



PUBLIC GUARDIAN CONSERVATORSHIPS

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ESTATE PLANNING & PROBATE SECTION

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Today's Agenda

- ❖ The Office of the Public Guardian
- ❖ Recent Changes In LPS Laws
(SB-43-Definition of Grave Disability, SB-1338 - Care Court)
- ❖ Criminal Court Referrals/Murphy Conservatorships
- ❖ Probate Conservatorship Referrals/Investigations/Placements
- ❖ Unique Role of the Public Guardian
- ❖ Distinctions between LPS and Probate Conservatorships
- ❖ Recent Changes in Probate Conservatorship Laws

PAPG THEN AND NOW

2009 Public Guardian changed from Elected Official (Treasurer-Tax Collector) to BOS Appointment Director of Human Services Agency (HSA).



2/18/24 - BOS approved agency transfer HSA to Health Care Agency splitting PA from PG.

2/3 of PG cases (LPS) and (Subpayee) involve HCA-VCBH clients including growing number of Murphy Conservatorships

By December 2024, implementation of CARE Court

LPS program to benefit from MHSA funds through DHCS.



Current Structure

Public Administrator remains under the Human Services Agency

SubPayee Program – PG - HCA Behavioral Health

Public Guardian – LPS and Probate Conservatorships – PG - HCA Behavioral Health

DESCRIPTION OF PROGRAMS

Public Administrator – Investigates/administers the estates of persons who die with/without a will or an appropriate person willing or able to act as administrator. Administers County Indigent Burial Fund.

- 8 Formal Estate cases; 5 Summary Estate cases; 80 Indigent/Non-Indigent cases

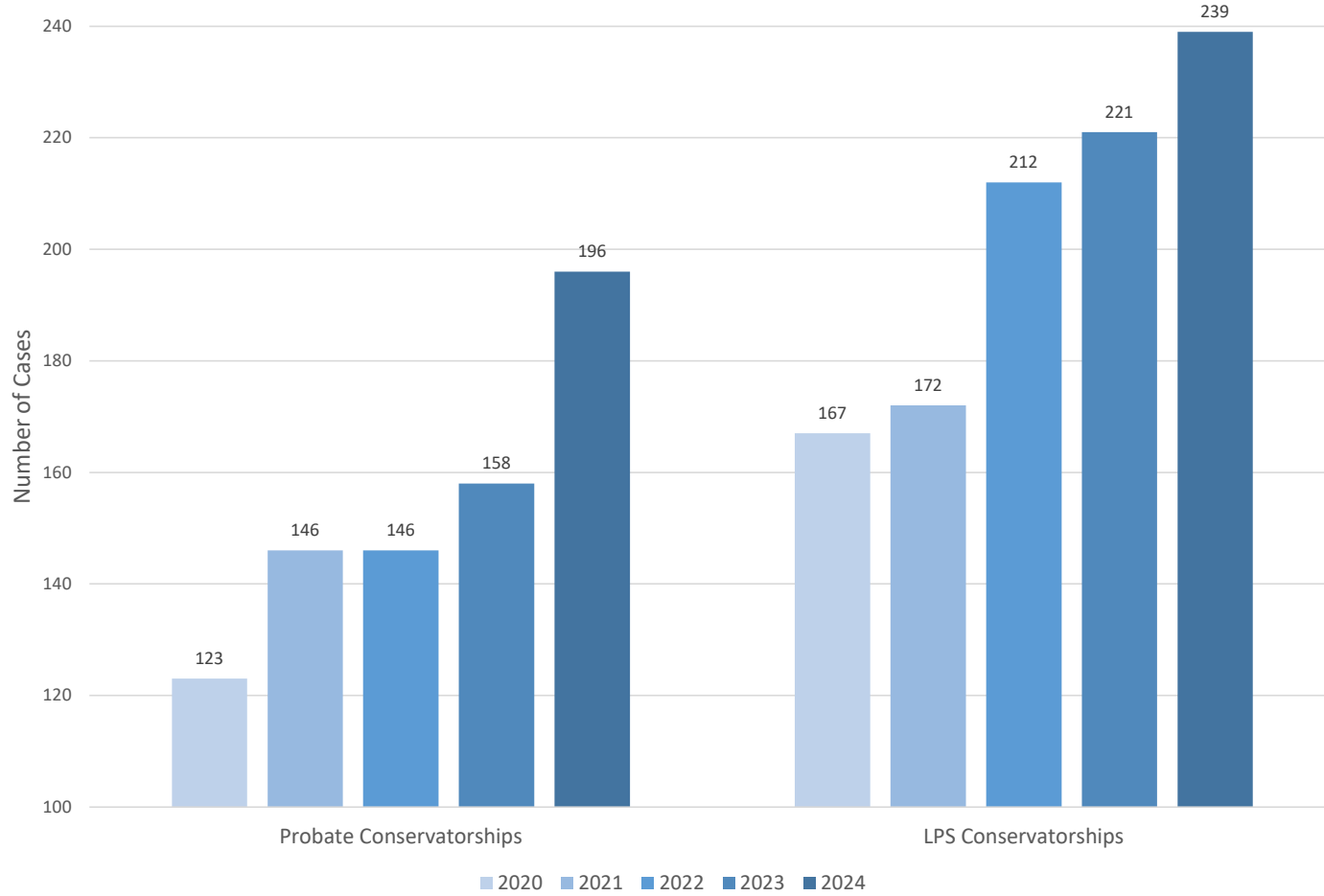
Public Guardian LPS/Murphy/Probate– Investigates/oversees care of people, who are unable to care for themselves. Court appointed as Conservator for those with cognitive impairment due to dementia, TBI, Developmentally Disabled or those gravely disabled.

- LPS – 218; Murphy – 16 Total of 234 cases and 6 Deputies – 39 caseload
- Probate – 154 cases and 6 Deputies – 26 caseload

Public Guardian SubPayee – At request of BHD, PG established a bill payment support activity. Supports recipients of SSI who are incapable of managing their funds, who **voluntarily** agree to participate in program.


- SubPayee – 239 cases; 1 Fiscal staff (270 cap); BHD Case Managers manages the clients

County of Ventura Public Guardian




SB 43 - 1st Change to LPS in more than 50 years . . .

1967 Grave disability as result of severe mental disorder or chronic alcoholism; incapable for providing for their own food, clothing or shelter, and who do not agree to voluntary treatment.



SB 43 – (Eggman): Adds severe substance use disorder (SUD) as a reason someone could be placed on an involuntary hold.



Also adds inability to provide for one's personal safety or necessary medical care as reasons that a person could be placed on an involuntary hold.

CARE COURT

Differs from LPS - does not include custodial settings or long-term involuntary medications

Differs from ASSIST (Laura's Law)

- May be initiated by petition to Court from variety of people
- Multiple prior incarceration, hospitalization, are not required
- Client may have a Supporter

Ventura County begin implementation by December 2024

Purpose of Care Court

Plan to get Californians in crisis off the streets and into housing, treatment, and care.

Aimed at helping Californians suffering from untreated mental health and substance abuse disorders.

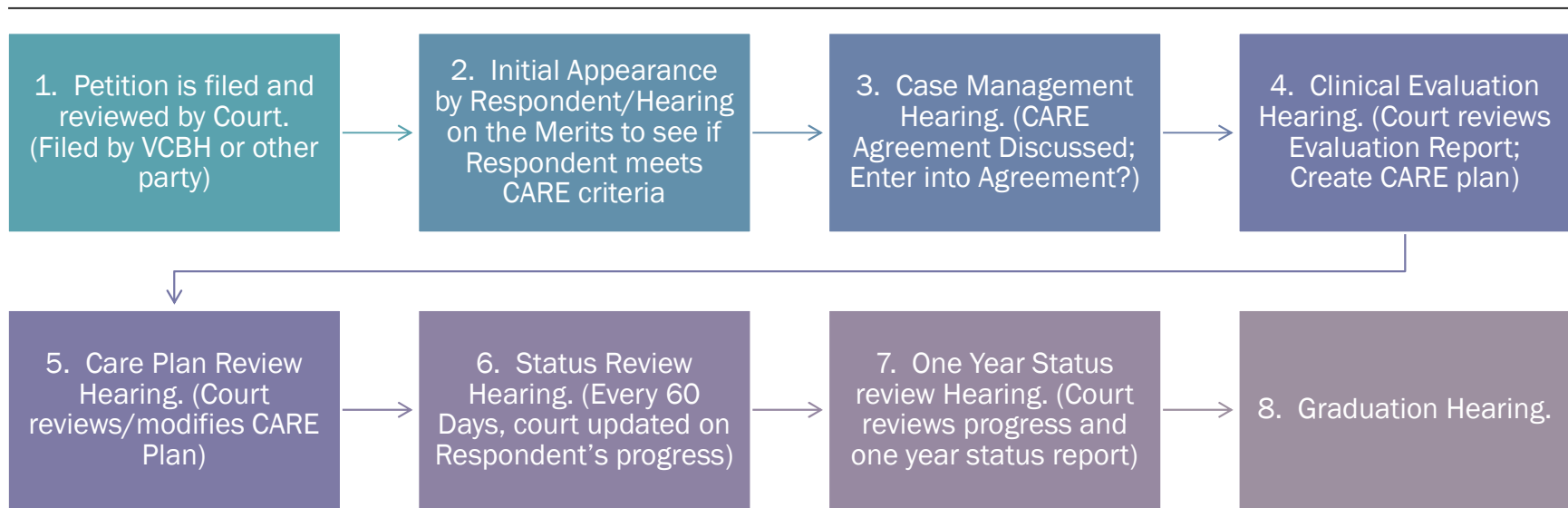
Designed to reduce homelessness and incarceration.

Each person receives a court-ordered CARE Plan and Supporter for up to 24 months.

Individualized CARE plan connects the individual to a care team in the community.

Care Team can include individualized treatment, supportive services, stabilizing medication and a housing plan.

Care Petition Process



CARE Court Petitioners

WIC 5974

Petitioners can be the individuals themselves or an adult that resides with the individual.

Spouse, parent, sibling, grandparent, or a person acting as a parent (loco parentis)

Director of a hospital, or designee in which individual is hospitalized due to 5150 or 5250

Director of Behavioral Health, Director of Adult Protective Services or the Public Guardian.

Judge of a Tribunal Court located in California

Licensed behavioral health professional who within the last 30 days provided or supervised treatment.

First responder: peace officer, firefighter, paramedic, EMT, mobile crisis response team member, homeless outreach who had repeated interactions with the respondent.

Care Court Supporters

Supports the respondent in a culturally responsive way to maintain autonomy and decision-making authority.

Strengthens the respondent's capacity to engage in decision making.

Assists the respondent in understanding, making and communicating decisions throughout the CARE process.

Participate in meetings and judicial hearings.

Shall not make decisions for or on behalf of the respondent or sign documents.

Bound by existing Elder Abuse and Dependent Adult Civil Protection Act.

Shall not be subpoenaed or called to testify as a witness against the respondent.

CARE Court Eligibility

WIC 5972

Respondent must be 18 years or older, diagnosed with schizophrenia spectrum or related psychotic disorders.

Unlikely to survive safely in the community without supervision, and condition is deteriorating, OR

Needs support to prevent relapse resulting in grave disability or harm to self or others.

Not clinically stable in voluntary treatment

CARE Court is the least restrictive option for treatment

Likely to benefit from CARE Court.

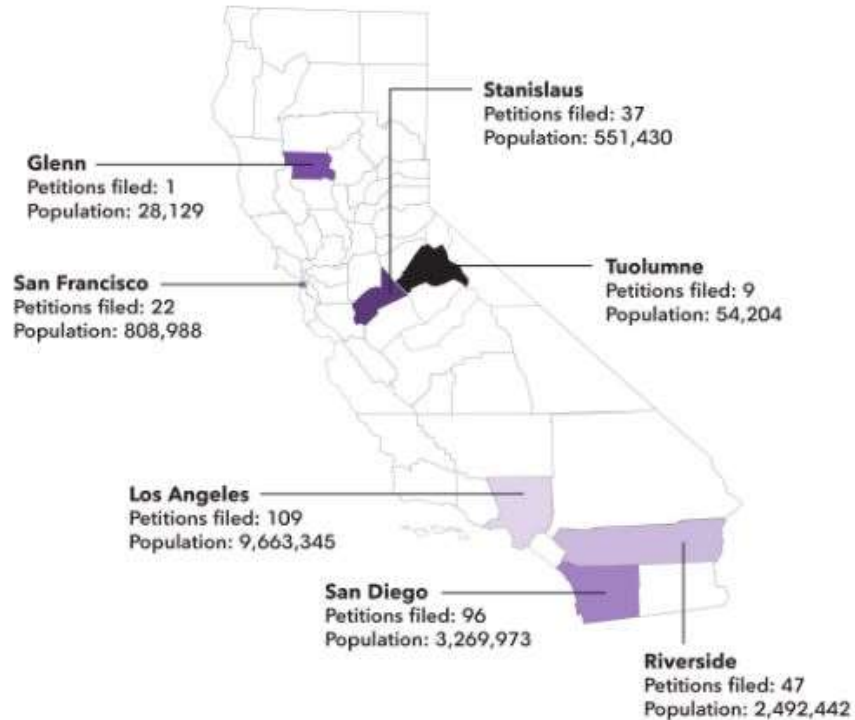
Respondent's Rights Under Care Court WIC 5976



Where CARE Courts Are Located

Number of Petitions Filed (Per Capita)

Least Most



Note: Numbers reflect petitions filed in these counties between Oct. 1, 2023 and the end of March 2024, except for in Los Angeles County Superior Court, where the CARE program launched on Dec. 1, 2023. Orange County Superior Court declined to provide updated numbers.

Source: Bloomberg Law Research
Graphic: Cordelia Gaffney

Bloomberg Law

Impact of Care Court on Caseloads

County	Population	Petitions Filed	CARE Agreements	Care Plans Ordered
Glenn	28,339	2	0	0
Orange	3,151,184	53	1	0
Riverside	2,473,902	34	3	0
San Diego	3,276,208	70	21	0
San Francisco	808,437	19	0	0
Stanislaus	551,275	24	6	0
Tuolumne	54,531	8	1	0

Third Element of Grave Disability

Third Element of Grave Disability no longer applies
(Willingness to accept voluntarily meaningful treatment.)

The petitioner does not have to prove the so-called “third element” of grave disability, which requires proof beyond a reasonable doubt that the conservatee is either unwilling or unable to voluntarily accept meaningful treatment. In the recently decided case of *Conservatorship of K.P.*, the California Supreme Court held that “resistance to voluntary treatment is not a separately required element that must be proven.” (Emphasis in the original.) (*Conservatorship of K.P.* (June 28, 2021, S258212) __ Cal.App.2d__ [p. 4].)

Right to Refuse to Testify at Trial

Three Appellate Courts have Ruled on the right of an LPS conservatee or proposed conservatee to testify at trial. There is a 2-1 split in favor of the position that requiring a conservatee to testify at their conservatorship appointment trial violates due process because similarly situated NGI, SVP and MDO criminal defendants “enjoys the right to refuse to testify at all.

Conservatorship of E.B. (2020) 45 Cal.App.5th 986, 991 (1st Appellate District – disparate treatment with NGI commitments, but harmless error);

Conservatorship of Bryan S. (2019) 42 Cal.App.5th 190, 195; (no disparate treatment with NGI commitments).

Public Guardian of Contra Costa County v. J.Y. (Filed 5/21/20) (1st Appellate District - disparate treatment and right to refuse to testify).

Increase in Criminal Court Referrals

PC § 1370.01, defendant IST in misdemeanor case, court may hold:

- Hearing to determine whether qualify mental health diversion.
- If ineligible for MHD, court may hold hearing:

Modify their treatment plan;

Hold a hearing for AOT;

Refer them to the PG for a possible LPS conservatorship; or

Refer them to the CARE program.

Murphy Conservatorships WIC 5008(h)(1)(B) (16 with PG)

PC § 1370 accused of serious felony and found IST, court may:

Refer to PG for possible Murphy conservatorship.



PROBATE CONSERVATORSHIP REFERRALS

Largest sources of referrals:

1. APS
2. Area Hospitals
3. SNFs
4. Superior Court

Electronic referral form
required:

Capacity Dec GC-335
Dementia Attach GC-335A

PG received 60 probate
referrals in 2023
average 5 per month

PC 2920(c) – within 48 hrs.
PG to begin their
investigation

PG Best Practice: complete
investigation within 30 days

PG INTAKE INVESTIGATION

Factors to consider in favor of conservatorship

- Inability to think logically or exercise sound judgment
- Primary diagnosis or physical disabling disease
- Dev. Disability; TBI or mental health issues significantly impairing individual's functioning
- No family member or individual to provide care or act as conservator

Factors to consider discouraging conservatorship

- Ability to provide
- Friend, family, facility is providing all individual's needs
- Primary diagnosis of mental illness or alcoholism requiring locked treatment – LPS track

PROBATE PLACEMENT

2023 CA Dept of Aging
Survey
All 58 Counties
Identified areas where
PG faced difficulty:

96% Placement
89% Funding
66% Staffing

- ❖ Refer to Court Order authority to place
 - ❖ Secured PC 2356.5(b)
 - ❖ Least restrictive remain in personal residence PC 2253
- ❖ All placements must be in a California licensed facility.
- ❖ PG considers finances – income source/monthly income
 - ❖ If with Tri-Counties; Tri-Counties will assist with monthly payment.
- ❖ PG considers care/personal assist. Needs and medical conditions.

PROBATE PLACEMENT

SNFs and Assisted Living

SNFs:

- If Medicare/MediCal, low income, custodial beds usually clients who are bedbound/wheelchair.
- These clients easy to place in Ventura County – bed availability.

Assisted Living:

- If clients needs lower level of care from SNF to Assisted Living in VTA County Medicare/MediCal do not cover; its all **out of pocket**. Shared room \$4,500 to Private \$8,000.
- VTA/SB County do not offer the Assisted Living Waiver – MediCal pays for this program.
- If least restrictive is Assisted Living and income low, PG can only place outside VTA County, i.e. LA County where they have the Assisted Living Waiver program.

Public Guardian's Role as LPS Conservatorship Investigator

W&I Code 5354 and 5354.5, the Public Guardian is the County's Designated LPS Conservatorship Investigator for both grave disability (food, clothing and shelter) and Murphy Conservatorships.

W&I Code 5352.5, the person in charge of a County Designated Mental Health Facility recommends to the Public Guardian, as the Conservatorship Investigator, that a conservatorship is necessary.

If the Public Guardian concurs in the LPS conservatorship recommendation, the Public Guardian must file a petition for appointment of LPS conservatorship.

Note that the Public Guardian is the only person who is authorized to file an LPS conservatorship petition. *Kaplan v. Super. Ct.* (1989) 216 Cal.App.3d 1354, 1360-61.

DISTINCTIONS LPS vs. PROBATE

LPS	PROBATE
How Initiated: Prof. person in charge of facility	Anyone
Statutory Req.: Mental Disorder or chronic alcoholism	Unable to provide personal needs or manage financial resources
Placement: Authority for Locked	No such right: only if granted dementia extra power for secured perimeter (PC 2356.5(B))
Duration: Expires 1 year unless renewed	Indefinite – until court order or death (PC 1860)
Burden of Proof: Beyond a reasonable doubt	Clear and convincing evidence
Right to Hearing: Court/jury trial on GD	Court Trial – ability to provide for food and clothing; manage estate
Powers: basic powers of management of P/E + locked placement	Basic powers of management of P/E
Medical Powers: Court approval needed for medical treatment outside GD	Authority for medical powers
Confidential Hearing	Public Hearing

Order of Preference for Appt of Conservator

Probate Proceedings – Appt of Conservator Prob. Code § 1812:

Solely within the discretion of the court, between persons equally qualified and guided by what appears to be in the best interests of the conservatee; preference is to be given in the following order:

- 1) the conservatee's or proposed conservatee's stated preference;
- 2) the prior conservator's preference;
- 3) the spouse or domestic partner of the conservatee or proposed conservatee;
- 4) the adult child of the conservatee or proposed conservatee
- 5) the parent of the proposed conservatee;
- 6) a sibling of the proposed conservatee;
- 7) any other person or entity, which would include the Public Guardian.

Conservatorship of Ramirez (2001) 90 Cal.App.4th 390.

Assembly Bill 1663

California embraces a national trend of empowering adults with disabilities who are frequently subjected to limited conservatorships. Slide 1 of 3

Probate Code § 1456: Compliance with requirements for filing inventory and appraisals and accountings.

Probate Code § 1800: Determine appropriateness of conservatorship; increase functional abilities, provide community-based services, and periodic review of conservatee's best interests.

Probate Code § 1800.3; Requires express finding that conservatorship is the least restrictive alternative needed for the protection of the Conservatee.

Probate Code § 1812: Conservatee's stated preference and the prior conservator's preference are now ranked first and second in the order of preference.

Probate Code § 1821: Alternatives to conservatorship, including supported decision-making agreements, POA, advance healthcare directives, and health care surrogates are all potential alternatives to conservatorship.

Probate Code § 1835: Informational Package for Conservators to include an extensive list of conservator's rights, duties, limitations and responsibilities under the Probate Code.

Assembly Bill 1663

Slide 2 of 3

Probate Code § 1850: Provides for six-month and annual investigations by the Court Investigator, with focus on the appropriateness of conservatorship and less restrictive alternatives to conservatorship.

Probate Code § 1860.5: Provides new procedures for termination or modification of a limited conservatorship, with additional rights to the limited conservatee.

Probate Code § 1863: Provides new procedures for termination or modification of a general probate conservatorship, with additional rights to the probate conservatee.

Probate Code § 2113: Fiduciary is required to determine the preferences of the conservatee, as expressed by any methods of communication.

Assembly Bill 1663

Slide 3 of 3

Probate Code § 1835.5: Within 30 day of establishment of a conservatorship, the court will provide conservatee with informational package containing identity of conservator, rights retained by the conservatee, duties of court investigator, and process for terminating the conservatorship.

Probate Code § 1836: Upon appropriation by the Legislature, the Judicial Council shall establish a conservatorship alternatives program within each center in every state Superior Court to advise of the conservatorship alternatives program and less restrictive alternatives to conservatorships.

Probate Code § 1861.5: Upon receipt of communication by conservatee wishing to terminate conservatorship, court will appoint counsel and set hearing if the court believes there is good cause or if there has not been a termination hearing in the past 12 months.