Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 43 (Eggman) – As Amended April 27, 2023

SENATE VOTE: 37-0

SUBJECT: Behavioral health.

SUMMARY: Expands the definition under the Lanterman-Petris-Short Act (LPS Act) of "gravely disabled," for purposes of involuntarily detaining an individual, to also include a condition in which a person, as a result of a mental health disorder or a substance use disorder (SUD), or both, is at substantial risk of serious harm, as defined, or is currently experiencing serious harm to their physical or mental health. Prohibits the existence of a mental health/substance use disorder (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. Specifically, **this bill**:

1) Expands the definition of "gravely disabled," for purposes of the LPS Act to include a condition in which a person, as result of a mental health disorder or a SUD, or both is at substantial risk of serious harm or is currently experiencing serious harm to their physical or mental health.

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

    a) Satisfy the need for nourishment;
    b) Attend to necessary personal or medical care;
    c) Utilize adequate shelter;
    d) Be adequately clothed; or,
    e) Attend to self-protection or personal safety.

3) Provides that a substantial risk of serious harm to the physical or mental health of the person may be evidenced by one or more of the followings:

    a) The individual is presently suffering adverse effects to their physical or mental health;
    b) The individual previously suffered adverse effects to their physical or mental health in the historical course of their mental health/SUD;
    c) Their condition is again deteriorating;
    d) They are unable to understand their disorders; and,
    e) Their decision making is impaired due to their lack of insight into their disorder.

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

5) 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.

6) Permits, even if deeming statements of specified health practitioners are not hearsay, a party to call 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.

7) 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.

8) Defines a "Health Practitioner" to mean a physician and surgeon, psychiatrist, psychologist, resident, intern, registered nurse, licensed clinical social worker or associate clinical social worker, marriage and family therapist, licensed professional clinical counselor, any emergency medical technician I or II, paramedic, or other person certified as specified, a registered psychological associate and an registered, unlicensed marriage and family therapist registered.

9) Makes other technical and non-substantive amendments.

EXISTING LAW:

1) Establishes the LPS Act to end the inappropriate, indefinite, and involuntary commitment of persons with mental health 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. [Welfare and Institutions Code (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 mental health 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 mental health disorder or impairment by chronic alcoholism, is unable to provide for theirbasic 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 also refer 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 mental health 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 mental health 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. [Health and Safety Code §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 theirown health and well-being due to serious mental health/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 mental health 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*.]

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. [Evidence Code §1200]

FISCAL EFFECT: According to the Senate Appropriations Committee, there are unknown, potentially significant workload costs in the millions of dollars, 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 (GF)). 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 GF to increase the amount appropriated for trial court operations.

Additionally, there are unknown, potentially significant costs for an increase in the use of mental health and SUD treatment services for individuals involuntarily detained and individuals under conservatorship based upon the expanded definition of gravely disabled (GF, 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.

COMMENTS:

1) **PURPOSE OF THIS BILL**. 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 mental health or 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. The author claims the current model is leaving too many people suffering with significant psychotic disorders in incredibly unsafe situations, leading to severe injury, incarceration, homelessness, or death. While well-intentioned, the dated criteria in LPS no longer work for today's needs and have contributed to the mass incarceration of those with mental illness. The author concludes this bill will help to provide dignity and treatment to those who are the most difficult to reach.

2) **BACKGROUND**.

   a) **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 mental health 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.

b) 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 (ED) that is an NDF. Pursuant to existing law, NDFs are permitted to involuntarily detain individuals who meet 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.

c) 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.

d) 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 (LAC, San Francisco, and Shasta):

i) Criteria for involuntary detention for those who are a danger to self or others or gravely disabled, due to a mental health condition, and criteria for conservatorship, and whether the counties have consistently followed those criteria;
ii) Differences in approaches among the counties in implementing the LPS Act, if any;
iii) Funding sources, and whether funding is a barrier to implementing the LPS Act; and,
iv) 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 LAC 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 should 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 also 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 mental health treatment services and the inability for specific individuals to access intensive treatment like AOT were the major reasons that individuals with mental health challenges deteriorate or relapse into a condition that necessitates a conservatorship.

e) 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 mental health disorders and those states' definitions for terms like "gravely disabled" and "danger to self." (TAC is a non-profit organization based in Arlington, Virginia that identifies its mission as the elimination of barriers to the timely and effective treatment of severe mental illness. It was originally announced as the NAMI Treatment Action Centre in 1997.)

Some examples of definitions include:

i) 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 their own basic physical needs;
ii) Colorado: "Grave disability" means a condition in which a person is incapable of making informed decisions about or providing for their 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 essential needs that could result in substantial bodily harm;
iii) 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;
iv) 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;
v) Washington: "Gravely disabled" means a condition in which a person is in danger of serious physical harm resulting from a failure to provide for essential human needs of health or safety; and,
vi) 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.

f) Grading states' civil commitment laws. In another September 2020 document "Grading the States," TAC states that the U.S. mental health 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 state that 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 current state law requires) for outpatient commitment for an individual.

It is important to note that the TAC grades only consider 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.

g) 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 mental health 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.

h) 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:

- **i)** 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);
- **ii)** 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);
- **iii)** 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,

iv) 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 underway with 33 grants totalling $430 million awarded on June 23, 2023. This round will fund 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 mental health/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 mental health 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, a growing number 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 by 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 (EDs) and jails, it is frequently because they cannot access treatment in the community, even when they ask for it.

i) Behavioral Health Modernization. In March 2023, Governor Newsom announced his proposal to modernize California's behavioral health system stating that since 2019, California has embarked on massive investments and policy reforms to re-envision the mental health and substance use systems in California. According to the Administration having already invested more than $10 billion in resources to strengthen the continuum of community-based options for Californians living with the most significant mental health and substance use needs, this proposal is intended to complement and build on other major behavioral health initiatives already underway. There are three key elements to the proposal:

i) Authorize a general obligation bond of $4.7 billion to fund 10,000 new residential treatment and house settings through unlocked community behavioral health residential settings; permanent supportive housing for people experiencing or at risk of homelessness who have behavioral health conditions; and, housing for veterans experiencing or at risk of homelessness who have behavioral health conditions;

ii) Modernize the Mental Health Services Act (MHSA) to:
(1) Rename the MHSA to the Behavioral Health Services Act (BHSA)
(2) Broaden the target population to include those with debilitating SUDs;
(3) Focus on the most vulnerable and most at-risk;

(4) Update local categorical funding buckets to 30% for Housing Interventions; 35% for Full Service Partnerships (FSP); 30% for Behavioral Health Services and Supports (non FSP); and, 5% for population-based prevention
(5) Allocate 3% of total BHSA funds for state directed initiatives to expand the behavioral health workforce;
(6) Transform the county MHSA planning process; and,
(7) Improve transparency and accountability for behavioral health funding and outcomes.

iii) Improve statewide accountability, transparency, and access to behavioral health services by developing a plan for achieving parity between commercial and Medi-Cal mental health and SUD benefits.

AB 531 (Irwin) and SB 326 (Eggman) of this Session are the bills before the Legislature this year representing these proposals. AB 531 is the obligation bond and SB 326 is the MHSA Reform piece. It is anticipated that following Legislative approval, major portions of these bill will be placed on the March 2024 ballot for voter approval.

j) Severe SUD. SUDs are recognized within the Diagnostic and Statistical Manual of Mental Disorders (DSM) which is the American Psychiatric Association's gold-standard text on the names, symptoms, and diagnostic features of every recognized mental illness – including addictions. The DSM recognizes substance-related disorders resulting from the use of 10 separate classes of drugs including alcohol, cannabis, hallucinogens, opioids, and sedatives stimulants (amphetamine type substances, cocaine). There are two groups of substance-related disorders: substance-use disorders and substance-induced disorders. SUDs are patterns of symptoms resulting from the use of a substance that one continues to take, despite experiencing problems as a result. SUDs span a wide variety of problems arising from substance use, and cover 11 different criteria: The 11 criteria in the DSM can be grouped into four primary categories: physical dependence, risky use, social problems, and impaired control. The DSM allows clinicians to specify how severe or how much of a problem the SUD is depending on how many symptoms are identified. Mild SUD is two to three symptoms, moderate SUD is four to five and six or more indicate a severe SUD. Understanding the severity of a SUDs facilitates doctors and therapists determining which treatments to recommend and choosing the appropriate level of care. Substance-induced disorders involve problems that are caused by the effects of substances, including substance-induced mental disorders. Substance-induced disorders, include psychosis, bipolar and related disorders; depressive disorders; delirium; and, neurocognitive disorders. Substance/medication-induced mental disorders are mental problems that develop in people who did not have mental health problems before using substances.

3) SUPPORT. The Big City Mayors Coalition (BCM) (representing the 13 largest cities and nearly 11 million residents in California) is a cosponsor of this bill and states that despite all efforts to reduce the need for conservatorship, it is sometimes the last resort to provide critical treatment to those who are gravely disabled. These individuals are the hardest to reach and often suffer from conditions which prevent them from being cognitively aware of the severity of their illness. BCM states that the current definition and interpretation of "gravely disabled" does not accurately reflect the realities being seen in communities and on the streets. This bill would address this issue by updating the definition of "gravely disabled" to include a person's ability to provide for their own personal or medical care, or self-

protection and safety, to ensure that those who are truly vulnerable receive the help they need. BCM further states that cities 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. BCM concludes by stating that this bill would also ensure an individual's relevant medical history can be considered by the court in a uniform manner across the state. Tools focused on acute symptoms are not suited for chronic and severe conditions that we see on our streets. This bill will also ensure that a complete and accurate picture is presented in court when considering the very serious step of conservatorship.

The California State Association of Psychiatrists (CSAP), a cosponsor states that we need to be clear on what LPS law is about: it is for deciding as a society who deserves care regardless of their capacity to choose it. It is not for creating a barrier to care for individuals because government has previously allocated inadequate resources. Family members and patients who meet criteria for grave disability are acutely aware that differentiating between mental health and substance use is not helpful when saving their lives. SUDs deserve parity with psychiatric disorders. California does in fact have programs that can and do serve the most severely ill individuals who are gravely disabled with SUDs. CSAP concludes by stating that, furthermore, Governor Newsom and recent Legislatures have appropriated funds to build out California's behavioral health infrastructure, reimbursements to providers, and expand the State's workforce.

4) **SUPPORT IF AMENDED.** The Sutter County Board of Supervisors (Sutter), in a support if amended positions states that many individuals with mental health/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 would have on county resources and community medical resources, not just in Sutter but across the state. Sutter contends this bill would 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. Sutter concludes they would 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.

5) **OPPOSITION**. The California Behavioral Health Planning Council (CBHPC) in an oppose position states that while sharing the urgent desire to ensure individuals with serious mental illness (SMI) and SUDs have access to adequate and appropriate treatment and housing, the expansion of the LPS, as outlined in this bill, would significantly expand the portion of the state's population that is subject to conservatorship and ultimately is an overreach of the state's power. The proposed expansion would also further stress the state's already strained behavioral health system. CBHPC states that currently many individuals placed on 5150 holds languish for days in hospital EDs as they await referrals to community-based services or placement in appropriate settings. Expanding the definition of "gravely disabled" will only make this problem worse, particularly given existing limitations in infrastructure, staffing, and funding. In concluding, CBHPC states that research from around the world suggests that coerced and involuntary treatment is actually less effective in terms of long-term than voluntary treatment.

Disability Rights California (DRC) in opposition states, that based on extensive experience working with clients and communities across the state, expanding the definition of "gravely disabled" to make it easier to involuntarily detain people undermines the very purpose of the LPS Act and fails to address the real needs of Californians living with mental health disabilities, especially those who are unhoused. If the state is serious about solving the housing and mental health crises, investment in community-based services to provide sufficient funding is what is needed instead of pursuing legislation to expand involuntary commitment. These investments include: a) requiring counties to offer permanent affordable housing to people with severe and persistent mental illness; b) ensure that people with SMI have the support they need to stay in housing by requiring counties to offer Assertive Community Treatment; and, c) require counties to provide crisis services adhering to recovery-oriented principles by increasing state funding for crisis services. DRC concludes the expansion of involuntary criteria will just perpetuate the revolving door between homelessness and involuntary commitment. The solution it proposes are what is needed to pull people out of that cycle.

The California Association of Mental Health Peer Run Organizations (CAMHPRO) states that they oppose this bill and the efforts to reform the LPS Act as it is an expansion of forced treatment and directly contrary to data-driven, evidence-based proposals. CAMHPRO claims the solution to supporting individuals living with mental health challenges is expanding access. Creating more psychiatric holds does not in any way guarantee admission to a hospital, medication, ongoing treatment, housing or support in recovery. CAMHPRO states that some major concerns and considerations are: data does not warrant changing the LPS Act; changes will strain EDs; hospitals currently "cherry-pick" admissions and this expansion will only exacerbate this practice; hospitalization is binary in that individuals are often denied hospitalization due to the binary system of care of most psychiatric facilities into "me" and "women;" the significant and ongoing shortage of acute psychiatric beds; and Black, Indigenous and People of Color citizens will disproportionately be impacted. In concluding CAMHPRO urges the legislation to consider alternative solutions in providing care for California's most vulnerable communities, including the expansion of peer-run services.

6) **OPPOSE UNLESS AMENDED.** The California Association of Alcohol and Drug Program Executives (CCAPDE) in an oppose unless amended position states that expanding the definition of gravely disabled to apply to individuals with SUD, who do not also have a diagnosed SMI, will lead to the involuntary detention and treatment of these individuals under a conservatorship. Many peer reviewed studies of research from around the world show that coerced and involuntary treatment for SUD is actually less effective in terms of long-term substance use outcomes, and more dangerous in terms of overdose risk. Another concern is 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. CAADPE concludes that while recognizing individuals with SUD are at risk of harm to their physical or mental health and should have access to care, CAADPE believes that voluntary treatment, as well as harm reduction approaches such as overdose prevention programs, are more effective in helping these individuals without depriving them of their basic rights.

7) **CONCERNS.** The California Behavioral Health Directors Association (CBHDA) states that while agreeing with concerns expressed that too many individual suffer without adequate and

appropriate treatment and housing, and sharing in the urgency to bring about real change to address the needs of unhoused individuals with SMI and SUD, there are significant concerns including: expansion of the involuntary treatment and conservatorship criteria in the ways proposed is unprecedented; significantly larger portion of the state's population would become eligible for conservatorships under this bill due to the inclusion of SUDS as stand-alone criteria; the equity implications of such a policy shift; treatment efficacy concerns in that involuntary treatment is less effective for SUD individuals than for those with SMI; no established system of care for involuntary SUD treatment exists outside of jails and prisons; capacity issues around workforce, housing and treatment options; lack of funding for long-term inpatient and residential SUD treatment; addition of physical health conditions as a basis for conservatorship requires a new set of medical services; and the waiver of hearsay testimony to allow a broad array of clinicians and non-clinicians to provide evidence to establish or extend a conservatorship by waiving hearsay testimony restrictions. In concluding, CBHDA states that without adequate treatment types, options for reimbursement of SUD treatment, or new housing to assist with long-term stability in recovery, California may not see significant positive impact from these sweeping changes to involuntary commitment laws.

Also expressing significant concerns is a coalition of the Rural County Representatives of California, the Urban Counties of California and the California State Association of California (the coalition). The coalition expresses concerns similar to those of CBHDA related to inclusion of stand-alone SUD. The coalition further states that the responsibility for administering and funding the LPS systems falls almost entirely on counties, including initial detention, evaluations, services, courts, and the role of public guardians which have no state or federal revenue stream to support them. It makes little sense to impose a conservatorship, if there is no adequate placement available for the proposed conservatee. Counties are currently unable to meet the demand for placements, and conserved individuals in rural areas are often placed hundreds of miles away from the county in which they were conserved. Without significant ongoing investment into LPS conservatorship this bill will have little to no impact on the number of individuals conserved and will likely exacerbate the resource problem. The coalition concludes by stating that a build-out of delivery networks to support this significant policy change will take years with new, sustained and dedicated state resources, above and beyond the one-time investments already made by the state through recent initiatives. While an unprecedented level of investment has been made, funding is in the early stages of deployment and we are still years away from seeing the results of this investment.

8) **DOUBLE REFERRAL**. This bill has been double referred; upon passage in this committee, this bill will be referred to the Assembly Judiciary Committee.

9) **RELATED LEGISLATION**.

   a) AB 531 (Irwin) would enact the Behavioral Health Infrastructure Bond Act of 2023 which, if approved by the voters, would authorize the issuance of bonds in the amount of $4.7 billion to finance grants for the acquisition of capital assets for, and the construction and rehabilitation of unlocked, voluntary and community-based treatment settings and residential care settings and also for housing for veterans and other who are experiencing homelessness or at risk of homelessness.

b) 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 mental health/SUD crisis. AB 512 was held on the Assembly Appropriations Committee's suspense file.

c) 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 is pending hearing in the Assembly Health Committee.

d) 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 was held on the Senate Appropriations Committee suspense file.

e) SB 326 (Eggman) would, if approved by the voters, amend the MHSA extensively including renaming it the BHSA, shifting the priorities for which the BHSA funds would be allocated, refocusing the BHSA efforts to address homelessness, serious mental illness, substance use disorders, and other key areas.

f) SB 363 (Eggman) requires DHCS, in consultation with the Department of Public Health and the Department of Social Services, 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 mental health/SUD treatment, as specified. SB 363 is pending hearing in the Assembly Appropriations Committee.

10) PREVIOUS LEGISLATION.

a) 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 mental health 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.

b) 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.

c) 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.

d) 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.

e) 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 their basic personal needs for medical treatment, as specified, and contained specified reporting requirements. AB 1971 died on the Senate Floor inactive file.

f) 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.

g) 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.

h) 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.

i) 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.

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

k) 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.

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

m) 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 the Senate Health Committee.

n) 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.

8) **COMMITTEE AMENDMENTS.** The author, this Committee and the Assembly Judiciary Committee have worked together extensively on amendments to address some of the concerns of opposition by narrowing the bill and providing some clarity. While agreement has been reached in concept; specific language is still being finalized. As such, final amendments requested by this Committee will be taken when the bill is heard in the Judiciary Committee. The agreed upon amendments are:

a) Amend the existing "gravely disabled" definition to include Severe SUD or co-occurring mental illness and Severe SUD resulting in inability to provide for food, shelter, clothing, personal safety and necessary medical care;
b) Specifically define Severe SUD to include the definition of Severe SUD in the DSM.
c) Specifically define personal safety.
d) Specifically define necessary medical care;
e) Strike all sections/language related to a definition of gravely disabled that includes "substantial risk of serious harm";
f) Delay implementation for one year. (Discussion related to a mechanism for earlier implementation by counties is ongoing.)
g) Addition of specific data the counties must report to DHCS on the underlying basis of a hold. (i.e. danger to self, danger to other, mental Illness, Severe SUD, both mental illness and Severe SUD.

REGISTERED SUPPORT / OPPOSITION:

Support

Big City Mayors, (cosponsor)
California State Association of Psychiatrists (CSAP), (cosponsor)
NAMI-California, (cosponsor)
Psychiatric Physicians Alliance of California, (cosponsor)
Alameda County Families Advocating for The Seriously Mentally Ill
AEsynergy
Bay Area Council
California Advocates for SMI
California Contract Cities Association
California Downtown Association
California Medical Association
California Professional Firefighters
City of Bakersfield
City of Camarillo
City of Carlsbad

City of Eureka
City of Garden Grove
City of Jurupa Valley
City of Lake Forest
City of Moorpark
City of Murrieta
City of Norwalk
City of Palo Alto
City of Redwood City
City of Riverside
City of Rosemead
City of Santa Barbara
City of Santa Monica
City of South Gate
City of Thousand Oaks
City of West Hollywood
City of Whittier
Clare|Matrix
Cloverdale Community Outreach Committee
County of Los Angeles Board of Supervisors
Family Advocates for Individuals With Serious Mental Illness in The Sacramento Region
Govern for California
Heart Forward LA
Housing That Heals
League of California Cities
Los Angeles County
NAMI Contra Costa
NAMI Nevada County
NAMI Santa Clara County
NAMI Urban LA LPS Conservatorship Programs
Psynergy Programs, INC.
San Diego City Attorney's Office
San Diego County District Attorney's Office
San Gabriel Valley Council of Governments
Stories From the Frontline
Treatment Advocacy Center
Tri-Valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville
Union of American Physicians and Dentists
Numerous individuals

Opposition

ACLU California Action
API Equality-LA
Black Women for Wellness
California Behavioral Health Planning Council
California Advocates for Nursing Home Reform
California Association of Mental Health Peer Run Organizations (CAmental healthPRO)
California Association of Mental Health Patients' Rights Advocates

California Association of Social Rehabilitation Agencies
California Black Health Network
California Pan - Ethnic Health Network
California Public Defenders Association (CPDA)
California Rural Legal Assistance Foundation (crla Foundation)
California Youth Empowerment Network
Cal Voices
Caravan for Justice
Caravan for Justice San Diego
Citizens Commission on Human Rights
Corporation for Supportive Housing (CSH)
County Behavioral Health Directors Association
County of Kern
County of Monterey
CRLA Foundation
Depression and Bipolar Support Alliance
Disability Rights California
Drug Policy Alliance
Empowering Pacific Islander Communities (EPIC)
Hmong Cultural Center of Butte County
Housing California
Law Foundation of Silicon Valley
Lift Up Always
Mental Health America of California
National Harm Reduction Coalition
National Health Law Program
Native American Health Center
Orange County Equality Coalition
Pacific Asian Counseling Services
Peers Envisioning and Engaging in Recovery Services (PEERS)
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
San Francisco Public Defender
Solano County Board of Supervisors
South Asian Network
Southeast Asia Resource Action Center
The Sidewalk Project
Western Center on Law & Poverty
Western Regional Advocacy Project

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