

AMENDED IN SENATE APRIL 6, 2022  
AMENDED IN SENATE MARCH 15, 2022

**SENATE BILL**

**No. 965**

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**Introduced by Senator Eggman**

February 9, 2022

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An act to amend Section 5354 ~~of~~ *of*, and to add Section 5122 to, the Welfare and Institutions Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 965, as amended, Eggman. Conservatorships: gravely disabled persons.

Existing law, the Lanterman-Petris-Short Act, authorizes a conservator of the person, of the estate, or of the person and the estate to be appointed for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism. Existing law requires the officer providing the conservatorship investigation, which may include a public guardian or a county mental health program, to investigate all available alternatives to conservatorship and to recommend conservatorship to the court only if no suitable alternatives are available. Existing law requires the officer to render a written report of investigation to the court prior to the hearing that contains specified information, including all relevant aspects of the person's medical, psychological, financial, family, vocational, and social condition. Existing law authorizes the court to receive the report in evidence and to read and consider the contents of the report in rendering its judgment.

This bill would require, rather than authorize, the court to receive the report in evidence and to read and consider the contents of the report in rendering its judgment. The bill would also require the officer, if the officer determines that information about the historical course of the

person's mental disorder and adherence to prior treatment plans has a reasonable bearing on the determination as to whether the person is gravely disabled as a result of the mental disorder, to include that information in the report and would require the court to consider the information.

*By information.* By expanding the duties of the county officer providing conservatorship investigation, this bill would impose a state-mandated local program.

*Existing law establishes the hearsay rule, which provides that evidence of a statement that was made other than by a witness while testifying at a hearing and that is offered to prove the truth of the matter stated, is inadmissible. Existing law provides exceptions to the hearsay rule to permit the admission of specified kinds of evidence, including a social study, as defined, prepared by the petitioning agency to establish jurisdiction in a matter involving the custody, status, or welfare of a minor in a dependency proceeding, as specified.*

*Under this bill, a written report, and the hearsay evidence contained in it, furnished to the court and to all parties or their counsel by the officer conducting the conservatorship investigation or by another specified individual, in a matter involving the status or welfare of a conservatee or proposed conservatee, would be admissible and constitute competent evidence upon which the appointment of conservator may be ordered by the court, as specified. The bill would apply to a conservatorship proceeding described above and to specified conservatorship proceedings in the County of Los Angeles, the County of San Diego, or the City and County of San Francisco for the appointment of a conservator for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder. The bill would require the preparer of the report to be made available for cross-examination upon a timely request by a party. Under the bill, if a party raises a timely objection to the admission of specific hearsay evidence, the evidence would not be sufficient by itself to support an appointment of a conservator unless the petitioner establishes an exception, including, among other things, that the evidence would be admissible in any civil or criminal proceeding under any exception to the prohibition against hearsay or that the hearsay declarant is available for cross-examination.*

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.

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

1     SECTION 1. Section 5122 is added to the Welfare and  
2     Institutions Code, to read:

3     5122. (a) For purposes of this section, “report” means any  
4     written report furnished to the court and to all parties or their  
5     counsel by the officer conducting conservatorship investigation,  
6     the county public guardian or conservator, or any other appointed  
7     conservator, in any matter involving the status or welfare of a  
8     conservatee or a proposed conservatee in a conservatorship  
9     proceeding, including a court or jury trial regarding the initial  
10    appointment of a conservator and subsequent proceedings to  
11    reestablish conservatorship pursuant to Chapter 3 (commencing  
12    with Section 5350) or Chapter 5 (commencing with Section 5450).

13    (b) The report, and any hearsay evidence contained in it, is  
14    admissible and constitutes competent evidence upon which the  
15    appointment of a conservator pursuant to Section 5350 or 5451  
16    may be ordered by the court, to the extent allowed by subdivisions  
17    (e) and (f).

18    (c) The preparer of the report shall be made available for  
19    cross-examination upon a timely request by a party. The court  
20    may deem the preparer available for cross-examination if it  
21    determines that the preparer is on telephone standby and can be  
22    present in court within a reasonable time of the request.

23    (d) The court may grant a reasonable continuance upon request  
24    by any party if the report is not provided to the parties or their  
25    counsel within a reasonable time before the hearing.

26    (e) (1) If a party raises a timely objection to the admission of  
27    specific hearsay evidence contained in the report, the specific  
28    hearsay evidence shall not be sufficient by itself to support an  
29    appointment of a conservator unless the petitioner establishes one  
30    or more of the following exceptions:

1 (A) *The hearsay evidence would be admissible in any civil or*  
 2 *criminal proceeding under any statutory or decisional exception*  
 3 *to the prohibition against hearsay.*

4 (B) *The hearsay declarant is a health practitioner described in*  
 5 *paragraphs (21) to (28), inclusive, of subdivision (a) of Section*  
 6 *11165.7 of the Penal Code, or a social worker licensed pursuant*  
 7 *to Chapter 14 (commencing with Section 4991) of Division 2 of*  
 8 *the Business and Professions Code. For purposes of this*  
 9 *subparagraph, evidence in a declaration is admissible only to the*  
 10 *extent that it would otherwise be admissible under this section or*  
 11 *if the declarant were present and testifying in court.*

12 (C) *The hearsay declarant is available for cross-examination.*  
 13 *For purposes of this section, the court may deem a witness*  
 14 *available for cross-examination if it determines that the witness*  
 15 *is on telephone standby and can be present in court within a*  
 16 *reasonable time of a request to examine the witness.*

17 (2) *For purposes of this subdivision, an objection is timely if it*  
 18 *identifies with reasonable specificity the disputed hearsay evidence*  
 19 *and it gives the petitioner a reasonable period of time to meet the*  
 20 *objection prior to a contested hearing.*

21 (f) *This section shall not be construed to limit the right of a*  
 22 *party to subpoena a witness whose statement is contained in the*  
 23 *report or to introduce admissible evidence relevant to the weight*  
 24 *of the hearsay evidence or the credibility of the hearsay declarant.*

25 **SECTION 1.**

26 *SEC. 2.* Section 5354 of the Welfare and Institutions Code is  
 27 amended to read:

28 5354. (a) The officer providing conservatorship investigation  
 29 shall investigate all available alternatives to conservatorship and  
 30 shall recommend conservatorship to the court only if no suitable  
 31 alternatives are available. The officer shall render to the court a  
 32 written report of investigation prior to the hearing. The report to  
 33 the court shall be comprehensive and shall contain all relevant  
 34 aspects of the person's medical, psychological, financial, family,  
 35 vocational, and social condition, and information obtained from  
 36 the person's family members, close friends, social worker, or  
 37 principal therapist. If the officer determines that information about  
 38 the historical course of the person's mental disorder and adherence  
 39 to prior treatment plans has a reasonable bearing on the  
 40 determination as to whether the person is gravely disabled as a

1 result of the mental disorder, the officer shall include that  
2 information in the report and the court shall consider the  
3 information. The report shall also contain all available information  
4 concerning the person's real and personal property. The facilities  
5 providing intensive treatment or comprehensive evaluation shall  
6 disclose any records or information which may facilitate the  
7 investigation. If the officer providing conservatorship investigation  
8 recommends against conservatorship, the officer shall set forth all  
9 alternatives available. A copy of the report shall be transmitted to  
10 the individual who originally recommended conservatorship, to  
11 the person or agency, if any, recommended to serve as conservator,  
12 and to the person recommended for conservatorship. The court  
13 shall receive the report in evidence and shall read and consider the  
14 contents of the report in rendering its judgment.

15 (b) Notwithstanding Section 5328, if a court with jurisdiction  
16 over a person in a criminal case orders an evaluation of the person's  
17 mental condition pursuant to Section 5200, and that evaluation  
18 leads to a conservatorship investigation, the officer providing the  
19 conservatorship investigation shall serve a copy of the report  
20 required under subdivision (a) upon the defendant or the  
21 defendant's counsel. Upon the prior written request of the  
22 defendant or the defendant's counsel, the officer providing the  
23 conservatorship investigation shall also submit a copy of the report  
24 to the court hearing the criminal case, the district attorney, and the  
25 county probation department. The conservatorship investigation  
26 report and the information contained in that report, shall be kept  
27 confidential and shall not be further disclosed to anyone without  
28 the prior written consent of the defendant. After disposition of the  
29 criminal case, the court shall place all copies of the report in a  
30 sealed file, except as follows:

31 (1) The defendant and the defendant's counsel may retain their  
32 copy.

33 (2) If the defendant is placed on probation status, the county  
34 probation department may retain a copy of the report for the  
35 purpose of supervision of the defendant until the probation is  
36 terminated, at which time the probation department shall return  
37 its copy of the report to the court for placement into the sealed file.

38 ~~SEC. 2.~~

39 *SEC. 3.* If the Commission on State Mandates determines that  
40 this act contains costs mandated by the state, reimbursement to

- 1 local agencies and school districts for those costs shall be made
- 2 pursuant to Part 7 (commencing with Section 17500) of Division
- 3 4 of Title 2 of the Government Code.

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