
THIRD READING

Bill No: SB 43
Author: Eggman (D), et al.
Amended: 4/27/23
Vote: 21

SENATE HEALTH COMMITTEE: 12-0, 3/29/23
AYES: Eggman, Nguyen, Glazer, Gonzalez, Grove, Hurtado, Limón, Menjivar,
Roth, Rubio, Wahab, Wiener

SENATE JUDICIARY COMMITTEE: 11-0, 4/25/23
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Niello,
Stern, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/18/23
AYES: Portantino, Jones, Ashby, Bradford, Seyarto, Wahab, Wiener

SUBJECT: Behavioral health

SOURCE: Big City Mayors Coalition
California State Association of Psychiatrists
NAMI California
Psychiatric Physicians Alliance of California

DIGEST: This bill 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. This bill prohibits the existence of a MH/SUD alone from establishing a substantial risk of serious harm, as specified. This bill 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.

ANALYSIS:

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 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.]

Hearsay

- 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:

Involuntary Commitment

- 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.

Comments

- 1) *Author's statement.* According to the author, this bill modernizes 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 includes 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 also ensures 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) *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.

- 4) *Concerns.* 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 has concerns about 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 expresses 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 of 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Unknown, potentially significant workload costs in the millions, to the courts to adjudicate conservatorship petitions, by trial if demanded by the petition subject, and review the progress reports for established conservatorships based upon the expanded definition of gravely disabled (Trial Court Trust Fund, General Fund). While the superior courts are not funded on a workload basis,

an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated for trial court operations.

- Unknown, potentially significant costs for an increase in the use of mental health and substance abuse treatment services for individuals involuntarily detained and individuals under conservatorship based upon the expanded definition of gravely disabled (General Fund, federal funds, county funds). Cost to counties for administration would be potentially reimbursable by the state, subject to a determination by the Commission on State Mandates.

SUPPORT: (Verified 5/18/23)

Big City Mayors Coalition (co-source)

California State Association of Psychiatrists (co-source)

NAMI California (co-source)

Psychiatric Physicians Alliance of California (co-source)

AEsynergy

Alameda County Families Advancing for the Seriously Mental Ill

Bay Area Council

California Contract Cities Association

California Medical Association

City of Bakersfield

City of Carlsbad

Cloverdale Community Outreach Committee

City of Eureka

City of Jurupa Valley

City of Lake Forest

City of Moorpark

City of Murrieta

City of Palo Alto

City of Riverside

City of Redwood City

City of Rosmead

City of Santa Barbara

City of Santa Monica

City of South Gate

City of West Hollywood

City of Whittier Mayor Joe Vinatieri

County of Los Angeles Board of Supervisors

Govern for California

Heart Forward
NAMI – Contra Costa County
NAMI – Nevada County
NAMI – Urban LA LPS Conservativeship Program
Psynergy
San Diego City Attorney Mara W. Elliott
San Diego County District Attorney's Office
San Gabriel Valley Council of Governments
Stories from the Frontline
Treatment Advocacy Coalition
Tri-Valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of
Danville
Union of American Physicians and Dentists

OPPOSITION: (Verified 5/24/23)

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
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

ARGUMENTS IN 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.

ARGUMENTS IN OPPOSITION: 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.

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5/24/23 11:15:36

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