

**ASSEMBLY BILL**

**No. 1836**

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**Introduced by Assembly Member Maienschein**

February 9, 2016

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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 1836, as introduced, 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, unless he or she waives presence, and the conservatee’s counsel, to recommend an investigation 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 of the professional person providing comprehensive evaluation or intensive treatment or the recommendation of the court, and to file a copy of his or her report with the court. The bill would require a 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:*

- 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~~ *members*, or any
- 5 other 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

1 is sought shall be advised by the facility treating the ~~person~~ *person*,  
2 *or by the court in a proceeding under the Probate Code if the*  
3 *conservatorship investigation order was made pursuant to*  
4 *subdivision (c) of Section 5352*, that he or she may request that  
5 information about the time and place of the conservatorship hearing  
6 not be given to family ~~members, in those circumstances where~~  
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~~ *a* proposed conservator  
11 not 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. ~~When~~ *(a) If* the professional person in charge of an  
15 agency 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 *of the person* to the officer providing  
21 conservatorship investigation of the *person's* county of residence  
22 ~~of before admitting the person prior to his admission~~ as a patient  
23 ~~in such~~ *the* facility.

24 ~~The~~

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

30 *(1) The* professional person or another professional person  
31 designated by him *or her* has examined and evaluated the person  
32 and determined that ~~he the person~~ is gravely ~~disabled~~; ~~(b) the~~  
33 *disabled*.

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

38 *(c) (1) If a conservatorship has already been established under*  
39 *the Probate Code, the court, in a proceeding under the Probate*  
40 *Code, after an evidentiary hearing attended by the conservatee,*

1 unless the conservatee waives presence, and the conservatee's  
 2 counsel, may recommend an investigation from the officer  
 3 providing conservatorship investigation in the person's county of  
 4 residence if the court, in a proceeding under the Probate Code,  
 5 in consultation with a licensed physician or licensed psychologist  
 6 satisfying the conditions of subdivision (c) of Section 2032.020 of  
 7 the Code of Civil Procedure providing comprehensive evaluation  
 8 or intensive treatment, determines, based on evidence presented  
 9 to the court, including medical evidence, that the conservatee may  
 10 be gravely disabled as a result of a mental disorder or impairment  
 11 by chronic alcoholism and is unwilling to accept or is incapable  
 12 of accepting treatment voluntarily. If the conservatee cannot afford  
 13 counsel, the court, in a proceeding under the Probate Code, shall  
 14 appoint counsel for him or her.

15 (2) The officer providing conservatorship investigation shall  
 16 file a copy of his or her report with the court making the  
 17 recommendation for conservatorship in a proceeding under the  
 18 Probate Code.

19 ~~¶~~

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

26 ~~Where~~

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

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

33 5354. (a) The officer providing conservatorship investigation  
 34 shall investigate all available alternatives to conservatorship and  
 35 shall recommend conservatorship to the court only if no suitable  
 36 alternatives are available. ~~This~~ The officer shall render to the court  
 37 a written report of investigation ~~prior to~~ before the hearing. The  
 38 report to the court shall be comprehensive and shall contain all  
 39 relevant aspects of the person's medical, psychological, financial,  
 40 family, vocational, and social condition, and information obtained

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

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

36 (1) The defendant and the defendant’s counsel may retain their  
37 copy.

38 (2) If the defendant is placed on probation status, the county  
39 probation department may retain a copy of the report for the  
40 purpose of supervision of the defendant until the probation is

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

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

5 5360. (a) The officer providing conservatorship investigation  
 6 shall recommend, in his *or her* report to the court, for or against  
 7 imposition of a disability set forth in Section 5357 on the basis of  
 8 the determination of the professional person who recommended  
 9 conservatorship pursuant to *subdivision (a) or (b) of Section 5352,*  
 10 *or the determination of the physician or psychologist who presented*  
 11 *medical evidence to the court pursuant to subdivision (c) of Section*  
 12 *5352.*

13 ~~The~~  
 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~~ *those*  
 18 powers. In making ~~such~~ *this* determination, the officer providing  
 19 conservatorship investigation shall consult with the professional  
 20 person who recommended conservatorship pursuant to *subdivision*  
 21 *(a) or (b) of Section 5352, or the physician or psychologist who*  
 22 *presented medical evidence to the court pursuant to subdivision*  
 23 *(c) of Section 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.