

LANTERMAN-PETRIS-SHORT ACT

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4000. Conservatorship—Essential Factual Elements

[Name of petitioner] **claims that** *[name of respondent]* **is gravely disabled due to [a mental disorder/impairment by chronic alcoholism] and therefore should be placed in a conservatorship. In a conservatorship, a conservator is appointed to oversee, under the direction of the court, the care of persons who are gravely disabled due to a mental disorder or chronic alcoholism. To succeed on this claim, [name of petitioner] must prove beyond a reasonable doubt all of the following:**

- 1. That *[name of respondent]* [has a mental disorder/is impaired by chronic alcoholism]; [and]**
 - 2. That *[name of respondent]* is gravely disabled as a result of the [mental disorder/chronic alcoholism][; and/.]**
 - 3. That *[name of respondent]* is unwilling or unable voluntarily to accept meaningful treatment.]**
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New June 2005; Revised June 2016

Directions for Use

There is a split of authority as to whether element 3 is required. (Compare *Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1467 [257 Cal.Rptr. 860] [“[M]any gravely disabled individuals are simply beyond treatment”] with *Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 328 [177 Cal.Rptr. 369] [jury should be allowed to consider all factors that bear on whether person should be on LPS conservatorship, including willingness to accept treatment].)

Sources and Authority

- Right to Jury Trial. Welfare and Institutions Code section 5350(d).
- “Gravely Disabled” Defined. Welfare and Institutions Code section 5008(h).
- “The Lanterman-Petris-Short Act (the act) governs the involuntary treatment of the mentally ill in California. Enacted by the Legislature in 1967, the act includes among its goals ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program.” (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1008–1009 [36 Cal.Rptr.2d 40, 884 P.2d 988].)
- “LPS Act commitment proceedings are subject to the due process clause because significant liberty interests are at stake. But an LPS Act proceeding is civil. ‘[T]he stated purposes of the LPS Act foreclose any argument that an LPS

commitment is equivalent to criminal punishment in its design or purpose.’ Thus, not all safeguards required in criminal proceedings are required in LPS Act proceedings.” (*Conservatorship of P.D.* (2018) 21 Cal.App.5th 1163, 1167 [231 Cal.Rptr.3d 79], internal citations omitted.)

- “The clear import of the LPS Act is to use the involuntary commitment power of the state sparingly and only for those truly necessary cases where a ‘gravely disabled’ person is incapable of providing for his basic needs either alone or with help from others.” (*Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1280 [221 Cal.Rptr.3d 622].)
- “The right to a jury trial upon the establishment of conservatorship is fundamental to the protections afforded by the LPS. As related, that right is expressly extended to the reestablishment of an LPS conservatorship.” (*Conservatorship of Benvenuto* (1986) 180 Cal.App.3d 1030, 1037 [226 Cal.Rptr. 33], internal citations omitted.)
- “[T]he trial court erred in accepting counsel’s waiver of [conservatee]’s right to a jury trial” (*Estate of Kevin A.* (2015) 240 Cal.App.4th 1241, 1253 [193 Cal.Rptr.3d 237].)
- “‘The due process clause of the California Constitution requires that proof beyond a reasonable doubt and a unanimous jury verdict be applied to conservatorship proceedings under the LPS Act.’ An LPS commitment order involves a loss of liberty by the conservatee. Consequently, it follows that a trial court must obtain a waiver of the right to a jury trial from the person who is subject to an LPS commitment.” (*Conservatorship of Heather W.* (2016) 245 Cal.App.4th 378, 382–383 [199 Cal.Rptr.3d 689].)
- “We . . . hold that a person sought to be made an LPS conservatee subject to involuntary confinement in a mental institution, is entitled to have a unanimous jury determination of all of the questions involved in the imposition of such a conservatorship, and not just on the issue of grave disability in the narrow sense of whether he or she can safely survive in freedom and provide food, clothing or shelter unaided by willing, responsible relatives, friends or appropriate third persons.” (*Conservatorship of Davis, supra*, 124 Cal.App.3d at p. 328.)
- “The jury should determine if the person voluntarily accepts meaningful treatment, in which case no conservatorship is necessary. If the jury finds the person will not accept treatment, then it must determine if the person can meet his basic needs on his own or with help, in which case a conservatorship is not justified.” (*Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1092–1093 [242 Cal.Rptr. 289].)
- “Our research has failed to reveal any authority for the proposition [that] without a finding that the proposed conservatee is unable or unwilling to voluntarily accept treatment, the court must reject a conservatorship in the face of grave disability. . . . Some persons with grave disabilities are beyond treatment. Taken to its logical conclusion, they would be beyond the LPS Act’s reach, according to the argument presented in this appeal.” (*Conservatorship of Symington, supra*, 209 Cal.App.3d at p. 1469.)

- “The party seeking imposition of the conservatorship must prove the proposed conservatee’s grave disability beyond a reasonable doubt and the verdict must be issued by a unanimous jury.” (*Conservatorship of Susan T.*, *supra*, 8 Cal.4th at p. 1009, internal citation omitted.)
- “Although there is no private right of action for a violation of section 5152, ‘aggrieved individuals can enforce the [LPS] Act’s provisions through other common law and statutory causes of action, such as negligence, medical malpractice, false imprisonment, assault, battery, declaratory relief, United States Code section 1983 for constitutional violations, and Civil Code section 52.1. [Citations.]’ ” (*Swanson v. County of Riverside* (2019) 36 Cal.App.5th 361, 368 [248 Cal.Rptr.3d 476].)

Secondary Sources

15 Witkin, Summary of California Law (11th ed. 2017) Wills and Probate, § 1007

3 Witkin, California Procedure (5th ed. 2008) Actions, § 97

2 California Conservatorship Practice (Cont.Ed.Bar) Ch. 23

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.30 et seq. (Matthew Bender)

4001. “Mental Disorder” Explained

The term “mental disorder” is limited to those disorders described in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. This book is sometimes referred to as “the DSM [current edition, e.g., “IV”].”

New June 2005

Directions for Use

This instruction is not intended for cases proceeding on a theory of impairment by chronic alcoholism only.

Sources and Authority

“The term ‘mental disorder’ is limited to those disorders listed by the American Psychiatric Association in its Diagnostic and Statistical Manual of Mental Disorders (Cal. Admin. Code, tit. 9, § 813).” (*Conservatorship of Chambers* (1977) 71 Cal.App.3d 277, 282, fn. 5 [139 Cal.Rptr. 357].) “Although this [administrative] regulation has since been repealed, the practice has been to continue using the same definition.” (California Conservatorship Practice (Cont.Ed.Bar) § 23.11.)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, § 97

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.11

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.33 (Matthew Bender)

4002. “Gravely Disabled” Explained

The term “gravely disabled” means that a person is presently unable to provide for the person’s basic needs for food, clothing, or shelter because of [a mental health disorder/impairment by chronic alcoholism]. [The term “gravely disabled” does not include persons with intellectual disabilities by reason of the disability alone.]

[[*Insert one or more of the following:*] [psychosis/bizarre or eccentric behavior/delusions/hallucinations/[*insert other*]] [is/are] not enough, by [itself/themselves], to find that [*name of respondent*] is gravely disabled. [He/She/Nonbinary pronoun] must be unable to provide for the basic needs of food, clothing, or shelter because of [a mental disorder/impairment by chronic alcoholism].]

[If you find [*name of respondent*] will not take [his/her/nonbinary pronoun] prescribed medication without supervision and that a mental disorder makes [him/her/nonbinary pronoun] unable to provide for [his/her/nonbinary pronoun] basic needs for food, clothing, or shelter without such medication, then you may conclude [*name of respondent*] is presently gravely disabled.

In determining whether [*name of respondent*] is presently gravely disabled, you may consider evidence that [he/she/nonbinary pronoun] did not take prescribed medication in the past. You may also consider evidence of [his/her/nonbinary pronoun] lack of insight into [his/her/nonbinary pronoun] mental condition.]

In considering whether [*name of respondent*] is presently gravely disabled, you may not consider the likelihood of future deterioration or relapse of a condition.

New June 2005; Revised January 2018, May 2019, May 2020

Directions for Use

This instruction provides the definition of “gravely disabled” from Welfare and Institutions Code section 5008(h)(1)(A), which will be the applicable standard in most cases. The instruction applies to both adults and minors. (*Conservatorship of M.B.* (2018) 27 Cal.App.5th 98, 107 [237 Cal.Rptr.3d 775].)

Read the bracketed sentence at the end of the first paragraph if appropriate to the facts of the case. There is a second standard in Welfare and Institutions Code section 5008(h)(1)(B) involving a finding of mental incompetence under Penal Code section 1370. A different instruction will be required if this standard is alleged.

The last paragraph regarding the likelihood of future deterioration may not apply if the respondent has no insight into the respondent’s mental disorder.

(*Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1576–1577 [254 Cal.Rptr. 552].)

If there is evidence concerning the availability of third parties that are willing to provide assistance to the proposed conservatee, see CACI No. 4007, *Third Party Assistance*.

Sources and Authority

- “Gravely Disabled” Defined. Welfare and Institutions Code section 5008(h).
- “The enactment of the LPS and with it the substitution of ‘gravely disabled’ for ‘in need of treatment’ as the basis for commitment of individuals not dangerous to themselves or others reflects a legislative determination to meet the constitutional requirements of precision. The term ‘gravely disabled’ is sufficiently precise to exclude unusual or nonconformist lifestyles. It connotes an inability or refusal on the part of the proposed conservatee to care for basic personal needs of food, clothing and shelter.” (*Conservatorship of Chambers* (1977) 71 Cal.App.3d 277, 284 [139 Cal.Rptr. 357], footnotes omitted.)
- “[T]he public guardian must prove beyond a reasonable doubt that the proposed conservatee is gravely disabled.” (*Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453, 461 [203 Cal.Rptr.3d 667].)
- “The stricter criminal standard is used because the threat to the conservatee’s individual liberty and personal reputation is no different than the burdens associated with criminal prosecutions.” (*Conservatorship of Smith* (1986) 187 Cal.App.3d 903, 909 [232 Cal.Rptr. 277] internal citations omitted.)
- “Bizarre or eccentric behavior, even if it interferes with a person’s normal intercourse with society, does not rise to a level warranting conservatorship except where such behavior renders the individual helpless to fend for herself or destroys her ability to meet those basic needs for survival.” (*Conservatorship of Smith, supra*, 187 Cal.App.3d at p. 909.)
- “Under [Welfare and Institutions Code] section 5350, subdivision (e)(1), ‘a person is not “gravely disabled” if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.’ ” (*Conservatorship of Jesse G., supra*, 248 Cal.App.4th at p. 460.)
- “While [third person] may not have shown that he could manage appellant’s mental health symptoms as adeptly as would a person professionally trained to care for someone with a mental disorder, that is not the standard. As appellant states, ‘[t]he question in a LPS conservatorship case where the proposed conservatee asserts a third party assistance claim is not whether the third party will be able to manage the person’s mental health symptoms completely. Rather, the dispositive question is whether the person is able to provide the proposed conservatee with food, clothing, and shelter on a regular basis.’” (*Conservatorship of Jesse G., supra*, 248 Cal.App.4th at p. 463 fn. 4.)

- “We . . . hold that a person sought to be made an LPS conservatee subject to involuntary confinement in a mental institution, is entitled to have a unanimous jury determination of all of the questions involved in the imposition of such a conservatorship, and not just on the issue of grave disability in the narrow sense of whether he or she can safely survive in freedom and provide food, clothing or shelter unaided by willing, responsible relatives, friends or appropriate third persons.” (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 328 [177 Cal.Rptr. 369].)
- “[A]n individual who will not voluntarily accept mental health treatment is not for that reason alone gravely disabled.” (*Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1468 [257 Cal.Rptr. 860].)
- “[T]he pivotal issue is whether [respondent] was ‘presently’ gravely disabled and the evidence demonstrates that he was not. Accordingly, the order granting the petition must be overturned.” (*Conservatorship of Benvenuto* (1986) 180 Cal.App.3d. 1030, 1034 [226 Cal.Rptr. 33], fn. omitted, citing to *Conservatorship of Murphy* (1982) 134 Cal.App.3d 15, 18 [184 Cal.Rptr. 363].)
- “[A] conservatorship cannot be established because of a perceived likelihood of future relapse. To do so could deprive the liberty of persons who will not suffer such a relapse solely because of the pessimistic statistical odds. Because of the promptness with which a conservatorship proceeding can be invoked the cost in economic and liberty terms is unwarranted.” (*Conservatorship of Neal* (1987) 190 Cal.App.3d 685, 689 [235 Cal.Rptr. 577].)
- “A perceived likelihood of future relapse, without more, is not enough to justify establishing a conservatorship. Neither can such a likelihood justify keeping a conservatorship in place if its subject is not presently gravely disabled, in light of the statutory provisions allowing rehearings to evaluate a conservatee’s current status.” (*Conservatorship of Jones* (1989) 208 Cal.App.3d 292, 302 [256 Cal.Rptr. 415], internal citation omitted.)
- “[T]he definition of ‘[g]ravely disabled minor’ from section 5585.25 is not part of the LPS Act, but is found in the Children’s Civil Commitment and Mental Health Treatment Act of 1988. (§ 5585.) This definition applies ‘only to the initial 72 hours of mental health evaluation and treatment provided to a minor. . . . Evaluation and treatment of a minor beyond the initial 72 hours shall be pursuant to the . . . [LPS Act].’ (§ 5585.20.) Accordingly, we must apply the definition found in the LPS Act, and determine whether there was substantial evidence Minor suffered from a mental disorder as a result of which she ‘would be unable to provide for [her] basic personal needs’ if she had to so provide.” (*Conservatorship of M.B.*, *supra*, 27 Cal.App.5th at p. 107.)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, § 97

2 California Conservatorship Practice (Cont.Ed.Bar) §§ 23.3, 23.5

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental*
982

Disabilities: Judicial Commitment, Health Services, and Civil Rights, §§ 361A.33, 361A.42 (Matthew Bender)

4003. “Gravely Disabled” Minor Explained

Revoked May 2019. See *Conservatorship of M.B.* (2018) 27 Cal.App.5th 98, 107 [237 Cal.Rptr.3d 775].)

4004. Issues Not to Be Considered

In determining whether [name of respondent] is gravely disabled, you must not consider or discuss the type of treatment, care, or supervision that may be ordered if a conservatorship is established.

New June 2005

Sources and Authority

- “Petitioner’s proposed jury instruction reads as follows: ‘You are instructed that the matter of what kind or type of treatment, care or supervision shall be rendered is not a part of your deliberation, and shall not be considered in determining whether or not [proposed conservatee] is or is not gravely disabled. The problem of treatment, care and supervision of a gravely disabled person and whether or not he shall be detained in a sanitarium, private hospital, or state institution, is not within the province of the jury, but is a matter to be considered by the conservator in the event that the jury finds that [proposed conservatee] is gravely disabled.’ [¶] [T]he instruction should be given.” (*Conservatorship of Baber* (1984) 153 Cal.App.3d 542, 553 & fn. 7 [200 Cal.Rptr. 262].)
- “[I]nformation about the consequences of conservatorship for [proposed conservatee] was irrelevant to the only question before [the] jury: whether, as a result of a mental disorder, he is unable to provide for his basic personal needs for food, clothing, or shelter.” (*Conservatorship of P.D.* (2018) 21 Cal.App.5th 1163, 1168 [231 Cal.Rptr.3d 79].)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, § 97

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.89

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.33 (Matthew Bender)

4005. Obligation to Prove—Reasonable Doubt

[Name of respondent] is presumed not to be gravely disabled. [Name of petitioner] has the burden of proving beyond a reasonable doubt that [name of respondent] is gravely disabled. The fact that a petition has been filed claiming [name of respondent] is gravely disabled is not evidence that this claim is true.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that [name of respondent] is gravely disabled as a result of [a mental disorder/impairment by chronic alcoholism]. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether [name of respondent] is gravely disabled, you must impartially compare and consider all the evidence that was received throughout the entire trial.

Unless the evidence proves that [name of respondent] is gravely disabled because of [a mental disorder/impairment by chronic alcoholism] beyond a reasonable doubt, you must find that [he/she/nonbinary pronoun] is not gravely disabled.

Although a conservatorship is a civil proceeding, the burden of proof is the same as in criminal trials.

New June 2005; Revised June 2016

Directions for Use

The presumption in the first sentence of the instruction is perhaps open to question. Two older cases have held that there is such a presumption. (See *Conservatorship of Law* (1988) 202 Cal.App.3d 1336, 1340 [249 Cal.Rptr. 415]; *Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1099 [242 Cal.Rptr. 289].) However, these holdings may have been based on the assumption that the California Supreme Court had incorporated all protections for criminal defendants into LPS proceedings. (See *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235 [152 Cal.Rptr. 425, 590 P.2d 1] [proof beyond reasonable doubt and unanimous jury verdict required].) Subsequent cases have made it clear that an LPS respondent is not entitled to all of the same protections as a criminal defendant. (See *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 538 [53 Cal.Rptr.3d 856, 150 P.3d 738] [exclusionary rule and *Wende* review do not apply in LPS].)

Sources and Authority

- “A proposed conservatee has a constitutional right to a finding based on proof beyond a reasonable doubt. Without deciding whether the court has a sua sponte duty to so instruct, we are satisfied that, on request, a court is required to

instruct in language emphasizing a proposed conservatee is presumed to not be gravely disabled until the state carries its burden of proof.” (*Conservatorship of Walker, supra*, 196 Cal.App.3d at p. 1099, internal citation omitted.)

- “[I]f requested, a court is required to instruct that a proposed conservatee is presumed not to be gravely disabled until the state carries its burden of proof.” (*Conservatorship of Law, supra*, 202 Cal.App.3d at p. 1340.)
- But see *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1409 [122 Cal.Rptr.2d 384]: “Even if we view the presumption in a more general sense as a warning against the consideration of extraneous factors, we cannot conclude that the federal and state Constitutions require a presumption-of-innocence-like instruction outside the context of a criminal case. Particularly, we conclude that, based on the civil and nonpunitive nature of involuntary commitment proceedings, a mentally ill or disordered person would not be deprived of a fair trial without such an instruction.”
- “Neither mental disorder nor grave disability is a crime.” (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 330 [177 Cal.Rptr. 369].)
- “More recently this court has recognized, however, that the analogy between criminal proceedings and proceedings under the LPS Act is imperfect at best and that not all of the safeguards required in the former are appropriate to the latter.” (See *Conservatorship of Ben C., supra*, 40 Cal.4th at p. 538.)
- “In *Roulet*, the California Supreme Court held that due process requires proof beyond a reasonable doubt and jury unanimity in conservatorship proceedings. However, subsequent appellate court decisions have not extended the application of criminal law concepts in this area.” (*Conservatorship of Maldonado* (1985) 173 Cal.App.3d 144, 147 [218 Cal.Rptr. 796].)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 97, 104

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.81

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.33 (Matthew Bender)

4006. Sufficiency of Indirect Circumstantial Evidence

You may not decide that [name of respondent] is gravely disabled based substantially on indirect evidence unless this evidence:

1. Is consistent with the conclusion that [name of respondent] is gravely disabled due to [a mental disorder/impairment by chronic alcoholism]; and
2. Cannot be explained by any other reasonable conclusion.

If the indirect evidence suggests two reasonable interpretations, one of which suggests the existence of a grave disability and the other its nonexistence, then you must accept the interpretation that suggests [name of respondent] is not gravely disabled.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable one.

If you base your verdict on indirect evidence, [name of petitioner] must prove beyond a reasonable doubt each fact essential to your conclusion that [name of respondent] is gravely disabled.

New June 2005

Directions for Use

Read this instruction immediately after CACI No. 202, *Direct and Indirect Evidence*.

Sources and Authority

- “[W]here proof to establish a conservatorship for a person alleged to be gravely disabled is based upon substantially circumstantial evidence, the proposed conservatee is entitled, on request in an appropriate case, to have the jurors instructed as to the principles relevant when applying circumstantial evidence to the beyond a reasonable doubt burden of proof.” (*Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1088 [242 Cal.Rptr. 289].)
- “A proposed conservatee is entitled to procedural due process protections similar to a criminal defendant since fundamental liberty rights are at stake. The trial court had a sua sponte duty to correctly instruct on the general principles of law necessary for the jury’s understanding of the case.” (*Conservatorship of Walker, supra*, 196 Cal.App.3d at p. 1092, fn. 5, internal citations omitted.)
- “The court has no duty to give the [circumstantial evidence jury instructions applicable to criminal cases] in a case where the circumstantial evidence

necessary to prove a certain mental state is not subject to any inference except that pointing to the existence of that mental state.” (*Conservatorship of Walker, supra*, 196 Cal.App.3d at p. 1098; *Conservatorship of Law* (1988) 202 Cal.App.3d 1336, 1342 [249 Cal.Rptr. 415].)

- “Where a noncriminal case is to be evaluated by a reasonable doubt standard, it follows that a party on a proper state of the evidence is entitled on request to have jurors informed of the manner in which that standard must be established when the evidence consists substantially of circumstantial evidence.” (*Conservatorship of Walker, supra*, 196 Cal.App.3d at p. 1098.)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 100, 104

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.90

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.33 (Matthew Bender)

4007. Third Party Assistance

A person is not “gravely disabled” if [he/she/nonbinary pronoun] can survive safely with the help of third party assistance. Third party assistance is the aid of family, friends, or others who are responsible, willing, and able to help provide for the person’s basic needs for food, clothing, or shelter.

You must not consider offers by family, friends, or others unless they [have testified to/stated specifically in writing] their willingness and ability to help provide [name of respondent] with food, clothing, or shelter. Well-intended offers of assistance are not sufficient unless they will ensure the person can survive safely.

[Assistance provided by a correctional facility does not constitute third party assistance.]

New June 2005

Sources and Authority

- Help of Family or Friends. Welfare and Institutions Code section 5350(e).
- “[A] person is not ‘gravely disabled’ within the meaning of section 5008, subdivision (h)(1) if he or she is capable of surviving safely in freedom with the help of willing and responsible family members, friends or third parties.” (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 321 [177 Cal.Rptr. 369].)
- “As we view the broad purpose of the LPS Act, imposition of a conservatorship should be made only in situations where it is truly necessary. To accomplish this purpose evidence of the availability of third party assistance must be considered.” (*Conservatorship of Early* (1983) 35 Cal.3d 244, 253 [197 Cal.Rptr. 539, 673 P.2d 209].)
- “The California Supreme Court in *Conservatorship of Early* . . . concluded although a person might be gravely disabled if left to his or her own devices, he or she may be able to function successfully in freedom with the support and assistance of family and friends. The court recognized almost everyone depends to a greater or lesser extent upon others in order to survive in our complex society.” (*Conservatorship of Jones* (1989) 208 Cal.App.3d 292, 299 [256 Cal.Rptr. 415].)
- “In *Conservatorship of Early* . . . the Supreme Court held that it was error for the trial court to refuse to admit evidence of and to fail to instruct on the ‘availability of assistance of others to meet the basic needs of a person afflicted with a mental disorder.’ ” (*Conservatorship of Baber* (1984) 153 Cal.App.3d 542, 552–553 [200 Cal.Rptr. 262], citation omitted.)
- “Corrections custody does not qualify as third party assistance under the LPS

Act as interpreted by case law.” (*Conservatorship of Jones, supra*, 208 Cal.App.3d at p. 303.)

- “Under section 5350, subdivision (e)(1), a person is not gravely disabled only if he or she can *survive safely* with the assistance of a third party. There is substantial evidence that the assistance offered by [respondent’s mother], while well-intended, would not meet this requirement.” (*Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 699 [1 Cal.Rptr. 2d 46], original italics, footnote omitted.)
- “The parties have raised the issue of whether section 5350, subdivision (e)(2), precluded the trial court from considering [petitioner’s mother’s] testimony on the issue of third party assistance. This section provides that third parties shall not be considered willing or able to provide assistance unless they so indicate in writing. This section has no application in this case. The purpose of section 5350, subdivision (e), ‘is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the court to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person’s basic needs for food, clothing, or shelter.’ This was not the case here; [petitioner’s mother] took the stand at trial and testified as to her willingness to provide assistance to her daughter. No purpose of section 5350, subdivision (e), would be served by requiring her to also execute a writing to this effect.” (*Conservatorship of Johnson, supra*, 235 Cal.App.3d at p. 699, n. 5.)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 98, 100

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.4

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.42 (Matthew Bender)

4008. Third Party Assistance to Minor

A minor is not “gravely disabled” if [he/she/nonbinary pronoun] can survive safely with the help of third party assistance. Third party assistance is the aid of family, friends, or others who are responsible, willing, and able to help provide for the minor’s health, safety, and development, including food, shelter, and clothing.

You must not consider offers by family, friends, or others unless they [have testified to/stated specifically in writing] their willingness and ability to help provide for [name of respondent]’s health, safety, and development. Well-intended offers of assistance are not sufficient unless they will ensure the person can survive safely.

[Assistance provided by a correctional facility does not constitute third party assistance.]

New June 2005

Sources and Authority

- Help of Family and Friends. Welfare and Institutions Code section 5350(e).
- “[A] person is not ‘gravely disabled’ within the meaning of section 5008, subdivision (h)(1) if he or she is capable of surviving safely in freedom with the help of willing and responsible family members, friends or third parties.” (*Conservatorship of Davis* (1981) 124 Cal.App.3d 313, 321 [177 Cal.Rptr. 369].)
- “Although a minor may not be legally responsible to provide for his basic personal needs, or may suffer disabilities other than a mental disorder which preclude him from so providing, the [statutory] definition is nevertheless applicable. A minor is ‘gravely disabled’ within the meaning of section 5008, subdivision (h)(1), when the trier of fact, on expert and other testimony, finds that disregarding other disabilities, if any, the minor, because of the further disability of a mental disorder, would be unable to provide for his basic personal needs. Immaturity, either physical or mental when not brought about by a mental disorder, is not a disability which would render a minor ‘gravely disabled’ within the meaning of section 5008.” (*In re Michael E.* (1975) 15 Cal.3d 183, 192, fn. 12 [123 Cal.Rptr. 103, 538 P.2d 231].)
- “As we view the broad purpose of the LPS Act, imposition of a conservatorship should be made only in situations where it is truly necessary. To accomplish this purpose evidence of the availability of third party assistance must be considered.” (*Conservatorship of Early* (1983) 35 Cal.3d 244, 253 [197 Cal.Rptr. 539, 673 P.2d 209].)
- “The California Supreme Court in *Conservatorship of Early* . . . concluded although a person might be gravely disabled if left to his or her own devices, he

or she may be able to function successfully in freedom with the support and assistance of family and friends. The court recognized almost everyone depends to a greater or lesser extent upon others in order to survive in our complex society.” (*Conservatorship of Jones* (1989) 208 Cal.App.3d 292, 299 [256 Cal.Rptr. 415].)

- “Corrections custody does not qualify as third party assistance under the LPS Act as interpreted by case law.” (*Conservatorship of Jones, supra*, 208 Cal.App.3d at p. 303.)
- “Under section 5350, subdivision (e)(1), a person is not gravely disabled only if he or she can *survive safely* with the assistance of a third party. There is substantial evidence that the assistance offered by [respondent’s mother], while well-intended, would not meet this requirement.” (*Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 699 [1 Cal.Rptr. 2d 46], original italics, footnote omitted.)
- “The parties have raised the issue of whether section 5350, subdivision (e)(2), precluded the trial court from considering [petitioner’s mother’s] testimony on the issue of third party assistance. This section provides that third parties shall not be considered willing or able to provide assistance unless they so indicate in writing. This section has no application in this case. The purpose of section 5350, subdivision (e), ‘is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the court to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person’s basic needs for food, clothing, or shelter.’ This was not the case here; [petitioner’s mother] took the stand at trial and testified as to her willingness to provide assistance to her daughter. No purpose of section 5350, subdivision (e), would be served by requiring her to also execute a writing to this effect.” (*Conservatorship of Johnson, supra*, 235 Cal.App.3d at p. 699, n. 5.)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 90, 97, 100

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.4

28 California Forms of Pleading and Practice, Ch. 329, *Juvenile Courts: Delinquency Proceedings*, § 329.73 (Matthew Bender)

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, §§ 361A.42, 361A.45 (Matthew Bender)

4009. Physical Restraint

The fact that respondent has been brought before the court in physical restraints is not evidence of grave disability. You must not speculate on the reasons for such restraints.

New June 2005

Directions for Use

When the restraints are concealed from the jury's view, this instruction should not be given unless requested by the conservatee since it might invite initial attention to the restraints and, thus, create prejudice, which would otherwise be avoided. (*People v. Duran* (1976) 16 Cal.3d 282, 292 [127 Cal.Rptr. 618, 545 P.2d 1322].)

In *Conservatorship of Warrack* (1992) 11 Cal.App.4th 641, 647 [14 Cal.Rptr. 2d 99], the court held that a proposed conservatee in a jury trial under the LPS Act may not be physically restrained unless the trial court follows the procedures outlined in *People v. Duran, supra*, 16 Cal.3d at pp. 288–290.

Sources and Authority

- “The court in *People v. Duran*, held that where physical restraints are visible to the jury the trial court must give a cautionary instruction advising the jurors such restraints are not evidence of the defendant's guilt (disability) and that the jury should not speculate as to the reasons for such restraints. The court erred in failing to so instruct in this case.” (*Conservatorship of Warrack, supra*, 11 Cal.App.4th at p. 648, internal citation omitted.)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, §§ 100, 104

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.88

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.42 (Matthew Bender)

4010. Limiting Instruction—Expert Testimony

Revoked May 2018. See *People v. Sanchez* (2016) 63 Cal.4th 665, 684 [204 Cal.Rptr.3d 102, 374 P.3d 320] and *Conservatorship of K. W.* (2017) 13 Cal.App.5th 1274, 1281 [221 Cal.Rptr.3d 622].

4011. History of Disorder Relevant to the Determination of Grave Disability

You must consider information about the history of [name of respondent]'s alleged mental disorder if you believe this information has a direct bearing on whether [he/she/nonbinary pronoun] is presently gravely disabled as a result of a mental disorder. Such information may include testimony from persons who have provided, or are providing, mental health or related support services to [name of respondent], [his/her/nonbinary pronoun] medical records, including psychiatric records, or testimony from family members, [name of respondent], or any other person designated by [name of respondent].

You must not consider any evidence that you believe is irrelevant because it occurred either too long ago or under circumstances that are not similar to those involved in this case.

New June 2005

Sources and Authority

- Historical Course of Mental Disorder. Welfare and Institutions Code section 5008.2(a).

Secondary Sources

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.84

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.33 (Matthew Bender)

4012. Concluding Instruction

To find that [name of respondent] is gravely disabled, all 12 jurors must agree on the verdict. To find that [name of respondent] is not gravely disabled, only 9 jurors must agree on the verdict.

As soon as you have agreed on a verdict, the presiding juror must date and sign the form and notify the [clerk/bailiff].

New June 2005; Revised May 2017

Directions for Use

Read this instruction immediately after CACI No. 5009, *Predeliberation Instructions*.

There are many votes that are possible other than a unanimous 12-0 vote for gravely disabled or a 9-3 or better vote for not gravely disabled. A vote other than one of these will result in a mistrial and the option to retry the proceeding.

Sources and Authority

- “The due process clause of the California Constitution requires that proof beyond a reasonable doubt and a unanimous jury verdict be applied to conservatorship proceedings under the LPS Act.” (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235 [152 Cal.Rptr. 425, 590 P.2d 1].)
- “The LPS Act is silent as to whether the jury must unanimously agree on the issue of grave disability. ‘[H]owever, the Act incorporates by reference Probate Code procedures for conservatorships. The Probate Code provides for factual determinations by a three-fourths majority . . . Thus, the Legislature has provided for less than unanimous jury verdicts in grave disability cases.’ ” (*Conservatorship of Rodney M.* (1996) 50 Cal.App.4th 1266, 1269 [58 Cal.Rptr.2d 513].)
- “The Legislature’s determination that a three-fourths majority vote applies in LPS conservatorship proceedings is eminently sound in the context of finding a proposed conservatee is not gravely disabled.” (*Conservatorship of Rodney M., supra*, 50 Cal.App.4th at pp. 1271–1272.)
- “Permitting a finding of no grave disability to be based on a three-fourths majority coincides with *Roulet’s* goal of minimizing the risk of unjustified and needless conservatorships. It also avoids unnecessary confinement of the proposed conservatee while renewal proceedings are completed.” (*Conservatorship of Rodney M., supra*, 50 Cal.App.4th at p. 1270.)

Secondary Sources

3 Witkin, California Procedure (5th ed. 2008) Actions, § 104

2 California Conservatorship Practice (Cont.Ed.Bar) § 23.89

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.42
(Matthew Bender)

4013. Disqualification From Voting

If you find that [name of respondent], as a result of [a mental disorder/impairment by chronic alcoholism], is gravely disabled, then you must also decide whether [he/she/nonbinary pronoun] should also be disqualified from voting. To disqualify [name of respondent] from voting, all 12 jurors must find, by clear and convincing evidence, that [he/she/nonbinary pronoun] cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.

New June 2005; Revised June 2016

Directions for Use

This instruction should be given if the petition prays for this relief.

In addition to the required jury finding, one of the following must apply (See Elec. Code, § 2208(a)):

- (1) A conservator for the person or the person and estate is appointed under Division 4 (commencing with Section 1400) of the Probate Code.
- (2) A conservator for the person or the person and estate is appointed under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.
- (3) A conservator is appointed for the person under proceedings initiated under Section 5352.5 of the Welfare and Institutions Code, the person has been found not competent to stand trial, and the person's trial or judgment has been suspended pursuant to Section 1370 of the Penal Code.
- (4) A person has pleaded not guilty by reason of insanity, has been found to be not guilty under Section 1026 of the Penal Code, and is deemed to be gravely disabled at the time of judgment as defined in paragraph (2) of subdivision (h) of Section 5008 of the Welfare and Institutions Code.

The court should determine if one of the above requirements has been met.

Sources and Authority

- Disqualification from Voting. Elections Code section 2208.
- Affidavit of Voter Registration. Elections Code section 2150.

Secondary Sources

2 California Conservatorship Practice (Cont.Ed.Bar) § 11.34

32 California Forms of Pleading and Practice, Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services, and Civil Rights*, § 361A.42 (Matthew Bender)

4014–4099. Reserved for Future Use

VF-4000. Conservatorship—Verdict Form

Select one of the following two options:

_____ 12 jurors find that [*name of respondent*] is presently gravely disabled due to [a mental disorder/impairment by chronic alcoholism].

_____ 9 or more jurors find that [*name of respondent*] is not presently gravely disabled due to [a mental disorder/impairment by chronic alcoholism].

[If you have concluded that [*name of respondent*] is gravely disabled due to [a mental disorder/impairment by chronic alcoholism] then answer the following:

Do all 12 jurors find that [*name of respondent*] is disqualified from voting because [*he/she/nonbinary pronoun*] cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process?

_____ Yes _____ No]

Signed: _____
 Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New June 2005; Revised December 2010, May 2017

Directions for Use

The question regarding voter disqualification is bracketed. The judge must decide whether this question is appropriate in a given case. (See CACI No. 4013, *Disqualification From Voting*.)

VF-4001–VF-4099. Reserved for Future Use