SENATE COMMITTEE ON HEALTH
Senator Dr. Susan Talamantes Eggman, Chair

BILL NO: SB 43
AUTHOR: Eggman
VERSION: February 28, 2023
HEARING DATE: March 29, 2023
CONSULTANT: Reyes Diaz

SUBJECT: Behavioral health

SUMMARY: Expands the definition of "gravely disabled," for purposes of involuntarily detaining an individual, as a condition that will result in substantial risk of serious harm, as defined, to the physical or mental health of an individual due to a mental health or substance use disorder (MH/SUD), as specified. Prohibits the existence of a MH/SUD alone from establishing a substantial risk of serious harm, as specified. Deems statements of specified health practitioners, for purposes of an expert witness in a proceeding relating to the appointment or reappointment of a conservator, as not hearsay, as specified.

Existing law:

Involuntary commitment

1) Establishes the Lanterman-Petris-Short (LPS) Act to end the inappropriate, indefinite, and involuntary commitment of persons with MH disorders, developmental disabilities, and chronic alcoholism, as well as to safeguard a person's rights, provide prompt evaluation and treatment, and provide services in the least restrictive setting appropriate to the needs of each person. Permits involuntary detention of a person deemed to be a danger to self or others, or "gravely disabled," as defined, for periods of up to 72 hours for evaluation and treatment, or for up-to 14 days and up-to 30 days for additional intensive treatment in county-designated facilities. [WIC §5000, et seq.]

2) Permits a conservator of a person, or the estate, or of both the person and the estate, to be appointed for someone who is gravely disabled as a result of a MH disorder or impairment by chronic alcoholism, and who remains gravely disabled after periods of intensive treatment. [WIC §5350]

3) Defines "gravely disabled," for purposes of evaluating and treating an individual who has been involuntarily detained or for placing an individual in conservatorship, as a condition in which a person, as a result of a MH disorder or impairment by chronic alcoholism, is unable to provide for his or her basic personal needs for food, clothing, or shelter. [WIC §5008]

4) Requires the phrase "a danger to himself or herself or others, or gravely disabled" throughout the LPS Act to refer also to the condition of being a danger to self or others, or gravely disabled, as a result of the use of controlled substances rather than by MH disorder. [WIC §5342]

5) Defines a "designated facility" or "facility designated by the county for evaluation and treatment" as a facility that is licensed or certified as a MH treatment facility or a hospital, as specified, by the Department of Public Health, and includes a licensed psychiatric hospital, a licensed psychiatric health facility, and a certified crisis stabilization unit. [WIC §5008]

6) Prohibits licensed general acute care hospitals or licensed acute psychiatric hospitals that are not county-designated facilities (NDFs) for purposes of involuntarily detaining a person; licensed professional staff of those hospitals; or, any physician providing emergency medical services in those hospitals from being civilly or criminally liable for involuntarily detaining a person for more than eight hours but less than 24 hours who is gravely disabled, using the same definition of "gravely disabled" as is used in the LPS Act. [HSC §1799.111]

7) Permits, until January 1, 2024, Los Angeles and San Diego counties and the City and County of San Francisco to place in a housing conservatorship, as specified, a person who is chronically homeless and incapable of caring for his or her own health and well-being due to serious MH/SUD, as specified. [WIC §5450, et seq.]

8) Permits the Department of Health Care Services (DHCS), until January 1, 2027, to establish the Behavioral Health Continuum Infrastructure Program (BHCIP) for the purpose of awarding competitive grants to qualified entities, as specified, to construct, acquire, and rehabilitate real estate assets or to invest in needed mobile crisis infrastructure to expand the community continuum of behavioral health treatment resources to build new capacity or expand existing capacity for short-term crisis stabilization; acute and subacute care; crisis residential; community-based MH residential; SUD residential; peer respite; mobile crisis; community and outpatient behavioral health services; and other clinically enriched longer term treatment and rehabilitation options for persons with behavioral health disorders in the least restrictive and least costly setting. [WIC §5960, et seq.]

9) Enacts the Community Assistance, Recovery, and Empowerment (CARE) Court Act to help connect an individual with a court-ordered care plan for up to 12 months, with the possibility to extend for an additional 12 months, that provides a clinically appropriate, community-based set of services and supports that are culturally and linguistically competent, which include short-term stabilization medications, wellness and recovery supports, a CARE navigator, connection to social services, and a housing plan. [WIC §5970, et seq.]

<u>Heresay</u>

10) Defines "hearsay evidence" as evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. Establishes the hearsay rule, which states that, except as provided by law, hearsay evidence is inadmissible. [EVID §1200]

This bill:

<u>Involuntary commitment</u>

1) Expands the definition of "gravely disabled," for purposes of the LPS Act and NDFs, to include a condition that will result in substantial risk of serious harm to the physical or MH of an individual due to one of more of the following:

   a) A MH disorder; or,
   b) A SUD, including alcohol use disorder.

2) Defines "serious harm" as significant deterioration, debilitation, or illness due to the individual's inability to do one or more of the following:

   a) Satisfy the need for nourishment;
   b) Attend to necessary personal or medical care;

c) Seek adequate shelter;
d) Be appropriately or adequately clothed; or,
e) Attend to self-protection or personal safety.

3) Permits a substantial risk of serious harm to the physical or MH of the individual to be evidenced by one or more of the following:

   a) The individual is presently suffering adverse effects to their physical or MH; or,
   b) The individual previously suffered adverse effects to their physical or MH in the historical course of their MH/SUD and their condition is again deteriorating.

4) Prohibits the existence of a MH/SUD diagnosis alone from establishing a substantial risk of serious harm to the physical or MH of an individual.

5) Requires an individual's inability to appreciate the nature of their disorder and that their decision making is impaired due to their lack of insight into their mental or medical disorders to be considered by the court when evaluating a substantial risk of serious harm.

Hearsay

6) Deems the statements of specified health practitioners, for purposes of an expert witness in a proceeding relating to the appointment or reappointment of a conservator, as specified, that are included in the medical record, as not hearsay.

7) Specifies that deeming statements of specified health practitioners as not hearsay does not prevent a party from calling as a witness the author of any statement contained in the medical records, whether or not the author was relied on by the expert witness.

8) Permits the court to grant a reasonable continuance if an expert witness in a proceeding relied on the medical record and the medical record has not been provided to the parties or their counsel.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

1) *Author's statement.* According to the author, this bill would modernize the definition of "gravely disabled" within the LPS Act to provide for the needs, more accurately and comprehensively, of individuals experiencing a substantial risk of serious harm due to a MH/SUD. This bill would include under the definition of "gravely disabled" a condition in which a person is unable to provide for the basic needs for nourishment, personal or medical care, adequate shelter, adequate clothing, self-protection, or personal safety. Involuntary treatment is a serious intervention, and one that should only be used as a last resort. This bill would also ensure that the court is considering the contents of the medical record and that, during conservatorship proceedings, relevant testimony regarding medical history can be considered in order to provide the most appropriate and timely care. Our current model is leaving too many people suffering with significant psychotic disorders in incredibly unsafe situations, leading to severe injury, incarceration, homelessness, or death. This bill will help to provide dignity and treatment to those who are the most difficult to reach.

2) *LPS Act involuntary detentions.* The LPS Act provides for involuntary detentions for varying lengths of time for the purpose of evaluation and treatment, provided certain requirements are

met, such as that an individual is taken to a county-designated facility. Typically, one first interacts with the LPS Act through a 5150 hold initiated by a peace officer or other person authorized by a county, who must determine and document that the individual meets the standard for a 5150 hold. A county-designated facility is authorized to then involuntarily detain an individual for up to 72 hours for evaluation and treatment if they are determined to be, as a result of a MH disorder, a danger to self or others, or gravely disabled. The professional person in charge of the county-designated facility is required to assess an individual to determine the appropriateness of the involuntary detention prior to admitting the individual. Subject to various conditions, a person who is found to be a danger to self or others, or gravely disabled, can be subsequently involuntarily detained for an initial up-to 14 days for intensive treatment, an additional 14 days (or up to an additional 30 days in counties that have opted to provide this additional up-to 30-day intensive treatment episode), and ultimately a conservatorship, which is typically for up to a year and may be extended as appropriate. (According to DHCS's website, the following counties offer additional up-to 30 days of intensive treatment: Butte, El Dorado, Fresno, Humboldt, Kern, Los Angeles, Mendocino, Merced, Monterey, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Diego, San Joaquin, San Mateo, Santa Barbara, Shasta, Tulare, Yolo and Sutter/Yuba.) Throughout this process, existing law requires specified entities to notify family members or others identified by the detained individual of various hearings, where it is determined whether a person will be further detained or released, unless the detained person requests that this information is not provided. Additionally, a person cannot be found to be gravely disabled if they can survive safely without involuntary detention with the help of responsible family, friends, or others who indicate they are both willing and able to help. A person can also be released prior to the end of intensive treatment if they are found to no longer meet the criteria or are prepared to accept treatment voluntarily.

3) *County-designated facilities vs. NDFs.* Individual counties are responsible for determining whether general acute care hospitals, psychiatric health facilities, acute psychiatric hospitals, and other licensed facilities qualify to be designated facilities for evaluating and treating individuals placed in involuntary detentions. DHCS is responsible for the approval of designated facilities as determined by the counties. Counties generally have the discretion to implement how facilities are designated, but facilities are required to uphold proper care of the patient and a patient's civil rights throughout the process of detention. As one example, Los Angeles County (LAC) has strict guidelines that designated facilities must meet. Every three years, facilities are re-evaluated for designation. If there are complaints about a designated facility, the county has the authority to inspect patient medical records and issue corrective action plans to the designated facilities. If designated facilities do not comply, LAC can revoke designation. While the intent of the LPS Act is for authorized individuals to take those whom have been placed on a 5150 hold to a designated facility, if one does not exist, or a person is suffering another condition that requires immediate emergency medical services, the person is transported to the nearest facility, which is often an emergency department that is an NDF. Pursuant to existing law, NDFs are permitted to involuntarily detain an individual who meets grave disability criteria, as outlined in the LPS Act, for more than eight, but less than 24, hours for evaluation and treatment, until the individual is either safely released or transferred to a designated facility.

4) *Treatment beds in California.* According to a 2021 RAND report, California requires 50.5 inpatient psychiatric beds per 100,000 adults: 26.0 per 100,000 at the acute level and 24.6 per 100,000 at the subacute level, or 7,945 and 7,518 beds, respectively. At the community residential level, the estimated need is 22.3 beds per 100,000 adults. RAND estimated that

California has a total of 5,975 beds at the acute level (19.5 per 100,000 adults) and 4,724 at the subacute level (15.4 per 100,000 adults), excluding state hospital beds. If state hospital beds are included, these figures increase to 7,679 (25.1 per 100,000 adults) and 9,168 beds (29.9 per 100,000 adults), respectively. RAND also observed large regional variation. For example, excluding state hospitals, acute bed capacity ranged from 9.1 beds per 100,000 adults in the Northern San Joaquin Valley to 27.9 beds per 100,000 adults in the Superior county region. For subacute bed capacity, regional estimates ranged from 7.4 to 31.8 beds per 100,000 adults. At the community residential level, RAND estimated that California has a total of 3,872 beds (12.7 per 100,000 adults). California has a shortfall of approximately 1,971 beds at the acute level (6.4 additional beds required per 100,000 adults) and a shortage of 2,796 beds at the subacute level (9.1 additional beds required per 100,000 adults), or 4,767 subacute and acute beds combined, excluding state hospital beds. If state hospitals were included in this estimate, the shortage of acute inpatient beds would shrink to 267, and there would be no observable shortage in beds at the subacute level. Separately, RAND estimated a shortage of 2,963 community-based residential beds.

5) *California State Auditor (CSA) audit on the LPS Act.* The CSA released *LPS Act: California Has Not Ensured That Individuals with Serious Mental Illnesses Receive Adequate Ongoing Care* on July 28, 2020. The audit focused on the following issues in three counties (Los Angeles, San Francisco, and Shasta):

   a) Criteria for involuntary detention for those who are a danger to self or others or gravely disabled, due to a MH condition, and criteria for conservatorship, and whether the counties have consistently followed those criteria;
   b) Differences in approaches among the counties in implementing the LPS Act, if any;
   c) Funding sources, and whether funding is a barrier to implementing the LPS Act; and,
   d) Availability of treatment resources in each county.

   Relative to this bill, the CSA found, among other things, that the LPS Act's current criteria for involuntary treatment allows counties sufficient authority to provide short-term involuntary treatment to people. That finding was related to previous attempts in the Legislature to expand the definition of "gravely disabled," as some have argued that the current LPS Act definition of gravely disabled does not adequately contemplate a person's inability to recognize either their mental or physical deterioration. The CSA further stated that perhaps most troublingly was that 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. For example, almost 7,400 people in Los Angeles County experienced five or more short-term involuntary holds from fiscal years 2015–16 through 2017–18, but only 9% were enrolled in the most intensive and comprehensive community-based services available in fiscal year 2018–19. The CSA stated that assisted outpatient treatment (AOT, also known as "Laura's Law") is an effective approach to serving individuals in their communities, and made recommendations for the Legislature to require all counties to provide AOT services (rather than the county opt-in model at the time), as well as expand access to AOT to people leaving conservatorship. These recommendations were implemented through AB 1976 (Eggman, Chapter 140, Statutes of 2020) and SB 507 (Eggman and Stern, Chapter 426, Statutes of 2021), respectively. The CSA further recommended that counties be allowed to provide express authority to include medication requirements in court-ordered AOT plans as long as the medication is self-administered. SB 1035 (Eggman, Chapter 828, Statutes of 2022) implements that recommendation in that it authorizes a court to conduct status hearings with an individual and the treatment team to

receive information regarding progress related to the categories of treatment listed in the treatment plan, and authorizes the court to inquire about medication adherence.

The CSA found that, in cases it reviewed in all three counties, designated professionals applied consistent standards for grave disability. The CSA stated that public guardians and superior courts did not limit the use of conservatorship by requiring, for example, homelessness as proof of inability to provide shelter. Rather, the CSA saw reasonable variations among the factors that demonstrated that individuals could not adequately provide for their own basic needs. The documentation in these cases demonstrated that each county's public guardian and superior court considered the level of insight individuals had into their illnesses and their voluntary treatment history when determining if conservatorships were necessary. The CSA report stated that the LPS Act was not intended to provide involuntary treatment for extended periods of time and that the criteria are not meant to apply to individuals simply because they choose not to seek voluntary treatment. The CSA highly cautioned against the Legislature expanding LPS Act criteria and stated that expanding or revising criteria to include standards that are overly broad, such as the ability to live safely in one's community, could widen the use of involuntary holds and pose significant concerns about infringement on individual rights, finding no evidence to justify such a change. The CSA also concluded that a dearth of community-based MH treatment services and the inability for specific individuals to access intensive treatment like AOT were the major reasons that individuals with MH challenges deteriorate or relapse into a condition that necessitates a conservatorship.

6) *Other states' definitions.* A September 2020 document by the Treatment Advocacy Center (TAC), "State Standards for Civil Commitment," lists the definitions for every state that has inpatient commitment laws for people with MH disorders and those states' definitions for terms like "gravely disabled" and "danger to self." Some examples include:

   a) Arizona: "Grave disability" means a condition evidenced by behavior in which a person is likely to come to serious physical harm or serious illness because the person is unable to provide for his or her own basic physical needs;
   b) Colorado: "Grave disability" means a condition in which a person is incapable of making informed decisions about or providing for his or her essential needs without significant supervision and assistance from other people, and is at risk of substantial bodily harm, dangerous worsening of any concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of his or her essential needs that could result in substantial bodily harm;
   c) Hawaii: "Dangerous to self" means the person behaved in such a manner as to indicate that the person is unable, without supervision and the assistance of others, to satisfy the need for nourishment, essential medical care, shelter, or self-protection so that it is probable that death, substantial bodily injury, or serious physical debilitation or disease will result unless adequate treatment is afforded;
   d) Nevada: "Present substantial likelihood of serious harm to self or others" means the person attempts suicide or homicide; causes bodily injury to self or others, including, without limitation, death, unconsciousness extreme physical pain, protracted and obvious disfigurement or a protracted loss or impairment of a body part, organ or mental functioning; or, incurs a serious injury, illness, or death resulting from complete neglect of basic needs for food, clothing, shelter, or personal safety;

e) Washington: "Gravely disabled" means a condition in which a person is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; and,
f) Kentucky, Michigan, and Utah define "gravely disabled" or "danger to self" similar to California, as the inability to provide for one's food, clothing, or shelter, with some additional nuances.

7) *Grading states' civil commitment laws.* In another September 2020 document "Grading the States," TAC states that the U.S. MH system is not one single broken system, but many, and the U.S. is effectively running 50 different experiments, with no two states taking the same approach. As a result, whether a person receives timely, appropriate treatment for an acute psychiatric crisis or chronic psychiatric disease is almost entirely dependent on what state that person is in when the crisis arises. TAC found that, on some issues, states are close to universal use of recommended best practices, such as a robust majority of states authorize an emergency psychiatric hold of at least 72 hours for evaluation and crisis care; only a small number of states require that danger to self or others be imminent to qualify for hospitalization; nearly all states recognize a person's failure to meet basic needs (such as food, clothing, and shelter) due to mental illness as a basis for intervention; and, all but three states have laws that authorize civil commitment on an outpatient basis. California is one such state that uses TAC's best practices. However, TAC also identified many states whose criteria have not been updated for many years, whose laws create needless barriers to treatment for people with severe mental illness, and whose procedures are confusing or vague, making them even more difficult to navigate for families and practitioners alike.

For example, California, Kentucky, Michigan, and Utah all use the general definition for "gravely disabled" as the inability to provide for one's food, clothing, and shelter—with a little added nuance in each state—yet earned varying grades for their civil commitment laws: California (D-), Kentucky (C+), Michigan (A), and Utah (C). TAC gave each of these states the highest possible score of 10 for the quality of criteria for "grave disability/basic needs," deeming that all contained explicit criteria. One variation is that Michigan was given a score of 10 for the quality of criteria for psychiatric deterioration while all three other states scored 0 on that criterion, with a recommendation from TAC that all three states add psychiatric deterioration criteria or amend grave disability to include one. Some other recommendations for California included authorizing citizens to petition for evaluation and treatment, such as directly to the courts (rather than to the county, as requires in current state law) for outpatient commitment for an individual.

It is important to note that the TAC grades only take into consideration one advocacy organization's views on the clarity of each state's involuntary detention laws, both for inpatient and outpatient, but do not necessarily reflect the availability of community-based treatment services in each state or an individual's experience as they move through the various involuntary detention stages.

8) *Recent legislation and proposals to aid the most severely mentally ill.* There have been many proposals and enacted legislation during the past several years to ensure those with MH/SUD can access treatment services and to remove barriers. The following are examples of how the state has focused on some of the individuals with the most severe conditions:

   a) SB 1045 (Wiener and Stern, Chapter 845, Statutes of 2018) and SB 40 (Wiener and Stern, Chapter 467, Statutes of 2019) established, under a five-year pilot project in San

Francisco, Los Angeles, and San Diego Counties, a housing conservatorship process for individuals who are incapable of caring for their own health and well-being due to a serious mental illness and SUD as evidenced by "frequent detention" for evaluation and treatment. Frequent detention is defined as having eight or more 5150 holds in the preceding 12 months. This pilot requires a county, in consultation with representatives of disability rights advocacy groups, permanent supportive housing services, the county health department, law enforcement, labor unions, and staff from hospitals in the county to develop a plan for implementing this conservatorship process and to attest that a myriad of services for the conserved person are available in the county, such as supportive housing, outpatient MH counseling, medications, and SUD services. Counties are also required to establish a working group to evaluate the effectiveness and outcomes of the housing conservatorship process, with reports to the Legislature. In a December 12, 2022 update from San Francisco's Department of Public Health (the only county to implement the housing conservatorship pilot), 16 individuals in the county were placed on eight or more 5150 holds between October 2021 and October 2022. In a review of the last three 5150s for those individuals, there was a documented offer of shelter or housing support 60% of the time. Only two people were conserved under the housing conservatorship but were ultimately transitioned to an LPS conservatorship. No one is currently conserved under the housing conservatorship. Working group notes from a January 9, 2023, meeting indicate that the group discussed barriers to implementation due to the way the housing conservatorship law was written. Some other concerns include: gaps in data collection; the desire to get more data from law enforcement; gaps in data to understand how voluntary services are offered and to quantify those efforts; and the disproportionate number of 5150s among people who identify as Black or African American. Further, a *San Francisco Chronicle* story from February 7, 2023, highlighted the challenges San Francisco faced in implementing housing conservatorship. While the city initially estimated that 50-100 people would benefit from the law, in its fifth year (the pilot sunsets on January 1, 2024) only three individuals ever entered the program. While some argue that the law's criteria are too stringent, others cite other barriers that included the Board of Supervisors adding more criteria under a contentious political debate, logistics and paperwork delaying implementation, and the COVID-19 pandemic slowing the law's implementation progress.

b) *CARE Court.* SB 1338 (Umberg and Eggman, Chapter 319, Statutes of 2022) enacted the CARE Court, as an alternative to amending the LPS Act, to help connect a person in crisis with a court-ordered care plan for up to 12 months, with the possibility to extend for an additional 12 months. The framework provides individuals with a clinically appropriate, community-based set of services and supports that are culturally and linguistically competent, which includes short-term stabilization medications, wellness and recovery supports, connection to social services, and a housing plan. According to the California Health and Human Services Agency's (CHHSA) website, housing is an important component—finding stability and staying connected to treatment, even with the proper supports, is next to impossible while living outdoors, in a tent, or in a vehicle. CHHSA states that CARE Court is an upstream diversion to prevent more restrictive conservatorships or incarceration, based on evidence that demonstrates many people can stabilize, begin healing, and exit homelessness in less restrictive, community-based care settings. With advances in treatment models, new longer-acting antipsychotic treatments, and the right clinical team and housing plan, individuals who have historically suffered tremendously on the streets or during

avoidable incarceration can be successfully stabilized and supported in the community. CHHSA further states that CARE Court is not for everyone experiencing homelessness or mental illness; rather it focuses on people with schizophrenia spectrum or other psychotic disorders who lack medical decision-making capacity, before they enter the criminal justice system or become so impaired that they end up in a LPS conservatorship due to mental illness. CHSSA states that although homelessness has many faces in California, among the most tragic is the face of the sickest who suffer from treatable MH conditions, and the CARE Court proposal aims to connect these individuals to effective treatment and support, mapping a path to long-term recovery. CARE Court is estimated to help thousands of Californians on their journey to sustained wellness. The first cohort of counties to implement CARE Court include Glenn, Orange, Riverside, San Diego, Stanislaus, and Tuolumne, and the City and County of San Francisco, beginning no later than October 1, 2023. The second cohort of counties, representing the remaining population of the state, is required to begin implementing CARE Court no later than December 1, 2024, unless a county is provided additional time if the county experiences a state or local emergency and the delay of the provision of the CARE Court is necessary as a result of the emergency. All counties are ultimately required to implement CARE Court by December 1, 2025.

c) *Behavioral Health Continuum Infrastructure Program (BHCIP).* DHCS was authorized through 2021 legislation to establish BHCIP and award $2.2 billion to construct, acquire, and expand properties, as well as invest in mobile crisis infrastructure related to behavioral health. In partnership with Advocates for Human Potential, Inc., DHCS is releasing these funds through six grant rounds targeting various gaps in the state's behavioral health facility infrastructure. This infrastructure funding, alongside significant new state and federal investments in homelessness, health care delivery reform, and the social safety net, will help address historic gaps in the behavioral health and long-term care continuum to meet growing demand for services and supports across the lifespan. These investments are intended to ensure care can be provided in the least restrictive settings by creating a wide range of options, including outpatient alternatives, urgent care, peer respite, wellness centers, and social rehabilitation models. A variety of care placements can provide a vital off-ramp from intensive behavioral health service settings and transition individuals, including the most vulnerable and those experiencing homelessness, to community living.

To date, the first four grant rounds have been awarded in the following areas:

- *Mobile Crisis:* $205 million ($55 million federal Substance Abuse and Mental Health Services Administration grant funding) to county, city, or tribal entity behavioral health authorities to implement new and enhanced crisis care mobile units (November 2021 and February 2022);
- *County and Tribal Planning Grants:* $16 million for counties and tribal entities to expand planning efforts in their communities or regions for the acquisition and expansion of behavioral health infrastructure statewide. Action plans may involve the construction, acquisition, or rehabilitation of behavioral health facilities (January and April 2022);
- *Launch Ready:* $518.5 million to counties, cities, tribal entities, nonprofit organizations, for-profit organizations, and other private organizations, including private real estate developers, to expand community capacity for serving the

behavioral health population, with a requirement to commit to serving Medi-Cal beneficiaries (June 2022); and,
- *Children & Youth:* $480.5 million in projects to expand the behavioral health continuum of treatment and service resources in settings that serve Californians ages 25 and younger, including pregnant and postpartum women and their children, and transition-age youth, along with their families (October 2022).

Round 5, Crisis and Behavioral Health Continuum, is currently under consideration as applications were due February 13, 2023. This round will fund $480 million in projects to address significant crisis care gaps in California's behavioral health infrastructure, with consideration for funding priority to those that provide crisis services to individuals in need. The crisis can be due to MH/SUDs. Round 6 has been delayed in accordance with the Governor's January 2023 budget proposal. The $480 million allocated for outstanding needs is expected to be distributed in fiscal year 2024-25 and 2025-26. The Newsom administration estimates that this funding will provide treatment beds for more than 1,000 people at a time, plus behavioral health services for many more.

The need to expand MH bed infrastructure is also needed at the Department of State Hospitals, which has a backlog of hundreds of individuals needing bed space in competency restoration in order to stand trial, in addition to limited space for LPS Act patients who are placed on involuntary detention or conservatorships. Additionally, growing numbers of inmates are waiting for state hospital beds, sometimes for months at a time. In the past five years, the number of California inmates deemed incompetent to stand trial and ordered sent to state hospitals increased 60%. A few decades ago, fewer than half of state hospital patients came from the criminal justice system compared to more than 90% today. When people in psychiatric crisis land in emergency departments (EDs) and jails, it is frequently because they cannot access treatment in the community, even when they ask for it.

9) *Double referral.* This bill has been double referred. Should it pass out of this committee, it will be referred to the Senate Judiciary Committee.

10) *Related legislation.* SB 45 (Roth) establishes the California Acute Care Psychiatric Hospital Loan Fund to continuously appropriate moneys in that fund to the California Health Facilities Financing Authority to provide loans to qualifying county or city and county applicants to build or renovate acute care psychiatric hospitals, psychiatric health facilities, or psychiatric units in general acute care hospitals, as defined. *SB 45 passed this Committee by a vote of 11-0 on March 22, 2023.*

    SB 65 (Ochoa Bogh) permits DHCS, in awarding BHCIP grants, to give a preference to qualified entities that are intending to place their projects in specified facilities or properties. Appropriates $1 billion, for encumbrance during the 2023-24 to 2025-26 fiscal years, to DHCS for the purpose of implementing the BHCIP. *SB 65 passed this Committee by a vote of 11-0 on March 22, 2023.*

    SB 363 (Eggman) requires DHCS, in consultation with CDPH and CDSS, by January 1, 2025, to develop a real-time, Internet-based database to collect, aggregate, and display information about specified facilities to identify the availability of inpatient and residential MH/SUD treatment, as specified. *SB 363 passed this Committee by a vote of 11-0 on March 22, 2023.*

AB 512 (Waldron) requires CHHSA, either on its own or through the Behavioral Health Task Force established by the Governor, to create an ad hoc committee to study how to develop a real-time, internet-based system, usable by specified entities, to display information about available beds in specified facilities for the transfer to, and temporary treatment of, individuals in MH/SUD crisis. *AB 512 passed the Assembly Health Committee by a vote of 13-0 on March 14, 2023.*

11) *Prior legislation.* SB 516 (Eggman and Stern of 2022) would have permitted evidence considered in an intensive treatment certification review hearing under the LPS Act to include information regarding a 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. *SB 516 was not heard in the Assembly Health Committee.*

SB 965 (Eggman of 2022) would have created, in a proceeding under the LPS Act, an exception to the rule against hearsay that allows an expert witness to rely on the out-of-court statements of medical professionals, as defined, who have treated the person who is the subject of the conservatorship petition. *SB 965 was not heard in the Assembly Judiciary Committee.*

SB 1035 (Eggman, Chapter 828, Statutes of 2022) authorizes a court to conduct status hearings with an individual and the treatment team to receive information regarding progress related to the categories of AOT treatment listed in the treatment plan, and authorizes the court to inquire about an individual's medication adherence.

SB 1227 (Eggman, Chapter 619, Statutes of 2022) permits an additional intensive treatment period of up to 30-days, in a county where up to 30-day treatment has been authorized by the board of supervisors, as specified, for a person who is gravely disabled and meets the criteria for the purpose of avoiding assignment of a temporary conservator or court petition and proceedings for placement in a conservatorship.

SB 1338 (Umberg and Eggman, Chapter 319, Statutes of 2022) enacts the CARE Court Act.

SB 1394 (Eggman, Chapter 996, Statutes of 2022) authorizes the court to extend the temporary conservatorship until the date of the disposition of the issue by the court or jury trial if that extension does not exceed 180 days.

SB 1416 (Eggman of 2022) was similar to this bill. *SB 1416 was not heard in the Assembly Judiciary Committee.*

AB 2242 (Santiago, Chapter 867, Statutes of 2022) requires individuals who have been involuntarily detained for purposes of evaluation and treatment, and placed under a conservatorship, to receive a care coordination plan developed by specified entities. Requires DHCS to convene a stakeholder group to create a model care coordination plan to be followed when discharging those held under temporary holds or a conservatorship. Permits county MH plans to pay for the provision of services for individuals placed under involuntary detentions and conservatorship using specified funds, including Mental Health Services Act funds.

AB 2275 (Wood and Stone, Chapter 960, Statutes of 2022) makes various clarifications and changes to the processes for involuntary detentions under the LPS Act, including specifying timeframes for when involuntary holds begin and for conducting certification review hearings and judicial reviews.

AB 2853 (Lackey of 2022) would have required DHCS to establish guidelines for the application of the LPS Act to ensure that it is uniformly applied by counties, including, at a minimum, an explanation of how to determine if a person meets the definition of "gravely disabled" and if a person is a danger to themselves or others. *AB 2853 was not heard in the Assembly Judiciary Committee.*

SB 640 (Moorlach of 2020) would have added to the definition of "gravely disabled" for those who are being detained in a NDF, as specified, a condition in which the person is incapable of making informed decisions about, or providing for, one's own basic personal needs, as specified. *SB 640 failed passage in this Committee.*

AB 1976 (Eggman) implemented "Laura's Law" statewide, commencing July 1, 2021. Permits a county or group of counties to opt out of providing AOT services, as specified.

SB 590 (Stone of 2019) would have added a person who is impaired by chronic alcoholism to the existing prepetition screening process in the LPS Act, which permits any individual to request a county-designated entity to provide a comprehensive screening to determine if the person impaired by chronic alcoholism is a danger to self or others, or gravely disabled. *SB 590 was never heard in the Assembly Appropriations Committee.*

SB 40 (Wiener and Stern, Chapter 467, Statutes of 2019) and SB 1045 (Wiener and Stern, Chapter 845, Statutes of 2018) establish the five-year housing conservatorship pilot project in San Francisco, Los Angeles, and San Diego Counties.

AB 1275 (Santiago of 2019) would have required DHCS to establish a three-year pilot project whereby specified counties create outreach teams to provide services to those with a history of mental illness or SUDs who are unable to provide for needed medical care and who are homeless or at risk of experiencing homelessness. *AB 1275 died on the Senate Floor inactive file.*

AB 1971 (Santiago, Friedman, and Chen of 2018) would have expanded the definition of "gravely disabled" until January 1, 2024, as implemented in the County of Los Angeles, to include a person's inability to provide for his or her basic personal needs for medical treatment, as specified, and contained specified reporting requirements. *AB 1971 died on the Senate Floor inactive file.*

AB 2099 (Gloria, Chapter 258, Statutes of 2018) requires a copy of the application required under existing law that states the circumstances under which a person's condition was called to the attention of an authorized person to place a 5150 hold to be treated as the original.

12) *Support.* The co-sponsors of this bill, largely psychiatrist groups, local governments, and family of those with MH conditions, state that despite all efforts to reduce the need for conservatorship the reality is that they can sometimes be the last resort to provide critical treatment to those who are gravely disabled. As such, the current definition and interpretation of gravely disabled does not accurately reflect the realities they are seeing in communities

and on the streets. Additionally, supporters state they continue to see the struggles of community members that cycle in and out of hospitalizations, shelters, and jails without getting the concrete connections to needed medication and treatment. These aforementioned problems point to the fact that legislation like this bill is needed. Supporters argue the focus on a person's ability to provide for their own personal or medical care, or self-protection and safety, is important because it ensures that those who are truly vulnerable receive the help they need. Furthermore, supporters encourage support of the provision that ensures relevant history can be considered by the court in a uniform manner across the state, and state that tools focused on acute symptoms are not suited for chronic and severe conditions that are seen on the streets. This bill will also ensure that a complete and accurate picture is presented in court when considering the very serious step of conservatorship. California currently has the largest concentration of homelessness in the United States, both in absolute and per-capita figures, and people experiencing homelessness in California are less likely to have access to shelter than in any other state. Supporters state an estimated 23% of people experiencing homelessness in California—approximately 40,000 individuals—suffer a severe MH/SUD and can no longer care for themselves. The Psychiatric Physicians Alliance of California (PPAC) argues that serious mental illnesses disrupt a person's ability to engage in activities of daily living that the rest of us take for granted, which is why in California 24% of emergency medical service encounters are for people with severe mental illness. Among those, nearly 40% of these are attributed to patients who are arguably gravely disabled. These individuals comprise the majority of a conservatively estimated 30% of homeless individuals. Many counties whose coroners track homeless deaths, such as Sacramento, Alameda, Los Angeles, and the City and County of San Francisco report a large uptick in deaths in the homeless population—in some cases 89% annual increases. PPAC states that clearly business as usual is no longer tolerable, as the above statistics will attest.

13) *Support if amended.* The Sutter County Board of Supervisors agrees that many individuals with MH/SUDs fail to receive necessary medical treatment because of the narrow legal definition of the term "gravely disabled" but has concerns about the impact this bill will have on county resources and community medical resources, not just in Sutter but across the state. They argue this bill will mandate changes that include an increased workload on law enforcement, public guardians, courts, health care, and behavioral health workforce, which are already strained under a firehose of new laws and responsibilities aimed at mitigating the impact of homelessness in the state (such as CARE Court) without providing counties with the necessary resources to meet the new mandates. They are further concerned about the chronic underinvestment of ongoing support in public and private treatment resources, housing facilities, and public guardians to absorb millions of individuals into the health care system who will likely need expensive, long-term care. They support this bill if amendments are made to guarantee sufficient funding to cover the increased costs necessary to humanely meet the needs of the population who will be impacted by the expanded definition.

14) *Opposition.* The County Behavioral Health Directors Association of California (CBHDA) states its membership agrees with concerns expressed by the author and sponsors that too many individuals suffer without adequate and appropriate treatment and housing, and they share in the urgency to bring about real change to address the needs of unhoused individuals with serious MH/SUD. Counties specialize in providing a full continuum of prevention, outpatient, intensive outpatient, crisis and inpatient, and residential MH/SUD primarily to low-income Californians who have Medi-Cal or are uninsured. Counties also have responsibility for involuntary commitments under the LPS Act. CBHDA states they found that for a small subset of their clients, conservatorships can be effective in helping

individuals with significant MH conditions by compelling inpatient treatment. CBHDA and other opponents oppose this bill on the basis that the proposed expansion of LPS is overly broad and ultimately would not benefit the clients and communities they serve. These changes would also further stigmatize behavioral health conditions and frustrate clients and the public, who want to see real action to meaningfully address the needs of those with MH/SUDs. CBHDA and other opponents express additional concerns when it comes to involuntarily detaining and treating those with SUDS, such as that involuntary SUD treatment could result in overrepresentation of people or color, LGBTQ+, and other historically marginalized people being forced into more coercive treatment, which is often traumatizing; that a peer reviewed study of research from around the world suggests that coerced and involuntary treatment is actually less effective in terms of long-term substance use outcomes, and more dangerous in terms of overdose risk, and voluntary treatment is more effective; and, a build out of delivery networks to support this policy change would take years, with new, sustained dedicated state resources needed above and beyond investments already made by the state, with a significant increase in residential and inpatient SUD treatment capacity.

A coalition of other opponents, largely comprised of disability rights and racial and ethnic minority group advocates, echo some of the arguments made by CBHDA. The coalition further argues that voluntary, community-based treatment and services, as well as the expansion of choices, rights, and liberties for people living with MH disabilities are what the state needs. The coalition states that the Legislature should invest in evidence-based programs and services that are proven to meet the needs of Californians, and that the state should exercise greater oversight over local jurisdictions to ensure that unhoused people are actually offered and placed in appropriate affordable, accessible housing with voluntary supports. The coalition further points out that while the state has made investment, such as BHCIP, that infrastructure will not be available soon enough to absorb additional involuntary detentions that will result if the expanded definition of "gravely disabled" is enacted.

15) *Technical amendments.* The author may wish to consider the following technical amendments for clarity, and consistency with existing law:

   a) Clarify that <u>as a result of</u> a MH/SUD a condition will result in substantial risk of serious harm to the physical or MH of an individual; and,

   b) Specify that evidence for determining whether a substantial risk of serious harm to the physical or MH of the individual is present is tied to the criteria listed under the definition of "serious harm."

<u>SUPPORT AND OPPOSITION</u>:

Support: Big City Mayors Coalition (co-sponsor)
California State Association of Psychiatrists (co-sponsor)
NAMI California (co-sponsor)
Psychiatric Physicians Alliance of California (co-sponsor)
Bay Area Council
City of Bakersfield
City of Moorpark
City of Santa Monica
City of Whittier Mayor Joe Vinatieri
County of Los Angeles Board of Supervisors

Govern for California
San Diego City Attorney Mara W. Elliott

Oppose: API Equality-LA
Black Women for Wellness
Cal Voices
California Advocates for Nursing Home Reform
California Association of Mental Health Patients' Rights Advocates
California Black Health Network
California Pan-Ethnic Health Network
California Public Defenders Association
California Rural Legal Assistance Foundation
California Youth Empowerment Network
CAMHPRO
Caravan 4 Justice
Corporation for Supportive Housing
County Behavioral Health Director Association of California
Depression and Bipolar Support Alliance
Disability Rights California
Empowering Pacific Islander Communities
Hmong Cultural Center of Butte County
Kern County Board of Supervisors
Law Foundation of Silicon Valley
LGBTQ+ Collaboration
Lift Up Love Always
Mental Health American of California
National Health Law
Native American Health Center
Orange County Equality Coalition
Pacific Asian Counseling Services
Peers Envisioning and Engaging in Recovery Services
Project Amiga
Racial and Ethnic Mental Health Disparities Coalition
Sacramento Homeless Union
Sacramento Regional Coalition to End Homelessness
Safe Black Space
San Bernardino Free Them All
South Asian Network
Southeast Asia Resource Action Center
Western Center on Law and Poverty
Western Regional Advocacy Project

-- END --