

# **PUBLIC GUARDIAN**

## **THE FINAL HELPING HAND: A MANDATE TO CARE**



Stock photo from Microsoft 365

### **SUMMARY**

The Civil Grand Jury (CGJ) investigated the Public Guardian Bureau of Monterey County with a focus on its mandates, service delivery, and the information it makes available to the community. The Public Guardian Bureau has the legal mandate to care for the most vulnerable individuals in the County – individuals who are no longer able to manage their own basic living needs (personal, financial or both) when no one else is either willing or able to act on their behalf or care for them. The Bureau provides Probate and Lanterman-Petris-Short Act Conservatorships, Public Administrative duties, and Representative Payee services. These tasks are often unknown or misunderstood by the community and yet are critical to the people they serve. Balancing an individual's personal rights and freedom versus the terms of a conservatorship is an ongoing challenge for the Bureau.

The CGJ identified the following findings: Potentially eligible individuals face unnecessary barriers when attempting to access Bureau services. Monterey County offers few placement options for people who need locked facilities. Important aspects of

the conservator process are missing from the Bureau's website and brochure. Written policies and procedures were not consistently followed by staff. Evidence of specialized training related to working with clients referred by the criminal courts and those with mental illness was not apparent.

The Public Guardian Bureau has a dedicated staff who appear to advocate for the best interests of its clients and who collaborate well with key partners.

## **BACKGROUND**

The Public Guardian Bureau is a branch of the Monterey County Health Department. The Health Department director serves as the Court Appointed Public Guardian/Public Administrator and reports to the County Administrative Officer (CAO). In 2020, a chief deputy position was approved by the Board of Supervisors and filled. That person assumed the Public Guardian Bureau's day-to-day operations, management, and supervision of the staff.

The Public Guardian Bureau has three distinct departments:

1. The Lanterman-Petris-Short Act (LPS) Public Conservator serves severely mentally ill clients.
2. The Probate Public Guardian manages the assets and daily needs of clients.
3. The Public Administrator manages the estates of deceased individuals who had no will or anyone able to manage their estates.

Representative Payee services are provided for LPS and Probate clients as well as other individuals incapable of managing public entitlement benefits such as Social Security, SSI, Veteran, or Medi-Cal. This service ensures that payments such as rent, food, and medication on behalf of clients, are completed in a timely and effective manner. The Public Guardian can collect fees from the clients or their estates for these services.

## Conservatorship Defined

Conservatorship is the legal process for asking the Superior Court to give a responsible person the legal decision-making power for individuals unable to handle their own financial and/or personal affairs. The law prefers a family member or close friend be appointed conservator but if none is available or willing, the Public Guardian is assigned this role.

All Monterey County residents are eligible for Public Guardian services if they meet the grave disability or incapacity criteria and if they receive court approval. A grave disability is defined as the inability to provide for one's basic needs for food, clothing, or shelter, because of a mental health disorder or impairment, or chronic alcoholism. Incapacity is defined as the lack of ability to use and understand information to make decisions and communicate any decision made.

A Capacity Declaration is a document filled out by a psychiatrist, medical doctor or neuropsychologist, detailing the mental capabilities of proposed conservatees. It is the initial step in considering a referral to the Court to secure a conservatorship.

California law provides for and mandates several basic forms of conservatorship.

## General Probate Conservatorship

A General Probate Conservatorship provides services to adults deemed incapable of providing for their personal and physical health needs, food, clothing or shelter, due to conditions rendering them incapable. This can include individuals with dementia, Alzheimer's Disease, and other cognitive impairments which are not usually a diagnosed mental illness. As a Probate Conservator, the Public Guardian can be involved in all aspects of clients' lives including fiscal management, housing, medical care, and advocacy. Placement options for probate conservatees can include skilled nursing facilities, assisted living residences, or at home with support. Under a Probate Conservatorship, individuals may lose control of their finances, medical care, choice of

residence, driving privileges, and right to vote. The law mandates that conservatorship remains the option of last resort.

A Probate Conservator of an estate is established for those clients unable to make fiscally responsible financial decisions. They are often victims of undue influence, fraud, or financial abuse.

The Public Administrator provides services such as the selling of physical property and distribution of estate proceeds for deceased with no will or apparent heirs. A reporting of accounts to the Court must be filed every two years. Probate conservatorships are governed by [California Probate Code Section 1800 to 1804](#)

A Limited Conservatorship serves adults with a developmental disability or disorder.

#### Lanterman-Petris-Short Act Conservatorship

Lanterman-Petris-Short Act Conservatorship (LPS) is for individuals unable to provide for basic personal needs of food, clothing, or shelter due to severe mental illness such as schizophrenia, schizoaffective disorder, bipolar, or chronic alcoholism. These individuals are considered gravely disabled and unwilling or unable to accept treatment voluntarily. The Public Guardian arranges placement and mental health treatment for these individuals. An LPS Conservatorship is established for one year and is reassessed annually and may be renewed by the court. Under LPS, the individual may lose personal rights such as financial control, medical care, choice of residence, driving privileges, and the right to vote. The law mandates this conservatorship remains the option of last resort. LPS conservatorships are governed by the [California Welfare and Institutions Code Section 5350](#).

Placement options for LPS conservatees include:

1. State Hospitals (five in California) which are the highest level of acute care
2. IMD (Institute for Mental Disease), a non-hospital locked facility for those needing long term psychiatric care, and who no longer meet criteria for acute care but are not clinically ready to live in a Board and Care facility or independently

3. Enhanced Board and Care, a facility/home which has in-and-out privileges and 24-hour support and structure
4. Community based settings (Board and Care homes) that allow more freedom and receive support from the Behavioral Health Bureau, a division of the Monterey County Health Department.

Referrals to the Public Guardian Bureau for LPS Conservatorships come from hospitals, Monterey County agencies such as Adult and Aging Services – Adult Protective Services (APS) or the Behavioral Health Bureau of the Health Department, Hospice, community service agencies, or a physician. They can also come from the Criminal Court.

### Murphy Conservatorship

A Murphy Conservatorship is specifically for defendants with a severe mental disorder who have pending criminal charges for violent felonies. These individuals are deemed incompetent to stand trial under [California Penal Code Section 1370](#) and are approved for indefinite commitment to an appropriate facility. Once placed in conservatorship, the criminal charges are put on hold until the individual is competent to stand trial. Murphy Conservatorship placements present a risk, as potentially violent and dangerous individuals can be placed in the same facilities as other conservatees.

In 2022, [California Penal Code Section 1001.36](#) changed. Defendants with pending charges for misdemeanors or some non-violent crimes who suffer from certain mental health issues may have their charges dropped if they enter a mental health diversion program. They will receive treatment in lieu of prosecution and jail unlike the Murphy Conservatorship. Charges may also be dropped with the option of a referral to the Public Guardian for conservatorship. This has resulted in an increase in referrals to the Public Guardian.

## **METHODOLOGY**

The CGJ conducted interviews with individuals familiar with the operations of the Public Guardian Bureau and other County Departments. The CGJ reviewed internal documents provided by the Monterey County Health Department, Public Guardian Bureau, and Aging and Adult Services. In addition, the CGJ examined reports from other California counties which investigated their Public Guardian Bureaus. Research was also done on legal codes and California regulations.

## **DISCUSSION**

The Public Guardian Bureau staff consists of one Chief Deputy/Public Guardian/Public Administrator, six full-time and one half-time Deputy Public Administrator/Public Guardians (Deputy PA/PG), three office support staff, 20% of a finance manager and three accounting staff. One clerical position is vacant.

Those interviewed felt supported by management, acknowledged that resources were sufficient, displayed enthusiasm for their work, and expressed commitment to doing their best for the clients. Deputy PA/PGs carry a variety of caseloads. The addition of staff has made caseloads more reasonable. Currently, Deputy PA/PGs have clients in every category of conservatorship. A preference was expressed to have Deputy PA/PGs specialize in one specific conservatorship category to allow focus, expertise and more time with clients.

Monterey County's Public Guardian Bureau works in close coordination and collaboration with Monterey County Behavioral Health Bureau (BH) and the Aging and Adult Services branch of the Department of Social Services (AAS) . Both BH and AAS understand the mandates and basic eligibility criteria for Probate and LPS conservatorships. The commitment by BH and AAS to utilize conservatorship as a last resort and to use regular meetings to discuss potential referrals and alternative ways to support clients was noted.

The Public Guardian Bureau is responsible for directing mental health treatment and placement of LPS conservatees. BH provides the funding and case management support services for LPS conservatees. BH assures clients receive appropriate medication, care and therapy, whether hospitalized or in a community setting.

No Institute for Mental Disease (IMD) facility providing locked psychiatric care exists in Monterey County. Conservatees are, therefore, placed out-of-county causing Public Guardian staff and client families to travel long distances. Public Guardians are required to make in-person visits once a quarter to these IMDs thereby spending time and money to travel. Monterey County does have both Board and Care homes and Enhanced Board and Care facilities. These residences and out-of-county facilities are used for lower-level-of-care placements.

The Deputy PA/PGs and BH staff meet weekly to discuss the status of their mutual LPS clients and consider their readiness for a lower level of care and placement options. Their goal is to enable conservatees to reach a level of independence in which they can provide for their own food, clothing, shelter, and financial well-being.

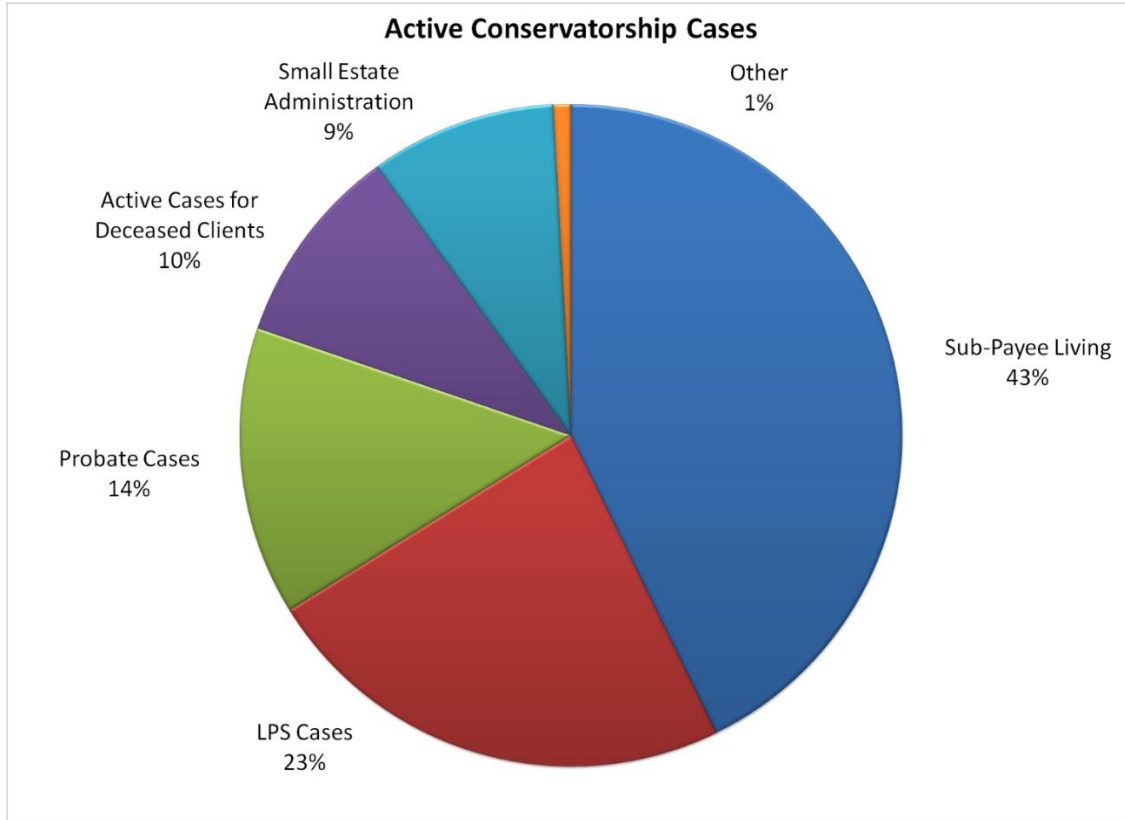
Clients not served by or shared with BH staff are those with mild to moderate mental health issues, dementia, Alzheimer's Disease, or traumatic brain injuries (typically those in Probate Conservatorship).

#### Performance Measures for the Public Guardian Bureau

The following performance measures were in place in 2020-2021 and 2021-2022 for PAs and Public Guardians. The goal is 100%.

1. PG will begin conservator investigations within ten business days after receiving a completed referral packet (86%).
2. Urgent client safety needs addressed within five days after court appointment (100%).
3. Close all PG cases per schedule (80%).
4. Complete and return client Social Security eligibility redeterminations within five business days of notification (100%).
5. Conduct onsite visits with clients at least once per quarter (97%).

Caseload



The current number of cases served by the PG:

Sub-Payee Living = 249

LPS Cases = 136

Probate Cases = 82

Full Probate Administration = 12

Permanent Probate Estate = 12

Permanent Probate Person & Estate = 19

Permanent Probate Person = 17

Special Trust Probate = 5

Summary Probate Administration =17

Active Cases for Deceased Clients =57

Deceased LPS Active = 13

Deceased Probate Active = 20

Deceased Sub-Payee Active = 24

Small Estate Administration = 53

Other = 5

Guardian Ad- Litem = 2

Successor Trustee = 3

**TOTAL ACTIVE CASES = 582**



### Role of County Counsel

County Counsel is the legal advisor to the Public Guardian Bureau and a support to its staff and clients. County Counsel prepares the petitions and annual LPS reports, advises on asset sale and distribution, assists with the bi-annual probate reports, and represents the Public Guardian Bureau in Court. County Counsel and Bureau staff meet weekly to discuss potential referrals and their clients' status.

### Role of Public Defender

A Public Defender is assigned to clients by the Court if any client is unable to provide for an attorney. The Public Defender advocates for clients and assures that they understand the conservatorship process, know their legal rights, and makes certain that their wishes are heard.

### Adult Protective Services Referrals

Adult Protective Services (APS) is part of AAS and responds to community referrals that allege abuse or neglect of an adult. When APS investigates a situation that merits a referral to the PG, they are required to include a Capacity Declaration. The neuropsychologist used by APS does not meet APS' needs for Capacity Declaration assessments. The Capacity Declaration provider has some restrictions that limit the individuals evaluated. In addition, the client must be willing to participate in the assessment and appear in person at the appointment. Only six assessments have been completed since 2015.

Self-determination is the process by which people control their own decisions about such matters as medical care and where to live. The right to self-determination is a fundamental concept in working with adults, and especially the disabled and mentally ill. Self-determination and the lack of easy access for assessment raises concerns that individuals who need conservatorship will not get the help they need to stay safe, meet their basic needs, or have their finances protected.

## Staff Training

Working with potential conservatees requires training and skill. The CGJ recognizes the challenges and complexities of this important work. Deputy PA/PGs conduct initial investigations to determine the legality of and need for placing individuals into LPS or Probate conservatorship. They conduct mandated visits to evaluate and monitor the delivery and quality of care provided and then prepare detailed reports for the Court. They plan, manage, and monitor fiscal affairs and real property, basic living needs, psychological and medical care, and related matters for conservatees and their estates. The Deputy PA/PGs interact directly with clients diagnosed with significant mental health issues, violent tendencies, or severe alcoholism.

Training on how to interact specifically with mentally ill clients to assure that best practices were being followed and personal safety heightened was not evident in the investigation.

The CGJ received reports of a recent increase in Murphy Conservator cases referred to the PG Bureau by the Superior Court. These individuals are facing violent felony charges and have been declared to be incompetent to stand trial. Their charges are on hold due to existing mental health issues. After treatment in State hospitals, they are returned to Monterey County. These clients are visited in the Monterey County Jail, other locked facilities, or community settings. The CGJ was unable to substantiate that any training, specific to how employees can ensure their safety while building effective relationships in these settings, has been provided.

The California State Association of PA/PG/PC offers a mandatory certification program for all county PAs, PGs and Public Conservators in California. The PA/PG/PC provides a variety of professional training courses to help prepare members to meet the demands of the job. All Monterey County Deputy PA/PGs meet the required 40 hours of training. They have also completed the mandatory training required of all Monterey County employees.

New Deputy PA/PG orientation was reported to rely heavily on peer-to-peer and on-the-job training.

While the PG Bureau provided current and updated (2020-2022) written policies and procedures including office assistant training materials, Deputy PA/PGs were not fully aware of these nor were they consistently utilizing them.

### Public Awareness

The Monterey County PG's website and brochure describes the different types of conservatorships and services, but the CGJ did not find any mention of the need for a medical assessment and/or Capacity Declaration as a prerequisite for conservatorship. Additionally, there was no information about how to make a referral. The Performance Measures posted on the website are outdated (2016/2017); however, more current information was provided directly to the CGJ.

The law mandates that family members, close friends and other options, be considered first – well before a conservator is appointed. A client's best interest is served when referring agencies, family, and friends, come together to solve problems and develop a plan. This preference should be emphasized in PG information.

Many people do not understand that once an individual is conserved, confidentiality laws apply. Without consent from the client who may not be mentally able to provide it, there are limits to the information that can be shared with family members and friends regarding the conservatee. Lack of access to information about family members was listed as a complaint received by the PG. Confidentiality requirements should be discussed in the brochure and on the website.

Due to the ultimate loss of individual rights, conservatorship must be considered as the last resort – as the final helping hand.

## **FINDINGS**

- F1. Adult Protective Services does not have sufficient access to professional Capacity Determinations for potentially-eligible clients to be referred to the Public Guardian.

- F2. Written policies and procedures exist, but it does not appear that they are fully utilized by staff.
- F3. The Civil Grand Jury was unable to determine whether all staff interacting directly with clients with mental health diagnoses and medication needs were provided specific training to ensure their personal safety and build effective relationships.
- F4. The Civil Grand Jury was unable to determine whether all staff interacting with clients from the criminal justice system or with incarcerated individuals have been provided with training on how best to ensure their safety and build effective relationships.
- F5. There is a lack of information for the public to assess eligibility for a conservatorship and understand the referral process, confidentiality rules, and the limitations of the Public Guardian Bureau.
- F6. There is no locked Institution for Mental Disease facility in Monterey County, requiring LPS conservatees to be placed out-of-county, resulting in hardship for families, PG staff and for conservatees to re-integrate into their community.
- F7. A preference for Deputy PA/PGs to each specialize in a specific type of case was stated. They currently all do all types of cases.
- F8. The Monterey County Health Department is commended for its commitment and work with the LPS, Probate and Representative Payee population.

## **RECOMMENDATIONS**

- R1. Adult and Aging Services engage a licensed professional to provide all necessary Capacity Declarations for Adult Protective Services' clients and/or collaborate with existing professional resources in other County Departments to fill this need by December 31, 2023.
- R2. The Public Guardian Bureau adopt an approved and accessible policies and procedures manual to standardize operations and assure that staff is fully aware of and compliant with the stated policies and procedures by December 31, 2023.
- R3. The Public Guardian Bureau initiate on-going mandatory training for staff on best practices for working with clients with mental illness by September 30, 2023.
- R4. The Public Guardian Bureau initiate on-going mandatory training for staff on best practices for working with criminally charged clients by September 30, 2023.

- R5. The Public Guardian Bureau update its website and brochure to include information about Capacity Declarations, referral procedures, self-determination, and family as first option by December 31, 2023.
- R6. The Public Guardian Bureau evaluate the benefits of specialized caseload assignments versus mixed caseload assignments by December 31, 2023.
- R7. The Monterey County Health Department pursue mechanisms and options to have LPS conservatees housed within Monterey County to enable more family support, efficient use of staff time, and easier transition to lower level of care within the County by March 31, 2024.

## REQUEST FOR RESPONSES

The following responses are required pursuant to Penal Code sections 933 and 933.05:

From the following governing body within 90 days:

- Monterey County Board of Supervisors  
Findings F1-F7  
Recommendations R1-R7

## INVITED RESPONSES

- County of Monterey Health Department Director  
Findings F1-F7  
Recommendations R1-R7
- County of Monterey Department of Social Services Director  
Findings F1  
Recommendations R1

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

## GLOSSARY AND ACRONYMS

**APS** Adult Protective Services - a unit of Monterey County’s Adult and Aging Services

**BH** Behavioral Health - a division of Monterey County’s Health Department

**Board and Care Home** A licensed, home-like, assisted living facility that offers help to its residents with basic daily tasks.

**CA PA/PG/PC** - California State Association of Public Administrators, Public Guardians and Public Conservators

**Enhanced Board and Care** A licensed, structured facility that provides health care and services to adults unable to perform daily living skills

**IMD** Institute for Mental Disease

**Murphy Conservatorship** For individuals facing violent felony charges and have been declared to be incompetent to stand trial

**LPS** Lanterman-Petris-Short Act (Chapter 1667 of the 1967 California Statutes, codified as [Cal. Welf & Inst. Code](#), sec. 5000 et seq.) authorizes involuntary psychiatric treatment in very limited circumstances

**PA** Public Administrator

**PC** Public Conservator

**PG** Public Guardian

**WIC** Welfare and Institutions Code (California)

## **BIBLIOGRAPHY**

Handbook for Conservators from the Judicial Council of California (revised 2016)

CA PA/PG/PC Suggested Industry Best Practices (published May 2017)

2014-2015 Contra Costa Civil Grand Jury, Office of the Public Guardian Caring For Those Who Can No Longer Care for Themselves

2015-2016 Orange County Grand Jury, Changing of the Guardian: Life After the Reorganization of the PA and PG Offices

2019-2020 Civil Grand Jury of Santa Clara County, Conservatorship Revisited

2021-2022 Alameda County Civil Grand Jury, Probate Conservatorship Cries Out For Reform

## **APPENDIX**

[Monterey County Public Guardian Bureau website](#)

[Public Guardian Brochure](#)



## MISSION STATEMENT

We, of the Monterey County Public Administrator/Public Guardian Bureau, provide excellence in public service through our uncompromising belief in respect for life and dignity in death.

We are dedicated as a team to provide the highest level of service to our client populations whether they are alive or deceased; to provide protection of their property and finances and to assist and empower our client's families as they cope with matters often out of their control.

We believe that each person we serve has a basic right to quality in all stages of their life and in their death.



### Monterey County Public Administrator/Guardian/Conservator

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### MONTEREY COUNTY PUBLIC ADMINISTRATOR CONSERVATOR PUBLIC GUARDIAN





## PUBLIC ADMINISTRATOR SERVICES



The Monterey County Public Administrator takes control and safeguards all property subject to loss, injury, waste, or misappropriation of Monterey County residents who died without leaving a will or apparent heirs. The Public Administrator is in charge of investigating and administering the estates of persons who died with no will or without an appropriate person willing or able to act as an administrator.

## PUBLIC CONSERVATOR SERVICES



The Monterey County Public Guardian-Conservator manages probate conservatorships and mental health (LPS also known as Lanterman-Petris-Short) conservatorships for Monterey County residents who have been adjudicated by the Superior Court to either lack capacity to manage finances and/or health care.

The ***Probate Conservatorship*** acts as court appointed conservator for frail, elderly, dependent, and cognitively impaired adults substantially unable to manage personal or financial affairs or who are victims of financial abuse or exploitation and who are unable to protect themselves.

The ***LPS Conservatorships*** (also known as Lanterman-Petris-Short and Mental Health Conservatorship) ensures that individuals who are diagnosed with a mental illness or chronic alcoholism and are gravely disabled are afforded legal due process when involuntarily hospitalized in a mental health facility.

## REPRESENTATIVE PAYEE SERVICES



The Public Guardian can also act as a Representative Payee for Monterey County Residents who are incapable of managing their public entitlement benefits on their own behalf.

Public Representative Payee services manage and/or apply for any Public Entitlement Benefits for disabled Monterey County residents, with no available family or third party assistance, and who are unable to manage or apply for benefits on their own behalf. We assure access to any health care and social services available.