

2023 LEGISLATIVE UPDATE



PROTECTIVE
PROCEEDINGS
AB 1663



Purposes of AB 1663

Requires consideration
of less restrictive
alternatives to
conservatorship.

Gives greater
consideration to the
conservatee's
indicated preferences

A decorative graphic consisting of several parallel white lines that originate from the right side of the slide and extend towards the center, creating a sense of movement or flow.

Parts of AB 1663

Amends Health & Safety
Code §§ 416.17 and 416.19

Amends Probate Code §§
1456, 1800, 1800.3, 1812,
1821, 1835, 1850, 1860.5,
1863, and 2113

Adds Division 11.5
(commencing with
§ 21000) to the Welfare &
Institutions Code.

Legislature's Stated Intent

PC § 1800 - the Legislature intends investigator's periodic review to consider the best interests "and expressed wishes" of the conservatee, regardless of whether the conservatee has or could regain abilities and capacity or whether the conservatee continues to need a conservatorship. The Legislature also states its intent to "[e]nsure, to the greatest possible extent, that the conservatee is able to understand, make, and communicate their own, informed, choices while under conservatorship."

The court's duties

PC § 1800.3 - the court must consider less restrictive alternatives

PC § 1812 – the court must consider the conservatee's stated preferences including those “expressed by speech, sign language, alternative or augmentative communication, actions, facial expressions, and other spoken and nonspoken methods of communication.”

The Petitioner's Duties

PC § 1821 - the Petition must include less restrictive alternatives considered by the petitioner or the proposed conservator and reasons why those alternatives are not suitable. If alternatives have been attempted, the petition must include details about why they failed. The Judicial Council is to create a supplemental information form for the specified information.

Investigator's Duties

PC § 1826 – investigators must inform the proposed conservatee of the right to have legal counsel appointed by the court if “not otherwise represented by” legal counsel (used to be if “unable to retain legal counsel”).

Investigators must consider subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a) of Section 1821 [the less restrictive alternatives].

Revised Form GC- 330 (order appointing court investigator)

GC-330

FOR PREPARATION BY THE COURT ONLY	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS: _____	
MAILING ADDRESS: _____	
CITY AND ZIP CODE: _____	
BRANCH NAME: _____	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE	
of (name): _____	
<input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	
ORDER APPOINTING COURT INVESTIGATOR	
<input type="checkbox"/> Conservatorship <input type="checkbox"/> Limited Conservatorship	
	CASE NUMBER: _____

To (name): _____

You are hereby appointed court investigator in the matter above.

1. A *Petition for Appointment of a Probate Conservator* (form GC-310) has been filed. YOU ARE DIRECTED TO:

- a. Interview the proposed conservatee personally.
- b. Conduct the other interviews required by Probate Code section 1826(a)(1).*
- c. Provide to the proposed conservatee all the information required by Probate Code section 1826(a)(2).

- ADOPTED FOR OPTIONAL USE AT OF JANUARY 1, 2023

- UPDATED TO CONFORM WITH DUTIES UNDER PROBATE CODE 1826

Investigator's Duties (cont.)

PC § 1850 – requires annual investigations with discussion of less restrictive alternatives followed by a report to the court as to: (i) whether the conservator or conservatee wishes to modify or terminate the conservatorship; and (ii) whether less restrictive alternatives could be attempted. If the report indicates the conservatorship should be terminated or modified, the court must promptly consider that at a hearing.

It's all about less
restrictive
alternatives and the
conservatee's
expressed wishes.

**Probate Code § 1836
requires the court to
establish a conservatorship
alternatives program within
the self-help centers in every
superior court.**

Less Restrictive Alternatives

- Supported decision-making agreements
 - Power of Attorney
- Advanced Health Care Directive
- Designation of a health care surrogate
 - Anything else you can think of

Supported decision-making agreements

Welfare & Institutions Code § 21001

...

(b) "Life decision" means any decision that affects the adult with a disability, including, but not limited to, a decision regarding any medical, psychological, financial, educational, living arrangement, access to home and community-based services, social, sexual, religious, or occupational matter.

(c) "Supported decisionmaking" means an individualized process of supporting and accommodating an adult with a disability to enable them to make life decisions without impeding the self-determination of the adult.

(d) "Supported decisionmaking agreement" means a voluntary, written agreement, written in plain language accessible to the adult with a disability and in conformance with Section 21005. A supported decisionmaking agreement shall be signed in conformance with subdivision (b) of Section 21005 and may be revoked orally or in writing at any time by either party. A supported decisionmaking agreement may include images, be read aloud, or be video or audio recorded, in addition to the written version.

(e) "Supporter" means one or more adults who meet the requirements in Section 21002 and who enter into a supported decisionmaking agreement to help the adult with a disability make decisions.

Supported decision-making agreements (cont.)

Welfare & Institutions Code § 21002 explains the limitations on who can be a supporter and the duties and obligations of a supporter.

Supported decision-making agreements (cont.)

Welfare & Institutions Code § 21003

(a) An adult with a disability may choose to enter into a supported decisionmaking agreement with one or more chosen supporters. Support may include, but is not limited to, helping the adult with a disability obtain and understand information related to a life decision, communicating the decision to others, and assisting the individual to ensure their preferences and decisions are honored.

• • • •

Power of Attorney

Probate Code § 4123:

(a) In a power of attorney under this division, a principal may grant authority to an attorney-in-fact to act on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. The attorney-in-fact may be granted authority with regard to the principal's property, personal care, or any other matter.

(b) With regard to property matters, a power of attorney may grant authority to make decisions concerning all or part of the principal's real and personal property, whether owned by the principal at the time of the execution of the power of attorney or thereafter acquired or whether located in this state or elsewhere, without the need for a description of each item or parcel of property.

(c) With regard to personal care, a power of attorney may grant authority to make decisions relating to the personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment.

Advance Health Care Directive

Probate Code §§ 4701 et seq.

- May include a power of attorney for health care should you become incapable of making your own decisions or want someone else to make the decisions for you even though you are still capable.
- May include a limited power of attorney for certain health care decisions.
- May include donor information in the event of death.
 - May designate a physician to have primary responsibility for your health care.

Designation of a Health Care Surrogate

Probate Code § 4711.

(a) A patient may designate an adult as a surrogate to make health care decisions by personally informing the supervising health care provider or a designee of the health care facility caring for the patient. The designation of a surrogate shall be promptly recorded in the patient's health care record.

(b) Unless the patient specifies a shorter period, a surrogate designation under subdivision (a) is effective only during the course of treatment or illness or during the stay in the health care institution when the surrogate designation is made, or for 60 days, whichever period is shorter.

(c) The expiration of a surrogate designation under subdivision (b) does not affect any role the person designated under subdivision (a) may have in making health care decisions for the patient under any other law or standards of practice.

(d) Notwithstanding Section 4685, if the patient has designated an agent under a power of attorney for health care, the surrogate designated under subdivision (a) has priority over the agent for the period provided in subdivision (b), but the designation of a surrogate does not revoke the designation of an agent unless the patient communicates the intention to revoke in compliance with subdivision (a) of Section 4695.

Probate Code Amendments

PC § 1835 was amended to add the following to the written information provided to the conservators: (i) information on how to assess the “preferences” of the conservatee; (ii) “Procedures to petition to terminate or modify the conservatorship;” and (iii) “The conservator’s obligations pursuant to Section 2113.”

- This information will be provided on an updated Duties of Conservator form (GC-346) which PC § 1835(c) instructs the Judicial Council to prepare.

Probate Code § 1835.5

§ 1835.5 requires certain information be provided by the court to the conservatee within 30 days of the establishment of the conservatorship and annually thereafter. The information must be written in plain language and must include:

- The name and contact information of the conservator.
- A description of the conservatorship, including the rights the conservatee retains under the conservatorship.
- The role, duties, and contact information, including name, telephone number, address, and email address, of the court investigator and the court alternatives program.
- The person to petition to end or change the conservatorship and contact information for the person to contact to begin that process.

Probate Code § 1835.5 (cont.)

§ 1835.5 (cont.) the notice to the conservatee must also include:

- A personalized list of rights that the conservatee retains, even under the conservatorship, including the rights to do all of the following:
 - Directly receive and control their own salary.
 - Make or change their will.
 - Get married.
 - Receive mail.
 - Have visits from family and friends.
 - Have a lawyer.
 - Ask a judge to change conservators.
 - Ask a judge to end the conservatorship.
 - Vote, unless expressly withheld by the court.
 - Control personal spending money if a judge permits an allowance to be paid directly to the conservatee.
 - Make their own health care decisions.
 - Enter into business transactions to provide for the conservatee's basic needs and those of their children.
 - 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.

The personalized list of rights in paragraph (5) shall state which rights, if any, were expressly withheld by the court.

Probate Code Amendments

PC § 1860.5 amendment: If a petition for termination of limited conservatorship is uncontested and includes facts showing both the limited conservator and the limited conservatee want to terminate the limited conservatorship, and the conservatorship is no longer the least restrictive alternative for the limited conservatee's protection, the limited conservatorship can be terminated without an evidentiary hearing.

Probate Code Amendments

PC § 1863 amendment: If a petition for termination of conservatorship is uncontested and includes facts showing both the conservator and the conservatee want to terminate the conservatorship, and the conservatorship is no longer the least restrictive alternative for the conservatee's protection, the conservatorship can be terminated without an evidentiary hearing.

Probate Code § 1861.5 requires the court to appoint counsel for the conservatee and set a hearing whenever a conservatee tells the court they wish to terminate the conservatorship, unless there has been a hearing on termination within the last 12 months (the 12-month exception does not apply if the court finds good cause for the hearing).

Probate Code Amendments

PC § 2113 was amended to impose a duty on the conservator to “support the conservatee to maximize their autonomy, support the conservatee in making decisions, and, on a regular basis, inform the conservatee of decisions made on their behalf. In determining the desires of the conservatee, the conservator shall consider stated or previously expressed preferences, including preferences expressed by speech, sign language, alternative or argumentative communication, actions, facial expressions, and other spoken and non-spoken methods of communication.”

Changes in Guardianship Forms:

- *Comparison of Guardians With Other Nonparent Caregivers* (GC-207-INFO/JV-352-INFO) adopted
- *Information on Probate Guardianship of the Estate* (GC-206-INFO) approved
- *Probate Court Request for Juvenile Court Review of Decision Not to Commence Proceedings* (JV-213) approved
- *Guardianship Pamphlet* (GC-205) retitled and renumbered *Information on Probate Guardianship of the Person* (GC-205-INFO) and revised
- *Becoming a Child's Guardian in Juvenile Court* (form JV-350-INFO) retitled *Information on Juvenile Court Guardianship* and revised
- *Application to Commence Proceedings by Affidavit and Decision by Social Worker* (form JV-210) retitled *Application to Commence Juvenile Court Proceedings and Decision of Social Worker* and revised

New form *Comparison of Guardians With Other Nonparent Caregivers* (GC-207-INFO/JV-352-INFO) fulfills the statutory requirement to develop a form explaining the nature of a guardianship, the rights and duties of a guardian, and the services and supports available to a probate guardian compared with those available to a caregiver in the child welfare system and a guardian appointed by the juvenile court.

Other new 2023 Probate developments: CARE court and Anti-Isolation Restraining Orders

CARE Court will be implemented
statewide, starting with Glenn,
Orange, Riverside, San Diego,
Stanislaus, Tuolumne and San
Francisco counties

COMMUNITY
ASSISTANCE,
RECOVERY, AND
EMPOWERMENT ACT

CARE COURT – SB 1338

PURPOSE

To identify and assist adults with persistent mental disorders who are not clinically stable in ongoing voluntary treatment and

Either:

- are substantially deteriorating and unlikely to survive safely in the community without supervision **or**
- need services to prevent a relapse which would likely result in grave disability or harm to the participant or others

CARE Court must be the least restrictive option to ensure recovery and stability

It must be likely the person will benefit from participation in CARE Court

WHAT IS CARE COURT?

- *Civil Court* process to connect certain (not all) persons suffering from mental health issues with county behavioral health services under the oversight of a judge.
- One- to two-year process.
- Voluntary and non-punitive.

WHO CAN FILE IN CARE COURT?

- A person who resides with Respondent
- Spouses, parents, siblings, children, or grandparents, or *Loco Parentis*
- Director of a hospital
- Director of a public or charitable organization, agency, or home
- Licensed behavioral health professional
- First responder
- Public Guardian/Conservator
- Adult Protective Services
- County Behavioral Health Agency
- Indian Health Services Program
- Judge of a Tribal Court
- Respondent

ANTI-ISOLATION RESTRAINING ORDERS (W&IC § 15657.03(E)(I))

Purpose: To enjoin isolation of an elder or dependent adult under the Elder Abuse and Dependent Adult Civil Protection Act.

Petitioners Burden:

- Party against whom the order is sought repeatedly prevented contact by the interested party.
- The elder or dependent adult expressly desires contact with the interested party.
- The isolating acts are not in response to actual or threatened abuse or the elder or dependent adult's own desire not to see the interested party.

The order may specify the actions to be enjoined, including enjoining the respondent from preventing the interested party from in-person or remote online visits with the elder or dependent adult, including telephone and online contact.

Questions?

Questions?

Questions?

Questions?