

AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 193**

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

January 28, 2015

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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 amended, 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~~ *court, in consultation with a physician providing comprehensive evaluation or intensive treatment*, 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

1 by the facility treating the person, or by the probate court if the  
2 recommendation was made pursuant to subdivision (c) of Section  
3 5352, that he or she may request that information about the time  
4 and place of the conservatorship hearing not be given to family  
5 members if the proposed conservator is not a family member. The  
6 request shall be honored by the mental health program. Neither  
7 this section nor Section 5350 shall be interpreted to allow the  
8 proposed conservatee to request that any proposed conservator not  
9 be advised of the time and place of the conservatorship hearing.

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

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

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 the facility if both of the following  
25 conditions are met:

26 (1) The professional person or another professional person  
27 designated by him or her has examined and evaluated the person  
28 and determined that the person is gravely disabled.

29 (2) The professional person or another professional person  
30 designated by him or her has determined that future examination  
31 on an inpatient basis is not necessary for a determination that the  
32 person is gravely disabled.

33 (c) (1) The court, after a hearing attended by ~~both~~ the proposed  
34 conservatee or the proposed conservatee's counsel, or both, may  
35 recommend a conservatorship under this chapter to the officer  
36 providing conservatorship investigation of the person's county of  
37 residence if the ~~court~~ *court, in consultation with a physician*  
38 *providing comprehensive evaluation or intensive treatment*, in a  
39 proceeding under the Probate Code determines based on evidence  
40 presented to the court, including medical evidence, that a person

1 for whom a conservatorship has been established under the Probate  
2 Code may be gravely disabled as a result of a mental disorder or  
3 impairment by chronic alcoholism and is unwilling to accept or is  
4 incapable of accepting treatment voluntarily. If the proposed  
5 conservatee cannot afford counsel, the court shall appoint counsel  
6 for him or her.

7 (2) Within 30 days after the recommendation pursuant to  
8 paragraph (1), the officer providing conservatorship investigation  
9 shall file a copy of his or her report with the court making the  
10 recommendation in the probate conservatorship.

11 (d) If the officer providing conservatorship investigation concurs  
12 with the recommendation of the professional person, pursuant to  
13 subdivision (a) or (b), or the court, pursuant to subdivision (c), he  
14 or she shall petition the superior court in the patient's county of  
15 residence to establish conservatorship.

16 (e) If temporary conservatorship is indicated, that fact shall be  
17 alternatively pleaded in the petition. The officer providing  
18 conservatorship investigation or other county officer or employee  
19 designated by the county shall act as the temporary conservator.

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

22 5354. (a) The officer providing conservatorship investigation  
23 shall investigate all available alternatives to conservatorship and  
24 shall recommend conservatorship to the court only if no suitable  
25 alternatives are available. This officer shall render to the court a  
26 written report of investigation prior to the hearing. The report to  
27 the court shall be comprehensive and shall contain all relevant  
28 aspects of the person's medical, psychological, financial, family,  
29 vocational, and social condition, and information obtained from  
30 the person's family members, close friends, social worker, or  
31 principal therapist. The report shall also contain all available  
32 information concerning the person's real and personal property.  
33 The facilities providing intensive treatment or comprehensive  
34 evaluation shall disclose any records or information that may  
35 facilitate the investigation. If the recommendation for  
36 conservatorship was made pursuant to subdivision (c) of Section  
37 5352, the existing probate conservator shall disclose any records  
38 or information that may facilitate the investigation. If the officer  
39 providing conservatorship investigation recommends against  
40 conservatorship, he or she shall set forth all alternatives available.

1 A copy of the report shall be transmitted to the individual who, or  
2 the court that, originally recommended conservatorship, to the  
3 person or agency, if any, recommended to serve as conservator,  
4 and to the person recommended for conservatorship. The court  
5 may receive the report in evidence and may read and consider the  
6 contents thereof in rendering its judgment.

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

23 (1) The defendant and the defendant's counsel may retain their  
24 copy.

25 (2) If the defendant is placed on probation status, the county  
26 probation department may retain a copy of the report for the  
27 purpose of supervision of the defendant until the probation is  
28 terminated, at which time the probation department shall return  
29 its copy of the report to the court for placement into the sealed file.

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

32 5360. (a) The officer providing conservatorship investigation  
33 shall recommend, in his or her report to the court, for or against  
34 imposition of a disability set forth in Section 5357 on the basis of  
35 the determination of the professional person who recommended  
36 conservatorship pursuant to subdivision (a) or (b) of Section 5352,  
37 or the determination of the physician who presented medical  
38 evidence to the court pursuant to subdivision (c) of Section 5352.

39 (b) The officer providing conservatorship investigation shall  
40 recommend in his or her report any of the additional powers of a

1 conservator set forth in Section 2591 of the Probate Code if the  
2 needs of the individual patient or his estate require such powers.  
3 In making this determination, the officer providing conservatorship  
4 investigation shall consult with the professional person who  
5 recommended conservatorship pursuant to subdivision (a) or (b)  
6 of Section 5352, or the determination of the physician who  
7 presented medical evidence to the court pursuant to subdivision  
8 (c) of Section 5352.

9 SEC. 5. If the Commission on State Mandates determines that  
10 this act contains costs mandated by the state, reimbursement to  
11 local agencies and school districts for those costs shall be made  
12 pursuant to Part 7 (commencing with Section 17500) of Division  
13 4 of Title 2 of the Government Code.