abuse against that person or if the person is the subject of a civil or criminal order prohibiting contact with the adult with a disability.

- 31) 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, and that Part 10 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, as specified.
- 32) Provides that, if an adult with a disability chooses to use a written supported decisionmaking agreement, the agreement must contain the following elements:
- a) The name of the adult with a disability;
 - b) The name, address, telephone number, and email address, if applicable, of each supporter;
 - c) An acknowledgement by each supporter agreeing to (1) provide information as requested by the adult with a disability, (2) support the adult with a disability in good faith and to the best of their abilities, (3) respect that the final decision shall be made by the adult with a disability and not the supporter, (4) not coerce or manipulate the adult with a disability into making any decision, (5) provide the most up-to-date and relevant information to the adult with a disability, based on all available and known information the supporter has, and (6) disclose, minimize, and manage conflicts of interest;
 - d) The day, month, and year the agreement was entered into; and
 - e) The signatures of the adult with a disability and each supporter, in the presence of two or more attesting and disinterested witnesses who are at least 18 years of age or a notary public. The adult with a disability may use reasonable modifications, such as assistive technology or physical assistance, to sign the agreement, and shall enter the agreement voluntarily and without coercion.
- 33) Requires a written supported decisionmaking agreement to be written in simple language that is accessible to the adult with a disability, and may include images or be read out loud or be audio- or video-recorded.
- 34) Permits a written supported decisionmaking agreement to include provisions not set forth in 32), including, but not limited to:
- a) A description of the type of assistance and support each supporter agrees to provide, such as a list of which supporter or supporters will provide assistance with each decision, or a description of decisions for which only certain supporters may assist.
 - b) A list of decisions for which a supporter may not assist.
 - c) A statement whether the supporters may communicate with each other about support without the adult with a disability present and, if so, in what context and with what limitations.

- d) The name and contact information of an oversight or review person who is not a supporter to oversee any financial assistance or decisions.
 - e) Information and copies of other supported or substituted decisionmaking documents the adult with a disability has in place, including, but not limited to, powers of attorney, authorizations to share medical or educational information, authorized representative forms, or representative payee agreements.
- 35) Provides that a supported decisionmaking agreement is effective until it is terminated by the adult with a disability, by all supporters, or by the terms of the agreement, and that any party may choose to terminate their participation in the agreement by any time by providing verbal or written notice to the other parties.
- a) If there is more than one supporter, the termination by one supporter does not terminate the supported decisionmaking agreement with respect to the other supporters.
 - b) A supported decisionmaking agreement is terminated with respect to any supporter who is found criminally, civilly, or administratively liable for abuse, neglect, mistreatment, coercion, or fraud, or is subject to a restraining order with respect to the adult with a disability.
- 36) Provides that supported decisionmaking shall be encouraged and used, to the maximum extent possible, by adults with disabilities who are subject to a conservatorship or other protective arrangements. To the greatest extent possible, a conservator shall encourage and respect the preference of an adult with a disability under a conservatorship to use supported decisionmaking within the conservatorship, or to rely on supported decisionmaking in seeking to terminate a conservatorship.
- 37) Provides that a person may rely on known supports used by an adult with a disability, including a written supported decisionmaking agreement as described in 32).
- 38) Requires the State Council on Developmental Disabilities to establish and staff a centralized Supported Decisionmaking Technical Assistance Program (SDM-TAP), which shall 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.
- a) The State Council on Developmental Disabilities, in coordination with the private nonprofit corporation designated by the Governor pursuant to federal law for the protection and advocacy of the rights of persons with disabilities and in consultation with a nonprofit organization with experience in supported decisionmaking and other alternatives to conservatorships, must administer the SDM-TAP to provide support, education, technical assistance,

- and administer grants to expand and strengthen the use of supported decisionmaking throughout California.
- b) The SDM-TAP shall respond to inquiries about supported decisionmaking, including providing technical assistance to people referred to them by the conservatorship alternatives program set forth in 11).
 - c) The SDM-TAP shall further develop and disseminate information, materials, training, and support on the use of supportive decisionmaking, with consideration to providing access and support to underserved populations and communities and supportive decisionmaking for persons who do not rely on speech to communicate or meet other criteria.
 - d) The State Council on Developmental Disabilities, in coordination with the entities in 39)(a), shall administer SDM-TAP grant funding to state or local government entities such as courts and school districts and nongovernmental entities such as nonprofit organizations that submit project proposals to expand the use of supported decisionmaking and reduce the use of conservatorships, as specified.
- 39) Appropriates ten million dollars from the General Fund as follows:
- a) Five million dollars to the Judicial Council for implementation of the conservatorship alternatives program established pursuant to Section 1836 of the Probate Code, as specified.
 - b) Five million dollars to the State Council on Disabilities, for the implementation of SDM-TAP, as specified.

COMMENTS

1. Author's comment

According to the author:

Many people are familiar with conservatorships through the case of Britney Spears. Britney was arguably the world's most famous conservatee, however individuals most likely to end up in probate conservatorships are those with intellectual and developmental disabilities and people with age-related disabilities such as dementia or Alzheimer's.

Far too often, conservatorships are presented as the only option, despite the existence of many other alternatives, including supported decision-making (SDM). SDM allows people with disabilities to choose a trusted supporter or supporters to help them understand, evaluate, and communicate their own choices without interfering with their individual rights by avoiding unnecessary court intervention.

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.

2. Background on conservatorships in California

California adopted its first conservatorship statute in 1957. Prior to that time, the court appointed a “guardian” for any person, child or adult, who was deemed “incompetent” to manage their daily affairs. After 1957, the law distinguished between a “guardianship,” created for a minor, and a “conservatorship,” created for an adult.²

In a general probate conservatorship, if an adult is, based on clear and convincing evidence, unable to adequately provide for their personal needs for physical health, food, clothing, or shelter, the court may appoint a conservator of the person.³ If an adult who is, based on clear and convincing evidence, substantially unable to manage their own financial resources or is unable to resist fraud or undue influence, the court may appoint a conservator of the estate to manage the adult’s financial matters.⁴ Before a court can rule on a petition to appoint a conservator, the probate court investigator must investigate the subject of the petition and submit a report to the court.⁵ The court cannot appoint a conservator unless the court expressly finds that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.⁶

A conservator can be a family member, friend, a professional fiduciary, or, less frequently, the county Public Conservator. A court-appointed conservator is empowered to make far-reaching decisions on behalf of the conservatee. A conservator can also expand their authority to make decisions for the conservatee if the court makes specific orders related to the conservatee’s capacity to, e.g., make medical decisions.⁷

As an alternative to a conservatorship of the estate or of the person, current law authorizes the establishment of a limited conservatorship for individuals with developmental disabilities that allow them to function with some autonomy, called

² See Prob. Code, §§ 1500, 1800.3.

³ *Id.*, § 1801(a).

⁴ *Id.*, § 1801(b).

⁵ *Id.*, §§ 1821, 1826.

⁶ *Id.*, § 1800.3(b).

⁷ *Id.*, §§ 1881 (standard for when conservatee lacks capacity to make medical decisions), 1951 (standard for when conservatee lacks capacity to consent or refuse court-ordered sterilization).

“limited conservatorships.”⁸ Unlike the general probate conservatorship, a limited conservatorship is meant to be as minimal as necessary in order to allow the individual the most possible rights, and the court must decide what specific rights to grant to the conservator.⁹ As a result, a limited conservator has only the powers specified by the court, which can include the power to (1) determine where the limited conservatee lives; (2) consent or withhold consent to marriage; (3) give or withhold medical consent; (4) choose the limited conservatee’s social and sexual contacts and relationships; and (5) make educational decisions.¹⁰ Unfortunately, it has been reported that most limited conservators seek and are granted all of the specified powers, making a limited conservatorship nearly identical to a general conservatorship and thwarting the intent to offer persons with developmental disabilities a greater degree of control over their own lives.

A conservatorship – limited or otherwise – lasts until the death of the conservatee or a court order terminating it in response to a petition for termination.¹¹ Legislation passed last year – AB 1194 (Low, Ch. 417, Stats. 2021) – added oversight into ongoing conservatorships and limited conservatorships by requiring that these conservatorships be reviewed annually by the probate court and terminated unless the court can legally reestablish them under the clear and convincing evidence standard. Unfortunately, many provisions of AB 1194, including this one, cannot be implemented until the Legislature specifically allocates funding for it – which it has not done – meaning conservatorships continue to run indefinitely despite state law to the contrary.

3. Problems in the conservatorship system and Legislative reform efforts

Since the 2000s, there have been multiple reports on the shortcomings in California’s conservatorship system. In 2005, the *Los Angeles Times* published an in-depth investigatory series, called “Guardians for Profit,” which dramatically exposed the failings of California’s conservatorship system for elderly and dependent adults.¹² The series included stories of private conservators who misused the system and stole or mismanaged their conservatees’ assets; Public Guardians who did not have the resources to help truly needy individuals; probate courts without sufficient resources to provide adequate oversight to catch the abuses; and a system that provided no place for those in need to turn for help.¹³ A 2012 *Mercury News* series exposed problems with exorbitant fee petitions. The article reported that “a six-month investigation by this newspaper found a small group of [Santa Clara] [C]ounty’s court-appointed personal and estate managers are handing out costly and questionable bills – and charging even more if they are challenged. The troubling trend is enriching these private

⁸ *Id.*, § 1801(d).

⁹ *Ibid.*

¹⁰ *Id.*, § 2351.5.

¹¹ *Id.*, §§ 1860, 1860.5.

¹² Fields, Larrubia, & Leonard, *Guardians for Profit* series, *Los Angeles Times* (Nov. 13-17, 2005).

¹³ *Ibid.*

professionals – working as conservators and trustees – and their attorneys, with eye-popping rates that threaten to force their vulnerable clients onto government assistance to survive.”¹⁴ In 2018, the *Orange County Register* reported on the lack of judicial oversight into conservatorships, abandoning vulnerable seniors to the care of professional conservators who neglect their charges while making off with their life savings.¹⁵ The recently terminated conservatorship of iconic pop star Britney Spears also shone a light on the lack of oversight into conservatorships after they are established, and how difficult it is for a conservatee to emerge from the system once their circumstances have changed and they are able to care for themselves again.

In the same time frame, the Legislature has enacted many pieces of legislation to try and address the conservatorship system’s shortcomings.¹⁶ Unfortunately, many legislative efforts were stifled by vetoes or failures to fund the reform measures. Accordingly, while statutory law reflects a conservatorship system with more guardrails and oversight, the system in practice remains prone to many of the abuses repeatedly flagged by journalists and activists.

One perverse problem in the efforts to reform the conservatorship system is that there are minimal data on conservatorships in the state. In 2021, the Legislature enacted AB 1194 (Low, Ch. 1194, Stats. 2021), which included a requirement that the Judicial Council report to the Legislature, by January 1, 2024, a three-court review of the use of Probate Code conservatorships, including caseload statistics, information about compliance with statutory timeframes, and the operational differences between courts.¹⁷ This report should provide the Legislature with important information on how to implement meaningful conservatorship reform.

4. Alternatives to conservatorships

Not everyone who needs help making important life decisions needs a conservatorship. Recognizing this fact, a court cannot impose a conservatorship unless it finds that the conservatorship is least restrictive alternative for the person, and the court must consider whether there are appropriate alternatives that can be considered to avoid a conservatorship.¹⁸ These alternatives include a durable power of attorney¹⁹ and an advance health care directive,²⁰ which allow an individual to give another person the ability to make financial and medical decisions for them if they are not able to do so

¹⁴ de Sá, *Santa Clara County’s court-appointed personal and estate managers are handing out costly and questionable bills*, Mercury News (Jun. 30, 2012).

¹⁵ Saavedra, *Money-draining probate system “like a plague on our senior citizens,”* Orange County Register (Sept. 23, 2018).

¹⁶ See, e.g., AB 1194 (Low, Ch. 417, Stats. 2021); SB 156 (Beall, 2013); SB 1550 (Figueroa, Ch. 491, Stats. 2006); SB 1116 (Scott, Ch. 490, Stats. 2006); AB 1363 (Jones, Ch. 493, Stats. 2006).

¹⁷ Prob. Code, § 1498.

¹⁸ *Id.*, §§ 1800.3, 1821(a)(3).

¹⁹ *Id.*, div. 4.5, §§ 4000 et seq.

²⁰ *Id.*, div. 4.7, §§ 4600 et seq.

themselves. These documents are executed when a person has capacity and become operative when they no longer have capacity, thereby giving the individual control over who their decisionmaker will be and what decisions that person will be making when they can no longer make decisions for themselves. These tools can be used to avoid court, avoid a conservatorship, and avoid an involuntary loss of decisionmaking.

Outside of statutory law, supported decisionmaking allows an individual to choose trusted family or friends to help them make important choices in their life. Unlike a power of attorney or advance health care directive, where the individual is transferring their right to make decisions to another person, a supported decisionmaking agreement allows the individual to choose those who will support them in making their decisions but does not give the supporter the right to make decisions for the individual. While supportive decisionmaking does not need to be formalized, formalization into a written agreement can help ensure that third parties, such as doctors and banks, honor the decisions that the individual makes through this process. This process can allow the supported individual to retain their autonomy and their choices, while still getting the help they need to make reasonable decisions and maintain their independence. Several states have already codified a supported decisionmaking framework.²¹

5. As proposed to be amended, this bill codifies the supported decisionmaking process and establishes related requirements

As currently in print, this bill establishes a supported decisionmaking framework in the Probate Code. After discussions with stakeholders, the author has agreed to move the overall supported decisionmaking framework into the Welfare and Institutions Code – in recognition of the fact that supported decisionmaking is not a substitute for a conservatorship, but rather a program that helps individuals retain autonomy outside of a conservatorship – and to make various changes that better account for the differing needs of adults with disabilities who utilize supported decisionmaking. This analysis discusses the bill as proposed to be amended; a full mockup of the amendments are set forth at the end of this analysis, subject to any nonsubstantive change Legislative Counsel may make.²² The amendments appear to address many of the concerns raised by opponents of the bill and other stakeholders.

This bill’s supported decisionmaking framework defines “supported decisionmaking” as:

[A]n individualized process in which an adult with a disability chooses one or more people they trust as supporters to help them understand, make,

²¹ See, e.g., Colo. Rev. Stats. Ann. §§ 15-14-801 et seq.; Il. Stats., Ch. 755, §§ 9/1 et seq.; Ind. Stats. §§ 29-3-14-1 et seq.; Nev. Stats. Ann. §§ 162c.010 et seq.; R.I Gen. laws, §§ 42-66.13-1 et seq.; Tex. Stat. Ann., Estates Code, §§ 1357.001 et seq.

²² One such additional provision will clarify that the SDM program being established by this bill is distinct from the SDM arrangements utilized in CARE Court (SB 1338 (Umberg, 2022)).

communicate, implement, or act on, their own choices. Supported decisionmaking recognizes and accepts the preferences of the adult with a disability, as expressed with the supports and supporters they choose.

As discussed above, the key to supported decisionmaking is that the decisionmaking authority remains with the adult with the disability; this provision and others make clear that the supported decisionmaking process is used to assist the adult with a disability make their own decisions. To that end, the bill provides that a person's use of supported decisionmaking cannot be used as evidence that they lack capacity and that a person in a supported decisionmaking arrangement retains the right to act independently of their supporter.

The supported decisionmaking framework recognizes that supported decisionmaking can operate more or less formally, depending on the needs of the adult with a disability. As such, the bill allows a supported decisionmaking arrangement to be oral or written. The bill includes requirements for written agreements to ensure they are sufficiently specific and entered into willingly, such as requiring specific information to be included in the agreement and for the writing to be either witnessed by two disinterested adults or notarized. The bill also clarifies that an adult with a disability may operate with multiple supporters and that the adult may combine a supported decisionmaking arrangement with other pre-planning tools such as a power of attorney or an advance healthcare directive.

For persons who utilize supported decisionmaking, the bill recognizes that they are entitled to bring their supporter(s) into various meetings to provide support. A third party can refuse the presence of a supporter only if they have reasonable cause to believe that the supporter is manipulating, coercing, or abusing the supported person. The bill provides multiple limits on the supporter's power, providing, e.g., that a supporter may not substitute their judgment for that of the supported person, sign documents on behalf of the supported person, or disclose the supported person's information for purposes other than effectuating the supported decisionmaking process. The bill also provides that nothing in the new Welfare and Institutions Code division alters existing liability schemes relating to elder abuse, fraud, or other laws.

With the process of supported decisionmaking established in the Welfare and Institutions Code, this bill then instructs probate courts to consider supported decisionmaking as a less restrictive alternative to conservatorships. One of the amendments agreed to by the author provides that the probate court should consider written decisionmaking agreements to ensure that the adult with a disability has an agreement that is fully fleshed out and that can be reviewed by persons who may need to inquire as to the scope of the agreement.

To further the use of supported decisionmaking, the bill also establishes two new programs. First is the conservatorships alternatives program (CAP), which will be

established within each self-help center of the superior court. The CAP will provide interested persons with information about supported decisionmaking and other conservatorship alternatives. The author has agreed to accept some amendments to the CAP provisions to address concerns from Judicial Council, and pledges to continue working with Judicial Council on their outstanding issues.

The second program is the Supported Decisionmaking Technical Assistance Program (SDM-TAP). SDM-TAP, incorporating amendments agreed to by the author, will be administered by the State Council on Developmental Disabilities in coordination with the University of California Davis MIND Institute and other stakeholders and will provide guidance and grants to strengthen the use of supported decisionmaking. Additionally, to provide the Legislature with information on how to guide supported decisionmaking policy in the future, SDM-TAP will submit a report to the Legislature following Judicial Council's report on conservatorships that addresses the use of supported decisionmaking in the state, recommendations for how to improve and expand the use of supported decisionmaking, and other relevant considerations. The report is required to deidentify any information included in the report and, to preserve individuals' constitutional right of privacy, exempts personal information about individuals engaging in supported decisionmaking from disclosure under the Public Records Act.²³

6. This bill implements several other measures to provide better oversight of conservators and provide better assistance and information to conservatees

In addition to the codification of supported decisionmaking discussed above, this bill implements a variety of conservatorship reforms. The specifics are as follows:

a. Restrictions on the use of regional centers

Twenty-one community-based regional centers in California provide assessments, determine eligibility for services, and offer case management services for individuals with developmental disabilities. The Department of Developmental Services oversees these regional centers.

This bill puts limits on the involvement of a regional center when a conservatorship is involved. Under the bill, a court can appoint the Director of Developmental Services as a conservator only if the court determines that another qualified and willing person is not chosen and preferred by the proposed conservatee, that the appointment presents no substantial risk of a conflict of interest, and that the appointment is in the best interests of the proposed conservatee. The bill further provides that a regional center may not act as a conservator, but may only act as a designee of the Director of Developmental Services. Finally, the bill eliminates the ability of the required regional

²³ See Gov. Code, tit. 1, div. 7, ch. 3.5, §§ 6250 et seq.

center report evaluating a person with developmental disabilities for a proposed conservatorship to take the place of the court petition requesting appoint of a conservator.

b. Prioritizing the conservatee's wishes and ensuring the conservatee is informed of their rights

This bill expands on the duties of the conservator to act in the interests of the conservatee by requiring them, to the greatest extent possible, to inform the conservatee on a regular basis of decisions made on their behalf. Conservators are also encouraged, to the maximum extent possible, to use supported decisionmaking, discussed below, for their conservatees, and to encourage and respect the preference of their conservatees to use supported decisionmaking.

Additionally, this bill expands requirements relating to information provided to conservators. Current law requires private conservators to be given a handbook of their rights and responsibilities.²⁴ This bill builds on that mandate by: requiring that all conservators, including Public Guardians, receive the handbook; requiring the handbook to include discussions on procedures to petition to terminate or modify the conservatorship; and requiring the handbook to set forth the conservator's obligation to support the conservatee to maximize their autonomy, support and respect their preferences, use supported decisionmaking when possible, and support their development and learning to obviate the need for conservatorship. The bill also imposes a new requirement that courts provide conservatees with written information describing their rights and options, including basics like how to contact their conservator and a personalized list of rights that the conservatee retains, even under the conservatorship. The author has agreed to minor technical amendments to this provision to clarify that a court is required to send this notice to any conservatee under its jurisdiction within 30 days of the appointment of the conservator and annually thereafter.

c. Additional safeguards for the establishment and termination of a conservatorship

This bill seeks to build on previous reforms – albeit reforms that remain unfunded – by adding safeguards intended to ensure that conservatorships are ordered only when there are no less restrictive alternatives and that the less restrictive alternatives are given actual consideration. The bill also seeks to help ensure that, when the drastic step of a conservatorship is taken, the conservatee retains the most autonomy possible. Specific measures in the bill include:

- Requiring 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 proposed conservatee's abilities and capacities with

²⁴ Prob. Code, § 1835.

current and possible supports, including but not limited to supported decisionmaking, powers of attorney, and advance health care directives.

- Requiring the court, if it becomes aware that the proposed conservatee has developmental disabilities and the proposed conservator is not seeking special dementia powers, to deem a conservatorship proceeding to be a proceeding for a limited conservatorship.
- Requiring that the petition requesting appoint of a conservator presents the alternatives to conservatorship that were considered and tried, if any, along with details on the length and duration of attempted alternatives and the reasons why they did not meet the needs of the proposed conservatee.
- Expanding the duties of the probate investigator by requiring them, when possible at the annual visit to the conservatee, to 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. If the investigator's report to the court so indicates, the court is then required to promptly consider terminating or altering the conservatorship.
- Requiring the court, on receipt of communication from a conservatee wishing to terminate their conservatorship, to appoint counsel for the conservatee and set a hearing for termination of the conservatorship. To ensure that this requirement for a hearing is not abused, a court need act on a communication only when 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.
- Authorizing a court to terminate a conservatorship or limited conservatorship without a hearing, if the petition to terminate the 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.
- Encouraging conservators to use supported decisionmaking within a conservatorship, and provides information to conservatees in plain language about what choices they can still make for themselves.
- Requiring each court to establish a conservatorship alternatives program within the court's self-help center, which will give guidance to conservators, conservatees, and other participants in the conservatorship system about alternatives to conservatorships and the means for implementing those alternatives.

7. Arguments in support and concerns

The bill's supporters argue that the bill's codification of supported decisionmaking and related reforms will help prevent the "pipeline to conservatorships" in the probate courts. For example, the State Council on Developmental Disabilities, a co-sponsor of the bill, notes that "[t]he probate conservatorship system offers limited meaningful oversight and many opportunities for abuse" and argues that this bill will help divert

adults with disabilities away from conservatorships and give them more choice over their lives. Disability Voices United, another co-sponsor, states that

AB 1663 will reform and improve California's probate conservatorship system in four important ways to help maintain choice and control over their lives. First, the bill would help reduce probate conservatorships by recognizing less restrictive alternatives, such as Supported Decision-Making, which provides people with disabilities and older adults a way to understand, make, and communicate their own decisions with the help of their chosen supporters. Second, the bill would make probate conservatorships a last resort. Third, the bill makes it easier to end conservatorships. Finally, AB 1663 would ensure that conservatees have a level of choice in decisions made regarding their lives.

8. Arguments in opposition

According to Autism Society San Francisco Bay Area, writing in opposition:

The sum of \$10 million should be spent on bolstering our underfunded, heavily burdened conservatorship system – not on the development of a supposedly new alternative, one that is *already* authorized under law. Supported decisionmaking is already available to any person who feel a need for help in making decisions: a new bureaucracy to “formalize” it does not advance the most pressing needs of adults with [autism and intellectual and developmental disabilities (I/DD)]. While Supported Decisionmaking is popular among ideological advocates, there is no clamor for it, at all, in our autism and I/DD communities. AB 1663 does nothing to address the very real problems we face in the conservatorship system:

- The need for better training and support for conservators
- The need for a simple, timely, low-cost path for appointment of successor conservators
- The need for increased levels of court supervision, particularly after parents pass away
- The systematic underfunding of the heavily overburdened conservatorship system

SUPPORT

California Advocates for Nursing Home Reform (co-sponsor)

California Community Living Network (co-sponsor)

California State Council on Developmental Disabilities (co-sponsor)

Disability Rights California (co-sponsor)

Disability Rights Education and Defense Fund (co-sponsor)

Disability Voices United (co-sponsor)

Free Britney LA (co-sponsor)
AARP California
ACLU California Action
Alzheimer's Association
Autism Society of Los Angeles
Autism Society San Francisco Bay Area
California Public Defenders Association
California Senior Legislature
CaTASH
California Elder Justice Coalition
California Foundation for Independent Living Centers
Choice in Aging
Club21 Learning and Resource Center
Consumer Attorneys of California
Exceptional Rights Advocacy
Integrated Community Collaborative
Long Beach Gray Panthers
National Council on Severe Autism
National Association of Social Workers - California Chapter
PRAGNYA
One individual

OPPOSITION

Autism Society San Francisco Bay Area
California Association of Public Administrators, Public Guardians, and Public Conservators
National Council on Severe Autism
The Arc and United Cerebral Palsy California Collaboration

RELATED LEGISLATION

Pending Legislation:

SB 1338 (Umberg, 2022) establishes and implements the CARE Act, which will implement a statewide framework for court-ordered mental illness treatment and services and includes the option for a person within the program to be assisted by a support person appointed by the court or selected by the person. SB 1338 is pending before the Assembly Judiciary Committee.

AB 2830 (Bloom, 2022) establishes and implements the CARE Act, which will implement a statewide framework for court-ordered mental illness treatment and services and includes the option for a person within the program to be assisted by a

support person appointed by the court or selected by the person. AB 2830 is pending before the Assembly Judiciary Committee.

AB 2288 (Choi, 2022) clarifies that advance health care directives include mental health and treatment, modifies the statutory advanced health care directive form accordingly, and makes more prominent the requirement that the advanced health care directive be either notarized or witnessed by two qualified individuals. AB 2288 has been passed and is awaiting the Governor's signature.

Prior Legislation:

AB 1194 (Low, Ch. 417, Stats. 2021) with respect to guardians and conservators, enhanced oversight and investigations, augmented remedies and penalties for misconduct, and imposed certain restrictions on fees and compensation, with some measures conditioned on an appropriation for the specific purpose. The bill also required the Judicial Council, by January 1, 2024, to conduct a study regarding conservatorship cases.

SB 1016 (Wieckowski, 2020) would have required, as part of a court's determination of whether to establish a conservatorship under the Probate Code and whether less-restrictive alternatives had been considered or attempted, the court to consider the alternative of supported decisionmaking. SB 1016 was held in the Senate Judiciary Committee due to COVID-19-related bill limits.

AB 437 (Rodriguez, 2017) would have authorized the creation of a network wherein persons with disabilities could voluntarily place themselves into the network and identify, for the benefit of first responders, their symptoms and conditions; the bill authorized persons to voluntarily identify themselves if the decision to do so was made via supported decisionmaking. AB 437 died in the Assembly Appropriations Committee.

SB 156 (Beall, 2013) would have prohibited a guardian or conservator from being compensated from the estate for any costs or fees, including attorney fees, incurred in defending the compensation in the petition, where the court reduced or denied the compensation requested in the petition. SB 156 was vetoed by Governor Edmund G. Brown, Jr., who stated in his veto message that he believed the bill unduly limited judicial discretion governing compensation for defense costs in an evenhanded way.

SB 1550 (Figueroa, Ch. 491, Stats. 2006) created the Professional Fiduciaries Bureau within the Department of Consumer Affairs to license and regulate professional fiduciaries, including conservators, guardians, and trustees.

SB 1116 (Scott, Ch. 490, Stats. 2006) required stronger reviews and protections before a conservator can sell the personal residence of a conservatee.

AB 1363 (Jones, Ch. 493, Stats. 2006) required stronger and more frequent reviews and responsibility of conservators by probate courts, along with uniform standards of conduct that conservators must follow, new training rules for all professionals involved in the system, and a new requirement that Public Guardians take the cases of all those at imminent risk of harm.

PRIOR VOTES:

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

Amended Mock-up for AB-1663 (Maienschein)

Mock-up based on Version Number 96 - Amended Assembly 5/19/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 416.9 of the Health and Safety Code is amended to read:

416.9. The court may appoint the Director of Developmental Services as guardian or conservator of the person and estate or person or estate of a minor or adult developmentally disabled person. The preferences established in Section 1812 of the Probate Code for appointment of a conservator applies. An appointment of the Director of Developmental Services as conservator shall not of itself constitute a judicial finding that the developmentally disabled person is legally incompetent. The petition for the appointment of the Director of Developmental Services as conservator of an adult developmentally disabled person may include a request that the court adjudge the developmentally disabled person to be legally incompetent or that adjudication may be made subsequently upon a petition made, noticed, and heard by the court in the same manner as a petition for the appointment of the director as conservator. If the Director of Developmental Services is serving as the guardian of an adult developmentally disabled person on December 31, 1980, after that date the appointment shall be deemed to be the appointment of a conservator and the conservatee shall be deemed to have been adjudged to be legally incompetent.

SEC. 2. Section 416.17 of the Health and Safety Code is amended to read:

416.17. It is the intent of this article that the director, when acting as guardian or conservator of the person of a developmentally disabled person, shall maintain close contact with the developmentally disabled person no matter where the person is living in this state; shall act as a wise parent would act in caring for the parent's developmentally disabled child; shall permit and encourage maximum self-reliance on the part of the developmentally disabled person under their protection; and shall work with regional centers and the person, to the greatest extent possible, to develop and implement less restrictive alternatives to conservatorship.

SEC. 3. Section 416.19 of the Health and Safety Code is amended to read:

416.19. The services to be rendered by the director as adviser or as guardian or conservator of the person may be performed through the regional centers or by other agencies or individuals designated by the regional centers, except that a regional center shall not act as guardian or conservator ~~of for~~ a person if that regional center is also responsible for providing service coordination activities pursuant to Section 4647 of the Welfare and Institutions Code.

SEC. 4. Section 1800 of the Probate Code is amended to read:

1800. It is the intent of the Legislature in enacting this chapter to do the following:

- (a) Protect the rights of persons who are placed under conservatorship.
- (b) Provide that an assessment of the needs of the person is performed in order to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible.
- (c) Provide that the health and psychosocial needs of the proposed conservatee are met.
- (d) Provide that community-based services are used to the greatest extent in order to allow the conservatee to remain as independent and in the least restrictive setting as possible.
- (e) Provide that the periodic review of the conservatorship by the court investigator shall consider the best interests and expressed wishes of the conservatee; whether the conservatee has regained or could regain abilities and capacity with or without supports; and whether the conservatee continues to need a conservatorship.
- (f) Ensure that the conservatee's basic needs for physical health, food, clothing, and shelter are met.
- (g) Provide for the proper management and protection of the conservatee's real and personal property.
- (h) Ensure, to the greatest possible extent, that the conservatee is able to understand, make, and communicate their own, informed, choices ~~to the greatest possible extent~~ while under conservatorship.

SEC. 5. Section 1800.3 of the Probate Code is amended to read:

1800.3. (a) If the need therefor is established to the satisfaction of the court and the other requirements of this chapter are satisfied, the court may appoint:

- (1) A conservator of the person or estate of an adult, or both.
 - (2) A conservator of the person of a minor who is married or whose marriage has been dissolved.
- (b) A conservatorship of the person or of the estate shall not be granted by the court unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.

(c) In determining whether a conservatorship is the least restrictive alternative available, and whether to grant or deny a conservatorship petition, the court shall consider the person's abilities and capacities with current and possible supports, including, but not limited to, supported decisionmaking **agreements as defined in subdivision (d) of Section [2] of Division 11 of the Welfare and Institutions Code,** powers of attorney, and advance health care directives.

(d) If the court becomes aware that the proposed conservatee has a developmental disability, and the proposed conservator is not seeking authority to act under Section 2356.5, the court shall deem the proceeding to be seeking a limited conservatorship.

SEC. 6. Section 1812 of the Probate Code is amended to read:

1812. (a) Subject to Sections 1810, 1813, and 1813.1, the selection of a conservator of the person or estate, or both, is solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.

(b) Subject to Sections 1810, 1813, and 1813.1, of persons equally qualified in the opinion of the court to appointment as conservator of the person or estate or both, preference is to be given in the following order:

(1) **The conservatee or proposed conservatee's stated preference, including preferences expressed by speech, sign language, alternative or augmentative communication, actions, facial expressions, and other spoken and nonspoken methods of communication.**

(2) **The prior conservator's preference, if known, if the selection of a successor conservator is being made pursuant to the provisions of Article 2 (commencing with Section 2680) of Chapter 9.5 of Part 4 and the prior conservator is a person described in paragraphs (3)-(6) of this subdivision, unless:**

(A) The reason for the appointment of a successor conservator is due to the prior conservator's removal pursuant to the provisions of Article 1 (commencing with Section 2650) of Chapter 9 of Part 4,

(B) The prior conservator or prior conservator's preference for successor conservator has been found criminally, civilly, or administratively liable for abuse, neglect, mistreatment, coercion, or fraud with respect to the conservatee or any elder or dependent adult.

(3) The spouse or domestic partner of the proposed conservatee or the person nominated by the spouse or domestic partner pursuant to Section 1811.

(~~24~~) An adult child of the proposed conservatee or the person nominated by the child pursuant to Section 1811.

(~~53~~) A parent of the proposed conservatee or the person nominated by the parent pursuant to Section 1811.

(~~46~~) A sibling of the proposed conservatee or the person nominated by the brother or sister pursuant to Section 1811.

(~~57~~) Any other person or entity eligible for appointment as a conservator under this code or, if there is no person or entity willing to act as a conservator, under the Welfare and Institutions Code.

(c) The preference for any nominee for appointment under paragraphs (2), (3), and (4) of subdivision (b) is subordinate to the preference for any other parent, child, or sibling in that class.

(d) An appointment of the Director of Developmental Services as provided by Article 7.5 (commencing with Section 416) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code may only be made if the court determines that another qualified person is not chosen and preferred by the proposed conservatee who is willing to act as conservator, the appointment presents no substantial risk of a conflict of interest, and the appointment is in the best interests of the proposed conservatee. A regional center, as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, or any employee or agent acting on a regional center's behalf, shall not act as a conservator, but may act as the designee of the Director of Developmental Services, subject to Section 416.19 of the Health and Safety Code.

SEC. 7. Section 1821 of the Probate Code is amended to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner or proposed conservator is a bank or other entity authorized to conduct the business of a trust company, the petitioner or proposed conservator shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for their own needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered and tried by the petitioner or proposed conservator, if any, including details as to the length and duration of attempted alternatives and the reasons why those alternatives do not meet the proposed conservatee's needs. Those alternatives include, but are not limited to, all of the following:

(A) Supported decisionmaking agreements, as defined in subdivision (d) of Section [2] of Division 11 of the Welfare and Institutions Code set forth in Part 10 (commencing with Section 3950).

(B) Powers of Attorney set forth in Division 4.5 (commencing with Section 4000).

(C) Advanced Health Care Directives set forth in Chapter 1 (commencing with Section 4670) of Part 2 of Division 4.7.

(D) Designations of a health care surrogate as set forth in Section 4711.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner or proposed conservator has information as to those services.

(5) The substantial inability of the proposed conservatee to substantially manage their own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner or proposed conservator if the proposed conservator has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

If any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner or proposed conservator shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(b) The petition shall set forth, so far as they are known to the petitioner or proposed conservator, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner or proposed conservator, the petition shall set forth, so far as they are known to the petitioner or proposed conservator, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse or domestic partner of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petitioner or proposed conservator is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition shall include the following:

(1) The petitioner's or proposed conservator's proposed hourly fee schedule or another statement of their proposed compensation from the estate of the proposed conservatee for services performed as a conservator. The petitioner's or proposed conservator's provision of a proposed hourly fee schedule or another statement of their proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's or proposed conservator's fees or other compensation.

(2) Unless a petition for appointment of a temporary conservator that contains the statements required by this paragraph is filed together with a petition for appointment of a conservator, both of the following:

(A) A statement of the petitioner's or proposed conservator's license information.

(B) A statement explaining who engaged the petitioner or proposed conservator or how the petitioner or proposed conservator was engaged to file the petition for appointment of a conservator or to agree to accept the appointment as conservator and what prior relationship the petitioner or proposed conservator had with the proposed conservatee or the proposed conservatee's family or friends.

(d) If the petition is filed by a person other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:

(1) Either the efforts to find the proposed conservatee's relatives or why it was not feasible to contact any of them.

(2) Either the preferences of the proposed conservatee concerning the appointment of a conservator and the appointment of the proposed conservator or why it was not feasible to ascertain those preferences.

(e) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(f) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services and that fact is known to the petitioner or proposed conservator, the petition shall state that fact and name the institution.

(g) The petition shall state, so far as is known to the petitioner or proposed conservator, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(h) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(i) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(j) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

(k) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is a member of a federally recognized Indian tribe. If so, the petition shall state the name of the tribe, the state in which the tribe is located, whether the proposed conservatee resides on tribal land, and whether the proposed conservatee is known to own property on tribal land. For the purposes of this subdivision, "tribal land" means land that is, with respect to a specific Indian tribe and the members of that tribe, "Indian country" as defined in Section 1151 of Title 18 of the United States Code.

SEC. 8. Section 1835 of the Probate Code is amended to read:

1835. (a) Every superior court shall provide all conservators with written information concerning a conservator's rights, duties, limitations, and responsibilities under this division.

(b) The information to be provided shall include, but need not be limited to, the following:

(1) The rights, duties, limitations, and responsibilities of a conservator.

(2) The rights of a conservatee.

(3) How to assess the needs and preferences of the conservatee.

(4) How to use community-based services to meet the needs of the conservatee.

(5) How to ensure that the conservatee is provided with the least restrictive possible environment.

(6) The court procedures and processes relevant to conservatorships.

(7) The procedures for inventory and appraisal, and the filing of accounts.

(8) Procedures to petition to terminate or modify the conservatorship.

(9) The conservator's obligation to support the conservatee to maximize their autonomy, support and respect their preferences, **accommodate their preferences to the greatest extent possible, keep them informed of decisions made on their behalf,**

and use of supported decisionmaking as far as possible pursuant to Section 2113, and support their development and learning to obviate the need for conservatorship.

(c) An information package shall be developed by the Judicial Council, after consultation with the following organizations or individuals:

(1) The California State Association of Public Administrators, Public Guardians, and Public Conservators, or other comparable organizations.

(2) The State Bar.

(3) Individuals or organizations, approved by the Judicial Council, who represent court investigators, specialists with experience in performing assessments and coordinating community-based services, and legal services programs for the elderly.

(d) The failure of any court or any employee or agent thereof, to provide information to a conservator as required by this section does not:

(1) Relieve the conservator of any of the conservator's duties as required by this division.

(2) Make the court or the employee or agent thereof, liable, in either a personal or official capacity, for damages to a conservatee, conservator, the conservatorship of a person or an estate, or any other person or entity.

(e) The information package shall be made available to individual courts. The Judicial Council shall periodically update the information package when changes in the law warrant revision. The revisions shall be provided to individual courts.

(f) To cover the costs of providing the written information required by this section, a court may charge each private conservator a fee of twenty dollars (\$20) which shall be distributed to the court in which it was collected.

SEC. 9. Section 1835.5 is added to the Probate Code, to read:

1835.5. (a) Within 30 days of the establishment of a conservatorship under this Division, and annually thereafter, the Every superior court shall provide information to a all conservatees under its jurisdiction with information written in plain language describing the conservatee's rights and options within the conservatorship.

(b) The information to be provided shall include, but need not be limited to, all of the following:

(1) The name and contact information of the conservator.

(2) A description of the conservatorship, including the rights the conservatee retains under the conservatorship.

(3) The role, duties, and contact information, including name, telephone number, address, and email address, of the court investigator and the court alternatives program.

(4) The person to petition to end or change the conservatorship and contact information for the person to contact to begin that process.

(5) A personalized list of rights that the conservatee retains, even under the conservatorship, including the rights to do all of the following:

(A) Directly receive and control their own salary.

(B) Make or change their will.

(C) Get married, unless expressly withheld by the court.

(D) Receive mail.

(E) Have visits from family and friends, unless expressly withheld by the court.

(F) Have a lawyer.

(G) Ask a judge to change conservators.

(H) Ask a judge to end the conservatorship.

(I) Vote, unless expressly withheld by the court.

(J) Control personal spending money if a judge permits an allowance to be paid directly to the conservatee.

(K) Make their own health care decisions, unless expressly withheld by the court.

(L) Enter into business transactions to provide for the conservatee's basic needs and those of their children.

(M) Participate in other activities the court allows when the conservator is appointed, or when the court order later grants that right at the conservatee's request.

SEC. 10. Section 1836 is added to the Probate Code, to read:

1836. (a) The Judicial Council shall establish a conservatorship alternatives program within each self-help center in every state Superior Court.

(b) The purposes of the conservatorship alternatives program are:

(1) To ~~identify petitions for conservatorship for which~~ provide information relating to less restrictive alternatives to conservatorship, including, but not limited to, supported decisionmaking agreements as defined in subdivision (d) of Section [2] of Division 11 of the Welfare and Institutions Code to interested individuals, ~~could be used to avoid the conservatorship.~~

(2) To educate interested individuals ~~parties in conservatorship proceedings~~ on less restrictive alternatives to conservatorship that may be appropriate, and to provide assistance and guidance in considering and implementing those alternatives.

~~(3) To reduce the number of people who lose their rights under conservatorships.~~

(c) Each court's conservatorship alternatives program shall include staff who provide information and resources ~~to potential petitioners and potential conservatees~~ interested individuals about less restrictive alternatives to conservatorship. ~~options that could avoid conservatorships to the maximum extent practical.~~

(d) The conservatorship alternatives program shall operate as follows:

(1) Any interested individual ~~person~~ who contacts a superior court self-help center ~~by telephone, email, or in person~~ to inquire about conservatorship proceedings or to request documents to petition for a conservatorship shall be directed to contact advised of the conservatorship alternatives program. ~~The conservatorship alternatives program shall also be available to other potential or present conservators, conservatees, their attorneys, or others involved in the conservatorship system.~~

(2) The conservatorship alternatives program shall be a component of each superior court's self-help center.

(3) Conservatorship alternatives program staff shall be trained in less restrictive alternatives to conservatorship and shall be available meet, through in-person or remote means, with interested individuals to potential conservators and conservatees with the following goals:

(A) Provide ~~ing~~ education and resources on supported decisionmaking agreements and other less restrictive alternatives to conservatorship, and to provide guidance and resources to assist ~~support~~ people who wish to implement or establish those alternatives. ~~to inform people about how they can avoid conservatorships when alternatives are appropriate.~~

(B) Providing guidance and resources to support people who wish to implement or establish those alternatives.

(4) Conservatorship alternatives program staff shall **be able to** provide ~~all of~~ the following to **interested individuals** ~~potential petitioners and potential conservatees~~:

(A) Information about a range of alternatives to conservatorship, including supported decisionmaking.

(AB) Information and practical ~~Practical~~ resources and documents to establish and implement **less restrictive** alternatives to conservatorship, including powers of attorney, advance health care directives, and supported decisionmaking agreements.

(C) Technical support and education on these alternatives, including assistance in filling out any associated paperwork, in understanding these alternatives, and in providing referrals to the Supported Decisionmaking Technical Assistance Program (SDM-TAP) established under **Section 3959 Division 11 of the Welfare and Institutions Code**, and other experts who can provide more extensive support.

(5) Interactions or communication with the CAP Program may not be used as evidence of incapacity or introduced for any other reason in a conservatorship proceeding under this Division unless introduced by the proposed conservatee or conservatee. Communication with conservatorship alternatives program staff shall be confidential.

(6) Participation in the conservatorship alternatives program is not mandatory.

(e) The Judicial Council, in coordination with the SDM-TAP, shall ensure judges are provided with education on alternatives to conservatorship, including supported decisionmaking. Education may include, but is not limited to, training courses, continuing education, and informational materials.

SEC. 11. Section 1850 of the Probate Code is amended to read:

1850. (a) Except as provided in subdivision (e), each conservatorship established pursuant to this part shall be reviewed by the court as follows:

(1) Six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation as provided in subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental health treatment, and finances. In response to the investigator's report, the court may take appropriate action including, but not limited to, ordering a hearing or

ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.

(2) One year after the initial appointment of the conservator and annually thereafter, the court investigator shall, as provided in Section 1851, visit the conservatee, conduct an investigation, including, when possible, discussing with the conservatee less restrictive alternatives to conservatorship as set forth in Section 1800.3, and report the findings of the investigation to the court, including whether the conservator or conservatee wishes to modify or terminate the conservatorship and whether less restrictive alternatives could be tried. On receipt of the investigator's report, the court shall, if indicated by the report, consider promptly terminating or altering the conservatorship at a hearing pursuant to Section 1860.5 or 1863 and take any other appropriate action.

(b) At any time, the court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship at a noticed hearing or ordering the conservator to submit an accounting pursuant to Section 2620.

(c) Notice of a review hearing pursuant to this section shall be given to the persons, for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

(e) (1) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes of 2006 until the Legislature makes an appropriation identified for this purpose.

(2) A superior court shall not be required to perform any duties imposed pursuant to the measure that added this paragraph until the Legislature makes an appropriation identified for this purpose.

SEC. 12. Section 1860.5 of the Probate Code is amended to read:

1860.5. (a) A limited conservatorship continues until the authority of the conservator is terminated by one of the following:

(1) The death of the limited conservator.

(2) The death of the limited conservatee.

(3) An order appointing a conservator of the former limited conservatee.

(4) An order of the court terminating the limited conservatorship.

(b) A petition for the termination of a limited conservatorship may be filed by any of the following:

(1) The limited conservator.

(2) The limited conservatee.

(3) Any relative or friend of the limited conservatee.

(c) The petition shall state facts showing that the limited conservatorship is no longer required.

(d) Notice of a hearing pursuant to Section 1850.5 or on a petition filed pursuant to this section shall be given to the same persons and in the same manner as provided for a petition for the appointment of a limited conservator.

(1) If a petition is filed and the limited conservator is not the petitioner, or has not joined in the petition, the limited conservator shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. This service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in another manner authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with notice.

(2) If the court sets a hearing pursuant to Section 1850.5 to consider termination of a limited conservatorship and no petition is filed, the court shall order the limited conservator to give notice of the hearing as provided in this subdivision and to appear at the hearing and show cause why the limited conservatorship should not be terminated.

(e) (1) The limited conservatee shall be produced at the hearing except in the following cases:

(A) When the limited conservatee is out of the state and is not the petitioner.

(B) When the limited conservatee is unable to attend the hearing by reason of medical inability.

(C) When the court investigator has reported to the court that the limited conservatee has expressly communicated that the limited conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the continuation of the limited conservatorship, and (iii) does not object to the current limited conservator or prefer that another person act as limited conservator, and the court makes an order that the limited conservatee need not attend the hearing.

(2) If the limited conservatee is unable to attend the hearing because of medical inability, that inability shall be established by the affidavit or certificate of a licensed medical practitioner or, if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the limited conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the continuation of the limited conservatorship.

(3) Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(f) The limited conservator or any relative or friend of the limited conservatee may appear and support or oppose termination of the limited conservatorship. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. If the court terminates the limited conservatorship, the limited conservator may, either at the hearing or thereafter on further notice and hearing, be discharged and the bond exonerated upon the settlement and approval of the final account by the court.

(g) (1) The court shall order the termination of the limited conservatorship unless the court finds, on the record and by clear and convincing evidence, that the limited conservatee still meets the criteria for appointment of a limited conservator under Section 1801 and a limited conservatorship remains the least restrictive alternative needed for the limited conservatee's protection.

(2) If the petition for termination is uncontested and states facts showing that both the limited conservator and limited conservatee wish to terminate the limited conservatorship, and the conservatorship is no longer the least restrictive alternative for the limited conservatee's protection, the court may terminate the limited conservatorship without an evidentiary hearing.

(h) If the court determines, by clear and convincing evidence, that the limited conservatee meets the criteria for appointment of a limited conservator under Section 1801, the court shall determine whether to modify the powers granted to the limited

conservator to ensure that the limited conservatorship remains the least restrictive alternative needed for the limited conservatee's protection. If the court modifies any powers granted to the limited conservator, new letters shall issue.

SEC. 13. Section 1861.5 is added to the Probate Code, to read:

1861.5. Upon the receipt of a communication from the conservatee that the conservatee wishes to terminate the conservatorship, a court shall appoint counsel for the conservatee and set a hearing for the termination of the conservatorship when either of the following conditions apply:

(a) There has not been a hearing for the termination of the conservatorship within the 12 months preceding the communication from the conservatee.

(b) The court believes there is good cause to set a hearing for the termination of the conservatorship.

SEC. 14. Section 1863 of the Probate Code is amended to read:

1863. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the conservatee. The conservator, the conservatee, the spouse or domestic partner, or any relative or friend of the conservatee or other interested person may appear and support or oppose the termination of the conservatorship.

(b) (1) The conservatee shall be produced at the hearing except in the following cases:

(A) When the conservatee is out of the state and is not the petitioner.

(B) When the conservatee is unable to attend the hearing by reason of medical inability.

(C) When the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the continuation of the conservatorship, and (iii) does not object to the current conservator or prefer that another person act as conservator, and the court makes an order that the conservatee need not attend the hearing.

(2) If the conservatee is unable to attend the hearing because of medical inability, that inability shall be established by the affidavit or certificate of a licensed medical practitioner or, if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall

not be considered in determining the issue of need for the continuation of the conservatorship.

(3) Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(c) Unless the court determines, on the record and by clear and convincing evidence, that (1) the conservatee still meets the criteria for appointment of a conservator of the person under subdivision (a) of Section 1801, a conservator of the estate under subdivision (b) of Section 1801, or both; and (2) a conservatorship remains the least restrictive alternative needed for the conservatee's protection, as required by subdivision (b) of Section 1800.3, the court shall enter judgment terminating the conservatorship.

(d) If the court determines, by clear and convincing evidence, that the conservatee meets the criteria for appointment of a conservator of the person under subdivision (a) of Section 1801, a conservator of the estate under subdivision (b) of Section 1801, or both, the court shall determine whether to modify the existing powers of the conservator to ensure that the conservatorship remains the least restrictive alternative needed for the conservatee's protection and shall order the conservatorship to continue accordingly. If the court modifies the existing powers of the conservator, new letters shall issue.

(e) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(f) This section does not apply to limited conservatorships.

(g) Termination of conservatorship does not preclude a new proceeding for appointment of a conservator on the same or other grounds.

(h) If a petition for termination pursuant to Section 1861 is uncontested and states facts showing that both the conservator and conservatee wish to terminate the conservatorship and the conservatorship is no longer the least restrictive alternative for the conservatee's protection, the court may terminate the conservatorship without an **evidentiary** hearing.

SEC. 15. Section 2113 of the Probate Code is amended to read:

2113. A conservator shall accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee

or impose an unreasonable expense on the conservatorship estate. To the greatest extent possible, the conservator, on a regular basis, shall inform the conservatee of decisions made on their behalf. In determining the desires of the conservatee, the conservator shall consider stated or previously expressed preferences, including preferences expressed by speech, sign language, alternative or augmentative communication, actions, facial expressions, and other spoken and nonspoken methods of communication.

SEC. 16. Division 11 of the Welfare Institutions Code Part 10 (commencing with Section 3950) is added to Division 4 of the Probate Code, to read:

**PART 10. SUPPORTED DECISIONMAKING- DIVISION 11: SUPPORTED
DECISIONMAKING**

3950WIC SECTION [1]. The Legislature finds and declares all of the following:

(a) Adults with disabilities, including older adults with disabilities, are presumed competent and to have the capacity to make decisions regarding their day-to-day health, safety, welfare, social, and financial affairs, unless otherwise determined through legal proceedings.

(b) All adults, to the best of their ability and with supports they choose, should be able to be informed about, and participate in, the management of their affairs.

(c) Like adults without disabilities, adults with disabilities may use a wide range of voluntary supports to help them understand, make, and communicate their own decisions. These voluntary arrangements should be encouraged and recognized as a valid way for people with disabilities to strengthen their capacity and maintain their autonomy.

(d) The capacity of any adult should be assessed with any supports, including supported decisionmaking, that the person is using or could use. **The capacity of any adult should never be assessed in isolation from existing or possible supports.**

(e) All adults with disabilities should receive the most effective, yet least restrictive and intrusive, form of supports, assistance, or protection when they need help to care for themselves or manage their affairs.

(f) Eighteen states and the District of Columbia have passed laws recognizing supported decisionmaking as a valid way for adults with disabilities to make, understand, and communicate their own choices.

(eg) Supported decisionmaking offers adults with disabilities a flexible way to maintain autonomy and decisionmaking authority over their own lives by developing and

maintaining voluntary supports to assist them in understanding, making, communicating, and implementing their own informed choices.

~~(fh) Supported decisionmaking can be a way to strengthen the capacity of an adult with a disability. and can prevent or remove the need to use more restrictive protective mechanisms, such as conservatorship. The ability of an adult with a disability to meet their personal needs or manage their financial resources through supported decisionmaking shall be assessed in determining the appropriateness and extent of any conservatorship.~~

~~(i) A supported decisionmaking agreement or arrangement is not evidence that the adult with a disability lacks capacity or needs a conservatorship and does not preclude the adult with a disability from acting independently of the agreement.~~

(j) Supported decisionmaking is one of several options available to adults with disabilities to understand, make, and communicate decisions and to express preferences, including, but not limited to, medical and financial powers of attorney, authorized representative forms, health care directives, release of information forms, and representative payees.

3951WIC SECTION [2]. The following definitions apply for purposes of this part:

(a) "Adult with a disability" includes an adult with any disability, including, but not limited to, an intellectual or developmental disability, cognitive disability, communication disability, psychiatric disability, age-related disability, physical disability, sensory disability, learning disability, dementia, cognitive impairment, Alzheimer's disease, major neurocognitive disorder, or chronic illness or condition.

(b) "Life decision" means any decision, whether minor or major, that affects the adult with a disability, including, but not limited to, a decision regarding any medical, psychological, financial, educational, residential, social, sexual, religious, and occupational matter. Life decisions include decisions about institutional, residential, and community-based services such as those provided by a regional center, In-Home Supportive Services, a nursing home, or a skilled nursing facility.

(c) "Supported decisionmaking" means an individualized process arrangement in which an adult with a disability chooses one or more people they trust as supporters to help them understand, make, communicate, implement, or act on, their own choices. Supported decisionmaking recognizes and accepts the preferences of the adult with a disability, as expressed with the supports and supporters they choose.

(d) "Supported decisionmaking agreement" means a voluntary, written agreement, signed by the supporter and the supported person, which may be revoked orally or in writing at any time by either party. A supported decisionmaking agreement should

be written in plain language that is accessible to the adult with a disability. It may include images, be read aloud, or be video or audio recorded in addition to the written version.

(ed) “Supporter” means another adult who agrees to help the adult with a disability in using supported decisionmaking. A supporter agrees to help the adult with a disability as requested, which may include providing assistance to the adult with a disability to understand, make, communicate, implement, or act on, their own life decisions. **A supporter is not entitled to substitute their judgment for that of the adult with a disability or make a decision on behalf of the adult with a disability unless they have independent legal authorization to do so. An adult with a disability may have multiple supporters. Unless the adult with a disability explicitly delegates decisionmaking, a supporter is not entitled to substitute their judgment for the decision of the adult with a disability.**

3952. (a) An adult with a disability may choose to enter into supported decisionmaking with one or more chosen supporters. The adult with a disability may request a supporter to provide assistance in any **way, including, but not limited to or all of the following ways:**

(1) Participate in supported decisionmaking, including assistance in understanding information, options, responsibilities, and consequences of the life decisions of the adult with a disability.

(2) Assist the adult with a disability in accessing, collecting, obtaining, and understanding information that is relevant to a given life decision from any person or entity, and information about how supporters and supported decisionmaking is used.

(3) Assist the adult with a disability in understanding information related to a life decision.

(4) Assist the adult with a disability in communicating the adult’s life decisions to appropriate persons, and advocate or assist to ensure that the adult’s preferences and decisions are implemented.

(b) Supported decisionmaking can take many forms and may be informal. An adult with a disability is not required to enter into a written supported decisionmaking agreement to participate in supported decisionmaking.

(c) An adult’s participation in a supported decisionmaking process or execution of a supported decisionmaking agreement may not be used by a court or other entity of as evidence of incapacity. Participation in a supported decisionmaking agreement or existence of a supported decisionmaking agreement does not preclude the adult with a disability from acting independently of the supported decisionmaking process or

agreement. This subdivision does not limit admissibility pursuant to Section 28 of Article 1 of the California Constitution.

~~3953~~**WIC SECTION [4].** (a) Notwithstanding any other provision of this part, an adult with a disability ~~may request, and~~ is entitled to have present, one or more other adults, including supporters, in any meeting or communication, including, but not limited to, all of the following:

- (1) An individualized education ~~program plan~~ (IEP) meeting.
- (2) An individual program plan (IPP) meeting.
- (3) A service planning meeting.
- (4) A care plan and hospital discharge planning meeting.
- (5) A financial planning meeting.
- (6) A communication or meeting with a bank or other financial institution.
- (7) An employment planning meeting.
- (8) A medical appointment.

~~(b) When an adult with a disability indicates that they wish to have one or more other adults present in any meeting or communication, any entity or third party shall permit the other adult or adults to attend with the adult with a disability.~~ An adult with a disability may indicate that they wish to have one or more ~~the other adult or~~ adults ~~to~~ attend a meeting or communication through oral statement, gesture, or any augmentative or alternative communication method used by the adult with a disability.

~~(c) A third party may refuse the presence of a supporter or supporters under subdivision (a) only if they have reasonable cause to believe that there is fraud, coercion, or abuse by the supporter or supporters.~~

~~(de)~~ The Legislature finds and declares that this section is declaratory of existing law.

~~3954~~**WIC SECTION [5].** (a) ~~A supporter is an adult identified by a person with a disability to participate in supported decisionmaking, and who agrees to participate in supported decisionmaking. An adult with a disability may have multiple supporters.~~

~~(b)~~ Each supporter shall do all of the following:

- (1) Support and implement the will and preferences of the adult with a disability.
- (2) Respect the values, beliefs, and preferences of the adult with a disability.
- (3) Act honestly, diligently, and in good faith.
- (4) Act within the scope identified by the adult with a disability.
- (5) Avoid, to the greatest extent possible, disclose, minimize, and manage conflicts of interest.

(be) Supporters shall not coerce the adult with a disability.

(cd) Unless **legally explicitly** authorized, **including but not limited to authorization by power of attorney**, supporters shall not do any of the following:

- (1) Make decisions for or on behalf of the adult with a disability, except when necessary to prevent imminent bodily harm or injury.
- (2) Sign documents on behalf of the adult with a disability.
- (3) Substitute their own judgment for the decision or preference of the adult with a disability.
- (4) Obtain information that is not reasonably related to matters with which the supporter may assist the adult through supported decisionmaking.
- (5) Use or disclose information acquired for the purpose of supporting the adult with a disability for another purpose that does not support the adult with a disability.

(de) (1) To minimize conflicts of interest, a supporter shall avoid, to the maximum extent possible, providing support on life decisions for which the supporter has a financial or other tangible stake in the outcome, such as decisions related to an employment relationship between the adult with a disability and the supporter.

(2) Where feasible, the supporter should work diligently with the adult with a disability to find other trusted supporters who can provide support on life decisions for which the first supporter has a financial or other tangible stake in the outcome.

(3) If a supporter does provide support on decisions in which the supporter has a financial or other tangible stake, the supporter shall disclose and discuss any conflicts with the adult with a disability.

~~(4) A supporter who is paid solely to provide paid supported decisionmaking services does not have a conflict of interest.~~

(ef) A person shall not be a supporter if the adult with a disability has obtained an order of protection for abuse against that person or if the person is the subject of a civil or criminal order prohibiting contact with the adult with a disability.

(fg) In addition to the obligations in this section, 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. This section 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, **breach of fiduciary duty, if any exists**, coercion, or mistreatment, including liability under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code), including, but not limited to, Sections 15656 and 15657 of the Welfare and Institutions Code.

~~3955 WIC SECTION [6].~~ (a) ~~If an adult with a disability chooses to use a~~ **A written supported decisionmaking agreement pursuant to Section [2(d)] shall include**, ~~the agreement shall include~~ all of the following elements:

- (1) The name of the adult with a disability.
- (2) The name, address, telephone number, and email address, if applicable, of each supporter.
- (3) A list of the areas in which the adult with a disability requests support from one or more supporters.
- (4) An acknowledgment by each supporter agreeing to do all of the following:
 - (A) Provide information as requested by the adult with a disability.
 - (B) Support the adult with a disability in good faith and to the best of their abilities.
 - (C) Respect that the final decision shall be made by the adult with a disability and not the supporter.
 - (D) Not coerce or manipulate the adult with a disability into making any decision.
 - (E) Provide the most up-to-date and relevant information to the adult with a disability, based on all the available and known information the supporter has.
 - (F) Disclose, minimize, and manage conflicts of interest.

(5) The day, month, and year the agreement was entered into.

(6) Any additional information the adult with a disability or the supporter wishes to include in order to express the intent of the parties with respect to the supported decisionmaking agreement.

(b) A supported decisionmaking agreement shall be signed by the adult with a disability and each supporter, in the presence of two or more attesting and disinterested witnesses who are at least 18 years of age, or a notary public. The adult with a disability may use reasonable modifications, such as assistive technology or physical assistance, to sign the agreement. The adult with a disability shall enter the agreement voluntarily and without coercion.

(c) A supported decisionmaking agreement shall be written in simple language that is accessible to the adult with a disability. It may contain images or be read out loud or be audio- or video-recorded.

(d) A supported decisionmaking agreement may include other elements, including, but not limited to, any of the following:

(1) A description of the type of assistance and support each supporter agrees to provide, such as a list of which supporter or supporters will provide assistance with each decision, or a description of decisions for which only certain supporters may assist.

(2) A list of decisions for which a supporter may not assist.

(3) A statement whether the supporters may communicate with each other about support without the adult with a disability present and, if so, in what context and with what limitations.

(4) The name and contact information of oversight or review person who is not a supporter to oversee any financial assistance or decisions.

(5) Information and copies of other supported or substituted decisionmaking documents the adult with a disability has in place, including, but not limited to, powers of attorney, authorizations to share medical or educational information, authorized representative forms, or representative payee agreements.

3956-WIC SECTION [7]. (a) A supported decisionmaking agreement is effective until it is terminated by the adult with a disability, by all supporters, or by the terms of the agreement, **or by the death of the adult with a disability, or by operation of law.** Any party may choose to terminate their participation in the agreement at any time by providing written or **oral verbal** notice of the termination to all parties to the agreement. **An adult with a disability may terminate a supported decisionmaking**

agreement by other conduct intended to communicate termination, including by canceling, defacing, obliterating, burning, tearing, or otherwise destroying the supported decisionmaking agreement or directing another in the presence of the adult with a disability to so destroy the supported decisionmaking agreement.

(b) If there is more than one supporter, the termination by one supporter does not terminate the supported decisionmaking agreement with respect to other supporters.

(c) A supported decisionmaking agreement is terminated with respect to any supporter who is found criminally, civilly, or administratively liable for abuse, neglect, mistreatment, coercion, or fraud, or is subject to a restraining order with respect to the adult with a disability.

~~3957. Supported decisionmaking shall be encouraged and used, to the maximum extent possible, by adults with disabilities who are subject to conservatorship or other protective arrangements. To the greatest extent possible, conservators shall encourage and respect the preference of an adult with a disability under conservatorship to use supported decisionmaking within the conservatorship, or to rely on supported decisionmaking in seeking to terminate a conservatorship.~~

~~3958. A person may rely on known supports used by an adult with a disability, including a written supported decisionmaking agreement as described in Section 3955.~~

~~3959 WIC SECTION [8].~~ (a) The State Council on Developmental Disabilities, in coordination with the University of California Davis MIND Institute and the protection and advocacy agency described in subdivision (i) of Section 4900 of the Welfare and Institutions Code and in consultation with a nonprofit organization with experience in supported decisionmaking and other alternatives to conservatorship, shall administer the statewide Supported Decisionmaking Technical Assistance Program (SDM-TAP), as established pursuant to subdivision (b), to provide support, education, technical assistance, and administer grants to expand and strengthen the use of supported decisionmaking throughout California.

(b) (1) The State Council on Developmental Disabilities shall establish and staff a centralized SDM-TAP program, which shall 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.

(2) The SDM-TAP program shall respond to inquiries about SDM, including providing technical assistance to people referred to them by the conservatorship alternatives program in subdivision (d) of Section 1836.

(3) The SDM-TAP program shall further develop and disseminate information, materials, training, and support on the use of ~~supportive~~ **supported** decisionmaking, with consideration to providing both of the following:

(A) Tailored access and support for populations and communities that have been historically underserved, including speakers of languages other than English and immigrant, native, and rural populations.

(B) ~~Supported~~ **Supportive** decisionmaking for people who do not rely on speech to communicate, people with complex and significant disabilities, people who do not already have established support networks, people with psychiatric disabilities, and older adults.

(c) The State Council on Developmental Disabilities, in coordination with the University of California Davis MIND Institute and the protection and advocacy agency described in subdivision (i) of Section 4900 of the Welfare and Institutions Code and in consultation with state and local advocacy, disability, and aging agencies, including self-advocacy organizations, shall administer SDM-TAP grant funding to state or local government entities such as courts and school districts and nongovernmental entities such as nonprofit organizations that submit project proposals to expand the use of supported decisionmaking and reduce the use of conservatorship. SDM-TAP shall conduct outreach to educate local, grassroots, and nontraditional entities about the program, and to solicit these entities to apply for funding under this section. In deciding and allocating grant funding under this section, SDM-TAP shall consider equity and diversity of grant recipients, including with regard to geographic location, population size, type of entity seeking funding, type of project proposed, and size of the grant.

(d)(1) No later than six months after the Judicial Council issues its findings on conservatorships under Section 1458 under the Probate Code, the State Council on Developmental Disabilities, in coordination with the University of California Davis MIND Institute and the protection and advocacy agency described in subdivision (i) of Section 4900 of the Welfare and Institutions Code and in consultation with state and local advocacy, disability, and aging agencies, including self-advocacy organizations, shall report to the Legislature on the use of supported decisionmaking in the state, recommendations for how to improve and expand the use of supported decisionmaking in the state, whether and how the SDM-TAP reduces the number of conservatorships, best practices for supported decisionmaking employed in other states, and effective measures for adults with disability to strengthen autonomy and protect against undue influence within supported decisionmaking.

(2) The report shall be submitted pursuant to Section 9795 of the Government Code.

(3) Any information contained in the report shall be deidentified to prevent disclosure of any personal information about specific individuals engaging in

supported decisionmaking. Information about specific individuals engaging in supported decisionmaking obtained by SDM-TAP shall be exempt from disclosure under the Public Records Act (Gov. Code, §§ 6250 et seq.).

SEC. 17. The sum of ten million dollars (\$10,000,000) is appropriated from the General Fund as follows:

(a) Five million dollars (\$5,000,000) to the Judicial Council for implementation of the conservatorship alternatives program established pursuant to Section 1836 of the Probate Code, as follows:

(1) Two million dollars (\$2,000,000) for administration and establishment of resources, guides, oversight, and training, including judicial training and educational materials.

(2) Three million dollars (\$3,000,000) for distribution to the 58 superior court self-help centers, proportional to the applicable county's population.

(b) Five million dollars (\$5,000,000) to the State Council on Developmental Disabilities, for implementation of the Supported Decisionmaking Technical Assistance Program (SDM-TAP) established pursuant to Section 3959 of the Probate Code, as follows:

(1) Two million dollars (\$2,000,000) for the establishment and operation of the SDM-TAP within the State Council on Developmental Disabilities.

(2) Three million dollars (\$3,000,000) to be awarded in grant funding pursuant to subdivision (c) of Section 3959 of the Probate Code.

SEC. 18. The Legislature finds and declares that Section ~~16 10~~ of this act, which adds **Section [8] to Division 11 of the Welfare and Institutions Code, Section 1836 to the Probate Code,** imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the interests, **medical and health care information,** and privacy of **vulnerable** individuals **engaging in supported decisionmaking subject to protective proceedings,** it is necessary that information **provided pursuant to Section [7] disclosed pursuant to the program described in Section 1836 of the Probate Code** be kept confidential.