

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1106 (Rubio)  
Version: April 18, 2024  
Hearing Date: April 30, 2024  
Fiscal: No  
Urgency: No  
AWM

**SUBJECT**

Conservators: required notices

**DIGEST**

This bill clarifies who may receive special notice about a conservatorship; requires persons who have requested special notice to be notified when a conservator is moving the conservatee's place of residence, as specified; and extends the timeframe for when a conservator must provide a notice of intent to move the conservatee from their personal residence, from 15 days to 20 days.

**EXECUTIVE SUMMARY**

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. Subsequent journalistic investigations into the problems with conservatorships, as well as public attention to the conservatorship of pop star Britney Spears, resulted in renewed Legislative attention to conservatorship reforms over the past few years.

This bill is intended to close gaps in the conservatorship system that may prevent individuals who care about a conservatee from staying in touch with the conservatee and potentially learning about mistreatment by the conservator. Specifically, this bill clarifies that a conservator's family and friends may request special notice of the conservatorship proceedings as interested persons, and adds provisions requiring notice regarding the conservatee's change of residence and any funeral or burial arrangements to be provided to family members and interested persons, as specified. The author has agreed to amendments to remove an unclear term relating to the conservatee's change of residence.

This bill is sponsored by the Kasem Cares Foundation and is supported by Elderly Lives Matter USA, the Foundation Aiding the Elderly, ONSTAGELOSANGELES, and eight individuals. The Committee has not received timely opposition to this bill.

### **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, where the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee. (Prob. Code, § 1800.3(a), (b).)
- 2) Provides that 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; and a conservator of the estate may be appointed for a person who is substantially unable to manage their own financial resources or resist fraud or undue influence. A conservator of the person and estate may be appointed if both sets of criteria are met. (Prob. Code, § 1801(c).)
- 3) Provides that a conservatee retains the rights to do all of the following under the conservatorship, unless the court expressly withholds those rights:
  - a) Directly receive and control their own salary.
  - b) Make or change their will.
  - c) Get married.
  - d) Receive mail.
  - e) Have visits from family and friends.
  - f) Hire 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.
  - 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. (Prob. Code, §§ 1835.5, 1871, 1880, 1900, 1901, 1910.)
- 4) Requires, within 120 days of appointment by the court and no later than 10 days before a hearing to determine the continuation or termination of an existing conservatorship, a conservator to file with the court a plan for the care, custody, and control of the conservatee, including the following relevant factors:

- a) A description of the current living arrangement for the conservatee and any plans to modify this living arrangement within the next 12 months.
  - b) A description of the normal activities of the conservatee, including outings and social and recreational activities.
  - c) A description of any special problems raised by the court investigator, the court, or any other interested person, and a description of how the conservator has addressed or intends to address those problems. (Prob. Code, § 2351.2.)<sup>1</sup>
- 5) Provides that a conservator has the care, custody, and control of the conservatee; but this control does not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by court order.
- a) The court may issue an order that specifically grants the conservator the power to enforce the conservatee's rights to receive visitors, telephone calls, and personal mail, or that directs the conservator to allow those visitors, telephone calls, and personal mail.
  - b) Where the court determines that it is appropriate in the circumstances of a particular conservatee, the court, in its discretion, may limit the powers and duties that a conservator would otherwise have by stating the specific powers that the conservator does not have, reserving those powers to the conservatee; or by stating the specific powers the conservator has, reserving the remaining rights to the conservatee. (Prob. Code, § 2351.)
- 6) Provides that a conservator may establish the residence of the conservatee at any place within this State without the permission of the court, which is the least restrictive appropriate residence that is available and necessary to meet the needs of the conservatee and that is in the best interests of the conservatee. (Prob. Code, § 2352(b).)
- 7) Provides that there is a presumption that the conservatee's personal residence at the time of the commencement of the proceeding is the least restrictive appropriate residence; the presumption may be overcome by clear and convincing evidence. (Prob. Code, § 2352.5.)
- 8) Requires, if a conservator intends to change the conservatee's residence, the conservator to file a notice of change of residence with the court within 30 days of the change
- a) The notice must include a declaration stating that the conservatee's change of residence is consistent with 6).

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<sup>1</sup> For the most part, the requirements set forth in 4)-9) for conservators and conservatees also apply to guardians and wards. This analysis incorporates those terms into "conservator" and "conservatee," respectively, except where there is a legal distinction that needs to be specifically mentioned.

- b) The notice must be delivered to the conservatee's spouse or domestic partner, if any, and any relatives named in the petition, at their addresses stated in the petition. The court may, for good cause, waive the delivery requirement to prevent harm to the conservatee. (Prob. Code, § 2352(e)(1), (2).)
  - c) If the conservator intends to remove the conservatee from their personal residence, the notice of intention must be delivered to the persons in 8)(b) at least 15 days before the proposed removal, unless there is an emergency that the conservator sets forth in the notice.
- 9) Permits, at any time after the establishment of a conservatorship, the spouse or domestic partner of the conservatee, any relative or creditor of the conservatee, or any other interested person to file with the court a written request for special notice.
- a) The request may seek special notice of any or specified matters, including a range of financial matters, petitions filed in the conservatorship proceeding, or proceedings for the termination of the conservatorship.
  - b) A copy of the request shall be delivered to the conservator and is effective upon receipt.
  - c) Unless the court has issued an order dispensing with the notice, any person filing a petition or other filing in the matter shall give written notice, along with the filing and the time and place set for the hearing, to the person named in the request at least 15 days before the time set for the hearing. (Prob. Code, §§ 2700, 2702.)
- 10) Requires a conservator, upon the death of a conservatee, to provide notice of the death by delivering a copy of the notice to the conservatee's spouse or domestic partner, if any, and any person who has requested special notice under 8) unless the court, for good cause, dispenses with the notice requirement. (Prob. Code, §§ 1460, 2361.)

This bill:

- 1) Requires a conservator, when they file a notice of change of residence for the conservatee, to provide notice to any person who has requested special notice in the matter.
- 2) Requires a conservator, when they propose to remove the conservator from their personal residence, to provide the notice of intention to change the residence to any person who has requested special notice in the matter.
- 3) Expands, for conservatee's but not wards, the time prior to the removal of a conservatee from their personal residence before which a conservator must provide the notice of the removal to eligible persons, from 15 days to 20 days.

- 4) Extends the obligations in 2)-3) to circumstances where the conservator proposes to remove the conservatee from a location where the conservatee is staying for an extended period of time.
- 5) Requires a conservator, upon the death of a conservatee, to provide notice of the date, time, and location of any funeral, burial, or memorial arrangements for the conservatee to all persons entitled to receive notice of the death, if the conservator makes those arrangements; the notice must be delivered electronically whenever possible.
- 6) Clarifies that an “interested person” who may file a request for special notice in a conservatorship matter includes, but is not limited to, a family member or a friend of the conservatee.

### COMMENTS

#### 1. Author’s comment

According to the author:

Improving the quality of life and care for the elderly has always been a top priority for me. They are among the most vulnerable groups who are abused and taken advantage of far too often. Under a conservatorship, they may be at risk of being in the care of someone who does not have their best interests in mind, and could even hurt them. Isolation from loved ones only causes more harm. One way we can help conservatees – who are often senior citizens – is by allowing loved ones to request special notice of important developments such as when they are removed from their personal residency, when the conservatee passes away, and details of funeral/memorial/burial arrangements if the conservator makes these arrangements. Notifying loved ones of this information, upon their request, is crucial in ensuring conservators are not trying to isolate conservatees or preventing them from knowing about this important information.

#### 2. Recent reforms and attempted reforms to the conservatorship system<sup>2</sup>

In 2005, the *Los Angeles Times* published an award-winning series of articles highlighting flaws in California’s conservatorship system.<sup>3</sup> The *Times* articles included stories of private conservators who misused the system to get appointed

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<sup>2</sup> This bill addresses conservatorships established under the Probate Code for adults unable to care for themselves generally, which are distinct from conservatorships established under the Lanterman-Petris-Short Act for persons gravely disabled as a result of a mental health disorder or impairment due to chronic alcoholism. (See generally Welf. & Inst. Code, div. 5, pt. 1.)

<sup>3</sup> Robin Fields, Evelyn Larrubia, and Jack Leonard, *Guardians for Profit* series (Nov. 13-17, 2005) *Los Angeles Times*.

inappropriately and then either steal or mismanage conservatee assets; public guardians who did not have the resources to help vulnerable individuals in need of assistance; probate courts that lacked sufficient resources to provide adequate oversight to catch the abuses; and a system that provided no recourse for those who needed help. The *Times* editorial that ran at the end of the series exhorted courts and elected officials to “turn this abusive system into the honest guardianship it was meant to be.”<sup>4</sup>

In response to the series, the Legislature passed the Omnibus Conservatorship and Guardianship Reform Act of 2006, a package of bills to reform the conservatorship system. In the same year, then-Chief Justice Ron George appointed a Probate Conservatorship Task Force to evaluate the court’s role in the conservatorship system and to make recommendations for reform, if necessary.<sup>5</sup> The Task Force released its final report in October of 2007 and detailed 85 recommendations and included items that needed further review, additional funding, changes in legislation or rules of court, and preparation of training materials and guidelines for the courts. In 2008, the Task Force reported that 22 of its recommendations had been implemented through various means, including the Omnibus Act described above.<sup>6</sup>

Unfortunately, the reforms failed to resolve the problems with the conservatorship system. 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 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.”<sup>7</sup> And 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.<sup>8</sup> The now-terminated conservatorship of iconic pop star Britney Spears called attention to the lack of oversight into conservatorships after they are established, and how difficult it is for a conservatee to emerge from the system after their circumstances have changed and they are able to care for themselves again.

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<sup>4</sup> *Deserving of Care* (Nov. 17, 2005) Los Angeles Times, <https://www.latimes.com/archives/la-xpm-2005-nov-17-ed-conservators17-story.html>. All links in this analysis are current as of April 25, 2024.

<sup>5</sup> Judicial Council of California, Probate Conservatorship Task Force, *Final Report of the Probate Conservatorship Task Force* (Oct. 26, 2007) <https://www.courts.ca.gov/documents/102607itemD.pdf>.  
Judicial Council of California, Probate Conservatorship Task Force, *Probate Conservatorship Task Force Recommendations to the Judicial Council: Status of Implementation* (Dec. 9, 2008) <https://www.courts.ca.gov/documents/120908item10.pdf>.

<sup>7</sup> de Sá, *Santa Clara County’s court-appointed personal and estate managers are handing out costly and questionable bills*, *Mercury News* (Jun. 30, 2012).

<sup>8</sup> Saavedra, *Money-draining probate system “like a plague on our senior citizens,”* *Orange County Register* (Sept. 23, 2018).

Part of the problem was a lack of funding: when the Great Recession hit, however, SB 78 (Committee on Budget and Fiscal Review, Ch. 10, Stats. 2011) was enacted to suspend superior court duties added by the 2006 reforms until the Legislature makes an appropriation for these purposes, which to date has not occurred. Thus, it is possible that some of the same abuses that took place before the 2006 reforms could still be occurring today and that courts simply lack the oversight resources to detect these abuses. Another part of the problem was that not all of the Task Force's recommendations were implemented.

In the 2020s, the Legislature has taken additional steps to reform the conservatorship system. 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, the results of a three-court review of the use of Probate Code conservatorships that must include caseload statistics, information about compliance with statutory timeframes, and the operational differences between courts.<sup>9</sup> And in 2023, the Legislature enacted SB 280 (Laird, Ch. 705, Stats. 2023), which implemented the Task Force's recommendation of requiring conservators to file care plans for conservatees at specified intervals.

### 3. A conservatee's rights and a conservator's obligation to provide notice of certain events

A conservator has the care, custody, and control of the conservatee, but that authority does not automatically extend to any and all decisions about the conservatee's life.<sup>10</sup> Instead, the boundaries of the rights transferred to the conservator and the rights retained by the conservatee are set by the court.<sup>11</sup> Absent a court order to the contrary, a conservatee retains a number of rights, including the right to vote, the right to make medical decisions, and the right to receive visitors, telephone calls, and personal mail.<sup>12</sup>

A conservator is also authorized to establish the residence of the conservatee anywhere in the state without a court order, absent a court order reserving that right to the conservatee.<sup>13</sup> This power is tempered by the requirement that the conservator choose the least restrictive residence appropriate for the conservatee that is available and meets the conservatee's needs.<sup>14</sup> There is a rebuttable presumption that the conservatee's personal residence at the time the conservatorship proceeding commences is the least restrictive appropriate residence; the conservator can overcome that presumption only

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<sup>9</sup> Prob. Code, § 1498.

<sup>10</sup> Prob. Code, §§ 1835.5, 2351.

<sup>11</sup> *Id.*, § 1835.5.

<sup>12</sup> *Id.*, §§ 1880, 1910, 2351.

<sup>13</sup> *Id.*, § 2351.

<sup>14</sup> *Id.*, §§ 2352, 2352.5. There is a separate procedure for moving the conservatee out of the state, which requires a noticed hearing and a court order. (*Id.*, § 2352(c).)

with clear and convincing evidence to the contrary.<sup>15</sup> Additionally, a conservator must undertake certain steps when they change the conservatee's residence to another location within the state:

- A conservator must file a notice of change of residence within 30 days of the date of the change, and include with the notice a declaration that the new residence satisfies the least restrictive alternative requirement.
- If, however, the conservator proposes to remove the conservatee from their personal residence, the conservator must provide a notice of intention at least 15 days before the proposed removal, absent emergency circumstances.
- The notices must be delivered to the conservatee's spouse or domestic partner, if any, and any relatives named in the petition, at their addresses listed in the petition, unless the court waives the notice requirement for good cause.<sup>16</sup>

The Probate Code also permits "interested" individuals to file a request to receive notice of matters pertaining to a conservatorship.<sup>17</sup> There are no restrictions on who qualifies as an interested person; the statute specifically lists the conservatee's spouse or domestic partner, relatives, and creditors, but also extends the right to request special notice to "any other interested person."<sup>18</sup> The request for special notice may request notice on specific topics – such as petitions filed or inventories and appraisals of the estate's property – or all matters for which notice can be provided.<sup>19</sup>

In 2015, the Legislature passed AB 1085 (Gatto, Ch. 92, Stats. 2015), which, among other things, added a requirement that a conservator provide notice of a conservatee's death to the conservatee's spouse or domestic partner, if any, and any person who has requested special notice in the matter.<sup>20</sup> This provision was added to ensure that family members are not left in the dark when a loved one passes away.<sup>21</sup>

#### 4. This bill modifies conservatorship laws to provide more information about the conservatee to family members and other interested persons

This bill is intended to close gaps and provide greater clarity with respect to who may receive notice regarding a conservatee, and also to increase the notice provided when a conservator changes the conservatee's personal residence. The author and sponsor are concerned that existing law fails to adequately protect conservatees whose conservators may be attempting to isolate them from friends and family against the conservatees' wishes.

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<sup>15</sup> *Id.*, § 2352.5.

<sup>16</sup> *Id.*, § 2352.5(e).

<sup>17</sup> *Id.*, § 2700.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> See Prob. Code, §§ 1460, 2361.

<sup>21</sup> See Sen. Com. on Judiciary, Analysis of AB 1085 (Reg. Sess. 2015-2016) as amended May 5, 2015, p. 5.



First, the bill adds a requirement that a conservator notify persons entitled to special notice about the conservatee when the conservator is changing the conservatee's personal residence. This new requirement applies both to the post-move notice required for moves in general, and the pre-move notice of intent required when the conservator intends to move the conservatee from their personal residence.

Second, the bill extends the timeframe in which a conservator must provide a notice of intent before moving a conservatee from their personal residence, from 15 days before the removal to 20 days before the removal. The bill leaves the 15-day notice window for wards as-is.

Third, this bill adds a requirement that a conservator provide a notice of intention when the conservator proposes to remove the conservatee from their "current residence or location where the conservatee is staying for an extended period of time." This provision does not directly contradict current law, which requires only that a conservator notify the court of a change of residence only within 30 days of a change of residence, unless the residence is the conservatee's personal residence. It does, however, seem to render the current 30-day *post facto* notice provision<sup>22</sup> moot: if the court and interested persons are given advance notice of every change of residence, the second, *post hoc* notice will serve little purpose.

The bill also does not define what constitutes "an extended period of time" for purposes of determining what other locations might require a notice. Because this requirement is ambiguous, the author has agreed to amend the bill to remove this provision and to continue working with stakeholders on how to ensure adequate notice is provided whenever a conservator changes the conservatee's residence.

Finally, this bill requires a conservator to provide notice of the date, time, and location of any funeral, burial, or memorial arrangements for the conservatee, if the conservator makes those arrangements, to the conservatee's spouse or domestic partner, and any person who has requested special notice. The bill requires this notice to be provided electronically wherever possible.

## 5. Amendments

As noted above, the author has agreed to amend the bill to remove an ambiguous term. The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

### Amendment 1

At page 4, in lines 2-4, delete "or location where the conservatee is staying for an extended period of time"

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<sup>22</sup> Welf. & Inst. Code, § 2352(e)(1), (2).

Amendment 2

At page 4, in lines 13-14, delete “or location where the conservatee is staying for an extended period of time”

SUPPORT

Kasem Cares (sponsor)  
Elderly Lives Matter USA  
Foundation Aiding the Elderly  
ONSTAGELOSANGELES  
Eight individuals

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 280 (Laird, Ch. 705, Stats. 2023) required probate conservators to submit, at specified points, comprehensive care plans for the care of conservatees and the management of their estates. This bill is discussed further in Part 2 of this analysis.

SB 602 (Laird, 2021) was substantially similar to SB 280, except that it would have required the initial care plan to be filed 90 days following the establishment of a conservatorship, and required care plans to include more detailed information. SB 602 died in the Assembly Appropriations Committee.

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. This bill is discussed further in Part 2 of this analysis.

AB 1062 (Mathis, 2021) would have required guardians and conservators to provide notice to certain individuals before disposing of valueless property, and would authorize those individuals to petition a court to resolve a dispute over the property. The bill is pending in this Committee. AB 1062 died in this Committee.

AB 1085 (Gatto, Ch. 92, Stats. 2015) authorized a court to issue an order that specifically grants a conservator the power to enforce the conservatee's rights to receive visitors, telephone calls, and personal mail, or that directs the conservator to allow those visitors, telephone calls, and personal mail; and requires a conservator to provide notice of a conservatee's death by mailing a copy of the notice to all persons entitled to notice, as specified, and by filing a proof of service with the court, unless otherwise ordered by the court. This bill is discussed further in Part 3 of this analysis.

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