

Memorandum 2013-52

Technical and Minor Substantive Statutory Corrections (Comments on Tentative Recommendation)

At its April 2013 Meeting, the Commission approved a tentative recommendation on *Technical and Minor Substantive Statutory Corrections* (hereafter, "Tentative Recommendation"). In April, the Commission circulated the Tentative Recommendation with a public comment deadline of July 1, 2013.

The Commission has received a comment letter, which is attached in the Exhibit, as follows:

Exhibit p.

- Robert Temmerman, Temmerman, Cilley, & Kohlmann, LLP
(05/02/13) 1

In addition to discussing Mr. Temmerman’s comment, this memorandum discusses items on which the Commission sought specific public comment. **After consideration of this memorandum and the attached staff draft, the Commission will need to decide whether to approve the draft recommendation, with or without changes, as its final recommendation for submission to the Legislature and printing in the Commission’s official reports.**

GENERAL RESPONSE

Robert Temmerman, a trusts and estates practitioner, reviewed all of the proposed changes to the Probate Code included in the Tentative Recommendation. He expressed his agreement with those changes and his appreciation for the Commission’s work on the matter:

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.

I continue to appreciate all the good work done by the Commission and look forward to the Commission's continuing role in improving the Probate Code for trusts and estates practitioners.

See Exhibit p. 3. The staff appreciates Mr. Temmerman's thorough review of the proposed Probate Code revisions.

CONFIDENTIALITY OF IN-HOME SUPPORTIVE SERVICES RECORDS

In the Tentative Recommendation, the Commission proposed to correct an apparently erroneous cross-reference in Penal Code Section 11163.3(g)(2)(J). See attached draft, p. 15. The existing section authorizes the disclosure of certain in-home supportive service records, for specified purposes, "notwithstanding Section 10825 of the Welfare and Institutions Code." The reference to Section 10825 does not make sense, because that section has no apparent connection to the confidentiality or disclosure of such records.

The Tentative Recommendation proposed revising the section to instead refer to Section 10850, which provides for the confidentiality of public social services records and establishes that violation of such confidentiality is a misdemeanor.

The Tentative Recommendation included a Note specifically requesting comment on whether that revision is appropriate. No comments on the matter were received.

Despite the lack of supportive public comment, the staff believes that the proposed revision is correct and recommends that it be included in the final recommendation. Is the Commission comfortable with that approach?

PETITION FOR TERMINATION OF CONSERVATORSHIP DEMENTIA AUTHORITY

Probate Code Section 2356.5 relates to additional powers that a conservator of a conservatee with dementia can request from the court. Specifically, these powers include the authority to place conservatee in a secured facility and the authority to administer dementia medications.

In addition to proposing other technical revisions to this section, the Tentative Recommendation questions the appropriateness of a cross-reference in Section 2356.5(h), which currently provides:

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

Section 2359 is a general provision authorizing a petition for instructions to a conservator, or to approve certain actions of a conservator. It does not expressly address repealing or removing the court-authorized powers of a conservator. A Note following Section 2356.5 requested comment on whether Section 2359 applies to a petition to terminate authority.

Mr. Temmerman notes that he has never in his 33 years of conservatorship practice had occasion to petition to terminate authority in accordance with this provision. “My experience is that once a conservatee has dementia which is severe enough to require secure placement to prevent wandering the dementia condition rarely if ever substantially improves.” See Exhibit p. 2.

Nonetheless, Mr. Temmerman suggests a substitute cross-reference:

A possible more appropriate reference would be to Probate Code Section 2357 which cover[s] court orders authorizing medical treatment. It is possible that in considering a termination of such medical treatment (dementia medications or secure perimeter placement) the legislature might want to have many of the same safeguards as when the court makes an order granting such medical treatment. Probate Code Section 2357 also sets forth proper notice requirements as well as the required evidentiary findings.

Exhibit p. 2.

Mr. Temmerman’s suggestion seems sensible. However, unless we are certain that the Legislature intended to refer to Section 2357, such a change would be too substantive to include in a minor corrections recommendation. Before recommending such a change we would need to solicit broader input from interested persons and groups. **Despite the merits of the suggestion, the staff recommends against including it in the final recommendation. It is beyond the scope of this study.**

As an alternative, Mr. Temmerman suggests:

If the reference to Probate Code Section 2359 was intended, then perhaps it should be just limited to subsections (a) and (b) as the provisions in subsection (c) do not make any sense with respect to a petition to terminate authority for administering dementia medications or placement of a conservatee in a secured facility.

See Exhibit p. 2. Mr. Temmerman’s suggestion makes sense, *if the reference to Probate Code Section 2359 was intended*. Section 2359(c) relates to court approval of certain property transactions and seems to have no relevance to a conservator’s specific powers with regard to a conservatee with dementia.

However, the staff is still uncertain whether the reference to Section 2359 was intended. (We have conducted further legislative history research, but did not find anything useful.) Given that uncertainty, it would be imprudent to re-enact the cross-reference in more limited form. Doing so would likely be seen as affirmation of the correctness of the reference.

In light of the foregoing, the staff recommends against making any change to the cross-reference.

REPEAL OF KERN COUNTY VENDOR PAYMENT DEMONSTRATION PROJECT

Chapter 4.2 of Part 2 of Division 9 of the Welfare and Institutions Code authorized a demonstration project for direct payment of rental assistance in Kern County. Because that chapter was enacted in 1997 and provided for termination of demonstration project authority after three years of operation, it seemed likely that the authority granted in the chapter was obsolete. For that reason, the Tentative Recommendation proposed repealing the chapter.

The staff contacted the Kern County Department of Human Services (“Kern DHS”) to ask if they have any concerns about the proposed repeal. The staff also requested background information about the demonstration project. See Email from Kristin Burford to Dena Murphy, Chief Deputy Director of Kern DHS (May 3, 2013) (on file with the Commission). (Kern DHS is the agency responsible for administering welfare programs in Kern County. See Kern DHS Website, <www.co.kern.ca.us/dhs>. Kern DHS also supported the bill that added the provisions proposed for repeal. See Senate Floor Analysis of AB 2 (Sept. 8, 1997).)

In staff’s email exchange with Kern DHS, Kern DHS indicated that subsequent welfare reforms had obviated the need for the demonstration project. See Email from Cindy Uetz, Assistant Director of Kern DHS to Kristin Burford (May 7, 2013) (on file with the Commission). This confirms that Chapter 4.2 is obsolete and can be repealed. However, our assumption that, due to the passage of significant time, the chapter had become obsolete by its own terms turns out to be erroneous.

Based on this new information, the staff recommends that the proposed revision remain the same, but that the explanation provided in the final recommendation be adjusted. Thus, the description in the preliminary part has been modified to state: “The Commission understands that more recent welfare reform changes have rendered this demonstration project authority obsolete.” In addition, the staff has eliminated the citation and associated parenthetical

explanation in the proposed Comment in light of the new information. The comment is shown below with the deleted text in strikeout:

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

See attached draft recommendation, pp. 5, 20. **Does the Commission have any concerns with these changes?**

NEXT STEPS

The staff is aware of a few pending bills that, if enacted as currently drafted, will make changes to sections that are included in the recommendation. If the staff is aware of any enactments in advance of the October meeting that affect the sections at issue in the attached draft recommendation, we will prepare a supplement to this memorandum showing any necessary changes.

However, the fate of legislation amending the sections addressed in the attached draft recommendation may not be known before the October meeting. If necessary, we will revisit the matter in December.

Subject to those possible future modifications to reflect legislative changes in 2013, does the Commission approve the attached draft as a final recommendation for submission to the Legislature and publication in the Commission’s official reports?

Respectfully submitted,

Kristin Burford
Staff Counsel

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MAY 6 2013

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May 2, 2013

Kristin Burford, Staff Counsel
California Law Revision Commission
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Palo Alto, CA 94303-4739

RE: Tentative Recommendation on Technical and Minor
Substantiative Statutory Corrections

Dear Ms. Burford:

I have received the California Law Revision Commission's request for further comment on the above referenced tentative recommendation. My comments are limited strictly to those contained in the California Probate Code as that is our firm's field of experience.

1. Correction of Obsolete Cross-references:

The Commission's recommendation regarding amending the updated reference to the California Code of Regulations is appropriate. Probate Code Section 2356.5 should refer to Section 87705 of the California Code of Regulations.

2. Consistency in Treatment of Spouses and Domestic Partners:

I agree with the Commission's recommendation to amend Probate Code Section 1811 and 1812 to cross refer to Probate Code Section 1813.1 as explained in the tentative recommendation. It does provide additional clarity and consistency in treatment when steps have been taken to terminate the spousal or domestic partner relationship.

3. Revision of Numbering:

The revision of numbering in Probate Code Section 1813 to add an additional number for an unnumbered paragraph makes good sense.

4. Deletion of Obsolete Provisions contained in Probate Code Section 2356.5 (l):

I agree that the transitional provisions are no longer necessary and accordingly, subsection (l) should be deleted from Probate Code Section 2356.5.

5. Comments on Cross reference contained in Probate Code Section 2356.5:

As stated in the tentative recommendation, Probate Code Section 2356.5 (h) states that if a petition to terminate authority to place a conservatee with dementia in a secured perimeter residential care facility for the elderly, or to administer dementia medications to a conservatee “shall be governed by Section 2359.”

In all of my years of practice in the conservatorship field (33 years), I have not had occasion to prepare such a petition to terminate authority. My experience is that once a conservatee has dementia which is severe enough to require secure placement to prevent wandering the dementia condition rarely if ever substantially improves. Accordingly, I have not had occasion to review the cross reference to Probate Code Section 2359. A possible more appropriate reference would be to Probate Code Section 2357 which cover court orders authorizing medical treatment. It is possible that in considering a termination of such medical treatment (dementia medications or secure perimeter placement) the legislature might want to have many of the same safeguards as when the court makes an order granting such medical treatment. Probate Code Section 2357 also sets forth proper notice requirements as well as the required evidentiary findings.

If the reference to Probate Code Section 2359 was intended, then perhaps it should be just limited to subsections (a) and (b) as the provisions in subsection (c) do not make any sense with respect to a petition to terminate authority for administering dementia medications or placement of a conservatee in a secured facility.

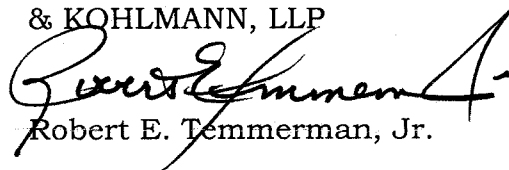
May 2, 2013

Kristin Burford, Staff Counsel

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I continue to appreciate all the good work done by the Commission and look forward to the Commission's continuing role in improving the Probate Code for trusts and estates practitioners.

Sincerely,
TEMMERMAN, CILLEY
& KOHLMANN, LLP

A handwritten signature in black ink, appearing to read "Robert E. Temmerman, Jr.", written over the typed name below.

Robert E. Temmerman, Jr.

(C:\Documents and Settings\gdunson\My Documents\Bob's Personal Folder\2013-05-02 clrc re tentative recommendation.wpd)

#T-100

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Technical and Minor Substantive Statutory
Corrections

October 2013

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

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

1. 2005 Cal. Stat. ch. 240 (AB 22 (Lieber, Liu & Kuehl)); Evid. Code §§ 1038-1038.2.

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 Incorrect Cross-References**

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 Penal Code Section 11163.3(g)(2) contains a list of certain confidential
13 information that may be disclosed to a domestic violence interagency death review
14 team. Subparagraph (g)(2)(J) allows for the disclosure of in-home supportive
15 services records, notwithstanding Section 10825 of the Welfare and Institutions
16 Code, unless disclosure is prohibited by federal law. The cross-reference to
17 Section 10825 appears to be incorrect. Section 10825 does not address
18 confidentiality or in-home supportive services.⁵ The provision should instead refer
19 to Section 10850 of the Welfare and Institutions Code, which provides for the
20 confidentiality of certain records regarding public social services.

21 The Commission recommends that Penal Code Section 11163.3(g)(2)(J) be
22 amended to refer to Welfare and Institutions Code Section 10850.

23 **Correction of Obsolete Cross-References**

24 A few code sections refer to Article 6.5 of the Health and Safety Code or
25 sections contained therein. Article 6.5 was originally added to the Health and
26 Safety Code in 1989.⁶ It created a pilot program “to determine the appropriateness
27 of generally allowing locked or secured perimeters in all such facilities which care
28 for persons with dementia.”⁷ Originally, this article was set to expire by its own
29 terms on January 1, 1994.⁸ The Legislature later extended the pilot program and
30 amended the provision regarding the statute’s expiration.⁹ The statute was repealed
31 by its own terms on January 1, 1998.¹⁰

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

5. Instead, Section 10825 authorizes a county to spread issuance of public assistance warrants over the course of a month.

6. 1989 Cal. Stat. ch. 1372, § 1 (SB 481 (Mello)).

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

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

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

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

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

5 Also, Probate Code Section 2356.5 contains an outdated reference to the
6 California Code of Regulations. This section refers to a residential care facility for
7 the elderly that “has a care plan that meets the requirements of Section 87724 of
8 Title 22 of the California Code of Regulations.” Title 22 of the California Code of
9 Regulations has been reorganized since the above-quoted text was enacted.¹¹ The
10 material formerly codified at Section 87724 is now codified at Section 87705.
11 Thus, the Commission recommends amending the regulatory reference
12 accordingly.

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

14 Probate Code Section 1811 relates to nomination of a proposed conservator, and
15 Probate Code Section 1812 specifies the order of preference for appointment of a
16 conservator. These provisions were amended in 2001 to provide guidance on how
17 to treat a domestic partner in the conservatorship selection process. Section 1811
18 now includes a domestic partner in the list of relatives who are authorized to
19 nominate a conservator.¹² Similarly, Section 1812 expressly refers to a domestic
20 partner and a person nominated by a domestic partner in the hierarchy for
21 appointment of a conservator.¹³

22 The 2001 amendments to Sections 1811 and 1812 generally accord domestic
23 partners the same treatment as spouses for the purposes of conservatorship
24 nominations and order of preference. However, these sections do not currently
25 place the same limitations on spouses and domestic partners when steps have been
26 taken to terminate the relationship. Sections 1811 and 1812 both cross-refer to
27 Section 1813, which imposes restrictions when a spouse seeks divorce or legal
28 separation. However, Sections 1811 and 1812 do not cross-refer to Section 1813.1,
29 which imposes comparable restrictions when a domestic partner is seeking
30 termination of the partnership.

31 Arguably, domestic partners are effectively subject to such restrictions even
32 without the statutory reference. California law provides that “[r]egistered domestic
33 partners shall have the same rights, protections, and benefits, and shall be subject
34 to the same responsibilities, obligations, and duties under law, whether they derive
35 from statutes, administrative regulations, court rules, government policies,

11. 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).

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

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

1 common law, or any other provisions or sources of law, as are granted to and
2 imposed upon spouses.”¹⁴

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

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

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

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

14 **Deletion of Obsolete Provisions**

15 In the course of its work, the Commission found some provisions that are
16 obsolete. Specifically, the Commission recommends that Probate Code Section
17 2356.5(*l*) and Chapter 4.2 of Part 2 of Division 9 of the Welfare and Institutions
18 Code be repealed.

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

24 According to the terms of subdivision (*l*), if a conservatorship was established
25 after the Judicial Council adopted forms to implement the dementia restrictions, or
26 on or after January 1, 1998, the conservatorship would become subject to the
27 dementia restrictions no later than January 1, 1998, or the date on which the
28 conservatorship was established.¹⁵ If a conservatorship was established before the
29 Judicial Council adopted forms to implement the dementia restrictions, or before
30 January 1, 1998, it would become subject to the dementia restrictions no later than
31 the first periodic court review of the conservatorship that occurred after January 1,
32 1998.¹⁶ Probate Code Section 1850 allows for a maximum of two years to elapse
33 between court reviews of a conservatorship. Thus, within two years of January 1,
34 1998, every conservatorship in existence would have become subject to the

14. Fam. Code § 297.5(a).

15. Prob. Code § 2356.5(*l*)(2).

16. Prob. Code § 2356.5(*l*)(1).

1 dementia restrictions. Therefore, the transitional provision is no longer necessary
2 and the Commission recommends deletion of subdivision (l).

3 Chapter 4.2 of Part 2 of Division 9 of the Welfare and Institutions Code
4 established a demonstration project for direct payment of rental assistance in Kern
5 County. The Commission understands that more recent welfare reform changes
6 have rendered this demonstration project authority obsolete. Thus, the
7 Commission recommends that this chapter be deleted.

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PROPOSED LEGISLATION

EVIDENCE CODE

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

2 SECTION 1. 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. 2. 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 to reflect the enactment of the human trafficking
19 caseworker-victim privilege. See Sections 1038-1038.2.

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

21 SEC. 3. 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. 4. 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.

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PENAL CODE

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

SEC. 5. 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 ~~40825~~ 10850 of the Welfare and Institutions Code,
38 records of in-home supportive services, unless disclosure is prohibited by federal
39 law.

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

1 Evidence Code, the physician-patient privilege protected by Article 6
2 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code,
3 the psychotherapist-patient privilege protected by Article 7 (commencing with
4 Section 1010) of Chapter 4 of Division 8 of the Evidence Code, the sexual assault
5 counselor-victim privilege protected by Article 8.5 (commencing with Section
6 1035) of Chapter 4 of Division 8 of the Evidence Code, ~~and~~ the domestic violence
7 counselor-victim privilege protected by Article 8.7 (commencing with Section
8 1037) of Chapter 4 of Division 8 of the Evidence Code, and the human trafficking
9 caseworker-victim privilege protected by Article 8.8 (commencing with Section
10 1038) of Chapter 4 of Division 8 of the Evidence Code.

11 **Comment.** Subparagraph (g)(2)(J) of Section 11163.3 is amended to correct a cross-reference.
12 Subparagraph (g)(3) is amended to include the human trafficking caseworker-victim privilege.

13 PROBATE CODE

14 **Prob. Code § 1811 (amended). Nomination by spouse, domestic partner, or specified** 15 **relatives of proposed conservatee**

16 SEC. 6. Section 1811 of the Probate Code is amended to read:

17 1811. (a) Subject to ~~Section~~ Sections 1813 and 1813.1, the spouse, domestic
18 partner, or an adult child, parent, brother, or sister of the proposed conservatee
19 may nominate a conservator in the petition or at the hearing on the petition.

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

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

28 **Prob. Code § 1812 (amended). Order of appointment preference for conservator** 29 **nominations**

30 SEC. 7. Section 1812 of the Probate Code is amended to read:

31 1812. (a) Subject to ~~Sections 1810 and 1813~~ 1810, 1813, and 1813.1, the
32 selection of a conservator of the person or estate, or both, is solely in the discretion
33 of the court and, in making the selection, the court is to be guided by what appears
34 to be for the best interests of the proposed conservatee.

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

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

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

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

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

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

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

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

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

17 SEC. 8. Section 1813 of the Probate Code is amended to read:

18 1813. (a)(1) The spouse of a proposed conservatee may not petition for the
19 appointment of a conservator for a spouse or be appointed as conservator of the
20 person or estate of the proposed conservatee unless the petitioner alleges in the
21 petition for appointment as conservator, and the court finds, that the spouse is not
22 a party to any action or proceeding against the proposed conservatee for legal
23 separation of the parties, dissolution of marriage, or adjudication of nullity of their
24 marriage. However, if the court finds by clear and convincing evidence that the
25 appointment of the spouse, who is a party to an action or proceeding against the
26 proposed conservatee for legal separation of the parties, dissolution of marriage, or
27 adjudication of nullity of their marriage, or has obtained a judgment in any of
28 these proceedings, is in the best interests of the proposed conservatee, the court
29 may appoint the spouse.

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

33 (b) The spouse of a conservatee shall disclose to the conservator, or if the spouse
34 is the conservator, shall disclose to the court, the filing of any action or proceeding
35 against the conservatee for legal separation of the parties, dissolution of marriage,
36 or adjudication of nullity of the marriage, within 10 days of the filing of the action
37 or proceeding by filing a notice with the court and serving the notice according to
38 the notice procedures under this title. The court may, upon receipt of the notice,
39 set the matter for hearing on an order to show cause why the appointment of the
40 spouse as conservator, if the spouse is the conservator, should not be terminated
41 and a new conservator appointed by the court.

42 **Comment.** Subdivision (a) of Section 1813 is amended to insert paragraph labels.

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

2 SEC. 9. Section 2356.5 of the Probate Code is amended to read:

3 2356.5. (a) The Legislature hereby finds and declares:

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

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

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

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

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

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

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

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

36 (c) Notwithstanding any other provision of law, a conservator of a person may
37 authorize the administration of medications appropriate for the care and treatment
38 of dementia, upon a court’s finding, by clear and convincing evidence, of all of the
39 following:

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

42 (2) The conservatee lacks the capacity to give informed consent to the
43 administration of medications appropriate to the care of dementia, and has at least

1 one mental function deficit pursuant to subdivision (a) of Section 811, and this
2 deficit or deficits significantly impairs the person's ability to understand and
3 appreciate the consequences of his or her actions pursuant to subdivision (b) of
4 Section 811.

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

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

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

17 (f) A petition for authority to act under this section shall be governed by Section
18 2357, except:

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

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

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

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

29 (g) The court investigator shall annually investigate and report to the court every
30 two years pursuant to Sections 1850 and 1851 if the conservator is authorized to
31 act under this section. In addition to the other matters provided in Section 1851,
32 the conservatee shall be specifically advised by the investigator that the
33 conservatee has the right to object to the conservator's powers granted under this
34 section, and the report shall also include whether powers granted under this
35 section are warranted. If the conservatee objects to the conservator's powers
36 granted under this section, or the investigator determines that some change in the
37 powers granted under this section is warranted, the court shall provide a copy of
38 the report to the attorney of record for the conservatee. If no attorney has been
39 appointed for the conservatee, one shall be appointed pursuant to Chapter 4
40 (commencing with Section 1470) of Part 1. The attorney shall, within 30 days
41 after receiving this report, do one of the following:

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

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

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

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

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

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

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

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

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

24 Subdivision (b) is also amended to update a cross-reference to the California Code of
25 Regulations. The cross-reference is to care plan requirements for a residential care facility for the
26 elderly that houses dementia patients. Those requirements were moved from Section 87724 to
27 87705 of Title 22 of the California Code of Regulations. See Regulatory Notice Register 2008,
28 No. 11-Z, p. 387 (Mar. 14, 2008).

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

30 WELFARE & INSTITUTIONS CODE

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

32 **Demonstration Project**

33 SEC. 10. Chapter 4.2 (commencing with Section 10830) of Part 2 of Division 9
34 of the Welfare and Institutions Code is repealed.

35 **Comment.** Chapter 4.2 (commencing with Section 10830) authorized a demonstration project
36 for direct payment of rental assistance in Kern County. This chapter is repealed as obsolete.