SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

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Urgency: No
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SUBJECT

Certification for intensive treatment: review hearing

DIGEST

This bill provides that a person's medical condition may be considered in determining their mental condition for purposes of certifying them for a 14- or 30-day involuntary detention for treatment and evaluation under the Lanterman-Petris Short (LPS) Act.

EXECUTIVE SUMMARY

The *parens patriae* authority gives the state the power to intervene on behalf of those who cannot act in their own best interests. California's approach to wielding this power over people with mental illnesses shifted dramatically beginning in the second half of the 20th century, as it sought to move from a heavy-handed paternalistic model to a more libertarian model that better protected civil rights. This effort culminated with the passage of the LPS Act, which established a process for imposing a conservatorship on a person found to be gravely disabled or a danger to self or others.

Because a conservatorship involves a major curtailment of liberty, the LPS Act contains several significant procedural safeguards, including a carefully calibrated series of temporary detentions for evaluation and treatment of people who may ultimately necessitate a conservatorship. This process begins with a 72-hour "5150" detention for evaluation and treatment, which may be extended by certification for 14 days of intensive treatment and an additional 30-day period for further intensive treatment, provided that at each juncture probable cause to continue the detention is found at a certification review hearing.

This bill would provide that the evidence submitted in support of the certification may include information regarding the person's medical condition, as defined, and how that condition bears on certifying the person as a danger to self or others or as gravely disabled. The bill would require the hearing officer to consider such information.

The bill is sponsored by the California Psychiatric Association and supported by the California Judges Association, California Hospital Association, California Psychological Association, California Treatment Advocacy, Crestwood Behavioral Health, Dignity Health, Sutter Health, the Steinberg Institute, and Tenet Health. The bill is opposed by Access California, California Behavioral Health Planning Council, Disability Rights California, and the Law Foundation of Silicon Valley.

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee, as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Committee on Health.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the LPS Act, which provides for the involuntary detention for treatment and evaluation of people who are gravely disabled or a danger to self or others. (Welf. & Inst. Code § 5000 et seq.)[1] Defines "grave disability" as a condition in which a person, as a result of a mental disorder, or impairment by chronic alcoholism, is unable to provide for the person's basic personal needs for food, clothing, or shelter. (§ 5008(h)(1)(A),(2).)

2) Provides that, if a person is gravely disabled as a result of mental illness, or a danger to self or others, then a peace officer, staff of a designated treatment facility or crisis team, or other professional person designated by the county, may, upon probable cause, take that person into custody for a period of up to 72 hours for assessment, evaluation, crisis intervention, or placement in a designated treatment facility. (§ 5150.)

3) Provides that a person who has been detained for 72 hours may be further detained for up to 14 days of intensive treatment if the person continues to pose a danger to self or others, or to be gravely disabled, and the person has been unwilling or unable to accept voluntary treatment. (§ 5250.) Provides for an additional 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (§ 5270.15.)

4) Requires that when applying the definition of mental disorder for purposes of, among other provisions, section 5250, that the historical course of the person's medical disorder be considered, and defines "historical course" to include

[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

evidence presented by persons who have provided, or are providing, mental health or related support services to the patient, the patient's medical records as presented to the court, including psychiatric records, or evidence voluntarily presented by family members, the patient, or any other person designated by the patient. (§ 5008.2.)

5) Generally requires, for a person to be certified for the additional 14 days, that a notice of certification be signed by a professional person or a qualified designee in charge of the agency or facility providing evaluation services, as well as a second person who participated in the evaluation who is a physician or, if possible, a board-certified psychiatrist. (§ 5251.) The certification notice must be personally delivered to the person, their attorney or a designated advocate, and sent to anyone else the person designates. (§ 5253.)

6) Requires that the person be informed, at the time of delivery of the notification, that they are entitled to a certification review hearing, to be held within four days of the date of certification unless judicial review is requested, to determine whether probable cause exists to detain the person for intensive treatment related to the mental disorder or impairment by chronic alcoholism. Requires that the person be informed of their rights with respect to the hearing, including the right to the assistance of another person to prepare for the hearing or to answer other questions and concerns regarding their involuntary detention or both. (§ 5254.)

7) Requires that the person be informed of their right to judicial review by habeas corpus and their right to counsel, including court-appointed counsel. (§ 5254.1.)

8) Requires, when a person is certified for intensive treatment for the 14-day or 30-day hold, that, unless judicial review has been requested, a certification review hearing be held within four days of the certification unless postponed by request of the person, their attorney, or advocate. (§ 5256.)

9) Requires, at the certification review hearing, that evidence in support of the certification decision be presented by a person designated by the director of the facility. In addition, either the district attorney or the county counsel may, at their discretion, elect to present evidence at the certification review hearing. (§ 5256.2.)

10) Provides that, at a certification review hearing, a person certified has the following rights:
    a) Assistance by an attorney or advocate.
    b) To present evidence on their own behalf.
    c) To question persons presenting evidence in support of the certification decision.

d) To make reasonable requests for the attendance of facility employees who have knowledge of or participated in, the certification decision.
e) To make the person conducting the hearing aware if they have received medication within a specified timeframe of the hearing, and of the probable effects of the medication.
f) To an impartial hearing conducted in an informal manner not bound by the rules of procedure or evidence applicable to judicial proceedings.
g) Reasonable attempts must be made by the mental health facility to notify family members or any other person designated by the patient, of the time and place of the certification hearing, unless the patient requests that this information not be provided.
h) All evidence that is relevant to establishing that the person certified is or is not as a result of a mental disorder or impairment by chronic alcoholism, a danger to self or others, or gravely disabled, must be admitted at the hearing and considered by the hearing officer.
i) Although resistance to involuntary commitment may be a product of a mental disorder, this resistance does not, in itself, imply the presence of a mental disorder or constitute evidence that a person meets the criteria of being dangerous to self or others, or gravely disabled. (§ 5256.4.)

11) Provides that if, at the conclusion of the certification review hearing, the person conducting the hearing finds that there is not probable cause to believe that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others or self, or gravely disabled, then the person certified may no longer be involuntarily detained. (§ 5256.5.) If, however, there is probable cause, then the person may be detained for involuntary care, protection, and treatment related to the mental disorder or impairment by chronic alcoholism for an additional 14-day or 30-day period, as provided. (§ 5256.6.)

12) Requires that a person's involuntary 14-day or 30-day detention be terminated only if the psychiatrist directly responsible for the person's treatment believes, as a result of their personal observations, that the person certified no longer is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others or self, or gravely disabled. (§ 5257.)

13) Allows the professional person in charge of a facility providing 72-hour, 14-day, or 30-day treatment to recommend an LPS conservatorship to the county conservatorship investigator for a person who is gravely disabled and is unwilling or unable to voluntarily accept treatment, and requires the conservatorship investigator, if they concur with the recommendation, to petition the superior court to establish an LPS conservatorship. (§ 5350 et seq.)

This bill:

1) Allows for the evidence presented in support of the certification decision to include information regarding the person's medical condition and how that condition bears on certifying the person as a danger to self or others or as gravely disabled. Requires the hearing officer to consider the information in the determination of probable cause.

2) Defines "medical condition" for these purposes as a serious chronic or acute physical ailment for which the treating physician and treating psychiatrist, as part of the certification process, document the following:
    a. A certification by the physician that all of the following apply:
        i. Without treatment, the medical condition poses a serious risk that the person, within three months, will suffer great bodily harm or death.
        ii. The treatment is consistent with generally accepted standards of practice, the person will receive the treatment if further detained, and upon release, the person will be provided with a treatment plan and connected with services to continue to receive treatment.
        iii. During the person's detention pursuant to section 5150, the physician advised the person on the purpose, nature, risks, and benefits of the medical condition and the treatment, consistent with existing requirements for obtaining informed consent.
    b. A certification by the psychiatrist that all of the following apply:
        i. If the medical condition is a chronic condition that existed before the person was detained pursuant to Section 5150, the person was consistently unable to comply with treatment due to their mental health condition.
        ii. If released into the community, the person, due to their mental health condition at the time of certification, is likely to remain consistently unable to comply with the treatment due to either of the following:
            1. The person remains unable to comply with the treatment because they cannot achieve a rudimentary understanding of the nature of the medical condition and continue to lack insight into the need for treatment.
            2. The person understands the nature of the medical condition and wishes to comply with the treatment, but, due to the person's mental health condition, has a demonstrated history of being consistently unable to comply with the treatment, or a treatment for a similar medical condition, and this pattern is likely to recur if the person is released into the community.
    c. Excludes from the definition of "medical condition":

i. A condition that predominantly involves a substance use disorder.
ii. Exposure to potential harms resulting from the individual's personal circumstances, including, but not limited to, lack of health care insurance, poverty, or homelessness.
iii. Medical information that is more than four years old.

3) Requires, if the person needs continuing medical treatment after the termination of the involuntary detention, that they be informed that continuing medical treatment is recommended.

4) Makes other conforming, stylistic, and clarifying changes.

COMMENTS

1. Homelessness, substance abuse, and mental illness

Between 2018 and 2019, according to the U.S. Department of Housing and Urban Development's point-in-time count, California's homeless population increased nearly 17 percent to 151,278. While some of this population has access to transitional housing programs or emergency shelters, 72 percent remain unsheltered, living in cars, tent encampments, or on the street.[2] One out of every nine Americans live in California but about one in four homeless Americans, including the majority of the nation's unsheltered people, live in California.[3] African-Americans are disproportionately represented among the state's unhoused population, as are LGBTQ people.[4] Seniors are falling into homelessness at an increasing rate.[5] These figures will likely become even grimmer as a result of the COVID-19 pandemic and ensuing economic devastation.

There are various causes of homelessness, including mental health problems, addiction, trauma, poverty, and interaction with the criminal justice system. However, the primary cause of homelessness in California is the rising cost of rent.[6] Low-income people with serious mental illnesses are often housed in board-and-care facilities. But because state subsidies have remained stagnant while housing prices and the minimum wage have increased, several of these facilities have been shuttered.[7] Since 2012, San Francisco has lost more than a third of licensed residential facilities serving people

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[2] *The 2019 Annual Homeless Assessment Report to Congress* https://files.hudexchange.info/resources/documents/2019-AHAR-Part-1.pdf (as of July 31, 2020).
[3] *California's homelessness crisis – and possible solutions – explained.* Calmatters (Jan. 8, 2020) https://calmatters.org/explainers/californias-homelessness-crisis-explained/ (as of July 31, 2020).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Vanishing board-and-care-homes leave residents with few options*, Calmatters (Apr. 15, 2019) https://calmatters.org/projects/board-and-care-homes-closing-in-california-mental-health-crisis/ (as of July 31, 2020).

under 60 and more than a quarter of those serving older people.[8] From 2018 through 2019, Los Angeles lost more than 200 beds for low-income people with serious mental illnesses.[9]

While some people only temporarily fall into homelessness, governments and service providers generally focus their efforts on the chronically homeless. Typically, these individuals suffer from a disability and have experienced homelessness on multiple occasions or for a prolonged period. Roughly 34,000 Californians fall into this category.[10]

Although mental illness and substance abuse contribute to homelessness, the extent is not clear. Last year, the *Los Angeles Times* examined more than 4,000 questionnaires and found that about 67 percent had either a mental illness or a substance abuse disorder.[11] However, the Los Angeles Homeless Services Authority interpreted this data more strictly, finding that 14 percent had a substance use disorder and 25 percent had a serious mental illness.[12] Confounding this issue is the fact that living without a secure home can cause mental health problems and lead to substance abuse, and these conditions may be mutually reinforcing. For example, some drugs, such as methamphetamine, exacerbate mental illness.[13]

2. Involuntary detention for treatment and evaluation under the LPS Act

Before the 1950s, people with serious mental illnesses were typically confined in expansive state-run institutions, often for their entire lives, based on a mere finding by a physician that the person had a mental illness and was in need of treatment. Following a series of exposes[14] and the advocacy efforts of civil rights attorneys and mental health

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[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Are many homeless people in L.A. mentally ill? New findings back the public's perception* (Oct. 7, 2019) https://www.latimes.com/california/story/2019-10-07/homeless-population-mental-illness-disability (as of July 31, 2020).
[12] *2019 Greater Los Angeles Homeless Count – Los Angeles Continuum of Care* https://www.lahsa.org/documents?id=3422-2019-greater-los-angeles-homeless-count-los-angeles-continuum-of-care.pdf (as of July 31, 2020).
[13] *California's homelessness crisis – and possible solutions – explained. Calmatters* (Jan. 8, 2020) https://calmatters.org/explainers/californias-homelessness-crisis-explained/ (as of July 31, 2020).
[14] One journalist described "the frightful squalor these unfortunates live in--beds jammed against one another, holes in the floor, gaping cracks in the wall, long rows of hard, unpainted benches, dirty toilets, dining halls where the food is slopped out by unkempt patient attendants and, above all, the terrifying atmosphere of hopelessness in institutions where thousands of patients are penned in day after day and night after night endlessly staring at blank walls." Another author described mental hospitals as "buildings swarming with naked humans herded like cattle and treated with less concern, pervaded by a fetid odor so heavy, so nauseating, that the stench seemed to have almost a physical existence of its own." (Gordon, Sara, *The Danger Zone: How the Dangerousness Standard in Civil Commitment Proceedings Harms People with Serious Mental Illness* (2016) 66 Case W. Res. 657, 660, fn. 30.)

professionals, this model gave way to an approach that instead privileged individual liberty. States like California began "deinstitutionalizing" psychiatric patients, allowing them to seek treatment in their own community, premised on the largely unrealized expectation that the resources to provide the treatment would be available.

Signed into law in 1967 by Governor Ronald Reagan, the LPS 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." (§ 5001.)

Under the LPS framework, "[o]ne of the principal powers which the court may grant a conservator is the right to place a conservatee in an institution." (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 223 (*Roulet*).) A person found to be gravely disabled may be involuntarily confined for up to one year. (§ 5361.) If, at the end of that year, the conservator determines that the conservatorship is still required, the conservator may petition the superior court for reappointment (*id.*), a process that may repeat itself for as long as the person remains gravely disabled. "In effect, these statutes assure in many cases an unbroken and indefinite period of state-sanctioned confinement. 'The theoretical maximum period of detention is *life* as successive petitions may be filed . . . .' [Citation.]" (*Roulet*, *supra*, 23 Cal.3d at p. 224; italics in original.) "In addition to physical restraint, '[t]he gravely disabled person for whom a conservatorship has been established faces the loss of many other liberties … '" (*Id.* at 227.) "Moreover, a person suffering from a grave mental disorder is obviously in a poor position to influence or monitor counsel's efforts on his behalf. Accordingly, the Legislature and this court have built several layers of important safeguards into conservatorship procedure." (*Conservatorship of Ben C.* (2007) 40 Cal. 4th 529, 540.)

"Before a person may be found to be gravely disabled and subject to a year-long confinement, the LPS Act provides for a carefully calibrated series of temporary detentions for evaluation and treatment." (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541.) The act limits involuntary commitment to successive periods of increasingly longer duration, beginning with a 72-hour detention for evaluation and treatment (§ 5150), which may be extended by certification for 14 days of intensive treatment (§ 5250); that initial period may be extended for an additional 14 days if the person detained is suicidal. (§ 5260.) The 14-day certification may be extended for an additional 30-day period for further intensive treatment. (§ 5270.15.)

After the initial 72-hour detention, the 14-day and 30-day commitments each require a certification hearing before an appointed hearing officer to determine probable cause for confinement unless the person has filed a petition for the writ of habeas corpus. (§§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.) When two professional persons sign the

certification, notice of the certification must be personally delivered to the person, their attorney or a designated advocate, and sent to anyone else the person designates. (§§ 5251, 5253.) When the notice is delivered, the person must be informed of their rights with respect to the hearing, including the right to the assistance of another person to prepare for the hearing or to answer other questions and concerns regarding their involuntary detention or both. (§ 5254.) At the hearing, which must be held within four days of delivery of the notice (§ 5256), a designee of the director of the psychiatric facility must present evidence in support of the certification decision, and the district attorney or the county counsel may present additional evidence. (§ 5256.2.) The hearing must be conducted in an impartial and informal manner to encourage free and open discussion by participants. (§ 5256.4(b).) The person has the right to assistance by an attorney or advocate, present evidence, request the attendance of facility employees, and question persons presenting evidence in support of the certification. (*Id.* at (a).) All evidence that is relevant to establishing that the person certified is or is not as a result of mental disorder or impairment by chronic alcoholism, a danger to others or self, or gravely disabled, must admitted at the hearing and considered by the hearing officer. (*Id.* at (d).)

3. Allows medical conditions to be considered in LPS certification review hearings

Over the last few years, as the state's mental health and homelessness crises have intensified, several policy disagreements have played out in the Legislature with respect to the causes of, and solutions to, these crises. One prominent fault line centers on the state's power to intervene on behalf of those who cannot act in their own best interests. Some argue that the LPS Act should be expanded to provide counties additional discretion to assert legal control over people who are incapable of surviving safely on their own. Others argue that this focus is misguided because many counties currently do not provide adequate community-based services to help individuals avoid deteriorating into a condition that necessitates a conservatorship.

Several bills have attempted to expand the "gravely disabled" criteria to expressly address a person's inability to provide for their own medical treatment.[15] Perhaps the most noteworthy is AB 1971 (Santiago, 2018), which was passed by this Committee as a pilot program applicable until 2024 in Los Angeles County. As amended in this Committee, the bill would have expanded the definition of "gravely disabled" for the purpose of the LPS Act to also include a condition in which a person, as a result of a mental health disorder, is unable to provide for their basic personal needs for medical treatment, if the failure to receive medical treatment, as defined, results in a deteriorating physical condition that a medical professional, in their best medical judgment, attests in writing, will more likely than not, lead to death within 6 months, as specified. The bill passed this Committee by a vote of 5-1 but was later ordered to the Senate inactive file.

[15] See "Related Legislation" section below for additional details.

The State Auditor recently released an audit of the implementation of the LPS Act in Los Angeles, San Francisco, and Shasta Counties. The Auditor concluded:

> […] the LPS Act's criteria for involuntary treatment allows counties sufficient authority to provide short-term involuntary treatment to people. Expanding the LPS Act's criteria to include additional situations in which individuals may be involuntarily treated could potentially infringe upon people's liberties—and we found no evidence to justify such a change.
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> Perhaps most troublingly, many individuals were subjected to repeated instances of involuntary treatment without being connected to ongoing care that could help them live safely in their communities. […][16]

The Auditor further concluded that a dearth of community-based mental health treatment services is the major reason that individuals with mental health challenges deteriorate or relapse into a condition that necessitates a conservatorship.[17]

Compared to previous bills, this bill takes a generally narrower approach to the issue of a person's inability to provide for their own medical care. Whereas its predecessors would have applied to the LPS conservatorship itself, this bill only applies to the 14-day and 30-day detentions that are preludes to the one-year conservatorship. And instead of amending the "gravely disabled" definition, the bill expands the scope of admissible evidence that may be considered in the certification review hearing. Specifically, the bill would authorize the evidence presented in support of the certification decision to include information regarding the person's medical condition and how that condition bears on certifying the person as a danger to themselves or to others or as gravely disabled. The bill would require the hearing officer to consider the information in the determination of whether there is probable cause that the person is gravely disabled or a danger to self or others.

Proponents of the bill note that people with severe mental illnesses who experience homelessness are subjected to harsh conditions that may create or exacerbate life-threatening medical conditions, but often they do not have access to care or are resistant to it. The sponsors offer an example of a person who had schizophrenia and diabetes. Because she was able to verbalize to the court that she was able to care for her food, clothing, and shelter needs, she was decertified. But she didn't believe she needed any medications, including her diabetes medication. She was soon hospitalized, stabilized, and sent back to a psychiatric treatment facility.

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[16] *Lanterman-Petris-Short Act: California Has Not Ensured That Individuals With Serious Mental Illnesses Receive Adequate Ongoing Care* (July 28, 2020) Report 2019-119, Public Letter, available at https://www.auditor.ca.gov/reports/2019-119/index.html (as of Jul. 28, 2020).
[17] *Id.*

The author writes:

> When surveyed psychiatrists identified that they often felt they had to release patients that no longer met the current criteria for a hold although the patient was so disabled by a severe mental illness that they lacked the capacity to manage their health issues and seek sufficient medical care. The failure in the law to specifically address this means patients suffering from a debilitating mental illness miss the opportunity to receive adequate and extended medical care while receiving treatment for their mental health condition. There is no question that we must do more to invest in community resources and provide early intervention. This bill seeks to support individuals that face serious health risks by ensuring that they have the opportunity and resources to manage medical issues that are or can become complicated and acute without medical treatment.

4. Support

The California Psychiatric Association, the bill's sponsor, writes:

> […] current law fails to address the needs of those individuals with a mental illness to lack the capacity to provide for their medical needs. Those individuals languish on the streets without adequate access to proper hygiene and conditions like malnutrition, wounds from accidents and altercations, diabetes and other chronic health conditions, all of which place them at risk of serious physical harm. … Many homeless refuse treatment for their mental illness or their health condition.

The Steinberg Institute argues that current law "blinds courts to the physical medical condition of a patient, no matter how serious." They argue that this leads to circumstances in which psychiatrists "feel they have to release patients no longer meeting the criteria for a hold even though the patient is so tragically disabled by a severe mental illness that they lack the capacity to manage their co-occurring serious health issues."

Additionally, several organizations that provide care to LPS patients support the bill. Dignity Health argues that considering a person's medical status gives "the decision maker a more complete view of the individual's needs." Tenet Health argues that the bill "seeks to allow a more holistic consideration of a patient's health in extending an involuntary hold." Crestwood Behavioral Health argues that "[p]oor nutrition, exposure to the elements, injuries from accidents and altercations, and inadequate access to proper hygiene leave many people experiencing a severe mental disorder with serious physical ailments."

5. Comment from the Senate Committee on Health

The Senate Committee on Health writes:

> The Legislature over the years has considered numerous bills seeking to expand LPS Act criteria for involuntarily detaining individuals with mental or substance use disorders, particularly the expansion of the definition of "grave disability" to include an individual's inability to provide for one's medical care. The Senate Judiciary and Health Committees have been cautious in this approach given the amount of opposition such proposals invite from disability rights and behavioral health advocates, as well as a general inconclusive need to expand criteria for involuntary detention. Additionally, the California State Auditor's recently released report on the LPS Act found no evidence for the need to expand criteria for involuntary detentions and determined that any expansion could widen the use of involuntary holds and pose significant concerns about infringement on individual rights. The Senate Judiciary Committee may wish to consider whether the provisions in this bill align with those principles.

6. Recent amendments address concerns by defining "medical condition" narrowly

   a. *Concerns with the prior version of the bill*

Due to time constraints, the bill was amended August 6, 2020. All registered opposition is based on the prior version of the bill. This section sets forth the concerns articulated by the opposition. The next section describes how the bill was amended to address many, if not all, of these concerns.

Access California argues that physical health conditions are not relevant to mental health conditions and that this bill creates a slippery slope in which a person with a mental health condition that does not rise to the level of gravely disabled is nonetheless subjected to an involuntary hold because of a physical health condition. They argue this "is a clear violation of the civil rights of those with serious medical conditions who may have an array of reasons for the severity of their medical condition unrelated to their mental health (no access to medication, inability to property store refrigerated medications, ineffectiveness of medication, etc.)."

The California Behavioral Health Planning Council writes that "any effort to institutionalize an individual involuntarily is counterproductive to the wellness and recovery model that California embraces, which allows an individual to choose how, when and where they are to receive services/treatment related to mental health and/or substance use." They view the expansion of the scope of admissible evidence as tantamount to expanding the gravely disabled standard, which would "lead to more civil liberties being taken from individuals."

The Law Foundation of Silicon Valley argues: "By allowing hearing officers to consider medical conditions in determining whether patients are gravely disabled for purposes of 5250 commitment, it conflates a person's medical condition with their unrelated mental health condition. This is a troubling concern for their civil rights." They argue that California law ensures that people have the right to make their own health care decisions. They assert that the bill will result in people being held in psychiatric hospitals due to medical conditions regardless of whether the hospital can treat the condition, and that the patient will have the additional burden of showing they are able to seek health care treatment for the condition in order to avoid involuntary commitment.

Disability Rights California (DRC), which initially did not take a position on the bill, writes: "In light of the findings and recommendations of the [State Auditor's] report we now opposed AB 2015. We believe that this bill and related policy issues raised in the audit should undergo a thorough vetting of the audit findings and recommendations and the implications for the broader mental health delivery system before making piecemeal changes in LPS." DRC argues that "[e]ven though this bill poses the additional criteria of considering a person's medical conditions in a certification hearing as evidentiary it is still, in effect, an expansion of the danger to self, others or gravely disabled standard since the court is required to consider the evidence." They assert that the term "medical condition," which was not defined in the prior version of the bill, was unclear and overbroad and was not limited to serious or persistent conditions. DRC also points out that "the bill does not include any provisions to distinguish between informed and uninformed rejection of care nor does it include a requirement that the held individual have a basic understanding of the medical condition or a lack of insight into the need for treatment."

Of these opponents, only DRC has confirmed their continued opposition despite the amendments described below.

b. Recent amendments substantially narrow the bill's scope

The California Supreme Court has admonished that "[the] law must still strive to make certain that only those truly unable to take care of themselves are being assigned conservators under the LPS Act and committed to mental hospitals against their will." (*Conservatorship of Roulet*, *supra*, 23 Cal.3d at p. 225.) The prior version of the bill placed no limitations on the medical conditions that can be entered into evidence to help determine if there is probable cause that a person is gravely disabled or a danger to self or others. This risked the possibility that the bill could be applied in a manner that results in the detention of people who do not have an imminent, life-threatening ailment, which, in turn, could disproportionately impact people who have medical conditions arising from hardships associated with poverty or homelessness. Additionally, the previous version of the bill could have been construed to apply to

people who make informed, albeit unusual or even unwise, decisions to forgo medical treatment.

To address such concerns, the author recently amended the bill to narrow the definition of "medical condition" to serious medical conditions that the person is incapable of treating due to their mental illness. This determination would be made jointly by the physician and psychiatrist who treat the person during their initial 5150 hold. The physician must confirm the seriousness of the medical ailment—specifically, a condition that poses a serious risk of great bodily harm or death within three months—as well as the appropriate treatment, and a plan for administering that treatment during and after the person's subsequent detention. The physician must also advise the person on the purpose, nature, risks, and benefits of the medical condition and the treatment, consistent with existing requirements for obtaining informed consent.

Against this backdrop, the treating psychiatrist must separately determine whether the person's mental illness renders them incapable of managing their own treatment of the medical condition. This determination is based on a finding that (1) the person is incapable of forming a rudimentary understanding of the nature of the medical condition and lacks insight into the need for treatment, or (2) has a demonstrated history of being unable to comply with the treatment, or a treatment for a similar medical condition, as a result of their medical condition, and this pattern is likely to recur. To ensure that a person is not deemed unable to provide for their own care due to their station in life, the bill, as it relates to chronic conditions that existed before the person was detained, requires the psychiatrist to find that the person was consistently unable to comply with the treatment due to their mental health conditions. This forecloses the possibility that a prior inability to provide for one's care was not principally due to lack of access to care.

Finally, the bill expressly excludes from the definition of medical condition (1) a condition that predominantly involves a substance use disorder,[18] (2) exposure to potential harms resulting from the individual's personal circumstances, including lack of health care insurance, poverty, or homelessness, and (3) medical information that is more than four years old.

[18] The issue of conservatorships for individuals with co-occurring and mutually-exacerbating substance abuse disorders and mental illnesses was painstakingly addressed in recent legislation that created a pilot program that establishes a novel type of conservatorship known as a "housing conservatorship." SB 1045 (Weiner, Ch. 845, Stats. 2018) and the follow-up bill, SB 40 (Weiner, Ch. 467, Stats. 2019), established a pilot program, applicable in Los Angeles, San Diego, and San Francisco counties, that provides for the appointment of a conservatorship for a person who is incapable of caring for their own health and well-being due to a serious mental illness and substance use disorder, as evidenced by eight detentions under a section 5150 hold for treatment and evaluation within a 12-month period. The program is in the early stages of implementation in San Francisco and information is being gathered as to its effectiveness. Arguably, legislation that touches on this issue is premature.

While these limitations on the scope of medical evidence that may be considered under the bill's provisions are likely to assuage many of the concerns described above, some concerns linger in light of the State Auditor's conclusion that there is no evidence that justifies expanding the LPS Act to include additional situations in which individuals may be involuntarily treated.

SUPPORT

California Psychiatric Association (sponsor)
California Judges Association
California Hospital Association
California Psychological Association
California Treatment Advocacy Coalition
Crestwood Behavioral Health
Dignity Health
Steinberg Institute
Sutter Health
Tenet Health

OPPOSITION

Access California – Cal Voices
California Behavioral Health Planning Council
Disability Rights California
Law Foundation of Silicon Valley

RELATED LEGISLATION

Pending Legislation:

AB 1976 (Eggman, 2020) would remove the sunset on the assisted outpatient treatment program under Laura's law and would make it so that counties must opt out of the program instead of opting in. The bill is pending in the Senate Appropriations Committee.

AB 3242 (Irwin, 2020) would authorize the use of telehealth technology to conduct an evaluation under section 5150. The bill is pending on the Senate floor.

Prior Legislation:

SB 1251 (Moorlach, 2020) would have authorized any county to adopt the "housing conservatorship" program established by SB 40, which is described below. SB 1251 was referred to this committee but was not heard.

SB 1254 (Moorlach, 2020) would have provided for the establishment of a guardian ad litem for a person who, upon petition to a court, is determined to lack the capacity to make rational informed decisions regarding medical care, mental health care, safety, hygiene, shelter, food, or clothing with a rational thought process due to a mental illness, defect, or deficiency. The bill would have provided that a guardian may make medical care, mental health care, safety, hygiene, shelter, food, or clothing decisions on behalf of the person lacking capacity. SB 1254 was referred to this committee but was not heard.

AB 1946 (Santiago & Friedman 2020) would have expanded the definition of "gravely disabled" for the purpose of the LPS Act to also include a condition in which a person, as a result of a mental health disorder, is unable to provide for their basic personal needs for medical treatment, if the failure to receive medical treatment, as defined, results in a deteriorating physical condition that a medical professional, in their best medical judgment, attests in writing, will more likely than not, lead to death within 6 months, as specified. AB 1946 was referred to the Assembly Health Committee but was not heard.

AB 2679 (Gallagher, 2020) would have expanded authorized the County of Butte to adopt the "housing conservatorship" program under SB 40, which is described below. AB 2679 was referred to the Senate Health Committee but was not heard.

SB 40 (Weiner, Ch. 467, Stats. 2019) refined a pilot program, established by SB 1045 (Weiner, Ch. 845, Stats. 2018), applicable in Los Angeles, San Diego, and San Francisco counties, which provides for the appointment of a conservatorship for a person who is incapable of caring for their own health and well-being due to a serious mental illness and substance use disorder, which is initially evidenced by eight detentions under a section 5150 hold for treatment and evaluation within a 12-month period.

SB 640 (Moorlach, 2019) would have expanded the "gravely disabled" standard to apply to a person who, as a result of a mental health disorder, is incapable of making informed decisions about, or providing for, the person's own basis personal needs for food, clothing, or shelter without significant supervision and assistance from another person and, as a result of being incapable of making these informed decisions, the person is at risk of substantial bodily harm, dangerous worsening of concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of the person's essential needs. The bill failed passage in the Senate Health Committee.

AB 1572 (Chen, 2019) was virtually identical to SB 640 and also would have created a grant program to fund conservatorship cases. The bill was referred to the Assembly Health Committee but was not heard.

AB 1971 (Santiago, Chen, & Friedman, 2018) was similar to AB 1946 (2020) but would have been limited to a pilot program in the County of Los Angeles until 2024. The bill was ordered to the inactive file on the Senate floor.

AB 2156 (Chen, 2018) would have changed the definition of "gravely disabled" for LPS Act purposes to read, in part, a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about, or providing for, their own basic personal needs for food, clothing, shelter, or medical care without significant supervision and assistance from another person and, as a result of being incapable of making these informed decisions, the person is at risk of substantial bodily harm, dangerous worsening of a concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of their essential needs that could result in bodily harm. The bill was held in the Assembly Health Committee.

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 0)
Assembly Appropriations Committee (Ayes 18, Noes 0)
Assembly Health Committee (Ayes 15, Noes 0)

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