

AMENDED IN SENATE APRIL 25, 2000

AMENDED IN SENATE MARCH 29, 2000

SENATE BILL

No. 2092

**Introduced by Senator Schiff
(Coauthor: Senator Bowen)**

February 25, 2000

An act to amend Section 5350 of, and to add Section 5350.5 to, the Welfare and Institutions Code, relating to conservatorship.

LEGISLATIVE COUNSEL'S DIGEST

SB 2092, as amended, Schiff. Conservatorship: minors.

Existing law sets forth procedures, including the holding of a hearing, for purposes of the appointment of a conservator of a person or estate of a person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism. Existing law requires that notice of these conservatorship proceedings be given to a guardian or conservator of the person or estate of the proposed conservatee appointed under provisions of the Probate Code.

This bill would require that notification also be given to the minor's attorney and county welfare department if the minor is a dependent of the juvenile court, as well as any reports, medical records, or files of the guardianship proceedings upon request. ~~The~~

This bill would ~~also~~ provide that whenever a minor is the subject of a petition for conservatorship and a dependent minor or ward of the juvenile court, the regional center and

the educational institution attended by the minor, the county mental health department, *and either the county probation department, and the county welfare department shall, pursuant to a jointly-developed specified written protocol, determine and recommend whether or not a conservatorship is necessary and in the best interests of the minor and, if recommended, develop a plan for the coordination of services for the best interests of the minor, which would be presented to the court hearing the petition for conservatorship for its consideration.*

The bill would require the county welfare department or the county probation department, depending on whether the minor is a dependent or ward of the court, to develop a written protocol to ensure appropriate local coordination in the assessment of the minor and the development of recommendations by the above entities for consideration by the court hearing the petition for conservatorship. It would also prohibit the giving of psychotropic medication to a minor without court approval once a conservatorship has been granted, except in emergency situations, as defined. The imposition of these new requirements on local agencies would create 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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 of the Welfare and
2 Institutions Code is amended to read:



1 5350. A conservator of the person, of the estate, or of
2 the person and the estate may be appointed for any
3 person who is gravely disabled as a result of mental
4 disorder or impairment by chronic alcoholism.

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

9 (a) A conservator may be appointed for a gravely
10 disabled minor.

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

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

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

35 (d) The person for whom conservatorship is sought
36 shall have the right to demand a court or jury trial on the
37 issue whether he or she is gravely disabled. Demand for
38 court or jury trial shall be made within five days following
39 the hearing on the conservatorship petition. If the
40 proposed conservatee demands a court or jury trial



1 before the date of the hearing as provided for in Section
2 5365, the demand shall constitute a waiver of the hearing.

3 Court or jury trial shall commence within 10 days of the
4 date of the demand, except that the court shall continue
5 the trial date for a period not to exceed 15 days upon the
6 request of counsel for the proposed conservatee.

7 This right shall also apply in subsequent proceedings to
8 reestablish conservatorship.

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

16 (2) However, unless they specifically indicate in
17 writing their willingness and ability to help, family,
18 friends, or others shall not be considered willing or able
19 to provide this help.

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

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

29 (f) Conservatorship investigation shall be conducted
30 pursuant to this part and shall not be subject to Section
31 1826 or Chapter 2 (commencing with Section 1850) of
32 Part 3 of Division 4 of the Probate Code.

33 (g) Notice of proceedings under this chapter shall be
34 given to a guardian or conservator of the person or estate
35 of the proposed conservatee appointed under the
36 Probate Code, and to the minor’s attorney and the county
37 welfare department if the minor is a dependent of the
38 juvenile court. Any reports, medical records, or files of the
39 guardianship proceedings shall be made available upon



1 request to the minor’s attorney and the county welfare
2 department if the minor is a dependent of the court.

3 (h) As otherwise provided in this chapter.

4 SEC. 2. Section 5350.5 is added to the Welfare and
5 Institutions Code, to read:

6 5350.5. (a) Whenever a minor is the subject of a
7 petition for conservatorship pursuant to Sections 5350,
8 5352, or 5352.1, and a dependent minor of the juvenile
9 court pursuant to Section 300 or a ward of the juvenile
10 court pursuant to Section 602, the regional center and the
11 educational institution attended by the minor, the county
12 mental health department, *the county probation*
13 *department*, and the county welfare department shall,
14 pursuant to a jointly developed written protocol;
15 ~~determine as specified in subdivision (b), determine and~~
16 ~~recommend~~ whether or not a conservatorship is
17 necessary and in the best interests of the minor ~~and, if~~
18 ~~recommended, develop a plan for the coordination of~~
19 ~~services for the best interests of the minor. Once in light~~
20 ~~of the status of the minor as a dependent or ward of the~~
21 ~~court. The recommendation of these entities shall be~~
22 ~~presented to the court hearing the petition for~~
23 ~~conservatorship of the minor and the court, after~~
24 ~~considering this recommendation and based upon~~
25 ~~existing legal standards, shall determine whether to grant~~
26 ~~the conservatorship.~~

27 (b) (1) *The county welfare department or the county*
28 *probation department, depending on whether the minor*
29 *is a dependent or ward of the court, shall develop a*
30 *written protocol to ensure appropriate local coordination*
31 *in the assessment of the minor and the development of*
32 *recommendations by these entities for consideration by*
33 *the court hearing the petition for conservatorship.*

34 (2) *The protocol shall require, but shall not be limited*
35 *to, consideration of all of the following:*

36 (A) *The nature of the basis for the petition for*
37 *conservatorship.*

38 (B) *The age of the minor.*

39 (C) *The minor’s educational records and ability to*
40 *function at school.*



1 (D) The minor’s history with the regional center, if
2 any.

3 (E) The nature, extent, and effect of psychotropic
4 medication taken by the minor.

5 (F) The history of the minor’s placement.

6 (G) The assessment of the effectiveness of
7 intervention by mental health professionals.

8 (H) The records of any other agencies that have been
9 involved with the minor and his or her family.

10 (3) The protocol shall also contain provisions for
11 resolution of disagreements between the entities
12 specified in subdivision (a) that are involved with the
13 minor.

14 (c) Once a conservatorship has been granted, no
15 minor shall be given psychotropic medication without
16 court approval, except in emergency situations.

17 (d) For purposes of this section, “emergency
18 situations” means a situation in which action is
19 immediately necessary for the preservation of life, the
20 prevention of a serious disability, or the prevention of
21 serious bodily injury to the minor or to others.

22 (e) This section is not intended to modify Section
23 369.5.

24 SEC. 3. Notwithstanding Section 17610 of the
25 Government Code, if the Commission on State Mandates
26 determines that this act contains costs mandated by the
27 state, reimbursement to local agencies and school
28 districts for those costs shall be made pursuant to Part 7
29 (commencing with Section 17500) of Division 4 of Title
30 2 of the Government Code. If the statewide cost of the
31 claim for reimbursement does not exceed one million
32 dollars (\$1,000,000), reimbursement shall be made from
33 the State Mandates Claims Fund.

