

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

SB 602 (Laird)  
Version: April 5, 2021  
Hearing Date: April 13, 2021  
Fiscal: Yes  
Urgency: No  
JT

**SUBJECT**

Review of conservatorships

**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.

This bill resurrects this idea. It is part of a package of bills that have been introduced this session in response to concerns over potential abuses in probate conservatorships. The bill requires a conservator, within 30 days of appointment or 30 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 using a form developed by the Judicial Council. The plan must be provided to specified parties and family members. Failure to timely submit the care plan may result in a civil penalty, administrative discipline, and removal from the conservatorship. The bill has no known support or opposition.

**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. (Prob. Code § 1800.3(a).)<sup>1</sup> Requires that the conservatorship be the least restrictive alternative needed for the protection of the conservatee. (*Id.* at (b).)
- 2) Provides that a conservator of the person may be appointed for a person who is unable to provide properly for their personal needs for physical health, food, clothing, or shelter. (§ 1801(a).) 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. (*Id.* at (b).)
- 3) Requires a conservator to submit an inventory and appraisal of the conservatee's assets within 90 days of appointment. (§ 2610.)
- 4) Establishes a presumption that the personal residence of a conservatee is the least restrictive appropriate residence for the conservatee; provides that this presumption may be overcome by clear and convincing evidence. (§ 2352.5(a).) Provides that, 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. (*Id.* at (b).) Requires the conservator to submit this information in writing to the court within 60 days of their appointment. (*Id.* at (c).)

This bill:

- 1) Requires a conservator, within 30 days of appointment or 30 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 using a form the Judicial Council is required to develop and adopt, which must include a description of:
  - a) the current living arrangement for the conservatee and any plans to modify this arrangement within the next year;
  - b) the conservatee's current level of care and any plans to modify this level of care within the next year;
  - c) the conservatee's health status, including medications and medical devices the conservatee needs, as well as their health care providers;
  - d) the conservator's schedule of visitation, as well as those of the conservatee's family and friends;

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<sup>1</sup> All further section references are to the Probate Code unless otherwise indicated.

- e) the conservatee's normal activities;
  - f) any problems raised by the court investigator, the court, or by any interested person, and how these problems were or are being addressed.
  - g) the conservatee's financial needs, including the conservatee's monthly income and expenses;
  - h) assets that may be sold within the next year and the reasons for the sale; and
  - i) a description of any valuable assets in the conservatee's residence that need to be protected and what steps the conservator has taken or intends to take to protect those items from loss or theft.
- 2) Requires that the care plan be submitted to the court, the attorney for the conservator, the attorney for the conservatee, the conservatee, and the conservatee's spouse or registered domestic partner and relatives within the first degree, as specified. Requires the court to exercise its discretion to redact medical information before the care plan is provided to family members.
- 3) Subjects a conservator who fails to timely submit a care plan to a civil penalty of up to \$5,000 unless the court finds good cause not to impose the penalty. Provides that a failure to timely submit is a basis to remove the conservator. If the conservator is a professional fiduciary, they may additionally be subject to an administrative penalty or a revocation of the conservator's license.

### COMMENTS

1. Revives a proposal to provide courts with key information to foster better oversight

In 2005, the *Los Angeles Times* published an award-winning series of articles highlighting flaws in California's conservatorship system.<sup>2</sup> 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."<sup>3</sup>

In response to the series, the Legislature passed the Omnibus Conservatorship and Guardianship Reform Act of 2006, a package of bills to reform the conservatorship system. SB 1116 (Scott, Ch. 490, Stats. 2006) imposed requirements related to the sale of

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

<sup>3</sup> *Deserving of Care* (Nov. 17, 2005) *Los Angeles Times*, <https://www.latimes.com/archives/la-xpm-2005-nov-17-ed-conservators17-story.html> (as of Mar. 28, 2021).

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.

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.<sup>4</sup> 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 funding, changes in legislation or rules of court, and preparation of training materials and guidelines for the courts. In 2008, the Task Force reported that 22 of its recommendations had been implemented through various means, including the Omnibus Act described above.<sup>5</sup>

Among the Task Force's recommendations were 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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

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<sup>4</sup> Jud. Council of Cal. Admin. Off. Of Cts., Rep., *Final Report of the Probate Conservatorship Task Force* (Oct. 26, 2007) <https://www.courts.ca.gov/documents/102607itemD.pdf> (as of Mar. 28, 2021).

<sup>5</sup> Jud. Council of Cal. Admin. Off. Of Cts., Rep., *Probate Conservatorship Task Force Recommendations to the Judicial Council: Status of Implementation* (Dec. 9, 2008)

<https://www.courts.ca.gov/documents/120908item10.pdf> (as of Mar. 28, 2021).

<sup>6</sup> *Final Report of the Probate Conservatorship Task Force*, *supra*, n. 5 at 13, 16, 26, 28.

<sup>7</sup> *Id.* at 13, 16.

<sup>8</sup> *Id.* at 13.

care plan in one form.<sup>9</sup> 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.<sup>10</sup>

SB 800 would have codified this recommendation. The June 21, 2007 version of the bill 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 plan would have been required to be mailed to the conservatee’s attorney, spouse, and close relatives. The bill received zero no votes in policy committees and on the Senate floor but was held in the Assembly Appropriations Committee. This bill seeks to finish what that bill started.

## 2. Comprehensive care plan similar to SB 800

Existing law requires certain 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 (§ 2610), and courts must take steps to ensure compliance with these provisions (§ 1456.5). Additionally, section 2352.5(a) 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. 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. (*Id.* at (b).) The conservator must submit this information in writing to the court within 60 days of their appointment. (*Id.* at (c).)<sup>11</sup> These provisions were on the books when the Task Force recommended creating a comprehensive care plan, and the information vacuum that the Task Force identified continues to exist.

This bill implements the Task Force’s recommendation to require a more holistic assessment of the conservator’s plan for caring for the person and their estate. The author writes: “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 602, we ensure care plans are properly detailed and reviewed by courts, certifying transparent fairness for those living under conservatorships.”

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 45.

<sup>11</sup> The Judicial Council has adopted Form GC-355 to effectuate these provisions. Judicial Council website, <https://www.courts.ca.gov/documents/gc355.pdf> (as of Mar. 28, 2021). 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> (as of Mar. 28, 2021).)

Going forward, the author may wish to consider ways of ensuring the bill is fully harmonized with existing law by absorbing existing disclosure requirements, such as the inventory and appraisal and plan for a person's residential situation, along with the timeframes applicable to those requirements, under the umbrella of the comprehensive care plan the bill creates. The author may also wish to consider whether the form created by this bill should distinguish duties applicable to conservators of the person and duties applicable to conservators of the estate.

### SUPPORT

None known

### OPPOSITION

None known

### RELATED LEGISLATION

#### Pending Legislation:

SB 724 (Allen, 2021) would revive dormant provisions for enhanced judicial oversight over probate conservators by removing funding contingencies. The bill also seeks to strengthen the role of attorneys for probate conservatees or proposed conservatees by, among other things, making representation by an attorney mandatory in all probate conservatorship cases, enabling conservatees or proposed conservatees to choose their own attorney, and requiring probate conservatorship attorneys to zealously advocate for the expressed wishes of their clients. The bill will be heard in this Committee in the same hearing as this bill.

AB 596 (Nguyen, 2021) would require attorneys appointed to represent conservatees or proposed conservatees to act as an advocate for the client. However, if the attorney determines that the client is unable to communicate, the bill would require the court to replace the attorney with a guardian ad litem. The bill is pending in the Assembly Judiciary Committee.

AB 1194 (Low, 2021) would make various changes to enhance the regulation of professional fiduciaries, including professional conservators. The bill is pending in the Assembly Business and Professions Committee.

Prior Legislation: *See Comment 1.*

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