

AMENDED IN SENATE MAY 25, 2018
AMENDED IN SENATE MAY 1, 2018
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 and repeal Chapter 5 (commencing with Section 5450) of, and to add and repeal Article 7 (commencing with Section 5555) of Chapter 6.2 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 use disorders.

Existing

(1) 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. alcoholism, as specified, pursuant to a petition to the superior court by an officer conducting an investigation and concurring with a recommendation of conservatorship.~~

Existing law, the Assisted Outpatient Treatment Demonstration Project Act of 2002, known as Laura's Law, until January 1, 2022, grants each county the authority to offer certain assisted outpatient treatment services for a person who meets specified criteria, including, among others, that the person is suffering from a mental illness, that the person has a history of lack of compliance with treatment for his or her mental illness, and that the person is in need of assisted outpatient treatment, as specified. Laura's Law authorizes designated persons to request the county behavioral health director to file a petition in the superior court for an order for assisted outpatient treatment.

This bill would establish a procedure, for the County of Los Angeles and the City and County of San Francisco, if the board of supervisors of the respective county or city and county authorizes the application of these provisions subject to specified requirements, 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 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 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, specified,~~ for the purpose of providing appropriate placement, including a licensed health care or psychiatric facility or community-based residential care setting, in supportive community housing that provides wraparound services, as specified.

~~This bill would require an officer providing conservatorship investigation in the County of Los Angeles or the City and County of San Francisco, subject to the county's or city and county's election to apply these provisions, 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 provide appropriate placement for the conservatee, including a licensed health care or psychiatric facility or community-based residential care setting, in supportive community housing that provides wraparound services, as specified.~~

This bill would make the establishment of a conservatorship pursuant to these provisions subject to, among other things, a finding by the court that the behavioral health director of the county or the city and county has previously attempted by petition to obtain a court order authorizing assisted outpatient treatment pursuant to Laura's Law for the person for whom conservatorship is sought, that the petition was denied or the assisted outpatient treatment was insufficient to treat the person's mental illness, and that assisted outpatient treatment would be insufficient to treat the person in the instant matter in lieu of a conservatorship.

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. except as specified.~~

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

~~This~~

(2) *This bill would require the County of Los Angeles and the City and County of San Francisco, subject to the county's or city and county's election to apply these provisions, 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 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, 2023.

~~This bill would repeal all of the above-described provisions on January 1, 2024.~~

(3) *This bill would repeal, on January 1, 2024, all of the provisions relating to the new conservatorship procedure and the working group, as described above in paragraphs (1) and (2).*

~~This~~

(4) *This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Los Angeles and the City and County of San Francisco.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: 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 SERIOUS MENTAL ILLNESS AND
7 SUBSTANCE USE DISORDERS

8

9 5450. (a) Until January 1, 2024, this article shall apply only
10 to the County of Los Angeles and the City and County of San
11 Francisco if the board of supervisors of the respective county or
12 city and county, by resolution or through the county budget process,
13 authorizes the application of this article and makes a finding that
14 no voluntary mental health program serving adults, and no
15 children’s mental health program, may be reduced as a result of
16 the implementation of this article.

17 (b) (1) Before the county board of supervisors may authorize
18 the application of this article, the county mental health department,
19 the county welfare department, and, if one exists, the county
20 department of housing and homeless services shall present before
21 the county board of supervisors on the available resources for the
22 implementation of this article.

23 (2) In order to approve authorization of the application of this
24 article, the county board of supervisors shall determine, based on

1 materials presented, that all of the following services are available
2 within the county or city and county for utilization in connection
3 with the application of this article:

4 (A) Supportive community housing that provides wraparound
5 services, with adequate beds available.

6 (B) Public conservators trained on the specifics of the new form
7 of conservatorship described in this article.

8 (C) Outpatient mental health counseling.

9 (D) Coordination and access to medications.

10 (E) Psychiatric and psychological services.

11 (F) Substance use disorder services.

12 (G) Vocational rehabilitation.

13 (H) Veterans' services.

14 (I) Family support and consultation services.

15 5451. In the County of Los Angeles and the City and County
16 of San Francisco, subject to Section 5450, a conservator of the
17 person may be appointed for a person who is chronically homeless
18 and incapable of caring for the person's own health and well-being
19 due to a serious mental illness and substance use disorder, as
20 evidenced by high-frequency emergency department use,
21 high-frequency jail detention due to behavior resulting from the
22 person's serious mental illness and substance use disorder, or
23 frequent detention for evaluation and treatment pursuant to Section
24 5150. The procedure for establishing, administering, and
25 terminating a conservatorship under this chapter shall be the same
26 as provided for in Division 4 (commencing with Section 1400) of
27 the Probate Code, except as follows:

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

32 (b) (1) The person for whom conservatorship is sought shall
33 have the right to demand a court or jury trial on the issue of whether
34 the person meets the criteria for the appointment of a conservator
35 of the person under this chapter. Demand for court or jury trial
36 shall be made within five days following the hearing on the
37 conservatorship petition. If the proposed conservatee demands a
38 court or jury trial before the date of the hearing as provided for in
39 Section ~~5465~~, 5466, the demand shall constitute a waiver of the
40 hearing.

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

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

7 (c) Conservatorship investigation shall be conducted pursuant
8 to this part and shall not be subject to Section 1826 of, or Chapter
9 2 (commencing with Section 1850) of Part 3 of Division 4 of, the
10 Probate Code.

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

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

15 5452. For purposes of this chapter, the following definitions
16 apply:

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

20 (b) “Frequent detention for evaluation and treatment” means
21 four or more detentions for evaluation and treatment in the
22 preceding 12 months.

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

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

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

30 5453. The purpose of conservatorship under this chapter is to
31 provide appropriate placement, including a licensed health care or
32 psychiatric facility or community-based residential care setting,
33 in supportive community housing that provides wraparound
34 services, such as onsite physical and behavioral health services,
35 for a person who is chronically homeless and incapable of caring
36 for the person’s own health and well-being due to a serious mental
37 illness and substance use disorder, as evidenced by high-frequency
38 emergency department use, high-frequency jail detention due to
39 behavior resulting from the person’s serious mental illness and

1 substance use disorder, or frequent detention for evaluation and
2 treatment pursuant to Section 5150.

3 5454. In the County of Los Angeles and the City and County
4 of San Francisco, subject to Section 5450, the governing board
5 shall designate the agency or agencies to provide conservatorship
6 investigation as set forth in this chapter. The governing board may
7 designate that conservatorship services be provided by the public
8 guardian or agency providing public guardian services.

9 5455. (a) (1) The professional person in charge of a hospital
10 facility providing emergency services may recommend
11 conservatorship to the officer providing conservatorship
12 investigation in the county of residence of the person if the
13 professional person in charge of the hospital facility determines
14 that a person in the professional's care is chronically homeless and
15 incapable of caring for the person's own health and well-being
16 due to a serious mental illness and substance use disorder, as
17 evidenced by high-frequency emergency department use,
18 high-frequency jail detention due to behavior resulting from the
19 person's serious mental illness and substance use disorder, or
20 frequent detention for evaluation and treatment pursuant to Section
21 5150.

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

32 (3) The director of a county mental health department or county
33 department of public social services may recommend
34 conservatorship to the officer providing conservatorship
35 investigation in the county of residence of the person if the director
36 determines that a person is chronically homeless and incapable of
37 caring for the person's own health and well-being due to a serious
38 mental illness and substance use disorder, as evidenced by
39 high-frequency emergency department use, high-frequency jail
40 detention due to behavior resulting from the person's serious

1 mental illness and substance use disorder, or frequent detention
2 for evaluation and treatment pursuant to Section 5150.

3 (4) The professional person in charge of an agency providing
4 comprehensive evaluation or a facility providing intensive
5 treatment may recommend conservatorship to the officer providing
6 conservatorship investigation in the county of residence of the
7 person if the professional person in charge of the agency providing
8 comprehensive evaluation or the facility providing intensive
9 treatment determines that a person in the professional's care is
10 chronically homeless and incapable of caring for the person's own
11 health and well-being due to a serious mental illness and substance
12 use disorder, as evidenced by high-frequency emergency
13 department use, high-frequency jail detention due to behavior
14 resulting from the person's serious mental illness and substance
15 use disorder, or frequent detention for evaluation and treatment
16 pursuant to Section 5150.

17 (b) If the officer providing conservatorship investigation concurs
18 with the recommendation, the officer shall petition the superior
19 court in the county of residence of the person to establish
20 conservatorship.

21 *5456. The establishment of a conservatorship pursuant to this*
22 *chapter is subject to a finding by the court that the behavioral*
23 *health director of the county or the city and county has previously*
24 *attempted by petition to obtain a court order authorizing assisted*
25 *outpatient treatment pursuant to Article 9 (commencing with*
26 *Section 5345) of Chapter 2 for the person for whom*
27 *conservatorship is sought, and that both of the following conditions*
28 *exist:*

29 (a) *The petition was denied or the assisted outpatient treatment*
30 *was insufficient to treat the person's mental illness.*

31 (b) *Assisted outpatient treatment would be insufficient to treat*
32 *the person in the instant matter in lieu of a conservatorship.*

33 ~~5456.~~

34 5457. (a) The officer providing conservatorship investigation
35 shall investigate all available alternatives to conservatorship and
36 shall recommend conservatorship to the court only if no suitable
37 alternatives are available. This officer shall render to the court a
38 written report of investigation prior to the hearing. The report to
39 the court shall be comprehensive and shall contain all relevant
40 aspects of the person's medical, psychological, financial, family,

1 vocational, and social condition, and information obtained from
2 the person's family members, close friends, social worker, or
3 principal therapist. The report shall also contain all available
4 information concerning the person's real and personal property.
5 The facilities providing medical treatment, or intensive treatment
6 or comprehensive evaluation, the sheriff, and the director of the
7 county mental health department or the county department of public
8 social services shall disclose any records or information that may
9 facilitate the investigation. If the officer providing conservatorship
10 investigation recommends against conservatorship, he or she shall
11 set forth all alternatives available. When confidentiality and client
12 privacy laws permit, a copy of the report shall be transmitted to
13 the individual who originally recommended conservatorship, and
14 the information shared shall be compliant with state and federal
15 laws governing protected health information. The court may receive
16 the report in evidence and may read and consider the contents of
17 the report in rendering its judgment.

18 (b) The report of the officer providing conservatorship
19 investigation shall contain the officer's recommendations
20 concerning the powers to be granted to, and the duties to be
21 imposed upon, the conservator, the legal disabilities to be imposed
22 upon the conservatee, and the proper placement for the conservatee
23 pursuant to Section ~~5459~~: 5460. The report to the court shall also
24 contain an agreement signed by the person or agency recommended
25 to serve as conservator certifying that the person or agency is able
26 and willing to serve as conservator.

27 ~~5457.~~

28 5458. Except as otherwise provided in this chapter, the person
29 recommended to serve as conservator shall promptly notify the
30 officer providing conservatorship investigation whether the person
31 recommended to serve as conservator will accept the position if
32 appointed. If notified that the person or agency recommended will
33 not accept the position if appointed, the officer providing
34 conservatorship investigation shall promptly recommend another
35 person to serve as conservator.

36 ~~5458.~~

37 5459. (a) A person or agency shall not be designated as
38 conservator whose interests, activities, obligations, or
39 responsibilities are such as to compromise the person's or agency's
40 ability to represent and safeguard the interests of the conservatee.

1 (b) If a public guardian is appointed conservator, the public
 2 guardian’s official bond and oath as public guardian are in lieu of
 3 the conservator’s bond and oath on the grant of letters of
 4 conservatorship. A bond shall not be required of any other public
 5 officer or employee appointed to serve as conservator.

6 ~~5459.~~

7 5460. When ordered by the court after the hearing required by
 8 this chapter, a conservator appointed pursuant to this chapter shall
 9 provide appropriate placement for the conservatee, including a
 10 licensed health care or psychiatric facility or community-based
 11 residential care setting, in supportive community housing that
 12 provides wraparound services, such as onsite physical and
 13 behavioral health services.

14 ~~5460.~~

15 5461. (a) At any time, a conservatee or any person on the
 16 conservatee’s behalf with the consent of the conservatee or the
 17 conservatee’s counsel, may petition the court for a hearing to
 18 contest the powers granted to the conservator under Section ~~5459.~~
 19 5460. However, after the filing of the first petition for hearing
 20 pursuant to this section, no further petition for rehearing shall be
 21 submitted for a period of six months.

22 (b) A request for hearing pursuant to this section shall not affect
 23 the right of a conservatee to petition the court for a rehearing as
 24 to his or her status as a conservatee pursuant to Section ~~5464.~~ 5465.
 25 A hearing pursuant to this section shall not include trial by jury.

26 ~~5461.~~

27 5462. (a) Conservatorship initiated pursuant to this chapter
 28 shall automatically terminate one year after the appointment of
 29 the conservator by the superior court. If upon the termination of
 30 an initial or a succeeding period of conservatorship the conservator
 31 determines that conservatorship is still required, the conservator
 32 may petition the superior court for the conservator’s reappointment
 33 as conservator for a succeeding one-year period.

34 (b) Any supportive housing program in which a conservatee is
 35 placed shall release the conservatee at the conservatee’s request
 36 when the conservatorship terminates. A petition for reappointment
 37 filed by the conservator or a petition for appointment filed by a
 38 public guardian or public conservator shall be transmitted to the
 39 supportive housing program at least 30 days before the automatic
 40 termination date. The program may hold the conservatee after the

1 end of the termination date only if the conservatorship proceedings
2 have not been completed and the court orders the conservatee to
3 be held until the proceedings have been completed.

4 ~~5462.~~

5 5463. (a) The clerk of the superior court shall notify each
6 conservator, the conservatee, the person in charge of the supportive
7 housing program in which the conservatee receives services, and
8 the conservatee's attorney, at least 60 days before the termination
9 of the one-year period. Notification shall be given in person or by
10 first-class mail.

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

14 (c) If the conservator does not petition to reestablish
15 conservatorship at or before the termination of the one-year period,
16 the court shall issue a decree terminating conservatorship. The
17 decree shall be sent to the conservator and the conservatee by
18 first-class mail.

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

21 ~~5463.~~

22 5464. In the event the conservator continues in good faith to
23 act within the powers granted to the conservator in the original
24 decree of conservatorship beyond the one-year period, the
25 conservator may petition for and shall be granted a decree ratifying
26 the conservator's acts as conservator beyond the one-year period.
27 The decree shall provide for a retroactive appointment of the
28 conservator to provide continuity of authority in those cases where
29 the conservator did not apply in time for reappointment.

30 ~~5464.~~

31 5465. (a) At any time, the conservatee may petition the
32 superior court for a rehearing as to the conservatee's status as a
33 conservatee. However, after the filing of the first petition for
34 rehearing pursuant to this section, no further petition for rehearing
35 shall be submitted for a period of 30 days.

36 (b) If a conservatee appeals a court's decision to establish a
37 conservatorship, the conservatorship shall continue unless
38 execution of judgment is stayed by the appellate court.

1 ~~5465.~~

2 5466. A hearing shall be held on all petitions under this chapter
3 within 30 days of the date of the petition. The court shall appoint
4 the public defender or other attorney for the conservatee or
5 proposed conservatee within five days after the date of the petition.

6 ~~5466.~~

7 5467. This chapter shall remain in effect only until January 1,
8 2024, and as of that date is repealed.

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

12

13 Article 7. Housing Conservatorship Working Group

14

15 5555. (a) The County of Los Angeles and the City and County
16 of San Francisco, subject to Section 5450, shall establish a working
17 group to conduct an evaluation of the effectiveness of the
18 implementation of Chapter 5 (commencing with Section 5450) in
19 addressing the needs of chronically homeless persons with serious
20 mental illness and substance use disorders in the county or the city
21 and county. The working group shall be comprised of
22 representatives of disability rights advocacy groups, the county
23 mental health department, the county health department, the county
24 social services department, law enforcement, staff from hospitals
25 located in the county or the city and county, and, if one exists, the
26 county department of housing and homeless services.

27 (b) Each working group shall prepare and submit a report to the
28 Legislature on its findings and recommendations regarding the
29 implementation of Chapter 5 (commencing with Section 5450).
30 The report shall be submitted to the Legislature no later than
31 January 1, 2023, in compliance with Section 9795 of the
32 Government Code.

33 5556. This article shall remain in effect only until January 1,
34 2024, and as of that date is repealed.

35 SEC. 3. The Legislature finds and declares that a special statute
36 is necessary and that a general statute cannot be made applicable
37 within the meaning of Section 16 of Article IV of the California

- 1 Constitution because of the unique circumstances of the County
- 2 of Los Angeles and the City and County of San Francisco.

O