

AMENDED IN SENATE JUNE 13, 2005

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 609

**Introduced by Assembly ~~Members Lieber and Ruskin~~ Member
Lieber
(~~Coauthors: Assembly Members Canciamilla and Levine~~)**

February 17, 2005

An act to ~~amend Sections 2951 and 2952 of the Probate Code, relating to guardianships~~ *add Section 4474.3 to the Welfare and Institutions Code, relating to developmental services* .

LEGISLATIVE COUNSEL'S DIGEST

AB 609, as amended, Lieber. ~~Public guardian: adult protective services. Agnews Developmental Center: closure.~~

Existing law establishes the State Department of Developmental Services and sets forth its duties and responsibilities, including, but not limited to, administration and oversight of the state developmental centers and programs relating to persons with developmental disabilities. Existing law requires the department to submit a plan to the Governor and the Legislature whenever it proposes closure of a developmental center.

This bill would require the department to establish, until August 31, 2006, the Agnews Developmental Center Campus Advisory Group, to make recommendations to the department regarding disposition of the Agnews campus. The bill would require the recommendations to include options for retaining the land or its value for the use of people with developmental disabilities. The bill would require the advisory

group to convene by March 1, 2006, and report its recommendations to the Legislature by June 30, 2006.

~~(1) Existing law authorizes the public guardian, upon receipt of a declaration from a peace officer indicating that an elder person is unable to manage his or her financial resources or to resist fraud or undue influence, among other specified factors, to rely on that information and take immediate possession and control of the property of the elder person. Under existing law, a declaration prepared in accordance with those provisions is required to be signed by both a peace officer and a supervisor from the county’s adult protective services agency.~~

~~This bill would provide that a declaration also may be signed by a designated representative of the county’s adult protective services agency. The bill would additionally revise the term “declaration” as it is used in those provisions of law to include documents signed by a designated representative of the county’s adult protective services agency. The bill would also require that declaration to be transmitted to the appropriate financial institution within 24 hours of it being signed.~~

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

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

1 SECTION 1. Section 4474.3 is added to the Welfare and
 2 Institutions Code, to read:
 3 4474.3. (a) The department shall establish the Agnews
 4 Developmental Center Campus Advisory Group, to provide the
 5 Legislature with recommendations regarding the disposition of
 6 the real property of the Agnews Developmental Center campus.
 7 The recommendations shall include options for retaining the
 8 land, or its value, for the use of people with developmental
 9 disabilities, who receive services under the Lanterman
 10 Developmental Disabilities Services Act pursuant to Division 4.5
 11 (commencing with Section 4500).
 12 (b) (1) The advisory group established pursuant to
 13 subdivision (a) shall be cochaired by the executive directors of
 14 the San Andreas Regional Center, the Regional Center of the
 15 East Bay, and the Golden Gate Regional Center, if they consent

1 to serve. At a minimum, each of the following organizations may
2 appoint representatives to serve on the advisory group:

- 3 (A) Protection and Advocacy, Inc.
- 4 (B) Keep Our Families Together.
- 5 (C) The City of San Jose.
- 6 (D) The County of Santa Clara.
- 7 (E) The Santa Clara County Cities Association.
- 8 (F) The Association for the Mentally Retarded at Agnews.
- 9 (G) The Housing Authority of the County of Santa Clara.
- 10 (H) Affected labor organizations.
- 11 (I) The California Association of State Hospital Parent
12 Councils for the Retarded.
- 13 (J) The Department of Finance.
- 14 (K) The Governor's Advisory Board to Agnews Developmental
15 Center.

16 (L) Area Developmental Disabilities Board, Area VII.
17 (2) Members of the advisory group shall serve without
18 compensation or reimbursement.

19 (3) The department shall convene the advisory group by
20 March 1, 2006, and the group shall report its recommendations
21 to the human services and budget committees of the Legislature
22 by June 30, 2006.

23 (4) The advisory group shall be dissolved on August 31, 2006,
24 unless a statute that is enacted before August 31, 2006, deletes or
25 extends that date.

26 SECTION 1. ~~Section 2951 of the Probate Code is amended to~~
27 ~~read:~~

28 ~~2951. The definitions contained in this section shall govern~~
29 ~~the construction of this chapter, unless the context requires~~
30 ~~otherwise.~~

31 (a) ~~“Declaration” means a document that substantially~~
32 ~~complies with the requirements of Section 2954, and is signed by~~
33 ~~both a peace officer and a supervisor or other representative as~~
34 ~~designated by the supervisor from the county’s adult protective~~
35 ~~services agency and provided to the public guardian in~~
36 ~~accordance with subdivision (b) of Section 2952.~~

37 (b) ~~“Elder person” means any person residing in this state, 65~~
38 ~~years of age or older.~~

39 (c) ~~“Financial abuse” means a situation described in Section~~
40 ~~15610.30 of the Welfare and Institutions Code.~~

1 (d) ~~“Financial abuse POST training” means an elder financial~~
2 ~~abuse training course certified by the Commission on Peace~~
3 ~~Officer Standards and Training.~~

4 (e) ~~“Financial institution” means any bank, savings and loan,~~
5 ~~thrift, industrial loan company, credit union, or any branch of any~~
6 ~~of these institutions doing business in the state, as defined by~~
7 ~~provisions of the Financial Code.~~

8 (f) ~~“Peace officer” means a sheriff, deputy sheriff, municipal~~
9 ~~police officer, or a peace officer authorized under subdivision (b)~~
10 ~~of Section 830.1 of the Penal Code, duly sworn under the~~
11 ~~requirements of state law, who satisfies any of the following~~
12 ~~requirements:~~

13 (1) ~~The sheriff, deputy sheriff, municipal police officer, or~~
14 ~~peace officer authorized under subdivision (b) of Section 830.1~~
15 ~~of the Penal Code has completed or participated as a lecturer in a~~
16 ~~financial abuse POST training program within the last 36~~
17 ~~months. The completion of the course may be satisfied by~~
18 ~~telecourse, video training tape, or other instruction. The training~~
19 ~~shall, at a minimum, address relevant elder abuse laws,~~
20 ~~recognition of financial abuse and fraud, assessment of mental~~
21 ~~competence in accordance with the standards set forth in Part 17~~
22 ~~(commencing with Section 810) of the Probate Code, reporting~~
23 ~~requirements and procedures for the investigation of financial~~
24 ~~abuse and related crimes, including neglect, and civil and~~
25 ~~criminal procedures for the protection of victims. The course~~
26 ~~may be presented as part of a training program that includes other~~
27 ~~subjects or courses.~~

28 (2) ~~The sheriff, deputy sheriff, municipal police officer, or~~
29 ~~peace officer authorized under subdivision (b) of Section 830.1~~
30 ~~of the Penal Code, has consulted with a sheriff, deputy sheriff,~~
31 ~~municipal police officer, or peace officer authorized under~~
32 ~~subdivision (b) of Section 830.1 of the Penal Code, who satisfies~~
33 ~~the requirements of paragraph (1) concerning the declaration~~
34 ~~defined in subdivision (a) and obtained the signature of that~~
35 ~~sheriff, deputy sheriff, municipal police officer, or peace officer~~
36 ~~authorized under subdivision (b) of Section 830.1 of the Penal~~
37 ~~Code on a declaration that substantially complies with the form~~
38 ~~described in Section 2954.~~

39 (g) ~~“Property” means all personal property and real property~~
40 ~~of every kind belonging to, or alleged to belong to, the elder.~~

1 SEC. 2.— Section 2952 of the Probate Code is amended to read:
2 2952. (a) A peace officer may issue a declaration, as
3 provided in Section 2954, concerning an elder person if all of the
4 following conditions are satisfied:

5 (1) There is probable cause to believe that the elder person is
6 substantially unable to manage his or her financial resources or to
7 resist fraud or undue influence.

8 (2) There exists a significant danger that the elder person will
9 lose all or a portion of his or her property as a result of fraud or
10 misrepresentations or the mental incapacity of the elder person.

11 (3) There is probable cause to believe that a crime is being
12 committed against the elder person.

13 (4) The crime is connected to the inability of the elder person
14 to manage his or her financial resources or to resist fraud or
15 undue influence, and that inability is the result of deficits in the
16 elder person's mental functions.

17 (5) The peace officer has consulted with an individual
18 qualified to perform a mental status examination.

19 (b) If the requirements of subdivision (a) are satisfied, the
20 peace officer may provide a signed declaration to the public
21 guardian of the county. The declaration provided by the peace
22 officer under this subdivision shall be signed by both the peace
23 officer and a supervisor or other representative as designated by
24 the supervisor from the county's adult protective services agency.
25 The declaration shall be transmitted to the public guardian and
26 the appropriate financial institution within 24 hours of its being
27 signed, and may be transmitted by facsimile.

28 (c) (1) Upon receiving a signed declaration from a peace
29 officer, the public guardian is authorized to rely on the
30 information contained in the declaration to take immediate
31 possession or control of any real or personal property belonging
32 to the elder person referred to in the declaration, including any
33 property that is held jointly between the elder person and a third
34 party that is subject to loss, injury, waste, or misappropriation,
35 and may issue a written recordable certification of that fact
36 pursuant to this section. The written recordable certification shall
37 substantially comply with the following form:

1 “CERTIFICATE OF AUTHORITY

2
3
4
5
6
7
8
9

~~THIS IS AN OFFICIAL CERTIFICATE ENTITLING THE PUBLIC GUARDIAN TO TAKE POSSESSION OF ANY AND ALL PROPERTY BELONGING TO THE FOLLOWING INDIVIDUAL:~~

(Name of Victim) _____

10
11
12
13
14
15
16

~~This Certificate of Authority has been issued by the Public Guardian pursuant to and in compliance with the Financial Abuse of Mentally Impaired Elders statute, Chapter 4 (commencing with Section 2950) of Part 5 of Division 4 of the California Probate Code. Under California law, this Certificate of Authority authorizes the Public Guardian to take possession or control of property belonging to the above-named individual.~~

17

~~SPECIAL NOTE TO FINANCIAL INSTITUTIONS:~~

18

-

19
20
21
22
23

~~State law requires that upon receiving a copy of this Certificate of Authority, financial institutions shall provide the public guardian with information concerning property held by the above-named individual and surrender the property to the Public Guardian if requested.~~

24

-

25
26
27
28

~~This Certificate of Authority shall only be valid when signed and dated by the Public Guardian or a deputy Public Guardian of the County of _____ and affixed with the official seal of the Public Guardian below.~~

29

-

30

Signature of Public Guardian:

31

Date:

32

Official Seal²

33

-

34
35
36
37
38

~~(2) The mere issuance of the declaration provided by this section shall not require the public guardian to take possession or control of property and shall not require the public guardian to make a determination that the requirements for the appointment of a conservator are satisfied.~~

39

~~(3) The authority provided to the public guardian in paragraph~~

40

~~(1) includes the authority to deny use of, access to, or prohibit~~

1 residency in the home of the elder, by anyone who does not have
2 a written rental agreement or other legal right to the use of, or
3 access to, the residence, and, subject to the requirements of
4 subdivision (b) of Section 2900, the authority to terminate the
5 occupancy of anyone living in the home of the elder person, and
6 the authority to remove that occupant residing therein.

7 (4) ~~The public guardian shall serve, or cause to be served, a~~
8 ~~copy of the certification issued pursuant to this section on the~~
9 ~~elder person by mail within 24 hours of the execution of the~~
10 ~~certification, or as soon thereafter as is practical, in the manner~~
11 ~~provided in Chapter 4 (commencing with Section 413.10) of~~
12 ~~Title 5 of Part 2 of the Code of Civil Procedure.~~

13 (5) ~~Receipt of a certification issued under this section~~
14 ~~constitutes sufficient acquittance to financial institutions and~~
15 ~~others in possession of an elder person's property to provide~~
16 ~~information and surrender property of the elder person to the~~
17 ~~public guardian. Any financial institution or other person who~~
18 ~~provides information or surrenders property pursuant to this~~
19 ~~section shall be discharged from any liability for any act or~~
20 ~~omission of the public guardian with respect to the property.~~

21 (6) ~~A public guardian acting in good faith is not liable when~~
22 ~~taking possession or control of property pursuant to this section.~~

23 (7) ~~A certification issued pursuant to this section is valid for~~
24 ~~15 days after the date of issuance. Upon ex parte petition to the~~
25 ~~superior court, the public guardian may seek additional 15-day~~
26 ~~certifications. The court shall grant that petition only if it~~
27 ~~determines that the additional certification is necessary to protect~~
28 ~~the elder from financial abuse and the elder's property from loss,~~
29 ~~injury, waste, or misappropriation.~~

30 (d) (1) ~~If the public guardian takes possession of an elder~~
31 ~~person's property pursuant to this section, the public guardian~~
32 ~~shall attempt to find agents pursuant to the use of durable powers~~
33 ~~of attorney or successor trustees nominated in trust instruments,~~
34 ~~or other persons having legal authority under existing legal~~
35 ~~instruments, to manage the elder person's estate.~~

36 (2) ~~If the public guardian is unable to find any appropriate~~
37 ~~person to manage the elder person's estate pursuant to paragraph~~
38 ~~(1), the public guardian shall attempt to find appropriate family~~
39 ~~members willing to manage the elder person's estate. If no~~
40 ~~documents exist appointing appropriate fiduciaries, the public~~

1 ~~guardian shall follow the priorities set forth in Article 2~~
2 ~~(commencing with Section 1810) of Chapter 1 of Part 3.~~

3 ~~(3) The public guardian shall take the steps described in~~
4 ~~paragraphs (1) and (2) within 15 days of taking possession of an~~
5 ~~elder person's property pursuant to this section.~~

6 ~~(c) Nothing in this section prevents the county's adult~~
7 ~~protective services agency from conducting an investigation~~
8 ~~regarding the elder person named in the declaration and~~
9 ~~providing appropriate services, in coordination with any actions~~
10 ~~taken with the public guardian under this section or an~~
11 ~~investigation conducted by law enforcement regarding the elder~~
12 ~~person.~~