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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~~ *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, unless he or she waives presence, and the conservatee's counsel*, to order an investigation ~~from, and to recommend a conservatorship to,~~ from the officer providing conservatorship investigation if the court, in consultation with a licensed physician or psychologist, as specified, providing comprehensive evaluation or intensive treatment, 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~~ *conservatorship investigation order* 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,~~ *conservator* 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 court in a proceeding under the Probate ~~Code~~, *Code* if the ~~recommendation~~ *conservatorship investigation order* 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 on an inpatient basis is not necessary for a determination that the person is gravely disabled.

(c) (1) If a conservatorship has already been established under the Probate Code, the court, in a proceeding under the Probate Code, after ~~a~~ *an evidentiary* hearing attended by the *conservatee*, *unless the conservatee waives presence, and the conservatee's* counsel, may order an investigation ~~from, and recommend a conservatorship of the person under this chapter to,~~ *from* the officer providing conservatorship investigation of the person's county of residence if the court, in a proceeding under the Probate Code, in consultation with a licensed physician or licensed psychologist satisfying the conditions of subdivision (c) of Section 2032.020 of the Code of Civil Procedure providing comprehensive evaluation or intensive treatment, determines based on evidence presented to the court, including medical evidence, 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. If the conservatee cannot afford counsel, the court, in a proceeding under the Probate Code, shall appoint counsel for him or her.

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

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

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

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

5354. (a) The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship and

1 shall recommend conservatorship to the court only if no suitable
2 alternatives are available. This officer shall render to the court a
3 written report of investigation before the hearing. The report to
4 the court shall be comprehensive and shall contain all relevant
5 aspects of the person's medical, psychological, financial, family,
6 vocational, and social condition, and information obtained from
7 the person's family members, close friends, social worker, or
8 principal therapist. The report shall also contain all available
9 information concerning the person's real and personal property.
10 The facilities providing intensive treatment or comprehensive
11 evaluation shall disclose any records or information that may
12 facilitate the investigation. If the ~~recommendation for~~
13 conservatorship *investigation order* was made pursuant to
14 subdivision (c) of Section 5352, the conservator in a proceeding
15 under the Probate Code shall disclose any records or information
16 that may facilitate the investigation. If the officer providing
17 conservatorship investigation recommends against conservatorship,
18 he or she shall set forth all alternatives available. A copy of the
19 report shall be transmitted to the individual ~~who, or the court, in~~
20 ~~a proceeding under the Probate Code, that, who~~ originally
21 recommended ~~conservatorship, conservatorship, or, in a~~
22 ~~proceeding under the Probate Code, to the court that originally~~
23 ~~made a conservatorship investigation order,~~ to the person or
24 agency, if any, recommended to serve as conservator, and to the
25 person recommended for conservatorship. The court may receive
26 the report in evidence and may read and consider the contents
27 thereof in rendering its judgment.

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

1 the prior written consent of the defendant. After disposition of the
2 criminal case, the court shall place all copies of the report in a
3 sealed file, except as follows:

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

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

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

13 5360. (a) The officer providing conservatorship investigation
14 shall recommend, in his or her report to the court, for or against
15 imposition of a disability set forth in Section 5357 on the basis of
16 the determination of the professional person who recommended
17 conservatorship pursuant to subdivision (a) or (b) of Section 5352,
18 or the determination of the physician or psychologist who presented
19 medical evidence to the court pursuant to subdivision (c) of Section
20 5352.

21 (b) The officer providing conservatorship investigation shall
22 recommend in his or her report any of the additional powers of a
23 conservator set forth in Section 2591 of the Probate Code if the
24 needs of the individual patient or his estate require such powers.
25 In making this determination, the officer providing conservatorship
26 investigation shall consult with the professional person who
27 recommended conservatorship pursuant to subdivision (a) or (b)
28 of Section 5352, or the physician or psychologist who presented
29 medical evidence to the court pursuant to subdivision (c) of Section
30 5352.

31 SEC. 5. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.