

05-07-2013 (As Amended and Adopted)

DIGEST

Probate: Petition for Appointment of LPS Conservator

Amends Welfare and Institutions Code sections 5350.2 and 5352 to allow family members or interested persons to petition for a Lanterman-Petris-Short conservatorship when the officer providing conservatorship investigations has declined to do so.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Welfare and Institutions Code sections 5350.2 and 5352 to allow family members or interested persons to petition for a Lanterman-Petris-Short conservatorship when the officer providing conservatorship investigations has declined to do so. This resolution should be approved in principle because it will enable family members and other interested persons to seek establishment of a Lanterman-Petris-Short conservatorship (“LPS conservatorship”) in cases where they are needed but not established due to county budgetary restraints and the consequent reluctance on the part of the county officer providing conservatorship investigation to seek them.

An LPS conservatorship is one that is established to provide needed care for gravely mentally disabled persons who cannot care for themselves and who may otherwise refuse appropriate treatment and medication. Under current law, only the county officer designated to provide conservatorship investigations is authorized to petition to establish such a conservatorship, following an appropriate recommendation from a mental health professional. Because of the current fiscal crisis, that officer is often reluctant to initiate the proceeding, and anecdotal reports suggest that they will not do so where there are any family members or friends who can assist the disabled person. However, those family members and interested persons do not have the legal authority needed to require a disabled adult care for him or herself. As a result, the disabled person’s needs are often not being adequately met. This resolution would amend the relevant statutes to enable a family member or interested person to initiate court proceedings for the establishment of an LPS conservatorship under which the conservatee would be required to accept appropriate treatment and care. As with all LPS conservatorships, the court would review the continued need for the conservatorship every year. This would ensure that such conservatorships may be petitioned for regardless of the continually changing budgetary considerations of any given county.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Welfare and Institutions Code sections 5352 and 5350.2, to read as follows

1 §5352.

2 When the professional person in charge of an agency providing comprehensive
3 evaluation or a facility providing intensive treatment determines that a person in his care is
4 gravely disabled as a result of mental disorder or impairment by chronic alcoholism and is
5 unwilling to accept, or incapable of accepting, treatment voluntarily, he may recommend
6 conservatorship to the officer providing conservatorship investigation of the county of residence
7 of the person prior to his admission as a patient in such facility.

8 The professional person in charge of an agency providing comprehensive evaluation or a
9 facility providing intensive treatment may recommend conservatorship for a person without the
10 person being an inpatient in such facility, if both of the following conditions are met: (a) the
11 professional person or another professional person designated by him has examined and
12 evaluated the person and determined that he is gravely disabled; (b) the professional person
13 or another professional person designated by him has determined that future examination on an
14 inpatient basis is not necessary for a determination that the person is gravely disabled.

15 If the officer providing conservatorship investigation concurs with the recommendation,
16 he shall petition the superior court in the county of residence of the patient to establish
17 conservatorship. If the officer providing conservatorship investigation does not initiate
18 conservatorship proceedings, but a family member or interested person believes a
19 conservatorship is necessary, they may petition the Probate Court under this Article for the
20 establishment of a conservatorship if the following conditions have been met: a) ~~a professional~~
21 person the professional person in charge of an agency providing comprehensive evaluation or a
22 facility providing intensive treatment has examined and evaluated the person and determined that he/she
23 is gravely disabled as

24 a result of a mental disorder or impairment by chronic alcoholism or substance abuse and is
25 unwilling to accept, or incapable of accepting, voluntary treatment; b) the professional person
26 has recommended a conservatorship to the officer providing conservatorship investigation of the
27 county of residence; and c) the officer providing the investigation has made a report, but declines
28 to initiate conservatorship proceedings.

29 Where temporary conservatorship is indicated, the fact shall be alternatively pleaded in
the petition. The officer providing conservatorship investigation or other county officer or
employee designated by the county shall act as the temporary conservator.

1 §5350.2.

2 Reasonable attempts shall be made by the county mental health program, or the
3 petitioning party, to notify family members or any other person designated by the person for
4 whom conservatorship is sought, of the time and place of the conservatorship hearing. The
5 person for whom the conservatorship is sought shall be advised by the facility treating the person
6 that he or she may request that information about the time and place of the conservatorship
7 hearing not be given to family members, in those circumstances where the proposed conservator
8 is not a family member. The request shall be honored by the mental health program. Neither this
9 section nor Section 5350 shall be interpreted to allow the proposed conservatee to request that
10 any proposed conservator not be advised of the time and place of the conservatorship hearing.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Bernardino County Bar Association

STATEMENT OF REASONS

The Problem: Under current law, when the professional person providing an evaluation or treatment determines that someone is gravely disabled due to a mental disorder or chronic alcoholism, they can recommend the case for conservatorship to the officer providing conservatorship investigations. If the investigating officer concurs with the recommendation, then they can petition the court for the establishment of a conservatorship under the Lanterman- Petris-Short Act (LPS). Only the officer providing the investigation can petition for an LPS conservatorship.

Currently, a significant amount of people are not getting the care and treatment that they need and it seems that different counties are becoming more and more reluctant to initiate conservatorship proceedings because of budget cuts and the cost to initiate such proceedings can be significant. If a person who suffers from a mental disorder has any family who appear to be helping them, or they have a place to reside, the investigating officer will not initiate conservatorship proceedings because they can find that the person is not gravely disabled since they can survive safely without involuntary detention with the help of others. However, in most situations, it is difficult for the family to provide any support or assistance because the gravely disabled person refuses to be medication compliant and will not accept treatment and the “treatment” for the gravely disabled person becomes a revolving door through the mental health system.

This Solution: This resolution would allow family members, friends or other interested persons to initiate LPS conservatorships and not just rely on the officer providing the investigation to initiate such proceedings. Also, those who want to really help the gravely disabled person would be better able to assist them and provide them with the care and treatment that they truly need. Currently, there is no other way to get the long term treatment and care that they need, when it is needed, or any way to ensure the officer providing the investigations will initiate conservatorship proceedings. Also, once conservatorship proceedings have been initiated by the officer providing the conservatorship investigation, or county counsel, a family member, or other interested person, can serve as the conservator. Therefore, it makes sense to also allow such persons to initiate the conservatorship proceedings once it has been determined that the gravely disabled person is in need of, and would benefit from, an LPS conservatorship.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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