

Memorandum 2013-16

Technical and Minor Substantive Statutory Corrections

In the course of its work on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”), the staff identified some obsolete cross-references in Probate Code Section 2356.5. The Commission requested that the staff prepare a tentative recommendation addressing those technical errors, when time permitted. Minutes (Oct. 2012), p. 6; *see also* Memorandum 2012-45, p. 35; Minutes (Dec. 2012), p. 2; Memorandum 2012-43, p. 5.

The attached draft of a tentative recommendation proposes to correct the erroneous cross-references in Probate Code Section 2356.5. The draft would also address a handful of other technical and minor substantive problems in several different codes.

Staff Notes (~~is~~ **Staff Note**) in the draft present a few issues for the Commission to decide. If a Commissioner or member of the public has additional concerns relating to the draft, please raise them at the upcoming meeting, or by submitting a written comment before the meeting.

After resolving the issues that are raised, **the Commission needs to decide whether to approve the draft as a tentative recommendation (as is, or with revisions) to post to its website and circulate for comment.**

Respectfully submitted,

Kristin Burford
Staff Counsel

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Technical and Minor Substantive Statutory Corrections

April 2013

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation proposes technical corrections to address outdated or erroneous references and numbering defects in the Evidence, Health & Safety, Penal, Probate, and Welfare & Institutions Codes. Specifically, the revisions contained in this recommendation address:

- (1) Consistency in treatment of privileged communications.
- (2) Correction of gender-specific language.
- (3) Correction of an incorrect cross-reference.
- (4) Correction of obsolete cross-references.
- (5) Consistency in treatment of spouses and domestic partners.
- (6) Revision of numbering consistent with statutory conventions.
- (7) Deletion of obsolete provisions.

This recommendation was prepared pursuant to Government Code Section 8298.

MISCELLANEOUS TECHNICAL CORRECTIONS

1 The Law Revision Commission recommends minor technical corrections to
2 several code sections to address defects the Commission has found in the course of
3 its studies. A brief explanation of the proposed changes is provided below.

4 **Consistency in Treatment of Privileged Communications**

5 In 2005, California added the human trafficking caseworker-victim privilege to
6 the Evidence Code.¹ Before the addition of this privilege, California had enacted a
7 few code sections that provide general standards and protections for privileged
8 relationship-based communications. These code sections include Evidence Code
9 Sections 912 and 917 and Penal Code Section 11163.3. Each of these sections
10 applies to a list of relationship-based privileged communications, including the
11 lawyer-client, physician-patient, psychotherapist-patient, clergy-penitent, husband-
12 wife, sexual assault counselor-victim, and domestic violence counselor-victim
13 relationships. The list of privileged communications includes all of the
14 relationship-based privileged communications in the Evidence Code,² with one
15 exception. When the human trafficking caseworker-victim privilege was added to
16 the Evidence Code in 2005, none of these sections was amended to include that
17 privilege. However, with respect to the matters covered by these sections, it
18 appears that the same policy justifications regarding the preservation of
19 confidentiality would apply to all of the relationship-based privileges, including
20 the human trafficking caseworker-victim privilege.

21 Therefore, the Commission recommends adding the human trafficking
22 caseworker-victim privilege to the list of privileges in Evidence Code Sections
23 912 and 917 and Penal Code Section 11163.3.

24 **Correction of Gender-Specific Language**

25 Evidence Code 912 characterizes Evidence Code Section 1034 as the “privilege
26 of clergyman.” This reference is outdated as Section 1034 is now the privilege of
27 clergy, in recognition that both males and females serve as clergy.³ The
28 Commission recommends that Section 912 be amended to characterize Section
29 1034 as the “privilege of clergy.”

1. 2005 Cal. Stat. ch. 240 (AB 22 (Lieber, Liu & Kuehl)).

2. See Evid. Code §§ 930-1063.

3. Evidence Code Section 1034 was amended in 2002 to make the provision gender-neutral. See 2002 Cal. Stat. ch. 806, § 23 (AB 3027 (Committee on Judiciary)).

1 **Correction of an Incorrect Cross-Reference**

2 Evidence Code Section 1038.2 contains definitions relating to the human
3 trafficking caseworker-victim privilege. Subdivision (a) cross-refers to a definition
4 of “trafficking victim” in “Section 236.1.” But the Evidence Code does not contain
5 a Section 236.1, nor has such a section ever been part of the Evidence Code.
6 Rather, the Legislature appears to have intended to cross-refer to Penal Code
7 Section 236.1, which describes the crime of human trafficking and is cross-
8 referenced in several other code provisions to define “victim of human trafficking”
9 or “trafficking victim.”⁴

10 The Commission recommends amending the cross-reference in Evidence Code
11 Section 1038.2, so that it correctly refers to Penal Code Section 236.1.

12 **Correction of Obsolete Cross-References**

13 A few code sections refer to Article 6.5 of the Health and Safety Code or
14 sections contained therein. Article 6.5 was originally added to the Health and
15 Safety Code in 1989.⁵ It created a pilot program “to determine the appropriateness
16 of generally allowing locked or secured perimeters in all such facilities which care
17 for persons with dementia.”⁶ Originally, this article was set to expire by its own
18 terms on January 1, 1994.⁷ The Legislature later extended the pilot program and
19 amended the provision regarding the statute’s expiration.⁸ The statute was repealed
20 by its own terms on January 1, 1998.⁹

21 Due to this repeal, the Commission recommends (1) deletion of the reference to
22 Article 6.5 in Health and Safety Code Section 1569.698, and (2) deletion of the
23 reference to Health and Safety Code Section 1569.691 (part of Article 6.5) in
24 Probate Code Section 2356.5.

25 Also, Probate Code Section 2356.5 contains an outdated reference to the
26 California Code of Regulations. This section refers to a residential care facility for
27 the elderly that “has a care plan that meets the requirements of Section 87724 of
28 Title 22 of the California Code of Regulations.” Title 22 of the California Code of
29 Regulations has been reorganized since the above-quoted text was enacted.¹⁰ The
30 material formerly codified at Section 87724 is now codified at Section 87705.

4. See, e.g., Civ. Code § 52.5(a), Penal Code § 236.5.

5. 1989 Cal. Stat. ch. 1372, § 1 (SB 481 (Mello)).

6. *Id.* (former Health & Safety Code § 1569.69(g)).

7. *Id.* (former Health & Safety Code § 1569.697).

8. See 1993 Cal. Stat. ch. 702, § 5 (SB 420 (Mello)); 1995 Cal. Stat. ch. 550, § 1 (SB 732 (Mello)).

9. See 1995 Cal. Stat. ch. 550, § 1 (former Health & Safety Code § 1569.697).

10. Probate Code Section 2356.5 was adopted in 1996. See 1996 Cal. Stat. ch. 910, § 1 (SB 1481 (Mello)). Section 87724 of Title 22 of the California Code of Regulations was renumbered in 2008. See Regulatory Notice Register 2008, No. 11-Z, p. 387 (Mar. 14, 2008).

1 Thus, the Commission recommends amending the regulatory reference
2 accordingly.

3 **Consistency in Treatment of Spouses and Domestic Partners**

4 Probate Code Section 1811 relates to nomination of a proposed conservator, and
5 Probate Code Section 1812 specifies the order of preference for appointment of a
6 conservator. These provisions were amended in 2001 to provide guidance on how
7 to treat a domestic partner in the conservatorship selection process. Section 1811
8 now includes a domestic partner in the list of relatives who are authorized to
9 nominate a conservator.¹¹ Similarly, Section 1812 expressly refers to a domestic
10 partner and a person nominated by a domestic partner in the hierarchy for
11 appointment of a conservator.¹²

12 The 2001 amendments to Sections 1811 and 1812 generally accord domestic
13 partners the same treatment as spouses for the purposes of conservatorship
14 nominations and order of preference. However, these sections do not currently
15 place the same limitations on spouses and domestic partners when steps have been
16 taken to terminate the relationship. Sections 1811 and 1812 both cross-refer to
17 Section 1813, which imposes restrictions when a spouse seeks divorce or legal
18 separation. However, Sections 1811 and 1812 do not cross-refer to Section 1813.1,
19 which imposes comparable restrictions when a domestic partner is seeking
20 termination of the partnership.

21 Arguably, domestic partners are effectively subject to such restrictions even
22 without the statutory reference. California law provides that “[r]egistered domestic
23 partners shall have the same rights, protections, and benefits, and shall be subject
24 to the same responsibilities, obligations, and duties under law, whether they derive
25 from statutes, administrative regulations, court rules, government policies,
26 common law, or any other provisions or sources of law, as are granted to and
27 imposed upon spouses.”¹³

28 Given the explicit language of Section 1813.1 applying restrictions to domestic
29 partners that are analogous to Section 1813’s spousal restrictions, a cross-
30 reference to Section 1813.1 would be consistent with existing law and provide
31 additional clarity.

32 Thus, the Commission recommends amending Sections 1811 and 1812 to cross-
33 refer to Section 1813.1.

11. See 2001 Cal. Stat. ch. 893, § 15 (AB 25 (Migden)).

12. See 2001 Cal. Stat. ch. 893, § 16 (AB 25 (Migden)).

13. Fam. Code § 297.5.

1 **Revision of Numbering Consistent with Statutory Conventions**

2 Subdivision (a) of Probate Code Section 1813 includes an unnumbered
3 paragraph. The Commission recommends adding paragraph numbers to this
4 subdivision to comply with statutory drafting conventions and facilitate reference
5 to its substance.

6 **Deletion of Obsolete Provisions**

7 In the course of its work, the Commission found some provisions that are
8 obsolete. Specifically, the Commission recommends that Probate Code Section
9 2356.5(*l*) and Chapter 4.2 of Part 2 of Division 9 of the Welfare and Institutions
10 Code be repealed.

11 Probate Code Section 2356.5 restricts placement of a conservatee with dementia
12 in a secured perimeter residential care facility for the elderly, and administration
13 of dementia medications to such a conservatee. Subdivision (*l*) of that section is a
14 transitional provision, which specifies when a conservatorship will become subject
15 to these dementia restrictions.

16 According to the terms of subdivision (*l*), if a conservatorship was established
17 after the Judicial Council adopted forms to implement the dementia restrictions, or
18 on or after January 1, 1998, the conservatorship would become subject to the
19 dementia restrictions no later than January 1, 1998, or the date on which the
20 conservatorship was established.¹⁴ If a conservatorship was established before the
21 Judicial Council adopted forms to implement the dementia restrictions, or before
22 January 1, 1998, it would become subject to the dementia restrictions no later than
23 the first periodic court review of the conservatorship that occurred after January 1,
24 1998.¹⁵ Probate Code Section 1850 allows for a maximum of two years to elapse
25 between court reviews of a conservatorship. Thus, within two years of January 1,
26 1998, every conservatorship in existence would have become subject to the
27 dementia restrictions. Therefore, the transitional provision is no longer necessary
28 and the Commission recommends deletion of subdivision (*l*).

29 Chapter 4.2 of Part 2 of Division 9 of the Welfare and Institutions Code
30 established a demonstration project for direct payment of rental assistance in Kern
31 County. This chapter was enacted in 1997.¹⁶ Section 10831 provides that “[t]he
32 demonstration project shall operate for not more than a period of three years.”
33 Because more than a decade has elapsed since enactment of the chapter
34 establishing this demonstration project, the Commission recommends that the
35 chapter be repealed.

13. Prob. Code § 2356.5(*l*)(2).

14. Prob. Code § 2356.5(*l*)(1).

15. 1997 Cal. Stat. ch. 627, § 2 (AB 2 (Ashburn)).

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PROPOSED LEGISLATION

EVIDENCE CODE

1 **Evid. Code § 912 (amended). Waiver of privilege**

2 SEC. ____ . Section 912 of the Evidence Code is amended to read:

3 912. (a) Except as otherwise provided in this section, the right of any person to
4 claim a privilege provided by Section 954 (lawyer-client privilege), 980 (privilege
5 for confidential marital communications), 994 (physician-patient privilege), 1014
6 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of
7 ~~clergyman~~ clergy), 1035.8 (sexual assault counselor-victim privilege), ~~or~~ 1037.5
8 (domestic violence counselor-victim privilege), or 1038 (human trafficking
9 caseworker-victim privilege) is waived with respect to a communication protected
10 by the privilege if any holder of the privilege, without coercion, has disclosed a
11 significant part of the communication or has consented to disclosure made by
12 anyone. Consent to disclosure is manifested by any statement or other conduct of
13 the holder of the privilege indicating consent to the disclosure, including failure to
14 claim the privilege in any proceeding in which the holder has the legal standing
15 and opportunity to claim the privilege.

16 (b) Where two or more persons are joint holders of a privilege provided by
17 Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014
18 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim
19 privilege), ~~or~~ 1037.5 (domestic violence counselor-victim privilege), or 1038
20 (human trafficking caseworker-victim privilege), a waiver of the right of a
21 particular joint holder of the privilege to claim the privilege does not affect the
22 right of another joint holder to claim the privilege. In the case of the privilege
23 provided by Section 980 (privilege for confidential marital communications), a
24 waiver of the right of one spouse to claim the privilege does not affect the right of
25 the other spouse to claim the privilege.

26 (c) A disclosure that is itself privileged is not a waiver of any privilege.

27 (d) A disclosure in confidence of a communication that is protected by a
28 privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient
29 privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault
30 counselor-victim privilege), ~~or~~ 1037.5 (domestic violence counselor-victim
31 privilege), or 1038 (human trafficking caseworker-victim privilege), when
32 disclosure is reasonably necessary for the accomplishment of the purpose for
33 which the lawyer, physician, psychotherapist, sexual assault counselor, ~~or~~
34 domestic violence counselor, or human trafficking caseworker was consulted, is
35 not a waiver of the privilege.

36 **Comment.** Section 912 is amended to reflect the enactment of the human trafficking
37 caseworker-victim privilege. See Sections 1038-1038.2. Section 912 is also amended to make it
38 gender-neutral.

1 **Evid. Code § 917 (amended). Presumption of confidentiality for certain communications**

2 SEC. ____ . Section 917 of the Evidence Code is amended to read:

3 917. (a) If a privilege is claimed on the ground that the matter sought to be
4 disclosed is a communication made in confidence in the course of the lawyer-
5 client, physician-patient, psychotherapist-patient, clergy-penitent, husband-wife,
6 sexual assault counselor-victim, ~~or~~ domestic violence counselor-victim
7 relationship, or human trafficking caseworker-victim, the communication is
8 presumed to have been made in confidence and the opponent of the claim of
9 privilege has the burden of proof to establish that the communication was not
10 confidential.

11 (b) A communication between persons in a relationship listed in subdivision (a)
12 does not lose its privileged character for the sole reason that it is communicated by
13 electronic means or because persons involved in the delivery, facilitation, or
14 storage of electronic communication may have access to the content of the
15 communication.

16 (c) For purposes of this section, “electronic” has the same meaning provided in
17 Section 1633.2 of the Civil Code.

18 **Comment.** Section 917 is amended reflect the enactment of the human trafficking caseworker-
19 victim privilege. See Sections 1038-1038.2.

20 **Evid. Code § 1038.2 (amended). Definitions**

21 SEC. ____ . Section 1038.2 of the Evidence Code is amended to read:

22 1038.2. (a) As used in this article, “victim” means any person who is a
23 “trafficking victim” as defined in Section 236.1 of the Penal Code.

24 (b) As used in this article, “human trafficking caseworker” means any of the
25 following:

26 (1) A person who is employed by any organization providing the programs
27 specified in Section 18294 of the Welfare and Institutions Code, whether
28 financially compensated or not, for the purpose of rendering advice or assistance
29 to victims of human trafficking, who has received specialized training in the
30 counseling of human trafficking victims, and who meets one of the following
31 requirements:

32 (A) Has a master’s degree in counseling or a related field; or has one year of
33 counseling experience, at least six months of which is in the counseling of human
34 trafficking victims.

35 (B) Has at least 40 hours of training as specified in this paragraph and is
36 supervised by an individual who qualifies as a counselor under subparagraph (A),
37 or is a psychotherapist, as defined in Section 1010. The training, supervised by a
38 person qualified under subparagraph (A), shall include, but need not be limited to,
39 the following areas: history of human trafficking, civil and criminal law as it
40 relates to human trafficking, societal attitudes towards human trafficking, peer
41 counseling techniques, housing, public assistance and other financial resources
42 available to meet the financial needs of human trafficking victims, and referral

1 services available to human trafficking victims. A portion of this training must
2 include an explanation of privileged communication.

3 (2) A person who is employed by any organization providing the programs
4 specified in Section 13835.2 of the Penal Code, whether financially compensated
5 or not, for the purpose of counseling and assisting human trafficking victims, and
6 who meets one of the following requirements:

7 (A) Is a psychotherapist as defined in Section 1010, has a master’s degree in
8 counseling or a related field, or has one year of counseling experience, at least six
9 months of which is in rape assault counseling.

10 (B) Has the minimum training for human trafficking counseling required by
11 guidelines established by the employing agency pursuant to subdivision (c) of
12 Section 13835.10 of the Penal Code, and is supervised by an individual who
13 qualifies as a counselor under subparagraph (A). The training, supervised by a
14 person qualified under subparagraph (A), shall include, but not be limited to, law,
15 victimology, counseling techniques, client and system advocacy, and referral
16 services. A portion of this training must include an explanation of privileged
17 communication.

18 (c) As used in this article, “confidential communication” means information
19 transmitted between the victim and the caseworker in the course of their
20 relationship and in confidence by a means which, so far as the victim is aware,
21 discloses the information to no third persons other than those who are present to
22 further the interests of the victim in the consultation or those to whom disclosures
23 are reasonably necessary for the transmission of the information or an
24 accomplishment of the purposes for which the human trafficking counselor is
25 consulted. It includes all information regarding the facts and circumstances
26 involving all incidences of human trafficking.

27 (d) As used in this article, “holder of the privilege” means the victim when he or
28 she has no guardian or conservator, or a guardian or conservator of the victim
29 when the victim has a guardian or conservator.

30 **Comment.** Section 1038.2 is amended to correct an erroneous cross-reference.

31 **HEALTH & SAFETY CODE**

32 **Health & Safety Code § 1569.698 (amended). Building standards for residential care**
33 **facilities for the elderly that care for persons with dementia**

34 SEC. _____. Section 1569.698 of the Health & Safety Code is amended to read:

35 1569.698. (a) The State Fire Marshal has proposed that the State Building
36 Standards Commission adopt building standards to provide for locked and secured
37 perimeters in residential care facilities for the elderly that care for persons with
38 dementia:

39 (1) It is acknowledged that these building standards will not become effective
40 until October 1, 1996.

1 (2) It is the policy of the State Building Standards Commission that building
2 standards be adopted exclusively into the California Building Standards Code and
3 not into state statute.

4 (3) However, in recognition of the immediate need of residential care facilities
5 for the elderly caring for persons with dementia to provide a secured environment,
6 it is the intent of the Legislature that the building standards for locked and secured
7 perimeters proposed by the State Fire Marshal for adoption in the 1994 California
8 Building Standards Code, as set forth in Section 1569.699, be effective upon the
9 date this article becomes operative.

10 (b)(1) Upon the filing of emergency regulations with the Secretary of State
11 pursuant to subdivision (c), a residential care facility for the elderly that cares for
12 people with dementia may utilize secured perimeter fences or locked exit doors, if
13 it meets the requirements for additional safeguards required by those regulations.

14 (2) For the purposes of this article, dementia includes Alzheimer's disease and
15 related disorders diagnosed by a physician, that increases the tendency to wander
16 and that decreases hazard awareness and the ability to communicate.

17 (3) It is the intent of the Legislature in enacting this article that residential care
18 facilities for the elderly have options for the security of persons with dementia
19 who are residents of those facilities that are in addition to existing security
20 exceptions made for individual residents. It is the further intent of the Legislature
21 that these additional options shall include the use of waivers of certain building
22 standards relating to fire safety to be issued by the state department with the
23 approval, of the State Fire Marshal, to permit the care of a target group of persons
24 with dementia by means of secured perimeter fences, or the use of locked exterior
25 doors. Each waiver request shall include a facility plan of operation that addresses
26 elements of care to be identified by the department in regulations and
27 demonstrates the facility's ability to meet the safety needs of persons with
28 dementia.

29 (4) The department shall adopt regulations that ensure that staff for secured
30 perimeter facilities receive appropriate and adequate training in the care of
31 residents with Alzheimer's disease or other related dementia.

32 (5) Nothing in this section is intended to prohibit residential care facilities for
33 the elderly from accepting or retaining persons with dementia whose needs can be
34 fully met using care options permitted by existing law and regulations.

35 (6) It is not the intent of the Legislature to authorize an increase in the level of
36 care provided in a residential care facility for the elderly or to establish a
37 supplemental rate structure based on the services provided in the facility.

38 (7) All admissions to residential care facilities for the elderly shall continue to
39 be voluntary on the part of the resident or with the lawful consent of the resident's
40 legal conservator.

41 (c) The department shall adopt regulations to implement subdivision (b) in
42 accordance with those provisions of the Administrative Procedure Act contained
43 in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2

1 of the Government Code. The initial adoption of any emergency regulations
2 following the effective date of the act amending this section during the 1995–96
3 Regular Legislative Session shall be deemed to be an emergency and necessary for
4 the immediate preservation of the public peace, health and safety, or general
5 welfare. Emergency regulations adopted pursuant to this subdivision shall remain
6 in effect for no more than 180 days.

7 (d) In addition to the security options authorized by subdivision (b), residential
8 care facilities for the elderly that accept or retain as residents persons with
9 dementia, and that choose to utilize the security options of egress-control devices
10 of the time-delay type in addition to secured perimeter fences or locked exit doors,
11 shall comply with Section 1569.699, or regulations adopted by the State Building
12 Standards Commission, whichever is operative.

13 ~~(e) Except as specified in Article 6.5 (commencing with Section 1569.691), no~~
14 No residential care facility for the elderly shall utilize special egress-control
15 devices of the time-delay type, secured perimeter fences, or locked exit doors
16 unless the facility meets the requirements of Section 1569.699 or the Building
17 Standards Commission adopts building standards to implement this section.

18 (f) Any person who is not a conservatee and is entering a locked or secured
19 perimeter facility pursuant to this section, shall sign a statement of voluntary entry.
20 The facility shall retain the original statement and shall send a copy of the
21 statement to the department.

22 **Comment.** Subdivision (e) of Section 1569.698 is amended to delete an obsolete reference to
23 “Article 6.5 (commencing with Section 1569.691).” That article, relating to a pilot program, was
24 repealed by its own terms on January 1, 1998. See 1995 Cal. Stat. ch. 550, § 1.

PENAL CODE

Penal Code § 11163.3 (amended). Establishment authorization, composition requirements, and disclosure requirements for domestic violence interagency death review teams

SEC. ____ . Section 11163.3 of the Penal Code is amended to read:

11163.3. (a) A county may establish an interagency domestic violence death
review team to assist local agencies in identifying and reviewing domestic
violence deaths, including homicides and suicides, and facilitating communication
among the various agencies involved in domestic violence cases. Interagency
domestic violence death review teams have been used successfully to ensure that
incidents of domestic violence and abuse are recognized and that agency
involvement is reviewed to develop recommendations for policies and protocols
for community prevention and intervention initiatives to reduce and eradicate the
incidence of domestic violence.

(b) For purposes of this section, “abuse” has the meaning set forth in Section
6203 of the Family Code and “domestic violence” has the meaning set forth in
Section 6211 of the Family Code.

1 (c) A county may develop a protocol that may be used as a guideline to assist
2 coroners and other persons who perform autopsies on domestic violence victims in
3 the identification of domestic violence, in the determination of whether domestic
4 violence contributed to death or whether domestic violence had occurred prior to
5 death, but was not the actual cause of death, and in the proper written reporting
6 procedures for domestic violence, including the designation of the cause and mode
7 of death.

8 (d) County domestic violence death review teams shall be comprised of, but not
9 limited to, the following:

10 (1) Experts in the field of forensic pathology.

11 (2) Medical personnel with expertise in domestic violence abuse.

12 (3) Coroners and medical examiners.

13 (4) Criminologists.

14 (5) District attorneys and city attorneys.

15 (6) Domestic violence shelter service staff and battered women's advocates.

16 (7) Law enforcement personnel.

17 (8) Representatives of local agencies that are involved with domestic violence
18 abuse reporting.

19 (9) County health department staff who deal with domestic violence victims'
20 health issues.

21 (10) Representatives of local child abuse agencies.

22 (11) Local professional associations of persons described in paragraphs (1) to
23 (10), inclusive.

24 (e) An oral or written communication or a document shared within or produced
25 by a domestic violence death review team related to a domestic violence death
26 review is confidential and not subject to disclosure or discoverable by a third
27 party. An oral or written communication or a document provided by a third party
28 to a domestic violence death review team, or between a third party and a domestic
29 violence death review team, is confidential and not subject to disclosure or
30 discoverable by a third party. Notwithstanding the foregoing, recommendations of
31 a domestic violence death review team upon the completion of a review may be
32 disclosed at the discretion of a majority of the members of the domestic violence
33 death review team.

34 (f) Each organization represented on a domestic violence death review team may
35 share with other members of the team information in its possession concerning the
36 victim who is the subject of the review or any person who was in contact with the
37 victim and any other information deemed by the organization to be pertinent to the
38 review. Any information shared by an organization with other members of a team
39 is confidential. This provision shall permit the disclosure to members of the team
40 of any information deemed confidential, privileged, or prohibited from disclosure
41 by any other statute.

42 (g) Written and oral information may be disclosed to a domestic violence death
43 review team established pursuant to this section. The team may make a request in

1 writing for the information sought and any person with information of the kind
2 described in paragraph (2) of this subdivision may rely on the request in
3 determining whether information may be disclosed to the team.

4 (1) No individual or agency that has information governed by this subdivision
5 shall be required to disclose information. The intent of this subdivision is to allow
6 the voluntary disclosure of information by the individual or agency that has the
7 information.

8 (2) The following information may be disclosed pursuant to this subdivision:

9 (A) Notwithstanding Section 56.10 of the Civil Code, medical information.

10 (B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental
11 health information.

12 (C) Notwithstanding Section 15633.5 of the Welfare and Institutions Code,
13 information from elder abuse reports and investigations, except the identity of
14 persons who have made reports, which shall not be disclosed.

15 (D) Notwithstanding Section 11167.5 of the Penal Code, information from child
16 abuse reports and investigations, except the identity of persons who have made
17 reports, which shall not be disclosed.

18 (E) State summary criminal history information, criminal offender record
19 information, and local summary criminal history information, as defined in
20 Sections 11075, 11105, and 13300 of the Penal Code.

21 (F) Notwithstanding Section 11163.2 of the Penal Code, information pertaining
22 to reports by health practitioners of persons suffering from physical injuries
23 inflicted by means of a firearm or of persons suffering physical injury where the
24 injury is a result of assaultive or abusive conduct, and information relating to
25 whether a physician referred the person to local domestic violence services as
26 recommended by Section 11161 of the Penal Code.

27 (G) Notwithstanding Section 827 of the Welfare and Institutions Code,
28 information in any juvenile court proceeding.

29 (H) Information maintained by the Family Court, including information relating
30 to the Family Conciliation Court Law pursuant to Section 1818 of the Family
31 Code, and Mediation of Custody and Visitation Issues pursuant to Section 3177 of
32 the Family Code.

33 (I) Information provided to probation officers in the course of the performance
34 of their duties, including, but not limited to, the duty to prepare reports pursuant to
35 Section 1203.10 of the Penal Code, as well as the information on which these
36 reports are based.

37 (J) Notwithstanding Section 10825 of the Welfare and Institutions Code, records
38 of in-home supportive services, unless disclosure is prohibited by federal law.

39 (3) The disclosure of written and oral information authorized under this
40 subdivision shall apply notwithstanding Sections 2263, 2918, 4982, and 6068 of
41 the Business and Professions Code, or the lawyer-client privilege protected by
42 Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the
43 Evidence Code, the physician-patient privilege protected by Article 6

1 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code,
2 the psychotherapist-patient privilege protected by Article 7 (commencing with
3 Section 1010) of Chapter 4 of Division 8 of the Evidence Code, the sexual assault
4 counselor-victim privilege protected by Article 8.5 (commencing with Section
5 1035) of Chapter 4 of Division 8 of the Evidence Code, ~~and~~ the domestic violence
6 counselor-victim privilege protected by Article 8.7 (commencing with Section
7 1037) of Chapter 4 of Division 8 of the Evidence Code, and the human trafficking
8 caseworker-victim privilege protected by Article 8.8 (commencing with Section
9 1038) of Chapter 4 of Division 8 of the Evidence Code.

10 **Comment.** Section 11163.3 is amended to include the human trafficking caseworker-victim
11 privilege.

12 **Staff Note.** Subparagraph (g)(2)(J) of Section 11163.3 allows for disclosure of in-home
13 supportive services records notwithstanding Section 10825 of the Welfare and Institutions Code.
14 The cross-reference to Welfare and Institutions Code Section 10825 appears to be erroneous.
15 Welfare and Institutions Code Section 10825 pertains to public social services aid payments and
16 authorizes a county to spread issuance of public assistance warrants over the month. Section
17 10825 does not discuss in-home supportive services, recordkeeping, or confidentiality. Staff
18 suggests that the appropriate cross-reference may be to Welfare and Institutions Code Section
19 10850, which provides for confidentiality of public social services records and establishes
20 violation of such confidentiality as a misdemeanor. **Does the Commission want to replace the**
21 **cross-reference to Welfare and Institutions Code Section 10825 with a cross-reference to**
22 **Welfare and Institutions Code Section 10850, and include a Note encouraging comment on**
23 **whether this revision is correct?**

24 PROBATE CODE

25 **Prob. Code § 1811 (amended). Nomination by spouse, domestic partner, or specified** 26 **relatives of proposed conservatee**

27 SEC. ____ . Section 1811 of the Probate Code is amended to read:

28 1811. (a) Subject to ~~Section~~ Sections 1813 and 1813.1, the spouse, domestic
29 partner, or an adult child, parent, brother, or sister of the proposed conservatee
30 may nominate a conservator in the petition or at the hearing on the petition.

31 (b) Subject to ~~Section~~ Sections 1813 and 1813.1, the spouse, domestic partner,
32 or a parent of the proposed conservatee may nominate a conservator in a writing
33 signed either before or after the petition is filed and that nomination remains
34 effective notwithstanding the subsequent legal incapacity or death of the spouse,
35 domestic partner, or parent.

36 **Comment.** Section 1811 is amended to reflect the addition of Section 1813.1 (specifying
37 conditions for appointment of domestic partner as conservator), which is similar to 1813
38 (specifying conditions for appointment of spouse as conservator).

39 **Prob. Code § 1812 (amended). Order of appointment preference for conservator** 40 **nominations**

41 SEC. ____ . Section 1812 of the Probate Code is amended to read:

1 1812. (a) Subject to Sections ~~1810 and 1813~~ 1810, 1813, and 1813.1, the
2 selection of a conservator of the person or estate, or both, is solely in the discretion
3 of the court and, in making the selection, the court is to be guided by what appears
4 to be for the best interests of the proposed conservatee.

5 (b) Subject to Sections ~~1810 and 1813~~ 1810, 1813, and 1813.1, of persons
6 equally qualified in the opinion of the court to appointment as conservator of the
7 person or estate or both, preference is to be given in the following order:

8 (1) The spouse or domestic partner of the proposed conservatee or the person
9 nominated by the spouse or domestic partner pursuant to Section 1811.

10 (2) An adult child of the proposed conservatee or the person nominated by the
11 child pursuant to Section 1811.

12 (3) A parent of the proposed conservatee or the person nominated by the parent
13 pursuant to Section 1811.

14 (4) A brother or sister of the proposed conservatee or the person nominated by
15 the brother or sister pursuant to Section 1811.

16 (5) Any other person or entity eligible for appointment as a conservator under
17 this code or, if there is no person or entity willing to act as a conservator, under the
18 Welfare and Institutions Code.

19 (c) The preference for any nominee for appointment under paragraphs (2), (3),
20 and (4) of subdivision (b) is subordinate to the preference for any other parent,
21 child, brother, or sister in that class.

22 **Comment.** Section 1812 is amended to reflect the addition of Section 1813.1 (specifying
23 conditions for appointment of domestic partner as conservator), which is similar to 1813
24 (specifying conditions for appointment of spouse as conservator).

25 **Prob. Code § 1813 (amended). Conditions for appointment of spouse as conservator**

26 SEC. ____ . Section 1813 of the Probate Code is amended to read:

27 1813. (a)(1) The spouse of a proposed conservatee may not petition for the
28 appointment of a conservator for a spouse or be appointed as conservator of the
29 person or estate of the proposed conservatee unless the petitioner alleges in the
30 petition for appointment as conservator, and the court finds, that the spouse is not
31 a party to any action or proceeding against the proposed conservatee for legal
32 separation of the parties, dissolution of marriage, or adjudication of nullity of their
33 marriage. However, if the court finds by clear and convincing evidence that the
34 appointment of the spouse, who is a party to an action or proceeding against the
35 proposed conservatee for legal separation of the parties, dissolution of marriage, or
36 adjudication of nullity of their marriage, or has obtained a judgment in any of
37 these proceedings, is in the best interests of the proposed conservatee, the court
38 may appoint the spouse.

39 (2) Prior to making this appointment, the court shall appoint counsel to consult
40 with and advise the conservatee, and to report to the court his or her findings
41 concerning the suitability of appointing the spouse as conservator.

1 (b) The spouse of a conservatee shall disclose to the conservator, or if the spouse
2 is the conservator, shall disclose to the court, the filing of any action or proceeding
3 against the conservatee for legal separation of the parties, dissolution of marriage,
4 or adjudication of nullity of the marriage, within 10 days of the filing of the action
5 or proceeding by filing a notice with the court and serving the notice according to
6 the notice procedures under this title. The court may, upon receipt of the notice,
7 set the matter for hearing on an order to show cause why the appointment of the
8 spouse as conservator, if the spouse is the conservator, should not be terminated
9 and a new conservator appointed by the court.

10 **Comment.** Subdivision (a) of section 1813 is amended to insert paragraph labels.

11 **Prob. Code § 2356.5 (amended). Conservatee with dementia**

12 SEC. ____ . Section 2356.5 of the Probate Code is amended to read:

13 2356.5. (a) The Legislature hereby finds and declares:

14 (1) That people with dementia, as defined in the last published edition of the
15 “Diagnostic and Statistical Manual of Mental Disorders,” should have a
16 conservatorship to serve their unique and special needs.

17 (2) That, by adding powers to the probate conservatorship for people with
18 dementia, their unique and special needs can be met. This will reduce costs to the
19 conservatee and the family of the conservatee, reduce costly administration by
20 state and county government, and safeguard the basic dignity and rights of the
21 conservatee.

22 (3) That it is the intent of the Legislature to recognize that the administration of
23 psychotropic medications has been, and can be, abused by caregivers and,
24 therefore, granting powers to a conservator to authorize these medications for the
25 treatment of dementia requires the protections specified in this section.

26 (b) Notwithstanding any other provision of law, a conservator may authorize the
27 placement of a conservatee in a secured perimeter residential care facility for the
28 elderly operated pursuant to Section 1569.698 of the Health and Safety Code, ~~or a~~
29 ~~locked and secured nursing facility which specializes in the care and treatment of~~
30 ~~people with dementia pursuant to subdivision (c) of Section 1569.691 of the~~
31 ~~Health and Safety Code~~, and which has a care plan that meets the requirements of
32 Section ~~87724~~ 87705 of Title 22 of the California Code of Regulations, upon a
33 court’s finding, by clear and convincing evidence, of all of the following:

34 (1) The conservatee has dementia, as defined in the last published edition of the
35 “Diagnostic and Statistical Manual of Mental Disorders.”

36 (2) The conservatee lacks the capacity to give informed consent to this
37 placement and has at least one mental function deficit pursuant to subdivision (a)
38 of Section 811, and this deficit significantly impairs the person’s ability to
39 understand and appreciate the consequences of his or her actions pursuant to
40 subdivision (b) of Section 811.

1 (3) The conservatee needs or would benefit from a restricted and secure
2 environment, as demonstrated by evidence presented by the physician or
3 psychologist referred to in paragraph (3) of subdivision (f).

4 (4) The court finds that the proposed placement in a locked facility is the least
5 restrictive placement appropriate to the needs of the conservatee.

6 (c) Notwithstanding any other provision of law, a conservator of a person may
7 authorize the administration of medications appropriate for the care and treatment
8 of dementia, upon a court's finding, by clear and convincing evidence, of all of the
9 following:

10 (1) The conservatee has dementia, as defined in the last published edition of the
11 "Diagnostic and Statistical Manual of Mental Disorders."

12 (2) The conservatee lacks the capacity to give informed consent to the
13 administration of medications appropriate to the care of dementia, and has at least
14 one mental function deficit pursuant to subdivision (a) of Section 811, and this
15 deficit or deficits significantly impairs the person's ability to understand and
16 appreciate the consequences of his or her actions pursuant to subdivision (b) of
17 Section 811.

18 (3) The conservatee needs or would benefit from appropriate medication as
19 demonstrated by evidence presented by the physician or psychologist referred to in
20 paragraph (3) of subdivision (f).

21 (d) Pursuant to subdivision (b) of Section 2355, in the case of a person who is an
22 adherent of a religion whose tenets and practices call for a reliance on prayer alone
23 for healing, the treatment required by the conservator under subdivision (c) shall
24 be by an accredited practitioner of that religion in lieu of the administration of
25 medications.

26 (e) A conservatee who is to be placed in a facility pursuant to this section shall
27 not be placed in a mental health rehabilitation center as described in Section 5675
28 of the Welfare and Institutions Code, or in an institution for mental disease as
29 described in Section 5900 of the Welfare and Institutions Code.

30 (f) A petition for authority to act under this section shall be governed by Section
31 2357, except:

32 (1) The conservatee shall be represented by an attorney pursuant to Chapter 4
33 (commencing with Section 1470) of Part 1.

34 (2) The conservatee shall be produced at the hearing, unless excused pursuant to
35 Section 1893.

36 (3) The petition shall be supported by a declaration of a licensed physician, or a
37 licensed psychologist within the scope of his or her licensure, regarding each of
38 the findings required to be made under this section for any power requested,
39 except that the psychologist has at least two years of experience in diagnosing
40 dementia.

41 (4) The petition may be filed by any of the persons designated in Section 1891.

42 (g) The court investigator shall annually investigate and report to the court every
43 two years pursuant to Sections 1850 and 1851 if the conservator is authorized to

1 act under this section. In addition to the other matters provided in Section 1851,
2 the conservatee shall be specifically advised by the investigator that the
3 conservatee has the right to object to the conservator's powers granted under this
4 section, and the report shall also include whether powers granted under this
5 section are warranted. If the conservatee objects to the conservator's powers
6 granted under this section, or the investigator determines that some change in the
7 powers granted under this section is warranted, the court shall provide a copy of
8 the report to the attorney of record for the conservatee. If no attorney has been
9 appointed for the conservatee, one shall be appointed pursuant to Chapter 4
10 (commencing with Section 1470) of Part 1. The attorney shall, within 30 days
11 after receiving this report, do one of the following:

12 (1) File a petition with the court regarding the status of the conservatee.

13 (2) File a written report with the court stating that the attorney has met with the
14 conservatee and determined that the petition would be inappropriate.

15 (h) A petition to terminate authority granted under this section shall be governed
16 by Section 2359.

17 (i) Nothing in this section shall be construed to affect a conservatorship of the
18 estate of a person who has dementia.

19 (j) Nothing in this section shall affect the laws that would otherwise apply in
20 emergency situations.

21 (k) Nothing in this section shall affect current law regarding the power of a
22 probate court to fix the residence of a conservatee or to authorize medical
23 treatment for any conservatee who has not been determined to have dementia.

24 ~~(l)(1) Until such time as the conservatorship becomes subject to review pursuant~~
25 ~~to Section 1850, this section shall not apply to a conservatorship established on or~~
26 ~~before the effective date of the adoption of Judicial Council forms that reflect the~~
27 ~~procedures authorized by this section, or January 1, 1998, whichever occurs first.~~

28 ~~(2) Upon the adoption of Judicial Council forms that reflect the procedures~~
29 ~~authorized by this section or January 1, 1998, whichever occurs first, this section~~
30 ~~shall apply to any conservatorships established after that date.~~

31 **Comment.** Subdivision (b) of Section 2356.5 is amended to delete an obsolete reference to “a
32 locked and secured nursing facility which specializes in the care and treatment of people with
33 dementia pursuant to subdivision (c) of Section 1569.691 of the Health and Safety Code.” Former
34 Health and Safety Code Section 1569.691, relating to a pilot program, was repealed by its own
35 terms on January 1, 1998. See 1995 Cal. Stat. ch. 550, § 1.

36 Subdivision (b) is also amended to update a cross-reference to the California Code of
37 Regulations. The cross-reference is to care plan requirements for a residential care facility for the
38 elderly that houses dementia patients. Those requirements were moved from Section 87724 to
39 87705 of Title 22 of the California Code of Regulations. See Regulatory Notice Register 2008,
40 No. 11-Z, p. 387 (Mar. 14, 2008).

41 Subdivision (l), a transitional provision, is deleted as obsolete.

42 **Staff Note.** Subdivision (h) says that Section 2359 governs a petition to terminate authority
43 granted under Section 2356.5 — i.e., authority to place a conservatee with dementia in a secured
44 perimeter residential care facility for the elderly, or to administer dementia medications to a
45 conservatee. The staff believes this cross-reference might be erroneous.

1 Section 2359 provides:

2 (a) Upon petition of the guardian or conservator or ward or conservatee or other
3 interested person, the court may authorize and instruct the guardian or conservator or
4 approve and confirm the acts of the guardian or conservator.

5 (b) Notice of the hearing on the petition shall be given for the period and in the
6 manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

7 (c)(1) When a guardian or conservator petitions for the approval of a purchase, lease,
8 or rental of real or personal property from the estate of a ward or conservatee, the
9 guardian or conservator shall provide a statement disclosing the family or affiliate
10 relationship between the guardian and conservator and the purchaser, lessee, or renter of
11 the property, and the family or affiliate relationship between the guardian or conservator
12 and any agent hired by the guardian or conservator.

13 (2) For the purposes of this subdivision, “family” means a person’s spouse, domestic
14 partner, or relatives within the second degree of lineal or collateral consanguinity of a
15 person or a person’s spouse. For the purposes of this subdivision, “affiliate” means an
16 entity that is under the direct control, indirect control, or common control of the guardian
17 or conservator.

18 (3) A violation of this section shall result in the rescission of the purchase, lease, or
19 rental of the property. Any losses incurred by the estate of the ward or conservatee
20 because the property was sold or leased at less than fair market value shall be deemed as
21 charges against the guardian or conservator under the provisions of Sections 2401.3 and
22 2401.5. The court shall assess a civil penalty equal to three times the charges against the
23 guardian, conservator, or other person in violation of this section, and may assess
24 punitive damages as it deems proper. If the estate does not incur losses as a result of the
25 violation, the court shall order the guardian, conservator, or other person in violation of
26 this section to pay a fine of up to five thousand dollars (\$5,000) for each violation. The
27 fines and penalties provided in this section are in addition to any other rights and
28 remedies provided by law.

29 The staff is not sure why this provision would apply to a petition to terminate authority granted
30 under Section 2356.5, or what impact the provision would have with regard to such a petition.
31 **Comments on this point would be helpful.**


32 WELFARE & INSTITUTIONS CODE

33 **Welf. & Inst. Code §§ 10830-10833 (repealed). Kern County Vendor Payment**

34 **Demonstration Project**

35 SEC. ____ Chapter 4.2 (commencing with Section 10830) of Part 2 of Division 9
36 of the Welfare and Institutions Code is repealed.

37 **Comment.** Chapter 4.2 (commencing with Section 10830) authorized a demonstration project
38 for direct payment of rental assistance in Kern County. This chapter is repealed as obsolete. See
39 Section 10831(a) (“The demonstration project shall operate for not more than a period of three
40 years.”).

41  **Staff Note.** The text of the repealed chapter is set out below.

42 CHAPTER 4.2. KERN COUNTY VENDOR PAYMENT DEMONSTRATION PROJECT

43 10830. The director may conduct a demonstration project in Kern County, with the approval
44 of the county, pertaining to restricted payments under Chapter 2 (commencing with Section
45 11200) of Part 3.

1 10831. The demonstration project provided for pursuant to this chapter shall meet all of the
2 following requirements:

3 (a) The demonstration project shall operate for not more than a period of three years.

4 (b) A maximum of 2,000 assistance units shall participate in the demonstration project.

5 (c) Notwithstanding Section 11274, the county may make direct rental payments under this
6 chapter without the need for a finding that a recipient has mismanaged funds. In addition, direct
7 rental payments may, notwithstanding Section 11274, be made for a period in excess of 12
8 months.

9 10832. The director shall conduct an evaluation of the demonstration project provided for in
10 this chapter. The evaluation shall measure all of the following:

11 (a) The cost-effectiveness of the demonstration project.

12 (b) The satisfaction of recipients, county staff, and landlords with the demonstration project.

13 (c) Any effect of the demonstration project on the goal of assisting recipients to become self-
14 sufficient.

15 10833. The demonstration project provided for in this chapter shall comply with Article 1
16 (commencing with Section 18230) of Chapter 3.3 of Part 6.