

Date of Hearing: August 23, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Chris Holden, Chair  
SB 43 (Eggman) – As Amended July 13, 2023

Policy Committee:	Health	Vote:	15 - 0
	Judiciary		8 - 0

Urgency: No      State Mandated Local Program: Yes      Reimbursable: Yes

**SUMMARY:**

This bill expands the definition of “gravely disabled” in the Lanterman-Petris-Short (LPS) Act and permits the admission of statements in the medical record in an LPS commitment proceeding.

Specifically, this bill:

- 1) For purposes of involuntary commitment of an individual under the LPS Act, expands the definition of “gravely disabled” to include a condition in which a person, as a result of a severe substance use disorder (SUD) or co-occurring mental health disorder with severe SUD, is unable to provide for their personal needs. Includes personal safety and necessary medical care as “personal needs.”
- 2) Provides that, for purposes of an expert witness’ opinion in a proceeding relating to appointment of a conservator, the statement of a health practitioner included in the medical record is not inadmissible as hearsay, as specified.
- 3) Requires the Department of Health Care Services (DHCS) expand data collection to include the additional persons who are defined as gravely disabled under the provisions of this bill.

**FISCAL EFFECT:**

- 1) According to the County Behavioral Health Directors Association (CBHDA), the overall increase in county behavioral health costs for mental health (MH) and SUD services is unknown; however, CBHDA estimates net statewide costs to counties in the range of \$5 billion to \$6.3 billion for SUD treatment, with Medi-Cal revenue included in the estimate. If the Commission on State Mandates determines the provisions of this bill constitute a reimbursable mandate, the state may be required to reimburse local governments for those costs (General Fund (GF), federal funds, local funds). CBHDA notes the estimated cost per person for those with severe SUD, at a minimum, is \$23,000 and includes outpatient treatment costs, SUD residential treatment, and temporary housing for 30 to 40 days, but does not include long-term housing costs or other investments for infrastructure that would be required to appropriately serve the expanded population.
- 2) Workload costs of an unknown, but likely significant amount, to the courts to adjudicate conservatorship petitions, by trial if demanded by the petition subject, and review the progress reports for established conservatorships based on the expanded definition of gravely

disabled (Trial Court Trust Fund, GF). Although the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and GF cost pressure to increase the amount appropriated for trial court operations.

- 3) Cost pressures of an unknown amount, potentially in the high hundreds of millions of dollars, to the Medi-Cal Program, to reimburse county mental health programs for services provided to individuals who are considered gravely disabled as a result of this bill (GF, federal funds). CBHDA estimates Medi-Cal reimbursements to county behavioral health agencies will be between \$11 billion and \$12.2 billion annually (GF, federal funds). Costs to the Medi-Cal program will likely be limited by the capacity of counties to provide services.
- 4) GF cost pressures in the low hundreds of millions of dollars to fund county public guardians and conservators, as evidenced by the author's budget request, with the sponsorship of the California Association of Public Administrators, Public Guardians, and Public Conservators (CAPAPGPC) and the support of the California State Association of Counties (CSAC), for \$200 million per year to fund county public guardians and conservators to serve individuals deemed gravely disabled under the LPS Act. The request was not funded.

#### COMMENTS:

- 1) **Purpose.** This bill is sponsored by the Big City Mayors Coalition, Psychiatric Physicians Alliance of California, California State Association of Psychiatrists, and National Alliance on Mental Illness (NAMI) – California. According to the author:

This bill would modernize the definition of “gravely disabled”...to provide for the needs more accurately and comprehensively of individuals experiencing a substantial risk of serious harm due to a mental health or substance use disorder. SB 43 would include under the definition of “gravely disabled” a condition in which a person is unable to provide for the basic needs for nourishment, personal or medical care, adequate shelter, adequate clothing, self-protection, or personal safety. Involuntary treatment is a serious intervention, and one that should only be used as a last resort. This bill would also ensure that the court is considering the contents of the medical record and that, during conservatorship proceedings, relevant testimony regarding medical history can be considered in order to provide the most appropriate and timely care. Our current model is leaving too many people suffering with significant psychotic disorders in incredibly unsafe situations, leading to severe injury, incarceration, homelessness, or death. 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.

- 2) **Background.** According to the Assembly Judiciary Committee analysis, the LPS Act was enacted in 1967 as part of a wave of reforms to deinstitutionalize and recognize the rights of individuals detained in state hospitals. State hospitals were used to detain individuals such as the mentally ill, disabled, and the elderly, sometimes for life, with minimal due process protections. The LPS Act was not intended 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 involuntarily committed to a psychiatric facility or subject to a conservatorship that could deny a person’s right to make basic life decisions. Recent efforts to reform LPS have attempted to make it easier to involuntarily detain mentally ill people as a means of getting them treatment.

- 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 argues conservatorship is sometimes the last resort to provide critical treatment to those who are gravely disabled. BCM states such individuals are the hardest to reach and often suffer from conditions that prevent them from being aware of the severity of their illness, and the current definition and interpretation of “gravely disabled” does not accurately reflect the realities being seen in communities and on the streets. BCM concludes this bill would also ensure an individual’s relevant medical history can be considered by the court in a uniform manner across the state, and ensure that a complete and accurate picture is presented in court when considering the very serious step of conservatorship.

Another cosponsor, the California State Association of Psychiatrists (CSAP), states 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 the Legislature have appropriated funds to build out California’s behavioral health infrastructure, reimbursements to providers, and expand the state’s workforce.

- 4) **Concerns.** According to CBHDA, counties would need the following investments to meet the requirements of this bill:
- a) Significantly increased workforce to provide treatment services, administration and oversight, quality assurance, and contracting on top of the most intense behavioral health workforce crisis our state has experienced.
  - b) Significantly increased residential and inpatient SUD treatment capacity for stepdown care options, including board and care facilities and housing to prevent conservatorships of a long duration. To be effective, SUD care often requires longer-term treatment (generally months or years), and relapse, which could be a justification in itself for conservatorship under this bill, is a common aspect of recovery over the long run. Additionally, involuntary long-term inpatient and residential care, particularly of those in locked settings, is not reimbursable through Medi-Cal or other payers.
  - c) A build-out of delivery networks to support this policy change. CBHDA reports such a build-out would take years, and new sustained dedicated state resources, beyond investments already made by the state through recent initiatives, would be needed. CBHDA contends that without new, ongoing funding to support the provisions of this bill, counties will be forced to reduce other services, including outpatient mental health and SUD services that help prevent individuals from destabilizing to the point of justice involvement, homelessness, and conservatorship, compounding the scope of the behavioral health crisis.

CAPAPGPC writes its members are charged with aiding the most vulnerable individuals in the state and understand the need to fully participate in solutions for the unhoused and those suffering from severe mental illness and SUD. However, CAPAPGPC notes significant concerns associated with an expansion of the definition of “grave disability” that are not addressed in current legislation. CAPAPGPC states California needs to significantly increase the capacity for residential and inpatient SUD treatment. CAPAPGPC argues this bill expands the population eligible for conservatorship without creating appropriate treatment options in placements. The only form of involuntary treatment for SUDs is incarceration. CAPAPGPC concludes that to provide conservatorship services effectively, the continuum of care must be sufficiently resourced to provide health, wellness, and recovery services.

- 5) **Opposition.** Opponents of this bill include counties, disability rights advocates, health advocates, organizations representing communities of color, advocates for homeless people, patients’ rights groups, mental health advocates, and advocates for people with SUDs. Opponents make numerous arguments against this bill, including:
- a) This bill expands the scope of individuals who can be committed involuntarily under the LPS Act, from 1% of the population with serious mental illness to approximately 5.5% of the population who have severe SUDs (based on national data published in 2022 by the U.S. Substance Abuse and Mental Health Services Administration).
  - b) California has no system of care for involuntary treatment outside of prisons; therefore, it is not clear where those with SUD who are declared gravely disabled would receive care.
  - c) This bill conflicts with the Americans with Disabilities Act, which mandates a right to treatment and services in the most integrated setting appropriate for people with mental health disabilities.
  - d) Coerced SUD treatment is less effective than longer term voluntary treatment, and more than twice as likely to result in overdose death after treatment ends.

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