

**Introduced by Senator Allen**February 19, 2021

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An act to amend Section 1471 of the Probate Code, relating to guardians and conservators.

## LEGISLATIVE COUNSEL'S DIGEST

SB 724, as introduced, Allen. Conservatees: legal counsel.

The Guardianship-Conservatorship Law requires the court to appoint the public defender or private counsel to represent interests of a conservatee, proposed conservatee, or person alleged to lack legal capacity who is unable to retain legal counsel and requests the appointment of counsel to assist them in particular proceedings that include, among others, proceedings to establish a conservatorship or to remove the conservator, whether or not that person lacks or appears to lack legal capacity. The law also requires the court to appoint the public defender or private counsel in these proceedings to represent the interests of a conservatee or proposed conservatee who does not plan to retain legal counsel and has not requested the court to appoint legal counsel, if the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee based on information contained in the court investigator's report or obtained from any other source, whether or not that person lacks or appears to lack legal capacity.

This bill would instead require the court, in the circumstances of the court determining that the appointment would be helpful to the resolution of the matter or is necessary to protect their interests based on information contained in the court investigator's report or obtained from any other source, to appoint the public defender or private counsel if the conservatee or proposed conservatee has not retained legal counsel.

The bill would generally require the court to allow representation by an attorney who a conservatee, proposed conservatee, or person alleged to lack legal capacity expresses any preference for, even if the attorney is not on the court’s list of court appointed attorneys.

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

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

1 SECTION 1. Section 1471 of the Probate Code is amended to  
2 read:

3 1471. (a) If a conservatee, proposed conservatee, or person  
4 alleged to lack legal capacity is unable to retain legal counsel and  
5 requests the appointment of counsel to assist in the particular  
6 matter, whether or not that person lacks or appears to lack legal  
7 capacity, the court shall, at or before the time of the hearing,  
8 appoint the public defender or private counsel to represent the  
9 interest of that person in the following proceedings under this  
10 division:

11 (1) A proceeding to establish or transfer a conservatorship or  
12 to appoint a proposed conservator.

13 (2) A proceeding to terminate the conservatorship.

14 (3) A proceeding to remove the conservator.

15 (4) A proceeding for a court order affecting the legal capacity  
16 of the conservatee.

17 (5) A proceeding to obtain an order authorizing removal of a  
18 temporary conservatee from the temporary conservatee’s place of  
19 residence.

20 (b) If a conservatee or proposed conservatee ~~does not plan to~~  
21 ~~retain legal counsel and has not requested the court to appoint~~ *has*  
22 *not retained* legal counsel, whether or not that person lacks or  
23 appears to lack legal capacity, the court shall, at or before the time  
24 of the hearing, appoint the public defender or private counsel to  
25 represent the interests of that person in any proceeding listed in  
26 subdivision (a) if, based on information contained in the court  
27 investigator’s report or obtained from any other source, the court  
28 determines that the appointment would be helpful to the resolution  
29 of the matter or is necessary to protect the interests of the  
30 conservatee or proposed conservatee.

1 (c) In any proceeding to establish a limited conservatorship, if  
2 the proposed limited conservatee has not retained legal counsel  
3 and does not plan to retain legal counsel, the court shall  
4 immediately appoint the public defender or private counsel to  
5 represent the proposed limited conservatee. The proposed limited  
6 conservatee shall pay the cost for that legal service if ~~he or she is~~  
7 *they are* able. This subdivision applies irrespective of any medical  
8 or psychological inability to attend the hearing on the part of the  
9 proposed limited conservatee as allowed in Section 1825.

10 (d) *If a conservatee, proposed conservatee, or person alleged*  
11 *to lack legal capacity expresses any preference for a particular*  
12 *attorney to represent them, the court shall allow representation*  
13 *by the preferred attorney, even if the attorney is not on the court's*  
14 *list of a court appointed attorneys.*