



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 13, 2013

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Conservatorship Investigator Report for Gravely Disabled Persons	Action Required
Rules, Forms, Standards, or Statutes Affected Amend Welf. & Inst. Code, § 5354	Effective Date December 13, 2013
Recommended by Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Mental Health Issues Implementation Task Force Hon. Richard J. Loftus, Jr., Chair	Date of Report November 15, 2013
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Executive Summary

The Policy Coordination and Liaison Committee (PCLC) and the Mental Health Issues Implementation Task Force (MHIITF) recommend that the Judicial Council sponsor legislation to add a new subdivision to Welfare and Institutions Code section 5354. The new subdivision would require that if a criminal court with jurisdiction orders an evaluation of the defendant's mental condition pursuant to section 5200, and that evaluation leads to a conservatorship investigation, the officer conducting the investigation must submit a copy of the report to the defendant or defendant's attorney who may authorize its release to the criminal court. It would also make the conservatorship report otherwise confidential. This legislation would increase the options available to courts when handling criminal cases involving potentially mentally ill offenders, and improve coordination between the conservatorship court and the criminal court when they have concurrent jurisdiction over a mentally ill individual.

Recommendation

The PCLC and MHIITF recommend that the Judicial Council sponsor legislation to add a new subdivision to Welfare and Institutions Code¹ section 5354 to:

1. Require that when a conservatorship investigation results from a criminal court ordering an evaluation of a defendant's mental condition pursuant to section 5200, the officer conducting the investigation must submit a copy of the report to the defendant or defendant's attorney who may authorize its distribution to the criminal court, prosecution or probation; and
2. Establish limits on the distribution and access to the conservatorship report in instances where it is released to the criminal court and justice partners.

Previous Council Action

There is no relevant previous Judicial Council action to report.

Rationale for Recommendation

California's criminal courts serve a disproportionate number of mentally ill offenders. 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 mental illness.

Former Chief Justice Ronald M. George established the Task Force for Criminal Justice Collaboration on Mental Health Issues (task force) in February 2008. The task force was charged with developing recommendations for policymakers, including the Judicial Council and its advisory committees, to improve system-wide responses to offenders with mental illness. The task force issued its final report in April 2011.

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

In January 2012, Chief Justice Tani G. Cantil-Sakauye appointed the MHIITF to develop a plan to implement the recommendations made in the task force's report. The MHIITF has developed a proposal that will assist criminal courts in ensuring that they are receiving the relevant

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

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.

information when a defendant has a case in the conservatorship court at the same time the criminal matter is pending.

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. The proposed legislation would require that when a conservatorship investigation stems from the criminal court's order for an evaluation of a defendant's mental condition pursuant to section 5200, the officer must also submit a copy of the report to the defendant or defendant's attorney. The defendant or defendant's attorney may then authorize its release to the judicial officer, the district attorney, and the county probation department.

The legislation would also put safeguards in place to help protect a defendant's right to privacy. By allowing for both the criminal and civil courts to 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, expand criminal disposition options, and encourage coordination between the civil courts handling conservatorships for gravely disabled persons and the criminal courts handling cases involving mentally ill offenders.

Comments, Alternatives Considered, and Policy Implications

Public comments

The invitation to comment was circulated from April 19, 2013, through June 19, 2013, to the standard mailing list for criminal, family, and juvenile law proposals. Included on the lists were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other legal professionals. Three comments were received. Two commentators, the San Diego and Los Angeles courts, agreed with the proposal as circulated and did not provide any additional comments. One commentator opposed the proposal.

The Orange County Bar Association opposed the proposal on the basis that it might interfere with the defendant's privacy rights, constitutional right against self-incrimination, and the efficacy of conservatorship investigations in instances where the defendant is afraid to provide information that could compromise the defense in his or her criminal case. When originally circulated, the proposal authorized release of the report to the court and did not specify that the report would be confidential. The MHIITF responded to the concerns raised by the Orange County Bar Association by revising the proposed legislation to require consent of the defendant or defense counsel prior to the conservatorship investigator releasing the report to the criminal court, prosecution or probation. The MHIITF also modified the proposed legislation to clarify that the conservatorship report is confidential and places limits on who may access the report, similar to the statutory protections described in Penal Code section 1203.03 that regulate dissemination of diagnostic reports prepared by the California Department of Corrections and Rehabilitation.

A chart with all comments received and the committee's responses is attached at page 7.

Committee comments

After the comment period, the Criminal Law Advisory Committee (CLAC) provided feedback on the proposed legislation and raised concerns similar to those articulated by the Orange County Bar Association, noting that there are limitations on the information received by criminal courts during the pendency of the criminal proceeding. CLAC also noted that, unlike conservatorship proceedings, most records in a criminal case are public and expressed concerns about the propriety of making the reports available to the prosecution without requiring the defendant's consent.

As noted above, the MHIITF has addressed these concerns by revising the proposed legislation to require consent of the defendant or defense counsel prior to the conservatorship investigator releasing the report to the criminal court, prosecution or probation, and by modifying the proposed legislation to clarify that the conservatorship report is confidential, and limiting its access in a manner similar to the statutory protections for reports relating to diagnosis and treatment services for individuals sentenced to state prison. (Pen. Code § 1203.03.) CLAC withdrew its objection to the proposal after these amendments were made, noting that it would be incumbent on individual courts to develop a tickler system or local protocol in order to ensure that parties mandated to return the reports to the court file for sealing are compliant.

A chart with all comments received and the committee's responses is attached at page 7.

Alternative actions considered and policy implications

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

Implementation Requirements, Costs, and Operational Impacts

The PCLC and MHIITF are proposing this legislation because it has concluded that its adoption would reduce, not increase, costs incurred by courts and justice system partners. This would be accomplished by helping to ensure that courts hearing cases involving mentally ill offenders

have the necessary information for appropriate resolution of the criminal case, thereby reducing the likelihood of conflicting orders between the criminal and civil courts. Because the confidentiality safeguards for handling the conservatorship investigation reports recognize the implementation of such protocols already in place for diagnostic reports from the California Department of Corrections and Rehabilitation—and would only be used in those limited instances where the defense has authorized the report’s distribution to the court—the administrative burden should be minimal.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed legislative amendments support the policies underlying Goal I, Access, Fairness, and Diversity. Specifically, these revisions support Goal I, policy 4, which provides that the Judicial Branch should “work to achieve procedural fairness in all types of cases.” The proposed legislative amendments also support the policies of Goal IV, Quality of Justice and Service to the Public. Specifically, these rules support policies 3 and 4, which provide that the Judicial Branch should “provide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes”; and “promote the use of innovative and effective problem-solving programs and practices that are consistent with and support the mission of the judicial branch.”

Attachments

1. Proposed amendments to Welfare and Institutions Code section 5354, at page 6
2. Chart of comments, LEG13-04, at page 7

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

1 Section 5354.

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

18
19 (b) When a court with jurisdiction over a person in a criminal case orders an evaluation of the
20 person's mental condition pursuant to section 5200, the officer providing the conservatorship
21 investigation shall serve the report required under subdivision (a) upon the defendant or the
22 defendant's counsel. Upon request of the defendant or defendant's counsel, the officer providing
23 the conservatorship investigation shall also submit a copy of the report to the court hearing the
24 criminal case, the district attorney, and the county probation department. The conservatorship
25 investigation report and the information contained therein, shall be kept confidential and shall
26 not be disclosed to anyone without the prior written consent of the defendant. After disposition
27 of the criminal case, the court must place all copies of the report in a sealed file, except that: (1)
28 the defendant or defendant's counsel may retain their copy, and (2) if the defendant is placed on
29 probation by the court, the county probation department may retain a copy of the report for the
30 purpose of supervision of the defendant until probation is terminated, at which time the probation
31 department must return the copy to the court for placement in the sealed file.

LEG13-04**Conservatorship for Gravely Disabled Persons: Conservatorship Investigator Report**

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By Wayne R. Gross President Newport Beach, California	N	This Proposed Legislation would effectively compromise the Constitutional rights of the vulnerable while at the same time, have a strong potential to interfere with the efficacy of conservatorship investigations. At this time, such investigations are protected by HIPPA confidentiality and include information that may not otherwise be admissible or accessible to a criminal court. If a defendant on a pending criminal matter understands that his/her mental history may be shared with the criminal courts, the efficacy of the conservatorship investigation may be hampered/compromised by the specter of the misuse of such sensitive information. It puts criminal defense counsel and counsel for the potential conservatee in a position of having to weigh potentially conflicting interests (including the 5 th Amendment right against self-incrimination) which may result in advice to the client to not openly cooperate in the investigation for fear of compromising the client's position and rights in the criminal proceedings.	The MHIITF revised the proposed legislation to require consent of the defendant or defense council prior to the conservatorship investigator releasing the report to the criminal court, prosecution or probation. The MHIITF also modified the proposed legislation to clarify that the conservatorship report is confidential and placed limits on its access similar to the statutory protections described in Penal Code section 1203.03, which regulate dissemination of diagnostic reports prepared by the California Department of Corrections.
2.	Superior Court of Los Angeles County Los Angeles, California	A	No additional comment.	No response required.
3.	Superior Court of San Diego County By Mike Roddy Executive Officer San Diego, California	A	No additional comment.	No response required.