
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 931 **Hearing Date:** April 3, 2018
Author: Hertzberg
Version: March 19, 2018
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Conservatorships: Custody Status*

HISTORY

Source: Los Angeles County District Attorney's Office

Prior Legislation: SB 684 (Bates), Ch. 246, Stats. 2017
SB 1414 (Nielsen), Ch. 759, Stats. 2014
AB 2190 (Maienschein), Ch. 734, Stats. 2014
AB 1424 (Thomson), Ch. 506, Stats. 2001

Support: California District Attorneys Association; California Psychiatric Association; California Public Defenders Association; California State Association of Counties; Los Angeles County Sheriff's Department; Yolo County Board of Supervisors

Opposition: None known

PURPOSE

The purpose of this bill is to specify that the custody status of a person who is subject to a conservatorship investigation shall not be the sole reason for not scheduling an investigation by the conservatorship investigator.

Existing law authorizes a person in charge of a jail or juvenile detention facility or a judge who determines that a person in custody is mentally disordered to cause the prisoner to be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code. The local mental health director or his or her designee may examine the prisoner prior to transfer to a facility for treatment and evaluation. Upon transfer, the prisoner may be subject to conservatorship proceedings. (Pen. Code, § 4011.6.)

Existing law provides that unless the treating facility certifies that arraignment or trial would be detrimental to the prisoner's well-being, the statutory timelines for arraignment and trial remain unaffected. (*Id.*)

Existing law specifies procedures for establishing, administering, and terminating a conservatorship when a person is gravely disabled. (Welf. & Inst. Code, § 5350 et seq.)

Existing law states that when the professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment determines that a person in his care is gravely disabled as a result of mental disorder or impairment by chronic alcoholism and is unwilling to accept, or incapable of accepting, treatment voluntarily, he may recommend conservatorship to the officer providing conservatorship investigation of the county of residence of the person prior to his admission as a patient in such facility. (Welf. & Inst. Code, § 5352.)

Existing law provides that the professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment may recommend conservatorship for a person without the person being an inpatient in such facility, if both of the following conditions are met:

- The professional person or another professional person designated by him has examined and evaluated the person and determined that he is gravely disabled; and,
- The professional person or another professional person designated by him has determined that future examination on an inpatient basis is not necessary for a determination that the person is gravely disabled. (*Id.*)

This bill clarifies that the professional person in charge of providing mental health treatment at a county jail has authority to recommend conservatorship for a person without the person being an inpatient of the facility if the conditions specified above are met.

Existing law states that if the officer providing conservatorship investigation concurs with the recommendation, he shall petition the superior court in the county of residence of the patient to establish conservatorship. (Welf. & Inst. Code, § 5352.)

Existing law authorizes conservatorship proceedings to be initiated for any person committed to a state hospital or local mental health facility or placed on outpatient treatment or transferred upon recommendation of the medical director of the state hospital, or the local mental health director, to the conservatorship investigator of the county of residence of the person prior to his or her admission to the hospital or facility or of the county in which the hospital or facility is located. (Welf. & Inst. Code, § 5352.5.)

Existing law provides that the initiation of conservatorship proceedings or the existence of a conservatorship shall not affect any pending criminal proceedings. (*Id.*)

Existing law states that a conservatorship shall automatically terminate one year after the appointment of the conservator by the superior court. (Welf. & Inst. Code, § 5361.)

Existing law states that upon the termination of an initial or a succeeding period of conservatorship, if the conservator determines that conservatorship is still required, he may petition the superior court for his reappointment as conservator for a succeeding one-year period. (Welf. & Inst. Code, § 5361.)

This bill specifies that the custody status of a person who is subject to the conservatorship investigation shall not be the sole reason for not scheduling an investigation by the conservatorship investigator.

COMMENTS

1. Need for This Bill

According to the author:

SB 931 would amend the Lanterman-Petris-Short (“LPS”) conservatorship law to specify that custody status cannot be used as a reason to postpone the psychiatric conservatorship evaluation process.

Seriously ill psychiatric patients often find themselves confined in the county jail for substantial periods of time, and are not evaluated for conservatorship status and appropriate treatment options until the conclusion of their criminal case.

Because they are “safely in custody,” they are considered to be less urgent for evaluation, which may result in a substantial delay in establishing conservatorships for them. Due to a longstanding and chronic shortage of psychiatric treatment resources, mentally ill persons may be booked into county jail upon criminal offenses simply because there are no immediate alternatives for their placement.

2. Conservatorships under the Lanterman-Petris-Short (LPS) Act

The LPS Act governs mental health conservatorships. Enacted by the Legislature in 1967, the act limits involuntary commitment to successive periods of increasingly longer duration, beginning with a 72-hour detention for evaluation and treatment (Welf. & Inst. Code, § 5150), which may be extended by certification for 14 days of intensive treatment (Welf. & Inst. Code, § 5250); that initial period may be extended for an additional 14 days if the person detained is suicidal. (Welf. & Inst. Code, § 5260.) In those counties that have elected to do so, the 14-day certification may be extended for an additional 30-day period for further intensive treatment. (Welf. & Inst. Code, § 5270.15.) Persons found to be imminently dangerous may be involuntarily committed for up to 180 days beyond the 14-day period. (Welf. & Inst. Code, § 5300.) After the initial 72-hour detention, the 14-day and 30-day commitments each require a certification hearing before an appointed hearing officer to determine probable cause for confinement unless the detainee has filed a petition for the writ of habeas corpus. (Welf. & Inst. Code, §§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.) A 180-day commitment requires a superior court order. (Welf. & Inst. Code, § 5301.)

An LPS conservatorship may be initiated by the treating physician who would request an evaluation of the patient for conservatorship. The recommendation for conservatorship would be sent to either the public guardian or public conservator designated by the county. The designated officer or agency would then conduct a conservatorship investigation.

The appointment of a conservator is limited to one year for a person determined to be gravely disabled as a result of a mental disorder and unable or unwilling to accept voluntary treatment. (Welf. & Inst. Code, § 5350.) The proposed conservatee is entitled to demand a jury trial on the issue of his or her grave disability, and has a right to counsel at trial, appointed by the court if necessary. (Welf. & Inst. Code, §§ 5350, 5365.)

3. Argument in Support

The Los Angeles County Sheriff's Department writes in support of this bill:

Under existing law, seriously ill psychiatric patients find themselves confined in county jail for extended periods of time, and are not evaluated for conservatorship status and appropriate treatment options until their criminal case has concluded.

Because these patients are held in custody in the county jail, and therefore considered to be safe, they often are incarcerated for longer periods of time. They also can be released unexpectedly at the conclusion of their criminal case without a conservatorship evaluation, leaving them in a vulnerable situation.

There has long been a shortage of psychiatric treatment resources, and mentally ill persons often may be booked into county jails upon criminal offenses simply because there are no immediate alternatives to their placement. Of these, the most acutely ill detainees may be evaluated for conservatorship.

The county jails have become the holding facilities for mentally ill persons while they await the conclusion of their pending criminal charges. These persons need timely conservatorship evaluation and treatment.

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