

Senate Bill No. 2092

Passed the Senate August 22, 2000

Secretary of the Senate

Passed the Assembly August 18, 2000

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2000, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

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, 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 by the county welfare department and probation department if the minor is a dependent or ward of the juvenile court. The bill would also require that if the minor is a dependent or ward of the juvenile court, any reports, medical records, or files of the guardianship or conservatorship proceedings shall be made available upon request to the minor's attorney by the county welfare department or county probation department according to a written protocol developed pursuant to this bill.

This bill would 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, 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 interest of the minor, which would be presented to



the court hearing the petition for conservatorship to consider.

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. 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.

The people of the State of California do enact as follows:

SECTION 1. Section 5350 of the Welfare and Institutions Code is amended to read:

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

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

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



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

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

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

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

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

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

(e) (1) Notwithstanding subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008, a person



is not “gravely disabled” if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.

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

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

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

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

(g) Notice of proceedings under this chapter shall be given to a guardian or conservator of the person or estate of the proposed conservatee appointed under the Probate Code and, if the proposed conservatee is a minor who is a dependent or a ward of the juvenile court, to the dependent minor’s or ward’s attorney and to the county welfare department if the minor is a dependent or the county probation department if the minor is a ward. Any reports, medical records, or files of the conservatorship proceedings shall be made available upon request to the minor’s attorney by the county welfare department or the county probation department according to the written protocol described in Section 5350.5, if the minor is a dependent or a ward of the court.

(h) As otherwise provided in this chapter.

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



5350.5. (a) (1) This section applies whenever a minor is the subject of a petition for conservatorship pursuant to Sections 5350, 5352, or 5352.1. The court shall contact the juvenile court to determine if the child is a dependent minor of the juvenile court pursuant to Section 300 or a ward of the juvenile court pursuant to Section 602. If the child is under the jurisdiction of the juvenile court the regional center and the educational institution attended by the minor, the county mental health department, the county probation department, and the county welfare department shall, pursuant to a jointly developed written protocol specified in subdivision (b), determine and recommend whether or not a conservatorship is necessary and in the best interest of the minor. The recommendation of these entities shall be presented to the court hearing the petition for conservatorship of the minor and shall be considered by the court in determining whether to grant the conservatorship.

(2) The responsibility for providing medical records, reports, and files of the minor child who is a subject of a conservatorship petition pursuant to Section 5350, 5352, or 5352.1 for the jointly developed written protocol described in subdivision (b) shall be as follows:

(A) If the child is a dependent minor of the juvenile court pursuant to Section 300, it shall be the responsibility of the county welfare department.

(B) If the child is a ward of the juvenile court pursuant to Section 602, it shall be the responsibility of the county probation department.

(3) The county probation department or the county welfare department shall provide copies of those records gathered pursuant to subdivision (j) of Section 706.6 or Section 16010 to the minor's attorney, upon request.

(4) This subdivision shall not be construed to relieve any person from the requirements imposed by Section 5328.

(b) (1) The county welfare department or the county probation department, depending on whether the minor is a dependent or ward of the court, shall develop a



written protocol to ensure appropriate local coordination in the assessment of the minor and the development of recommendations by these entities for consideration by the court hearing the petition for conservatorship.

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

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

(B) The age of the minor.

(C) The minor's educational records and ability to function at school.

(D) The minor's history with the regional center, if any.

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

(F) The history of the minor's placement.

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

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

(I) A statement from the minor's attorney.

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

(c) This section is not intended to modify Section 369.5.

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



Approved _____, 2000

Governor

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