

**CONSERVATORSHIP IN CRISIS:  
CIVIL RIGHTS VIOLATIONS & ABUSES OF POWER**

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This paper discusses systemic failure in California's conservatorship (adult guardianship) system and presents two case studies that illustrate heinous abuse of individuals trapped within that failed system. Courts provide no meaningful oversight. Conservators and court appointed attorneys abuse with impunity. Law enforcement and government agencies disregard abuse of elders and dependent adults. Although the scope of this paper is limited to California, anecdotal evidence indicates that similar abuses may be found in jurisdictions across the country.

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## EXECUTIVE SUMMARY

*The moral test of government is how it treats those who are in the dawn of life, the children; those who are in the twilight of life, the aged; and those in the shadows of life, the sick, the needy and the handicapped.*

Hubert H. Humphrey

California is failing its elders and disabled adults. Courts provide inadequate oversight of conservatorship. Statutes fail to curb abuse. Case law fails to curb abuse. Apathetic law enforcement and negligent social services agencies set the stage for rampant abuse by conservators. Conservatees are routinely denied their most basic civil rights. Families find no remedy for abuse of their loved ones.

- Denied due process
- Deprived of property
- Deprived of liberty
- Denied their right to trial
- Denied their right to counsel
- Denied their right to confront accusers
- Unlawfully confined and isolated
- Unlawfully chemically restrained

Case studies demonstrate the lack of remedy available to victims. In the cases presented, remedies for abuse were not available through Adult Protective Services, the long-term care ombudsman, Community Care Licensing, law enforcement, or civil court. In many cases, the only escape from conservatorship is death.

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## INTRODUCTION TO PROBATE CONSERVATORSHIP

General probate conservatorship is a legal instrument authorizing a third party to manage an individual's personal and financial matters. There is no registry of conservatorships, and there is no accurate way to estimate the number of individuals under conservatorship in a given jurisdiction or across jurisdictions.

The overarching duty of a conservator is to act in the best interest of the conservatee. The California Probate Code provides guidance on appropriate actions. The *Handbook for Conservators* (Administrative Office of the Courts, 2002) uses plain language to explain the duties of a conservator. Both Probate Code and the *Handbook* strive to protect a conservatee's rights by limiting the role of the conservator to actions that are in the best interest of the conservatee and are truly necessary.

Although the goal of conservatorship is to protect the conservatee, the system often fails. Those failures can lead to gross violations of basic civil rights. There is essentially no recourse for conservatees whose rights are violated. There is very little recourse for family members struggling to protect loved ones who are abused by conservators.

We will first examine the laudable intent of conservatorship and the equally laudable efforts to protect the rights of conservatees. Second, we will examine the failure of efforts to curb violations of conservatees' rights. Third, we will examine case studies that demonstrate the lack of remedy through social services agencies, law enforcement, or civil court. Last, we will examine how the Probate Code and probate courts deny conservatees their civil rights guaranteed under the California Constitution.

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### CONSERVATORSHIP'S INTENDED ROLE

Probate Code 1801<sup>1</sup> defines a conservator of the person and conservator of the estate. Under the Code, a conservator of the person is only appointed when an individual is unable to provide for his personal needs with or without assistance from family and friends. A conservator of the estate is only appointed when an individual is substantially unable to manage his financial affairs. A condition such as advanced dementia would be an indicator for appointing a conservator of the person and of the estate.

The *Handbook for Conservators*<sup>2</sup> presents the concept of conservatorship in plain language. A conservator is a person or organization chosen to protect and manage the personal care or finances, or both, of someone who has been found by a judge to be unable to do so.

In *Conservatorship of Stewart*<sup>3</sup> the court held:

*The sole purpose of a conservatorship is to provide a competent person to act, under the guidance of the probate court, as the agent of the conservatee. Both sources are clear that the role of the conservator is limited in scope, and the function of the conservator is to act in the interest of the conservatee.*

At no point in the Probate Code, the *Handbook for Conservators* or in case law is there an implication that conservatorship is a license to violate the civil rights of the conservatee or to profit at the expense of the conservatee. At no point is there any indication that a conservatorship is not subject to current regulations or statutes.

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### CONSERVATORSHIP'S CHECKERED HISTORY

Isolation of an elder or dependent adult constitutes abuse as defined by California's Welfare and Institutions Code 15610.07<sup>4</sup>. Under Penal Code 368(c)<sup>5</sup> *mental abuse* constitutes a misdemeanor. If abuse leads to serious injury or death, then the act is a felony<sup>6</sup>.

Yet, family after family reports loved ones unlawfully confined and isolated through the instrument of conservatorship. A long-term care ombudsman in the Sacramento area discussed an assisted living facility that isolated a resident simply because that resident was under conservatorship. Facility staff incorrectly assumed that conservatorship automatically strips individuals of that most basic right to maintain personal relationships and to enjoy the companionship of loved ones.

In a 1979 landmark case on LPS<sup>7</sup> (mental health) conservatorships, the Supreme Court of California held in *Conservatorship of Roulet*<sup>8</sup> that an LPS conservatorship trial must apply the reasonable doubt standard and require a unanimous jury decision, consistent with due process requirements in criminal trials. A preponderance of evidence and agreement of nine of twelve jurors, as required in civil trials, is not adequate to deprive a person of liberty. The court held:

*The appointment of a conservator for appellant and her subsequent confinement in a mental hospital against her will deprived appellant of freedom in its most basic aspects and placed a lasting stigma on her reputation.*

The Supreme Court of California looked to the U.S. Supreme Court for guidance:

*...commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called 'criminal' or 'civil.'*<sup>9</sup>

In a subsequent opinion, the U.S. Supreme Court reiterated their opinion:

*civil labels and good intentions do not themselves obviate the need for criminal due process safeguards*<sup>10</sup>....

The Supreme Court of California referred to its own previous rejection of the civil label for confinement:

*...involuntary commitment is incarceration against one's will regardless of whether*

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*it is called 'civil' or 'criminal.'*

The court held that the standard of proof requires due process considerations focused on the actual consequences to the individual<sup>11</sup>. The Supreme Court of California concluded:

*...appellant's protection ultimately must rest on requiring the state to match its good intentions with proof without a reasonable doubt that appellant is in need of the state's care.*

The following year, a California Court of Appeals applied similar logic to probate conservatorship<sup>12</sup>.

*Balancing the benefit and purpose of the probate conservatorship proceedings against the adverse consequences to the individual clearly suggests that the proper standard is clear and convincing proof. The deprivation of liberty and stigma which attaches under a probate conservatorship is not as great as under an LPS conservatorship. However, to allow many of the rights and privileges of everyday life to be stripped from an individual "under the same standard of proof applicable to run-of-the-mill automobile negligence actions" cannot be tolerated.*

Unfortunately, the standard set forth by the court is rarely applied. A 2007 study by U.C. Berkeley graduate students (Anders, 2009) found that not one of sixty randomly selected conservatorship cases in San Francisco County went to trial. The study found that proposed conservatees were rarely present for conservatorship hearings. Proposed conservatees were more likely to be conserved when represented by attorneys, indicating that attorneys did not necessarily represent the best interests of the conservatees. Of thirty-seven permanent conservatorship cases studied, only four cases limited the powers of the conservator. Those limitations were minor.

In November 2005, the Los Angeles Times published a scathing four-part series (Fields, 2006) on *Guardians for Profit*. Consistent themes running through the articles included abuses that took place because laws were not enforced, conservatees' wishes and best interests were ignored, and victims lacked effective means to communicate with the court. The Los Angeles Times stated:

*...inaction and inattention by the courts have left many elderly Californians vulnerable to abuse by the very people entrusted with their care.*

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A 2006 Government Accountability Office found similar deficiencies nationwide.

The Judicial Council of California quickly formed a Task Force on Conservatorships (Corey, 2007), and legislation was forthcoming. The Omnibus Guardianship Reform Act of 2006 was a package of four bills intended to enhance protections for conservatees. Among the new requirements was a mandate for a Court Investigator to interview first and second degree relatives, spouse or domestic partner, neighbors and close friends of the proposed conservatee<sup>13</sup>.

Also added was a presumption that the conservatee's home is the least restrictive and preferred residence<sup>14</sup>. Measures were established to protect the conservatee's home from being sold against the conservatee's wishes<sup>15</sup>. The duty of a conservator to act in the *best interest* of the conservatee is woven throughout the Probate Code. That best interest is met by selecting the least restrictive residence<sup>16</sup>, which is presumed to be the conservatee's own residence<sup>17</sup>.

Until 2014, the Probate Code did not speak directly to the conservatee's right to visitation. However, the *Notice of Conservatee's Rights*<sup>18</sup> (Judicial Council of California, 2008) specifically states the conservatee's right to have visitors. The *Handbook for Conservators*<sup>19</sup> expands on the conservatee's right to maintain personal relationships.

*When a person becomes a conservatee, he or she does not lose the right to visit with friends or family. Encourage the conservatee to keep in touch with family members, friends, and neighbors.*

*Do not isolate the conservatee by keeping friends or family away.*

Sadly, these measures have not curbed abuse of conservatees. A 2010 Government Accountability Office report found: *State Courts Failed to Adequately Screen Potential Guardians, State Courts Failed to Adequately Oversee Guardians after Their Appointment, and State Courts Failed to Communicate with Federal Agencies about Abusive Guardians.*

Once again, the task of shining light on abuse fell to the media. In summer and fall of 2012, the *San Jose Mercury News* ran a series on financial abuses by private fiduciaries and court appointed attorneys in Santa Clara County. *Loss of Trust* (deSa, 2012) exposed exorbitant fees charged for mundane tasks. Most offensive were *fees on fees* in which fiduciaries charged punitive fees in retaliation for conservatees' complaints of abuse. The stories reported that sizable estates can be exhausted in months to a few years.



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The ABC7 News I-Team<sup>20</sup> in San Francisco followed in 2012 and 2013 with a series of investigative reports on abuses by the Santa Clara County Public Guardian. A conservatee was confined and isolated for over two years. Her home was sold to pay for her confinement.

Caution voiced by Justice Louis Brandeis<sup>21</sup> nearly a century ago applies to conservatorship today.

*Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.*

We are born to freedom, but that freedom is ever at risk. Conservatorship may currently be the most insidious danger to our liberty.

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### CONSERVATORSHIP'S DARKER SIDE: CASE STUDIES

A conservator has considerable power over a conservatee's personal life and estate. In some cases, conservators abuse that power. Social services agencies, law enforcement, and the courts are hesitant to intervene in the actions of conservators. The case studies below demonstrate how conservatorship is used to violate the rights of conservatees. The case studies also demonstrate the lack of remedy for those abuses.

#### **CAROL HAHN (SAN BERNARDINO COUNTY)**

Carol Hahn shared a home with her *dearest friend in the world* and close companion since she was widowed in 2002. In spring of 2010, Hahn suffered from advanced Alzheimer's disease. She did not know her address or phone number. She had no memory of her \$1M estate. In June 2010, a step-granddaughter seized control of Hahn and her estate. The step-granddaughter hid Hahn at an assisted living facility, instructing the facility to deny Hahn visitors, phone calls, and mail.

In a 15-minute hearing in August 2010, the court awarded temporary conservatorship to the step-granddaughter. Hahn was not allowed to attend the hearing. The court investigator and court appointed attorney did not contact Hahn's companion, family, friends, neighbors, or clergy. Family was not allowed to testify.

Hahn remained unlawfully confined and isolated for fifteen months. Adult Protective Services substantiated that the facility isolated Hahn. Then they closed the case and walked away. The investigator later testified that she believed facilities have authority to forcibly isolate their residents.

The long-term care ombudsman substantiated that the facility isolated Hahn. Then she closed the case and walked away. The ombudsman later testified that County Counsel instructed her not to investigate isolation abuse.

Community Care Licensing cited the assisted living facility for violating Hahn's right to visitation, but Licensing did not require a correction. The licensing program analyst who issued the citation later testified that she was not aware of any abuse. She stated that she saw her role as protecting facilities from families that file complaints.

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San Bernardino County Sheriff's Department took the position that the facility had authority to forcibly isolate their residents. The investigating deputy ordered Hahn's daughter not to call the facility. He threatened to arrest anyone who attempted to visit Hahn. He threatened Hahn's daughter that he would charge her with a crime if she reported his misconduct.

The District Attorney's Office considered confinement and isolation to be civil matters. A Deputy District Attorney repeatedly told Hahn's family: *There is nothing out of the ordinary.*

Hahn's family approached the court many times, asking the court to intervene in the isolation abuse. Hahn's court appointed attorney opposed Hahn being allowed visitors, stating in court:

*It might inconvenience the facility.*

Hahn's isolation ended in September 2011, when the court issued a temporary restraining order against continued isolation abuse. Family incurred \$70K in legal fees to secure Hahn's right to visitation. Hahn's court appointed attorney invoiced Hahn's estate over \$70K for his efforts to oppose Hahn's right to visitation.

Family brought many motions related to horrific abuse in the assisted living facility. Family's counsel presented the court with evidence of gross financial abuse by the step-granddaughter, as well as mental, physical, and sexual abuse at the assisted living facility. The court appointed attorney opposed each motion. He invoiced Hahn's estate another \$80K to oppose Hahn receiving routine medical care or moving from the abusive facility.

Hahn remained under temporary conservatorship for three years, until she died in August 2013. In June 2015, the court reviewed the conservatorship accounting for the first time. The court declined to address matters of care during while Hahn was alive.

The court appointed attorney testified under oath that he completely supported the conservator's care of Hahn and the conservator's management of the estate. More than two years after Hahn's death, the court has yet to issue a ruling on the accounting. There will be no court review of Hahn's care.

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### **GISELA RIORDAN (SANTA CLARA COUNTY)**

Gisela Riordan lived comfortably in her own home with her son, who maintained the home and did chores as needed. In late 2009, Riordan went to the Kaiser Permanente emergency room a number of times for various reasons. Kaiser referred Riordan's case to Adult Protective Services.

In a 15-minute hearing in March 2010, the court appointed the Public Guardian as conservator. Riordan was not allowed to attend the hearing. The court investigator and the court appointed attorney did not interview family, friends, neighbors, or clergy. Testimony from family was disregarded. There was no trial.

The Public Guardian removed Riordan from her home, evicted her son, and sold their home. Riordan was confined and isolated a series of residential care facilities for over two years. Riordan was not allowed visitors, phone calls, or mail. The court appointed attorney was silent on Riordan's right to visitation.

The court appointed attorney and the court investigator both charged Riordan's estate to oppose her son's attempts to secure Riordan's right to visitation and to secure needed medical care. They also charged the estate to oppose advocates seeking to establish contact with Riordan and determine her physical and mental condition.

San Jose Police Department made the following determination.

*Based on all the information I have gathered at this point, it does not appear to me that this situation is a criminal neglect matter that would require the involvement of the police department.*

Chief Chris Moore added:

*After reviewing the facts as stated in your complaint, it has been determined that the actions taken were consistent with Department policy. This case will be closed as a Policy Complaint.*

The Santa Clara County District Attorney's Office gave the following opinion.

*This is a civil issue. You would have to petition the probate court through civil*

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*avenues. ... Once there is a clear violation of a court order, which is not the case here, and it has been investigated by a local law enforcement agency, then my office can review it. Hope this helps.*

Adult Protective Services did not respond to complaints of abuse. Community Care Licensing and the long-term care ombudsman both determined that the two-years of confinement and isolation were not a violation of Riordan's rights. Will Lightbourne, Director of California Department of Social Services, wrote:

*The results of the investigation are clear that there are no violations of Ms. Riordan's personal rights due to isolation occurring at the Villa Fontana facility....*

Riordan secured her right to visitation only after the county experienced considerable embarrassment following the series of investigative reports by ABC7 I-Team in San Francisco. Her estate was depleted. She now resides in a dreary skilled nursing facility that accepts Medicaid payments.

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### LEGISLATIVE RESPONSE TO ISOLATION ABUSE

In 2013, California's legislature responded to the cases of isolation abuse that are summarized above. Carol Hahn's daughter was invited to testify before the Senate Judiciary Committee, and her comments were included in relevant legislative analysis. Governor Brown signed Assembly Bill 937 (Wieckowski) two days after Hahn's daughter requested his support. AB 937 amended Probate Code 2351(a) to read:

*2351. (a) Subject to subdivision (b), the guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee. This control shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by court order.*

In 2014, Assembly Bill 2171 (Wieskowski) created a statutory Bill of Rights for residents in assisted living facilities. That Bill of Rights included the right to leave the facility, as well as the right to have visitors, phone calls, and mail.

In 2015, Assembly Bill 1085 (Gatto) expressed the culmination of legislative discussion on the right to social contact.

#### *SECTION 1.*

*The Legislature finds and declares that every adult in this state has the right to visit with, and receive mail and telephone or electronic communication from, whomever he or she so chooses, unless a court has specifically ordered otherwise.*

#### *SEC. 2.*

*Section 2351 of the Probate Code is amended to read:*

#### *2351.*

*(a) Subject to subdivision (b), the guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee. This control shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by court order. The court may issue an order that specifically grants the conservator the power to enforce the conservatee's rights to receive visitors, telephone calls, and personal mail, or that directs the conservator to allow those visitors, telephone calls, and personal mail.*

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## CONSERVATORSHIP AND CIVIL RIGHTS IN CONFLICT

In some cases, the Probate Code itself is in conflict with the fundamental civil right to due process. The Bill of Rights enumerates civil rights that must not be violated by the federal government. The 14<sup>th</sup> Amendment to the Constitution incorporates most of those rights, thus prohibiting states violating individuals' civil rights.

The California Constitution enumerates civil rights that are in keeping with the Bill of Rights and the 14<sup>th</sup> Amendment. On close examination, certain sections of the Probate Code are at odds with those express rights. In the Court's urgency to act on conservatorship petitions, conservatees may be deprived of their civil rights as stated in the California Constitution and reiterated in case law.

Central in the conservatorship discussion is Article 1 Section 7(a)<sup>22</sup> of the California Constitution. That section guarantees a person may not be deprived of liberty or property without due process of law. Section 13<sup>23</sup> guarantees that a person may not to be subjected to unreasonable searches and seizures.

California courts have held that civil confinement through conservatorship is no less intrusive than criminal confinement in a penitentiary. Hence, proposed conservatees are entitled to the same due process that criminal defendants receive prior to being incarcerated. The *Notice of Conservatee's Rights* reiterates those rights<sup>24</sup>.

However, sections of the Probate Code deny the very rights that are guaranteed in the California Constitution and clearly stated in the *Notice of Conservatee's Rights*. The Probate Code authorizes a Public Guardian to seize real and personal property<sup>25</sup> thirty days before<sup>26</sup> any hearing takes place. Homes and bank accounts are seized without court oversight. Family members are evicted. Proposed conservatees have no access to personal funds to retain counsel or provide for their personal needs. Proposed conservatees are rendered utterly dependent on the Public Guardian with no viable means of opposing an impending conservatorship action.

Accepted understanding of *due process*<sup>27</sup> includes the right to a jury trial<sup>27</sup>. Probate Code confirms the right to a jury trial based on *clear and convincing evidence*<sup>28</sup>. In practice, however, conservatorship trials are rare and occur only when motivated and affluent family members have the means to contest a conservatorship.

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Many conservatorship petitions are approved after hearings of only a few minutes. Petitions may contain unsubstantiated allegations and hearsay. Proposed conservatees may be denied their right to attend hearings or to confront their accusers. Families may be denied the opportunity to give testimony, or that testimony may be disregarded in favor of unsubstantiated allegations.

Conservatee's rights are terminated with the stroke of a pen. Once conserved, the conservatee lacks the means to effectively oppose conservatorship proceedings or object to abuse. Civil rights that we take for granted are, in essence, extinguished in conservatorship.

Under conservatorship, an individual is deemed to lack legal capacity to enter into a contract<sup>29</sup>. The conservatee is effectively denied any opportunity to retain counsel or oppose conservatorship proceedings. In situations of confinement and isolation, such as the case studies above, the conservatee has no means to object to abuse or to seek assistance of any kind.



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### **CONSERVATORSHIP'S DARK FUTURE**

California's conservatorship system is alarmingly repressive and devoid of oversight or accountability. The case studies presented above stir dark memories of confinement in the mental institutions of centuries past. Individuals were declared insane and then confined with little opportunity to stay the process. Once confined, there was little hope of escape.

The Probate Code requires due process and specifies that conservators must act in the best interest of conservatees. The Notice of Conservatee's Rights enumerates rights to representation by counsel and visitation with loved ones. But in practice, those rights are often ignored.

Oversight of conservators is inadequate. With little accountability for abusive actions, conservators exercise nearly absolute power over their conservatees. History has shown repeatedly that absolute power of one group over another leads to abuses of rights and abuses of persons. The case studies above speak to those abuses.

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### ENDNOTES

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<sup>1</sup> Probate Code 1801(a) *A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter....*

*(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence....*

<sup>2</sup> *Handbook for Conservators* (2002) Judicial Council of California

<sup>3</sup> *Conservatorship of Stewart* (1969) 276 Cal.App.2d 211 [80 Cal.Rptr. 738]

<sup>4</sup> Welfare & Institutions Code 15610.07 *"Abuse of an elder or a dependent adult" means either of the following:*

*(a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.(b) The deprivation by a care custody an of goods or services that are necessary to avoid physical harm or mental suffering.*

<sup>5</sup> Penal Code 368(c): *Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.*

<sup>6</sup> Penal Code 368(b)(1): *Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.*

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<sup>7</sup> Lanterman-Petris-Short Act (Welfare & Institutions Code, sec. 5000 et seq.) provides for conservatorship and involuntary commitment of “gravely disabled” adults.

<sup>8</sup> *Conservatorship of Roulet* (1979) 23 Cal.3d 219 225-226

<sup>9</sup> *In re Gault* (1967) 387 U.S. 1, 50.

<sup>10</sup> *In re Winship* (1970) 397 U.S. 358, 365-366.

<sup>11</sup> *People v. Thomas* (1977) 19 Cal.3d 630, 683.

<sup>12</sup> *Conservatorship of Mary Edith Sanderson* (1980) 106 Cal.App.3d 611, 620

<sup>13</sup> Probate Code 1826(a)

<sup>14</sup> Probate Code 2352.5(a)

<sup>15</sup> Probate Code 2540, Probate 2543

<sup>16</sup> Probate Code 2352(b) *The conservator shall select the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.*

<sup>17</sup> Probate Code 2352.5(a) *It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence.*

<sup>18</sup> GC-341 *Unless the court has limited or taken the right away, the conservatee also keep the right to: Receive personal mail; Receive visits from family and friends; ....*

<sup>19</sup> Handbook for Conservators (2002) p 61. *When a person becomes a conservatee, he or she does not lose the right to visit with friends or family. Encourage the conservatee to keep in touch with family members, friends, and neighbors. You or someone else may need to help the*

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*conservatee write letters or make phone calls. Encourage family and friends to visit and write back, and suggest that they take the conservatee on regular outings and trips. Even extremely impaired people enjoy going to a restaurant or a park or out for a drive. Do not isolate the conservatee by keeping friends or family away.*

<sup>20</sup> Noyes, *Public Guardian under fire for isolating elderly*, 2012

<sup>21</sup> *Olmstead v. United States* (1928) 277 U.S. 438, 479.

<sup>22</sup> *California Constitution Article 1, Section 7(a)* A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws;

<sup>23</sup> *California Constitution Article 1, Section 13* The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

<sup>24</sup> *After the appointment of a conservator, the conservatee keeps the right: Be represented by a lawyer; Ask the judge to replace the conservator; Ask a judge to end the conservatorship;*

<sup>25</sup> *Probate Code 2900(a)(1)* If the public guardian or public conservator determines that the requirements for appointment of a guardian or conservator of the estate are satisfied and the public guardian or public conservator intends to apply for appointment, the public guardian or public conservator may take possession or control of real or personal property of a person domiciled in the county that is subject to loss, injury, waste, or misappropriation, and, subject to subdivision (b), may deny use of, access to, or prohibit residency in, the real or personal property, by anyone who does not have a written rental agreement or other legal right to the use of, or access to, the property.

<sup>26</sup> *Probate Code 2901(a)* A public guardian who is authorized to take possession or control of property under this chapter may issue a written certification of that fact. The written certification is effective for 30 days after the date of issuance.

<sup>27</sup> *Probate Code 1827* The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the proposed conservatee.

## CONSERVATORSHIP IN CRISIS

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<sup>28</sup> *Probate Code 1801(e) The standard of proof for the appointment of a conservator pursuant to this section shall be clear and convincing evidence.*

<sup>29</sup> *Probate Code 1872(a) Except as otherwise provided in this article, the appointment of a conservator of the estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate.*