

IN THE SUPREME COURT OF CALIFORNIA

Case No. S287241

CONSERVATORSHIP OF THE PERSON OF E.A.

PUBLIC GUARDIAN OF CONTRA COSTA COUNTY,
Plaintiff and Respondent,

v.

E.A.,
Defendant and Appellant.

After a Decision by the Court of Appeal
First Appellate District, Division One, Case No. A169299

**[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA
STATE ASSOCIATION OF COUNTIES IN SUPPORT OF
PLAINTIFF AND RESPONDENT PUBLIC GUARDIAN OF
CONTRA COSTA COUNTY**

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I. INTRODUCTION

Context matters. Seemingly lost in E.A.’s appeal is the fact that Appellant was gravely disabled throughout the entirety of the proceedings during 2023 and 2024. (CT 225-235.) In the context of this case, the due process analysis should follow the jurisprudence of *Barker/Camacho* and its four-factor balancing test. (*Barker v. Wingo* (1972) 407 U.S. 514, 530; *Camacho v. Superior Court* (2025) 15 Cal.5th 354.) The application of the *Barker/Camacho* test promotes the purposes of the Lanterman-Petris-Short Act (“LPS Act”) while protecting the expectancies and interests of the parties. It also respects the Legislature’s assessment of the issue – the timeliness of a LPS trial - which resulted in specific amendments to Welfare and Institutions Code section 5350, subdivision (d)(2).¹ The proposed dismissal of a pending LPS conservatorship as the remedy on the facts in this case is flawed, in large part because the real world does not operate as neatly as suggested. E.A.’s proposed solution, a mandated dismissal, would be disruptive to the care and treatment of people in need of mental health services. The consequences following the termination of such cases would be uncertain and create risk for the individual and the community at large.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

This case arises under the LPS Act, the result of a prolonged delay in resolving a Public Guardian's petition for reappointment as conservator of the person and estate over the Appellant. The facts show the cause of delay was shared, in varying proportions, by the court and counsel. Priority for pending criminal cases caused several continuances.

There is a substantial body of decisional law under the LPS Act that has considered whether various protections from criminal procedure should be applied to proceedings under the LPS Act. (*Conservatorship of Mary K.* (1991) 234 Cal.App.3d 265 [conservatorship proceeding is not a prosecution for an act, but an attempt to determine a condition]; *Conservatorship of Beeson* (2002) 99 Cal.App.4th 1393 [presumption of innocence does not apply in the context of civil commitments]; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529 [de novo court review of record on appeal in criminal cases under *People v. Wende* (1979) 25 Cal.3d 436 is not required in LPS conservatorship proceedings]; But see, *Conservatorship of Warrack* (1992) 11 Cal.App.4th 641 [proposed LPS conservatee may not be physically restrained unless the trial court complies with procedures outlined applicable to treatment of criminal defendants in *People v. Duran* (1976) 16 Cal.3d 282]). These decisions require courts to characterize and distinguish the nature of proceedings in light of the specific issue or claim being raised.

For these reasons, as demonstrated below, the specific facts of this case do not support the relief sought.

II. ARGUMENT

A. The Legislature did not adopt a brightline test to trigger dismissal of an LPS case when it amended Section 5350, subdivision (d)(2), and the remedy of immediate dismissal unjustifiably contravenes the Legislature’s chosen resolution for a delay in conservatorship proceedings to the possible detriment of conservatees and the community.

The historical background of the issue of delayed trials in LPS cases is illustrated by *Conservatorship of Jose B.* (2020) 50 Cal.App.5th 963 (137-day delay in commencing jury trial). The applicable statutory language of Section 5350, subd. (d)(2) provided: “Court or jury trial shall commence within 10 days of the date of demand, except that the court shall not exceed 15 days upon the request of counsel for the proposed conservatee.”

In *Jose B.*, the Appellate Court held that the statutory language was “directory rather than mandatory” because it did not provide for a consequence or penalty for failure to commence the trial within ten days of demand. (*Id.* at p. 973.) The Appellate Court reasoned, inter alia, that since there was no consequence or penalty, the claim for relief could not be supported by the statutory language. In the year following the *Jose B.* decision, this shortcoming was corrected with the passage of Assembly Bill 2275 (2021-2022 Reg. Sess.), which added language that failure to

commence trial within the time required in existing law is grounds for dismissal of conservatorship proceedings. The amended statutory language read: “Court or jury trial shall commence within 10 days of the date of demand, except that the court shall continue the trial date for a period not to exceed 15 days upon request of counsel for the proposed conservatee. Failure to commence the trial within that period of time is grounds for dismissal of the conservatorship proceedings.” (§ 5350, subd. (b)(2).)

The plain language shows the Legislature’s decision to create a remedy that required the moving party to establish grounds for relief, rather than be granted an automatic dismissal on a fixed date. The Legislature did not establish a bright-line test requiring an immediate dismissal of the proceedings. “If a proposed conservatee contends he or she has been prejudiced by the delay, the proper remedy is to file a motion to dismiss for lack of speedy trial.” (*Jose B.*, *supra*, 50 Cal.App.5th at p. 967.)

In this regard, Section 5352.1 illustrates that the Legislature will set specific time frames with consequences in connection with the establishment of an LPS conservatorship. The initial petition for appointment of an LPS conservatorship can request the creation of a temporary conservator with substantial powers pending the resolution of the petition. But the duration of the temporary conservatorship is limited – it may not exceed 180 days. (See § 5352.1, subd. (c).)

Contrary to the argument advanced by the California Public Defenders Association (see Amicus Curiae Brief at p. 9), in practice, Appellant's interpretation of the statute as requiring mandatory termination has immediate and practical consequences. It would allow a proposed conservatee to delay their case to reach the 180-day limit in order to take advantage of a mandatory termination of the temporary conservatorship. With the lapse of the temporary conservatorship, the proposed conservatee would no longer be subject to the conservator's placement powers, or other powers or disabilities. This would permit proposed conservatees to leave their placements without advising of their new housing arrangements. As a consequence, the pending case could be dismissed based on the proposed conservatee's new status as 'whereabouts unknown.'

The Appellant's proposed remedy, if it had been applied to her own situation, would have terminated the continuity of her treatment and disrupted the course of her improvement. Appellant's alternative fate is uncertain and speculative. What is certain, and beyond speculation, is that Appellant overcame her mental health challenge because of the time spent in treatment.

The Appellant's proposed remedy would jeopardize the mental health of individuals whose cases are dismissed. Once in the community, with their mental health untreated, they would be at risk and the community would be at risk. A state has a "legitimate interest under its *parens patrie*

powers in providing care to its citizens who are unable because of emotional disorders to care for themselves, the state also has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill.” (*Addington v. Texas* (1979) 441 U.S. 418, 426; see *Kansas v. Hendricks* (1997) 521 U.S. 346, 356-357 [states may forcibly detain people with mental illness “who are unable to control their behavior and who thereby pose a danger to the public health and safety.”]; *People v. McKee* (2010) 47 Cal.4th 1172, 1188 [same].)

Thus, the four-factor *Barker/Camacho* test fairly protects the reasonable expectations and interests of the parties. Unlike Appellant’s proposed dignitary interest test, it also does not create the problem of effectively nullifying the Legislature’s amendments to Section 5361, subdivision (b).

B. The facts of this case illustrate that there was no point at which the Appellant was eligible for release because she was no longer gravely disabled, and that termination followed because Appellant was no longer gravely disabled only after a prolonged period in the conservatorship proceeding.

Seemingly lost in this appeal is that fact that Appellant was gravely disabled throughout the entirety of proceedings. This was true when the parties resolved a court trial by a disposition on November 28, 2023. Appellant accepted the reappointment of the conservatorship coupled with an agreement for placement in a board and care as the least restrictive

placement. The Placement Order was entered on November 30, 2023. (RT 220-221.) The disposition preserved Appellant's right to challenge the denial of her speedy trial rights. (RT 218. RT 5702.) Months later, a report confirmed that Appellant remained gravely disabled and that Appellant's mental health remained unchanged since October 2021. (CT 225-235.) However, the long-term consequences of the disposition and the change of placement may have contributed to Appellant overcoming her mental health challenges.

Board and care facilities are not locked facilities. The typical board and care facility distributes psychiatric medication to conservatees who previously demonstrated their voluntary compliance in taking their medications. Although placement is a consequence of a conservatorship, the unstructured and open setting is materially different from the higher levels of placement which are secured and providing more intensive treatment and supervision. In a board and care the residents are expected to have sufficient control over their behaviors justifying the increased freedoms.

In the months following her placement in the board and care, the Appellant thrived. (See Declaration of Deputy Conservator Regarding Ex Parte Motion to Terminate and Dismiss LPS Conservator, Exhibit "C" at p. 1 attached to Appellant's Motion for Judicial Notice). She was successful in managing herself in the board and care facility. (*Ibid.*) She stabilized and

did not require psychiatric hospitalization. (*Ibid.*) She participated in group activities at the facility. (*Ibid.*) She voluntarily took her prescribed medications that treated her mental illness. She also maintained consistent contact with her family. (*Id.* at p. 2.)

As a result of the re-establishment of the conservatorship, the Public Guardian continued to oversee and monitor the Appellant's care and treatment. After the passage of seven months the Public Guardian decided it had a sufficient evidentiary basis to request termination of the conservatorship. (See, Ex Parte Motion to Terminate and Dismiss LPS Conservatorship and Declaration of Deputy Conservator Regarding Ex Parte Motion to Terminate and Dismiss LPS Conservatorship, Exhibit "D" attached to Appellant's Motion for Judicial Notice; see also, Order terminating and Dismissing and Dismissing LPS conservatorship; and Setting Aside Letters of Conservatorship, Exhibit "E" attached to the Appellant's Motion for Judicial Notice.) The Public Guardian's Ex Parte Motion ended the conservatorship proceedings and allowed the Appellant to return to the community.

Although the Appellant reserved the right to dispute the violation of her speedy trial rights when the last re-appointment petition was granted, the lapse of time that forms the basis of Appellant's challenge was also the time that Appellant needed to regain her mental health and return to the community. The Appellant's lived experience in this context cannot be

disputed. The emergence of the facts that supported the Public Guardian's petition were equally available to Appellant who could have applied for her immediate release based at any point as her mental health condition stabilized.

C. The lack of an automatic dismissal for a delayed trial does not leave conservatees without remedies, as a Petition for Rehearing remains available, a remedy that Appellant never pursued.

A conservatee is entitled to a rehearing on the issue of whether they are gravely disabled and in need of a conservatorship at any time. The statutory language of Section 5364 provides:

(a) At any time, the conservatee may petition the superior court for a rehearing as to their status as a conservatee. However, after the filing of the first petition for rehearing pursuant to this section, no further petition for rehearing shall be submitted for a period of six months.

On rehearing, the conservatee bears the burden of proving by a preponderance of the evidence that a change of circumstances shows improvements such that they are no longer gravely disabled. (*Taber v. Superior Court* (1980) 113 Cal.App.3d 955.) "At a rehearing, the only fact needed to be shown is that, since the prior establishment or reestablishment of the conservatorship, the conservatee's situation has changed so that he is not gravely disabled. Thus, just as a potential conservatee is not required to prove a negative fact (i.e., that he is not gravely disabled) at a conservatorship establishment or reestablishment trial, so the Public

Guardian not be required to prove negative fact (i.e., that the conservatee's situation has not changed) at a section 5364 rehearing.” (*Id.* at p. 966.)

After E.A.'s board and care placement, the Public Guardian monitored her experience for seven months and sought to end the conservatorship when it became apparent that Appellant was no longer gravely disabled and that she was stabilized. Appellant's improved circumstances aligned perfectly with the change of circumstances that would have supported the immediate termination under Section 5364, but Appellant never pursued her statutory right to terminate the case.

III. CONCLUSION

Appellant's proposed dismissal pursuant to Section 5350, subdivision (d)(2) as the only appropriate remedy is misguided. Framing the matter as one protecting Appellant's dignitary interest – under the facts in this case - lacks merit. The consequences of the Appellant's solution would be disruptive to the care and treatment of people in need of mental health treatment and services the termination of such cases unnecessarily creates risks for the individual and the community at large.

For these reasons, CSAC urges this Court to affirm the unpublished opinion of the Court of Appeal below.

Dated: August 29, 2025

Respectfully submitted,

/s/ Jennifer B. Henning

By _____
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**CERTIFICATION OF COMPLIANCE WITH
CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)**

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 2,748 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of August 2025 in Sacramento, California.

Respectfully submitted,

/s/ Jennifer B. Henning

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