

AMENDED IN SENATE JUNE 22, 2015

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.

Existing law also provides for the establishment of a conservatorship for a person who is unable to properly provide for his or her personal needs or is substantially unable to manage his or her finances.

This bill would authorize the court, *if a conservatorship has already been established under the Probate Code and 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 licensed physician or psychologist, as specified, providing comprehensive evaluation or intensive treatment, in a ~~conservatorship~~ proceeding under the Probate Code determines, based on the evidence presented to the court, including medical evidence, that ~~a person for whom a conservatorship has been established~~ the conservatee 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. The bill would require ~~an existing probate~~ a 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:

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

5350.2. Reasonable attempts shall be made by the county mental health program to notify family members, or any other person designated *to receive notice* by the person for whom conservatorship is sought, of the time and place of the conservatorship hearing. The person for whom the conservatorship is sought shall be advised by the facility treating the person, or by the ~~probate~~ court *in a proceeding under the Probate Code*, if the recommendation was made pursuant to subdivision (c) of Section 5352, that he or she may request that information about the time and place of the conservatorship hearing not be given to family members if the proposed conservator is not a family member. The request shall be honored by the mental health program. Neither this section nor Section 5350 shall be interpreted to allow the proposed conservatee to request that any proposed conservator not be advised of the time and place of the conservatorship hearing.

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

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

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

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

(2) The professional person or another professional person designated by him or her has determined that future examination

1 on an inpatient basis is not necessary for a determination that the
2 person is gravely disabled.

3 (c) (1) ~~The court, If a conservatorship has already been~~
4 ~~established under the Probate Code, the court, in a proceeding~~
5 ~~under the Probate Code, after a hearing attended by the proposed~~
6 ~~conservatee or the proposed conservatee's counsel, or both, may~~
7 ~~recommend a conservatorship of the person under this chapter to~~
8 ~~the officer providing conservatorship investigation of the person's~~
9 ~~county of residence if the court, in a proceeding under the Probate~~
10 ~~Code, in consultation with a licensed physician or licensed~~
11 ~~psychologist satisfying the conditions of subdivision (c) of Section~~
12 ~~2032.020 of the Code of Civil Procedure providing comprehensive~~
13 ~~evaluation or intensive treatment, in a proceeding under the Probate~~
14 ~~Code determines based on evidence presented to the court,~~
15 ~~including medical evidence, that a person for whom a~~
16 ~~conservatorship has been established under the Probate Code the~~
17 ~~conservatee may be gravely disabled as a result of a mental disorder~~
18 ~~or impairment by chronic alcoholism and is unwilling to accept~~
19 ~~or is incapable of accepting treatment voluntarily. If the proposed~~
20 ~~conservatee cannot afford counsel, the court court, in a proceeding~~
21 ~~under the Probate Code, shall appoint counsel for him or her.~~

22 (2) The officer providing conservatorship investigation shall
23 file a copy of his or her report with the court making the
24 recommendation in ~~the probate conservatorship.~~ *a proceeding*
25 *under the Probate Code.*

26 (d) If the officer providing conservatorship investigation concurs
27 with the recommendation of the professional person, pursuant to
28 subdivision (a) or (b), or the court, pursuant to subdivision (c), he
29 or she shall petition the superior court in the patient's county of
30 residence to establish conservatorship.

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

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

37 5354. (a) The officer providing conservatorship investigation
38 shall investigate all available alternatives to conservatorship and
39 shall recommend conservatorship to the court only if no suitable
40 alternatives are available. This officer shall render to the court a

1 written report of investigation ~~prior to~~ *before* the hearing. The
2 report to the court shall be comprehensive and shall contain all
3 relevant aspects of the person's medical, psychological, financial,
4 family, vocational, and social condition, and information obtained
5 from the person's family members, close friends, social worker,
6 or principal therapist. The report shall also contain all available
7 information concerning the person's real and personal property.
8 The facilities providing intensive treatment or comprehensive
9 evaluation shall disclose any records or information that may
10 facilitate the investigation. If the recommendation for
11 conservatorship was made pursuant to subdivision (c) of Section
12 5352, ~~the existing probate conservator~~ *in a proceeding under the*
13 *Probate Code* shall disclose any records or information that may
14 facilitate the investigation. If the officer providing conservatorship
15 investigation recommends against conservatorship, he or she shall
16 set forth all alternatives available. A copy of the report shall be
17 transmitted to the individual who, or ~~the court~~ *court, in a*
18 *proceeding under the Probate Code*, that, originally recommended
19 conservatorship, to the person or agency, if any, recommended to
20 serve as conservator, and to the person recommended for
21 conservatorship. The court may receive the report in evidence and
22 may read and consider the contents thereof in rendering its
23 judgment.

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

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

3 (2) If the defendant is placed on probation status, the county
4 probation department may retain a copy of the report for the
5 purpose of supervision of the defendant until the probation is
6 terminated, at which time the probation department shall return
7 its copy of the report to the court for placement into the sealed file.

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

10 5360. (a) The officer providing conservatorship investigation
11 shall recommend, in his or her report to the court, for or against
12 imposition of a disability set forth in Section 5357 on the basis of
13 the determination of the professional person who recommended
14 conservatorship pursuant to subdivision (a) or (b) of Section 5352,
15 or the determination of the physician *or psychologist* who presented
16 medical evidence to the court pursuant to subdivision (c) of Section
17 5352.

18 (b) The officer providing conservatorship investigation shall
19 recommend in his or her report any of the additional powers of a
20 conservator set forth in Section 2591 of the Probate Code if the
21 needs of the individual patient or his estate require such powers.
22 In making this determination, the officer providing conservatorship
23 investigation shall consult with the professional person who
24 recommended conservatorship pursuant to subdivision (a) or (b)
25 of Section 5352, or the ~~determination of the~~ physician *or*
26 *psychologist* who presented medical evidence to the court pursuant
27 to subdivision (c) of Section 5352.

28 SEC. 5. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.