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AMENDED IN ASSEMBLY MAY 26, 1995
AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 145

**Introduced by Assembly Members Rogan, Alby, Baldwin,
Boland, Bordonaro, Bowler, Conroy, Harvey, Hawkins,
Hoge, House, Knight, Kuykendall, Martinez, Morrissey,
Morrow, Rainey, Richter, and Thompson**

(Coauthors: Senators Beverly, Haynes, Hurtt, Monteith, and
Russell)

January 13, 1995

An act to amend Section 1370 of the Penal Code, and to amend Sections 5328.3, 5350, and 5358 of the Welfare and Institutions Code, relating to mental competence.

LEGISLATIVE COUNSEL'S DIGEST

AB 145, as amended, Rogan. Mental competence: conservatorship.

(1) Existing law provides for the commitment of a defendant who is found mentally incompetent to a state hospital and for the initiation of conservatorship proceedings for those defendants if they are committed for specified lengths of time.

This bill would require, where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of

mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(2) Existing law authorizes the physician in charge of a voluntary patient who is a danger to others or himself or herself and the professional person in charge of the facility to notify that patient's relatives and governmental law enforcement agencies of the patient's disappearance without prior notice when the patient's whereabouts are unknown.

This bill would require notification of the court and specified law enforcement entities of the disappearance of a patient who is mentally incompetent to stand trial from a facility or his or her removal contrary to the facility's recommendation, when the disclosure is necessary for the protection of the patient or others, and would specify that the notification shall be made within 24 hours of the patient's disappearance or removal from the facility.

(3) Existing law authorizes the appointment of a conservator of the person or estate of a person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism, and specifies that appointment of the conservator shall be subject to a list of priorities unless the officer providing conservatorship recommends otherwise to the court.

This bill would specifically include the appointment of a conservator for a person who is unable to provide for his or her personal needs within the scope of those requirements, with specified exceptions.

~~The bill would also require the appointment of a public agency as a conservator in the case of a person who is found mentally incompetent to stand trial and who is subject to an indictment or information that has not been dismissed.~~

(4) Existing law requires a conservator, when ordered by the court, to place his or her conservatee in the least restrictive alternative placement.

This bill would limit that placement to those conservatees who are unable to provide for his or her personal needs, and would require that the placement of a conservatee for the purposes of the treatment of the conservatee and the protection of the public if the conservatee is found mentally



incompetent to stand trial and is subject to an indictment or information for specified crimes.

(5) Existing law establishes an order of priorities in the placement of those conservatees who are not to be placed in their own home.

This bill would revise that order of priorities with respect to conservatees who are found mentally incompetent to stand trial and who are subject to an indictment or information for specified crimes, and would require the notification of the district attorney or attorney representing the originating county prior to any change of placement, except in cases of transfer between state hospitals.

The bill would also prohibit the transfer of a conservatee found mentally incompetent to stand trial and who is subject to an indictment or information without a hearing, *and* court approval, ~~or approval by the district attorney, if after providing written notice, specified parties do not object to the transfer,~~ *and* except in the case of a transfer between state hospitals, would limit the circumstances in which the placement may be approved pursuant to a hearing, and would limit the frequency with which hearings may be granted for the purpose of determining the placement of the conservatee.

(6) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would impose a state-mandated local program by requiring local agencies to perform additional duties.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

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 1370 of the Penal Code is
2 amended to read:

3 1370. (a) (1) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on
5 the offense charged shall proceed, and judgment may be
6 pronounced. If the defendant is found mentally
7 incompetent, the trial or judgment shall be suspended
8 until the person becomes mentally competent, and the
9 court shall order that (i) in the meantime, the defendant
10 be delivered by the sheriff to a state hospital for the care
11 and treatment of the mentally disordered or to any other
12 available public or private treatment facility approved by
13 the community program director that will promote the
14 defendant's speedy restoration to mental competence, or
15 placed on outpatient status as specified in Section 1600,
16 and (ii) upon the filing of a certificate of restoration to
17 competence, the defendant be returned to court in
18 accordance with Section 1372. The court shall transmit a
19 copy of its order to the community program director or
20 a designee.

21 (2) Prior to making the order directing that the
22 defendant be confined in a state hospital or other
23 treatment facility or placed on outpatient status, the
24 court shall order the community program director or a
25 designee to evaluate the defendant and to submit to the
26 court within 15 judicial days of the order a written
27 recommendation as to whether the defendant should be
28 required to undergo outpatient treatment, or committed
29 to a state hospital or to any other treatment facility. No
30 person shall be admitted to a state hospital or other
31 treatment facility or placed on outpatient status under
32 this section without having been evaluated by the
33 community program director or a designee.

34 (3) When the court, after considering the placement
35 recommendation of the community program director
36 that is required in paragraph (2), orders that the
37 defendant be confined in a state hospital or other public
38 or private treatment facility, the court shall provide



1 copies of the following documents which shall be taken
2 with the defendant to the state hospital or other
3 treatment facility where the defendant is to be confined:

4 (A) The commitment order, including a specification
5 of the charges.

6 (B) A computation or statement setting forth the
7 maximum term of commitment in accordance with
8 subdivision (c).

9 (C) A computation or statement setting forth the
10 amount of credit for time served, if any, to be deducted
11 from the maximum term of commitment.

12 (D) State Summary Criminal History information.

13 (E) Any arrest reports prepared by the police
14 department or other law enforcement agency.

15 (F) Any court-ordered psychiatric examination or
16 evaluation reports.

17 (G) The community program director's placement
18 recommendation report.

19 (4) When directing that the defendant be confined in
20 a state hospital pursuant to this subdivision, the court shall
21 select the hospital in accordance with the policies
22 established by the State Department of Mental Health.

23 (5) If the defendant is committed or transferred to a
24 state hospital pursuant to this section, the court may,
25 upon receiving the written recommendation of the
26 medical director of the state hospital and the community
27 program director that the defendant be transferred to a
28 public or private treatment facility approved by the
29 community program director, order the defendant
30 transferred to that facility. If the defendant is committed
31 or transferred to a public or private treatment facility
32 approved by the community program director, the court
33 may, upon receiving the written recommendation of the
34 community program director, transfer the defendant to
35 a state hospital or to another public or private treatment
36 facility approved by the community program director. In
37 the event of dismissal of the criminal charges before the
38 defendant recovers competence, the person shall be
39 subject to the applicable provisions of the
40 Lanterman-Petris-Short Act (Part 1 (commencing with



1 Section 5000) of Division 5 of the Welfare and Institutions
2 Code). Where either the defendant or the prosecutor
3 chooses to contest either kind of order of transfer, a
4 petition may be filed in the court for a hearing, which
5 shall be held if the court determines that sufficient
6 grounds exist. At the hearing, the prosecuting attorney or
7 the defendant may present evidence bearing on the
8 order of transfer. The court shall use the same standards
9 as are used in conducting probation revocation hearings
10 pursuant to Section 1203.2.

11 Prior to making an order for transfer under this section,
12 the court shall notify the defendant, the attorney of
13 record for the defendant, the prosecuting attorney, and
14 the community program director or a designee.

15 (b) (1) Within 90 days of a commitment made
16 pursuant to subdivision (a), the medical director of the
17 state hospital or other treatment facility to which the
18 defendant is confined shall make a written report to the
19 court and the community program director for the
20 county or region of commitment, or a designee,
21 concerning the defendant's progress toward recovery of
22 mental competence. Where the defendant is on
23 outpatient status, the outpatient treatment staff shall
24 make a written report to the community program
25 director concerning the defendant's progress toward
26 recovery of mental competence. Within 90 days of
27 placement on outpatient status, the community program
28 director shall report to the court on this matter. If the
29 defendant has not recovered mental competence, but the
30 report discloses a substantial likelihood that the
31 defendant will regain mental competence in the
32 foreseeable future, the defendant shall remain in the state
33 hospital or other treatment facility or on outpatient
34 status. Thereafter, at six-month intervals or until the
35 defendant becomes mentally competent, where the
36 defendant is confined in a treatment facility, the medical
37 director of the hospital or person in charge of the facility
38 shall report in writing to the court and the community
39 program director or a designee regarding the defendant's
40 progress toward recovery of mental competence. Where



1 the defendant is on outpatient status, after the initial
2 90-day report, the outpatient treatment staff shall report
3 to the community program director on the defendant's
4 progress toward recovery, and the community program
5 director shall report to the court on this matter at
6 six-month intervals. A copy of these reports shall be
7 provided to the prosecutor and defense counsel by the
8 court. If the report indicates that there is no substantial
9 likelihood that the defendant will regain mental
10 competence in the foreseeable future, the committing
11 court shall order the defendant to be returned to the
12 court for proceedings pursuant to paragraph (2) of
13 subdivision (c). The court shall transmit a copy of its
14 order to the community program director or a designee.

15 (2) Any defendant who has been committed or has
16 been on outpatient status for 18 months and is still
17 hospitalized or on outpatient status shall be returned to
18 the committing court where a hearing shall be held
19 pursuant to the procedures set forth in Section 1369. The
20 court shall transmit a copy of its order to the community
21 program director or a designee.

22 (3) If it is determined by the court that no treatment
23 for the defendant's mental impairment is being
24 conducted, the defendant shall be returned to the
25 committing court. The court shall transmit a copy of its
26 order to the community program director or a designee.

27 (c) (1) If, at the end of three years from the date of
28 commitment or a period of commitment equal to the
29 maximum term of imprisonment provided by law for the
30 most serious offense charged in the information,
31 indictment, or misdemeanor complaint, whichever is
32 shorter, the defendant has not recovered mental
33 competence, the defendant shall be returned to the
34 committing court. The court shall notify the community
35 program director or a designee of the return and of any
36 resulting court orders.

37 (2) Whenever any defendant is returned to the court
38 pursuant to paragraph (1) or (2) of subdivision (b) or
39 paragraph (1) of this subdivision and it appears to the
40 court that the defendant is gravely disabled, as defined in



1 paragraph (2) of subdivision (h) of Section 5008 of the
 2 Welfare and Institutions Code, the court shall order the
 3 conservatorship investigator of the county of
 4 commitment of the defendant to initiate conservatorship
 5 proceedings for the defendant pursuant to Chapter 3
 6 (commencing with Section 5350) of Part 1 of Division 5
 7 of the Welfare and Institutions Code. Any hearings
 8 required in the conservatorship proceedings shall be held
 9 in the superior court in the county that ordered the
 10 commitment. The court shall transmit a copy of the order
 11 directing initiation of conservatorship proceedings to the
 12 community program director or a designee and shall
 13 notify the community program director or a designee of
 14 the outcome of the proceedings.

15 (3) Where the defendant is confined in a treatment
 16 facility, a copy of any report to the committing court
 17 regarding the defendant's progress toward recovery of
 18 mental competence shall be provided by the committing
 19 court to the prosecutor and to the defense counsel.

20 (d) The criminal action remains subject to dismissal
 21 pursuant to Section 1385. If the criminal action is
 22 dismissed, the court shall transmit a copy of the order of
 23 dismissal to the community program director or a
 24 designee.

25 (e) If the criminal charge against the defendant is
 26 dismissed, the defendant shall be released from any
 27 commitment ordered under this section, but without
 28 prejudice to the initiation of any proceedings that may be
 29 appropriate under the Lanterman-Petris-Short Act, Part
 30 1 (commencing with Section 5000) of Division 5 of the
 31 Welfare and Institutions Code.

32 (f) As used in this chapter, "community program
 33 director" means the person, agency, or entity designated
 34 by the State Department of Mental Health pursuant to
 35 Section 1605 of this code and Section 4360 of the Welfare
 36 and Institutions Code.

37 SEC. 2. Section 5328.3 of the Welfare and Institutions
 38 Code is amended to read:

39 5328.3. (a) When a voluntary patient would
 40 otherwise be subject to the provisions of Section 5150 of



1 this part and disclosure is necessary for the protection of
2 the patient or others due to the patient's disappearance
3 from, without prior notice to, a designated facility and his
4 or her whereabouts is unknown, notice of the
5 disappearance may be made to relatives and
6 governmental law enforcement agencies designated by
7 the physician in charge of the patient or the professional
8 person in charge of the facility or his or her designee.

9 (b) (1) When an involuntary patient is gravely
10 disabled, as defined in subparagraph (B) of paragraph (1)
11 of subdivision (h) of Section 5008, and the patient has
12 disappeared from a designated facility, or is transferred
13 between state hospitals, notice of the disappearance or
14 transfer shall be made to the court initially ordering the
15 patient's commitment pursuant to Section 1370 of the
16 Penal Code, the district attorney for the county that
17 ordered the commitment, and governmental law
18 enforcement agencies designated by the physician in
19 charge of the patient or the professional person in charge
20 of the facility or his or her designee. This notice shall be
21 made within 24 hours of the patient's disappearance or
22 transfer from the facility.

23 (2) A designated facility shall not permit the release of
24 an involuntary patient who is gravely disabled, as defined
25 in subparagraph (B) of paragraph (1) of subdivision (h)
26 of Section 5008, without prior written authorization of the
27 ~~district attorney of the county that made the~~
28 ~~commitment or of the court pursuant to paragraph (2) of~~
29 subdivision (d) of Section 5358. *The court may approve*
30 *the pending release without a hearing unless a party*
31 *notified pursuant to subdivision (d) of Section 5358*
32 *objects to the pending release within 10 days after*
33 *receiving notice.* This paragraph does not apply to the
34 transfer of persons between state hospitals.

35 SEC. 3. Section 5350 of the Welfare and Institutions
36 Code is amended to read:

37 5350. A conservator of the person, of the estate, or of
38 the person and the estate may be appointed for any
39 person who is gravely disabled as a result of mental
40 disorder or impairment by chronic alcoholism.



1 The procedure for establishing, administering, and
2 terminating a conservatorship under this chapter shall be
3 the same as that provided in Division 4 (commencing
4 with Section 1400) of the Probate Code, except as follows:

5 (a) A conservator may be appointed for a gravely
6 disabled minor.

7 (b) (1) Appointment of a conservator under this part,
8 including the appointment of a conservator for a person
9 who is gravely disabled, as defined in subparagraph (A)
10 of paragraph (1) of subdivision (h) of Section 5008, shall
11 be subject to the list of priorities in Section 1812 of the
12 Probate Code unless the officer providing
13 conservatorship investigation recommends otherwise to
14 the superior court.

15 (2) In appointing a conservator, as defined in
16 subparagraph (B) of paragraph (1) of subdivision (h) of
17 Section 5008, the court shall consider the purposes of
18 protection of the public and the treatment of the
19 conservatee.

20 (c) No conservatorship of the estate pursuant to this
21 chapter shall be established if a conservatorship or
22 guardianship of the estate exists under the Probate Code.
23 When a gravely disabled person already has a guardian or
24 conservator of the person appointed under the Probate
25 Code, the proceedings under this chapter shall not
26 terminate the prior proceedings but shall be concurrent
27 with and superior thereto. The superior court may
28 appoint the existing guardian or conservator of the
29 person or another person as conservator of the person
30 under this chapter.

31 (d) The person for whom conservatorship is sought
32 shall have the right to demand a court or jury trial on the
33 issue whether he or she is gravely disabled. Demand for
34 court or jury trial shall be made within five days following
35 the hearing on the conservatorship petition. If the
36 proposed conservatee demands a court or jury trial
37 before the date of the hearing as provided for in Section
38 5365, the demand shall constitute a waiver of the hearing.

39 Court or jury trial shall commence within 10 days of the
40 date of the demand, except that the court shall continue



1 the trial date for a period not to exceed 15 days upon the
2 request of counsel for the proposed conservatee.

3 This right shall also apply in subsequent proceedings to
4 reestablish conservatorship.

5 (e) (1) Notwithstanding subparagraph (A) of
6 paragraph (1) of subdivision (h) of Section 5008, a person
7 is not “gravely disabled” if that person can survive safely
8 without involuntary detention with the help of
9 responsible family, friends, or others who are both willing
10 and able to help provide for the person’s basic personal
11 needs for food, clothing, or shelter.

12 (2) However, unless they specifically indicate in
13 writing their willingness and ability to help, family,
14 friends, or others shall not be considered willing or able
15 to provide this help.

16 (3) The purpose of this subdivision is to avoid the
17 necessity for, and the harmful effects of, requiring family,
18 friends, and others to publicly state, and requiring the
19 court to publicly find, that no one is willing or able to assist
20 the mentally disordered person in providing for the
21 person’s basic needs for food, clothing, or shelter.

22 (4) This subdivision does not apply to a person who is
23 gravely disabled, as defined in subparagraph (B) of
24 paragraph (1) of subdivision (h) of Section 5008.

25 (f) Conservatorship investigation shall be conducted
26 pursuant to this part and shall not be subject to Section
27 1826 or Chapter 2 (commencing with Section 1850) of
28 Part 3 of Division 4 of the Probate Code.

29 (g) Notice of proceedings under this chapter shall be
30 given to a guardian or conservator of the person or estate
31 of the proposed conservatee appointed under the
32 Probate Code.

33 (h) As otherwise provided in this chapter.

34 SEC. 4. Section 5358 of the Welfare and Institutions
35 Code is amended to read:

36 5358. (a) (1) When ordered by the court after the
37 hearing required by this section, a conservator appointed
38 pursuant to this chapter shall place his or her conservatee
39 as follows:



1 (A) For a conservatee who is gravely disabled, as
2 defined in subparagraph (A) of paragraph (1) of
3 subdivision (h) of Section 5008, in the least restrictive
4 alternative placement, as designated by the court.

5 (B) For a conservatee who is gravely disabled, as
6 defined in subparagraph (B) of paragraph (1) of
7 subdivision (h) of Section 5008, in a placement that
8 achieves the purposes of treatment of the conservatee
9 and protection of the public.

10 (2) The placement may include a medical, psychiatric,
11 nursing, or other state-licensed facility, or a state hospital,
12 county hospital, hospital operated by the Regents of the
13 University of California, a United States government
14 hospital, or other nonmedical facility approved by the
15 State Department of Mental Health or an agency
16 accredited by the State Department of Mental Health, or
17 in addition to any of the foregoing, in cases of chronic
18 alcoholism, to a county alcoholic treatment center.

19 (b) A conservator shall also have the right, if specified
20 in the court order, to require his or her conservatee to
21 receive treatment related specifically to remedying or
22 preventing the recurrence of the conservatee's being
23 gravely disabled, or to require his or her conservatee to
24 receive routine medical treatment unrelated to
25 remedying or preventing the recurrence of the
26 conservatee's being gravely disabled. Except in
27 emergency cases in which the conservatee faces loss of
28 life or serious bodily injury, no surgery shall be performed
29 upon the conservatee without the conservatee's prior
30 consent or a court order obtained pursuant to Section
31 5358.2 specifically authorizing that surgery.

32 (c) (1) For a conservatee who is gravely disabled, as
33 defined in subparagraph (A) of paragraph (1) of
34 subdivision (h) of Section 5008, if the conservatee is not
35 to be placed in his or her own home or the home of a
36 relative, first priority shall be to placement in a suitable
37 facility as close as possible to his or her home or the home
38 of a relative. For the purposes of this section, suitable
39 facility means the least restrictive residential placement
40 available and necessary to achieve the purpose of



1 treatment. At the time that the court considers the report
2 of the officer providing conservatorship investigation
3 specified in Section 5356, the court shall consider
4 available placement alternatives. After considering all
5 the evidence the court shall determine the least
6 restrictive and most appropriate alternative placement
7 for the conservatee. The court shall also determine those
8 persons to be notified of a change of placement. The fact
9 that a person for whom conservatorship is recommended
10 is not an inpatient shall not be construed by the court as
11 an indication that the person does not meet the criteria
12 of grave disability.

13 (2) For a conservatee who is gravely disabled, as
14 defined in subparagraph (B) of paragraph (1) of
15 subdivision (h) of Section 5008, first priority shall be
16 placement in a facility that achieves the purposes of
17 treatment of the conservatee and protection of the
18 public. The court shall determine the most appropriate
19 placement for the conservatee. The court shall also
20 determine those persons to be notified of a change of
21 placement, and additionally require the conservator to
22 notify the district attorney or attorney representing the
23 originating county prior to any change of placement.

24 (3) For any conservatee, if requested, the local mental
25 health director shall assist the conservator or the court in
26 selecting a placement facility for the conservatee. When
27 a conservatee who is receiving services from the local
28 mental health program is placed, the conservator shall
29 inform the local mental health director of the facility's
30 location and any movement of the conservatee to another
31 facility.

32 (d) (1) Except for a conservatee who is gravely
33 disabled, as defined in subparagraph (B) of paragraph (1)
34 of subdivision (h) of Section 5008, the conservator may
35 transfer his or her conservatee to a less restrictive
36 alternative placement without a further hearing and
37 court approval. In any case in which a conservator has
38 reasonable cause to believe that his or her conservatee is
39 in need of immediate more restrictive placement
40 because the condition of the conservatee has so changed



1 that the conservatee poses an immediate and substantial
2 danger to himself or herself or others, the conservator
3 shall have the right to place his or her conservatee in a
4 more restrictive facility or hospital. Notwithstanding
5 Section 5328, if the change of placement is to a placement
6 more restrictive than the court-determined placement,
7 the conservator shall provide written notice of the
8 change of placement and the reason therefor to the court,
9 the conservatee's attorney, the county patient's rights
10 advocate and any other persons designated by the court
11 pursuant to subdivision (c).

12 (2) For a conservatee who is gravely disabled, as
13 defined in subparagraph (B) of paragraph (1) of
14 subdivision (h) of Section 5008, the conservator may not
15 transfer his or her conservatee without ~~written consent~~
16 ~~of the district attorney of the county that made the~~
17 ~~commitment~~ *or providing written notice of the proposed*
18 *change of placement and the reason therefor to the court,*
19 *the conservatee's attorney, the county patient's rights*
20 *advocate, the district attorney of the county that made*
21 *the commitment, and any other persons designated by*
22 *the court to receive notice. If any person designated to*
23 *receive notice objects to the proposed transfer within 10*
24 *days after receiving notice, the matter shall be set for a*
25 further hearing and court approval. The notification and
26 hearing is not required for the transfer of persons
27 between state hospitals.

28 (3) At a hearing where the conservator is seeking
29 placement to a less restrictive alternative placement
30 pursuant to paragraph (2), the placement shall not be
31 approved where it is determined by a preponderance of
32 the evidence that the placement poses a threat to the
33 safety of the public, the conservatee, or any other
34 individual.

35 (4) A hearing as to placement to a less restrictive
36 alternative placement, whether requested pursuant to
37 paragraph (2) or pursuant to Section 5358.3, shall be
38 granted no more frequently than is provided for in
39 Section 5358.3.



1 SEC. 5. Notwithstanding Section 17610 of the
2 Government Code, if the Commission on State Mandates
3 determines that this act contains costs mandated by the
4 state, reimbursement to local agencies and school
5 districts for those costs shall be made pursuant to Part 7
6 (commencing with Section 17500) of Division 4 of Title
7 2 of the Government Code. If the statewide cost of the
8 claim for reimbursement does not exceed one million
9 dollars (\$1,000,000), reimbursement shall be made from
10 the State Mandates Claims Fund. Notwithstanding
11 Section 17580 of the Government Code, unless otherwise
12 specified in this act, the provisions of this act shall become
13 operative on the same date that the act takes effect
14 pursuant to the California Constitution.

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