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ASSEMBLYMEMBER, SEVENTY-SEVENTH DISTRICT

Assembly Bill 1663

The Probate Conservatorship Reform and Supported Decision-Making Act

As Introduced 1/19/2022

Summary

AB 1663 recognizes Supported Decision Making in statute as a less-restrictive alternative to probate conservatorships; requires the court to make conservatorships the last resort; and makes important changes to protect the rights of conservatees and make it easier to end probate conservatorships.

Background

There are two types of conservatorships in California.

- Probate conservatorships can be imposed over the person (to make choices about food, clothing, shelter, and health care), or the estate (finances). Probate conservatorships are usually permanent and allow a conservator to make a wide range of decisions affecting the conservatee's life.
- Lanterman-Petris-Short (LPS) Act conservatorships are temporary conservatorships for people with

psychiatric disabilities. LPS conservatorships allow a person to be placed in a psychiatric facility involuntarily.

AB 1663 addresses the probate conservatorship system. Those most likely to end up in a probate conservatorship are persons with intellectual or developmental disabilities (I/DD), dementia, or other age-related disabilities. Probate conservatorships are usually granted for an indefinite term and cease only when the conservatee is no longer living or has regained capacity. Probate conservatorships are extremely difficult to end.

The Britney Spears conservatorship case exposed deep flaws within California's probate conservatorship system – demonstrating how easily people can become trapped in a conservatorship and how difficult it is to escape. People with disabilities and older adults are often caught in the pipeline to conservatorship, which

offers no meaningful alternatives, and which funnels people unnecessarily into a system that strips them of basic civil rights and their ability to advocate for themselves. The system offers little meaningful oversight and many opportunities for abuse.

Reform is necessary to ensure that people with disabilities retain their rights as the default. Courts should be required to ensure alternatives are tried first, while improving protections for those already conserved. Alternatives include “Supported Decision-Making” (SDM), which provides people with disabilities and older adults a way to understand, make, and communicate their own decisions in consultation with their chosen supporters.

This Bill

AB 1663 reforms the probate conservatorship system in four key areas to help people maintain choice and control over their lives:

DEFLECT–Avoid probate conservatorships by recognizing alternatives

- Establish SDM as a less-restrictive option for people with disabilities and older adults
- Create a SDM Technical Assistance Program to provide grants, training, and technical assistance that promote and strengthen the use of SDM and other supports

DIVERT – Make probate conservatorships a last resort

- Require alternatives be tried and considered by Courts before establishing a conservatorship and assess a person’s abilities and capacity with supports, not in isolation
- Create a conservatorship diversion program in all courts to identify conservatorship petitions where less-restrictive options may be appropriate and to discuss and educate parties on these alternatives

DISSOLVE–Make probate conservatorships easier to end

- Provide conservatees with understandable information that describes their rights and who to contact if they wish to change or end the conservatorship.
- Require Courts to appoint counsel and set a termination hearing if a conservatee wishes to terminate their conservatorship.
- Allow Courts to terminate a conservatorship without a hearing if both the conservator and conservatee agree to the termination.

DECIDE – Ensure conservatees choice in their lives

- Require conservators to consult with and make decisions aligned with the conservatee’s communicated wishes, including the use of alternative

communication methods or previously expressed preferences.

- Apply the “order of preference” to all conservators, including the Director of the Department of Developmental Services to ensure the Court first considers family members or other trusted individuals chosen by the proposed conservatee before appointing unrelated parties.
- Require conservators to support the capacity and abilities of conservatees and to encourage and facilitate the use of Supported Decision-Making within conservatorships to the greatest extent possible.

Co-Sponsors

California Advocates for Nursing Home Reform

California Community Living Network

California State Council on Developmental Disabilities

Coalition for Elder & Disability Rights

Disability Rights California

Disability Rights Education and Defense Fund

Disability Voices United

Free Britney L.A.

Support

ACLU California Action

Exceptional Rights Advocacy

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