

ASSEMBLY BILL

No. 1663

Introduced by Assembly Member Maienschein

January 19, 2022

An act to amend Sections 416.9, 416.17, and 416.19 of the Health and Safety Code, and to amend Sections 1800, 1800.3, 1812, 1821, 1835, 1850, 1860.5, and 1863 of, to add Sections 1835.5, 1836, 1861.5, and 2350.5 to, and to add Part 10 (commencing with 3950) to Division 4 of, the Probate Code, relating to protective proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 1663, as introduced, Maienschein. Protective proceedings.

Existing law, the Guardianship-Conservatorship Law, generally establishes the standards and procedures for the appointment of, and termination of an appointment for, a guardian or conservator of a person, an estate, or both. Under existing law, a court may appoint the Director of Developmental Services as guardian or conservator of the person and estate or person or estate of a developmentally disabled person, and in which case a specified order of preferences for deciding between equally qualified prospective conservators does not apply. Existing law authorizes the director to have these conservatorship duties performed through a regional center, or an agency or individual designated by the regional center, as specified.

This bill would revise various procedures in the conservatorship process. Among other provisions, the bill would provide that, when equally qualified as other potential conservators, the Director of Developmental Services would be appointed subject to the existing order of preference. The bill would prohibit a regional center from acting as a guardian or conservator if the regional center also provides

service coordination activities pursuant to specified existing law. The bill would only permit the appointment of the director or regional center as conservator if the proposed conservatee has not chosen another qualified person, as specified. The bill would require a petition for a general conservatorship of a person with a developmental disability to indicate why a limited conservatorship does not meet the needs of the proposed conservatee. The bill would require the court to provide conservatees with written information regarding their rights and options, including a personalized list of the rights the conservatee retains. The bill would expand the annual duties and reporting requirements of court investigators conducting required visits to assess the progress of the conservatorship. The bill would revise the procedures for termination of a limited conservatorships by requiring the court to terminate an uncontested petition for termination under specified circumstances, and without a hearing.

The bill would require the Judicial Council to establish a conservatorship diversion program in each superior court. Among other goals, the diversion program would seek less restrictive alternatives and protect the rights of individuals in conservatorships. The bill would designate the duties of court staff reviewing conservatorship cases under the diversion program.

The bill would establish a supported decisionmaking process for adults with disabilities. The bill would define “supported decisionmaking” as an individualized arrangement in which an adult with a disability chooses one or more trusted supporters to help them understand, make, communicate, implement, or act on, their own choices. The bill would authorize an adult with a disability to request and have present one or more adults, including supporters, in any meeting or communication. The bill would set forth the duties of supporters. The supportive decisionmaking agreement would be informal or memorialized in writing, and the bill would specify the elements of a written agreement. The bill would provide that a supported decisionmaking agreement may be terminated by the adult with a disability, by all supporters, or by the terms of the agreement. The agreement would also be terminated with respect to any supporter who is found liable for specified offenses with respect to the adult with a disability.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

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

3 416.9. The court may appoint the Director of Developmental
4 Services as guardian or conservator of the person and estate or
5 person or estate of a minor or adult developmentally disabled
6 person. The preferences established in Section 1812 of the Probate
7 Code for appointment of a conservator ~~shall not apply.~~ *applies.*
8 An appointment of the Director of Developmental Services as
9 conservator shall not of itself constitute a judicial finding that the
10 developmentally disabled person is legally incompetent. The
11 petition for the appointment of the Director of Developmental
12 Services as conservator of an adult developmentally disabled
13 person may include a request that the court adjudge the
14 developmentally disabled person to be legally incompetent or ~~such~~
15 ~~an~~ *that* adjudication may be made subsequently upon a petition
16 made, noticed, and heard by the court in the same manner as a
17 petition for the appointment of the director as conservator. If the
18 Director of Developmental Services is serving as the guardian of
19 an adult developmentally disabled person on December 31, 1980,
20 after that date ~~such the~~ appointment shall be deemed to be the
21 appointment of a conservator and the conservatee shall be deemed
22 to have been adjudged to be legally incompetent.

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

25 416.17. It is the intent of this article that the ~~director~~ *director*,
26 when acting as guardian or conservator of the person of a
27 developmentally disabled ~~person through the regional center as~~
28 ~~provided in Section 416.19 of this article,~~ *person*, shall maintain
29 close contact with the developmentally disabled person no matter
30 where ~~such the~~ person is living in this state; shall act as a wise
31 parent would act in caring for ~~his the~~ *the parent's* developmentally
32 disabled child; ~~and~~ shall permit and encourage maximum
33 self-reliance on the part of the developmentally disabled person
34 under ~~his protection.~~ *their protection; and shall work with regional*
35 *centers and the person, to the greatest extent possible, to develop*
36 *and implement less restrictive alternatives to conservatorship.*

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

1 416.19. The services to be rendered by the director as adviser
 2 or as guardian or conservator of the person ~~shall~~ *may* be performed
 3 through the regional centers or by other agencies or individuals
 4 designated by the regional ~~centers~~. *centers, except that a regional*
 5 *center shall not act as guardian or conservator of a person if that*
 6 *regional center is also responsible for providing service*
 7 *coordination activities pursuant to Section 4647 of the Welfare*
 8 *and Institutions Code.*

9 SEC. 4. Section 1800 of the Probate Code is amended to read:
 10 1800. It is the intent of the Legislature in enacting this chapter
 11 to do the following:

12 (a) Protect the rights of persons who are placed under
 13 conservatorship.

14 (b) Provide that an assessment of the needs of the person is
 15 performed in order to determine the appropriateness and extent of
 16 a conservatorship and to set goals for increasing the conservatee’s
 17 functional abilities to whatever extent possible.

18 (c) Provide that the health and psychosocial needs of the
 19 proposed conservatee are met.

20 (d) Provide that community-based services are used to the
 21 greatest extent in order to allow the conservatee to remain as
 22 independent and in the least restrictive setting as possible.

23 (e) Provide that the periodic review of the conservatorship by
 24 the court investigator shall consider ~~the best interests of the~~
 25 ~~conservatee~~. *expressed wishes of the conservatee; whether the*
 26 *conservatee has regained or could regain abilities and capacity*
 27 *with or without supports; and whether the conservatee continues*
 28 *to need a conservatorship.*

29 (f) Ensure that the conservatee’s basic needs for physical health,
 30 food, clothing, and shelter are met.

31 (g) Provide for the proper management and protection of the
 32 conservatee’s real and personal property.

33 (h) *Ensure that the conservatee is able to understand, make,*
 34 *and communicate their own, informed, choices to the greatest*
 35 *possible extent while under conservatorship.*

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

38 1800.3. (a) If the need ~~therefor~~ is established to the satisfaction
 39 of the court and the other requirements of this chapter are satisfied,
 40 the court may appoint:

1 (1) A conservator of the person or estate of an adult, or both.

2 (2) A conservator of the person of a minor who is married or
3 whose marriage has been dissolved.

4 (b) ~~No~~A conservatorship of the person or of the estate shall *not*
5 be granted by the court unless the court makes an express finding
6 that the granting of the conservatorship is the least restrictive
7 alternative needed for the protection of the conservatee. *This*
8 *finding shall consider both of the following:*

9 (1) *The person's abilities and capacity with current and possible*
10 *supports, including, but not limited to, alternatives such as*
11 *supported decisionmaking, powers of attorney, advanced health*
12 *care directives, supports provided through an Individualized*
13 *Education Plan pursuant to Chapter 4 (commencing with Section*
14 *56300) of Part 30 of Division 4 of Title 2 of the Education Code,*
15 *or supports provided through an Individual Program Plan (IPP)*
16 *pursuant to Section 4684 of the Welfare and Institutions Code.*

17 (2) *The alternatives tried by the petitioner or proposed*
18 *conservator, including details as to the length and duration of*
19 *those alternatives, and the reasons why those alternatives are not*
20 *available.*

21 (c) *If the proposed conservatee has a developmental disability,*
22 *and the court grants a general conservatorship of the person or*
23 *of the estate, the findings pursuant to subdivision (b) shall also*
24 *state the reasons a limited conservatorship would not meet the*
25 *person's needs.*

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

27 1812. (a) Subject to Sections 1810, 1813, and 1813.1, the
28 selection of a conservator of the person or estate, or both, is solely
29 in the discretion of the court and, in making the selection, the court
30 is to be guided by what appears to be for the best interests of the
31 proposed conservatee.

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

36 (1) The spouse or domestic partner of the proposed conservatee
37 or the person nominated by the spouse or domestic partner pursuant
38 to Section 1811.

39 (2) An adult child of the proposed conservatee or the person
40 nominated by the child pursuant to Section 1811.

1 (3) A parent of the proposed conservatee or the person
2 nominated by the parent pursuant to Section 1811.

3 (4) A brother or sister of the proposed conservatee or the person
4 nominated by the brother or sister pursuant to Section 1811.

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

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

12 (d) *An appointment of the Director of Developmental Services*
13 *as provided by Article 7.5 (commencing with Section 416) of*
14 *Chapter 2 of Part 1 of Division 1 of the Health and Safety Code,*
15 *or of a regional center as provided in Chapter 5 (commencing*
16 *with Section 4620) of Division 4.5 of the Welfare and Institutions*
17 *Code, or of any employee or agent thereof, may only be made if*
18 *the court determines that another qualified person is not chosen*
19 *and preferred by the proposed conservatee who is willing to act*
20 *as conservator, the appointment presents no substantial risk of a*
21 *conflict of interest, and the appointment is in the best interests of*
22 *the proposed conservatee.*

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

24 1821. (a) The petition shall request that a conservator be
25 appointed for the person or estate, or both, shall specify the name,
26 address, and telephone number of the proposed conservator and
27 the name, address, and telephone number of the proposed
28 conservatee, and state the reasons why a conservatorship is
29 necessary. Unless the petitioner or proposed conservator is a bank
30 or other entity authorized to conduct the business of a trust
31 company, the petitioner or proposed conservator shall also file
32 supplemental information as to why the appointment of a
33 conservator is required. The supplemental information to be
34 submitted shall include a brief statement of facts addressed to each
35 of the following categories:

36 (1) The inability of the proposed conservatee to properly provide
37 for ~~his or her~~ *their own* needs for physical health, food, clothing,
38 and shelter.

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

4 (3) Alternatives to conservatorship considered *and tried* by the
5 petitioner or proposed ~~conservator~~ *conservator*, including details
6 *as to the length and duration of attempted alternatives*, and reasons
7 why those alternatives are not available. *Those alternative include,*
8 *but are not limited to, all of the following:*

9 (A) *Supported decisionmaking set forth in Part 10 (commencing*
10 *with Section 3950).*

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

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

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

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

21 (5) The inability of the proposed conservatee to substantially
22 manage ~~his or her~~ *their* own financial resources, or to resist fraud
23 or undue influence.

24 The facts required to address the categories set forth in
25 paragraphs (1) to (5), inclusive, shall be set forth by the petitioner
26 or proposed conservator if ~~he or she~~ *the proposed conservator* has
27 knowledge of the facts or by the declarations or affidavits of other
28 persons having knowledge of those facts.

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

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

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

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

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

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

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

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

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

36 (1) The petitioner's or proposed conservator's proposed hourly
37 fee schedule or another statement of ~~his or her~~ *their* proposed
38 compensation from the estate of the proposed conservatee for
39 services performed as a conservator. The petitioner's or proposed
40 conservator's provision of a proposed hourly fee schedule or

1 another statement of ~~his or her~~ *their* proposed compensation, as
2 required by this paragraph, shall not preclude a court from later
3 reducing the petitioner's or proposed conservator's fees or other
4 compensation.

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

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

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

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

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

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

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

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

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

1 payable by the Veterans Administration for the proposed
2 conservatee.

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

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

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

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

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

19 ~~Reports submitted pursuant to Section 416.8 of the Health and~~
20 ~~Safety Code meet the requirements of this section, and~~
21 ~~conservatorships filed pursuant to Article 7.5 (commencing with~~
22 ~~Section 416) of Chapter 2 of Part 1 of Division 1 of the Health and~~
23 ~~Safety Code are exempt from providing the supplemental~~
24 ~~information required by this section, so long as the guidelines~~
25 ~~adopted by the State Department of Developmental Services for~~
26 ~~regional centers require the same information that is required~~
27 ~~pursuant to this section.~~

28 (3) *If the petitioner seeks a general conservatorship, the reason*
29 *a limited conservatorship does not meet the needs of a proposed*
30 *conservatee.*

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

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

2 1835. (a) Every superior court shall provide all—private
3 conservators with written information concerning a conservator’s
4 rights, duties, limitations, and responsibilities under this division.

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

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

9 (2) The rights of a conservatee.

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

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

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

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

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

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

21 (9) *The conservator’s obligation to support the conservatee to*
22 *maximize their autonomy, support and respect their preferences,*
23 *use supported decisionmaking as far as possible, and support their*
24 *development and learning to obviate the need for conservatorship.*

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

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

31 (2) The State Bar.

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

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

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

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

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

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

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

16 1835.5. (a) Every superior court shall provide all conservatees
17 with information written in plain language describing the
18 conservatee’s rights and options within the conservatorship.

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

- 21 (1) The name and contact information of the conservator.
- 22 (2) A description of the conservatorship, including the rights
23 the conservatee retains under the conservatorship.
- 24 (3) The role, duties, and contact information, including name,
25 telephone number, address, and email address, of the court
26 investigator for the court diversion program.
- 27 (4) The person to petition to end or change the conservatorship
28 and contact information for the person to contact to begin that
29 process.
- 30 (5) A personalized list of rights that the conservatee retains,
31 even under the conservatorship, including the rights to do all of
32 the following:
 - 33 (A) Directly receive and control their own salary.
 - 34 (B) Make or change their will.
 - 35 (C) Get married, unless expressly withheld by the court.
 - 36 (D) Receive mail.
 - 37 (E) Have visits from family and friends, unless expressly
38 withheld by the court.
 - 39 (F) Have a lawyer.
 - 40 (G) Ask a judge to change conservators.

- 1 (H) Ask a judge to end the conservatorship.
- 2 (I) Vote, unless expressly withheld by the court.
- 3 (J) Control personal spending money if a judge permits an
4 allowance to be paid directly to the conservatee.
- 5 (K) Make their own health care decisions, unless expressly
6 withheld by the court.
- 7 (L) Enter into business transactions to provide for the
8 conservatee's basic needs and those of their children.
- 9 (M) Participate in other activities the court allows when the
10 conservator is appointed, or when the court order later grants that
11 right at the conservatee's request.
- 12 SEC. 10. Section 1836 is added to the Probate Code, to read:
13 1836. (a) The Judicial Council shall establish a conservatorship
14 diversion program in every state Superior Court.
- 15 (b) The purposes of the conservatorship diversion program are:
16 (1) To identify existing conservatorships and petitions for
17 conservatorship where less-restrictive alternatives, including, but
18 not limited to, supported decisionmaking, could be used to avoid
19 the conservatorship.
- 20 (2) To educate parties in conservatorship proceedings and people
21 already in conservatorships, on less-restrictive alternatives to
22 conservatorship that may be appropriate, and to provide assistance
23 and guidance in considering and implementing those alternatives.
- 24 (3) To reduce the number of people who lose their rights under
25 conservatorships.
- 26 (c) Each court's conservatorship diversion program shall include
27 staff who review each conservatorship petition and each report
28 filed within existing conservatorships with the goal of avoiding or
29 dissolving conservatorships to the maximum extent practical.
- 30 (d) Reviewers shall do all of the following:
31 (1) Identify cases in which less-restrictive options may be
32 appropriate.
- 33 (2) In each case identified as eligible for potential diversion,
34 consult separately with the conservator or proposed conservator
35 and the conservatee or proposed conservatee to understand their
36 respective views.
- 37 (3) Meet with the parties in each identified case on at least two
38 occasions to discuss and provide education on alternative, less
39 restrictive options to conservatorship.

1 (e) Following the consultation and meetings described, the
2 petitioning party may choose to withdraw the petition for
3 conservatorship, or any party may petition for termination of an
4 existing conservatorship.

5 (f) If a petitioning party proceeds with the conservatorship
6 petition, or if an existing conservator chooses not to petition for
7 termination of the conservatorship, the staff reviewer shall report
8 to the judge on:

9 (1) The consultations that took place.

10 (2) The reviewer's opinion as to whether less-restrictive
11 alternatives would be appropriate.

12 (3) Whether the reviewer recommends denying or terminating
13 the conservatorship on the grounds that less-restrictive alternatives
14 have not been adequately considered.

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

16 1850. (a) Except as provided in subdivision (e), each
17 conservatorship established pursuant to this part shall be reviewed
18 by the court as follows:

19 (1) Six months after the initial appointment of the conservator,
20 the court investigator shall visit the conservatee, conduct an
21 investigation as provided in subdivision (a) of Section 1851, and
22 report to the court regarding the appropriateness of the
23 conservatorship and whether the conservator is acting in the best
24 interests of the conservatee regarding the conservatee's placement,
25 quality of care, including physical and mental health treatment,
26 and finances. In response to the investigator's report, the court
27 may take appropriate action including, but not limited to, ordering
28 a hearing or ordering the conservator to submit an accounting
29 pursuant to subdivision (a) of Section 2620.

30 (2) One year after the initial appointment of the conservator and
31 annually thereafter, the court investigator shall, as provided in
32 Section 1851, visit the conservatee, ~~conduct an investigation, and~~
33 ~~report the findings of the investigation to the court.~~ *conduct an*
34 *investigation, discuss with the conservatee less-restrictive*
35 *alternatives to conservatorship as set forth in Section 1800.3, and*
36 *report the findings of the investigation to the court, including*
37 *whether the conservator or conservatee wishes to modify or*
38 *terminate the conservatorship and whether less restrictive*
39 *alternatives could be tried. On receipt of the investigator's report,*
40 the court shall consider *promptly* terminating the conservatorship

1 at a hearing pursuant to Section 1860.5 or 1863 and take any other
2 appropriate action.

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

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

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

12 (1) A conservatorship for an absentee as defined in Section
13 1403.

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

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

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

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

25 1860.5. (a) A limited conservatorship continues until the
26 authority of the conservator is terminated by one of the following:

27 (1) The death of the limited conservator.

28 (2) The death of the limited conservatee.

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

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

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

34 (1) The limited conservator.

35 (2) The limited conservatee.

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

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

39 (d) Notice of a hearing pursuant to Section 1850.5 or on a
40 petition filed pursuant to this section shall be given to the same

1 persons and in the same manner as provided for a petition for the
2 appointment of a limited conservator.

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

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

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

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

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

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

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

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

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

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

21 (2) *If the petition for termination is uncontested and states facts*
22 *showing that both the limited conservator and limited conservatee*
23 *wish to terminate the limited conservatorship, and the*
24 *conservatorship is no longer the least restrictive alternative for*
25 *the limited conservatee's protection, the court may terminate the*
26 *limited conservatorship without a hearing.*

27 (h) If the court determines, by clear and convincing evidence,
28 that the limited conservatee meets the criteria for appointment of
29 a limited conservator under Section 1801, the court shall determine
30 whether to modify the powers granted to the limited conservator
31 to ensure that the limited conservatorship remains the least
32 restrictive alternative needed for the limited conservatee's
33 protection. If the court modifies any powers granted to the limited
34 conservator, new letters shall issue.

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

36 1861.5. Upon the receipt of a communication from the
37 conservatee that the conservatee wishes to terminate the
38 conservatorship, a court shall appoint counsel for the conservatee
39 and set a hearing for the termination of the conservatorship.

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

1 1863. (a) The court shall hear and determine the matter
2 according to the law and procedure relating to the trial of civil
3 actions, including trial by jury if demanded by the conservatee.
4 The conservator, the conservatee, the spouse or domestic partner,
5 or any relative or friend of the conservatee or other interested
6 person may appear and support or oppose the termination of the
7 conservatorship.

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

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

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

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

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

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

35 (c) Unless the court determines, on the record and by clear and
36 convincing evidence, that (1) the conservatee still meets the criteria
37 for appointment of a conservator of the person under subdivision
38 (a) of Section 1801, a conservator of the estate under subdivision
39 (b) of Section 1801, or both; and (2) a conservatorship remains
40 the least restrictive alternative needed for the conservatee's

1 protection, as required by subdivision (b) of Section 1800.3, the
2 court shall enter judgment terminating the conservatorship.

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

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

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

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

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

27 SEC. 15. Section 2350.5 is added to the Probate Code, to read:

28 2350.5. With respect to all decisions made on behalf of the
29 conservatee, the conservator shall consult with the conservatee
30 and, to the greatest extent possible, make decisions aligned with
31 the conservatee's stated or previously expressed preferences.

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

34
35 PART 10. SUPPORTED DECISIONMAKING
36

37 3950. (a) The Legislature finds and declares all of the
38 following:

39 (a) Adults with disabilities, including older adults with
40 disabilities, are presumed competent and to have the capacity to

1 make decisions regarding their day-to-day health, safety, welfare,
2 social, and financial affairs, unless otherwise determined through
3 legal proceedings.

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

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

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

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

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

25 (g) Supported decisionmaking offers adults with disabilities a
26 flexible way to maintain autonomy and decisionmaking authority
27 over their own lives by developing and maintaining voluntary
28 supports to assist them in understanding, making, communicating,
29 and implementing their own informed choices.

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

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

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

7 3951. The following definitions apply for purposes of this part:

8 (a) “Adult with a disability” includes an adult with any
9 disability, including, but not limited to, an intellectual or
10 developmental disability, cognitive disability, communication
11 disability, psychiatric disability, age-related disability, physical
12 disability, sensory disability, learning disability, dementia,
13 cognitive impairment, Alzheimer’s disease, major neurocognitive
14 disorder, or chronic illness or condition.

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

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

30 (d) “Supporter” means another adult who agrees to help the
31 adult with a disability in using supported decisionmaking. A
32 supporter agrees to help the adult with a disability as requested,
33 which may include providing assistance to the adult with a
34 disability to understand, make, communicate, implement, or act
35 on, their own life decisions. Unless the adult with a disability
36 explicitly delegates decisionmaking, a supporter is not entitled to
37 substitute their judgment for the decision of the adult with a
38 disability.

39 3952. (a) An adult with a disability may choose to enter into
40 supported decisionmaking with one or more chosen supporters.

1 The adult with a disability may request a supporter to provide
2 assistance in any or all of the following ways:

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

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

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

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

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

20 3953. (a) Notwithstanding any other provision of this part, an
21 adult with a disability may request, and is entitled to have present,
22 one or more other adults, including supporters, in any meeting or
23 communication, including, but not limited to, all of the following:

24 (1) An individualized education plan (IEP) meeting.

25 (2) An individual program plan (IPP) meeting.

26 (3) A service planning meeting.

27 (4) A care plan and hospital discharge planning meeting.

28 (5) A financial planning meeting.

29 (6) A communication or meeting with a bank or other financial
30 institution.

31 (7) An employment planning meeting.

32 (8) A medical appointment.

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

1 (c) The Legislature finds and declares that this section is
2 declaratory of existing law.

3 3954. (a) A supporter is an adult identified by a person with
4 a disability to participate in supported decisionmaking, and who
5 agrees to participate in supported decisionmaking. An adult with
6 a disability may have multiple supporters.

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

8 (1) Support and implement the will and preferences of the adult
9 with a disability.

10 (2) Respect the values, beliefs, and preferences of the adult with
11 a disability.

12 (3) Act honestly, diligently, and in good faith.

13 (4) Act within the scope identified by the adult with a disability.

14 (5) Disclose, minimize, and manage conflicts of interest.

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

16 (d) Unless explicitly authorized, supporters shall not do any of
17 the following:

18 (1) Make decisions for or on behalf of the adult with a disability.

19 (2) Sign documents on behalf of the adult with a disability.

20 (3) Substitute their own judgment for the decision or preference
21 of the adult with a disability.

22 (4) Obtain information that is not reasonably related to matters
23 with which the supporter may assist the adult through supported
24 decisionmaking.

25 (5) Use or disclose information acquired for the purpose of
26 supporting the adult with a disability for another purpose that does
27 not support the adult with a disability.

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

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

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

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

3 (f) A person shall not be a supporter if the adult with a disability
4 has obtained an order of protection for abuse or if the person is
5 the subject of a civil or criminal order prohibiting contact with the
6 adult with a disability.

7 3955. (a) If an adult with a disability chooses to use a written
8 supported decisionmaking agreement, the agreement shall include
9 all of the following elements:

10 (1) The name of the adult with a disability.

11 (2) The name, address, telephone number, and email address,
12 if applicable, of each supporter.

13 (3) A list of the areas in which the adult with a disability requests
14 support from one or more supporters.

15 (4) An acknowledgment by each supporter agreeing to do all
16 of the following:

17 (A) Provide information as requested by the adult with a
18 disability.

19 (B) Support the adult with a disability in good faith and to the
20 best of their abilities.

21 (C) Respect that the final decision shall be made by the adult
22 with a disability and not the supporter.

23 (D) Not coerce or manipulate the adult with a disability into
24 making any decision.

25 (E) Provide the most up-to-date and relevant information to the
26 adult with a disability, based on all the available and known
27 information the supporter has.

28 (F) Disclose, minimize, and manage conflicts of interest.

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

30 (b) A supported decisionmaking agreement shall be signed by
31 the adult with a disability and each supporter, in the presence of
32 two or more attesting and disinterested witnesses who are at least
33 18 years of age, or a notary public. The adult with a disability may
34 use reasonable modifications, such as assistive technology or
35 physical assistance, to sign the agreement. The adult with a
36 disability shall enter the agreement voluntarily and without
37 coercion.

38 (c) A supported decisionmaking agreement shall be written in
39 simple language that is accessible to the adult with a disability. It

1 may contain images or be read out loud or be audio- or
2 video-recorded.

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

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

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

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

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

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

22 3956. (a) A supported decisionmaking agreement is effective
23 until it is terminated by the adult with a disability, by all supporters,
24 or by the terms of the agreement. Any party may choose to
25 terminate their participation in the agreement at any time by
26 providing written or verbal notice of the termination to all parties
27 to the agreement.

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

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

36 3957. Supported decisionmaking shall be encouraged and used,
37 to the maximum extent possible, by adults with disabilities who
38 are subject to conservatorship or other protective arrangements.
39 Conservators shall encourage and respect the preference of an
40 adult with a disability under conservatorship to use supported

1 decisionmaking within the conservatorship, or to rely on supported
2 decisionmaking in seeking to terminate a conservatorship.

3 3958. (a) A person who receives the original or a copy of a
4 supported decisionmaking agreement described in Section 3955
5 shall rely on the agreement and its authority as presented.

6 (b) A person may rely on known supports used by the adult with
7 a disability other than a written supported decisionmaking
8 agreement as described in Section 3955.

9 3959. (a) A state agency with jurisdiction over programs
10 relating to disability and aging, in consultation with a nonprofit
11 organization with experience in supported decisionmaking and
12 other alternatives to conservatorship, shall establish and administer
13 a statewide Supported Decisionmaking Technical Assistance
14 Program (SDM-TAP), which shall provide support, education,
15 technical assistance, and shall administer grants to expand and
16 strengthen the use of supported decisionmaking across the state
17 of California.

18 (b) SDM-TAP shall provide guidance, assistance, and training
19 to educational entities, families, service providers, professionals,
20 people with disabilities, courts, attorneys, mediators, and others
21 in California who wish to use or expand supported decisionmaking
22 in their professional or personal life.

23 (c) SDM-TAP, in consultation with state and local advocacy,
24 disability, and aging agencies, including self-advocacy
25 organizations, and the Judicial Council, shall administer grant
26 funding to state or local government entities such as courts and
27 school districts and nongovernmental entities such as nonprofit
28 organizations that submit project proposals to expand the use of
29 supported decisionmaking and reduce the use of conservatorship.

30 (d) This section shall be implemented upon an appropriation by
31 the Legislature for its purposes.