

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Technical and Minor Substantive
Statutory Corrections

December 2013

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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December 13, 2013

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

This recommendation proposes technical corrections to address outdated or erroneous references and numbering defects in the Evidence, Health & Safety, Penal, Probate, and Welfare & Institutions Codes.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 incorrect cross-references.
- (3) Correction of obsolete cross-references.
- (4) Consistency in treatment of spouses and domestic partners.
- (5) Revision of numbering consistent with statutory conventions.
- (6) Deletion of obsolete provisions.

This recommendation was prepared pursuant to Government Code Section 8298.

Respectfully submitted,

Damian Capozzola
Chairperson

TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS

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

Consistency in Treatment of Privileged Communications

In 2005, California added the human trafficking caseworker-victim privilege to the Evidence Code.¹ Before the addition of this privilege, California had enacted a few code sections that provide general standards and protections for privileged relationship-based communications. These code sections include Evidence Code Sections 912 and 917 and Penal Code Section 11163.3. Each of these sections applies to a list of relationship-based privileged communications, including the lawyer-client, physician-patient, psychotherapist-patient, clergy-penitent, husband-wife, sexual assault counselor-victim, and domestic violence counselor-victim relationships. When the human trafficking caseworker-victim privilege was added to the Evidence Code in 2005, the lists of privileged communications included all of the other relevant relationship-based privileged communications in the Evidence Code.² None of these sections was amended to include the new human trafficking caseworker-victim privilege. However, with respect to the matters covered by these sections, it appears that the same policy justifications regarding the preservation of confidentiality that apply to the other relationship-based privileges would also apply to the human trafficking caseworker-victim privilege.

Therefore, the Commission recommends adding the human trafficking caseworker-victim privilege to the lists of privileges in

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

2. See Evid. Code §§ 930-1063.

Evidence Code Sections 912 and 917 and Penal Code Section 11163.3.

Correction of Incorrect Cross-References

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

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

Penal Code Section 11163.3(g)(2) contains a list of certain confidential information that may be disclosed to a domestic violence interagency death review team. Subparagraph (g)(2)(J) allows for the disclosure of in-home supportive services records, notwithstanding Section 10825 of the Welfare and Institutions Code, unless disclosure is prohibited by federal law. The cross-reference to Section 10825 appears to be incorrect. Section 10825 does not address confidentiality or in-home supportive services.⁴ The provision should instead refer to Section 10850 of the Welfare and Institutions Code, which provides for the confidentiality of certain records regarding public social services.

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

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

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

Correction of Obsolete Cross-References

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

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

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

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 enacted 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).

Consistency in Treatment of Spouses and Domestic Partners

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

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

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

Given the explicit language of Section 1813.1 applying restrictions to domestic partners that are analogous to the spousal

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(a).

restrictions in Section 1813, a cross-reference to Section 1813.1 would be consistent with existing law and provide additional clarity.

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

Revision of Numbering Consistent with Statutory Conventions

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

Deletion of Obsolete Provisions

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

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

According to the terms of subdivision (*l*), if a conservatorship was established after the Judicial Council adopted forms to implement the dementia restrictions, or on or after January 1, 1998, the conservatorship would become subject to the dementia restrictions no later than January 1, 1998, or the date on which the conservatorship was established.¹⁴ If a conservatorship was established before the Judicial Council adopted forms to implement the dementia restrictions, or before January 1, 1998, it would become subject to the dementia restrictions no later than the

14. Prob. Code § 2356.5(*l*)(2).

first periodic court review of the conservatorship that occurred after January 1, 1998.¹⁵ Probate Code Section 1850 allows for a maximum of two years to elapse between court reviews of a conservatorship. Thus, within two years of January 1, 1998, every conservatorship in existence would have become subject to the dementia restrictions. Therefore, the transitional provision is no longer necessary and the Commission recommends deletion of subdivision (*l*).

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

15. Prob. Code § 2356.5(*l*)(1).

PROPOSED LEGISLATION

EVIDENCE CODE

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

SECTION 1. Section 912 of the Evidence Code is amended to read:

912. (a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 980 (privilege for confidential marital communications), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of clergy member), 1035.8 (sexual assault counselor-victim privilege), ~~or~~ 1037.5 (domestic violence counselor-victim privilege), or 1038 (human trafficking caseworker-victim privilege) is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has the legal standing and opportunity to claim the privilege.

(b) Where two or more persons are joint holders of a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), ~~or~~ 1037.5 (domestic violence counselor-victim privilege), or 1038 (human trafficking caseworker-victim privilege), a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the privilege provided by Section 980 (privilege for confidential marital communications), a waiver of the right of one spouse to

claim the privilege does not affect the right of the other spouse to claim the privilege.

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

(d) A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), 966 (lawyer referral service-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), ~~or~~ 1037.5 (domestic violence counselor-victim privilege), or 1038 (human trafficking caseworker-victim privilege), when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, lawyer referral service, physician, psychotherapist, sexual assault counselor, ~~or~~ domestic violence counselor, or human trafficking caseworker was consulted, is not a waiver of the privilege.

Comment. Section 912 is amended to reflect the enactment of the human trafficking caseworker-victim privilege. See Sections 1038-1038.2.

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

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

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

(b) A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of

electronic communication may have access to the content of the communication.

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

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

Evid. Code § 1038.2 (amended). Definitions

SEC. 3. Section 1038.2 of the Evidence Code is amended to read:

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

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

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

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

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

of this training must include an explanation of privileged communication.

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

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

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

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

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

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

HEALTH & SAFETY CODE

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

SEC. 4. Section 1569.698 of the Health & Safety Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(c) The department shall adopt regulations to implement subdivision (b) in accordance with those provisions of the Administrative Procedure Act contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of any emergency regulations following the effective date of the act amending this section during the 1995-96 Regular Legislative Session shall be

deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

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

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

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

Comment. Subdivision (e) of Section 1569.698 is amended to delete an obsolete reference to “Article 6.5 (commencing with Section 1569.691).” That article, relating to a pilot program, was 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 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.

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

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

- (1) Experts in the field of forensic pathology.
- (2) Medical personnel with expertise in domestic violence abuse.
- (3) Coroners and medical examiners.
- (4) Criminologists.
- (5) District attorneys and city attorneys.
- (6) Domestic violence shelter service staff and battered women’s advocates.
- (7) Law enforcement personnel.
- (8) Representatives of local agencies that are involved with domestic violence abuse reporting.
- (9) County health department staff who deal with domestic violence victims’ health issues.
- (10) Representatives of local child abuse agencies.
- (11) Local professional associations of persons described in paragraphs (1) to (10), inclusive.

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

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

(g) Written and oral information may be disclosed to a domestic violence death review team established pursuant to this section. The team may make a request in writing for the information sought and any person with information of the kind described in paragraph (2) of this subdivision may rely on the request in determining whether information may be disclosed to the team.

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

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

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

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

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

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

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

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

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

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

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

(J) Notwithstanding Section ~~10825~~ 10850 of the Welfare and Institutions Code, records of in-home supportive services, unless disclosure is prohibited by federal law.

(3) The disclosure of written and oral information authorized under this subdivision shall apply notwithstanding Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code, or the lawyer-client privilege protected by Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the physician-patient privilege protected by Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, the psychotherapist-patient privilege protected by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, the sexual assault counselor-victim privilege protected by Article 8.5 (commencing with Section 1035) of Chapter 4 of Division 8 of the Evidence Code, ~~and~~ the domestic violence counselor-victim privilege protected by Article 8.7 (commencing with Section 1037) of Chapter 4 of Division 8 of the Evidence Code, and the human trafficking caseworker-victim privilege protected by Article 8.8 (commencing with Section 1038) of Chapter 4 of Division 8 of the Evidence Code.

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

PROBATE CODE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment. Section 1812 is amended to reflect the addition of Section 1813.1 (specifying conditions for appointment of domestic partner as

conservator), which is similar to Section 1813 (specifying conditions for appointment of spouse as conservator).

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

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

1813. (a)(1) The spouse of a proposed conservatee may not petition for the appointment of a conservator for a spouse or be appointed as conservator of the person or estate of the proposed conservatee unless the petitioner alleges in the petition for appointment as conservator, and the court finds, that the spouse is not a party to any action or proceeding against the proposed conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of their marriage. ~~However, if~~

(2) Notwithstanding paragraph (1), if the court finds by clear and convincing evidence that the appointment of the spouse, who is a party to an action or proceeding against the proposed conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of their marriage, or has obtained a judgment in any of these proceedings, is in the best interests of the proposed conservatee, the court may appoint the ~~spouse.~~

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

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

Comment. Subdivision (a) of Section 1813 is amended to move the paragraph break and label paragraphs.

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

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

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

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

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

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

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

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

(2) The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit

pursuant to subdivision (a) of Section 811, and this deficit significantly impairs the person's ability to understand and appreciate the consequences of his or her actions pursuant to subdivision (b) of Section 811.

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

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

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

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

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

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

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

(e) A conservatee who is to be placed in a facility pursuant to this section shall not be placed in a mental health rehabilitation

center as described in Section 5675 of the Welfare and Institutions Code, or in an institution for mental disease as described in Section 5900 of the Welfare and Institutions Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WELFARE & INSTITUTIONS CODE

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

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

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.
