Office of Senate Floor Analyses
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UNFINISHED BUSINESS

Bill No: SB 43
Author: Eggman (D), et al.
Amended: 9/8/23
Vote: 21

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

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

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

SENATE FLOOR: 37-0, 5/26/23
AYES: 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
NO VOTE RECORDED: Caballero, Rubio, Stern

ASSEMBLY FLOOR: 65-0, 9/14/23
(ROLL CALL NOT AVAILABLE)

SUBJECT: Behavioral health

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

DIGEST: This bill expands the definition of "gravely disabled," for purposes of involuntarily detaining an individual with a severe substance use disorder (SUD), or a co-occurring mental health (MH) disorder and a severe SUD, or chronic alcoholism that is unable to additionally provide for personal safety or necessary medical care. This bill deems statements of specified health practitioners, for purposes of an expert witness in a proceeding relating to the appointment or reappointment of a conservator, as not made inadmissible by the hearsay rule, as specified.

Assembly Amendments do the following:

1) Specify that those with chronic alcoholism also fall under the expanded "gravely disabled" definition;

2) Permit a county, by adoption of a resolution of its governing body, to elect to defer implementation of the expanded definition until January 1, 2026;

3) Add a specified process for an opinion offered by an expert witness in a proceeding relating to the appointment or reappointment of a conservator to not be made inadmissible by the hearsay rule, as specified;

4) Clarify that when an officer of a court investigates alternatives to conservatorship for an individual it includes individuals subject to proceedings for assisted outpatient treatment (AOT) and the Community Assistance, Recovery, and Empowerment (CARE) Act program; and,

5) Add to the Department of Health Care Services's (DHCS) data collection requirement for involuntary detentions the number of involuntary detentions subject to the expanded definition of "gravely disabled."

ANALYSIS:

Existing law:

Involuntary Commitment

1) Establishes the Lanterman-Petris-Short (LPS) Act to end the inappropriate, indefinite, and involuntary commitment of persons with MH disorders, developmental disabilities, and chronic alcoholism, as well as to safeguard a person's rights, provide prompt evaluation and treatment, and provide services in the least restrictive setting appropriate to the needs of each person. Permits involuntary detention of a person deemed to be a danger to self or others, or "gravely disabled," as defined, for periods of up to 72 hours for evaluation and

treatment, or for up-to 14 days and up-to 30 days for additional intensive treatment in county-designated facilities. [WIC §5000, et seq.]

2) Permits a conservator of a person, or the estate, or of both the person and the estate, to be appointed for someone who is gravely disabled as a result of a MH disorder or impairment by chronic alcoholism, and who remains gravely disabled after periods of intensive treatment. [WIC §5350]

3) Defines "gravely disabled," for purposes of evaluating and treating an individual who has been involuntarily detained or for placing an individual in conservatorship, as a condition in which a person, as a result of a MH disorder or impairment by chronic alcoholism, is unable to provide for his or her basic personal needs for food, clothing, or shelter. [WIC §5008]

4) Requires the phrase "a danger to himself or herself or others, or gravely disabled" throughout the LPS Act to refer also to the condition of being a danger to self or others, or gravely disabled, as a result of the use of controlled substances rather than by MH disorder. [WIC §5342]

5) Defines a "designated facility" or "facility designated by the county for evaluation and treatment" as a facility that is licensed or certified as a MH treatment facility or a hospital, as specified, by the Department of Public Health, and includes a licensed psychiatric hospital, a licensed psychiatric health facility, and a certified crisis stabilization unit. [WIC §5008]

6) Prohibits licensed general acute care hospitals or licensed acute psychiatric hospitals that are not county-designated facilities (NDFs) for purposes of involuntarily detaining a person; licensed professional staff of those hospitals; or, any physician providing emergency medical services in those hospitals from being civilly or criminally liable for involuntarily detaining a person for more than eight hours but less than 24 hours who is gravely disabled, using the same definition of "gravely disabled" as is used in the LPS Act. [HSC §1799.111]

7) Permits, until January 1, 2024, Los Angeles and San Diego counties and the City and County of San Francisco to place in a housing conservatorship, as specified, a person who is chronically homeless and incapable of caring for his or her own health and well-being due to serious MH/SUD, as specified. [WIC §5450, et seq.]

8) Permits DHCS, until January 1, 2027, to establish the Behavioral Health Continuum Infrastructure Program for the purpose of awarding competitive grants to qualified entities, as specified, to construct, acquire, and rehabilitate

real estate assets or to invest in needed mobile crisis infrastructure to expand the community continuum of behavioral health treatment resources to build new capacity or expand existing capacity for short-term crisis stabilization; acute and subacute care; crisis residential; community-based MH residential; SUD residential; peer respite; mobile crisis; community and outpatient behavioral health services; and other clinically enriched longer term treatment and rehabilitation options for persons with behavioral health disorders in the least restrictive and least costly setting. [WIC §5960, et seq.]

9) Enacts the CARE Act to help connect an individual with a court-ordered care plan for up to 12 months, with the possibility to extend for an additional 12 months, that provides a clinically appropriate, community-based set of services and supports that are culturally and linguistically competent, which include short-term stabilization medications, wellness and recovery supports, a CARE navigator, connection to social services, and a housing plan. [WIC §5970, et seq.]

Hearsay

10) Defines "hearsay evidence" as evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. Establishes the hearsay rule, which states that, except as provided by law, hearsay evidence is inadmissible. [EVID §1200]

This bill:

1) Expands the definition of "gravely disabled," for purposes of the LPS Act and NDFs, to include the inability of providing for personal safety or necessary medical care due to a severe SUD, or a co-occurring mental health disorder and a severe SUD, or chronic alcoholism.

2) Permits a county, by adoption of a resolution of its governing body, to elect to defer implementation of the expanded definition until January 1, 2026

3) Adds a specified process under which the statements of specified health practitioners, for purposes of an expert witness in a proceeding relating to the appointment or reappointment of a conservator, as specified, that are included in the medical record, are not made inadmissible under the hearsay rule, as specified.

4) Specifies that the provision in 3) above 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.

5) Permits the court to grant a reasonable continuance if an expert witness in a proceeding relied on the medical record and the medical record has not been provided to the parties or their counsel.

6) Adds services provided under AOT and the CARE Act to the provision requiring an officer of the court to investigate alternatives to conservatorship.

7) Adds to DHCS's data collection requirement for involuntary detentions the number of involuntary detentions subject to the expanded definition of "gravely disabled" for each of the following conditions:

   a) Danger to self;
   b) Danger to others;
   c) Grave disability due to a mental health disorder;
   d) Grave disability due to a severe substance use disorder; and,
   e) Grave disability due to both a MH disorder and a severe SUD.

Comments

1) *Author's statement.* According to the author, this bill modernizes the definition of "gravely disabled" within the LPS Act to provide for the needs, more accurately and comprehensively, of individuals experiencing a substantial risk of serious harm due to a MH/SUD. This bill includes under the definition of "gravely disabled" a condition in which a person is unable to provide for the basic needs for nourishment, personal or medical care, adequate shelter, adequate clothing, self-protection, or personal safety. Involuntary treatment is a serious intervention, and one that should only be used as a last resort. This bill also ensures that the court is considering the contents of the medical record and that, during conservatorship proceedings, relevant testimony regarding medical history can be considered in order to provide the most appropriate and timely care. Our current model is leaving too many people suffering with significant psychotic disorders in incredibly unsafe situations, leading to severe injury, incarceration, homelessness, or death. This bill will help to provide dignity and treatment to those who are the most difficult to reach.

2) *LPS Act involuntary detentions.* The LPS Act provides for involuntary detentions for varying lengths of time for the purpose of evaluation and treatment, provided certain requirements are met, such as that an individual is taken to a county-designated facility. Typically, one first interacts with the LPS Act through a 5150 hold initiated by a peace officer or other person authorized by a county, who must determine and document that the individual meets the

standard for a 5150 hold. A county-designated facility is authorized to then involuntarily detain an individual for up to 72 hours for evaluation and treatment if they are determined to be, as a result of a MH disorder, a danger to self or others, or gravely disabled. The professional person in charge of the county-designated facility is required to assess an individual to determine the appropriateness of the involuntary detention prior to admitting the individual. Subject to various conditions, a person who is found to be a danger to self or others, or gravely disabled, can be subsequently involuntarily detained for an initial up-to 14 days for intensive treatment, an additional 14 days (or up to an additional 30 days in counties that have opted to provide this additional up-to 30-day intensive treatment episode), and ultimately a conservatorship, which is typically for up to a year and may be extended as appropriate. (According to DHCS's website, the following counties offer additional up-to 30 days of intensive treatment: Butte, El Dorado, Fresno, Humboldt, Kern, Los Angeles, Mendocino, Merced, Monterey, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Diego, San Joaquin, San Mateo, Santa Barbara, Shasta, Tulare, Yolo and Sutter/Yuba.) Throughout this process, existing law requires specified entities to notify family members or others identified by the detained individual of various hearings, where it is determined whether a person will be further detained or released, unless the detained person requests that this information is not provided. Additionally, a person cannot be found to be gravely disabled if they can survive safely without involuntary detention with the help of responsible family, friends, or others who indicate they are both willing and able to help. A person can also be released prior to the end of intensive treatment if they are found to no longer meet the criteria or are prepared to accept treatment voluntarily.

3) *Support if amended*. The Sutter County Board of Supervisors agrees that many individuals with MH/SUDs fail to receive necessary medical treatment because of the narrow legal definition of the term "gravely disabled" but has concerns about the impact this bill will have on county resources and community medical resources, not just in Sutter but across the state. They argue this bill will mandate changes that include an increased workload on law enforcement, public guardians, courts, health care, and behavioral health workforce, which are already strained under a firehose of new laws and responsibilities aimed at mitigating the impact of homelessness in the state (such as CARE Court) without providing counties with the necessary resources to meet the new mandates. They are further concerned about the chronic underinvestment of ongoing support in public and private treatment resources, housing facilities, and public guardians to absorb millions of individuals into the health care system who will likely need expensive, long-term care. They support this bill if

amendments are made to guarantee sufficient funding to cover the increased costs necessary to humanely meet the needs of the population who will be impacted by the expanded definition.

4) *Concerns.* California State Association of Counties, Rural County Representatives of California, and the Urban Counties of California (counties) share in the urgency to bring about real change to address the needs of unhoused individuals with serious MH/SUD. Counties specialize in providing a full continuum of prevention, outpatient, intensive outpatient, crisis and inpatient, and residential MH/SUD primarily to low-income Californians who have Medi-Cal or are uninsured. Counties also have responsibility for involuntary commitments under the LPS Act. Counties expresses concerns in 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. Counties further state that this bill come at a time when state initiatives are attempting to significantly expand services—like the Medi-Cal mobile crisis services benefit, diversion from jails and state hospitals, CARE Court, and expanded services in schools and primary care.

   A coalition of disability rights groups expresses concerns and an alternative vision that addresses the real needs of Californians who are unhoused and living with severe and persistent mental illness. Their proposal relies on evidence-based practices supported by years of research from across the country and generally includes processes for requiring counties to offer permanent affordable housing to people with severe and persistent mental illness, and ensure that counties have necessary funding for this purpose; ensuring that people with severe mental illness have the support they need to stay in housing by requiring counties to offer Assertive Community Treatment and ensure counties have necessary funding for this purpose; and requiring counties to provide crisis services adhering to recovery-oriented principles by increasing state funding for crisis services, while allowing counties to choose crisis services based on community need and tie funding increases to fidelity with recovery-oriented principles.

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

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.

SUPPORT: (Verified 9/13/23)

Big City Mayors Coalition (co-source)
California State Association of Psychiatrists (co-source)
National Alliance of Mental Illness California (co-source)
Psychiatric Physicians Alliance of California (co-source)
AESynergy
Alameda County Families Advancing for the Seriously Mental Ill
Bay Area Council
California Contract Cities Association
California Medical Association
City of Bakersfield
City of Camarillo
City of Carlsbad
City of Eureka
City of Fairfield
City of Jurupa Valley
City of Lake Forest
City of Manhattan Beach
City of Moorpark
City of Murrieta
City of Norwalk
City of Palo Alto
City of Riverside
City of Redwood City
City of Rosemead
City of Santa Barbara
City of Santa Monica
City of South Gate
City of West Hollywood
City of Whittier Mayor Joe Vinatieri
Cloverdale Community Outreach Committee
County of Los Angeles Board of Supervisors
County of San Francisco Board of Supervisors
Families Advocating for the Seriously Mentally Ill
Family Advocates for Individuals with Serious Mental Illness in the Sacramento Region
Govern for California
Heart Forward
Housing that Heals
NAMI – Contra Costa County

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

OPPOSITION: (Verified 9/13/23)

API Equality-LA
ACLU California Action
Black Women for Wellness
Cal Voices
California Advocates for Nursing Home Reform
California Association of Alcohol and Drug Program Executives (unless amended)
California Association of Mental Health Patients' Rights Advocates
California Association of Social Rehabilitation Agencies
California Black Health Network
California Foundation for Independent Living Centers
California Mental Health Peer Support Organization
California Pan-Ethnic Health Network
California Public Defenders Association
California Psychological Association (unless amended)
California Rural Legal Assistance Foundation
California Society of Addiction Medicine (unless amended)
California Youth Empowerment Network
Caravan 4 Justice
Citizen's Commission on Human Rights
CLARE Matrix
Corporation for Supportive Housing
County of Monterey
Depression and Bipolar Support Alliance
Disabled Students Commission
Disability Rights California

Empowering Pacific Islander Communities
Hmong Cultural Center of Butte County
Kern County Board of Supervisors
Law Foundation of Silicon Valley
LGBTQ+ Collaboration
Lift Up Love Always
Mental Health American of California
National Health Law Program
Native American Health Center
Orange County Equality Coalition
Pacific Asian Counseling Services
Peers Envisioning and Engaging in Recovery Services
Project Amiga
Racial and Ethnic Mental Health Disparities Coalition
SEIU California (unless amended)
Sacramento Homeless Union
Sacramento Regional Coalition to End Homelessness
Safe Black Space
San Bernardino Free Them All
Senior Legislative Advocate Housing California
South Asian Network
Southeast Asia Resource Action Center
Western Center on Law and Poverty
Western Regional Advocacy Project

ARGUMENTS IN SUPPORT: The co-sponsors of this bill, largely psychiatrist groups, local governments, and family of those with MH conditions, state that despite all efforts to reduce the need for conservatorship the reality is that they can sometimes be the last resort to provide critical treatment to those who are gravely disabled. As such, the current definition and interpretation of gravely disabled does not accurately reflect the realities they are seeing in communities and on the streets. Additionally, supporters state they continue to see the struggles of community members that cycle in and out of hospitalizations, shelters, and jails without getting the concrete connections to needed medication and treatment. These aforementioned problems point to the fact that legislation like this bill is needed. Supporters argue the focus on a person's ability to provide for their own personal or medical care, or self-protection and safety, is important because it ensures that those who are truly vulnerable receive the help they need. Furthermore, supporters encourage support of the provision that ensures relevant history can be considered by the court in a uniform manner across the state, and

state that tools focused on acute symptoms are not suited for chronic and severe conditions that are seen on the streets. This bill will also ensure that a complete and accurate picture is presented in court when considering the very serious step of conservatorship. California currently has the largest concentration of homelessness in the United States, both in absolute and per-capita figures, and people experiencing homelessness in California are less likely to have access to shelter than in any other state. Supporters state an estimated 23% of people experiencing homelessness in California—approximately 40,000 individuals—suffer a severe MH/SUD and can no longer care for themselves. The Psychiatric Physicians Alliance of California (PPAC) argues that serious mental illnesses disrupt a person's ability to engage in activities of daily living that the rest of us take for granted, which is why in California 24% of emergency medical service encounters are for people with severe mental illness. Among those, nearly 40% of these are attributed to patients who are arguably gravely disabled. These individuals comprise the majority of a conservatively estimated 30% of homeless individuals. Many counties whose coroners track homeless deaths, such as Sacramento, Alameda, Los Angeles, and the City and County of San Francisco report a large uptick in deaths in the homeless population—in some cases 89% annual increases. PPAC states that clearly business as usual is no longer tolerable, as the above statistics will attest.

ARGUMENTS IN OPPOSITION: A coalition of opponents, largely comprised of disability rights and racial and ethnic minority group advocates, echo some of the arguments made by counties. The coalition further argues that voluntary, community-based treatment and services, as well as the expansion of choices, rights, and liberties for people living with MH disabilities are what the state needs. The coalition states that the Legislature should invest in evidence-based programs and services that are proven to meet the needs of Californians, and that the state should exercise greater oversight over local jurisdictions to ensure that unhoused people are actually offered and placed in appropriate affordable, accessible housing with voluntary supports. The coalition further points out that while the state has made investment, such as the Behavioral Health Continuum Infrastructure Project, that infrastructure will not be available soon enough to absorb additional involuntary detentions that will result if the expanded definition of "gravely disabled" is enacted.

The California Association of Alcohol and Drug Program Executives and the California Psychological Association are opposed unless it is amended to remove SUD from the definition of "gravely disabled." The California Society of Addiction Medicine (CSAM) is concerned that there is no mechanism within the legislation to assure adequate beds/space and treatment providers for individuals

who are conserved, and would propose an amendment to provide a system of providers and programs prior to this step. SEIU California is opposed unless this bill is amended to address the flaws of including those with SUDs within the definition and of not including adequate funding to ensure that counties can implement the provisions in this bill.

Prepared by: Reyes Diaz / HEALTH / (916) 651-4111
9/14/23 14:57:54

****** END ******