

SENATE THIRD READING
SB 43 (Eggman)
As Amended September 5, 2023
Majority vote

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. Permits county, by adoption of a resolution of its governing body, to defer implementation of the changes in definition until January 1, 2026. Prohibits the existence of a mental health/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.

COMMENTS

- 1) *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. 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.
- 2) *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. 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. The CSA further recommended that counties should be allowed to provide express authority to include medication requirements in court-ordered assisted out-patient treatment 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.

- 3) *Other states' definitions.* A September 2020 document by the Treatment Advocacy Center, "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." Some examples of definitions include:
 - a) Arizona: "Grave disability" means a condition evidenced by behavior in which a person is likely to come to serious physical harm or serious illness because the person is unable to provide for their own basic physical needs;
 - a) 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;
 - b) 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;
 - c) 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;
 - d) 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.
- 4) *CARE Court.* SB 1338 (Umberg), 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.

- 5) *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. This proposed modernization does not include the LPS system or involuntary care. AB 531 (Irwin) and SB 326 (Eggman) of this legislative session are the bills before the Legislature this year representing these proposals. There are three key elements to the proposal:
- a) Authorize a general obligation bond of \$4.7 billion to fund 10,000 new residential treatment and house settings;
 - b) Modernize the Mental Health Services Act; and,
 - c) 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.

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. The author concludes this bill will help to provide dignity and treatment to those who are the most difficult to reach.

Arguments in 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.

Support if amended: The Sutter County Board of Supervisors (Sutter), in a support if amended position 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.

Arguments in Opposition

The California Behavioral Health Planning Council 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. Disability Rights California 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.

Oppose unless amended: The California Association of Alcohol and Drug Program Executives 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.

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.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Cost pressures of an unknown amount to county mental health programs for services provided to an expanded population of individuals who are defined as gravely disabled as a result of this bill (General Fund (GF), federal funds, Mental Health Services Fund (MHSF)). Costs to counties will likely be limited by the capacity of counties to provide services. According to CBHDA, the estimated per-person cost to treat a person with severe SUD 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) Cost pressures, potentially in the tens of millions of dollars or more, 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. However, costs to the Medi-Cal program will likely be limited by the capacity of counties to provide services.
- 3) Cost pressures of an unknown but potentially significant amount, to health plan and insurance premiums under CalPERS, as this bill could significantly increase the number of individuals who are involuntarily committed for treatment under the LPS Act. More than half or premium costs are paid for by the state (California Public Employees Health Fund).
- 4) Cost pressures 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). 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.
- 5) Cost pressures to fund county public guardians and conservators, potentially in the low hundreds of millions of dollars, as evidenced by the author's budget requests in FYs 2022-23 and 2023-24 for \$200 million per year to fund county public guardians and conservators to serve individuals deemed gravely disabled under the LPS Act. The requests were not funded

VOTES

SENATE FLOOR: 37-0-3

YES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Seyarto, Skinner, Smallwood-Cuevas, Umberg, Wahab, Wiener, Wilk

ABS, ABST OR NV: Caballero, Rubio, Stern

ASM HEALTH: 15-0-0

YES: Wood, Waldron, Aguiar-Curry, Arambula, Boerner, Wendy Carrillo, Flora, Vince Fong, Maienschein, McCarty, Joe Patterson, Rodriguez, Santiago, Villapudua, Weber

ASM JUDICIARY: 8-0-3

YES: Maienschein, Connolly, Dixon, Haney, Pacheco, Papan, Sanchez, McKinnor

ABS, ABST OR NV: Essayli, Kalra, Reyes

ASM APPROPRIATIONS: 11-0-5

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Papan, Pellerin, Weber, Wilson

ABS, ABST OR NV: Megan Dahle, Dixon, Mathis, Sanchez, Soria

UPDATED

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