Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON JUDICIARY
Brian Maienschein, Chair
SB 43 (Eggman) – As Amended June 30, 2023

As Proposed to be Amended

SENATE VOTE: 37-0

SUBJECT: BEHAVIORAL HEALTH

KEY ISSUES:

1) SHOULD THE DEFINITION OF "GRAVELY DISABLED" IN THE LANTERMAN-PETRIS-SHORT (LPS) ACT BE EXPANDED IN A WAY THAT WILL MAKE IT EASIER TO SUBJECT A PERSON SUFFERING FROM MENTAL ILLNESS OR SEVERE SUBSTANCE ABUSE DISORDER TO INVOLUNTARY DETENTION, IN THE HOPES THAT THIS WILL INCREASE THAT PERSON'S ACCESS TO NECESSARY CARE AND SERVICES?

2) SHOULD OTHERWISE INADMISSIBLE HEARSAY BE ADMITTED INTO EVIDENCE IN AN LPS COMMITMENT PROCEEDING, NOTWITHSTANDING A RECENT CALIFORNIA SUPREME COURT HOLDING THAT, GIVEN THE HIGH STAKES FOR LOSS OF LIBERTY AND AUTONOMY AT SUCH PROCEEDINGS, HEARSAY CANNOT BE ADMITTED, ABSENT AN EXCEPTION TO THE HEARSAY RULE?

SYNOPSIS

Due to the growing mental health and homelessness crises in California, recent years have seen several legislative efforts to reform the LPS Act, usually by modifying the threshold requirements. In order to understand and evaluate these efforts, it helps to understand the history and original purpose of the LPS Act. The LPS Act was passed in 1967 as part of a wave of "de-institutionalization" reforms recognizing the rights of individuals detained in state hospitals. Prior to its passage, state hospitals were used to detain individuals who lacked support, such as the mentally ill, disabled, and the elderly, sometimes for life and with minimal due process protections. In short, the LPS Act was not created to provide a mechanism for involuntary detention; it was created to protect civil liberties and due process rights by creating a set of procedural requirements that the state must meet before a person could be involuntary committed to a psychiatric facility or subject to a conservatorship that can take away a person's right to make basic life decisions, from handling money to making health care decisions. Over the years however, some have argued that procedures created to protect people from state intervention have become an obstacle to getting people care and treatment that would benefit them, even if their mental state prevents them from recognizing this. As a result, the most recent efforts to reform LPS have attempted to make it easier to involuntarily detain people as a means of getting them treatment.

This bill represents the latest and arguably most ambitious effort to reform the LPS Act by expanding the definition of "gravely disabled" and permitting otherwise inadmissible hearsay evidence in an LPS commitment proceeding. The author believes that there are "individuals on

the street right now dealing with serious mental illness in extremely unsafe conditions such that a reasonable person would agree merit interventions over their objection, even though the individual may be able to provide for their basic needs for food, clothing, and shelter." The author contends that the bill "modernize" the definition of "gravely disabled" in the LPS Act in a way that will "more accurately and comprehensively [provide for the needs] of individuals experiencing a substantial risk of serious harm due to a mental health or substance use disorder." The bill would also admit otherwise inadmissible hearsay evidence in a conservatorship proceeding, as specified.

The bill is supported by several California cities, the Psychiatric Physicians Alliance of California, and several groups that advocate for the families of the mentally ill. The bill is opposed by several California counties, civil liberties groups, and California Disability Rights. While supporters argue that the bill is necessary to provide treatment to people who need but are not able to recognize that need, opponents argue that the bill will only result in more people brought in the LPS process without regard for their due process rights, and that once more people are drawn into the system they will simply recycle through it, for there are not sufficient services available to the people who are currently in the system, let alone those who will be added if this bill is enacted. The author will take amendments in this Committee relating to the hearsay provision and clarifying that specific alternatives to conservatorship—Assisted Outpatient Treatment and CARE Court—must be considered in the evaluation of whether conservatorship is appropriate. Those amendments are including in the bill summary and discussed in the analysis.

SUMMARY: Expands the definition of "gravely disabled" in the Lanterman-Petris-Short (LPS) Act and permits the admission of otherwise impermissible hearsay evidence, as provided, in an LPS commitment proceeding. Specifically, **this bill**:

1) Expands the definition of "gravely disabled" under the LPS Act to mean a condition in which a person, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder, is unable to provide for their basic personal needs for food, clothing, or shelter, personal safety, or necessary medical care.

2) Defines "personal safety" for purposes of the above to mean the ability of one to survive safely in the community without involuntary detention or treatment pursuant to this part.

3) Defines "necessary medical care" for purposes of the above to mean care that a licensed health care practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of an existing physical medical condition which, if left untreated, is likely to result in serious bodily injury, as defined.

4) Provides that for purposes of offering an opinion, an expert witness in a conservatorship proceeding, the statement of a health care practitioner included in the medical record are not made inadmissible by the hearsay rule when the statement pertains to the person's symptoms or behavior stemming from a mental health disorder or severe substance use disorder that the expert relies upon to explain the basis for their opinion, if the statement is based on the observation of the declarant, and the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

5) Clarifies that 4) does not affect the ability of a party to call as a witness the declarant of any statement contained in the medical record, whether or not the declarant's statement was relied on by the expert witness.

6) Allows a 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.

7) Defines the following for purposes of 4):

   a) "Health practitioner" means 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 person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological associate registered pursuant to Section 2913 of the Business and Professions Code, and an unlicensed marriage and family therapist registered under Section 4980.44 of the Business and Professions Code.

   b) "Medical record" means any record, in any form or medium, maintained or lawfully obtained by, or in the custody or control of the office of the public conservator or public guardian that is prepared by a health practitioner and relates to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient who is subject to an LPS conservatorship. This includes records of care in any health-related setting used by healthcare professionals while providing patient care services, for reviewing patient data or documenting observations, actions, or instructions, including records that are considered part of the active, overflow, and discharge chart. This also includes, but is not limited to, all alcohol and substance use and treatment records.

8) Clarifies that 4) does not affect the application of Section 1201 of the Evidence Code.

9) Requires the officer providing conservatorship investigation shall investigate all available alternatives to conservatorship, *including but not limited to, assisted outpatient treatment pursuant to Section 5346 and the CARE program pursuant to Section 5978*, as applicable, and shall recommend conservatorship to the court only if no suitable alternatives are available.

10) Provides that if the officer providing conservatorship investigation recommends in their written report to the court a written report of investigation prior to the hearing either for or against conservatorship, the officer shall set forth all alternatives available, *including conservatorship, assisted outpatient treatment pursuant to Section 5346 and the CARE program pursuant to Section 5978, as applicable, and all other less restrictive alternatives*.

EXISTING LAW:

1) Provides that if a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and

b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or *made known to him at or before the hearing, whether or not admissible*, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion. (Evidence Code Section 801.)

2) Allows a witness testifying in the form of an opinion may state on direct examination the reasons for his opinion and the matter (including, in the case of an expert, his special knowledge, skill, experience, training, and education) upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion. The court in its discretion may require that a witness before testifying in the form of an opinion be first examined concerning the matter upon which his opinion is based. (Evidence Code Section 802.)

3) 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. Provides that except as provided by law, hearsay evidence is inadmissible. (Evidence Code Section 1200 (a)-(b).)

4) Provides that a statement within the scope of an exception to the hearsay rule is not inadmissible on the ground that the evidence of such statement is hearsay evidence if such hearsay evidence consists of one or more statements each of which meets the requirements of an exception to the hearsay rule. (Evidence Code Section 1201.)

5) Establishes the LPS Act to end inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism, and to provide prompt evaluation and treatment of those with mental health disorders or impaired by chronic alcoholism. (Welfare & Institutions Code Section 5000 *et seq*; unless otherwise stated, all further statutory references are to this code.)

6) Defines, as a basis for involuntary commitment under the LPS Act, "grave disability" as a condition in which a person, as a result of a mental disorder, or impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, or shelter, or is found to be mentally incompetent under the Penal Code. Excludes from that definition persons with intellectual disabilities by reason of that disability alone. (Section 5008 (h).)

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

8) Allows a person who has been detained for 72 hours to be detained for up to 14 days of intensive treatment if the person continues to pose a danger to self or others, or to be gravely disabled, and the person has been unwilling or unable to accept voluntary treatment. (Section 5250.)

9) Allows a person to be held at the expiration of a 14-day period of intensive treatment for further intensive treatment of up to 14 days if, during the 14-day detention period, the person threatened or attempted to take their own life or was detained because they threatened or attempted to their own life and continues to present an imminent threat of taking their own life and other specified conditions. (Section 5260.)

10) Allows a person who has been detained for 14 days of intensive treatment to be detained for up to 30 additional days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (Section 5270.15.)

11) Requires a certification review hearing to be held within four days of the date on which a person is certified for a 14-day period of intensive treatment or 30 additional days of intensive treatment unless judicial review has been requested or a postponement is requested by a person or their attorney or advocate. (Section 5256.)

12) Requires the certification review hearing to be conducted by either a court-appointed commissioner or referee, or a certification review hearing officer who must be either a state-qualified administrative law hearing officer or a medical professional as specified. (Section 5256.1.)

13) Allows the person certified to be assisted by an attorney or an advocate. (Section 5256.4 (a).)

14) Requires that the certification review hearing be conducted in an impartial and informal manner and the person conducting the hearing is not bound by the rules of procedure or evidence applicable in judicial proceedings. All evidence relevant to establishing that the person certified is or is not gravely disabled must be admitted and considered. (Section 5256.4 (b).)

15) Provides every person detained by certification for intensive treatment with a right to a judicial hearing by writ of habeas corpus for their release. Enumerates specified requirements and procedures for judicial review, including the right to be represented by counsel. (Sections 5275, 5276.)

16) Provides that, at the end of a 30-day detention for intensive treatment, the patient must be released unless:

    a) The patient agrees to receive further treatment on a voluntary basis;

    b) The patient is the subject of a conservatorship petition; or

    c) The patient is the subject of a petition for post-certification treatment of a dangerous person, as provided in 17). (Section 5270.35 (b).)

17) Allows, under the LPS Act, a court to order an imminently dangerous person to be confined under a conservatorship for further inpatient intensive health treatment for an additional 180 days, as provided. (Section 5300 *et seq.*)

18) Allows the professional person in charge of a facility providing 72-hour, 14-day, or 30-day treatment to recommend an LPS conservatorship to the county conservatorship investigator for a person who is gravely disabled and is unwilling or unable to voluntarily accept

treatment, and requires the conservatorship investigator, if they concur with the recommendation, to petition the superior court to establish an LPS conservatorship. Provides that the person for whom the LPS conservatorship is sought has the right to demand a court or jury trial on the issue of whether they are gravely disabled. (Section 5350 *et seq.*)

19) Requires an officer providing the conservatorship investigation to investigate all available alternatives to conservatorship and recommend conservatorship to the court only if no suitable alternatives are available. Requires the officer to render to the court a comprehensive written report containing all relevant aspects of the person's medical, psychological, financial, family, vocational, and social condition; information obtained from the person's family members, close friends, social worker, or principal therapist; and information concerning the person's property. Requires the facilities providing intensive treatment or comprehensive evaluation to disclose any records or information that may facilitate the investigation. Requires the officer, if they recommend against conservatorship, to set forth all alternatives available. (Section 5354 (a).)

20) Requires that a conservator under an LPS conservatorship place the conservatee in the least restrictive alternative placement, as provided. Gives the LPS conservator the right, if specified in the court order, to require the conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatee's being gravely disabled. (Sections 5358, 5258.2.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: According to the author, this bill seeks to "modernize" the definition of "gravely disabled" within the Lanterman-Petris-Short (LPS) Act. This more modern definition, the author believes, will "more accurately and comprehensively [provide for the needs] of individuals experiencing a substantial risk of serious harm due to a mental health or substance use disorder." Specifically, this bill would expand the definition of "gravely disabled" so that it will apply to any person who is "unable to provide for the basic needs for nourishment, personal or medical care, adequate shelter, adequate clothing, self-protection, or personal safety." The author believes that 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. 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. This bill will help to provide dignity and treatment to those who are the most difficult to reach."

Redefining "gravely disabled." Most notably, this bill seeks to achieve the author's goal by amending the LPS Act to expand the definition of "gravely disabled," one of the two threshold requirements for justifying *involuntary commitment* of a person in a designated psychiatric facility. Existing law permits involuntary detention of person deemed to be *either* a "danger to self or others," or "gravely disabled." This bill only changes the definition "gravely disabled." Existing law defines gravely disabled as a condition in which a person, as *a result of a mental disorder, or impairment by chronic alcoholism*, is unable to provide for their basic personal needs for food, clothing, or shelter. This bill would substantially expand the definition of "gravely disabled" to mean "a condition in which a person, as a result of a mental health disorder, a severe substance use disorder (SUD), or both, is unable to provide for their basic personal needs for food, clothing, or shelter, *personal safety, or necessary medical care*. In short, the proposed definition would apply not only to a person with a mental health disorder, but also

to a person with a severe SUD. In addition, the proposed new definition adds "personal safety" and "necessary medical care" to the list of "basic personal needs." The bill, in turn, defines the "personal safety," with some circularity, to mean "the ability of one to survive in the community without involuntary detention or treatment pursuant to [the LPS Act]." The bill defines the term "necessary medical care" to mean care "that a licensed health care practitioner, while operating in the scope of their practice determines to be necessary to prevent serious deterioration of an existing physical medical condition which, if left untreated, is likely to result in serious bodily injury."

What does this expanded definition mean in practical terms? Under existing law, a person is only deemed to be gravely disabled if, because of mental illness or impairment by chronic alcoholism, they cannot care for their most basic human needs: food, clothing, or shelter. Under this bill, a person could additionally be deemed gravely disabled if their mental illness – *or* an SUD – prevents them from meeting their needs for "personal safety" or "necessary medical care." Because of the use of the disjunctive "or" in the list of basic needs, a person could meet their needs for food, safety, shelter, and even personal safety, but if mental illness or addiction caused them not to provide for their "necessary medical care," they could be deemed "gravely disabled" and subject to involuntary detention. According to the author, this expanded definition will allow those authorized to detain someone under the LPS Act could consider a broader set of factors to consider, which presumably leads to more people brought into the LPS system where, ideally, they will be directed needed care. As the author puts it: "There are individuals on the street right now dealing with serious mental illness in extremely unsafe conditions such that a reasonable person would agree merit interventions over their objection, even though the individual may be able to provide for their basic needs for food, clothing, and shelter."

Background: The origins of the LPS Act, its operation, and efforts at reform. Due to the growing mental health and homelessness crises in California, recent years have seen several legislative efforts in recent years to reform the LPS Act, usually by modifying the threshold requirements. In order to understand and evaluate these efforts, it helps to understand the history and original purpose of the LPS Act. The LPS Act was passed in 1967 as part of a wave of "de-institutionalization" reforms recognizing the rights of individuals detained in state hospitals. Prior to its passage, state hospitals were used to detain individuals who lacked support, such as the mentally ill, disabled, and the elderly, sometimes for life and with minimal due process protections. "The clear import of the LPS Act is to use the involuntary commitment power of the state sparingly and only for those truly necessary cases where a 'gravely disabled' person is incapable of providing for his basic needs either alone or with help from others." (Conservatorship of Smith (1986) 187 Cal.App.3d 903, 908.) (Conservatorship of K.W. (2017) 13 Cal.App.5th 1274, 1280.) In short, the LPS Act was not created to provide a mechanism for involuntary detention, it was created to protect civil liberties and due process rights by creating a set of procedural requirements that the state must meet before a person could be involuntary committed to a psychiatric facility or subject to a conservatorship that can take away a person's right to make basic life decisions, from handling money to making health care decisions.

Over the years however, some have argued that procedures created to protect people from state intervention have become an obstacle to getting people care and treatment that would benefit them, even if their mental state prevents them from recognizing this. As a result, the most recent efforts to reform LPS have attempted to make it easier to involuntarily detain people as a means of getting them treatment. As the state's homelessness problem has grown – and when it is clear that some of the homeless also appear to suffer from severe mental illness – the calls for

reforming LPS have grown louder. The exact connection between homeless and mental illness is unclear. For example, are mentally ill people more likely to become homeless because of their conditions, or do prolonged periods of homelessness trigger mental illness? Moreover, a recent study concluded that, contrary to what is often thought, a lack of affordable housing in California is a much more significant factor in causing homelessness. Nonetheless, whatever the causes of homelessness, or the relationship between homelessness and mental illness, the intersecting problems of homelessness, mental illness, and drug addiction are plain to see.

The LPS process: from 72-hour hold to conservatorship. The LPS Act provides for involuntary commitment, or "holds," for varying lengths of time for the purpose of treatment and evaluation, provided certain requirements are met. Additionally, the LPS Act provides for LPS conservatorships, resulting in involuntary commitment for the purposes of treatment, if an individual is found to meet the "grave disability" standard. A "grave disability" finding requires that the person presently be unable to provide for food, clothing, and shelter due to a mental disorder, or severe alcoholism, to the extent that this inability results in physical danger or harm to the person. In making this determination, the trier of fact must consider whether the person would be able to provide for these needs with a family member, friend, or other third party's assistance if credible evidence of such assistance is produced at the LPS conservatorship hearing. Courts have found that this definition of "gravely disabled" is not unconstitutionally vague or overbroad, but rather is sufficiently precise in that it excludes "unusual or nonconformist lifestyles" and turns on an inability or refusal on the part of the individual to care for their basic personal needs. (*See e.g., Conservatorship of Chambers* (1977) 71 Cal. App. 3d 277, 284.) The LPS Act specifies several levels of "holds" and conservatorships, progressing from an initial 5150 (5150 pertains to the Welfare & Institutions (WIC) section number) hold through to a 5350 conservatorship.

Section 5150: Detention of Mentally Disordered Persons for Evaluation and Treatment. Typically, the first interaction with the LPS Act is through what is commonly referred to as a 5150 hold. A peace officer, or an individual or facility authorized by the county (i.e., "LPS-designated") may involuntarily detain a person for up to 72 hours for evaluation and treatment if they are determined to be, because of a mental health disorder, a threat either to themselves or to others, or gravely disabled. The person who detains the individual must know of facts that would lead a person of ordinary care and prudence to believe that the individual meets this standard. When making the determination, the person or facility who enacts the hold may consider the individual's historical course, which includes evidence presented by an individual who has provided or is providing mental health or related support services to the person on the 5150 hold; evidence presented by one or more members of the family of the person on the 5150 hold; and, evidence presented by the person on the 5150 hold, or anyone designated by that person, if the historical course of the person's mental disorder has a reasonable bearing on making a determination that the person requires a 5150 hold. An individual admitted to a designated facility must be given written and oral information about why they are being detained, including whether they are a harm to themselves or others, or are gravely disabled. They must also be notified of whether weekends or holidays are excluded from the 72-hour period. There is no oversight or due process protections at the 5150 stage, though, in practice, individuals are sometimes physically detained for longer than 72 hours through the use of multiple, subsequent 5150s, also known as serial 5150s.

Section 5250: Certification for Intensive Treatment. Following a 72-hour hold, the individual may be held for an additional 14 days of intensive treatment, without court review, if they are

found to still be, because of a mental health disorder, a threat to themselves or others, or gravely disabled. (Welfare & Institutions Code Section 5250.) When determining whether the individual is eligible for an additional 14-day confinement, the professional staff of the agency or facility providing evaluation services must find that the individual has additionally been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis. A notice of certification is required for all persons certified for intensive treatment under a 5250, and a copy of the notice for certification is required to be personally delivered to the person certified, the person's attorney, or the attorney or advocate, as specified. The certification review hearing, which usually occurs in the facility holding the individual, must be four days from the 5250 hold or, pursuant to federal case law, seven days of confinement, unless judicial review is requested through a writ of habeas corpus. The certificate review hearing may be conducted by a broad range of hearing officers, including a physician, licensed psychologist or marriage and family therapist, or even a certified law student. The individual is represented by a patient advocate. By contrast, at a judicial writ hearing, the hearing officer is almost always a judge (or a commissioner), the hearing occurs at court, and the individual is represented by an attorney.

Sections 5260 and 5270: Additional Intensive Treatment of Suicidal Persons. If, during the 14-day period of intensive treatment or the original 72-hour evaluation period, a person threatened or attempted to take their own life or was detained for evaluation and treatment because they threatened or attempted to take their own life and continues to present an imminent threat of taking their own life, that individual may be detained after the expiration of the 14-day period under a 5250 hold, for an additional period not to exceed 14 days. A notice of certification is also required for this additional 14-day period. If a person is still found to remain gravely disabled and unwilling or unable to accept voluntary treatment following either their 5250 or 5260 holds, they may be certified for an additional period of not more than 30 days of intensive treatment. (Section 5270.15.) The individual may request judicial review of this involuntary detention, and if judicial review is not requested, the individual must be provided a certification review hearing. At the expiration of the 14-day period of intensive treatment (Section 5250), an individual may be further confined for treatment for an additional period, not to exceed 180 days if deemed imminently dangerous based on several enumerated conditions.

Section 5350: Conservatorship for gravely disabled persons. Finally, the LPS Act provides for a conservator of the person, of the estate, or of both the person and the estate for a person who is gravely disabled because of a mental health disorder or impairment by chronic alcoholism. The purpose of an LPS conservatorship is to provide individualized treatment, supervision, and placement for the gravely disabled individual. The individual for whom such a conservatorship is sought has the right to demand a court or jury trial on the issue of whether they meet the gravely disabled requirement, and they have the right to be represented by counsel. An LPS temporary conservatorship lasts for 30 days unless the person is awaiting a court or jury trial on the issue of whether they are gravely disabled, in which case the conservatorship may be extended up to six months. A permanent conservatorship lasts for one year and can be renewed.

Implementation of the LPS Act. Oversight of the LPS Act is under DHCS, which adopts the rules, regulations, and standards necessary for implementation. DHCS must consult with the County Behavioral Health Directors Association of California (CBHDA), the California Behavioral Health Planning Council, and the Office of the Attorney General in developing these rules, regulations, and standards. WIC 5402 requires DHCS to collect and publish an annual report of the number of detentions and conservatorships in each county.

The counties also have oversight responsibilities. The LPS Act provides that each county may designate facilities, other than hospitals or clinics, as 72-hour evaluation and treatment facilities and as 14-day intensive treatment facilities if these facilities meet DHCS requirements. The terms "designated facility" or "facility designated by the county for evaluation and treatment" mean facilities that are licensed or certified as a mental health treatment facility or a hospital. In practice, some counties also designate persons who may operate in a non-designated facility. While peace officers and other authorized persons are required to take a detained individual first to a designated facility, if one does not exist, they may transport individuals to a non-designated facility, which is also any facility participating in Medicare that is therefore required by federal Emergency Medical Treatment and Active Labor Act (EMTALA) laws to provide medical services to any individual who shows up requiring medical attention (*i.e.,* acute care hospitals).

Nationally, the rate at which individuals are involuntarily detained and compelled to undergo mental health evaluations has outpaced population growth by a rate of three-to-one, on average, over the past decade. (Lee, *et al., Incidences of Involuntary Psychiatric Detentions in 25 U.S.* (Nov. 2020) States Psychiatric Services.) Though variations in state laws and reporting requirements make comparisons between states difficult, existing data suggests that California has some of the highest rates of involuntary detentions due to mental illness among the 25 states that report this data. (*Ibid.*) Rates of involuntary detentions in California are also much higher than Europe. (Barnard, *Evaluating California's Conservatorship Continuum*, *supra*.) Moreover, though the LPS Act was passed amid a wave of reforms to develop a more humane system *less dependent* on hospitalizations, researchers have found that civil commitment laws have done little to limit hospital admission. California went from 13,000 civil commitments a year prior to LPS to over 80,000 by 1980. (*Ibid.*)

Lack of services and the limits of LPS. The rising rates of mental illness and homelessness in California have resulted in increased scrutiny of the LPS Act from academics, the media, advocacy groups, stakeholders, and the State Auditor, among others. Many of these groups have highlighted severe gaps in California's mental health system and shortcomings of the LPS Act's implementation. In all of these reports and commentaries, a recurring finding across research on mental health support in California is that there is a striking shortage of services, facilities, and support for individuals held or conserved under the LPS Act. For example, the number of facilities with inpatient psychiatric beds has fallen by 20 percent since 1995, even as the state's population has increased. (California Hospital Association, *California Psychiatric Bed Annual Report* (Aug. 2018).) Moreover, because hospitals are often organized and financed only to provide acute stabilization, individuals who are detained in hospitals due to a mental illness may not receive care beyond short-term stabilization, resulting in re-hospitalization. More generally, while many people are accessing low-intensity mental health services, such as receiving antidepressants from a doctor, there is generally a shortage of high-intensity services, such as supportive housing. (Barnard, *Evaluating California's Conservatorship Continuum*, *supra.*)

In 2020, the State Auditor published an audit of the LPS Act by examining its implementation in Los Angeles County, San Francisco County, and Shasta County. (California State Auditor, *Lanterman-Petris-Short Act: California has Not Ensured that Individuals with Serious Mental Illnesses Receive Adequate Ongoing Care* (July 2020).) The audit found severe gaps in services and support. For example, the audit noted:

- Individuals on conservatorships have limited treatment options. Many could not receive specialized care in state hospital facilities for an average of one year because of a shortage of available treatment beds;

- Individuals who are held involuntarily have not been enrolled consistently in subsequent care to help them live safely in their communities. In two counties, no more than nine percent of these individuals were connected to ongoing services and supports; and,

- Less than one-third of the State's counties – only 19 at the time of the audit – had adopted Assisted Outpatient Treatment even though it is an effective, less restrictive, community-based approach to mental health treatment to help prevent future involuntary holds and conservatorships.

The provision of services and funding is outside the express scope of the LPS Act, which is targeted at establishing commitment criteria that protect the due process rights of persons who are experiencing a dangerous or debilitating mental health crisis. Nevertheless, the lack of appropriate services, facilities, and supportive housing contributes to a system in which individuals who are in need of long-term care repeatedly cycle through LPS detentions.

Problems of Due Process. Inconsistent interpretations and misapplications of the LPS Act in the state, as well as lack of available services and placements, have raised critical due process concerns, specifically with regard to 5150 holds. WIC 5150 allows for the detaining of an individual for up to 72 hours for assessment, evaluation, and treatment. It does not allow for judicial review, certification review or due process. However, two practices pertaining to 5150 holds have resulted in individuals with mental illness being held for longer than 72 hours, sometimes for months, with no path towards a certification hearing or judicial review. One practice is a prolonged 5150 in which a person is physically detained on a 5150 hold, but the start of the 72-hour clock is delayed, resulting in a person being physically detained for much longer than the 72 hours. In conversations with stakeholders, this appears to occur because of a mistaken interpretation of the statute that the 72-hour period does not begin until an individual is brought to an appropriate facility for assessment, even if they are actually detained before that time. A second practice is the use of stacked, or serial, 5150s in which a person is repeatedly detained under a new 5150 when the expiration of a previous 5150 approaches. This practice traps a person in a series of 5150 holds, depriving them of a path towards due process.

Both these practices result in some individuals involuntarily detained for much longer than is statutorily permitted without due process and needed evaluation and treatment in a timely manner. Though misinterpretations of the statute may be responsible for these practices, they also occur because of a shortage of LPS-designated facilities where a person may be treated. Both practices put California out of step with federal constitutional and statutory requirements. The U.S. Supreme Court has recognized that governments may subject a mentally ill person to involuntary holds and treatments when necessary to prevent harm to that person or others, but that power is not unlimited and must respect the due process and liberty interests protected by the 14th Amendment. (*See O'Connor v. Donaldson* (1975) 422 U.S. 563.) In *Doe v. Gallinot* (9th Cir. 1982) 657 F.2d 1017, the 9th Circuit ruled that a hearing must be held within seven days of confinement. California's current lack of compliance with *Doe v. Gallinot* could be remedied by either (1) disallowing "serial" 5150 holds (including lobby "releases" immediately followed by a new 5150 hold) within a reasonable period of time, unless some new action has arisen justifying

the new hold, or (2) requiring that a certification review hearing, or alternatively, the writ to request a writ in court, occur within seven days of initial detainment.

Relationship to Assisted Outpatient Therapy (AOT) and the recently enacted, but yet to implemented, CARE Act. In 2002, the LPS Act was amended to establish the Assisted Outpatient Treatment (AOT) Project Act of 2002, also known as Laura's Law. The bill authorized court-ordered outpatient treatment services for people with serious mental illnesses when a court finds that a person's recent history of hospitalizations or violent behavior, coupled with noncompliance with voluntary treatment, indicate the person is likely to become dangerous or "gravely disabled" without the court-ordered outpatient treatment. (AB 1412, Chapter 1017. Stats. 2002.)

Under current law, to order AOT the court must find by clear and convincing evidence that the person is unlikely to survive in the community without supervision, the person has a history of lack of compliance with treatment for their mental illness, the person has been offered the opportunity to participate in a treatment plan, the person's condition is substantially deteriorating, and participation in the AOT program would be the least restrictive placement necessary to ensure the person's recovery and stability. In short, AOT is designed to treat the same population as LPS – the "gravely disabled" – but was established in order to provide a less restrictive option than involuntary detentions and conservatorships under LPS. Clearly, the more restrictive detentions and conservatorships authorized by the LPS Act are not working, as this bill and so many prior efforts to reform the system attest. If the involuntary means of LPS are not working, then perhaps greater efforts should be made to use AOT, given that avoidance of LPS detentions and conservatorships was one of the primary reasons for establishing the AOT approach.

Similarly, once they become operational, more effort should be made to direct people to CARE Courts instead of bringing more people into the LPS system. SB 1338 (Chap. 319, Stats. 2022), established the Community Assistance, Recovery, and Empowerment (CARE) Act. The CARE Act must be implemented in designated counties by October 1, 2023, and by the remaining counties by December 1, 2024. Like the bill now before the Committee, the CARE Act was intended to provide services to a population similar to the one that this bill targets, especially the homeless mentally ill and those suffering from severe SUD. A central feature of the CARE Act are so-called "CARE Courts," which are supposed to deliver mental health and SUD services as an alternative to incarceration in a jail or psychiatric facility, *or becoming subject to an LPS conservatorship*. The CARE Act provides for a court-ordered CARE Plan for a person suffering from a mental health or SUD crisis for up to 12 months, with possible extensions. The plan is supposed to provide individuals with clinically-appropriate, community-based services, and less restrictive than an involuntary detention or an LPS conservatorship. The California Health and Human Services Agency (CA-HSS) describes CARE Court as "an upstream diversion to prevent more restrictive conservatorships or incarceration." (*See* "CARE Court FAQ," available at www.chhs.ca.gov.) CA-HSS reasons that CARE Court could be an "appropriate next step" after someone has been placed on at 72-hour hold ("5150") or a 14-day hold ("5250"), an arrest, or who can otherwise be safely diverted from a criminal proceeding.

Given that both AOT and CARE Court seek to serve a similar population, it is worth asking how those programs will work with this bill. The goal of both AOT and CARE Court is to avoid long-term LPS conservatorships. The bill before the Committee, however, with its expanded definition of "gravely disabled," will likely result in *more* people within LPS conservatorship

system. As such, before a person is subjected to the more restrictive LPS detentions and conservatorships, LPS investigators should make effort to direct people toward less restrictive AOT and CARE Court, to the extent possible. As proposed to be amended (see discussion of ***Author's amendments****, below)*, the bill will codify that priority.

The Hearsay Rule as Applied to Conservatorship Proceedings. At first blush, the "hearsay rule" is deceptively simple. "Hearsay" is defined as an out-of-court statement offered to prove the truth of the statement asserted. (Evidence Code Section 1200 (a).) The problem with hearsay and its admission as evidence in court is that the person who allegedly made the out-of-court statement is not present in court. Therefore, the statements cannot be subject to questioning that could possibly establish, or refute, the credibility of the statement. As every law student learns to their great displeasure, the seemingly simple hearsay rule is complicated by a series of "exceptions" through which otherwise inadmissible hearsay *may* be admitted as evidence. Most of these exceptions presume that certain kinds of out-of-court statements are inherently trustworthy, such as official records produced in the normal course of business, thus making cross-examination of the absent witness less critical. It should also be noted that just because hearsay evidence is "admissible," that does not mean that that jury or finder of fact must assume that the statement is true. Hearsay exceptions speak to the *admissibility* of evidence, not to their *veracity.*

However complicated hearsay, and hearsay exceptions, may appear, the hearsay rule is critical in protecting due process rights, especially in criminal cases or civil commitment proceedings, including LPS conservatorship proceedings. Due process demands that our physical liberty not be taken away on the basis of comments by absent witnesses who cannot be cross-examined. For these reasons, the California Supreme Court ruled in a criminal case, involving expert testimony about the defendant's gang affiliation, as follows:

> If an expert testifies to case-specific out-of-court statements to explain the bases for his opinion, those statements are necessarily considered by the jury for their truth, thus rendering them hearsay. Like any other hearsay evidence, it must be properly admitted through an applicable hearsay exception. (*People v. Sanchez* (2016) 63 Cal.4th 665, 684.)

The constitutional rule announced in *People v. Sanchez* does not extend to civil cases. (See *Sanchez, supra*, 63 Cal.4th at p. 680, fn. 6.) However, according to the California Supreme Court, it applies to LPS commitment proceedings because "[t]he liberty interests at stake in a conservatorship proceeding are significant. . . Not only may '[a] person found to be gravely disabled … be involuntarily confined for up to one year,' but, '[i]n addition to physical restraint . . . [t]he gravely disabled person for whom a conservatorship has been established faces the loss of many other liberties[.]'" (*Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1284 [internal citations omitted].)

Sanchez and *Conservatorship of K.W.* did not change the rule of Evidence Code section 801, subdivision (b), allowing an expert to rely on hearsay in forming an opinion and tell the jury in general terms that they did so. (*Sanchez, supra*, 63 Cal.4th at pp. 685–686; *People v. Stamps* (2016) 3 Cal.App.5th 988, 996.) "Because the jury must independently evaluate the probative value of an expert's testimony, Evidence Code section 802 properly allows an expert to relate generally the kind and source of the 'matter' upon which his opinion rests." (*Sanchez*, at pp. 685–686, *Conservatorship of K.W., supra*, 13 Cal.App.5th at p. 1285.)

But *Sanchez* makes clear that a hearsay statement relied upon by an expert cannot be admitted into evidence absent a hearsay exception; admission of such a statement, even with a limiting instruction that the purpose for the statement being admitted into evidence as only for the basis of the expert's opinion, does not cure the hearsay and due process violation.

> Once we recognize that the jury must consider expert basis testimony for its truth in order to evaluate the expert's opinion, hearsay and confrontation problems cannot be avoided by giving a limiting instruction that such testimony should not be considered for its truth. If an expert testifies to case-specific out-of-court statements to explain the bases for his opinion, those statements are necessarily considered by the jury for their truth, thus rendering them hearsay. Like any other hearsay evidence, it must be properly admitted through an applicable hearsay exception. Alternatively, the evidence can be admitted through an appropriate witness and the expert may assume its truth in a properly worded hypothetical question in the traditional manner. (*People v. Sanchez, supra*, 63 Cal.4th at p. 684.)

This bill's hearsay provision. In addition to expanding the definition of "gravely disabled," this bill makes substantial and unprecedented, changes to the law governing the admissibility of evidence in civil commitment proceedings under the LPS Act. This provision is intended to overturn the application of *Sanchez* to LPS Conservatorship proceedings by means of *Conservatorship of K.W.* To explain the bill's hearsay provision, the author states the following:

> There are concerns, instances of which have already come to fruition, that important medical record information may be considered hearsay within conservatorship proceedings due to *Sanchez.* In response to the LPS Audit in 2020, LA County wrote that the Legislature should: "Add state law that would allow medical experts to share details with a court about a proposed conservatee that are observed by other medical personnel and staff as recorded in a medical record and not just those directly observed as limited by *People v. Sanchez*, 63 Cal 4th 665." (The Auditor's report, as well as Los Angeles's response and the Auditor's rebuttal to the response, can be found here: https://www.auditor.ca.gov/reports/2019-119/responses.html#LA_rebuttal.)

The language of the bill in print achieves this goal (and allows admission of even more hearsay evidence than was allowed to be admitted prior to the *Sanchez* decision) by saying that, "For purposes of an expert witness in a proceeding relating to the appointment or reappointment of a conservator . . . the statements of a health practitioner, as defined in subdivision (d), included in the medical record are not hearsay." This does not make sense, given the bill's clear intent for the statements to be considered for the truth of the matter stated. In order for a "statement that was made other than by a witness while testifying at the hearing" to not qualify as hearsay, it would have to be offered for a purpose *other than* to prove the truth of the matter stated. (See Evidence Code 1200 (a).) The bill in print would allow all statements in any medical record by any "health practitioner"—whether written or oral, first-hand observations or often-repeated statements of unknown origin—to be admitted into evidence in a conservatorship proceeding for the truth asserted.

As the California Supreme Court has observed, despite not being criminal proceedings, "[t]he liberty interests at stake in a conservatorship proceeding are significant." (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 540.) A person found to be gravely disabled faces possible confinement for up to one year, physical restraint, and the loss of many other liberties. (*Conservatorship of K.W., supra,* Cal.App.5th at p. 1284.) Therefore, there is a strong and

compelling policy interest in ensuring that courts and juries rely on only the most reliable evidence in making such high-stakes decisions. It is therefore important that any hearsay exception be focused on the admission of statements within the medical record that are inherently reliable and relevant and specify the criteria for admission of such a hearsay statement within the medical record.

Author's amendments. To address the clear overbreadth of the hearsay provision in Section 3 of the bill in print and its constitutional shortcomings, the author proposes the following amendments:

5122. (a) For purposes of ***offering an opinion,*** an expert witness in a proceeding relating to the appointment or reappointment of a conservator pursuant to Chapter 3 (commencing with Section 5350) or Chapter 5 (commencing with Section 5450), the ~~statements~~ ***statement*** of a health practitioner, as defined in subdivision (d), included in the medical record are not ~~hearsay~~ ***made inadmissible by the hearsay rule when the statement pertains to the person's symptoms or behavior stemming from a mental health disorder or severe substance use disorder that the expert relies upon to explain the basis for their opinion, if the statement is based on the observation of the declarant, and the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability.***

(b) This section does not ~~prevent~~ ***affect the ability of*** a party ~~from calling~~ ***to call*** as a witness the ~~author~~ ***declarant*** of any statement contained in the medical record, whether or not the ~~author~~ ***declarant's statement*** was relied on by the expert witness.

(c) The court may 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.

(d) ***(1)*** "Health practitioner" means 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 person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological associate registered pursuant to Section 2913 of the Business and Professions Code, and an unlicensed marriage and family therapist registered under Section 4980.44 of the Business and Professions Code.

(2) "Medical record" means any record, in any form or medium, maintained or lawfully obtained by, or in the custody or control of the office of the public conservator or public guardian that is prepared by a health practitioner and relates to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient who is subject to an LPS conservatorship. This includes records of care in any health-related setting used by healthcare professionals while providing patient care services, for reviewing patient data or documenting observations, actions, or instructions, including records that are considered part of the active, overflow, and discharge chart. This also includes, but is not limited to, all alcohol and substance use and treatment records.

(e) Nothing in this section affects the application of Section 1201 of the Evidence Code.

These amendments make a number of important changes to the law, including by clarifying that this provision is an exception to the hearsay rule (rather than declaring that statements are not hearsay), as consistent with other hearsay exceptions in the Evidence Code. The amendments only allow admission of the statement to the extent that it is relied upon by the expert as a basis for the expert's opinion (not for the truth asserted in the statement). The statement is required to be "based on the observation of the declarant" (not on statements told to the declarant), and the court must find, in a hearing conducted outside the presence of any jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability. Furthermore, the amendments clarify Section 1201 of the Evidence Code—which prevents the introduction of multi-level hearsay unless an exception applies to each level of hearsay—still applies in an LPS conservatorship proceeding.

The amendments also make a helpful and harmonizing clarification to existing law by explicitly requiring, when an investigation of a conservatorship is conducted, that the investigator consider AOT and CARE Court as less restrictive alternatives to conservatorship. In order to do so, the amendments add a new section to the bill, amending subdivision (a) of Section 5354 of the Welfare and Institutions Code, to read as follows:

(a) The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship ***, including but not limited to, assisted outpatient treatment pursuant to Section 5346 and the CARE program pursuant to Section 5978, as applicable,*** and shall recommend conservatorship to the court only if no suitable alternatives are available. This officer shall render to the court a written report of investigation prior to the hearing. The report to the court shall be comprehensive and shall contain all relevant aspects of the person's medical, psychological, financial, family, vocational, and social condition, and information obtained from the person's family members, close friends, social worker, or principal therapist. The report shall also contain all available information concerning the person's real and personal property. The facilities providing intensive treatment or comprehensive evaluation shall disclose any records or information which may facilitate the investigation. If the officer providing conservatorship investigation recommends either for or against conservatorship, the officer shall set forth all alternatives available, including conservatorship ***, assisted outpatient treatment pursuant to Section 5346 and the CARE program pursuant to Section 5978, as applicable,*** and all ***other*** less restrictive alternatives. A copy of the report shall be transmitted to the individual who originally recommended conservatorship, to the person or agency, if any, recommended to serve as conservator, and to the person recommended for conservatorship. The court may receive the report in evidence and may read and consider the contents thereof in rendering its judgment.

ARGUMENTS IN SUPPORT: Several regional chapters of the National Alliance on Mental Illness (NAMI), the Treatment Advocacy Center, and other groups advocating for greater care for the mentally ill write in their joint letter:

> The recent tragedy of Mark Rippee, a beloved community member well-known to the treatment system who experienced paranoid schizophrenia, traumatic brain injury and blindness, is a heart-wrenching example of the life and death consequences of California's failed treatment system.1 Mr. Rippee, like 50% of individuals with schizophrenia and 40% of individuals with bipolar disorder, experienced anosognosia, a lack of insight into his illness.2 This lack of insight prevented Mr. Rippee not only from accessing treatment for his SMI, but also his other medical conditions. His ultimate

death from a treatable medical infection could have, and should have, been prevented. Similar stories of needless suffering among those with SMI who are gravely disabled but don't meet the definition as it is currently interpreted are occurring across California.

The improvements to the definition of "gravely disabled" included in SB-43 could have saved Mr. Rippee's life; we urge you to pass SB-43 to prevent unnecessary tragedies that are devastating our communities. Currently, to meet the definition of "gravely disabled," an individual must either have a history with the criminal justice system and have been found mentally incompetent or be determined unable to meet their basic needs for food, clothing, or shelter. Unfortunately, this ability to meet one's basic needs has been stringently interpreted. Mr. Rippee, someone who was clearly unable to meet his basic needs on his own, did not meet the criteria according to the treatment system. SB-43 adds a "substantial risk of serious harm to their physical or mental health" as a third criterion of "gravely disabled" and further defines "serious harm" to mean "significant deterioration, debilitation, or illness" due to the person's failure to meet their need for medical care, nourishment, adequate clothing and shelter, and personal safety.

This expanded grave disability definition is critically needed to make treatment possible for those with SMI, so we hope that services for those with a primary diagnosis of SMI or co-occurring SMI and substance use disorder (SUD) remain prioritized amidst any increases in SUD services.

The League of California Cities argues that:

Cities across California are on the front lines of addressing homelessness and need additional tools and resources to end this crisis in our state. We recognize that for unsheltered individuals with severe behavioral health needs, access to a comprehensive care system can be essential to addressing their homelessness. That is why Cal Cities is eager to support legislation such as SB 43, which takes a comprehensive look at our existing system and makes targeted improvements.

Specifically, SB 43 modernizes the definition of "gravely disabled" within the Lanterman-Petris-Short Act to include conditions that result in a substantial risk of serious harm to an individual's physical or mental health. This includes the inability to seek medical care, adequate shelter, or self-protection and safety. Updating this definition better reflects the contemporary realities present in our communities, ensuring that individuals at risk of significant harm receive the help they need.

Additionally, this measure allows relevant medical history to be considered by the court in a uniform manner across the state by creating a hearsay exemption for information contained in a medical record so all relevant information can be presented and considered by the court. This would ensure that a complete and accurate picture is presented in court when considering the very serious step of conservatorship.

Cal Cities recognizes that conservatorship should be the last resort for treatment, and that there needs to be a concurrent, continued emphasis on preserving a patient's independence and civil liberties and preventing unnecessary conservatorships. This can be accomplished by increasing access to early intervention and prevention services and

prioritizing placements in the least restrictive environment necessary to foster recovery and stability. Cal Cities will continue to support legislation to ensure our most vulnerable residents have access to the behavioral health services they need.

ARGUMENTS IN OPPOSITION: A coalition of several civil liberties, civil rights, and anti-poverty groups – including ACLU California Action, Disability Rights California, and Western Center on Law and Poverty – oppose this bill for several reasons and suggest affirmative alternatives.

First, the coalition opposes SB 43 because "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." As an alternative, the coalition suggests, "the Legislature should invest in evidence-based, community-defined programs and services that are proven to meet the needs of Californians living with serious mental disabilities, including affordable, accessible housing with voluntary support services and Assertive Community Treatment."

Second, the coalition opposes SB 43 because "it reflects poor public policy. First, SB 43 will perpetuate health disparities, disproportionately burdening the unhoused and Black, Indigenous, people of color (BIPOC) and immigrant racial minorities. Second, SB 43 will traumatize individual patients and undermine public health policy by causing patients to distrust behavioral health systems. Third, SB 43 is not supported by any data showing that expanding the definition of "gravely disabled" will lead to positive long-term outcomes. Fourth, SB 43 will exacerbate bottlenecks in the already-strained mental health system, rather than investing in the infrastructure, workforce, and funding needed to meaningfully expand community-based services."

Finally, the coalition opposes SB 43 because "it is unconstitutional on its face and violates the Americans with Disabilities Act (ADA) and related law. The bill conflicts with constitutional due process protections by relying on vague criteria that requires decision-makers to speculate about future conditions. SB 43 will also cause the unnecessary institutionalization of people with disabilities in violation of the ADA. In addition, the use of hearsay evidence by expert witnesses will infringe upon fundamental rights to due process."

ARGUMENTS OF CONCERN: Several organizations have expressed concerns that highlight the potential unintended consequences of the bill and the difficulties practically implementing its provisions. For example, organizations representing California counties express concerns about both the expanded definition of "gravely disabled" and the hearsay exemption. The Rural County Representatives of California (RCRC), the Urban Counties of California (UCC), and the California State Association of Counties (CSAC) focus on two issues in particular: (1) including persons with severe substance use disorder (SUD); and (2) the lack of capacity and resources. On the addition of persons with SUD, the counties write that they "still lack the ability to provide involuntary SUD treatment, as California has no such system of care, including no existing civil models for locked treatment settings or models of care for involuntary SUD treatment. In addition, funding for SUD treatment is limited, even under Medi-Cal; the federal and state governments provide no reimbursement for long-term residential and long-term inpatient drug treatment under Medi-Cal. The

current treatment landscape doesn't address involuntary treatment for individuals with SUD."

On the issue of capacity and resources, the counties point out that even under the existing PS practice, "the demand outweighs existing resources." While counties have wide discretion regarding the commencement of LPS conservatorship proceedings, "the availability and adequacy of care for the proposed conservatee informs the exercise of that discretion. It makes little sense to impose a conservatorship, if there is no adequate placement available for the proposed conservatee, and the conservatorship, therefore, provides no treatment benefits." The counties conclude that it is "essential that SB 43 recognizes this discretion, and the real-world constraints under which it is exercised. Counties are unable to meet the current 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 conservatorships, this bill will have little to no impact on the number of individuals conserved and will likely exacerbate the resource problem."

REGISTERED SUPPORT / OPPOSITION:

Support

AEsynergy
Alameda County Families Advocating for the Seriously Mentally Ill
Bakersfield, City of
Bay Area Council
Big City Mayors
Board of Supervisors for the City and County of San Francisco
California Advocates for Seriously Mentally Ill
California Contract Cities Association
California Downtown Association
California Medical Association
California Professional Firefighters
California State Association of Psychiatrists (CSAP)
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 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
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
NAMI Contra Costa
NAMI Nevada County
NAMI Santa Clara County
NAMI Urban LA LPS Conservatorship Programs
National Alliance on Mental Illness (NAMI-CA)
Psychiatric Physicians Alliance of California
Psynergy Programs, INC.
Rosemead; City of
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

Support If Amended

County of Sutter

Opposition

ACLU California Action
API Equality-LA
Black Women for Wellness
CA Behavioral Health Planning Council
Cal Voices
California Advocates for Nursing Home Reform
California Assoc. of Mental Health Peer Run Organizations (CAMHPRO)
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
Caravan 4 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
CSH
Depression and Bipolar Support Alliance
Disability Rights California
Disabled Students Commission of the Associated Students of The University of California At Berkeley
Drug Policy Alliance
Empowering Pacific Islander Communities (EPIC)
Hmong Cultural Center of Butte County
Housing California
Law Foundation of Silicon Valley
Mental Health America of California
National Alliance to End Homelessness
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
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

Oppose Unless Amended

CAADPE
California Society of Addiction Medicine
California State Council of Service Employees International Union (SEIU California)

Concern/Other

California State Association of Counties
County Behavioral Health Directors Association of California
County of Fresno
County of Los Angeles Board of Supervisors
Rural County Representatives of California
Urban Counties of California

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