

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: Anne Pearson, Deputy City Attorney, Office of the City Attorney
Kate Chatfield, Acting Chief of Staff, Office of the District Attorney
Dr. Grant Colfax, Director, Department of Public Health

FROM: Jessica Perkinson, Assistant Clerk,
Public Safety and Neighborhood Services Committee,
Board of Supervisors

DATE: July 19, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Mandelman on July 12, 2022:

File No. 220814

Ordinance amending the Health Code to designate the City Attorney rather than the District Attorney to represent the City in judicial proceedings to establish a "Murphy Conservatorship," a conservatorship for individuals who have been found mentally incompetent during a criminal proceeding involving a charge of death, great bodily harm, or a serious threat to the physical well-being of another person; there has been a finding of probable cause and the proceeding has not been dismissed; as a result of a mental health disorder, the individual is unable to understand the nature and purpose of the criminal proceeding or assist counsel in the conduct of the defense; and the individual represents a substantial danger of physical harm to self or others by reason of mental disease, defect, or disorder.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102, or by email at: Jessica.Perkinson@sfgov.org.

cc: Tara Anderson, Office of the District Attorney
Greg Wagner, Department of Public Health
Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Ana Validizic, Department of Public Health

1 [Health Code - Designating City Attorney to Represent City in Certain Conservatorship
2 Proceedings]

3 **Ordinance amending the Health Code to designate the City Attorney rather than the**
4 **District Attorney to represent the City in judicial proceedings to establish a “Murphy**
5 **Conservatorship,” a conservatorship for individuals who have been found mentally**
6 **incompetent during a criminal proceeding involving a charge of death, great bodily**
7 **harm, or a serious threat to the physical well-being of another person; there has been a**
8 **finding of probable cause and the proceeding has not been dismissed; as a result of a**
9 **mental health disorder, the individual is unable to understand the nature and purpose**
10 **of the criminal proceeding or assist counsel in the conduct of the defense; and the**
11 **individual represents a substantial danger of physical harm to self or others by reason**
12 **of mental disease, defect, or disorder.**

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
16 **Board amendment additions** are in double-underlined Arial font.
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
18 **Asterisks (* * * *)** indicate the omission of unchanged Code
19 subsections or parts of tables.

20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Background.

22 (a) The Lanterman-Petris-Short Act (“LPS Act”), California Welfare and Institutions
23 Code §§ 5000 et seq., authorizes the implementation of several programs and interventions
24 relating to behavioral health, including but not limited to the involuntary commitment of
25 persons needing psychiatric treatment, court-ordered mental health conservatorships, and
court-ordered assisted outpatient treatment. The LPS Act establishes a procedure for the

1 appointment of a conservator for individuals who are unable to properly provide for their
2 physical health, food, clothing, and shelter, and individuals who are substantially unable to
3 manage their finances or resist fraud or undue influence. Under Section 5008(h)(1)(B) of the
4 Welfare and Institutions Code, a court can impose a mental health conservatorship for a
5 person found mentally incompetent to stand trial under Section 1370 of the California Penal
6 Code, where the individual has outstanding felony charges involving great physical injury or
7 death of another person; there has been a finding of probable cause on a complaint or
8 indictment and the complaint or indictment has not been dismissed; is unable to understand
9 the nature and purpose of the proceedings due to a mental health disorder; and poses a
10 threat to self or others as a result of that mental health disorder (a "Murphy Conservatorship").

11 (b) Sections 26530 and 27646 of the California Government Code, and Section 5114
12 of the California Welfare and Institutions Code, provide that the district attorney shall
13 represent the county in proceedings under the LPS Act, unless the county board of
14 supervisors designates the county counsel to do so.

15 (c) In 2018, the Board of Supervisors designated the City Attorney's Office to
16 represent the City in judicial proceedings for court-ordered assisted outpatient treatment and,
17 beginning January 1, 2019, in judicial proceedings for court-ordered mental health
18 conservatorships, except that the District Attorney continued to represent the City in Murphy
19 Conservatorships.

20 (d) This ordinance would designate the City Attorney's Office, rather than the District
21 Attorney, to represent the City in judicial proceedings seeking to impose a Murphy
22 Conservatorship on individuals meeting the criteria set forth in Section 5008(h)(1)(B) of the
23 Welfare and Institutions Code.

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1 Section 2. Article 41, Division III, of the Health Code is hereby amended by revising
2 Section 4121, to read as follows:

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4 **SEC. 4121. DESIGNATION OF CITY ATTORNEY.**

5 The City Attorney is designated to represent the county in the following proceedings:

6 (a) Judicial proceedings authorized by Article 9 of Chapter 2 of Division 5 of the
7 California Welfare and Institutions Code (“The Assisted Outpatient Treatment Demonstration
8 Project Act of 2002”);

9 (b) Judicial proceedings authorized by Chapter 3 of Division 5 of the California
10 Welfare and Institutions Code (“Conservatorship for Gravely Disabled Persons”); ~~provided,~~
11 ~~however, that the City Attorney is not designated to represent the county in such proceedings where~~
12 ~~they concern a person who meets the definition of “gravely disabled” as set forth in subsection~~
13 ~~(h)(1)(B) of Section 5008 of the California Welfare and Institutions Code;~~ and

14 (c) Judicial proceedings authorized by Chapter 5 of Part 1 of Division 5 of the
15 California Welfare and Institutions Code (“Housing Conservatorship for Persons with Serious
16 Mental Illness and Substance Use Disorders”).

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19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor’s veto of the ordinance.

1 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the “Note” that appears under
6 the official title of the ordinance.

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9 APPROVED AS TO FORM:
10 DAVID CHIU, City Attorney

11 By: /s/ Henry L. Lifton
12 HENRY L. LIFTON
13 Deputy City Attorney

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LEGISLATIVE DIGEST

[Health Code - Designating City Attorney to Represent City in Certain Conservatorship Proceedings]

Ordinance amending the Health Code to designate the City Attorney rather than the District Attorney to represent the City in judicial proceedings to establish a “Murphy Conservatorship,” a conservatorship for individuals who have been found mentally incompetent during a criminal proceeding involving a charge of death, great bodily harm, or a serious threat to the physical well-being of another person; there has been a finding of probable cause and the proceeding has not been dismissed; as a result of a mental health disorder, the individual is unable to understand the nature and purpose of the criminal proceeding or assist counsel in the conduct of the defense; and the individual represents a substantial danger of physical harm to self or others by reason of mental disease, defect, or disorder.

Existing Law

Section 4121 of the San Francisco Health Code currently provides that the City Attorney is designated to represent the City in assisted outpatient treatment proceedings and housing conservatorships for persons with serious mental illness and substance use disorders. Section 4121 also designates the City Attorney to represent the City to impose conservatorships for gravely disabled persons, except that, the District Attorney is currently designated to represent the City in judicial proceedings to appoint a “Murphy Conservatorship” (as defined below), which is a subset of conservatorships for gravely disabled persons.

Amendments to Current Law

The Proposed Ordinance would designate the City Attorney rather than the District Attorney in judicial proceedings seeking to impose a Murphy Conservatorship on individuals meeting the criteria set forth in Section 5008(h)(1)(B) of the California Welfare and Institutions Code.

Background Information

The Lanterman-Petris-Short Act (“LPS Act”), California Welfare and Institutions Code §§ 5000 et seq., authorizes, and establishes a procedure for, the appointment of a conservator for individuals who are unable to properly provide for their physical health, food, clothing, and shelter, and individuals who are substantially unable to manage their finances or resist fraud or undue influence. Under Section 5008(h)(1)(B) of the Welfare and Institutions Code, a court can impose a Murphy Conservatorship, which is a mental health conservatorship for a person found mentally incompetent to stand trial under Section 1370 of the California Penal Code, where the individual has outstanding felony charges involving great physical injury or death of

another person; there has been a finding of probable cause on a complaint or indictment and the complaint or indictment has not been dismissed; is unable to understand the nature and purpose of the proceedings due to a mental health disorder; and poses a threat to self or others as a result of that mental health disorder.

Sections 26530 and 27646 of the California Government Code, and Section 5114 of the California Welfare and Institutions Code, provide that the district attorney shall represent the county in proceedings under the LPS Act, unless the county board of supervisors designates the county counsel to do so. The Board has not previously designated the City Attorney to represent the City in judicial proceedings to impose a Murphy Conservatorships.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Ordinance amending the Health Code to designate the City Attorney rather than the District Attorney to represent the City in judicial proceedings to establish a "Murphy Conservatorship"—a conservatorship for individuals who have been found mentally incompetent during a criminal proceeding involving a charge of death, great bodily harm, or a serious threat to the physical well-being of another person; there has been a finding of probable cause and the proceeding has not been dismissed; as a result of a mental health disorder, the individual is unable to understand the nature and purpose of the criminal proceeding or assist counsel in the conduct of the defense; and the individual represents a substantial danger of physical harm to self or others by reason of mental disease, defect, or disorder.

Signature of Sponsoring Supervisor: