

AMENDED IN ASSEMBLY MAY 28, 2015

AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 193

Introduced by Assembly Member Maienschein
(Coauthors: Assembly Members Chávez, Cooley, 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 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, 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~~ court. 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

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

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

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

23 (b) The professional person in charge of an agency providing
24 comprehensive evaluation or a facility providing intensive
25 treatment may recommend conservatorship for a person without
26 the person being an inpatient in the facility if both of the following
27 conditions are met:

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

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

35 (c) (1) The court, after a hearing attended by the proposed
36 conservatee or the proposed conservatee's counsel, or both, may
37 recommend a conservatorship under this chapter to the officer
38 providing conservatorship investigation of the person's county of
39 residence if the court, in consultation with a physician providing
40 comprehensive evaluation or intensive treatment, in a proceeding

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

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

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

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

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

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

1 providing conservatorship investigation recommends against
 2 conservatorship, he or she shall set forth all alternatives available.
 3 A copy of the report shall be transmitted to the individual who, or
 4 the court that, originally recommended conservatorship, to the
 5 person or agency, if any, recommended to serve as conservator,
 6 and to the person recommended for conservatorship. The court
 7 may receive the report in evidence and may read and consider the
 8 contents thereof in rendering its judgment.

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

25 (1) The defendant and the defendant's counsel may retain their
 26 copy.

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

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

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

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

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