

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

LEG13-04

Title	Action Requested
Proposed Legislation: Conservatorship for Gravely Disabled Persons: Conservatorship Investigator Report	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Welfare & Institutions Code § 5354	January 1, 2015
Proposed by	Contact
Mental Health Issues Implementation Task Force	Carrie Zoller, 415-865-8829 carrie.zoller@jud.ca.gov
Hon. Richard J. Loftus, Jr., Chair	

Executive Summary and Origin

The Mental Health Issues Implementation Task Force proposes that the Judicial Council sponsor legislation to add a new subdivision to Welfare and Institutions Code¹ section 5354. The new subdivision would require that if a criminal court with jurisdiction over a defendant in a criminal case orders an evaluation of a person's mental condition pursuant to section 5200, and that referral leads to a conservatorship investigation, the officer providing investigation must submit a copy of the report to the criminal court. This legislation would increase the options available to courts when handling criminal cases involving mentally ill offenders, and improve coordination between the conservatorship court and the criminal court when a mentally ill individual has cases in both arenas.

Background

California's criminal courts serve a disproportionate number of mentally ill court users. People with mental illness are more likely to be arrested than those in the general population for similar offenses and many enter the criminal justice system as a direct result of their unmanaged illness. As the jurisdiction of local courts expands under criminal justice realignment, the courts can anticipate the mentally ill offender population having an even greater impact on court calendars.

¹ All section references are to the Welfare and Institution Code.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

As part of a national project designed to assist state judicial leaders in their efforts to improve responses to people with mental illnesses in the criminal justice system, in 2008 then-Chief Justice Ronald M. George established the Task Force for Criminal Justice Collaboration on Mental Health Issues (task force). The task force was charged with developing recommendations for policymakers, including the Judicial Council and its advisory committees, to improve systemwide responses to offenders with mental illness. The task force issued its final report in April 2011. In January 2012, Chief Justice Tani G. Cantil-Sakauye appointed the Mental Health Issues Implementation Task Force (MHIITF) to develop a plan to implement the recommendations in the report.

The task force recognized that “[s]ome criminal defendants with mental illness may be conserved or may be involved in conservatorship proceedings at the same time that their criminal case is being processed. Because these cases are currently heard by different judicial officers on different calendars, judicial officers hearing either the civil or criminal case often do not have all applicable information, which can result in conflicting orders and other complications for the defendant.”²

The MHIITF is recommending Judicial Council sponsorship of the proposed legislation to address these issues. Under section 5354, the officer conducting the conservatorship investigation must already provide a copy of his or her report to the court with jurisdiction over conservatorship proceedings. If passed, the proposed legislation will require the officer to also submit a copy of the report to the criminal court if the original evaluation of the person’s mental condition was undertaken based on an order from the criminal court. By ensuring that both the criminal and civil courts receive the conservatorship investigation report, this legislation is designed to reduce the likelihood of conflicting orders, minimize the chances of having duplicative or unnecessary hearings and encourage coordination between civil courts handling conservatorships for gravely disabled persons and criminal courts handling cases involving mentally ill offenders. By not imposing any new requirements on the courts, the legislation seeks to provide these benefits without being burdensome.

The Proposal

The proposed legislation would add a new subdivision to section 5354 to require the officer conducting a conservatorship investigation to submit a copy of the report to the criminal court if the criminal court had ordered an evaluation of the person’s mental condition pursuant to section 5200. Distribution of the report to the criminal court would be in addition to the requirement that the investigator provide copies to the individuals and entities set forth in section 5354.

Alternatives Considered

The MHIITF considered the option proposed in recommendation 26 of the report, which suggested legislation to provide judicial officers hearing criminal proceedings involving defendants with mental illness, the authority to order a conservatorship evaluation and file a

² Administrative Office of the Courts; Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report; April 2011; p.22; http://courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf.

petition when there is reasonable cause to believe that a defendant is gravely disabled, and to provide the option of having the conservatorship proceedings held before the referring court if all parties agreed. The MHIITF concluded that this option could place additional burdens on the courts by expanding the role of the criminal court and requiring mandatory coordination between court divisions. The MHIITF also considered postponing or declining to propose any legislative changes in light of the significant changes the criminal courts are undergoing related to public safety realignment. However, the MHIITF determined that the balanced approach of the proposed legislation provides the courts with an appropriate tool for improved coordination and improved case handling for defendants with mental illness without placing additional burdens on the courts.

Implementation Requirements, Costs, and Operational Impacts

The sponsoring Judicial Council task force is proposing this legislation because it has concluded that its adoption would reduce, not increase, costs incurred by courts and by justice system partners. This would be accomplished by helping to ensure that courts hearing cases involving mentally ill offenders have the information needed for appropriate resolution of the criminal case, and reduce the likelihood of conflicting orders between the criminal and civil courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

1. The text of the proposed legislation is attached at page 4.

Section 5354 of the Welfare and Institutions Code would be amended to read as follows:

(a) The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship and shall recommend conservatorship to the court only if no suitable alternatives are available. This officer shall render to the court a written report of investigation prior to the hearing. The report to the court shall be comprehensive and shall contain all relevant aspects of the person's medical, psychological, financial, family, vocational and social condition, and information obtained from the person's family members, close friends, social worker or principal therapist. The report shall also contain all available information concerning the person's real and personal property. The facilities providing intensive treatment or comprehensive evaluation shall disclose any records or information which may facilitate the investigation. If the officer providing conservatorship investigation recommends against conservatorship, he or she shall set forth all alternatives available. A copy of the report shall be transmitted to the individual who originally recommended conservatorship, to the person or agency, if any, recommended to serve as conservator, and to the person recommended for conservatorship. The court may receive the report in evidence and may read and consider the contents thereof in rendering its judgment.

(b) If a criminal court with jurisdiction over the person in a criminal case ordered an evaluation of the person's mental condition pursuant to section 5200, the officer providing conservatorship investigation must also submit a copy of the report to the criminal court.