

AMENDED IN ASSEMBLY APRIL 30, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1725

Introduced by Assembly Member Maienschein

February 14, 2014

An act to amend Sections 5350.2 ~~and~~, 5352, 5354, and 5360 of the Welfare and Institutions Code, relating to ~~mental health conservatorships~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 1725, as amended, Maienschein. ~~Mental health conservatorship hearings for the gravely disabled. Conservatorship hearings.~~

Existing law provides a procedure for the appointment of a conservator for a person who is determined to be gravely disabled as a result of a mental disorder or an impairment by chronic alcoholism and requires an officer, including a county public guardian or a county mental health program, to conduct a conservatorship ~~investigation~~. *investigation and render a written report to the court of his or her investigation*. Under existing law, a professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment for a gravely disabled person may recommend a conservatorship for that person, *and the agency is required to disclose any records or information that may facilitate an investigation*. Existing law requires the officer providing conservatorship investigation, when he or she concurs with the recommendation *of the professional person or facility*, to petition the superior court in the patient's county of residence for a conservatorship.

This bill would ~~include a person who is gravely disabled as a result of substance abuse as a person for whom a conservatorship may be~~

requested and granted. This bill would also provide a procedure for a family member or interested person who believes a conservatorship is necessary to petition the probate court to establish a conservatorship, as specified. This bill would also authorize the court, after a hearing attended by the proposed conservatee or the proposed conservatee's counsel, or both, to recommend a conservatorship to the officer providing conservatorship investigation when the court, in a conservatorship established proceeding under the Probate Code, determines, based on evidence presented to the court, including medical evidence, that a person, for whom a conservatorship has been established under the Probate Code, may be gravely disabled as a result of a mental disorder or impairment by chronic alcoholism or substance abuse and is unwilling to accept, or is incapable of accepting, treatment voluntarily. This bill would also require the court to appoint counsel to a proposed conservatee if he or she cannot afford counsel. This bill would require the officer providing conservatorship investigation to petition the superior court in the patient's county of residence to establish conservatorship if he or she concurs with the recommendation of the court, and to file a copy of his or her report with the court within 30 days of the court's recommendation. This bill would require an existing probate conservator, if conservatorship is recommended by the court, to disclose any records or information that may facilitate the investigation. This bill would also make conforming changes.

By expanding the duties of the county officer providing conservatorship investigation, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. Section 5350.2 of the Welfare and Institutions
- 2 Code is amended to read:

1 5350.2. Reasonable attempts shall be made by the county
2 mental health program, ~~or the petitioning party,~~ to notify family
3 members or any other person designated by the person for whom
4 conservatorship is sought, of the time and place of the
5 conservatorship hearing. The person for whom the conservatorship
6 is sought shall be advised by the facility treating the person, *or by*
7 *the probate court if the recommendation was made pursuant to*
8 *subdivision (c) of Section 5352,* that he or she may request that
9 information about the time and place of the conservatorship hearing
10 not be given to family members, in those circumstances where the
11 proposed conservator is not a family member. The request shall
12 be honored by the mental health program. Neither this section nor
13 Section 5350 shall be interpreted to allow the proposed conservatee
14 to request that any proposed conservator not be advised of the time
15 and place of the conservatorship hearing.

16 SEC. 2. Section 5352 of the Welfare and Institutions Code is
17 amended to read:

18 5352. (a) When the professional person in charge of an agency
19 providing comprehensive evaluation or a facility providing
20 intensive treatment determines that a person in his or her care is
21 gravely disabled as a result of mental disorder or impairment by
22 chronic alcoholism ~~or substance abuse~~ and is unwilling to accept,
23 or incapable of accepting, treatment voluntarily, he or she may
24 recommend conservatorship to the officer providing
25 conservatorship investigation of the person's county of residence
26 prior to admitting ~~him or her~~ *the person* as a patient in the facility.

27 (b) The professional person in charge of an agency providing
28 comprehensive evaluation or a facility providing intensive
29 treatment may recommend conservatorship for a person without
30 the person being an inpatient in the facility; if both of the following
31 conditions are met:

32 (1) The professional person or another professional person
33 designated by him or her has examined and evaluated the person
34 and determined that ~~he or she~~ *the person* is gravely disabled.

35 (2) The professional person or another professional person
36 designated by him or her has determined that future examination
37 on an inpatient basis is not necessary for a determination that the
38 person is gravely disabled.

39 (c) ~~If the officer providing conservatorship investigation concurs~~
40 ~~with the recommendation of the professional person, he or she~~

1 shall petition the superior court in the patient's county to establish
 2 conservatorship. ~~If the officer providing conservatorship~~
 3 ~~investigation does not initiate conservatorship proceedings, but a~~
 4 ~~family member or interested person believes a conservatorship is~~
 5 ~~necessary, the family member or interested person may petition~~
 6 ~~the Probate Court under this chapter for the establishment of a~~
 7 ~~conservatorship if the following conditions have been met:~~

8 (1) ~~The professional person in charge of an agency providing~~
 9 ~~comprehensive evaluation or a facility providing intensive~~
 10 ~~treatment has examined and evaluated the person and determined~~
 11 ~~that he or she is gravely disabled as a result of a mental disorder~~
 12 ~~or impairment by chronic alcoholism or substance abuse and is~~
 13 ~~unwilling to accept, or incapable of accepting, voluntary treatment.~~

14 (2) ~~The professional person has recommended a conservatorship~~
 15 ~~to the officer providing conservatorship investigation in the county~~
 16 ~~of residence.~~

17 (3) ~~The officer providing the investigation has made a report,~~
 18 ~~but declines to initiate conservatorship proceedings.~~

19 (d)

20 (c) (1) The court, after a hearing *attended by the proposed*
 21 *conservatee or the proposed conservatee's counsel, or both,* may
 22 recommend a conservatorship under this chapter to the officer
 23 providing conservatorship investigation of the person's county of
 24 residence when the court in a conservatorship-~~established~~
 25 *proceeding* under the Probate Code determines *based on evidence*
 26 *presented to the court, including medical evidence* that a person,
 27 for whom a conservatorship has been established under the Probate
 28 Code, may be gravely disabled as a result of a mental disorder or
 29 impairment by chronic alcoholism ~~or substance abuse~~ and is
 30 unwilling to accept, or *is* incapable of accepting, treatment
 31 voluntarily. *If the proposed conservatee cannot afford counsel,*
 32 *the court shall appoint counsel for him or her.*

33 (2) Within 30 days after the recommendation, the officer
 34 providing conservatorship investigation shall file a copy of his or
 35 her report with the court making the recommendation in the ~~Probate~~
 36 *probate* conservatorship.

37 (d) *If the officer providing conservatorship investigation concurs*
 38 *with the recommendation of the professional person, pursuant to*
 39 *subdivision (a) or (b), or the court, pursuant to subdivision (c), he*

1 *or she shall petition the superior court in the patient's county of*
2 *residence to establish conservatorship.*

3 (e) Where temporary conservatorship is indicated, that fact shall
4 be alternatively pleaded in the petition. The officer providing
5 conservatorship investigation or other county officer or employee
6 designated by the county shall act as the temporary conservator.

7 *SEC. 3. Section 5354 of the Welfare and Institutions Code is*
8 *amended to read:*

9 5354. The officer providing conservatorship investigation shall
10 investigate all available alternatives to conservatorship and shall
11 recommend conservatorship to the court only if no suitable
12 alternatives are available. This officer shall render to the court a
13 written report of investigation prior to the hearing. The report to
14 the court shall be comprehensive and shall contain all relevant
15 aspects of the person's medical, psychological, financial, family,
16 vocational and social condition, and information obtained from
17 the person's family members, close friends, social worker or
18 principal therapist. The report shall also contain all available
19 information concerning the person's real and personal property.
20 The facilities providing intensive treatment or comprehensive
21 evaluation shall disclose any records or information ~~which~~ *that*
22 may facilitate the investigation. *If the recommendation for*
23 *conservatorship was made pursuant to subdivision (c) of Section*
24 *5352, the existing probate conservator shall disclose any records*
25 *or information that may facilitate the investigation.* If the officer
26 providing conservatorship investigation recommends against
27 conservatorship, he or she shall set forth all alternatives available.
28 A copy of the report shall be transmitted to the individual who, *or*
29 *the court that*, originally recommended conservatorship, to the
30 person or agency, if any, recommended to serve as conservator,
31 and to the person recommended for conservatorship. The court
32 may receive the report in evidence and may read and consider the
33 contents thereof in rendering its judgment.

34 *SEC. 4. Section 5360 of the Welfare and Institutions Code is*
35 *amended to read:*

36 5360. (a) The officer providing conservatorship investigation
37 shall recommend, in his *or her* report to the court, for or against
38 imposition of a disability set forth in Section 5357 on the basis of
39 the determination of the professional person who recommended
40 conservatorship pursuant to *subdivision (a) or (b) of Section 5352*

1 *or the determination of the physician who presented medical*
2 *evidence to the court pursuant to subdivision (c) of Section 5352.*

3 ~~The~~

4 (b) *The officer providing conservatorship investigation shall*
5 *recommend in his or her report any of the additional powers of a*
6 *conservator set forth in Section 2591 of the Probate Code if the*
7 *needs of the individual patient or his or her estate require such*
8 *powers. In making such determination, the officer providing*
9 *conservatorship investigation shall consult with the professional*
10 *person who recommended conservatorship pursuant to subdivision*
11 *(a) or (b) of Section 5352 or the determination of the physician*
12 *who presented medical evidence to the court pursuant to*
13 *subdivision (c) of Section 5352.*

14 ~~SEC. 3.~~

15 SEC. 5. *If the Commission on State Mandates determines that*
16 *this act contains costs mandated by the state, reimbursement to*
17 *local agencies and school districts for those costs shall be made*
18 *pursuant to Part 7 (commencing with Section 17500) of Division*
19 *4 of Title 2 of the Government Code.*