

RESOLUTION 08-05-2017 (REVISED AS AMENDED)

DIGEST

LPS Conservatorships: Definition of “Gravely Disabled”

Amends Welfare and Institutions Code sections 5008 and 5350 to clarify the definition of “gravely disabled” to include being a danger to him/herself or others.

RESOLUTIONS COMMITTEE ANALYSIS

History:

No similar resolutions found.

Reasons:

The resolution would include “danger to himself or herself or others” as a requirement for allowing an LPS conservatorship because the person may still need assistance even though he/she has food, clothing or shelter provided. This would also make the law consistent throughout the code.

Under current law, a person is gravely disabled if, as a result of a mental health disorder, they are unable to provide for their own basic needs of food, clothing and shelter. This resolution seeks to add the condition of being a “danger to himself or herself or others” as a factor to allow someone to be determined as gravely disabled and to be placed on an LPS Conservatorship.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve the resolution after it was amended to remove “chemical dependency” as a further condition for imposing a LPS conservatorship.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code sections 5008, 5350, 5350.5 and 5361 to read as follows:

1 § 5008

2 Unless the context otherwise requires, the following definitions shall govern the
3 construction of this part:

4 (a) “Evaluation” consists of multidisciplinary professional analyses of a person’s
5 medical, psychological, educational, social, financial, and legal conditions as may appear to
6 constitute a problem. Persons providing evaluation services shall be properly qualified
7 professionals and may be full-time employees of an agency providing face-to-face, which
8 includes telehealth, evaluation services or may be part-time employees or may be employed on a
9 contractual basis.

10 (b) “Court-ordered evaluation” means an evaluation ordered by a superior court pursuant
11 to Article 2 (commencing with Section 5200) or by a superior court pursuant to Article 3
12 (commencing with Section 5225) of Chapter 2.

13 (c) “Intensive treatment” consists of such hospital and other services as may be indicated.

14 Intensive treatment shall be provided by properly qualified professionals and carried out in
15 facilities qualifying for reimbursement under the California Medical Assistance Program (Medi-
16 Cal) set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9, or under
17 Title XVIII of the federal Social Security Act and regulations thereunder. Intensive treatment
18 may be provided in hospitals of the United States government by properly qualified
19 professionals. Nothing in this part shall be construed to prohibit an intensive treatment facility
20 from also providing 72-hour evaluation and treatment.

21 (d) "Referral" is referral of persons by each agency or facility providing assessment,
22 evaluation, crisis intervention, or treatment services to other agencies or individuals. The purpose
23 of referral shall be to provide for continuity of care, and may include, but need not be limited to,
24 informing the person of available services, making appointments on the person's behalf,
25 discussing the person's problem with the agency or individual to which the person has been
26 referred, appraising the outcome of referrals, and arranging for personal escort and transportation
27 when necessary. Referral shall be considered complete when the agency or individual to whom
28 the person has been referred accepts responsibility for providing the necessary services. All
29 persons shall be advised of available precare services that prevent initial recourse to hospital
30 treatment or aftercare services that support adjustment to community living following hospital
31 treatment. These services may be provided through county or city mental health departments,
32 state hospitals under the jurisdiction of the State Department of State Hospitals, regional centers
33 under contract with the State Department of Developmental Services, or other public or private
34 entities.

35 Each agency or facility providing evaluation services shall maintain a current and
36 comprehensive file of all community services, both public and private. These files shall contain
37 current agreements with agencies or individuals accepting referrals, as well as appraisals of the
38 results of past referrals.

39 (e) "Crisis intervention" consists of an interview or series of interviews within a brief
40 period of time, conducted by qualified professionals, and designed to alleviate personal or family
41 situations which present a serious and imminent threat to the health or stability of the person or
42 the family. The interview or interviews may be conducted in the home of the person or family, or
43 on an inpatient or outpatient basis with such therapy, or other services, as may be appropriate.
44 The interview or interviews may include family members, significant support persons, providers,
45 or other entities or individuals, as appropriate and as authorized by law. Crisis intervention may,
46 as appropriate, include suicide prevention, psychiatric, welfare, psychological, legal, or other
47 social services.

48 (f) "Prepetition screening" is a screening of all petitions for court-ordered evaluation as
49 provided in Article 2 (commencing with Section 5200) of Chapter 2, consisting of a professional
50 review of all petitions; an interview with the petitioner and, whenever possible, the person
51 alleged, as a result of a mental health disorder, to be a danger to others, or to himself or herself,
52 or to be gravely disabled, to assess the problem and explain the petition; when indicated, efforts
53 to persuade the person to receive, on a voluntary basis, comprehensive evaluation, crisis
54 intervention, referral, and other services specified in this part.

55 (g) "Conservatorship investigation" means investigation by an agency appointed or
56 designated by the governing body of cases in which conservatorship is recommended pursuant to
57 Chapter 3 (commencing with Section 5350).

58 (h)(1) For purposes of Article 1 (commencing with Section 5150), Article 2
59 (commencing with Section 5200), and Article 4 (commencing with Section 5250) of Chapter 2,

60 and for the purposes of Chapter 3 (commencing with Section 5350), “gravely disabled” means
61 either of the following:

62 (A) A condition in which a person, as a result of a mental health disorder is unable to
63 provide for his or her basic personal needs for food, clothing, or shelter and/or is a danger to
64 himself or herself.

65 (B) A condition in which a person, has been found mentally incompetent under Section
66 1370 of the Penal Code and all of the following facts exist:

67 (i) The indictment or information pending against the person at the time of commitment
68 charges a felony involving death, great bodily harm, or a serious threat to the physical well-being
69 of another person.

70 (ii) The indictment or information has not been dismissed.

71 (iii) As a result of a mental health disorder, the person is unable to understand the nature
72 and purpose of the proceedings taken against him or her and to assist counsel in the conduct of
73 his or her defense in a rational manner.

74 (2) For purposes of Article 3 (commencing with Section 5225) and Article 4
75 (commencing with Section 5250), of Chapter 2, and for the purposes of Chapter 3 (commencing
76 with Section 5350), “gravely disabled” means a condition in which a person, as a result of
77 impairment by chronic alcoholism, is unable to provide for his or her basic personal needs for
78 food, clothing, or shelter.

79 (3) The term “gravely disabled” does not include persons with intellectual disabilities by
80 reason of that disability alone.

81 (i) “Peace officer” means a duly sworn peace officer as that term is defined in Chapter
82 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has completed the
83 basic training course established by the Commission on Peace Officer Standards and Training, or
84 any parole officer or probation officer specified in Section 830.5 of the Penal Code when acting
85 in relation to cases for which he or she has a legally mandated responsibility.

86 (j) “Postcertification treatment” means an additional period of treatment pursuant to
87 Article 6 (commencing with Section 5300) of Chapter 2.

88 (k) “Court,” unless otherwise specified, means a court of record.

89 (l) “Antipsychotic medication” means any medication customarily prescribed for the
90 treatment of symptoms of psychoses and other severe mental and emotional disorders.

91 (m) “Emergency” means a situation in which action to impose treatment over the
92 person’s objection is immediately necessary for the preservation of life or the prevention of
93 serious bodily harm to the patient or others, and it is impracticable to first gain consent. It is not
94 necessary for harm to take place or become unavoidable prior to treatment.

95 (n) “Designated facility” or “facility designated by the county for evaluation and
96 treatment” means a facility that is licensed or certified as a mental health treatment facility or a
97 hospital, as defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code, by
98 the State Department of Public Health, and may include, but is not limited to, a licensed
99 psychiatric hospital, a licensed psychiatric health facility, and a certified crisis stabilization unit.

100
101 § 5350

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

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

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

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

114 (2) In appointing a conservator, as defined in subparagraph (B) of paragraph (1) of
115 subdivision (h) of Section 5008, the court shall consider the purposes of protection of the public
116 and the treatment of the conservatee. Notwithstanding any other provision of this section, the
117 court shall not appoint the proposed conservator if the court determines that appointment of the
118 proposed conservator will not result in adequate protection of the public.

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

125 (d)(1) The person for whom conservatorship is sought shall have the right to demand a
126 court or jury trial on the issue of whether he or she is gravely disabled. Demand for court or jury
127 trial shall be made within five days following the hearing on the conservatorship petition. If the
128 proposed conservatee demands a court or jury trial before the date of the hearing as provided for
129 in Section 5365, the demand shall constitute a waiver of the hearing.

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

133 (3) This right shall also apply in subsequent proceedings to reestablish conservatorship.

134 (e)(1) Notwithstanding subparagraph (A) of paragraph (1) of subdivision (h) of Section
135 5008, a person is not “gravely disabled” if that person can survive safely without involuntary
136 detention with the help of responsible family, friends, or others who are both willing and able to
137 help provide for the person's basic personal needs for food, clothing, or shelter or is not a danger
138 to him or herself or others.

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

141 (3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects
142 of, requiring family, friends, and others to publicly state, and requiring the court to publicly find,
143 that no one is willing or able to assist a person with a mental health disorder in providing for the
144 person's basic needs for food, clothing, or shelter.

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

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

150 (g) Notice of proceedings under this chapter shall be given to a guardian or conservator

151 of the person or estate of the proposed conservatee appointed under the Probate Code.
152 (h) As otherwise provided in this chapter.
153

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

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Currently, the Lanterman-Petris-Short Act refers to “mental health disorder” or “chronic alcoholism” as recognized causes, and “inability to provide for his or her basic personal needs for food, clothing, or shelter as effects” when defining “gravely disabled” for purposes of LPS Conservatorship. In cases where a person is subject to section 5150, a court is not able to consider danger to one’s self or others as an effect of the disability. The result of this is that the court has to “fudge” to establish an LPS Conservatorship if it is clear the person needs help, but not because of mental illness or chronic alcoholism. Similarly, when considering the release from LPS Conservatorship of a conservatee, the court is only authorized to consider whether the conservatee has resources to provide for his basic personal needs for food, clothing, or shelter. The statute does not provide for retention of the conservatorship/institutionalization even if it is obvious that the conservatee would be a danger to himself or others if released without some kind of supervision.

The Solution: This resolution would add danger to him/herself or others to the definition of “gravely disabled” for purposes of the Act as an additional recognized factor for evaluating the propriety of involuntary mental health treatment in a general conservatorship or the extension of an LPS Conservatorship past its initial termination date.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None Known.

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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

**TEXCOM – DISAPPROVE (REFERENCE TO “CHEMICAL DEPENDENCE”
DELETED BY AMENDMENT AT CONFERENCE)**

The term "chemical dependence" is not defined in the amendments. It is not clear why a mental illness brought on by substance abuse, as it is defined and described in DSM-5 at pp. 481-589, would not be adequate to trigger a finding of "gravely disabled" under the present definitions in the Welfare and Institutions Code. Absent a more coherent and documented showing that individuals who are disabled by reason of substance abuse routinely escape the 5150 process, or the further stages in implementation of LPS conservatorships, the amendments are unnecessary and for that reason are opposed.

This position is only that of the TRUSTS and ESTATES SECTION of the State Bar of California. This position has not been adopted by the State Bar's Board of Trustees, and is not to be construed as representing the position of the State Bar of California.

Membership in the TRUSTS and ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.