

# Limited Conservatorships for Persons with Developmental Disabilities



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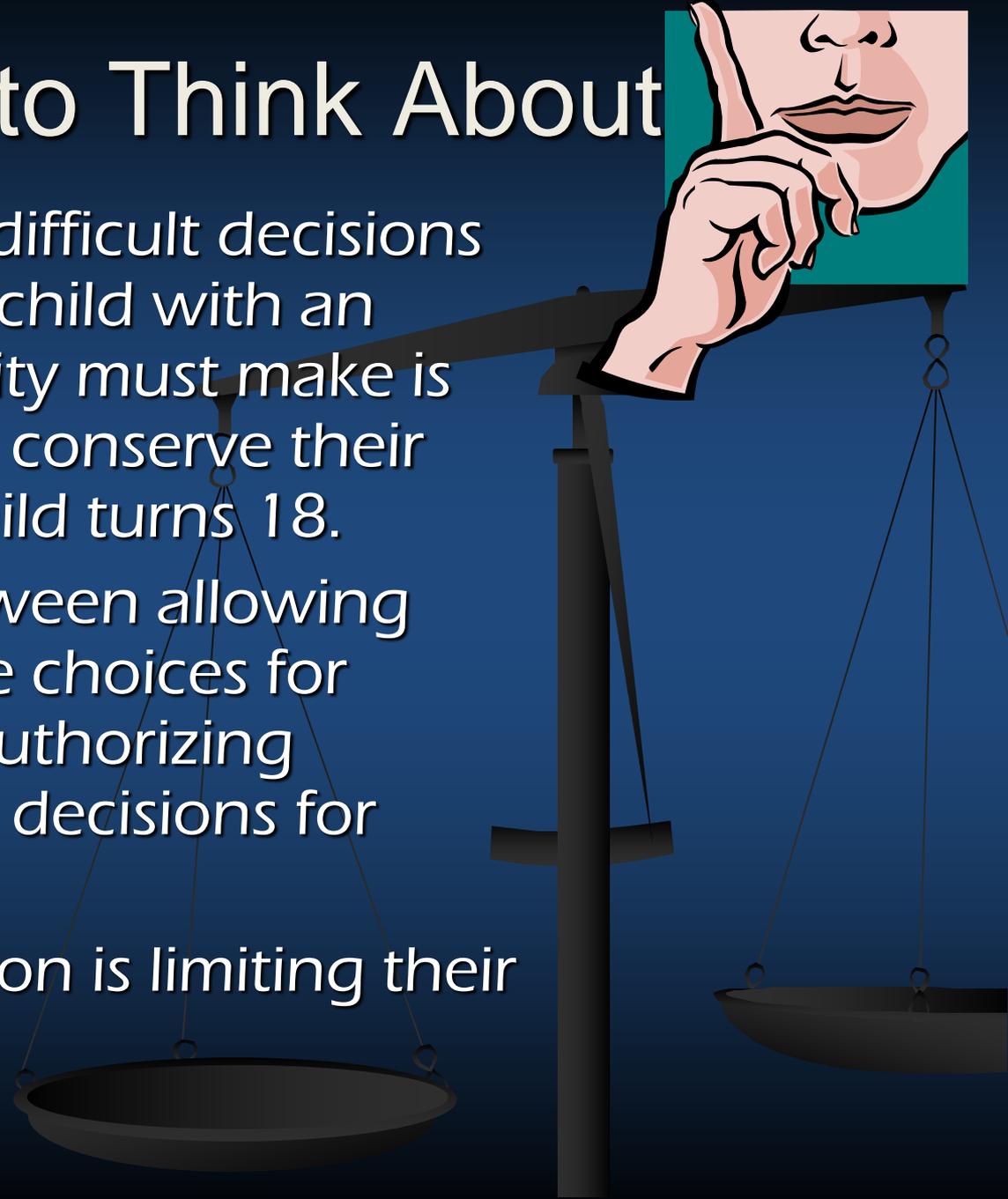
Pacheco, CA 94553

Serving the needs of persons with disabilities and  
their families

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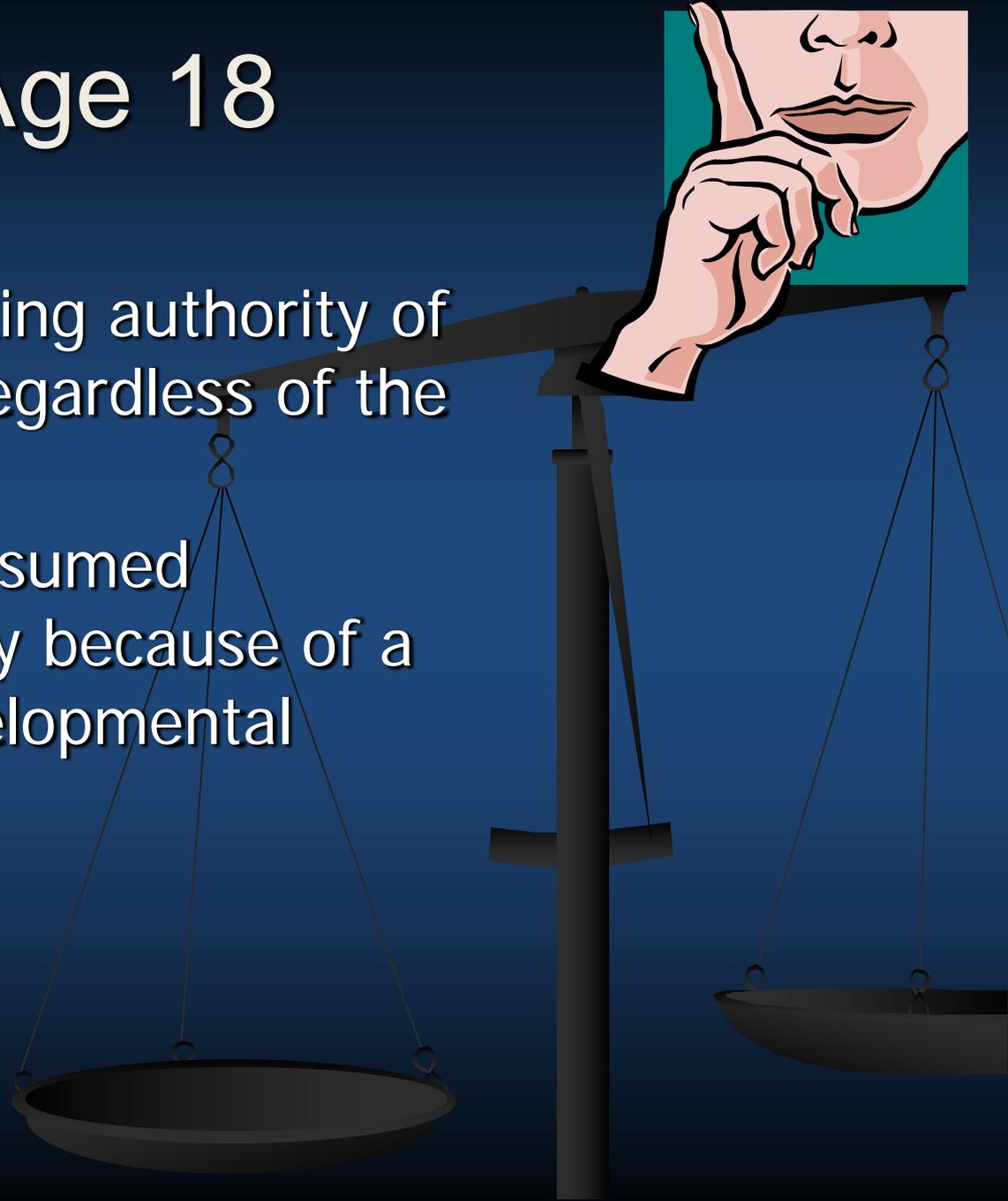
# Things to Think About

- One of the many difficult decisions that a parent of a child with an intellectual disability must make is whether or not to conserve their child when the child turns 18.
- Must balance between allowing your child to make choices for themselves, and authorizing someone to make decisions for them.
- Conserving a person is limiting their civil rights.



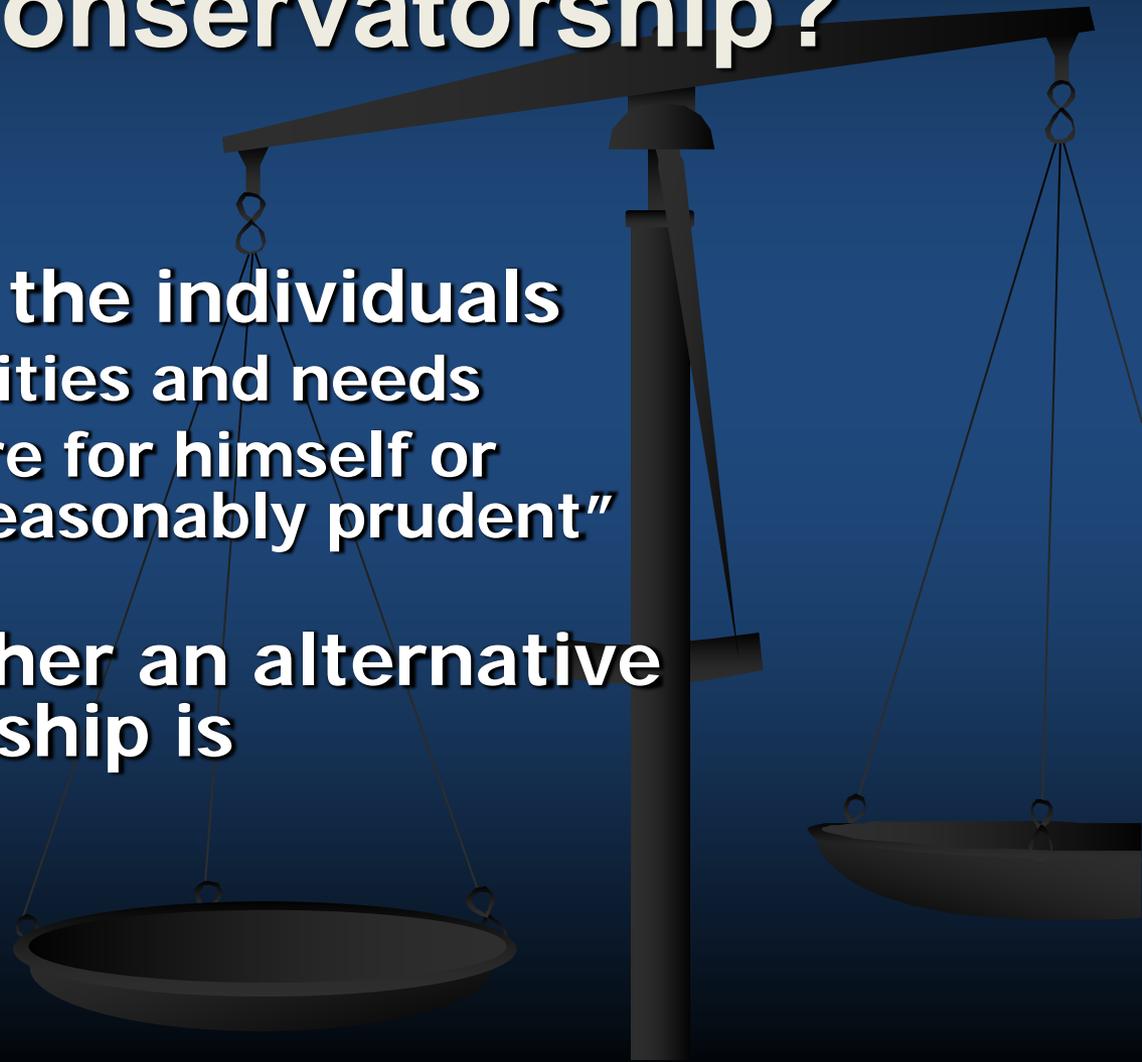
# Age 18

- Legal decision-making authority of the parents ends regardless of the circumstances
- A person is not presumed incompetent merely because of a diagnosis of a developmental disability



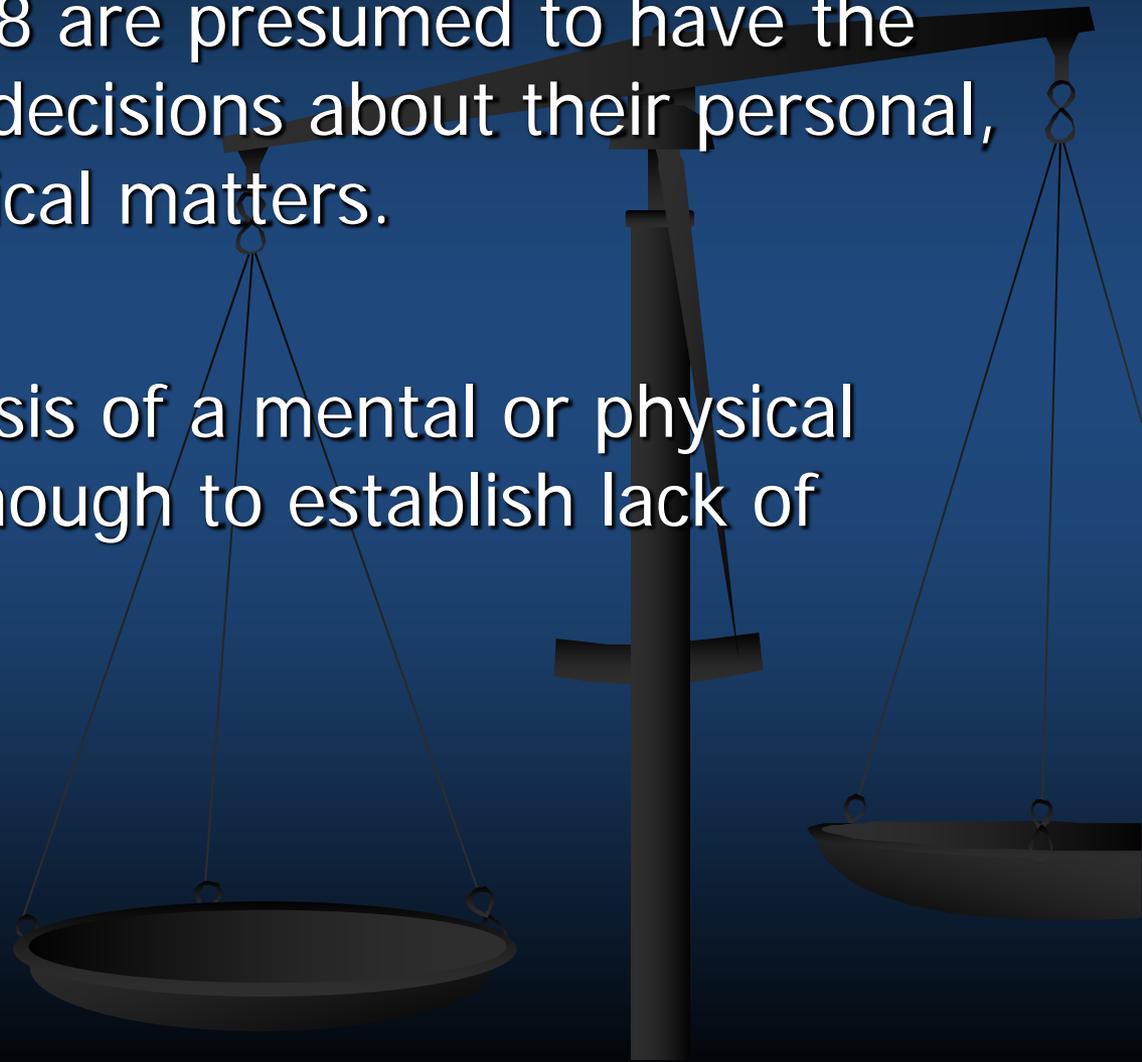
# Does Every Developmentally Disabled Person Need A Limited Conservatorship?

- NO!
- Depends upon the individuals
  - functional abilities and needs
  - capacity to care for himself or herself as a "reasonably prudent" person.
- Consider whether an alternative to conservatorship is appropriate



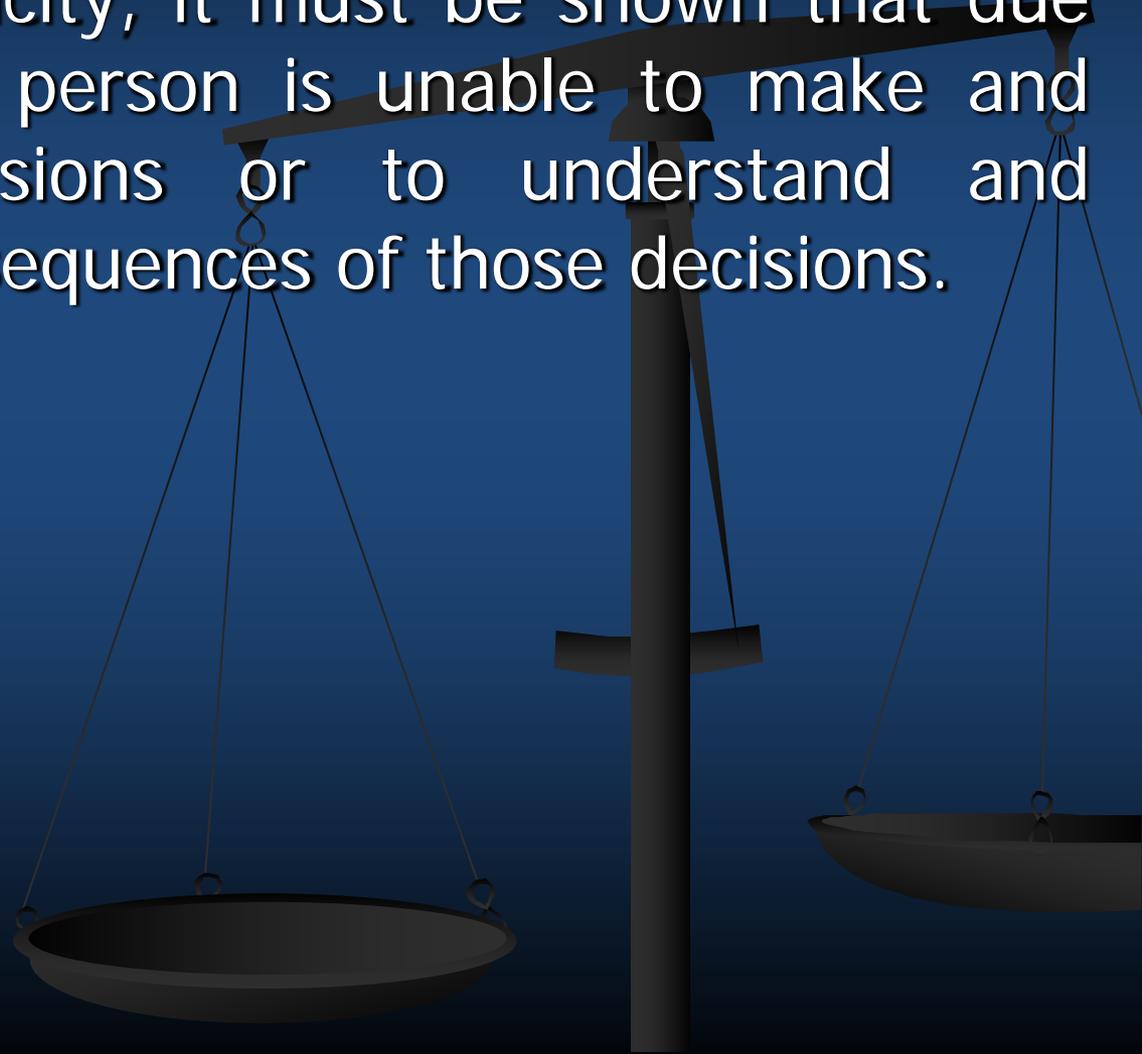
# Capacity v. Incapacity

- All persons over 18 are presumed to have the capacity to make decisions about their personal, financial and medical matters.
- The "mere diagnosis of a mental or physical disorder" is not enough to establish lack of capacity.

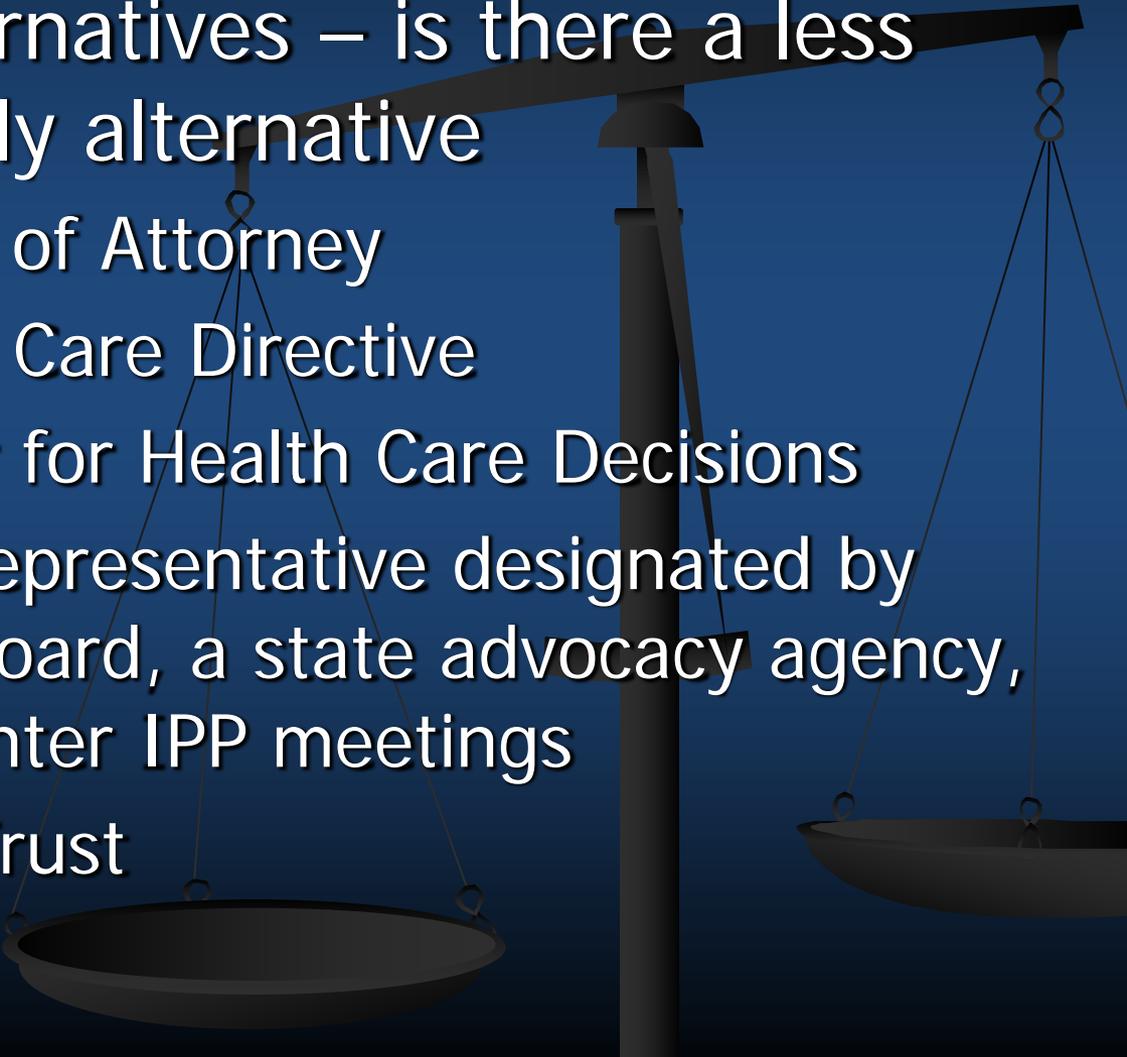


# Capacity v. Incapacity

- To establish incapacity, it must be shown that due to a disability the person is unable to make and communicate decisions or to understand and appreciate the consequences of those decisions.

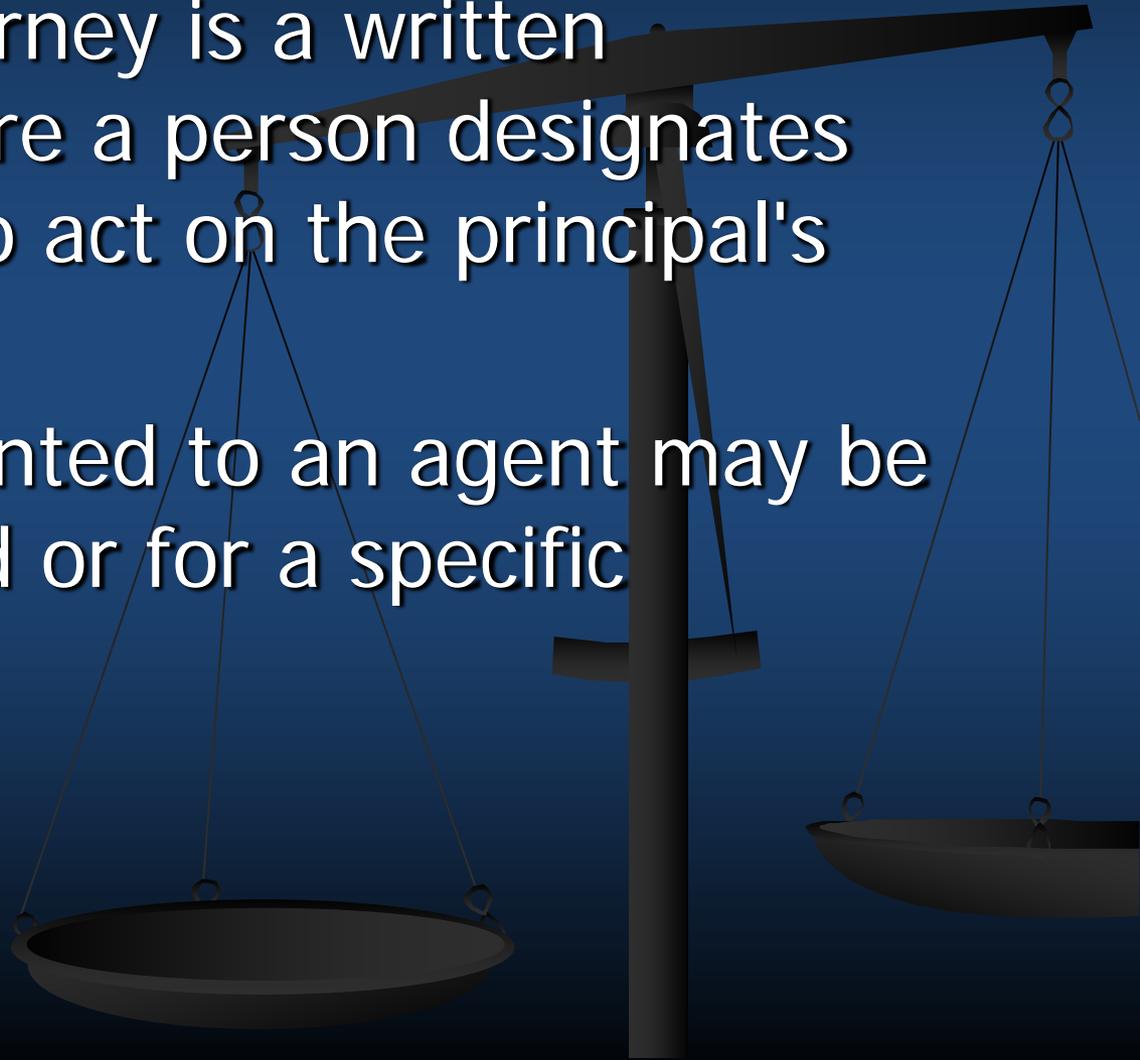


# Determining Whether a Conservatorship is Appropriate

- Consider all alternatives – is there a less intrusive or costly alternative
    - Financial Power of Attorney
    - Advance Health Care Directive
    - Regional Center for Health Care Decisions
    - An authorized representative designated by the local Area Board, a state advocacy agency, for Regional Center IPP meetings
    - Special Needs Trust
- 

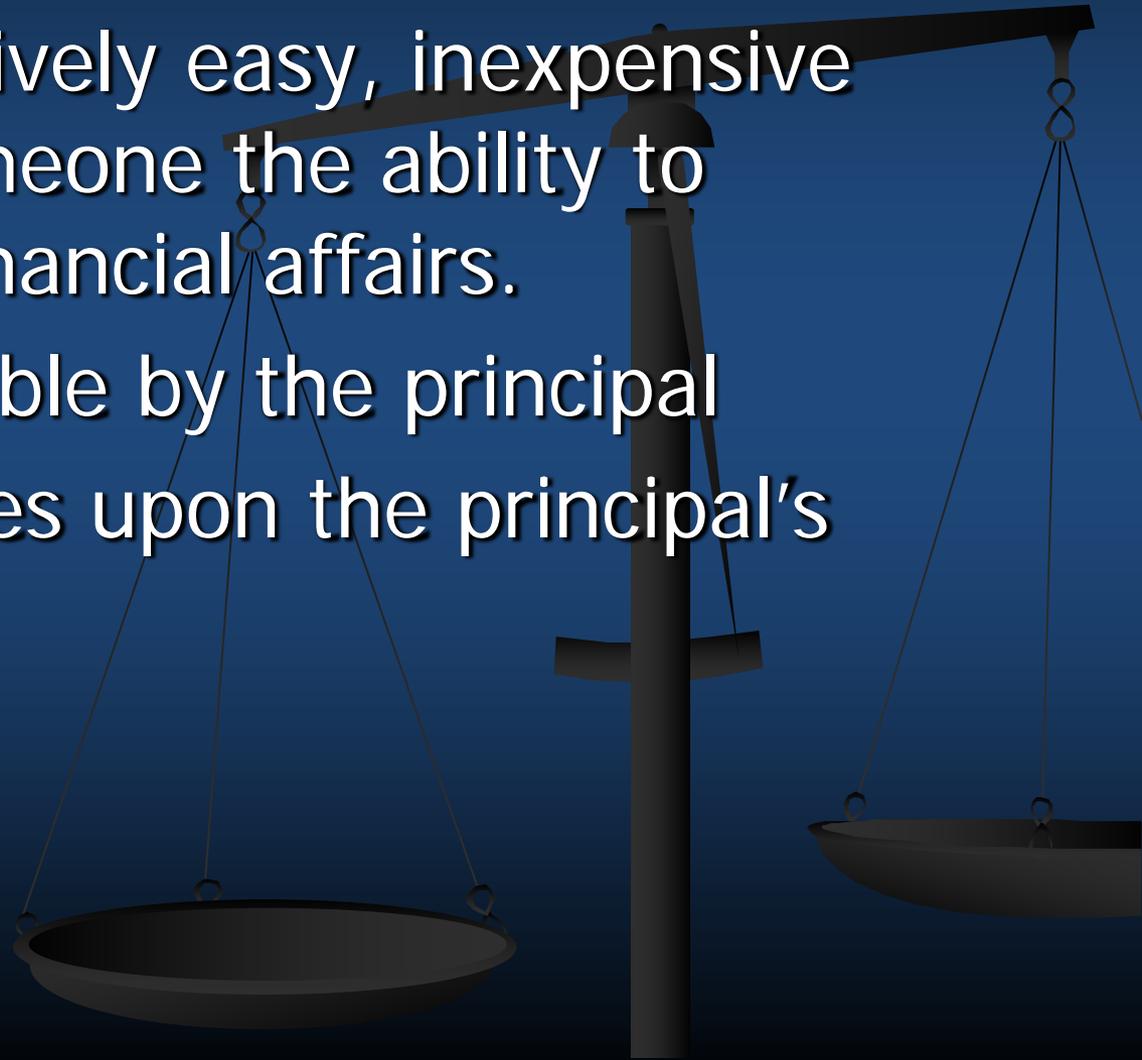
# Powers of Attorney

- A Power of Attorney is a written instrument where a person designates someone else to act on the principal's behalf.
- The powers granted to an agent may be extremely broad or for a specific transaction.



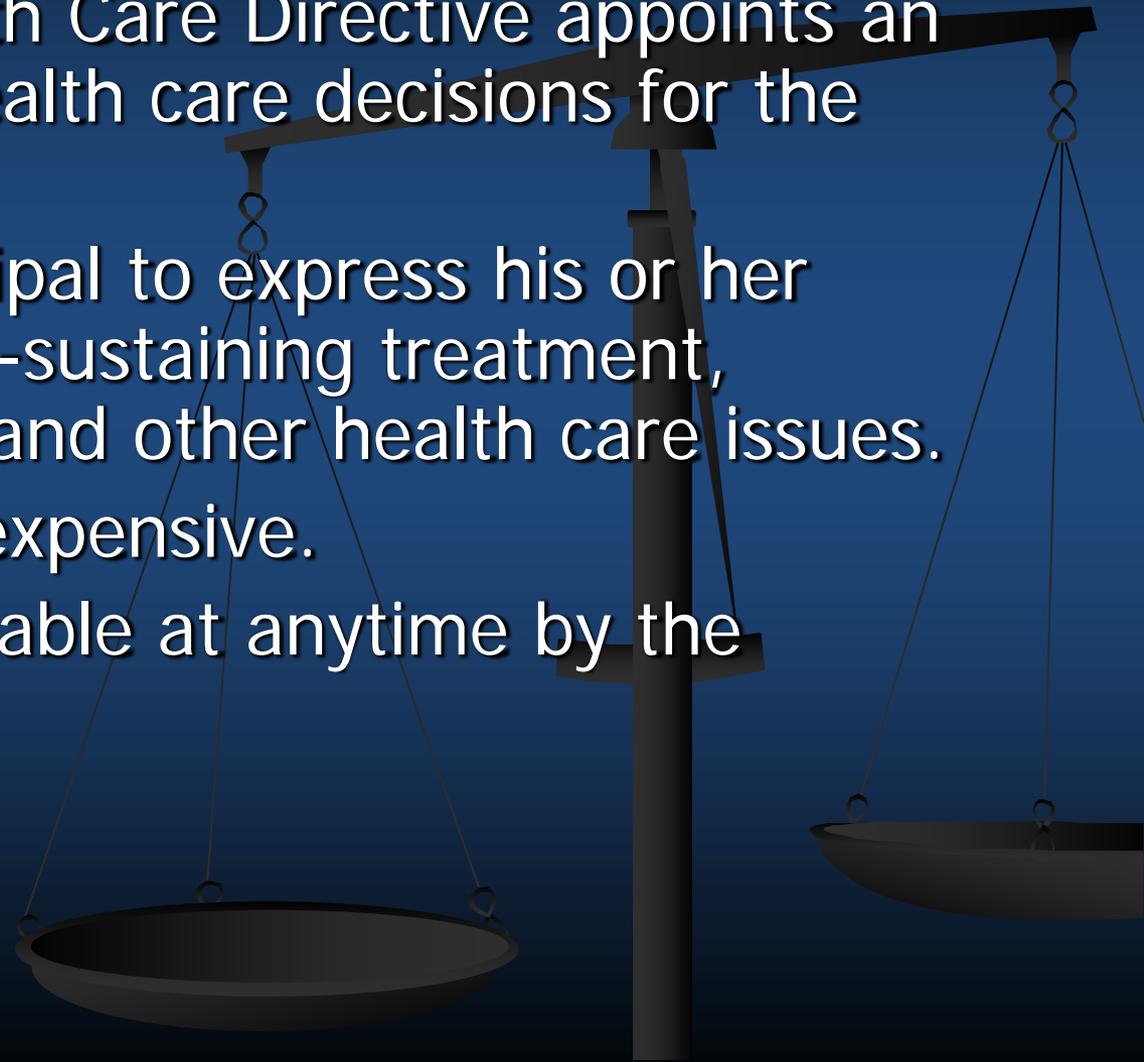
# Durable Power of Attorney

- A DPA is a relatively easy, inexpensive way to give someone the ability to manage your financial affairs.
- A DPA is revocable by the principal
- A DPA terminates upon the principal's death.

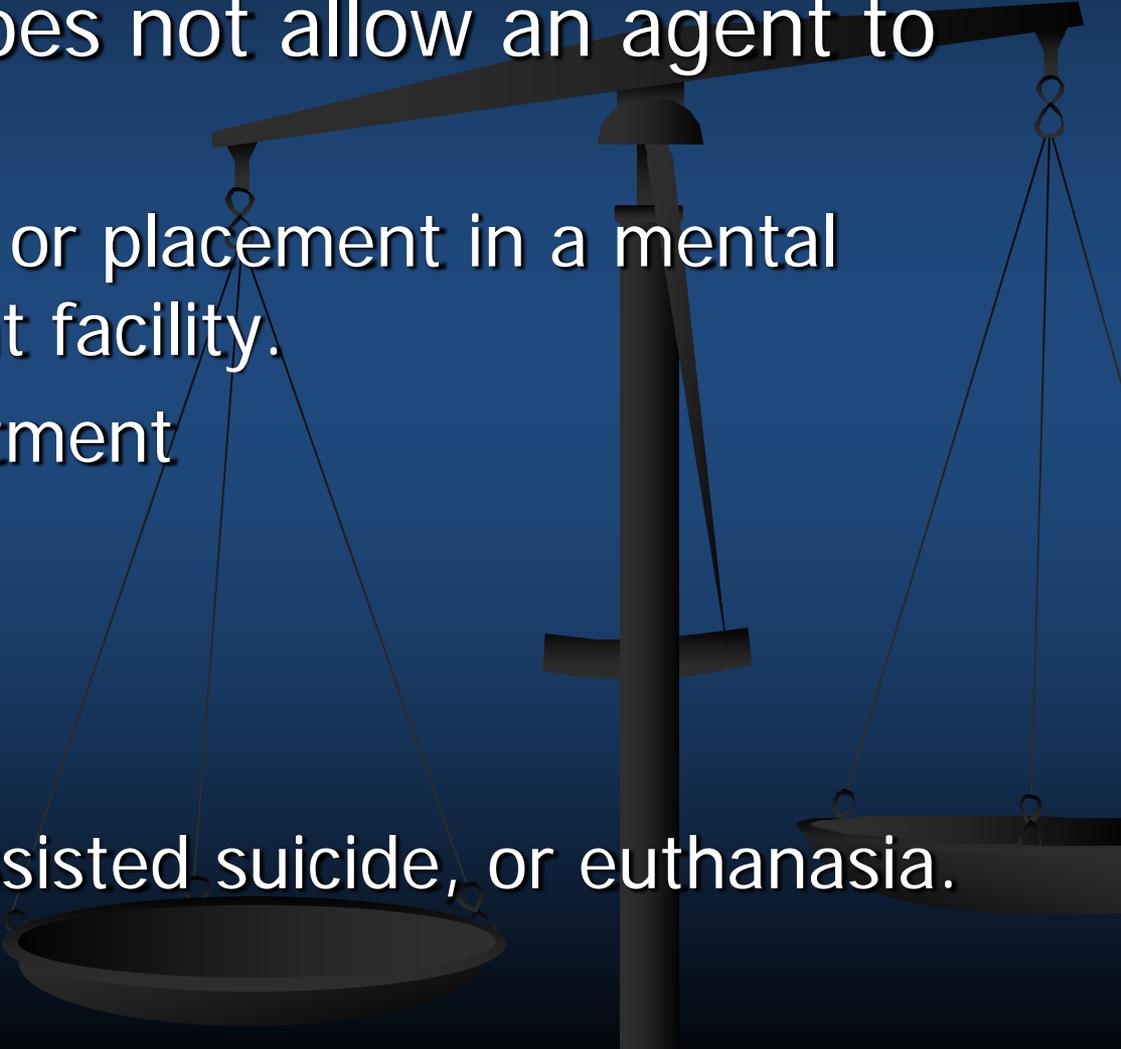


# Advance Health Care Directives

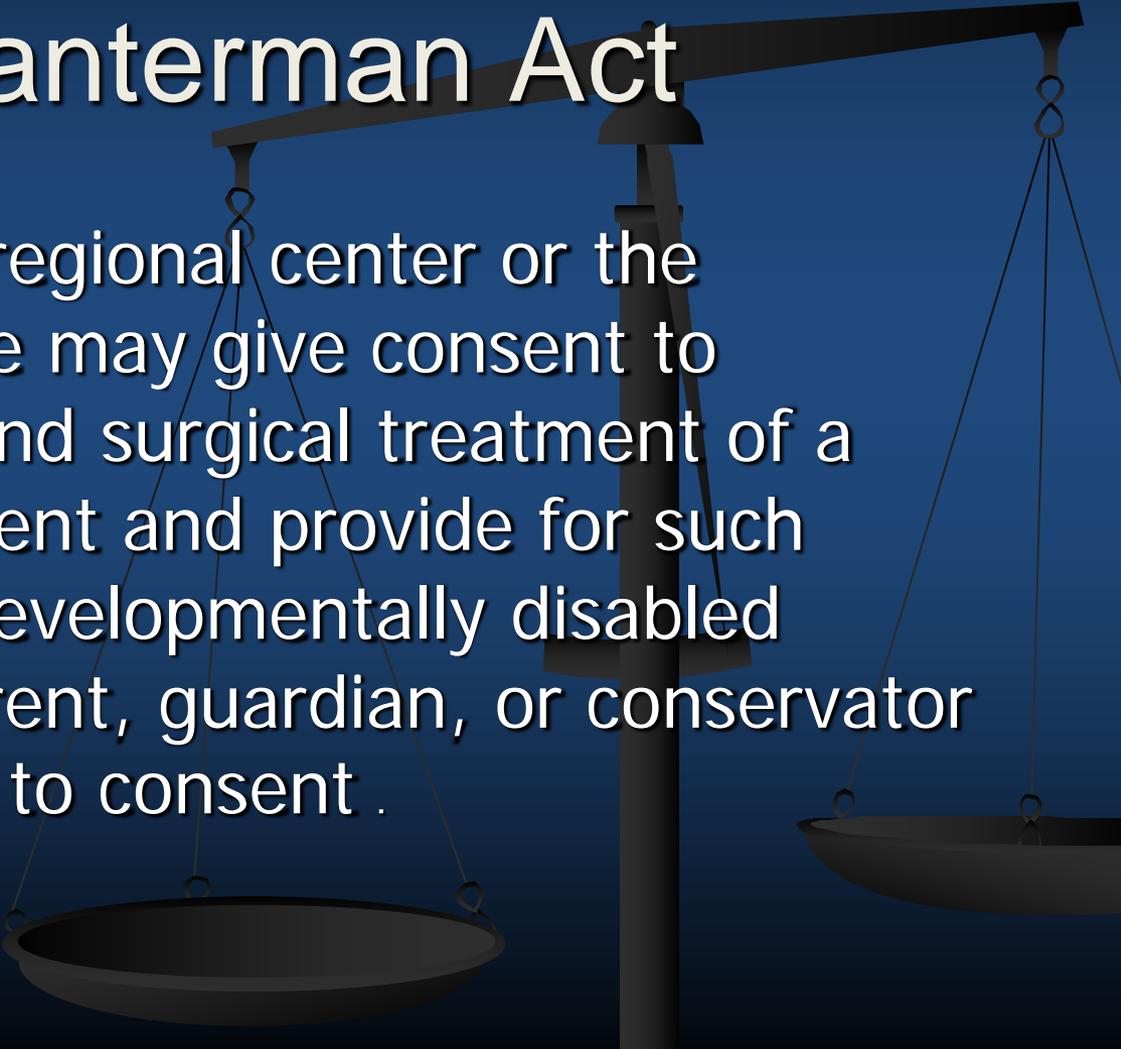
- An Advance Health Care Directive appoints an agent to make health care decisions for the individual.
- Enables the principal to express his or her wishes about life-sustaining treatment, anatomical gifts, and other health care issues.
- It is quick and inexpensive.
- An AHCD is revocable at anytime by the principal.



# Limitations

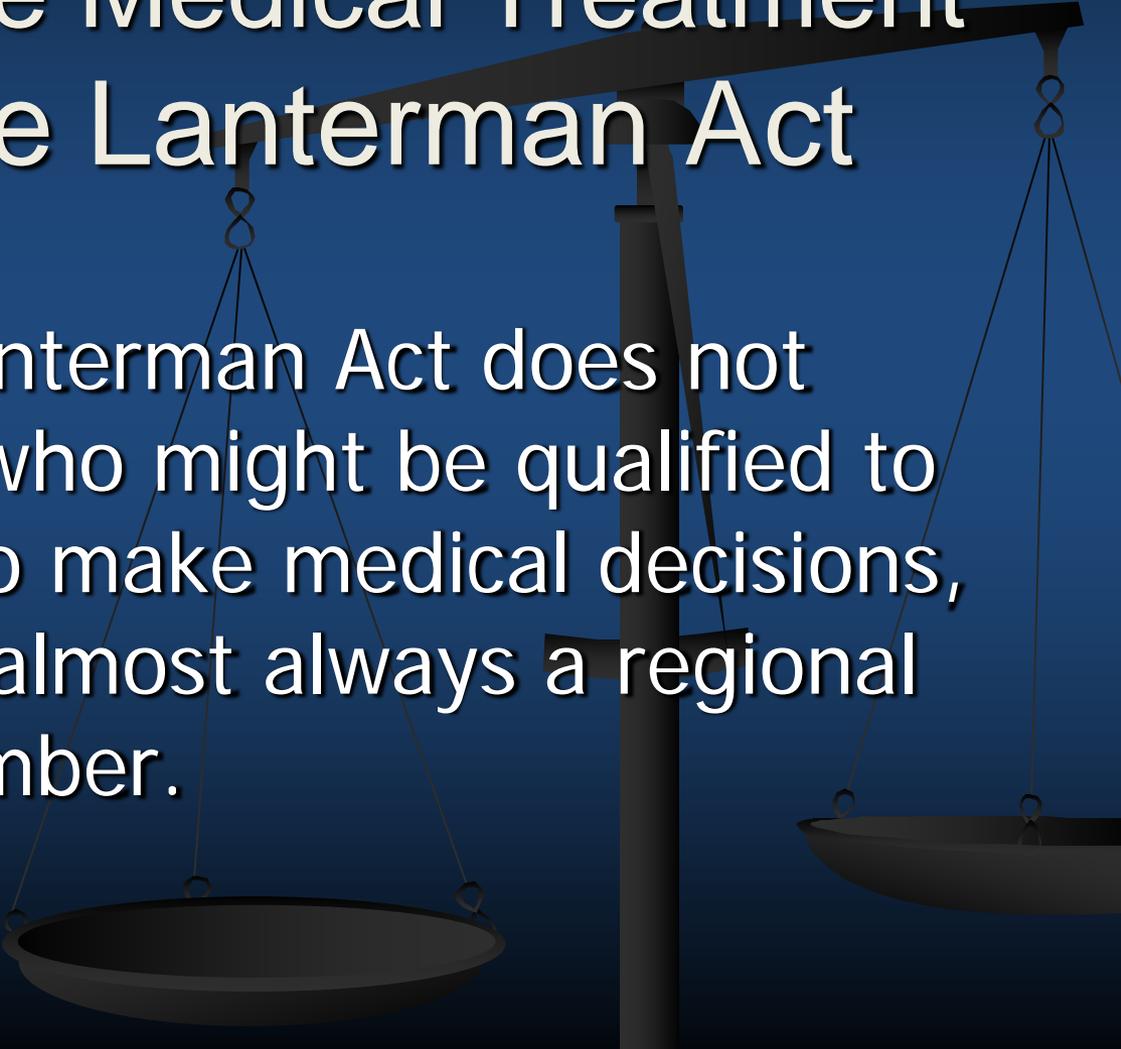
- California law does not allow an agent to authorize:
    - Commitment to or placement in a mental health treatment facility.
    - Convulsive treatment
    - Psychosurgery
    - Sterilization.
    - Abortion.
    - Mercy killing, assisted suicide, or euthanasia.
- 

# Regional Center Director's Authority to Authorize Medical Treatment under the Lanterman Act



- The director of a regional center or the director's designee may give consent to medical, dental, and surgical treatment of a regional center client and provide for such treatment if the developmentally disabled person has no parent, guardian, or conservator legally authorized to consent.

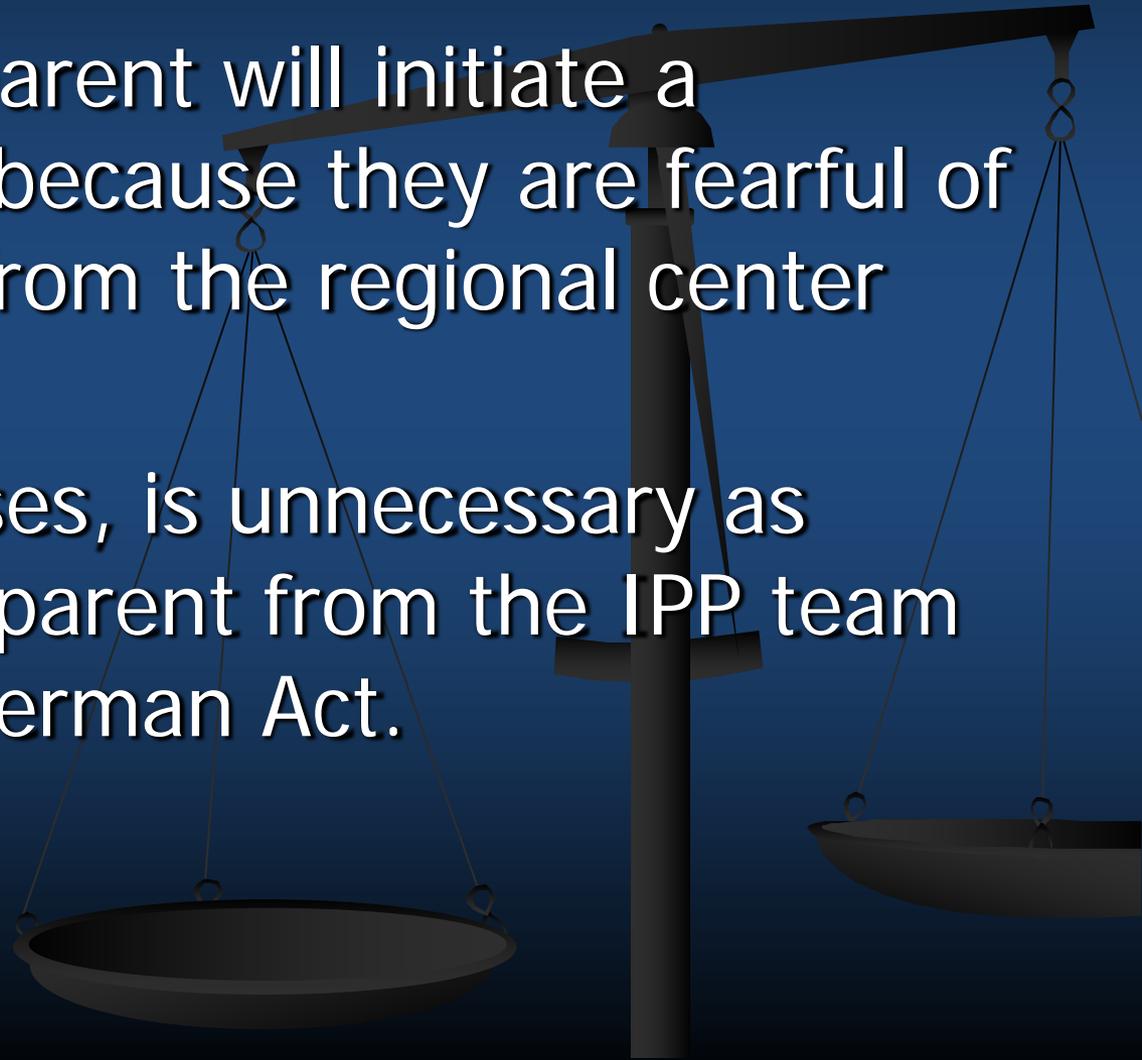
# Regional Center Director's Authority to Authorize Medical Treatment under the Lanterman Act



- Although the Lanterman Act does not specify or limit who might be qualified to be designated to make medical decisions, the designee is almost always a regional center staff member.

# IPP Participation

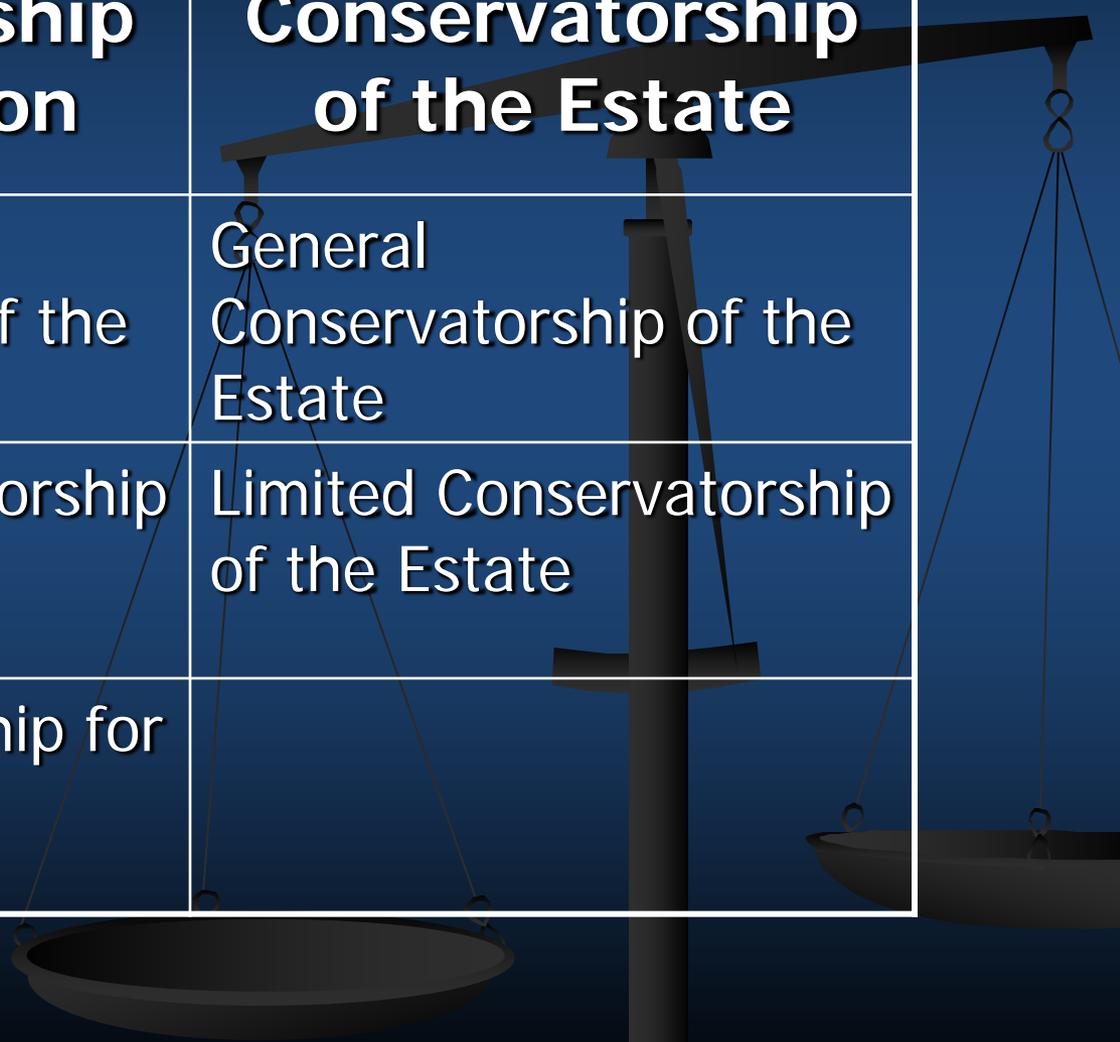
- On occasion, a parent will initiate a conservatorship because they are fearful of being excluded from the regional center process.
- This, in most cases, is unnecessary as exclusion of the parent from the IPP team violates the Lanterman Act.



# Types of Conservatorships

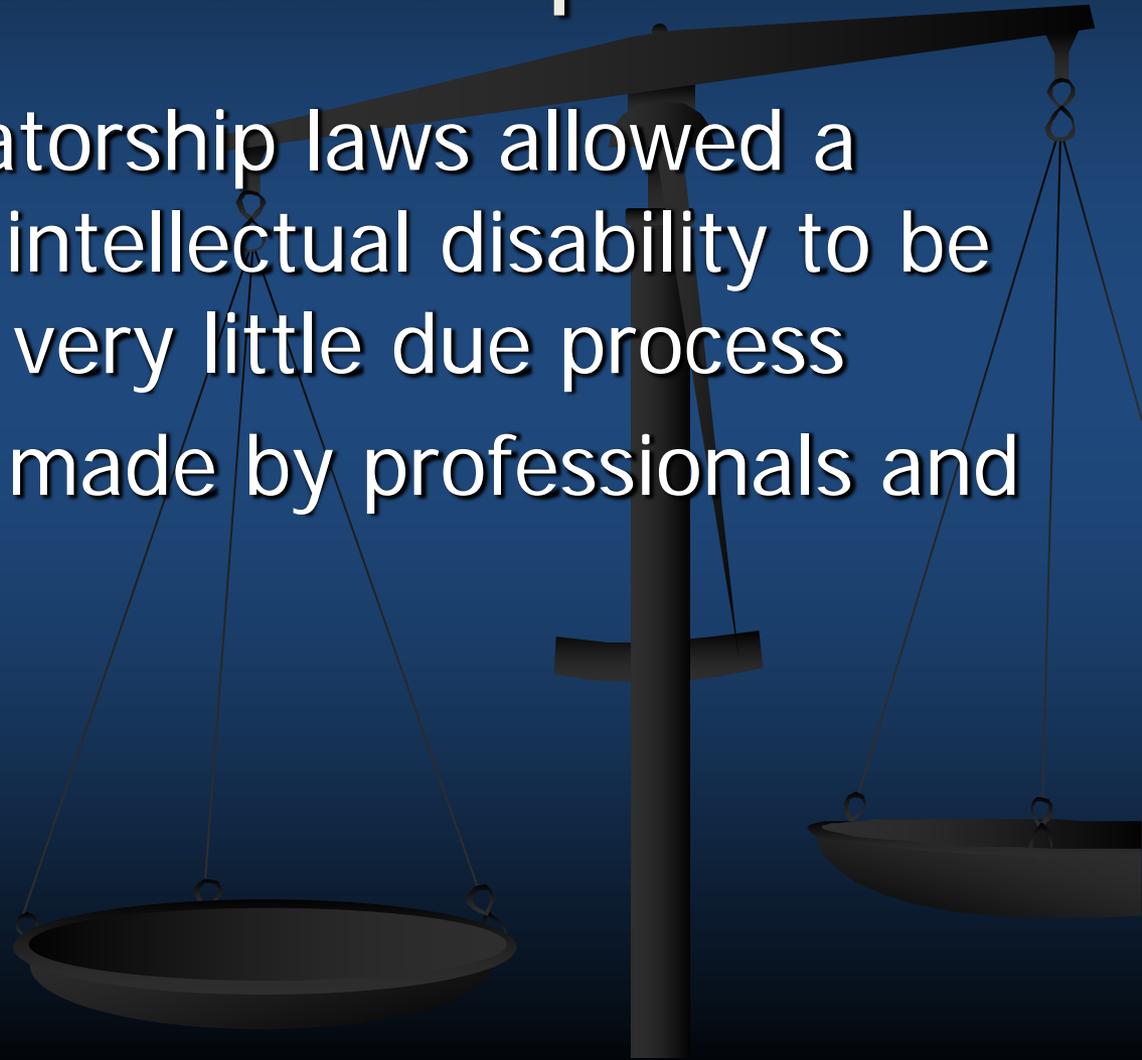
Categories

<b>Conservatorship of the Person</b>	<b>Conservatorship of the Estate</b>
General Conservatorship of the Person	General Conservatorship of the Estate
Limited Conservatorship of the Person	Limited Conservatorship of the Estate
LPS Conservatorship for Psychiatric Care	



# History of Limited Conservatorships

- Earlier conservatorship laws allowed a person with an intellectual disability to be conserved with very little due process
- Decisions were made by professionals and not family



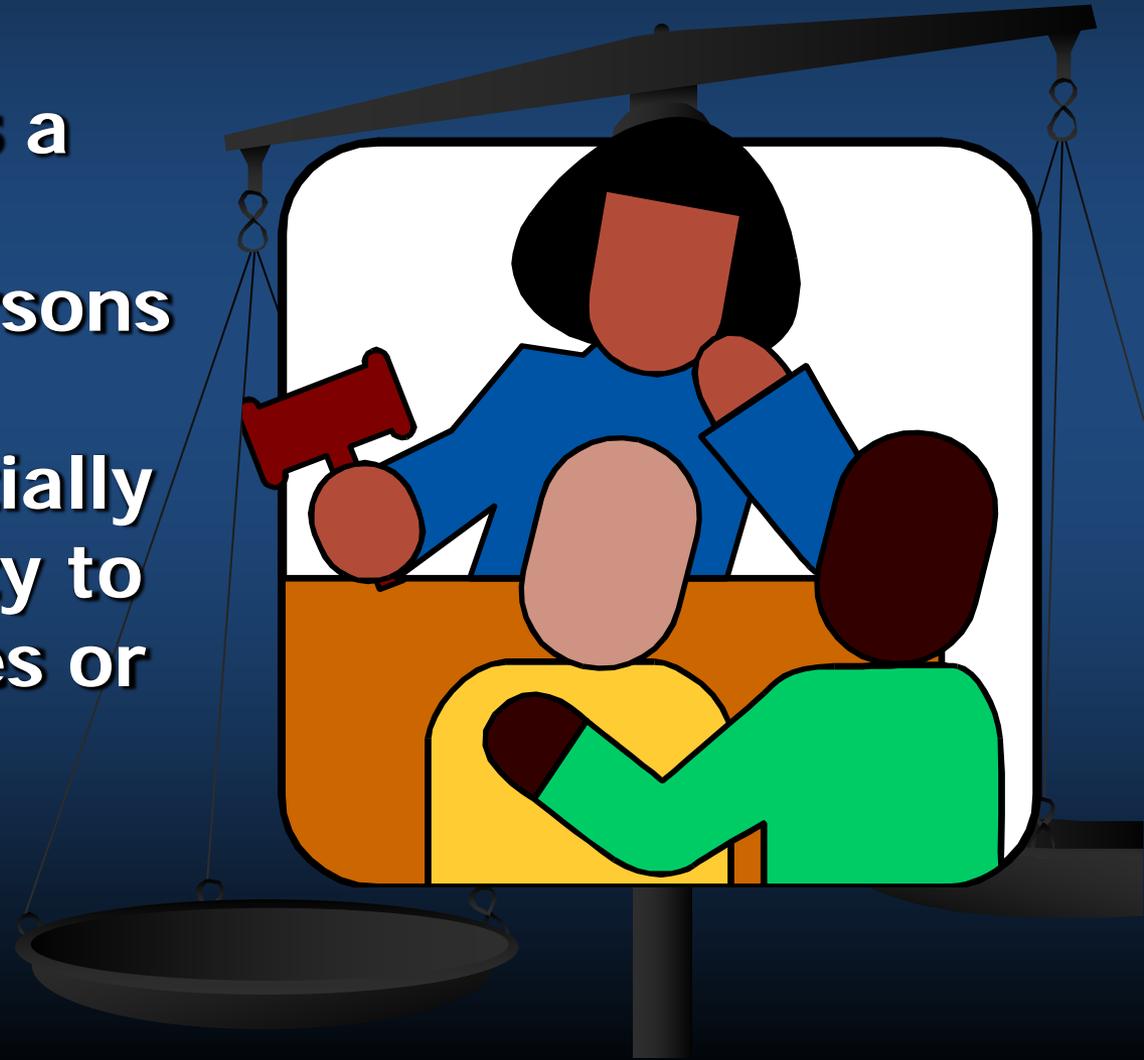
# Concept of the Limited Conservatorship

- The limited conservatorship process was created to provide better legal protection for people with intellectual disabilities.
- Shifts decision-making power from professionals to family/friends.
- Scope of power is flexible to better match the ability/needs of the person.



# What is a Limited Conservatorship?

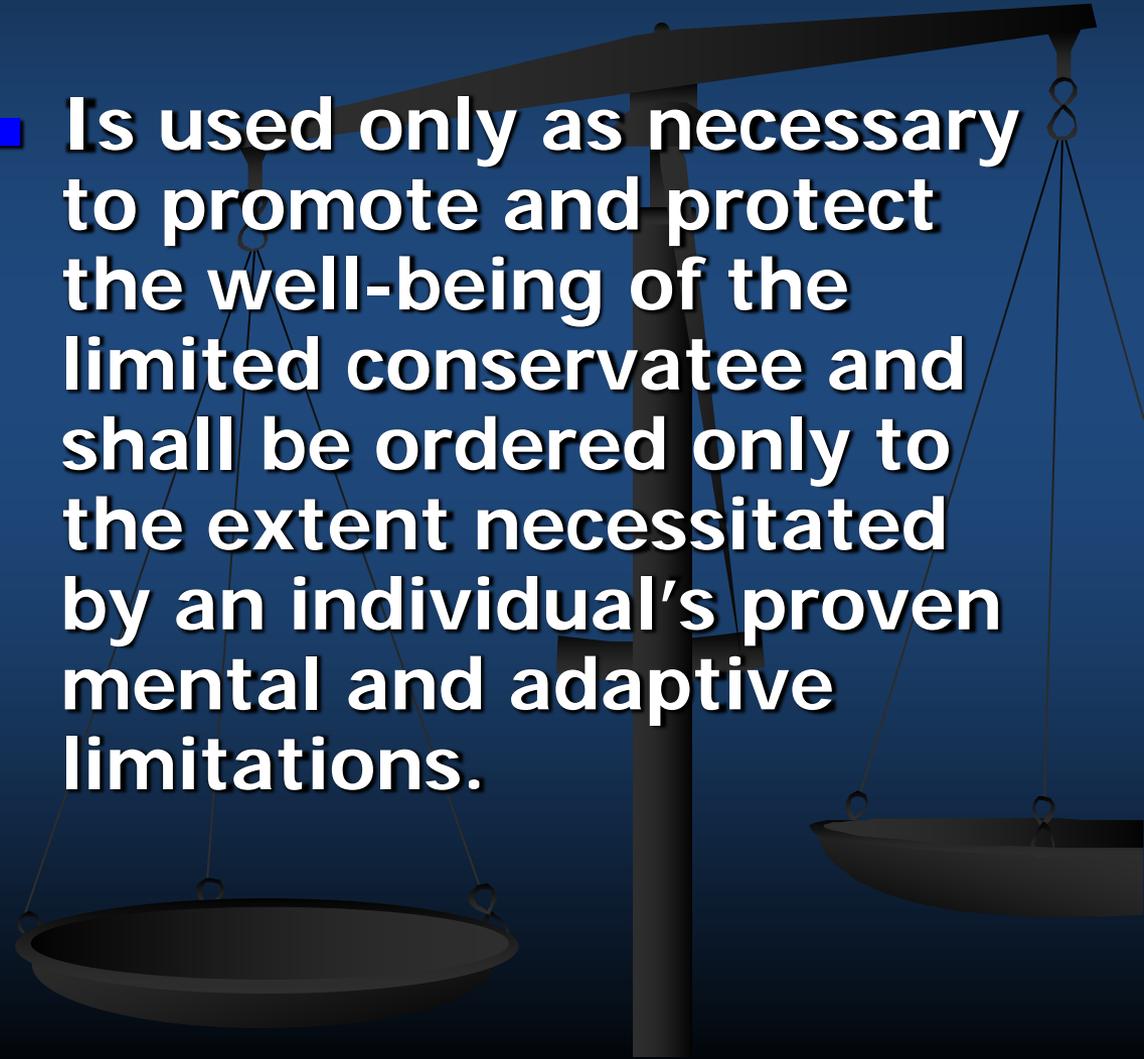
- A limited Conservatorship is a protective judicial proceeding for persons whose intellectual disability substantially impairs their ability to care for themselves or their property.



# What is a Limited Conservatorship?

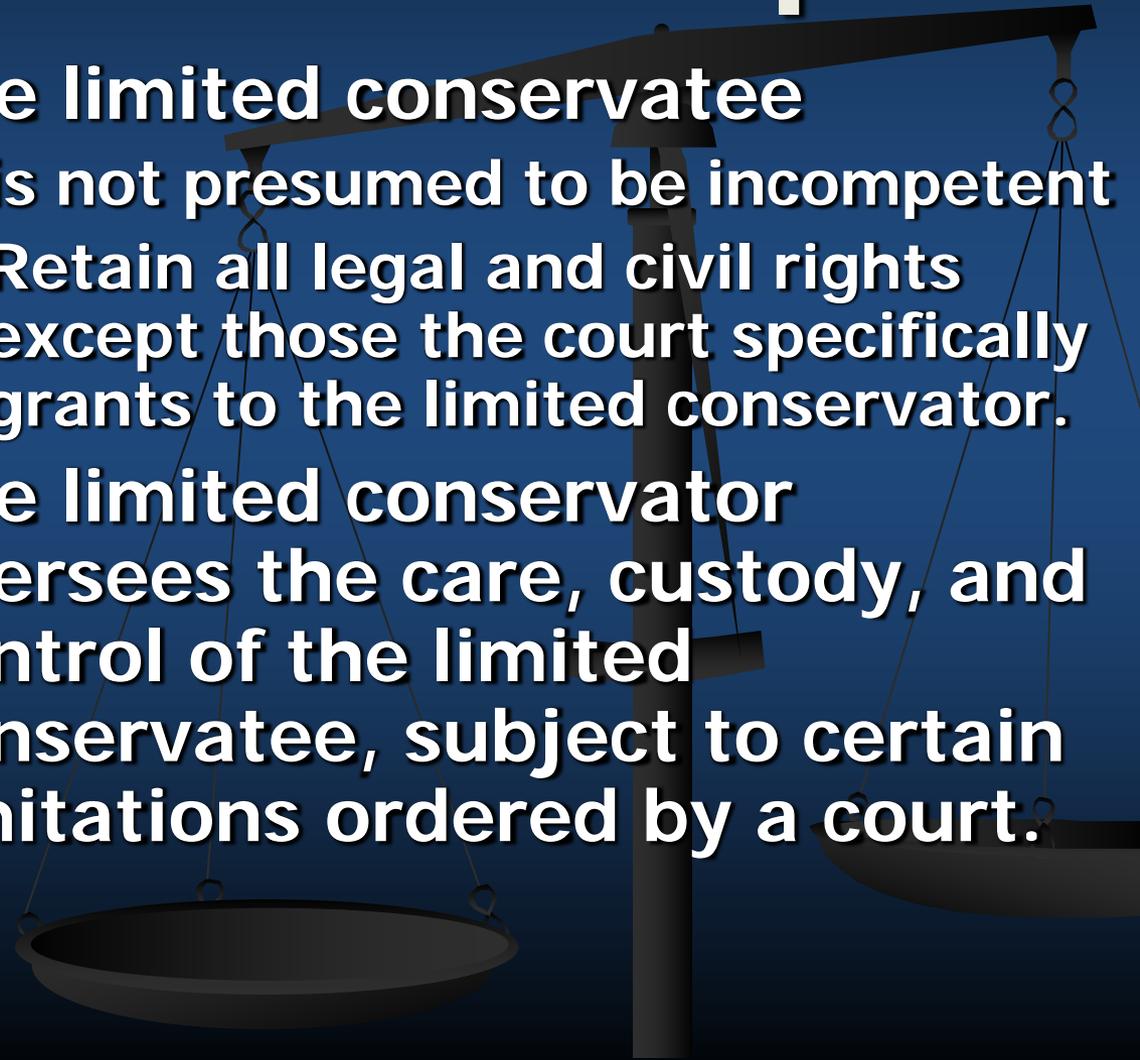


- Is used only as necessary to promote and protect the well-being of the limited conservatee and shall be ordered only to the extent necessitated by an individual's proven mental and adaptive limitations.

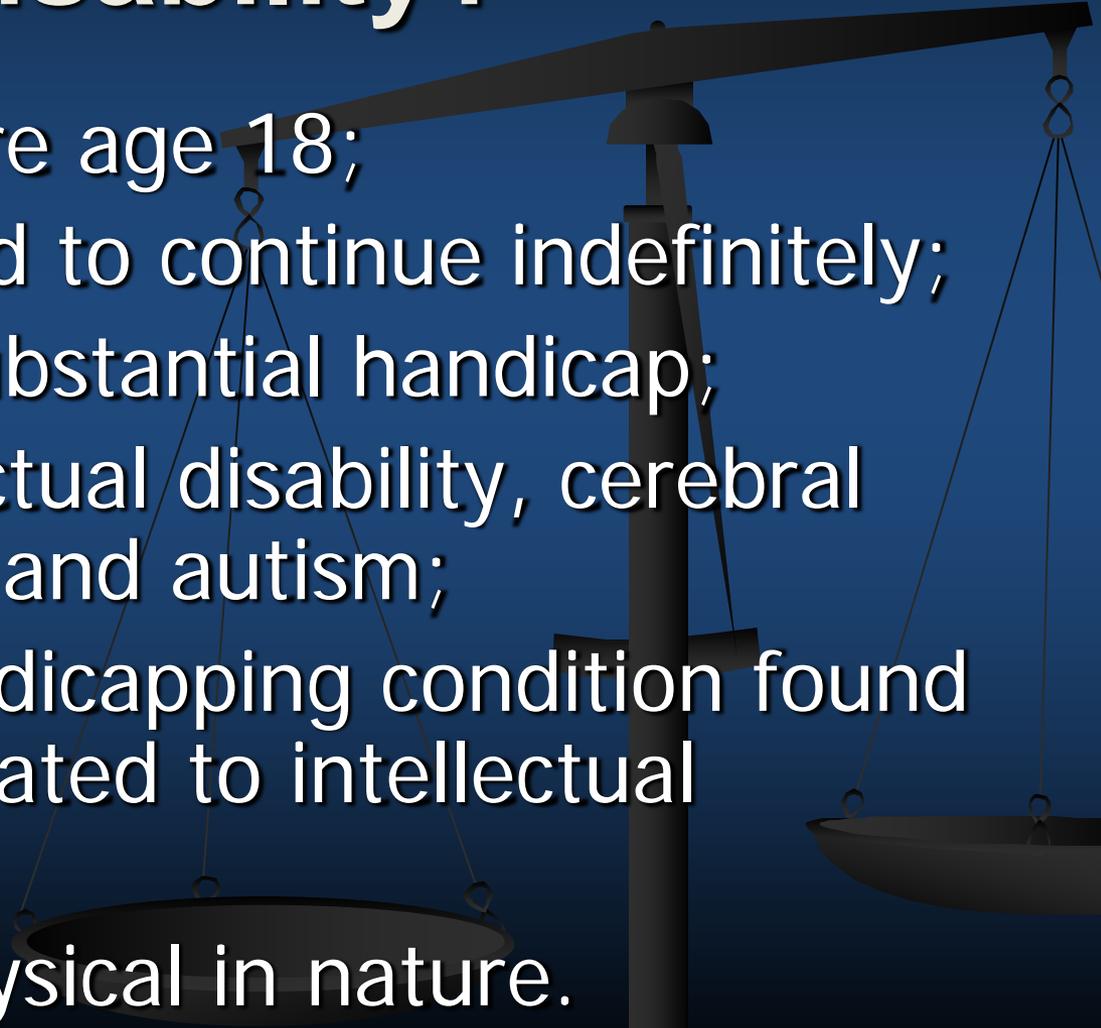


# What is a Limited Conservatorship?

- The limited conservatee
  - is not presumed to be incompetent
  - Retain all legal and civil rights except those the court specifically grants to the limited conservator.
- The limited conservator oversees the care, custody, and control of the limited conservatee, subject to certain limitations ordered by a court.

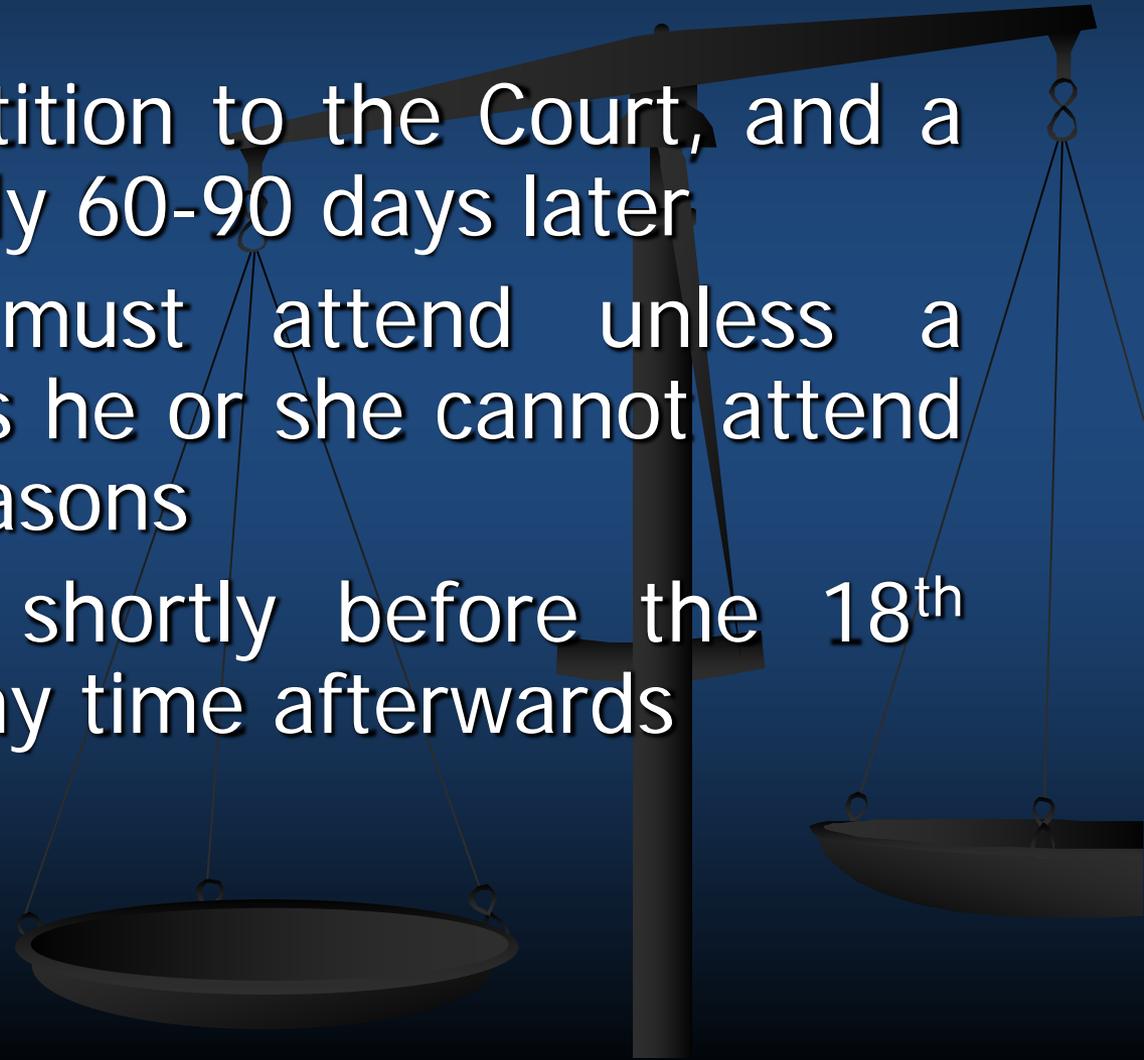


# What is a Developmental Disability?

- Originates before age 18;
  - Can be expected to continue indefinitely;
  - Constitutes a substantial handicap;
  - Includes intellectual disability, cerebral palsy, epilepsy, and autism;
  - Can be any handicapping condition found to be closely related to intellectual disability;
  - Is not solely physical in nature.
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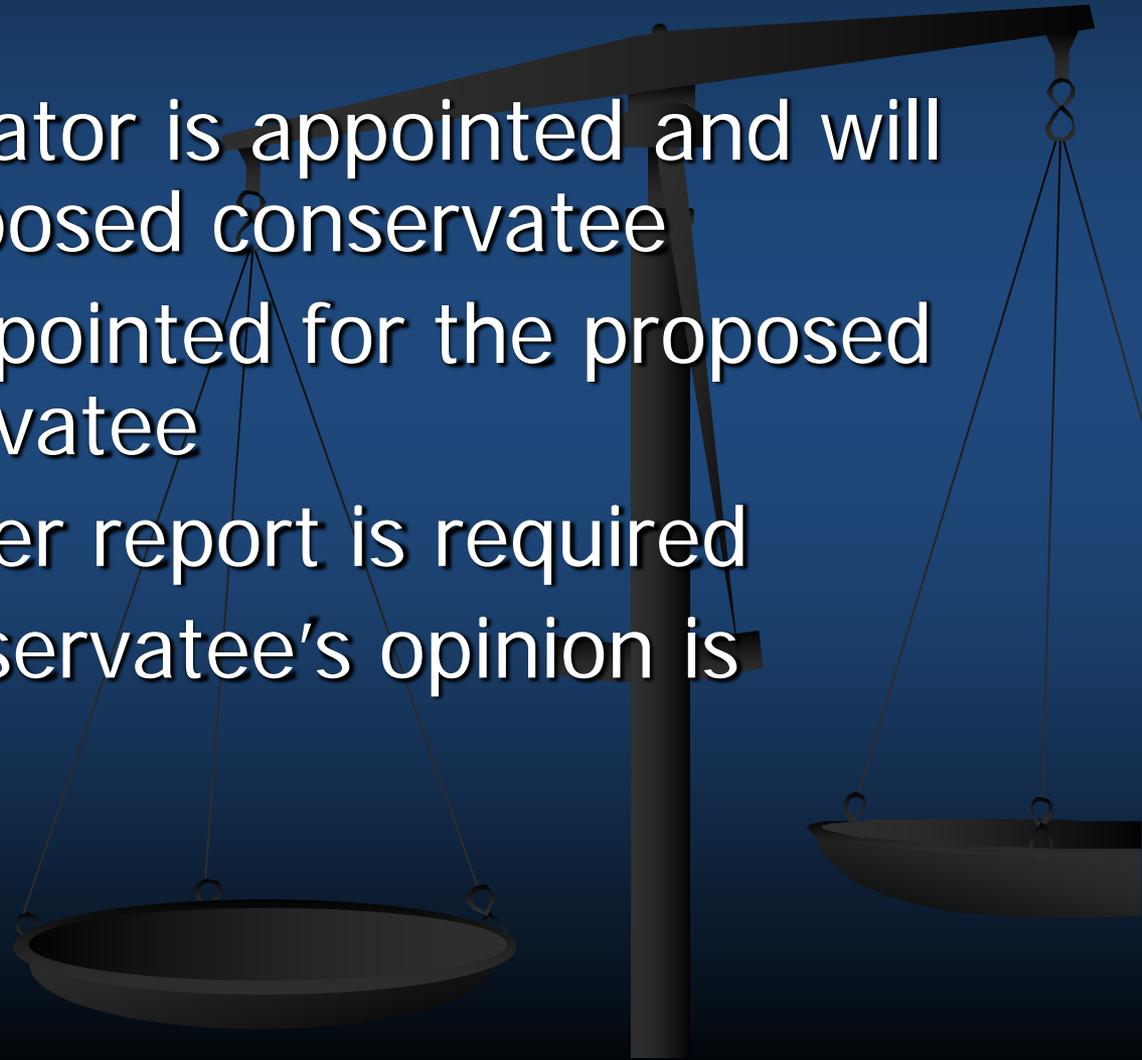
# How Is A Conservatorship Established?

- Requires a Petition to the Court, and a hearing, usually 60-90 days later
- Conservatee must attend unless a doctor certifies he or she cannot attend for medical reasons
- Can be filed shortly before the 18<sup>th</sup> birthday, or any time afterwards



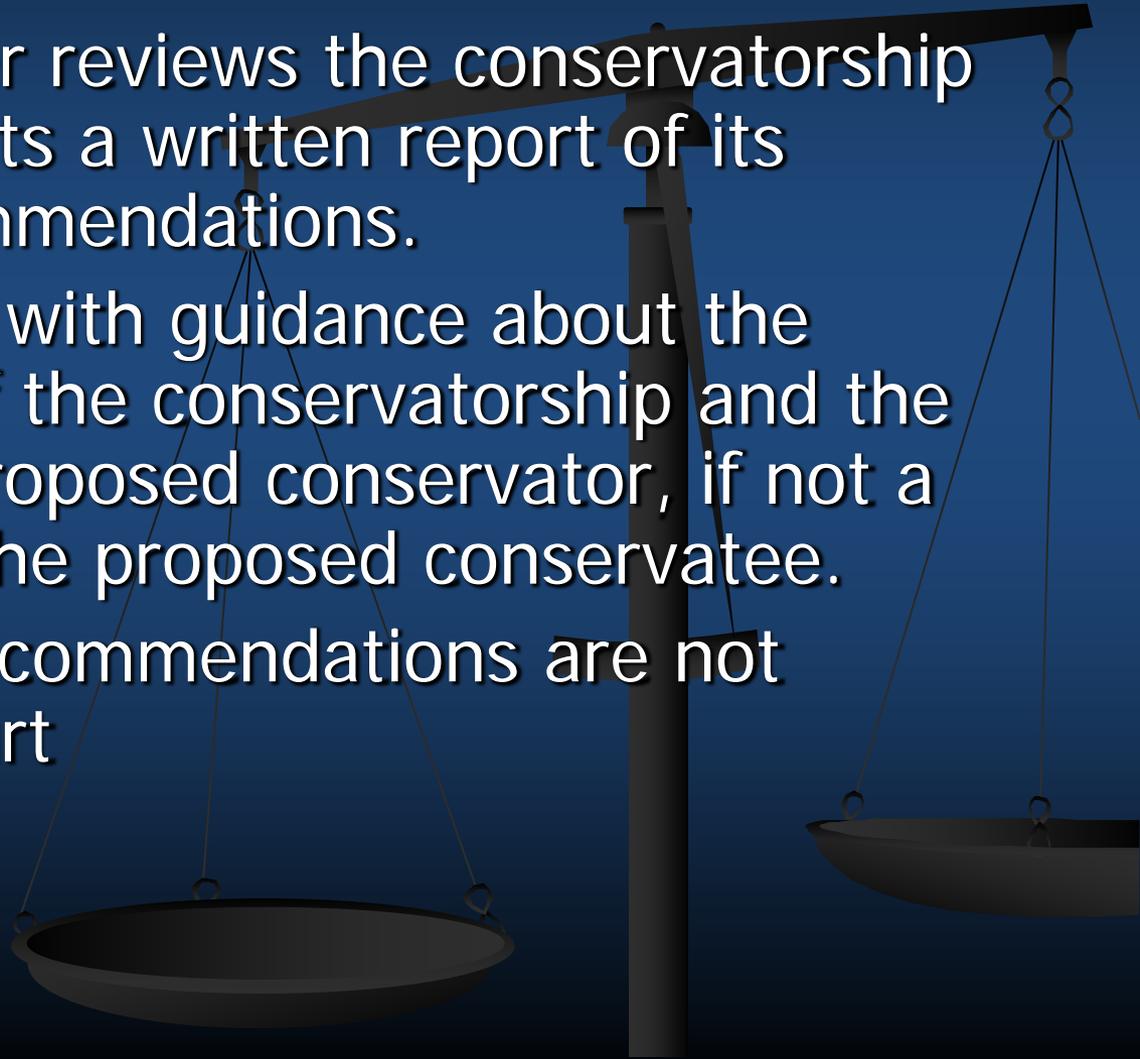
# How Is A Conservatorship Established?

- Court investigator is appointed and will interview proposed conservatee
- Attorney is appointed for the proposed limited conservatee
- Regional Center report is required
- Proposed conservatee's opinion is sought

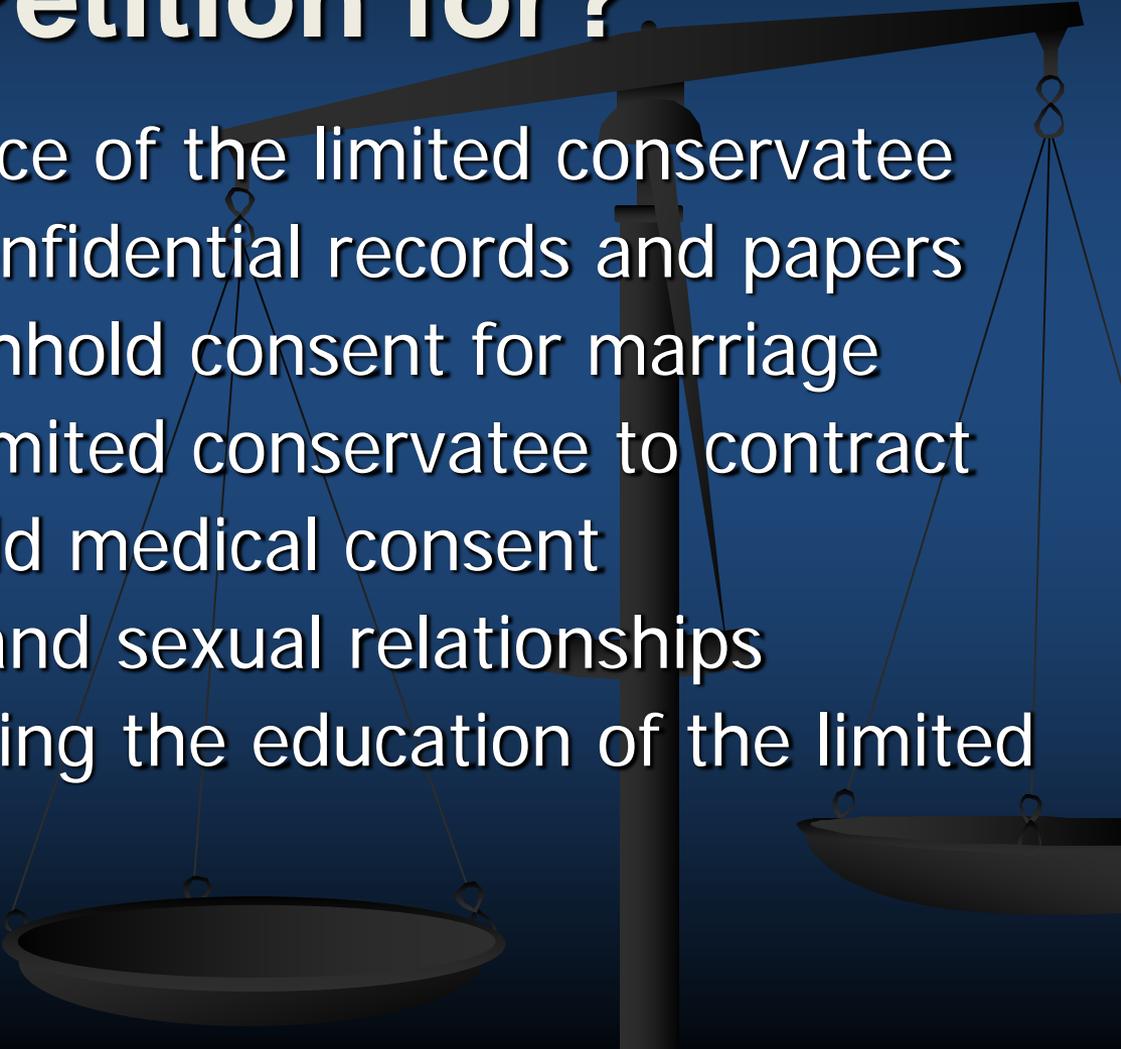


# The Role of the Regional Center

- The regional center reviews the conservatorship petition and submits a written report of its findings and recommendations.
- Provides the court with guidance about the appropriateness of the conservatorship and the suitability of the proposed conservator, if not a natural parent of the proposed conservatee.
- Regional Center recommendations are not binding on the court



# Powers a Limited Conservator of the Person can Petition for?

- Select the residence of the limited conservatee
  - Have access to confidential records and papers
  - To consent or withhold consent for marriage
  - The right of the limited conservatee to contract
  - To give or withhold medical consent
  - To control social and sexual relationships
  - Decisions concerning the education of the limited conservatee
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# Powers that are Restricted

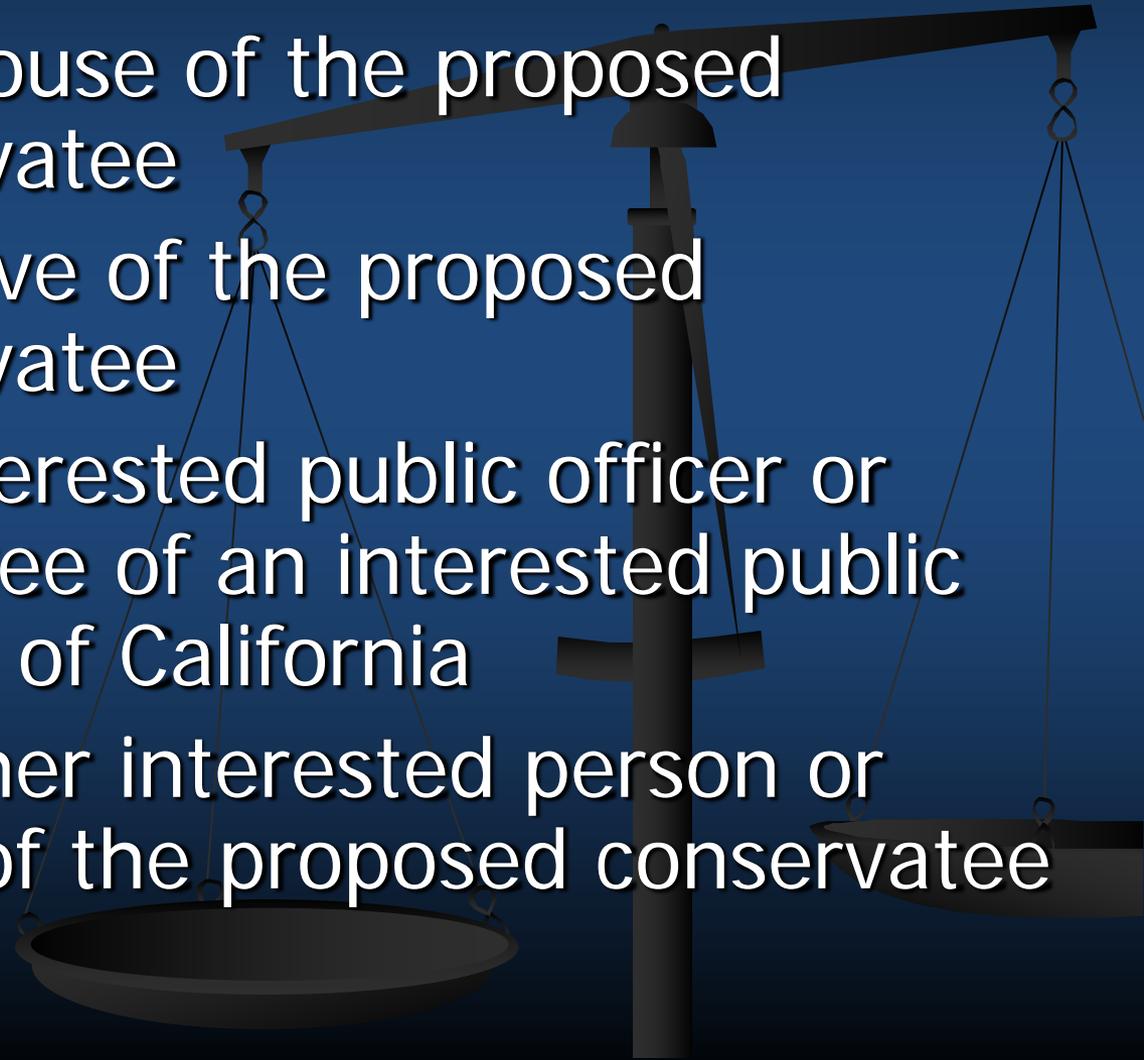


- No commitment to locked psychiatric facility, without an LPS Conservatorship
- No treatment with experimental drugs
- No electroshock treatment
- No sterilization without special court permission

# Who Can Establish a Limited Conservatorship?

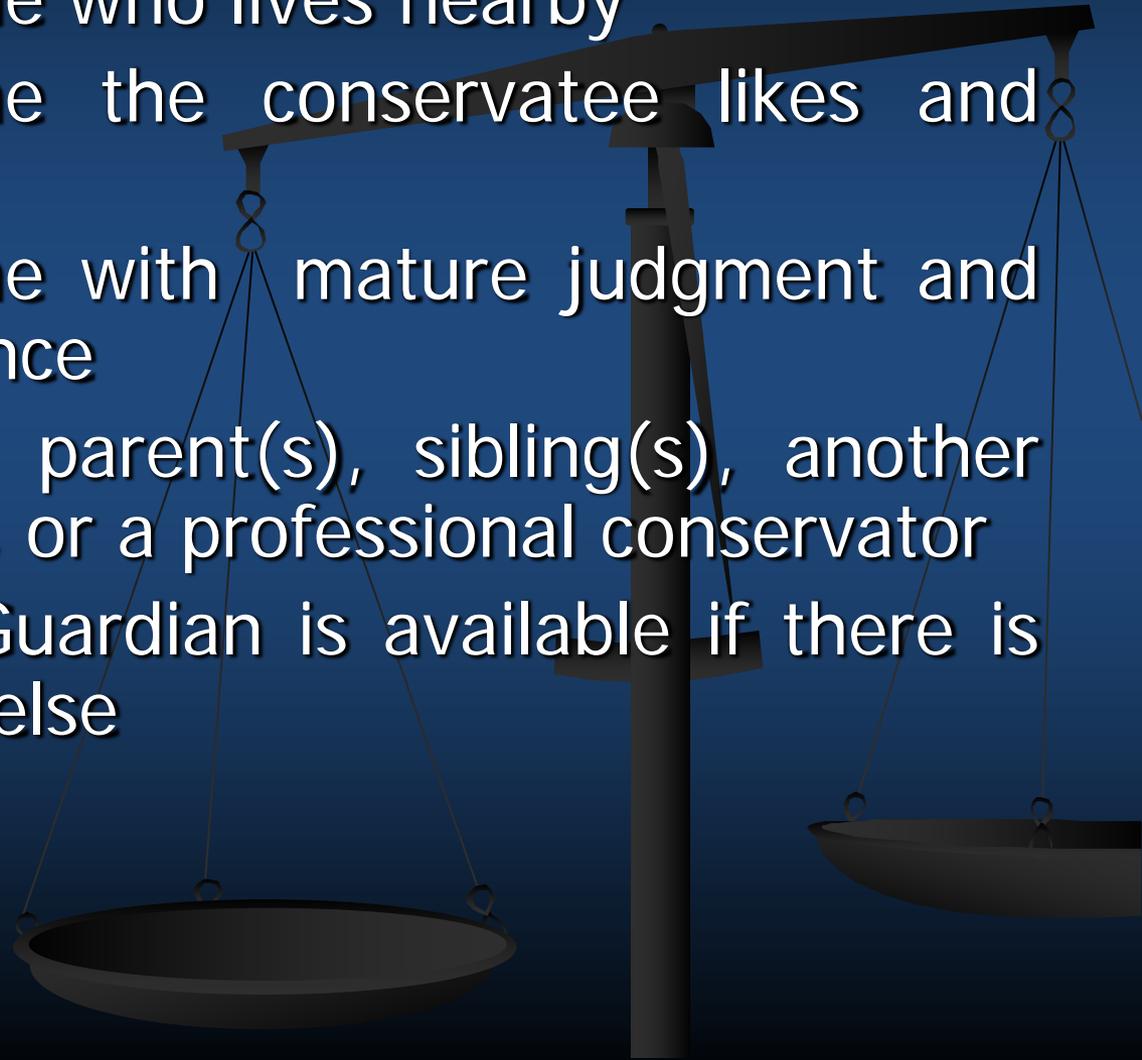


- The spouse of the proposed conservatee
- A relative of the proposed conservatee
- Any interested public officer or employee of an interested public agency of California
- Any other interested person or friend of the proposed conservatee

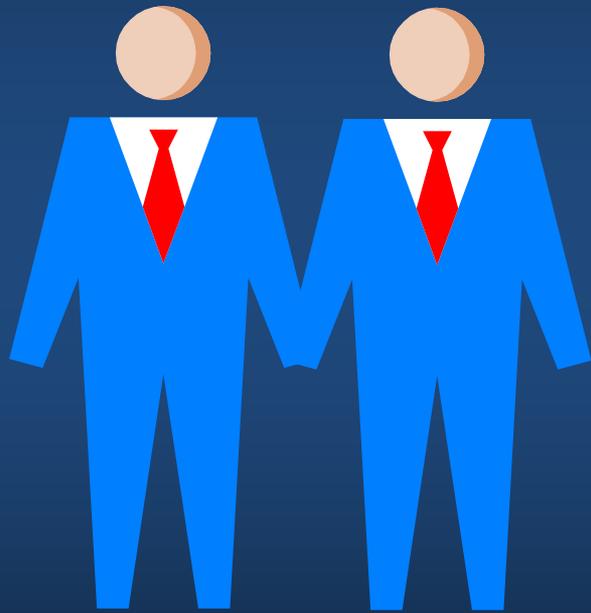


# Who Should be Conservator?

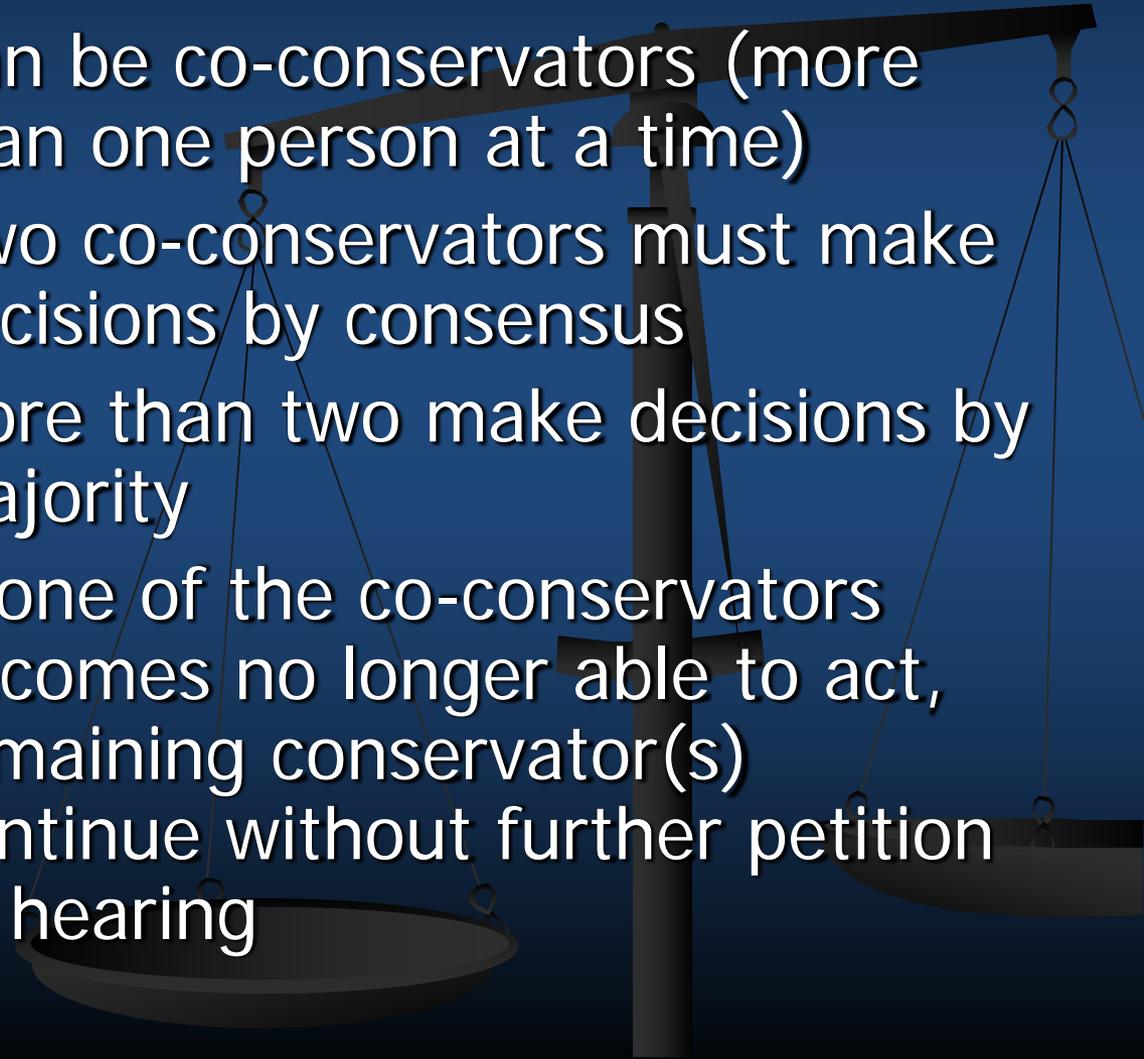
- Someone who lives nearby
- Someone the conservatee likes and trusts
- Someone with mature judgment and experience
- Can be parent(s), sibling(s), another relative, or a professional conservator
- Public Guardian is available if there is no one else



# Co-Conservators?

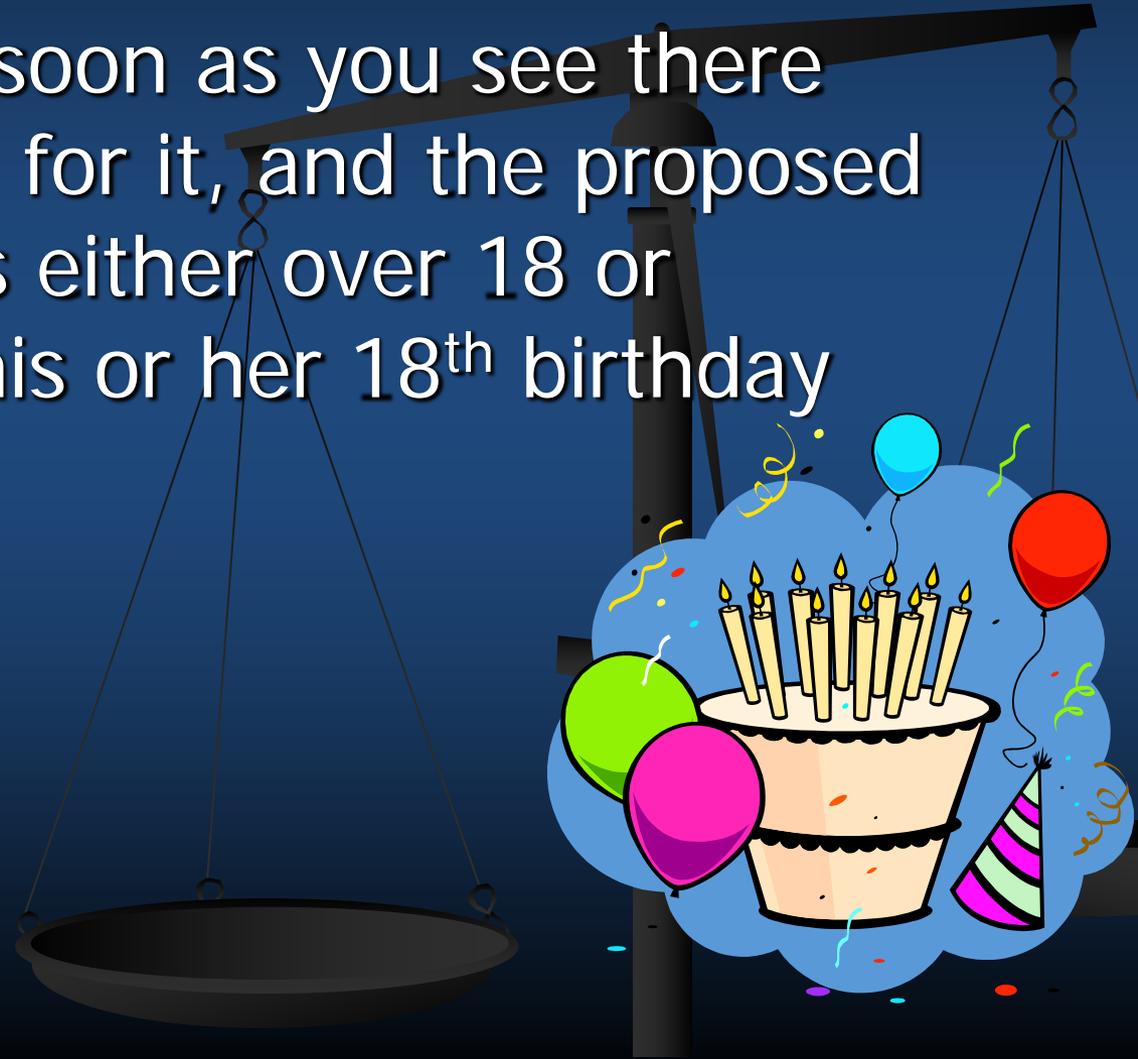


- Can be co-conservators (more than one person at a time)
- Two co-conservators must make decisions by consensus
- More than two make decisions by majority
- If one of the co-conservators becomes no longer able to act, remaining conservator(s) continue without further petition or hearing



# When to Apply

- May apply as soon as you see there will be a need for it, and the proposed conservatee is either over 18 or approaching his or her 18<sup>th</sup> birthday



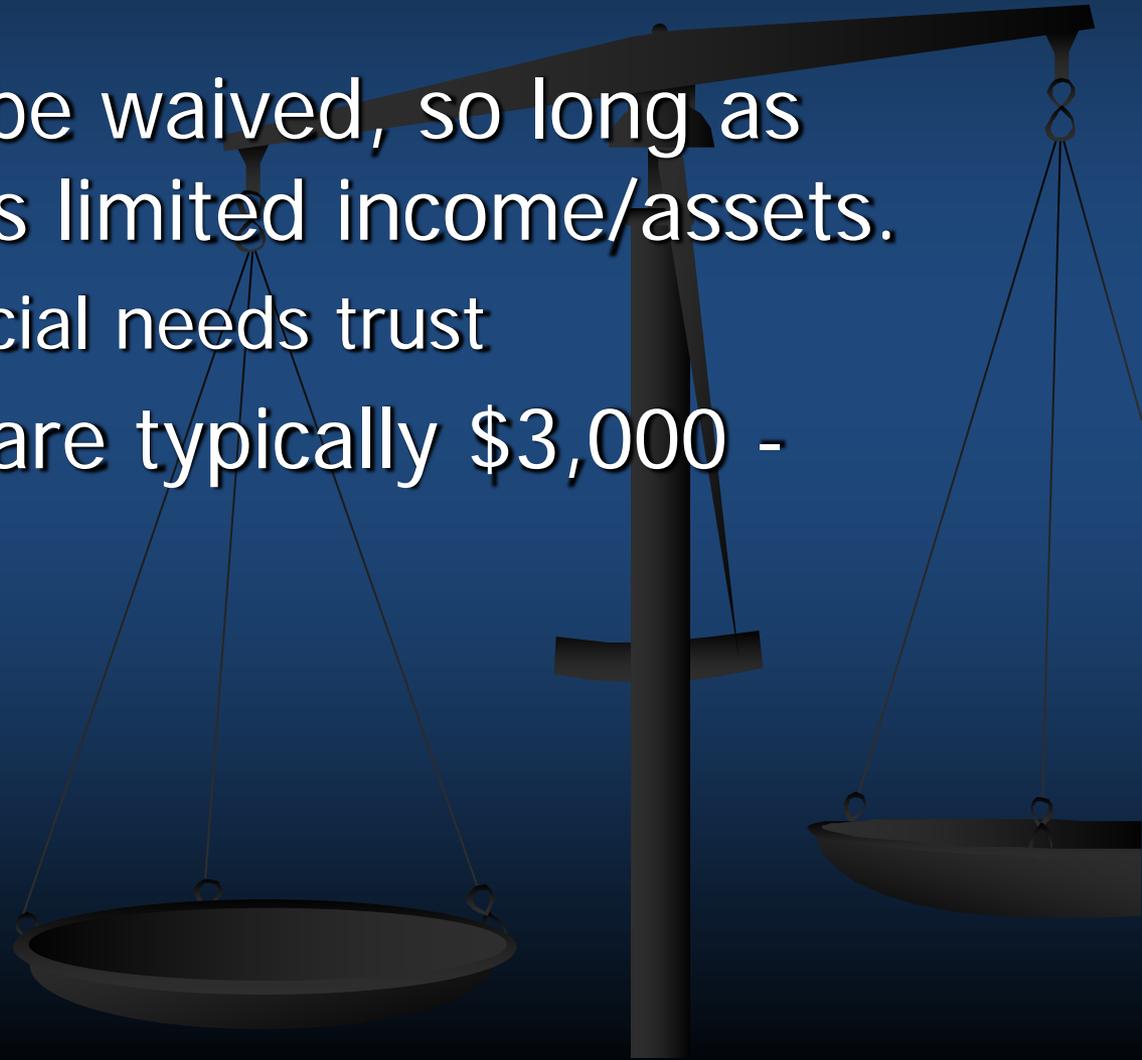
# Three Stages of Conservatorship Process

- Preparing & Filing Petition
- Preparing for Court Hearing
- Post-Hearing Tasks



# Fees

- Court fees will be waived, so long as conservatee has limited income/assets.
  - No funded special needs trust
- Attorneys fees are typically \$3,000 - \$4,000.



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