

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

SB 280 (Laird)
Version: February 1, 2023
Hearing Date: March 28, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Review of conservatorships: care plans

DIGEST

This bill requires probate conservators to submit, at specified points, comprehensive care plans for the care of conservatees and the management of their estates.

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. One such reform was the creation of a general plan for the care, custody, and control of the conservatee, including a plan for meeting the conservatee's financial needs. The plan was proposed by a Probate Conservatorship Task Force, which was appointed by then-Chief Justice Ronald George to make recommendations to improve the management of probate conservatorship cases in California trial courts. SB 800 (Corbett, 2007) took up this idea, among others. However, the bill died in the Assembly Appropriations Committee after passing policy committees and the Senate floor with zero no votes.

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. In 2021, the Legislature enacted AB 1194 (Low, Ch. 1194, Stats. 2021), which implemented several additional conservatorship reforms and requires the Judicial Council of California to report to the Legislature by January 1, 2024, the findings of a study measuring court effectiveness in conservatorships. The same year, this bill's author resurrected the care plan concept and authored SB 602 (Laird, 2021). SB 602 was passed by this Committee with a vote of 10-0 and never received a single "no" vote. Nevertheless, like SB 800, the bill died in the Assembly Appropriations Committee.

This bill, SB 280, is substantially similar to SB 602 but makes certain changes to the timing and content of the care plan to address stakeholder concerns about SB 602. Under this bill, a conservator, within 120 days of appointment or 10 days before a hearing to determine the continuation or termination of an existing conservatorship, must file a care plan that sets forth certain information relating to the care, custody, and the control of the conservatee. The obligation to file a care plan will commence on January 1, 2025, giving the Judicial Council time to draft and adopt a form on which the care plan must be submitted. The bill provides that confidential information, including medical information, must be kept confidential by the courts and provided only to specified persons under specified conditions. The bill further provides for potential penalties that can be levied against a conservator who fails to file the plan, including a civil penalty of up to \$1,000 and removal as the conservator.

This bill is sponsored by the author. This bill is opposed by the California Association of Public Administrators, Public Guardians, and Public Conservators.

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 needed for the protection of the conservatee. (Prob. Code, § 1800.3.)
 - 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 financial resources or resist fraud or undue influence. (Prob. Code, § 1801 (b).)
- 2) Requires a conservator to submit an inventory and appraisal of the conservatee's assets within 90 days of appointment. (Prob. Code, § 2610.)
- 3) Establishes a presumption that the personal residence of a conservatee is the least restrictive appropriate residence for the conservatee; this presumption may be overcome by clear and convincing evidence. (Prob. Code, § 2352.5(a).)
- 4) Requires a conservator, upon appointment, to determine the appropriate level of care for the conservatee, which includes information related to the plan for keeping or returning their personal residence or an explanation of the limitations or restrictions on a return of the conservatee to their personal residence in the foreseeable future, and submit this information in writing to the court within 60 days of their appointment. (Prob. Code, § 2352.5(b), (c).)

This bill:

- 1) Beginning January 1, 2025, requires a conservator of the person, within 120 days of appointment or 10 days before a hearing to determine the continuation or termination of an existing conservatorship, to submit a care plan for the care, custody, and control of the conservatee.
- 2) Requires a conservator to deliver a care plan filed pursuant to 1) to:
 - a) The conservator of the estate, if a separate conservator has been appointed;
 - b) The conservator's attorney and the attorney of the conservator of the estate, if any;
 - c) The attorney for the conservatee;
 - d) The conservatee;
 - e) The conservatee's spouse or domestic partner and relatives within the first degree, if any. If the conservatee does not have any such family members, the conservator shall deliver the care plan to relatives within the second degree unless the conservator determines that doing so will result in harm to the conservatee.
- 3) Requires the conservatee to redact confidential medical information included in the care plan in compliance with applicable state and federal medical privacy laws before transmitting the care plan to the conservatee's spouse, domestic partner, and/or relative pursuant to 2)(e).
- 4) Requires the care plan to include all of the following:
 - a) A description of the conservatee's current living arrangement and any plans to modify the arrangement within the next year;
 - b) A description of the conservatee's current level of care and any plans to modify this level of care within the next 12 months;
 - c) A description of the conservatee's health status, including medications currently prescribed and any medical treatments, supports, or devices used;
 - d) The conservator's schedule of visitation with the conservatee and actions taken to ensure the conservatee is able to exercise their rights to visitation and communications;
 - e) A description of the conservatee's normal activities, including outings and recreational activities;
 - f) A description of any special problems raised by the court investigator, the court, or by any other interested person, and how the conservator addressed or intends to address those problems.
 - g) The conservatee's financial needs, including the conservatee's estimated monthly income and expenses including for food, entertainment, rent or mortgage, transportation, utilities, medication, clothing, and other relevant health care and living expenses, to the extent the conservator has that information; and

- h) A list of all health care providers who provide care for the conservatee, including certain identifying and licensure information for each provider.
- 5) Requires the Judicial Council to develop and adopt a mandatory form to be used in preparing the care plan by January 1, 2025.
 - 6) Provides, if a conservator fails to file a care plan as required:
 - a) The court may impose a civil penalty upon the conservator in any amount up to \$1,000, payable to the estate of the conservatee.
 - b) If the conservator is a professional fiduciary, the court may, in addition to the civil penalty in 6)(a), find that the failure to file a care plan is a separate and independent reason to refer the conservator to the Professional Fiduciaries Bureau for Investigation.
 - c) The court may remove the conservator.
 - 7) Provides that the care plan must be confidential and made available only as provided in 1)-6) above, except that the court has the discretion to release the care plan to other persons if it would serve the best interests of the conservatee.
 - 8) Requires the clerk of the court to make provision for limiting disclosure of the care plan exclusively to persons entitled to the care plan pursuant to 1)-7).
 - 9) Provides that a court investigator conducting an investigation of the conservatorship pursuant to Probate Code section 1851 shall review the most recent care plan.

COMMENTS

1. Author's comment

According to the author:

Society has a responsibility to care for and protect the most vulnerable among us and nowhere is the responsibility of that more apparent than in conservatorships. With SB 280, we ensure care plans are properly detailed and reviewed by courts, certifying transparent fairness for those living under conservatorships.

2. Recent reforms and attempted reforms to the conservatorship system¹

In 2005, the *Los Angeles Times* published an award-winning series of articles highlighting flaws in California's conservatorship system.² The *Times* articles included stories of private conservators who misused the system to get appointed 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."³

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. SB 1116 (Scott, Ch. 490, Stats. 2006) imposed requirements related to the sale of a conservatee's personal residence. SB 1550 (Figueroa, Ch. 491, Stats. 2006) established the Professional Fiduciaries Act for the licensing and oversight of professional fiduciaries. SB 1716 (Bowen, Ch. 492, Stats. 2006) expanded the scope of evaluations conducted by court investigators and established a protocol for ex parte communication with the court about a conservatorship. AB 1363 (Jones, Ch. 493, Stats. 2006) reformed certain aspects of the courts' oversight of conservatorships. However, when the Great Recession hit, 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.

Also in 2006, 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.⁴ Composed of representatives from the courts, advocacy organizations, the Attorney General, legislative staff, practitioners in the conservatorship area, conservators, and other judicial officers, the Task Force held several public hearings and released its final report in October of 2007. The report detailed 85 recommendations and included items that needed further review, additional

¹ 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.)

² Robin Fields, Evelyn Larrubia, and Jack Leonard, *Guardians for Profit* series (Nov. 13-17, 2005) *Los Angeles Times*.

³ *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 March 23, 2023.

⁴ 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>.

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.⁵

One Task Force recommendation that remains unimplemented is the creation of a requirement for the submission of a care plan by the conservator of the person and/or estate that includes an estimate of the conservator's fees for the first year, which can enable courts to discern whether fees billed exceed that amount.⁶ The Task Force also recommended requiring follow-up reports, which may be reviewed by examiners or investigators to make a recommendation as to whether the judicial officer should set a hearing to review the plan.⁷ Additionally, it was recommended that the plan, along with the inventory and appraisal, be filed and served within 90 days on all persons required to be listed in the original petition or an order to show cause will automatically issue.⁸ Finally, the Task Force recommended adopting a uniform, mandatory Judicial Council form for the submission of the care plan, and combining existing level-of-care evaluations with the care plan in one form.⁹ The Task Force argued a care plan would give court information on what to expect and a baseline of data to compare against subsequent experience in each case.¹⁰ The Legislature considered SB 800 (Corbett, 2007) to codify the care plan recommendation, but it was held in the Assembly Appropriations Committee.

Unfortunately, the Task Force reforms that were implemented did not resolve problems within 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."¹¹ 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

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>.

⁶ *Final Report of the Probate Conservatorship Task Force, supra*, n. 4, at pp. 13, 16.

⁷ *Id.* at 13, 16.

⁸ *Id.* at 13.

⁹ *Id.*

¹⁰ *Id.* at 45.

¹¹ de Sá, *Santa Clara County's court-appointed personal and estate managers are handing out costly and questionable bills*, *Mercury News* (Jun. 30, 2012).

savings.¹² 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 after their circumstances have changed and they are able to care for themselves again. Additionally, many conservatorship reforms remain unfunded.

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.¹³ The same year, this bill's author authored SB 602 (Laird, 2021), which attempted to revive the case plan recommendation from the Task Force. As with SB 800, SB 602 did not receive a single "no" vote in committee or on the Senate Floor, but it was held in the Assembly Appropriations Committee.

3. This bill implements a compensative care plan requirement and reflects changes to address stakeholder concerns about SB 602

Existing law requires a limited set of disclosures to the court relating to the conservatee's care and assets. A conservator of the estate must submit an inventory and appraisal of the conservatee's assets within 90 days of appointment,¹⁴ and courts must take steps to ensure compliance with these provisions.¹⁵ Existing law also establishes a presumption that the personal residence of a conservatee is the least restrictive appropriate residence for the conservatee, but this presumption may be overcome by clear and convincing evidence.¹⁶ Accordingly, upon appointment, a conservator must determine the appropriate level of care for the conservatee that includes information related to the plan for keeping or returning their personal residence or an explanation of the limitations or restrictions on a return of the conservatee to their personal residence in the foreseeable future.¹⁷ The conservator must submit this information in writing to the court within 60 days of their appointment.¹⁸ These provisions were on the books when the Task Force recommended creating a more comprehensive care plan, and the information vacuum that the Task Force identified continues to exist.

¹² Saavedra, *Money-draining probate system "like a plague on our senior citizens,"* Orange County Register (Sept. 23, 2018).

¹³ Prob. Code, § 1498.

¹⁴ Prob. Code, § 2610.

¹⁵ *Id.*, § 1456.5.

¹⁶ *Id.*, § 2352.5.

¹⁷ *Ibid.*

¹⁸ *Ibid.* The Judicial Council has adopted Form GC-355 to effectuate these provisions. Judicial Council website, <https://www.courts.ca.gov/documents/gc355.pdf>. Some courts, such as the Los Angeles Superior Court, have developed more detailed care plan forms. (*Conservatorship Care Plan* <http://www.lacourt.org/forms/pdf/PRO023.pdf>.)

This bill establishes a modified version of the care plan recommended by the Task Force. Under the bill, conservators would, beginning January 1, 2025, be required to file a care plan 120 days after appointment and at least 10 days prior to a hearing to determine the continuation or termination of an existing conservatorship; the conservator must also provide the plan to the conservatee’s attorney as well as specified relatives. The bill sets forth the information that must be contained in the care plan, including specified details about the conservatee’s health, activities, and level of care. To preserve the conservatee’s privacy, the bill provides that the care plan is confidential; the clerk of the court must take steps to ensure the filed version remains confidential, and the conservator must redact confidential medical information in the care plans provided to relatives. The bill requires that the Judicial Council establish a mandatory form for care plans, which must be adopted on or before January 1, 2025.

Certain elements of this bill – such as requiring the care plan to be filed 120 days after appointment and at least 10 days prior to a hearing – were made to accommodate stakeholders’ concerns with SB 602. The Committee received late opposition from the California Association of Public Administrators, Public Guardians, and Public Conservators; the author is reviewing their concerns and is committed to working with them moving forward.

SUPPORT

None known

OPPOSITION

California Association of Public Administrators, Public Guardians, and Public Conservators

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 602 (Laird, 2021) was substantially similar to this bill, 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.

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 Brown, 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 800 (Corbett, 2007) was substantially similar to this bill and would have provided for a “general plan for the care, custody, and control of the conservatee, including a plan for meeting the conservatee’s financial needs.” The bill died in the Assembly Appropriations Committee.
