

AMENDED IN SENATE APRIL 9, 2018

AMENDED IN SENATE MARCH 13, 2018

SENATE BILL

No. 1045

Introduced by Senators Wiener and Stern
(Coauthors: Senators Allen and Bradford)
(Coauthor: Assembly Member Chen)

February 8, 2018

An act to add Chapter 5 (commencing with Section 5450) to, and to add Article 7 (*commencing with Section 5555*) to Chapter 6.2 (~~commencing with Section 5555~~) of, Part 1 of Division 5 of the Welfare and Institutions Code, relating to conservatorship.

LEGISLATIVE COUNSEL'S DIGEST

SB 1045, as amended, Wiener. Conservatorship: chronic homelessness: mental illness and substance ~~abuse~~ *use* disorders.

Existing law establishes a procedure for the appointment of a conservator for a person who is determined to be gravely disabled as a result of a mental health disorder or an impairment by chronic alcoholism for the purpose of providing individualized treatment, supervision, and placement, which may include placement in a medical, psychiatric, nursing, or other state-licensed facility. Under existing law, a professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment for a gravely disabled person may recommend a conservatorship for that person. Existing law requires an officer, including a county public guardian or a county mental health program, to conduct a conservatorship investigation and render a written report to the court of his or her investigation and requires the officer providing conservatorship investigation, when he or she concurs with a recommendation of

conservatorship, to petition the superior court in the individual's county of residence for a conservatorship.

This bill would establish a ~~procedure~~ *procedure, for counties that elect to participate*, for the appointment of a conservator for a person who is chronically homeless and incapable of caring for the person's own health and well-being due to ~~acute and severe mental illness or a severe substance abuse~~ *a serious mental illness and substance use disorder*, as evidenced by high-frequency emergency department use, high-frequency jail detention due to behavior resulting from the person's ~~severe mental illness or substance abuse~~ *serious mental illness and substance use disorder*, or frequent placement under a 72-hour involuntary hold because, based on probable cause, the person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or is gravely disabled, for the purpose of providing appropriate ~~placement in supportive housing that provides wraparound services~~ *placement, including a licensed health care or psychiatric facility or community-based residential care setting, in supportive housing that provides wraparound services, as specified.*

This bill would require an officer providing conservatorship investigation in ~~the a participating~~ county to conduct a conservatorship investigation upon recommendation of conservatorship by specified individuals and would require the officer, if he or she concurs in the recommendation of conservatorship, to petition the superior court in the person's county of residence for a conservatorship and to provide a written report to the court of his or her investigation prior to the hearing. The bill would authorize the court to appoint the public conservator or the director of a local agency who is tasked with addressing the homeless population in the county of residence of the person to serve as conservator if it is in the best interests of the proposed conservatee. The bill would require the conservator to place his or her conservatee in ~~supportive housing that provides wraparound services and would grant the conservator the right, if specified in the court order, to require his or her conservatee to be at the conservatee's housing location each night~~ *an appropriate placement, including a licensed health care or psychiatric facility or community-based residential care setting, in supportive housing that provides wraparound services, as specified.*

This bill would require a conservatorship initiated under these provisions to automatically terminate one year after the appointment of the conservator by the superior court, but would authorize the

conservator, if upon the termination of an initial or a succeeding period of conservatorship the conservator determines that conservatorship is still required, to petition the superior court for his or her reappointment as conservator for a succeeding one-year period.

This bill would authorize the Judicial Council to adopt rules, forms, and standards necessary to implement these provisions.

This bill would require each county *that elects to participate* to establish a working group, comprised of representatives of local agencies and disability rights groups, to conduct an evaluation of the effectiveness of the implementation of the conservatorship provisions described above in addressing the needs of chronically homeless persons with *serious mental illness or substance abuse and substance use* disorders. The bill would require each working group to prepare and submit a report to the Legislature on its findings and recommendations no later than January 1, 2020.

~~By creating new duties for counties relating to the above-described conservatorship procedures and working group, this bill would impose 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.~~

~~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 the statutory provisions noted above.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~*no*.

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

1 SECTION 1. Chapter 5 (commencing with Section 5450) is
2 added to Part 1 of Division 5 of the Welfare and Institutions Code,
3 to read:

4
5 CHAPTER 5. HOUSING CONSERVATORSHIP FOR CHRONICALLY
6 HOMELESS PERSONS WITH ~~ACUTE AND SEVERE~~ *SERIOUS MENTAL*
7 ~~ILLNESS OR SEVERE AND SUBSTANCE ABUSE~~ *USE DISORDERS*

8
9 5450. ~~A~~ *In a county that elects to implement this chapter, a*
10 conservator of the person may be appointed for a person who is

1 chronically homeless and incapable of caring for the person's own
2 health and well-being due to ~~acute and severe mental illness or a~~
3 ~~severe substance abuse~~ *serious mental illness and substance use*
4 disorder, as evidenced by high-frequency emergency department
5 use, high-frequency jail detention due to behavior resulting from
6 the person's ~~severe~~ *serious* mental illness ~~or and substance abuse~~
7 *use* disorder, or frequent detention for evaluation and treatment
8 pursuant to Section 5150. The procedure for establishing,
9 administering, and terminating a conservatorship under this chapter
10 shall be the same as provided for in Division 4 (commencing with
11 Section 1400) of the Probate Code, except as follows:

12 (a) The court may appoint the public conservator or the director
13 of a local agency who is tasked with addressing the homeless
14 population in the county of residence of the person to serve as
15 conservator if it is in the best interests of the proposed conservatee.

16 (b) (1) The person for whom conservatorship is sought shall
17 have the right to demand a court or jury trial on the issue of whether
18 the person meets the criteria for the appointment of a conservator
19 of the person under this chapter. Demand for court or jury trial
20 shall be made within five days following the hearing on the
21 conservatorship petition. If the proposed conservatee demands a
22 court or jury trial before the date of the hearing as provided for in
23 Section 5465, the demand shall constitute a waiver of the hearing.

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

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

30 (c) Conservatorship investigation shall be conducted pursuant
31 to this part and shall not be subject to Section 1826 of, or Chapter
32 2 (commencing with Section 1850) of Part 3 of Division 4 of, the
33 Probate Code.

34 (d) Notice of proceedings under this chapter shall be given to
35 a guardian or conservator of the person or estate of the proposed
36 conservatee appointed under the Probate Code.

37 (e) As otherwise provided for in this chapter.

38 5451. For purposes of this chapter, the following definitions
39 apply:

1 (a) “Chronically homeless” shall have the same meaning as that
2 term is defined in Section 578.3 of Title 24 of the Code of Federal
3 Regulations.

4 (b) “Frequent detention for evaluation and treatment” means
5 four or more detentions for evaluation and treatment in the
6 preceding 12 months.

7 (c) “High-frequency emergency department use” means five or
8 more monthly individual patient visits to an emergency department.

9 (d) “High-frequency jail detention” means five or more monthly
10 bookings, detentions, or other processing of the person into a jail.

11 (e) “Homeless” shall have the same meaning as that term is
12 defined in Section 578.3 of Title 24 of the Code of Federal
13 Regulations.

14 5452. The purpose of conservatorship under this chapter is to
15 provide appropriate placement, including ~~supportive community~~
16 ~~housing~~, a licensed health care or psychiatric ~~facility~~, *facility* or
17 community-based residential care settings, in supportive *community*
18 housing that provides wraparound services, such as on-site physical
19 and behavioral health services, for a person who is chronically
20 homeless and incapable of caring for the person’s own health and
21 well-being due to ~~acute and severe mental illness or a severe~~
22 ~~substance abuse~~ *a serious mental illness and substance use*
23 disorder, as evidenced by high-frequency emergency department
24 use, high-frequency jail detention due to behavior resulting from
25 the person’s ~~severe mental illness or substance abuse~~ *serious*
26 *mental illness and substance use* disorder, or frequent detention
27 for evaluation and treatment pursuant to Section 5150.

28 5453. In ~~each~~ *a participating* county or *participating* counties
29 acting jointly under the provisions of Article 1 (commencing with
30 Section 6500) of Chapter 5 of Division 7 of Title 1 of the
31 Government Code, the governing board shall designate the agency
32 or agencies to provide conservatorship investigation as set forth
33 in this chapter. The governing board may designate that
34 conservatorship services be provided by the public guardian or
35 agency providing public guardian services.

36 5454. (a) (1) The professional person in charge of a hospital
37 facility providing emergency services may recommend
38 conservatorship to the officer providing conservatorship
39 investigation in the county of residence of the person if the
40 professional person in charge of the hospital facility determines

1 that a person in the professional's care is chronically homeless and
2 incapable of caring for the person's own health and well-being
3 due to ~~acute and severe mental illness or a severe substance abuse~~
4 *a serious mental illness and substance use* disorder, as evidenced
5 by high-frequency emergency department use, high-frequency jail
6 detention due to behavior resulting from the person's ~~severe mental~~
7 ~~illness or substance abuse~~ *serious mental illness and substance*
8 *use* disorder, or frequent detention for evaluation and treatment
9 pursuant to Section 5150.

10 (2) The county sheriff may recommend conservatorship to the
11 officer providing conservatorship investigation in the county of
12 residence of the person if the sheriff determines that a person
13 detained in a jail is chronically homeless and incapable of caring
14 for the person's own health and well-being due to ~~acute and severe~~
15 ~~mental illness or a severe substance abuse~~ *a serious mental illness*
16 *and substance use* disorder, as evidenced by high-frequency
17 emergency department use, high-frequency jail detention due to
18 behavior resulting from the person's ~~severe mental illness or~~
19 ~~substance abuse~~ *serious mental illness and substance use* disorder,
20 or frequent detention for evaluation and treatment pursuant to
21 Section 5150.

22 (3) The director of a county mental health department or county
23 department of public social services may recommend
24 conservatorship to the officer providing conservatorship
25 investigation in the county of residence of the person if the director
26 determines that a person is chronically homeless and incapable of
27 caring for the person's own health and well-being due to ~~acute and~~
28 ~~severe~~ *a serious* mental illness ~~or a severe substance abuse~~ *and*
29 *substance use* disorder, as evidenced by high-frequency emergency
30 department use, high-frequency jail detention due to behavior
31 resulting from the person's ~~severe mental illness or substance abuse~~
32 *serious mental illness and substance use* disorder, or frequent
33 detention for evaluation and treatment pursuant to Section 5150.

34 (4) The professional person in charge of an agency providing
35 comprehensive evaluation or a facility providing intensive
36 treatment may recommend conservatorship to the officer providing
37 conservatorship investigation in the county of residence of the
38 person if the professional person in charge of the agency providing
39 comprehensive evaluation or the facility providing intensive
40 treatment determines that a person in the professional's care is

1 chronically homeless and incapable of caring for the person's own
2 health and well-being due to ~~acute and severe mental illness or a~~
3 ~~severe substance abuse~~ *a serious mental illness and substance use*
4 disorder, as evidenced by high-frequency emergency department
5 use, high-frequency jail detention due to behavior resulting from
6 the person's ~~severe mental illness or substance abuse~~ *serious*
7 *mental illness and substance use* disorder, or frequent detention
8 for evaluation and treatment pursuant to Section 5150.

9 (b) If the officer providing conservatorship investigation concurs
10 with the recommendation, the officer shall petition the superior
11 court in the county of residence of the person to establish
12 conservatorship.

13 5455. (a) The officer providing conservatorship investigation
14 shall investigate all available alternatives to conservatorship and
15 shall recommend conservatorship to the court only if no suitable
16 alternatives are available. This officer shall render to the court a
17 written report of investigation prior to the hearing. The report to
18 the court shall be comprehensive and shall contain all relevant
19 aspects of the person's medical, psychological, financial, family,
20 vocational, and social condition, and information obtained from
21 the person's family members, close friends, social worker, or
22 principal therapist. The report shall also contain all available
23 information concerning the person's real and personal property.
24 The facilities providing medical treatment, or intensive treatment
25 or comprehensive evaluation, the sheriff, and the director of the
26 county mental health department or the county department of public
27 social services shall disclose any records or information that may
28 facilitate the investigation. If the officer providing conservatorship
29 investigation recommends against conservatorship, he or she shall
30 set forth all alternatives available. ~~A copy of the report shall be~~
31 ~~transmitted to the individual who originally recommended~~
32 ~~conservatorship, to the person or agency, if any, recommended to~~
33 ~~serve as conservator, and to the person recommended for~~
34 ~~conservatorship.~~ *When confidentiality and client privacy laws*
35 *permit, a copy of the report shall be transmitted to the individual*
36 *who originally recommended conservatorship, and the information*
37 *shared shall be compliant with state and federal laws governing*
38 *protected health information.* The court may receive the report in
39 evidence and may read and consider the contents of the report in
40 rendering its judgment.

1 (b) The report of the officer providing conservatorship
2 investigation shall contain the officer's recommendations
3 concerning the powers to be granted to, and the duties to be
4 imposed upon, the conservator, the legal disabilities to be imposed
5 upon the conservatee, and the proper placement for the conservatee
6 pursuant to Section 5458. The report to the court shall also contain
7 an agreement signed by the person or agency recommended to
8 serve as conservator certifying that the person or agency is able
9 and willing to serve as conservator.

10 5456. Except as otherwise provided in this chapter, the person
11 recommended to serve as conservator shall promptly notify the
12 officer providing conservatorship investigation whether the person
13 recommended to serve as conservator will accept the position if
14 appointed. If notified that the person or agency recommended will
15 not accept the position if appointed, the officer providing
16 conservatorship investigation shall promptly recommend another
17 person to serve as conservator.

18 ~~5457. (a) If the conservatorship investigation results in a~~
19 ~~recommendation for conservatorship, the recommendation shall~~
20 ~~designate the most suitable local agency or county officer, or~~
21 ~~employee designated by the county to serve as conservator. A~~
22 ~~person or agency shall not be designated as conservator whose~~
23 ~~interests, activities, obligations, or responsibilities are such as to~~
24 ~~compromise the person's or agency's ability to represent and~~
25 ~~safeguard the interests of the conservatee.~~

26 (b) If a public guardian is appointed conservator, the public
27 guardian's official bond and oath as public guardian are in lieu of
28 the conservator's bond and oath on the grant of letters of
29 conservatorship. A bond shall not be required of any other public
30 officer or employee appointed to serve as conservator.

31 5458. When ordered by the court after the hearing required by
32 this chapter, a conservator appointed pursuant to this chapter shall
33 ~~place the conservator's conservatee in supportive housing that~~
34 ~~provides wraparound services. A conservator shall have the right,~~
35 ~~if specified in the court order, to require the conservatee to be at~~
36 ~~the conservatee's housing location each night. *provide appropriate*~~
37 ~~*placement for the conservatee, including a licensed health care*~~
38 ~~*or psychiatric facility or community-based residential care setting,*~~
39 ~~*in supportive housing that provides wraparound services, such as*~~
40 ~~*onsite physical and behavioral health services.*~~

1 5459. A conservator or public guardian appointed pursuant to
2 this chapter shall not be held civilly or ~~criminal~~ *criminally* liable
3 for any action by a conservatee.

4 5460. (a) At any time, a conservatee or any person on the
5 conservatee's behalf with the consent of the conservatee or the
6 conservatee's counsel, may petition the court for a hearing to
7 contest the powers granted to the conservator under Section 5458.
8 However, after the filing of the first petition for hearing pursuant
9 to this section, no further petition for rehearing shall be submitted
10 for a period of six months.

11 (b) A request for hearing pursuant to this section shall not affect
12 the right of a conservatee to petition the court for a rehearing as
13 to his or her status as a conservatee pursuant to Section 5464. A
14 hearing pursuant to this section shall not include trial by jury.

15 5461. (a) Conservatorship initiated pursuant to this chapter
16 shall automatically terminate one year after the appointment of
17 the conservator by the superior court. If upon the termination of
18 an initial or a succeeding period of conservatorship the conservator
19 determines that conservatorship is still required, the conservator
20 may petition the superior court for the conservator's reappointment
21 as conservator for a succeeding one-year period.

22 (b) Any supportive housing program in which a conservatee is
23 placed shall release the conservatee at the conservatee's request
24 when the conservatorship terminates. A petition for reappointment
25 filed by the conservator or a petition for appointment filed by a
26 public guardian *or public conservator* shall be transmitted to the
27 supportive housing program at least 30 days before the automatic
28 termination date. The program may ~~detain~~ *hold* the conservatee
29 after the end of the termination date only if the conservatorship
30 proceedings have not been completed and the court orders the
31 conservatee to be held until the proceedings have been completed.

32 5462. (a) The clerk of the superior court shall notify each
33 conservator, the conservatee, the person in charge of the supportive
34 housing program in which the conservatee receives services, and
35 the conservatee's attorney, at least 60 days before the termination
36 of the one-year period. Notification shall be given in person or by
37 first-class mail.

38 (b) Subject to a request for a court hearing or jury trial, the judge
39 may, on the judge's own motion, accept or reject the conservator's
40 petition.

1 (c) If the conservator does not petition to reestablish
2 conservatorship at or before the termination of the one-year period,
3 the court shall issue a decree terminating conservatorship. The
4 decree shall be sent to the conservator and the conservatee by
5 first-class mail.

6 (d) The Judicial Council may adopt rules, forms, and standards
7 necessary to implement this chapter.

8 5463. In the event the conservator continues in good faith to
9 act within the powers granted to the conservator in the original
10 decree of conservatorship beyond the one-year period, the
11 conservator may petition for and shall be granted a decree ratifying
12 the conservator’s acts as conservator beyond the one-year period.
13 The decree shall provide for a retroactive appointment of the
14 conservator to provide continuity of authority in those cases where
15 the conservator did not apply in time for reappointment.

16 5464. (a) At any time, the conservatee may petition the
17 superior court for a rehearing as to the conservatee’s status as a
18 conservatee. However, after the filing of the first petition for
19 rehearing pursuant to this section, no further petition for rehearing
20 shall be submitted for a period of ~~six months~~. 30 days.

21 (b) If a conservatee appeals a court’s decision to establish a
22 conservatorship, the conservatorship shall continue unless
23 execution of judgment is stayed by the appellate court.

24 5465. A hearing shall be held on all petitions under this chapter
25 within 30 days of the date of the petition. The court shall appoint
26 the public defender or other attorney for the conservatee or
27 proposed conservatee within five days after the date of the petition.

28 SEC. 2. Article 7 (commencing with Section 5555) is added
29 to Chapter 6.2 of Part 1 of Division 5 of the Welfare and
30 Institutions Code, to read:

31

32 Article 7. Housing Conservatorship Working Group

33

34 5555. (a) Each county ~~shall~~ *that elects to implement this article*
35 *may* establish a working group to conduct an evaluation of the
36 effectiveness of the implementation of Chapter 5 (commencing
37 with Section 5450) in addressing the needs of chronically homeless
38 persons with *serious* mental illness ~~or substance abuse and~~
39 *substance use* disorders in the county. The working group shall be
40 comprised of representatives of disability rights advocacy groups,

1 the county mental health department, *the county health department*,
2 the county ~~welfare~~ *social services* department, law enforcement,
3 staff from hospitals located in the county, and, if one exists, the
4 county department of housing and homeless services.

5 (b) Each working group shall prepare and submit a report to the
6 Legislature on its findings and recommendations regarding the
7 implementation of Chapter 5 (commencing with Section 5450).
8 The report shall be submitted to the Legislature no later than
9 January 1, 2020, in compliance with Section 9795 of the
10 Government Code. Pursuant to Section 10231.5 of the Government
11 Code, the reporting requirement imposed under this subdivision
12 shall become inoperative on January 1, 2024.

13 ~~SEC. 3.—If the Commission on State Mandates determines that~~
14 ~~this act contains costs mandated by the state, reimbursement to~~
15 ~~local agencies and school districts for those costs shall be made~~
16 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
17 ~~4 of Title 2 of the Government Code.~~