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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 conservatee or the conservatee's counsel, or both, *conservatee's counsel, to order an investigation from, and to recommend a conservatorship to* 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 proceeding under the Probate Code determines, based on the evidence presented to the court, including medical evidence, determines, in a specified proceeding,~~ that 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 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 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:

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 to receive notice by the person for whom
6 conservatorship is sought, of the time and place of the
7 conservatorship hearing. The person for whom the conservatorship
8 is sought shall be advised by the facility treating the person, or by
9 the court in a proceeding under the Probate Code, if the
10 recommendation was made pursuant to subdivision (c) of Section
11 5352, that he or she may request that information about the time
12 and place of the conservatorship hearing not be given to family
13 members if the proposed conservator is not a family member. The
14 request shall be honored by the mental health program. Neither
15 this section nor Section 5350 shall be interpreted to allow the
16 proposed conservatee to request that any proposed conservator not
17 be advised of the time and place of the conservatorship hearing.

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

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

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

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

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

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

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

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

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

35 5354. (a) The officer providing conservatorship investigation
36 shall investigate all available alternatives to conservatorship and
37 shall recommend conservatorship to the court only if no suitable
38 alternatives are available. This officer shall render to the court a
39 written report of investigation before the hearing. The report to
40 the court shall be comprehensive and shall contain all relevant

aspects of the person's medical, psychological, financial, family, vocational, and social condition, and information obtained from the person's family members, close friends, social worker, or principal therapist. The report shall also contain all available information concerning the person's real and personal property. The facilities providing intensive treatment or comprehensive evaluation shall disclose any records or information that may facilitate the investigation. If the recommendation for conservatorship was made pursuant to subdivision (c) of Section 5352, the conservator in a proceeding under the Probate Code shall disclose any records or information that may facilitate the investigation. If the officer providing conservatorship investigation recommends against conservatorship, he or she shall set forth all alternatives available. A copy of the report shall be transmitted to the individual who, or the court, in a proceeding under the Probate Code, that, originally recommended conservatorship, to the person or agency, if any, recommended to serve as conservator, and to the person recommended for conservatorship. The court may receive the report in evidence and may read and consider the contents thereof in rendering its judgment.

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

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

(2) If the defendant is placed on probation status, the county probation department may retain a copy of the report for the

1 purpose of supervision of the defendant until the probation is
2 terminated, at which time the probation department shall return
3 its copy of the report to the court for placement into the sealed file.

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

6 5360. (a) The officer providing conservatorship investigation
7 shall recommend, in his or her report to the court, for or against
8 imposition of a disability set forth in Section 5357 on the basis of
9 the determination of the professional person who recommended
10 conservatorship pursuant to subdivision (a) or (b) of Section 5352,
11 or the determination of the physician or psychologist who presented
12 medical evidence to the court pursuant to subdivision (c) of Section
13 5352.

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

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