

The image shows the Florida State Capitol building in Tallahassee, Florida, under a clear blue sky. The building features a prominent white dome with a dark top section. In the foreground, there are several palm trees. A large, semi-transparent blue rectangular area is overlaid on the center of the image, containing white text. At the bottom of this blue area, there is a dark blue horizontal bar with white text.

CASCI Legislative Update

DANA CRUZ | Governmental Affairs Attorney, Judicial Council

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Judicial Council's Governmental Affairs represents and advocates for the Judicial Council on legislative, policy, and budget matters.

- Monitor court-related legislation
- Public resources
 - *Annual Summary of Legislation (New Laws)* since 2005
 - *Active legislation by category*

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On behalf of the judicial branch, the Judicial Council's Governmental Affairs represents and advocates for the Judicial Council on legislative, policy, and budget matters. The office also works extensively on the judicial branch budget and related matters, meeting with legislators, committees, committee and leadership staff, as well as staff for the Governor and the state Department of Finance.

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The [2023 Summary of Court-Related Legislation](#) has brief descriptions of new laws, arranged according to subject matter, that affect the courts or that are of general interest to the judicial branch. The summary includes a statement for each new or amended statute that is determined to impact court operations and procedures, as well as a table summarizing new laws that create or expand crimes. Access the page numbers of specific bill summaries using an index at the back of the document.



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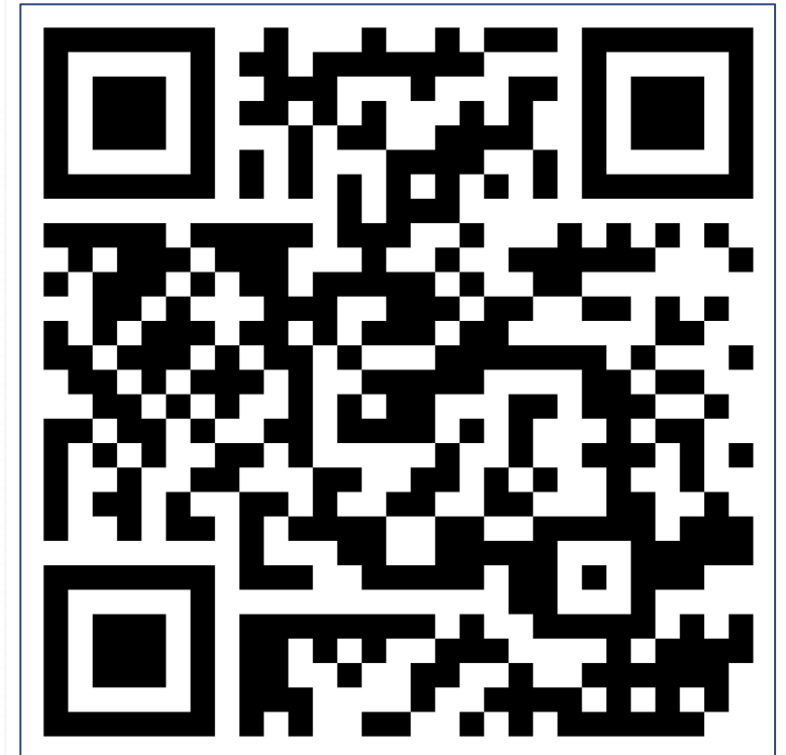
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MAJOR LEGISLATION IN 2023 (SB 43)

SB 43 (EGGMAN) (Ch 637): **Behavioral Health**

- Expands the definition of “gravely disabled” in the Lanterman-Petris-Short Act to include a condition in which a person, as a result of a substance use disorder or co-occurring mental health disorder with severe substance use disorder, is unable to provide for their personal needs.
- Includes personal safety and necessary medical care as “personal needs.”
- Authorizes counties to defer implementation of these provisions to January 1, 2026.
- Provides that, for purposes of the opinion of an expert witness in a proceeding relating to appointment of a conservator, the statement of a health practitioner included in the medical record is not inadmissible as hearsay.

(HSC amend 1799.111; WIC amend 5008, 5350, 5354, 5402, add 5122)

MAJOR LEGISLATION IN 2023 (SB 43)

WIC SEC 5008. (h)(1). Gravely disabled means: (A) A condition in which a person, as a result of a mental health disorder, *a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder*, is unable to provide for ~~his or her~~ *their* basic personal needs for food, clothing, ~~or shelter.~~ *shelter, personal safety, or necessary medical care.*

(2) For purposes of Article 3 (commencing with Section 5225) and Article 4 (commencing with Section 5250), of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), “gravely disabled” ~~means~~ *includes* a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for ~~his or her~~ *their* basic personal needs for food, clothing, ~~or shelter.~~ *shelter, personal safety, or necessary medical care.*

(3) The term “gravely disabled” does not include persons with intellectual disabilities by reason of that disability alone.

MAJOR LEGISLATION IN 2023 (SB 43)

WIC SEC 5008. *(o) “Severe substance use disorder” means a diagnosed substance-related disorder that meets the diagnostic criteria of “severe” as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders.*

(p) “Personal safety” means the ability of one to survive safely in the community without involuntary detention or treatment pursuant to this part.

(q) “Necessary medical care” means care that a licensed health care practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of an existing physical medical condition which, if left untreated, is likely to result in serious bodily injury as defined in Section 15610.67.

MAJOR LEGISLATION IN 2023 (SB 43)

WIC SEC 5354. (a) The officer providing conservatorship investigation shall investigate all available alternatives to ~~conservatorship and~~ *conservatorship, including, but not limited to, assisted outpatient treatment pursuant to Section 5346 and the Community Assistance, Recovery, and Empowerment (CARE) Act program pursuant to Section 5978, as applicable, and* shall recommend conservatorship to the court only if no suitable alternatives are available. . . . If the officer providing conservatorship investigation recommends either for or against conservatorship, the officer shall set forth all alternatives available, including ~~all~~ *conservatorship, assisted outpatient treatment pursuant to Section 5346 and the CARE Act program pursuant to Section 5978, as applicable, and all other* less restrictive alternatives.

MAJOR LEGISLATION IN 2023 (SB 43)

- WIC SEC 5122 (a) expert opinion for appointment of conservator the statement of a health practitioner included in the medical record is admissible (not hearsay) when pertains to “person’s symptoms or behavior stemming from a mental health disorder or severe substance use disorder that the expert relies upon to explain the basis for their opinion, if the statement is based on the observation of the declarant, and the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability
- (b) This section does not affect the ability of a party to call as a witness the declarant of any statement contained in the medical record, whether or not the declarant’s statement was relied on by the expert witness.
- (c) The court may grant a reasonable continuance if an expert witness in a proceeding relied on the medical record and the medical record has not been provided to the parties or their counsel.

MAJOR LEGISLATION IN 2023 (SB 280)

SB 280 (LAIRD) (Ch 705): **Review of Conservatorship: CARE Plans**

- Requires probate conservators, beginning January 1, 2025, to submit to the court comprehensive care plans for the care of conservatees and the management of their estates, and permits courts to impose specified sanctions if the plans are not submitted as required.
- Requires the Judicial Council to adopt a mandatory form for preparing the care plan by January 1, 2025.
- Provides that care plans are confidential and releasable by the court only if doing so would serve the best interests of the conservatee.
- Requires the court investigator conducting an investigation of the conservatorship to review the most recent care plan.

(PROB amend 2352.5, add 2351.2)

MAJOR LEGISLATION IN 2023 (SB 280)

PROB SEC 2351.2. Starting Jan 1, 2025,
(a) (1) Within 120 calendar days of appointment by the court and no later than 10 days before a hearing to determine the continuation or termination of an existing conservatorship, conservator files care plan to clerk of court

- Care plan outlines the care, custody, and control
- Court may require updated care plan at any time, use to assess continuation or termination

MAJOR LEGISLATION IN 2023 (SB 280)

PROB SEC 2351.2.(a)(2)(A) Deliver care plan to conservator of estate (if appointed), conservator's attorneys, conservatee's attorney, conservatee.

- Also to spouse, domestic partner, relatives within first degree (unless court finds will result in harm).
- If no spouse, domestic partner, first degree relatives, then to second degree relatives (unless court finds will result in harm)

(B) Information is confidential

MAJOR LEGISLATION IN 2023 (SB 280)

PROB SEC 2351.2. (b) Req's for care plan include, but not limited to:

(1) A description of the current living arrangement for the conservatee and any plans to modify this living arrangement within the next 12 months.

(2) A description of the conservatee's current level of care and any plans to modify the level of care within the next 12 months.

(3) A description of the status of the conservatee's health that lists medications currently prescribed for the conservatee, and any medical treatments, supports, or devices.

(4) A description of the conservator's schedule of visitation with the conservatee and actions to ensure the conservatee is able to exercise their rights to visitation and communications.

MAJOR LEGISLATION IN 2023 (SB 280)

PROB SEC 2351.2.(b) Req's for care plan include, but not limited to:

(5) A description of the normal activities of the conservatee, including outings and social and recreational activities.

(6) A description of any special problems raised by the court investigator, the court, or any other interested person, and a description of how the conservator has addressed or intends to address those problems.

MAJOR LEGISLATION IN 2023 (SB 280)

PROB SEC 2351.2.(b) Req's for care plan include, but not limited to:

(7) A description of the conservatee's financial needs, stating the conservatee's estimated monthly expenses, including food, entertainment, rent or mortgage, transportation, utilities, medication, clothing, and other relevant health care and living expenses, to the extent the conservator has that information.

(8) A list of all health care providers who provide care for the conservatee, including the provider's name, contact information, license type and number, and a description of the treatment provided by each provider.

MAJOR LEGISLATION IN 2023 (SB 280)

PROB SEC 2351.2. (c) JCC by Jan 1, 2025 is developing a mandatory form for preparing the care plan. Out for public comment.

(d) Up to \$500 civil penalty for not filing, referral to Professional Fiduciaries

(f) The court investigator shall review the most recent care plan when conducting an investigation

(h) Does NOT apply to limited conservatorship for developmentally disabled adult if conservator is relative within first degree



MAJOR LEGISLATION IN 2023 (OTHER)

SB 137 (COMMITTEE ON BUDGET) (Ch 191): **Health Omnibus**

Among other things, amends recent provisions establishing children's psychiatric residential treatment facilities to authorize, if the patient is a dependent or ward of the juvenile court who has been removed from the physical custody of their parents, legal guardian, or Indian custodian, and who is not under a conservatorship, disclosure of mental health and developmental services information or records without the consent of the patient or their guardian or conservator to the dependent's or ward's social worker or probation officer for the purposes of ensuring the dependent or ward receives all necessary services or referrals for transition out of a facility to a lower level of care.

(WIC amend 5328)

MAJOR LEGISLATION IN 2023 (OTHER)

AB 1756 (COMMITTEE ON JUDICIARY) (Ch 478): **Judiciary Omnibus**

Among other things, extends the date on which the Judicial Council must report to the Legislature regarding conservatorship issues until January 1, 2027.

(PROB amend 1458)

PROPOSED LEGISLATION IN 2024

AB 2224 (SANTIAGO): Human services: special immigrant juvenile status

Among other things, permits courts to appoint a parent as the guardian of special immigrant juvenile status applicants who are unmarried child who is 18 years of age or older, but who has not yet attained 21 years of age.

PROPOSED LEGISLATION IN 2024

SB 1106 (RUBIO): Conservators: required notices

Requires the conservator to provide notice if the conservator proposes to remove the conservatee from their current residence or location where they are staying for an extended period of time.

PROPOSED LEGISLATION IN 2024

SB 1458 (ALLEN): The Revised Uniform Fiduciary Access to Digital Assets Act

Expands the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) to additionally apply to a fiduciary acting as a conservator appointed by the court to manage the estate of a living individual or an agent acting as an attorney-in-fact who is granted authority under a durable or nondurable power of attorney.

QUESTIONS?

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UPDATED: RESPONSES TO QUESTIONS

Below are questions from the conference with responses:

1. Do limited conservators still need to fill out care plans under SB 280?

Limited conservators who are 1st-degree relatives (parents or children) of the conservatee are not required to comply with Probate Code section 2351.2, but they are still required to comply with the requirements of section 2352.5 regarding the conservatee's residence. Those requirements are addressed in items 1-4 of the forthcoming updated JC form GC-355.

2. Status of the updated care plan form?

The proposed form is open for comment. See Item SPR24-28 under the Probate and Mental Health dropdown menu at <https://www.courts.ca.gov/policyadmin-invitationstocomment.htm>

3. Aren't parents allowed to be guardians already for AB 2224?

The provisions related to parents as guardians are clarifying, presumably because not all courts do it.