

ASSEMBLY BILL

No. 193

**Introduced by Assembly Member Maienschein
(Coauthors: Assembly Members Chávez and Mathis)**

January 28, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 193, as introduced, Maienschein. Mental health: 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 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 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 if the court in a conservatorship proceeding determines,

based on the evidence presented to the court, including medical evidence, that a person for whom a conservatorship has been established may be gravely disabled as a result of a mental disorder or impairment by chronic alcoholism and is unwilling to accept, or is incapable of accepting, treatment voluntarily. The bill would also require the court to appoint counsel to a proposed conservatee if he or she cannot afford counsel. The 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. The 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. The 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:
3 5350.2. Reasonable attempts shall be made by the county
4 mental health program to notify family members, or any other
5 person designated by the person for whom conservatorship is
6 sought, of the time and place of the conservatorship hearing. The
7 person for whom the conservatorship is sought shall be advised
8 by the facility treating the person, *or by the probate court if the*
9 *recommendation was made pursuant to subdivision (c) of Section*
10 *5352*, that he or she may request that information about the time

1 and place of the conservatorship hearing not be given to family
2 members, ~~in those circumstances where~~ *if* the proposed conservator
3 is not a family member. The request shall be honored by the mental
4 health program. Neither this section nor Section 5350 shall be
5 interpreted to allow the proposed conservatee to request that any
6 proposed conservator not be advised of the time and place of the
7 conservatorship hearing.

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

10 5352. ~~When~~ *(a) If* the professional person in charge of an
11 agency providing comprehensive evaluation or a facility providing
12 intensive treatment determines that a person in his *or her* care is
13 gravely disabled as a result of mental disorder or impairment by
14 chronic alcoholism and is unwilling to accept, or incapable of
15 accepting, treatment voluntarily, he *or she* may recommend
16 conservatorship to the officer providing conservatorship
17 investigation of the *person's* county of residence ~~of the person~~
18 ~~prior to his admission~~ *before admitting the person* as a patient in
19 ~~such~~ *the* facility.

20 The

21 *(b) The* professional person in charge of an agency providing
22 comprehensive evaluation or a facility providing intensive
23 treatment may recommend conservatorship for a person without
24 the person being an inpatient in ~~such facility, the facility~~ if both
25 of the following conditions are met: ~~(a) the professional person or~~
26 ~~another professional person designated by him has examined and~~
27 ~~evaluated the person and determined that he is gravely disabled;~~
28 ~~(b) the professional person or another professional person~~
29 ~~designated by him has determined that future examination on an~~
30 ~~inpatient basis is not necessary for a determination that the person~~
31 ~~is gravely disabled.~~

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 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) (1) The court, after a hearing attended by both the proposed*
40 *conservatee or the proposed conservatee's counsel, or both, may*

1 *recommend a conservatorship under this chapter to the officer*
2 *providing conservatorship investigation of the person's county of*
3 *residence if the court in a proceeding under the Probate Code*
4 *determines based on evidence presented to the court, including*
5 *medical evidence, that a person for whom a conservatorship has*
6 *been established under the Probate Code may be gravely disabled*
7 *as a result of a mental disorder or impairment by chronic*
8 *alcoholism and is unwilling to accept or is incapable of accepting*
9 *treatment voluntarily. If the proposed conservatee cannot afford*
10 *counsel, the court shall appoint counsel for him or her.*

11 (2) *Within 30 days after the recommendation pursuant to*
12 *paragraph (1), the officer providing conservatorship investigation*
13 *shall file a copy of his or her report with the court making the*
14 *recommendation in the probate conservatorship.*

15 If

16 (d) *If the officer providing conservatorship investigation concurs*
17 *with the recommendation of the professional person, pursuant to*
18 *subdivision (a) or (b), or the court, pursuant to subdivision (c), he*
19 *or she shall petition the superior court in the patient's county of*
20 *residence of the patient to establish conservatorship.*

21 Where

22 (e) *If temporary conservatorship is indicated, the that fact shall*
23 *be alternatively pleaded in the petition. The officer providing*
24 *conservatorship investigation or other county officer or employee*
25 *designated by the county shall act as the temporary conservator.*

26 SEC. 3. Section 5354 of the Welfare and Institutions Code is
27 amended to read:

28 5354. (a) The officer providing conservatorship investigation
29 shall investigate all available alternatives to conservatorship and
30 shall recommend conservatorship to the court only if no suitable
31 alternatives are available. This officer shall render to the court a
32 written report of investigation prior to the hearing. The report to
33 the court shall be comprehensive and shall contain all relevant
34 aspects of the person's medical, psychological, financial, family,
35 vocational, and social condition, and information obtained from
36 the person's family members, close friends, social worker, or
37 principal therapist. The report shall also contain all available
38 information concerning the person's real and personal property.
39 The facilities providing intensive treatment or comprehensive
40 evaluation shall disclose any records or information ~~which~~ that

1 may facilitate the investigation. If the *recommendation for*
2 *conservatorship was made pursuant to subdivision (c) of Section*
3 *5352, the existing probate conservator shall disclose any records*
4 *or information that may facilitate the investigation. If the officer*
5 *providing conservatorship investigation recommends against*
6 *conservatorship, he or she shall set forth all alternatives available.*
7 *A copy of the report shall be transmitted to the individual who, or*
8 *the court that, originally recommended conservatorship, to the*
9 *person or agency, if any, recommended to serve as conservator,*
10 *and to the person recommended for conservatorship. The court*
11 *may receive the report in evidence and may read and consider the*
12 *contents thereof in rendering its judgment.*

13 (b) Notwithstanding Section 5328, when a court with jurisdiction
14 over a person in a criminal case orders an evaluation of the person's
15 mental condition pursuant to Section 5200, and that evaluation
16 leads to a conservatorship investigation, the officer providing the
17 conservatorship investigation shall serve a copy of the report
18 required under subdivision (a) upon the defendant or the
19 defendant's counsel. Upon the prior written request of the
20 defendant or the defendant's counsel, the officer providing the
21 conservatorship investigation shall also submit a copy of the report
22 to the court hearing the criminal case, the district attorney, and the
23 county probation department. The conservatorship investigation
24 report and the information contained in that report, shall be kept
25 confidential and shall not be further disclosed to anyone without
26 the prior written consent of the defendant. After disposition of the
27 criminal case, the court shall place all copies of the report in a
28 sealed file, except as follows:

29 (1) The defendant and the defendant's counsel may retain their
30 copy.

31 (2) If the defendant is placed on probation status, the county
32 probation department may retain a copy of the report for the
33 purpose of supervision of the defendant until the probation is
34 terminated, at which time the probation department shall return
35 its copy of the report to the court for placement into the sealed file.

36 SEC. 4. Section 5360 of the Welfare and Institutions Code is
37 amended to read:

38 5360. ~~The~~—(a) *The* officer providing conservatorship
39 investigation shall recommend, in his *or her* report to the court,
40 for or against imposition of a disability set forth in Section 5357

1 on the basis of the determination of the professional person who
2 recommended conservatorship pursuant to *subdivision (a) or (b)*
3 *of Section 5352, or the determination of the physician who*
4 *presented medical evidence to the court pursuant to subdivision*
5 *(c) of Section 5352.*

6 ~~The~~

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

17 SEC. 5. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.