

AMENDED IN ASSEMBLY MARCH 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1836

Introduced by Assembly Member Maienschein
(Coauthor: Assembly Member Cristina Garcia)
(Coauthor: Senator Wieckowski)

February 9, 2016

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 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, 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~~, *or determines after conducting the investigation recommended by the court that the person is gravely disabled*, 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, 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 conservatorship investigation order was made pursuant to
11 subdivision (c) of Section 5352, that he or she may request that
12 information about the time and place of the conservatorship hearing
13 not be given to family members if the proposed conservator is not
14 a family member. The request shall be honored by the mental
15 health program. Neither this section nor Section 5350 shall be
16 interpreted to allow the proposed conservatee to request that a
17 proposed conservator not be advised of the time and place of the
18 conservatorship hearing.

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

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

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

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

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

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

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

27 (d) If the officer providing conservatorship investigation concurs
28 with the recommendation of the professional person, pursuant to
29 subdivision (a) or (b), or ~~the court~~, *determines after conducting*
30 *the investigation recommended by the court* pursuant to subdivision
31 ~~(e)~~, *(c) that the person is gravely disabled*, he or she shall petition
32 the superior court in the patient's county of residence to establish
33 conservatorship.

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

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

1 5354. (a) The officer providing conservatorship investigation
2 shall investigate all available alternatives to conservatorship and
3 shall recommend conservatorship to the court only if no suitable
4 alternatives are available. The officer shall render to the court a
5 written report of investigation before the hearing. The report to
6 the court shall be comprehensive and shall contain all relevant
7 aspects of the person's medical, psychological, financial, family,
8 vocational, and social condition, and information obtained from
9 the person's family members, close friends, social worker, or
10 principal therapist. The report shall also contain all available
11 information concerning the person's real and personal property.
12 The facilities providing intensive treatment or comprehensive
13 evaluation shall disclose any records or information that may
14 facilitate the investigation. If the recommendation for
15 conservatorship was made pursuant to subdivision (c) of Section
16 5352, the conservator in a proceeding under the Probate Code shall
17 disclose any records or information that may facilitate the
18 investigation. If the officer providing conservatorship investigation
19 recommends against conservatorship, he or she shall set forth all
20 alternatives available. A copy of the report shall be transmitted to
21 the individual who originally recommended conservatorship, or,
22 in a proceeding under the Probate Code, to the court that originally
23 recommended conservatorship, to the person or agency, if any,
24 recommended to serve as conservator, and to the person
25 recommended for conservatorship. The court may receive the
26 report in evidence and may read and consider the contents thereof
27 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~~ *patient, or his or her*
25 *estate*, require those powers. In making this determination, the
26 officer providing conservatorship investigation shall consult with
27 the professional person who recommended conservatorship
28 pursuant to subdivision (a) or (b) of Section 5352, or the physician
29 or psychologist who presented medical evidence to the court
30 pursuant to subdivision (c) of Section 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.

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