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Getting the Full Report on Proposed Conservators

Alanna Lungren

Code Section Affected

Penal Code § 11105 (amended).

SB 340 (Ackerman); 2007 STAT. Ch. 581.

I. INTRODUCTION

The American legal feature of guardianship dates back to colonial Massachusetts. In 1641, state law permitted Massachusetts to exercise its *parens patriae* power and appoint individuals to oversee the affairs of a minor, an insane citizen, or an incompetent person.¹ Modernly, the office of the public guardian in each California county, along with other county departments, provides guardians and conservators for people and estates as permitted by the Probate Code and the Welfare and Institutions Code.² The power to appoint an individual to oversee the affairs of a minor or a dependent adult remains within a superior court or probate court's discretion, and those appointed are subjected to the court's regulatory power and control.³ Guardians and conservators take care of the most vulnerable in society and, because of this, should be subject to a thorough investigation before appointed.⁴ According to supporters of Chapter 581, a complete evaluation

1. Lawrence M. Friedman, Joanna L. Grossman & Chris Guthrie, *Guardians: A Research Note*, 40 AM. J. LEGAL HIST. 146, 146 & n.2 (1996); *see also* Cal. State Ass'n of Counties, County Offices: Public Guardian-Conservator-Administrator, www.csac.counties.org/default.asp?id=141 (last visited Mar. 1, 2008) [hereinafter Cal. State Ass'n of Counties] (on file with the *McGeorge Law Review*).

The Public Guardian-Conservator serves as conservator of a person and/or estate of individuals needing protective intervention. The two types of conservatorship, Lanterman-Petris-Short (LPS) and probate, can only be established by order of the superior court. As probate conservator, Public Guardians are involved in all aspects of their clients' lives, including financial management, housing, medical care, placement, and advocacy. As LPS conservator, Public Conservators are responsible for directing the mental health treatment and placement of their clients.

Id.

2. *See generally* Cal. State Ass'n of Counties, *supra* note 1 ("The services of the Public Guardian may be provided through a separate county department, an elected official, or incorporated into a larger department such as health or human services. Public Conservator services are oftentimes provided by the Public Guardian, but the responsibilities may be shared with mental health departments.").

3. CAL. PROB. CODE § 2102 (West 2002).

4. *See* SENATE FLOOR, COMMITTEE ANALYSIS of SB 340, at 4-5 (Sept. 8, 2007).

The Public Guardian's Office is charged with the responsibility to oversee the LPS conservatorship for the most vulnerable of our society. The LPS conservatorship provides for the care and treatment of persons who are deemed 'gravely disabled' due to severe mental health issues.

. . . Unlike probate conservators, the Public Guardian's Office does not have the authority to obtain criminal history information on proposed conservators, such as criminal records for theft, abuse or narcotics activity.

Id.

of a proposed guardian or conservator's suitability is more likely when an investigator has direct access to criminal history information.⁵

II. BACKGROUND

A. Probate and Lanterman-Petris-Short Act Conservatorships

Guardians and conservators appointed under the Probate Code may serve as a fiduciary to the minor or ward,⁶ not only overseeing the estate of the minor, but also the person.⁷ The court appoints conservators or guardians for those who "are, by definition, unable to provide for their basic care needs and are particularly vulnerable to abuse."⁸

Probate conservatorship is a private professional industry, and California requires conservators to register with the state.⁹ Registration as a professional conservator in California simply requires a few hundred dollars and a felony-free criminal record.¹⁰ Conservatorships permitted under the Lanterman-Petris-Short (LPS) Act and pursuant to the Welfare and Institutions Code may be appointed by the court for gravely disabled adults or minors,¹¹ or if a probate conservator has been previously appointed, the court may appoint the existing conservator.¹²

The LPS Act's objective in the appointment of conservators for gravely disabled persons is to provide "individualized treatment, supervision, and placement."¹³ In advance of the judicial appointment of a conservator under the Welfare and Institutions Code, prior law did not permit court investigators searching for information on proposed conservators to directly access their California criminal history information.¹⁴ This restriction was "unlike probate

5. See *id.* at 5 ("Senate Bill 340 [Chapter 581] will authorize the Public Guardian [sic] the ability to receive background information such as drug arrests, or other criminal behavior on the proposed conservator. This information is vita[l] to the Court when making a decision on the recommended conservators.").

6. CAL. PROB. CODE § 2101 (West 2002).

7. See CAL. WELF. & INST. CODE § 5350 (West 1998 & Supp. 2007) ("A conservator of the person, of the estate, or of the person and the estate may be appointed for any person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism."); CAL. PROB. CODE § 2101 ("The relationship of guardian and ward and of conservator and conservatee is a fiduciary relationship that is governed by the law of trusts, except as provided in this division.").

8. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 340, at 5 (Sept. 8, 2007).

9. See Jack Leonard, *Gov. Opposes Bill Licensing Conservators*, L.A. TIMES, Aug. 5, 2006, at B1.

10. See *id.* ("Conservators are appointed by probate courts but otherwise face less state regulation than Seeing Eye dog trainers and hairdressers. Anyone without a felony conviction who pays a \$385 state registration fee can go into the business.").

11. CAL. WELF. & INST. CODE § 5350 (West 1998 & Supp. 2007).

12. *Id.* § 5350(b)-(c).

13. *Id.* § 5350.1 (West 1998); see also *id.* § 5008(h)(1)(A) (West 1998) (defining the term "gravely disabled" to include "[a] condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter").

14. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 340, at 1-2 (July 11, 2007).

conservators, [in that] the Public Guardian's Office does not have the authority to obtain criminal history information on proposed conservators, such as criminal records for theft, abuse or narcotics activity."¹⁵

B. Existing Law Permitting Access to Criminal Histories

Under existing law, the Attorney General provides certain agencies and officers direct access to state summary criminal history information.¹⁶ The information gathered from a criminal history check includes a person's identification information, photographs and date of arrests, booking numbers and charges, convictions, and other documented information.¹⁷ Although courts have direct access to this criminal history information themselves, the court investigators working to collect relevant information on the proposed guardians or conservators are only able to receive this information indirectly.¹⁸

In response to reported instances of abuse and neglect of conservatees, the Judicial Council of California formed a Probate Conservatorship Task Force to improve the practices and administration of probate conservatorships.¹⁹ Supporters of Chapter 581 believe that more diligent and informed investigations in connection with probate conservatorships and of proposed LPS conservators will assist the court in appointing appropriate individuals to take care of the most vulnerable citizens in California's communities.²⁰

III. CHAPTER 581

Chapter 581 expands the list of agencies the Attorney General must furnish with state summary criminal history information.²¹ For example, Chapter 581

15. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 340, at 5 (Sept. 8, 2007).

16. See CAL. PENAL CODE § 11105(b)-(c) (West 2000 & Supp. 2007). Two subdivisions of the statute address when the Attorney General is required to or may release state summary criminal history information. One subdivision requires the Attorney General to provide state summary criminal history information to certain agencies. See *id.* § 11105(b) (stating that "[t]he Attorney General shall furnish state summary criminal history information" to the listed individuals and entities). The other subdivision gives the Attorney General discretion to provide such information to certain other agencies upon a showing of a "compelling need." See *id.* § 11105(c) (stating that "[t]he Attorney General may furnish state summary criminal history information . . . upon a showing of a compelling need" to the listed individuals and entities).

17. *Id.* § 11105(a).

18. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 340, at 1-2 (July 11, 2007).

19. See Cal. Courts, Probate Conservatorship Task Force, <http://www.courtinfo.ca.gov/jc/tflists/probcons-about.htm> (last visited Sept. 24, 2007) (on file with the *McGeorge Law Review*) (outlining the duties of the Probate Conservatorship Task Force).

20. See Letter from Daniel A. Pone, Senior Attorney, Jud. Council of Cal., to Senator Dick Ackerman, Cal. State Senate (Apr. 2, 2007) [hereinafter Pone Letter] (on file with the *McGeorge Law Review*) (discussing the importance of access to criminal history information in all conservatorship and guardianship cases).

21. See CAL. PENAL CODE § 11105(b)(19)-(21) (amended by Chapter 581) (including "[a]n officer providing conservatorship investigations pursuant to" specified sections of the Welfare and Institutions Code,

allows court investigators evaluating proposed conservators for the gravely disabled under the LPS Act to have direct access to state summary criminal history information.²² In addition, officers conducting court investigations in connection with probate conservatorships and guardianships are entitled to access state summary criminal history information.²³ Further, Chapter 581 expands this access “to a probation officer, domestic relations officer, other agency designated to investigate potential dependency cases, or court investigator providing investigative services in guardianship proceedings relating to a minor child.”²⁴

IV. ANALYSIS

The Judicial Council of California formed a Probate Conservatorship Task Force and included in their preliminary recommendations the need for court investigators to have direct access to the Department of Justice’s criminal history reports.²⁵ The Judicial Council of California, the policymaking body of California courts,²⁶ stated in letters supporting Chapter 581 that “access to criminal history information is just as important in probate guardianship and conservatorship cases, so that the courts will know whether the proposed guardians and conservators are fit to serve in this critical role.”²⁷

“[a] court investigator providing investigations or reviews in conservatorships pursuant to” specified sections of the Probate Code, and “[a] person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code” in the subdivision requiring the Attorney General to furnish summary criminal history information); *see also* SENATE FLOOR, COMMITTEE ANALYSIS OF SB 340, at 2-4 (Sept. 8, 2007) (explaining existing law and the changes that SB 340 (Chapter 581) makes). Chapter 581 also requires the Attorney General to furnish state summary criminal history information to “[c]ity attorneys pursuing civil gang injunctions . . . or drug abatement actions.” CAL. PENAL CODE § 11105(b)(5) (amended by Chapter 581). For more information on the recent amendment allowing city attorneys to pursue civil gang injunctions, *see* Philip Lee, *Chapter 34: Hitting Criminal Street Gangs Where it Hurts—Their Wallets*, 39 MCGEORGE L. REV. 577 (2008).

22. CAL. PENAL CODE § 11105(b)(19) (amended by Chapter 581); ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 340, at 1 (July 11, 2007).

23. CAL. PENAL CODE § 11105(b)(20)-(21) (amended by Chapter 581); SENATE FLOOR, COMMITTEE ANALYSIS OF SB 340, at 4 (Sept. 8, 2007).

24. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 340, at 4 (Sept. 8, 2007); *see also* CAL. PENAL CODE § 11105(b)(21) (amended by Chapter 581) (requiring the Attorney General to release criminal history information to “[a] person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code”); CAL. PROB. CODE § 1513 (West 2002) (“[A] court investigator, probation officer, or domestic relations investigator may make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate.”).

25. Pone Letter, *supra* note 20; *see also* PROB. CONSERVATORSHIP TASK FORCE, JUD. COUNCIL OF CAL., FINAL REPORT OF THE PROBATE CONSERVATORSHIP TASK FORCE 27 (2007), <http://www.courtinfo.ca.gov/jc/documents/reports/102607itemD.pdf> (on file with the *McGeorge Law Review*) (stating, in the final report, that “[j]udges should be provided with criminal and credit background checks before appointment of either a professional or nonprofessional conservator”).

26. Judicial Council of California, <http://www.courtinfo.ca.gov/jc/index.htm> (last visited Jan. 1, 2008) (on file with *McGeorge Law Review*). *See generally* About the Judicial Council, <http://www.courtinfo.ca.gov/jc/about.htm> (last visited Jan. 1, 2008) (on file with *McGeorge Law Review*) (“The [Judicial Council of California] is responsible for improving the statewide administration of justice . . .”).

27. Pone Letter, *supra* note 20.

Chapter 581 expands the list of agencies entitled to receive state summary criminal history information from the Department of Justice.²⁸ Through this direct access, the reports submitted by the investigators to the court will include any relevant criminal history, “such as criminal records for theft, abuse or narcotics activity,”²⁹ that the court should consider when deciding whether to appoint the proposed person as either a fiduciary or personal guardian for a ward, or a conservator over the gravely disabled.³⁰

Supporters believe that greater protection of those who are conserved, in terms of more thorough investigations of their proposed conservators, is critical.³¹ By definition, those determined gravely disabled due to mental illnesses, such as schizophrenia, can be vulnerable to abuse.³² Supporters believe that Chapter 581 is one way to ensure their safety and promote the goals of conservatorships.³³ Notably, no organization opposed Chapter 581.³⁴

V. CONCLUSION

Prior to Chapter 581, court investigators evaluating proposed LPS conservators for the gravely disabled did not have direct access to the proposed conservator’s criminal history information.³⁵ Because LPS conservatees are vulnerable to abuse by the very nature of their condition, it is vital that courts are fully informed as to the criminal history, if any, of a proposed conservator.³⁶ With

28. See CAL. PENAL CODE § 11105(b)(19)-(21) (amended by Chapter 581) (including “[a]n officer providing conservatorship investigations pursuant to” specified sections of the Welfare and Institutions Code, “[a] court investigator providing investigations or reviews in conservatorships pursuant to” specified sections of the Probate Code, and “[a] person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code” in the subdivision requiring the Attorney General to furnish summary criminal history information); see also ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 340, at 4 (June 19, 2007) (discussing the Judicial Council of California’s support of SB 340 (Chapter 581) allowing direct criminal history access for agencies that investigate proposed conservators).

29. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 340, at 5 (Sept. 8, 2007).

30. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 340, at 1-2 (July 11, 2007).

31. See *Pone Letter*, *supra* note 20 (discussing the importance of access to criminal history information in all conservatorship and guardianship cases and emphasizing the importance of appointing appropriate people as conservators).

32. See generally ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 340, at 2 (July 11, 2007) (“Persons subject to guardianships and conservatorships, are, by definition, unable to provide for their basic care needs and are particularly vulnerable to abuse.”); see also CAL. WELF. & INST. CODE § 5008 (h)(1)(A) (defining the term “gravely disabled” to include “[a] condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter”).

33. See *Pone Letter*, *supra* note 20 (discussing the importance of access to criminal history information in all conservatorship and guardianship cases).

34. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 340, at 4 (Sept. 8, 2007).

35. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 340, at 1-2 (July 11, 2007) (explaining that, under prior law, the courts could access criminal history information directly, but investigators of proposed conservators could not).

36. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 340, at 4-5 (Sept. 8, 2007).

Chapter 581, the court is in a better position to appoint the appropriate person to care for the vulnerable dependent adult or child and preserve the goal of such a conservatorship.³⁷

37. See *Pone Letter*, *supra* note 20 (discussing the importance of access to criminal history information in all conservatorship and guardianship cases); see also CAL. WELF. & INST. CODE § 5001 (West 1998) (explaining that the LPS Act “shall be construed to promote the legislature’s intent,” “[t]o provide individualized treatment, supervision, and placement services by a conservatorship program for gravely disabled persons” and “[t]o protect mentally disordered persons and developmentally disabled persons from criminal acts”).