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SB 367 (Allen)
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SUBJECT

Mental health

DIGEST

This bill makes a number of changes to the Lanterman-Petris-Short (LPS) Act relating to the recommendation for, and the treatment of the person after the establishment of, a conservatorship.

EXECUTIVE SUMMARY

Current law establishes the LPS Act, which establishes the framework by which a person who is gravely disabled can be involuntarily detained and treated with the goal of alleviating the conditions that led to their grave disability. The LPS Act permits an individual who is gravely disabled to be involuntarily detained for evaluation and treatment over a series of "holds" of increasing duration, which may culminate in the establishment of a one-year conservatorship at the recommendation of the county conservatorship investigator.

Until 2024, the LPS Act defined "gravely disabled" as a condition in which a person, as a result of a mental health disorder, they were unable to provide for their basic needs for food, clothing, or shelter. In 2023, the Legislature enacted SB 43 (Eggman, Ch. 637, Stats. 2023), which expanded the definition of "gravely disabled" to include persons whose condition arises from a severe substance use disorder or co-occurring mental health disorder and substance use disorder, and persons who are, as a result of their condition, unable to provide for their basic personal needs for shelter or medical care. Counties are still in the process of implementing the SB 43 standard; implementation must be complete by January 1, 2026.

This bill leaves the definition of "gravely disabled" untouched while making a number of changes to the LPS Act which are intended to make it easier to place a person in, and increase the number of people placed under, LPS Act conservatorships. These changes

include expanding the categories of persons who can make conservatorship investigations, including certain private, rather than county-designated, medical professionals; allowing a person who made a conservatorship recommendation to appeal, to the superior court, an investigator's decision not to file a conservatorship petition; permitting, rather than requiring, a court to terminate a conservatorship when the county informs the court that a conservatee is no longer gravely disabled; and defining when a gravely disabled person is incapable of accepting voluntary treatment for purposes of making a conservatorship recommendation. The bill also imposes additional requirements on county conservatorship investigators, the contents of investigators' reports to the court relating to a conservatorship recommendation, and the privacy of documents under the Community Assistance, Recovery, and Empowerment (CARE) Act. The author has agreed to a number of amendments in response to stakeholder concerns.

This bill is sponsored by the California State Association of Psychiatrists and the Office of San Diego Mayor Todd Gloria and is supported by Families Advocating for the Seriously Mentally Ill and one individual. This bill is opposed by Cal Voices, California Peer Watch, the California State Association of Counties, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the California Youth Empowerment Network, CAMHPRO, the Citizens Commission on Human Rights, California Chapter, the County Behavioral Health Directors Association, the County of Sacramento, Disability Rights California, Mental Health America of California, Rural County Representatives of California, Urban Counties of California, and one individual. The Senate Health Committee passed this bill with a vote of 11-0.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the LPS Act, which provides for the involuntary detention for treatment and evaluation of people who are gravely disabled, as defined, or are a danger to self or others. (Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.)

2) Defines "grave disability" as follows:
    a) 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, shelter, personal safety, or medical care.
    b) A condition in which a person has been found incompetent to stand trial, as provided.
    c) A condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care; except this

definition does not apply in the initial 5150 hold. (Welf. & Inst. Code, § 5008(h)(1) & (2).)

3) Authorizes a county, by adoption of a resolution of its governing body, to elect to defer implementation of the definitions in 2)(a) and (c) until January 1, 2026, and instead use the definitions in place prior to the enactment of SB 43 (Eggman, Ch. 637, Stats. 2023), which are:
    a) A condition in which a person, as a result of a mental health disorder, is unable to provide for their basic personal needs for food, clothing, and shelter.
    b) A condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, or shelter; except this definition does not apply in the initial 5150 hold. (Welf. & Inst. Code, § 5008(h)(4).)

4) Defines the additional relevant terms:
    a) "Severe substance use disorder" means a diagnosed substance-related disorder that meets the diagnostic criteria of "severe" as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders.
    b) "Personal safety" means the ability of one to survive safely in the community without involuntary detention or treatment pursuant to the LPS Act.
    c) "Necessary medical care" means medical 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 that, if left untreated, is likely to result in serious bodily injury, as defined. (Welf. & Inst. Code, § 5008.)

5) Establishes a series of escalating detentions for involuntary treatment of a person who meets the criteria above, which may culminate in a renewable one-year conservatorship for a person determined to be gravely disabled. Specifically:
    a) 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 (known as a "5150 hold"). (Welf. & Inst. Code, § 5150.)
    b) A person who has been detained for 72 hours may be further 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. (Welf. & Inst. Code, § 5250.)
    c) After the 14 days, a person may be detained for an additional 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (Welf. & Inst. Code, §§ 5260, 5270.15.)

d) If, after 15 days of the 30-day period of intensive treatment, but at least 7 days before the expiration of the 30 days, the professional staff find that the person remains gravely disabled and remains unwilling or unable to accept treatment voluntarily, the facility may petition the superior court for approval for up to an additional 30 days of intensive treatment. (Welf. & Inst. Code, § 5270.70.)
e) At any time during the holds set forth in (a)-(d), the person in charge of the facility may recommend an LPS conservatorship for the person treated, provided the person being treated remains gravely disabled and remains unwilling or unable to accept voluntary treatment. If the county conservatorship investigator concurs with the assessment, the county must petition the superior court to establish an LPS conservatorship. The county must establish, beyond a reasonable doubt, that the person is gravely disabled. (Welf. & Inst. Code, §§ 5350 et seq.)

6) Requires the 14- and 30-day intensive treatment detentions to be certified after a hearing to determine whether probable cause exists for the continued detention, conducted by 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. (Welf. & Inst. Code, §§ 5254, 5254.1, 5256, 5256.1, 5256.2, 5256.4, 5256.5, 5270.15.)

7) Provides that a person in charge of a facility providing a 5150 hold or 14- or 30-day involuntary detention for intensive treatment may recommend an LPS conservatorship for the person treated, when the person being treated is unwilling or unable to accept voluntary treatment; if the county conservatorship investigator agrees, the county must petition the superior court to establish an LPS conservatorship. If the finder of fact finds, beyond a reasonable doubt, that the person is gravely disabled, a conservatorship of up to one year, with the possibility of a renewal as provided, shall be established. (Welf. & Inst. Code, §§ 5350 et seq.)

8) Permits a professional person in charge of an agency providing comprehensive evaluation or at a facility providing intensive treatment to recommend conservatorship for a person in their care if they determine that the person is gravely disabled and is unwilling to accept, or is incapable of accepting, treatment voluntarily, as specified. (Welf. & Inst. Code, § 5352.)

9) Permits a professional person in charge of an agency providing comprehensive evaluation or at a facility providing intensive treatment, or the professional person in charge of providing mental health treatment at a county jail, to recommend conservatorship for a person without the person being an inpatient at a facility providing comprehensive evaluation or intensive treatment if both of the following conditions are met:

a) The professional person or another professional person designated by them has examined and evaluated the person and determined that they are gravely disabled.
b) The professional person or another professional person designated by them has determined that future examination on an inpatient basis is not necessary for a determination that the person is gravely disabled. (Welf. & Inst. Code, § 5352.)

10) Provides that, if the officer providing conservatorship investigation concurs with a recommendation under 8) or 9), they shall petition the superior court in the county of residence of the patient to establish a conservatorship, or, if indicated, a temporary conservatorship. (Welf. & Inst. Code, § 5352.)

11) Requires the officer providing conservatorship investigation to investigate all alternatives to conservatorship, including, but not limited to, assisted outpatient treatment and CARE court, and recommend conservatorship to the court only if there are no suitable alternatives available.
    a) The officer shall render to the court a written report of investigation prior to the hearing, which shall include specified information.
    b) The facilities providing intensive treatment or comprehensive evaluation must disclose any records or information that may facilitate the investigation.
    c) If the officer providing the investigation recommends for or against conservatorship, the report shall set forth all available alternatives, including all less restrictive alternatives.
    d) A copy of the report shall be transmitted to the individual who originally recommended conservatorship, the person or agency, if any, recommended to serve as conservator, and the person recommended for conservatorship. (Welf. & Inst. Code, § 5354(a).)

12) Requires the court to appoint a public defender or other attorney for the proposed conservatee within five days after a petition is filed. (Welf. & Inst. Code, § 5365.)

13) Provides that a person for whom an LPS conservatorship is sought has the right to demand a court or jury trial on the issue of whether they are gravely disabled. (Welf. & Inst. Code, § 5350(d).)

14) Provides that, for purposes of establishing a conservatorship, a person is not "gravely disabled" if they can survive safely without an involuntary detention with the help of responsible family members or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, and shelter, and these persons have specifically indicated their willingness and ability to provide such help. This limitation does not apply to a person who was found incompetent to stand trial under Penal Code section 1370, as specified. (Welf. & Inst. Code, §§ 5008(h)(1)(B), 5350(e).)

15) Provides that the court or the jury must find that a person is gravely disabled beyond a reasonable doubt, and in the case of a jury trial, the verdict must be unanimous, in order for a conservatorship to be established. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235.)

16) Requires, within 10 days of the establishment of a conservatorship under the LPS Act, the development of an individualized treatment plan, unless treatment is specifically found to be not appropriate by the court.
    a) The treatment plan shall be developed by specified mental health professionals or the staff of specified health facilities.
    b) The person responsible for developing the treatment plan shall encourage the participation of the client and the client's family members, when appropriate, in the development, implementation, revision, and review of the treatment plan.
    c) The individualized treatment plan shall specify goals for the individual's treatment, the criteria by which accomplishment of the goals can be judged, and a plan for review of the progress of treatment.
    d) The goals of the treatment plan shall be equivalent to reducing or eliminating the behavioral manifestations of grave disability.
    e) If a treatment plan is not developed as required, the matter shall be referred to the court. (Welf. & Inst. Code, § 5352.6.)

17) Provides that, when a progress review determines that the goals of an individualized treatment plan have been reached, a person designated by the county shall so report to the court and the conservatorship shall be terminated by the court. If the conservator fails to report to the court that the person is no longer gravely disabled, the matter shall be referred to the court, as specified. (Welf. & Inst. Code, § 5352.6.)

18) Establishes the CARE Act, which establishes a voluntary process by which persons who meet the CARE criteria can receive supports and services through a court-supervised agreement or plan developed with a county behavioral health agency (CBHA). (Welf. & Inst. Code, div. 5, pt. 8, §§ 5970 et seq.)

19) Provides the following with respect to documents and evidence presented in connection with a CARE Act proceeding:
    a) All reports, evaluations, diagnoses, or other information filed with the court related to a CARE Act respondent's health shall be confidential, and the respondent may, at any time, petition the court for an order sealing these records or any other court records in a CARE Act proceeding.
    b) The fact that evidence is admitted in a CARE Act proceeding shall not be the basis for admission in any subsequent legal proceeding.
    c) Photographs, records, transcripts, other recordings of CARE Act proceedings, and testimony regarding proceedings under the CARE Act shall not be admissible in any subsequent legal proceeding except by motion by the

respondent, the CBHA, the public guardian, or the public conservator. (Welf. & Inst. Code, § 5976.5.)

This bill:

1) Conforms the written information that must be provided to a person admitted by a facility designated for Section 5150 evaluation and treatment to reflect the expanded definition of "gravely disabled" put in place in SB 43.

2) Provides that a Section 5150 assessment shall consider reasonably available, relevant information including, but not limited to, the history of a person's mental health records and the frequency of prior assessments provided under subdivision (c) of Section 5150. Assessments may be used to assist the professional person in charge of a facility designated by the county for evaluation and treatment, a member of the attending staff, or a professional person designated by the county in developing an aftercare plan for the individual if they have agreed to an aftercare plan and can be properly served without being detained under Section 5150.

3) Provides that a professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment may recommend, to the office providing conservatorship investigation for the person's county of residence, conservatorship for a person in their care who is gravely disabled if the professional person determines either of the following:
    a) The person is unwilling to accept voluntary treatment.
    b) The person has demonstrated an to inability accept voluntary treatment due to an apparent incapacity as described in Probate Code section 811.

4) Expands the circumstances under which a person may be recommended for a conservatorship when the person is not a patient in a facility that provides comprehensive evaluation or intensive treatment, permitting the individuals and entities listed in 5), below, to recommend a person for a conservatorship to the conservatorship investigator if both of the following conditions apply:
    a) The individual or entity has examined and evaluated the person and determined that they are gravely disabled.
    b) The individual or entity has determined that future examination on an inpatient basis is not necessary for a determination that the person is gravely disabled.

5) Provides that the persons listed below may make a recommendation to the conservatorship investigator pursuant to 4):
    a) The professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment, or their designee.
    b) The professional person in charge of providing mental health treatment at a county jail, or their designee.

   c) A physician who has provided treatment to the person being recommended for conservatorship for a condition that is contributing to that person being gravely disabled.
   d) A psychiatrist who has provided treatment to the person being considered for a conservatorship for a condition that is contributing to that person being gravely disabled.
   e) The county agency providing investigations for conservatorships of the person established under the Probate Code.
   f) The judicial officer overseeing a competency hearing pursuant to the Penal Code.
   g) The judicial officer overseeing the CARE Act process, as defined, following a finding, made after a consultation with a licensed psychiatrist or licensed psychologist who satisfied the conditions of subdivision (c) of Section 2032.020 of the Code of Civil Procedure, that the individual is unlikely to complete the CARE process due to grave disability.

6) Provides that, if the officer providing conservatorship investigation does not concur with a recommendation under 3) or 4), the party who provided the recommendation may appeal to the associated LPS court; if the court concurs with the appellant, the outcome of the appeal shall be limited to returning the case for a new investigation.

7) Provides that the Judicial Council may create a form to facilitate the appeal in 6), but in the absence of such a form, a pleading may be utilized.

8) Modifies the requirements for the development of a treatment plan for a person for whom an LPS Act conservatorship has been established, requiring the following:
   a) The treatment plan shall specify goals for stabilization, the individual's evidence-based treatment, and movement to a less-restrictive setting.
   b) The goals shall include criteria by which accomplishment of the goals can be judged and a plan for review of the progress of treatment.
   c) The goals of the treatment plan shall be equivalent to reducing or eliminating the behavioral manifestations of grave disability.
   d) After a treatment plan is developed, a copy of the plan shall be filed with the court by the Short-Doyle Act community mental health service, the staff of a facility operating under a contract to provide such services, the conservator, or the attorney of record for the conservatee.
   e) If a treatment plan does not meet the goals and criteria specified, the court shall order the treating agency to remedy any perceived defects within 10 days of the order; appropriate treatment shall continue while the treatment plan is being remedied.

9) Modifies the requirements for when a progress review determines that the conservatee is no longer gravely disabled, requiring the person designated by the county to both (1) file a copy of the progress report with the court to establish that

the goals have been met, and (2) request that the court terminate the conservatorship.

10) Provides that, if a conservatee cannot be located at any point during the conservatorship's one-year term, the court shall not terminate the conservatorship prior to the one-year mark without proof that the treatment plan goals have been achieved and the individual is no longer gravely disabled.
    a) The court shall consider the fact that the previous conservatorship was terminated early in a subsequent hearing under the LPS Act, provided that the hearing occurs within six months of the previous termination.
    b) The facts considered by the court in 8)(a) create a presumption at the hearing that the individual needs additional intervention.

11) Requires, in a county where the duty of investigation for conservatorships under the Probate Code and conservatorships under the LPS Act are split between separate agencies, referrals for LPS Act conservatorships that include the presence of a major neurocognitive disorder to be reviewed by both agencies to ensure the continuity of evaluations.

12) Requires, when an officer providing conservatorship investigation recommends against an LPS Act conservatorship, the officer to also include a recommended individualized plan for treatment and care drawn from the documented list of less-restricted alternatives.

13) Requires the conservatorship investigation officer to provide the report to the person recommended for conservatorship or their appointed counsel, whether the investigation officer recommends for or against an LPS Act conservatorship.

14) Provides that information filed with a CARE court related to the respondent's health may be used outside of CARE Act proceedings, such as in an LPS Act conservatorship petition, only with a court order or with the approval of the respondent.

COMMENTS

1. Author's comment

According to the author:

> A lack of coordination between different parts of the behavioral health system can lead to gaps in care and a confusing experience for individuals and families. 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. Building on the Legislature's prior reform efforts, SB 367 adds needed consistency, flexibility, and oversight to the

> Lanterman-Petris-Short Act to ensure vulnerable Californians do not continue to fall through the cracks of the behavioral health care system. By better establishing structure and coordination across the spectrum of professionals advancing the behavioral health continuum of care, this bill will minimize cycling of patients in and out of emergency rooms, ensure there is no wrong door for gravely disabled individuals to be referred to appropriate supports, and facilitate opportunities for patients to move to less restrictive settings.

2. The LPS Act conservatorship process

The LPS Act authorizes a series of involuntary detentions, which may culminate in the establishment of a year-long conservatorship, for a person who is found to be "gravely disabled." [1] The shifting definition of "gravely disabled" is discussed further in Comment 3, below.

The initial holds—lasting 72 hours, 14 days, and 30 days—may be certified by a health professional or reviewed by a hearing officer, but do not require judicial review unless the individual files a writ of habeas corpus.[2] A county may, after 15 days of the initial 30-day involuntary treatment period, seek a court order authorizing a second 30 days for further evaluation; the individual must be appointed by counsel in such a proceeding.[3]

To move forward with a conservatorship, the county's appointed conservatorship investigation must first conduct an investigation.[4] The recommendation for an investigation can come from a range of medical and mental health professionals in charge of the facility where the person is being treated.[5] In limited circumstances, the professional person may recommend that the conservatorship investigator initiate an investigation before the person has been admitted to, or while the person is not undergoing inpatient treatment at, the facility.[6] The office conducting the conservatorship investigation must also investigate all available alternatives to conservatorship, including assisted outpatient treatment (AOT)[7] and CARE court, and shall recommend conservatorship only if there is no suitable alternative available.[8] If

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[1] Welf. & Inst. Code, § 5008(h). The LPS Act also authorizes detention and involuntary treatment for persons who, as a result of a mental health disorder, are a danger to themselves or others (Welf. & Inst. Code, §§ 5150, 5250); this category is not pertinent to this analysis.
[2] *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541.
[3] Welf. & Inst. Code, § 5270.70.
[4] *Id.*, §§ 5351, 5352.
[5] *Id.*, §§ 5352, 5352.5.
[6] *Id.*, §§ 5352, 5352.5.
[7] *Id.*, div. 5, pt. 1, ch. 2, art. 9, §§ 5345 et seq.
[8] *Id.*, § 5354.

the investigator recommends a conservatorship, their report must also contain a recommendation of the person or agency to serve as the conservator.[9]

If the investigator decides to move forward with a conservatorship petition, the person for whom the conservatorship is sought has the right to demand a jury trial on the question of whether they are gravely disabled.[10] The county must establish that the person is gravely disabled beyond a reasonable doubt, and the jury verdict must be unanimous.[11]

Once a person has been found to be gravely disabled for purposes of establishing an LPS Act conservatorship, the court must enter the order appointing a conservator; within 10 days of the appointment, an individualized treatment plan must be developed by specified mental health professionals pursuant to the Short-Doyle Act.[12] If the goals of the individualized treatment plan are reached and the person is no longer gravely disabled, a person designated by the county shall report these facts to the court and the conservatorship shall be terminated.[13] Otherwise, the conservatorship terminates automatically after one year of the appointment of the conservator, except that it may be renewed if the court determines that the person is still disabled, as specified.[14]

3. <u>The loss of rights from, and the due process protections in the establishment of, LPS Act conservatorships</u>

As explained by the California Supreme Court:

> The liberty interests at stake in a conservatorship proceeding are significant. A conservatorship can result in involuntary confinement, which entails a massive curtailment of liberty in the constitutional sense. A person found gravely disabled also faces stigmatization and the loss of personal rights like the freedom to drive, vote, enter contracts, and decide about medical treatment. This potential deprivation of liberty implicates due process concerns.[15]

To protect the fundamental liberties and freedoms of Californians and to ensure that individuals are afforded due process before they lose those liberties and freedoms, the

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[9] *Id.*, §§ 5354, 5355. The person recommended to serve as conservator must promptly notify the court whether they are willing to serve as conservator; if not, the investigator must promptly recommend another person to serve. In the event no person is willing to serve, the court shall appoint the public guardian as the conservator. (*Id.*¸§ 5354.5.)
[10] *Id.*, § 5350.
[11] *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235.
[12] Welf. & Inst. Code, § 5352.6.
[13] *Ibid.*
[14] *Id.*, § 5361.
[15] *Conservatorship of K.P.* (2021) 11 Cal.5th 695, 717 (cleaned up).

LPS Act imposes a number of substantive and procedural requirements before a conservatorship can be established, including:

- The subject of a conservatorship petition has the right to counsel, including court-appointed counsel if they otherwise cannot afford counsel, in the conservatorship proceeding.[16]
- The subject of a conservatorship petition has the right to a jury trial on the question of whether they are gravely disabled.[17]
- The finder of fact must find that the subject of the petition is gravely disabled beyond a reasonable doubt; if the finder of fact is a jury, the verdict must be unanimous.[18]
- A conserved person may, twice during their conservatorship, petition for a rehearing on whether they are gravely disabled; the conserved person has the burden of proving that they are not gravely disabled, but only under the preponderance of the evidence standard.[19]
- The conserved person retains the right to court-appointed counsel in any appeal from the conservatorship order.[20]
- An LPS Act conservatorship terminates automatically after one year; if the conservator believes the person is still gravely disabled, they must petition the court for the conservatorship to be renewed.[21] The same right to counsel, standard of proof, and jury protections apply in a hearing on whether to extend the conservatorship.[22]

These layers of protections represent the efforts of the Legislature and the California Supreme Court to "vigilantly guard[] against erroneous conclusions in conservatorship proceedings."[23]

4. <u>The changing definition of "gravely disabled" and implementation concerns</u>

Until 2024, the definition of "gravely disabled" was limited to persons who were unable to provide for their basic personal needs for food, clothing, and shelter as a result of a mental health or, in the case of holds other than a 5150 hold, as a result of impairment by chronic alcoholism.[24]

In 2023, however, the Legislature passed, and the Governor signed, SB 43 (Eggman, Ch. 637, Stats. 2023), which expanded the definition of "gravely disabled" in two main ways. First, SB 43 added severe substance abuse disorders, or co-occurring mental

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[16] Welf. & Inst. Code, § 5365.
[17] Welf. & Inst. Code, § 5350(d).
[18] *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235.
[19] Welf. & Inst. Code, § 5364; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541.
[20] *Conservatorship of Ben C.*, *supra*,40 Cal.4th at p. 542.
[21] Welf. & Inst. Code, § 5361.
[22] *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at p. 542.
[23] *Ibid.*
[24] Former Welf. & Inst. Code, § 5008(h).

health and severe substance use disorders, to the list of conditions a person could be suffering and be gravely disabled. Second, SB 43 expanded the list of limitations the mental health, substance abuse, or co-occurring mental health and substance abuse disorder, or chronic alcoholism, could cause to render a person gravely disabled, to include the person's basic personal needs for personal safety or medical care. SB 43 took effect on January 1, 2024, but gave counties the option to delay implementation of the new definition until January 1, 2026.[25]

At the time, many stakeholders raised concerns about SB 43's expansion of the "gravely disabled" definition on the grounds that the LPS system was already overburdened and over capacity, and that there is no system of care in California to involuntarily treat persons suffering from severe substance abuse disorders.[26] The California Association of Public Administrators, Public Guardians, and Public Conservators, writing in opposition to the bill, states that these concerns are still present:

> County conservator offices are already struggling to implement SB 43 with no identified state resources or implementation guidance. Despite the crucial role public conservators play in addressing mental health crises and homelessness, it is regrettable that the state has not created nor invested in a robust state and county partnership of PC services to match the increased expectation of services for individuals covered by expanded expectations. The Public Conservators continue to provide support to increasing numbers of individuals in the health care system who will need care under these new laws and proposals. Local programs do not receive any targeted state funding to support their operations, which significantly hinders these programs' ability to provide adequate staffing levels. There is a placement shortage across the state that impacts placement and services. Additional changes to the Lanterman-Petris-Short (LPS) Act must be accompanied by state resources needed to address the workload.

5. <u>This bill makes a number of changes to the LPS Act and the CARE Act</u>

This bill modifies the LPS Act and the CARE Act to accomplish the author and sponsors' goal of making the LPS and CARE processes more efficient. The details are discussed in this Comment. The author has agreed to a number of amendments in response to stakeholder concerns, as well as amendments to increase the clarity of the bill and restore a provision that was inadvertently removed. These amendments are discussed below and a full mock-up of the amendments is set forth as Appendix A to this analysis.

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[25] *See* Welf. & Inst. Code, § 5008(h)(4).
[26] *E.g.*, Assem. Com. on Judiciary, Analysis of Sen. Bill No. 43 (2023-2024 Reg. Sess.) as amended Jun. 30. 2023, pp. 18-19.

a. Form changes

This bill modifies statutory forms that must be provided to a person who has been admitted to a facility for evaluation and treatment on a 5150 hold. The changes are intended to reflect the changes to the law that will take effect in all counties on January 1, 2026. Some stakeholders have expressed concerns that the added language is overly technical for a form that is intended to be user-friendly for laypeople.

b. Expanded 5150 assessment definition

This bill expands the definition of an "assessment" for purposes of determining whether a person should be placed on a 5150 hold. The new language requires the individual conducting the assessment to consider reasonably available information about the person, including the history of their mental health records and the frequency of prior 5150 assessments. The bill also specifies that an assessment may be used to assist with the development of an aftercare plan for a person who can be served without being detained on a 5150 hold.

The California State Association of Counties, the County Behavioral Health Directors Association, the Rural County Representatives of California, and Urban Counties of California argue:

> [T]his added criteria will have the unintended consequence of making it more challenging and difficult to prove that counties and designated individuals have in fact considered all reasonably available and relevant information regarding the historical course of a person's background in making the decision to place an individual on a hold. In fact, most of the information required under this bill would not be readily accessible to the county, but could be used as a legal challenge to a hold. In order to ensure that the initial intent of due process within LPS Conservatorship remains, SB 367 (Allen) must remove the new definition it proposes for a 5150 assessment.

c. Expanded meaning of "incapable of accepting voluntary treatment"

The LPS Act currently permits a professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment to recommend a conservatorship for a person under their care to the county's conservatorship investigator if two conditions are met: (1) the person is gravely disabled, and (2) the person is unwilling to accept, or incapable of accepting, voluntary treatment.[27] This bill recasts the "incapable" element of prong (2) to state that "the person has demonstrated an inability to accept voluntary treatment due to an apparent incapacity as described in Section 811 of the Probate Code."

[27] Welf. & Inst. Code, § 5352.

Probate Code section 811 (Section 811) sets forth the conditions under which a person may be declared to lack the capacity to make legally binding decisions, such as entering into a contract or getting married, in a proceeding under the Probate Code. Section 811 lists a number of types of reduced mental functions that may be evidence of incapacity, and specifies that a reduced mental function may be evidence of lack of capacity only if it "significantly impairs the person's ability to understand and appreciate the consequences of [their] actions with regard to the type of act or decision in question,"[28] and that the court determining incapacity "may take into consideration the frequency, severity, and duration of periods of impairment."[29]

The sponsors of the bill argue that this provision will clarify when a gravely disabled person should be considered incapable of voluntarily consenting to treatment. Some of the bill's opponents, however, argue that the language makes the concept of incapacity more confusing, not less. Additionally, they argue that Section 811 is too broad, giving rise to due process concerns. The author has agreed to amend this provision to eliminate the reference to Section 811, so that the provision will read "The person has demonstrated an inability to accept voluntary treatment due to apparent incapacity." The amendments will also restore references to grave disability as a result of mental health disorder or impairment by chronic alcoholism.

d. Conservatorship referrals from private physicians and psychiatrists

Under current law, only persons designated by the county—a professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment, or the professional person in charge of providing mental health treatment at a county jail—can recommend a person for conservatorship if the person is not an inpatient at a facility providing comprehensive evaluation or intensive treatment.[30] Additionally, these designated individuals may recommend a person for conservatorship to the public guardian's conservatorship investigator only if two conditions are met: (1) the professional person or their designee has examined and evaluated the person and determined that they are gravely disabled, and (2) the professional person or their designee has determined that future examination on an inpatient basis is not necessary for a determination that the person is gravely disabled.[31] If the investigator concurs with the recommendation, they must file an LPS Act conservatorship petition in the superior court.[32]

This bill expands the lists of persons who may recommend a conservatorship for a person not currently in an inpatient facility for evaluation or treatment, to include (1) a physician who has provided treatment to the person being recommended for

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[28] Prob. Code, § 811(b).
[29] *Id.*, § 811(c).
[30] Welf. & Inst. Code, § 5352.
[31] *Ibid.*
[32] *Ibid.*

conservatorship that is contributing to that person being gravely disabled, and (2) a psychiatrist who has provided treatment to the person being recommended for conservatorship that is contributing to that person being gravely disabled. The author and sponsor argue that these provisions will be beneficial for gravely disabled persons who are being cycled through 5150 holds but not cared for further.

The opponents of the bill have a number of objections to this provision. These include:

- Arguing that the provisions are overbroad because there are no temporal limits on when the physician or psychiatrist provided treatment to the person—the condition, or the medical professional's conclusions about the person's condition, could be out of date, leading to an inappropriate conservatorship recommendation.
- Arguing that allowing non-county-affiliated medical professionals will increase the counties' costs and burdens, by forcing county employees to deal with conservatorship recommendations from individuals who are not trained in, or familiar with, the LPS Act or its requirements.
- Arguing that these additions threaten the due process protections baked into the LPS Act. The LPS Act's sequence of escalating holds is intended to give the detained person time to adjust to treatment and stabilize to the point that they can agree to voluntary treatment; an LPS Act conservatorship is the option of last resort, generally only after several weeks' worth of treatment has failed to bring the person back from their gravely disabled status. Under this bill's provisions, however, a person unaffiliated with the county could recommend that a person go straight to a conservatorship—a severe loss of rights—without any apparent attempt to stabilize the person beforehand. And while the conservatorship investigator still has to conduct an investigation, another provision of the bill, discussed in (f), below, would allow a recommending party to appeal the investigator's determination, further shifting the balance of power over private individuals' lives from the county to other private actors.

In response to these concerns, the author has agreed to narrow the scope of the private practitioner referrals. First, the amendments will add a temporal limitation: the physician or psychiatrist must have provided treatment to the person within the past year. Second, the amendments clarify that the treatment must have been for the condition that is causing the grave disability, not a condition that merely contributes to it.

e. CARE Court conservatorship referral

A CARE court judge currently has the authority, at any time in the CARE process, to order a CARE court participant to submit to an evaluation under the LPS Act to ensure the participant's safety.[33] If the person refuses to comply with the order, the person can

[33] *Id.*, §§ 5959, 5206.

be detained for up to 72 hours and, based on the result of the evaluation, released and referred for voluntary care, certified for intensive treatment under the LPS Act, or recommended for an LPS Act conservatorship.[34] Additionally, if a person fails to successfully complete a CARE plan, that failure creates a presumption in an LPS Act proceeding brought within the next six months

This bill would also permit a CARE court judge to recommend a person for a conservatorship if the court makes a finding that the person is unlikely to complete the CARE process due to grave disability; this finding can be made only after the judge has consulted with a licensed psychiatrist or licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders.[35]

Opponents of the bill express several concerns about this provision. Many disagree that this provision is necessary, given that a CARE court judge can already refer a CARE court participant for an evaluation. They also express concern about the requirement consult with a qualified psychiatrist or psychologist; the bill is not clear about how this consultation would come about, whether the communication would be on an *ex parte* basis, or whether the CARE court participant would even know the consultation was taking place.[36] Additionally, a coalition of the bill's opponents argue that, "By allowing a referral to conservatorship at any point during the CARE process, SB 367 will undermine the CARE Act by not allowing the process to play out to determine if the respondent needs a higher level of care."

The author has agreed to delete this provision and instead add a new provision to the CARE Act that will allow a CARE court judge, after the entry of a CARE agreement or CARE plan, to refer a CARE respondent to an evaluation under the LPS Act after a CARE agreement or CARE plan has been put in place, if the court believes the respondent appears gravely disabled and therefore no longer able to participate in the CARE process. This provision requires the court, before making the referral, must hold a noticed hearing at which the CBHA and respondent are given an opportunity to be heard. If the court finds that the respondent appears gravely disabled and that the respondent is refusing to accept the evaluation voluntarily, the court can refer the respondent for an evaluation pursuant to Section 5206 of the Welfare and Institutions Code without requiring a petition from the county.

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[34] *Id.*, § 5206.

[35] *See* Code Civ. Proc., § 2032.020(c).

[36] This provision appears to be modeled in part after a provision permitting a Probate court, where a Probate Code conservatorship has already been established, to hold an evidentiary hearing into the question of whether the conservatee has a treatable mental illness; this procedure, however, specifies that the conservatee and their counsel must be present, and the due process implications are different in the context of a person who is already in a conservatorship. (*See* Welf. & Inst. Code, § 5350.5.)

f. Conservatorship investigation recommendation appeal

The LPS Act grants the public guardian's conservatorship investigator the exclusive right to file an LPS Act petition, based on the results of their investigation.[37] This limitation is "consistent with the objectives of the LPS Act":[38]

> In order to protect the liberty and dignity of persons threatened with confinement in a mental health facility, the Legislature has determined that the safeguards attending Probate Code conservatorships are insufficient, and has required that such restraints may be imposed only after complying with LPS. A vital element of this protective framework is the vesting in a public official to investigate the need for a conservatorship which may lead to commitment, and the discretion to file a petition in light of that of that investigation.[39]

This bill would give the party who recommended the person for the conservatorship the right to "appeal" the determination to the court that received the conservatorship investigation report; if the court agrees with the appellant, the court may return the case to the investigator for a new investigation. The bill permits the Judicial Council to facilitate this process, but if no form is created, a party may use a pleading.

Opponents object to this provision on several grounds. The California State Association of Public Administrators, Public Guardians, and Public Conservators expresses concern that, even if the standard of review was clarified, this provision "could lead to a judge, albeit well meaning, substituting their judgment for the conclusions of the investigating officer who has examined all the evidence," which they compare to a judge ordering a district attorney's office to file criminal charges on a matter for which the district attorney does not believe there is probable cause. Opponents also have concerns about how this provision would affect the public guardian's already-strained finances.

The author has agreed to remove this provision.

g. Modified treatment plan and judicial review

Current law requires, within 10 days of the establishment of an LPS Act conservatorship, for the county mental health service to establish an individualized treatment plan for the conservatee.[40] The conservatee and their family, where appropriate, are encouraged to participate in developing the plan, and the plan must include specific goals for the conservatee's treatment and the criteria by which

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[37] Welf. & Inst. Code, § 5352.
[38] *Conservatorship of Lee C.* (2017) 18 Cal.App.5th 1072, 1086.
[39] *Id.* at pp. 1086-1076 (internal quotation marks omitted).
[40] Welf. & Inst. Code, § 5352.6. If the court specifically finds that a plan is not appropriate, there is no requirement to create a treatment plan. (*Ibid.*)

accomplishment of the goals can be judged. The overall goal for the plan is to reduce or eliminate the behavioral manifestations of grave disability.[41]

This bill requires every treatment plan to include goals for stabilization, the individual's evidence-based treatment, and movement to a less-restrictive setting, and requires the plan to be filed with the court. If the court determines that the treatment plan does not meet the goals and criteria required, the court shall order the treating agency to remedy any perceived defects within 10 days of the order.

Opponents to the bill have expressed concern about the requirement to address "stabilization" in the treatment plan in connection with the judicial oversight piece. These opponents are concerned that courts do not have the expertise to determine whether the stated plan for stabilization—a clinical term—is adequate or not, and are concerned that allowing courts to reject plans will cost the counties unnecessary time and resources. Opponents also note that a provision of this section that sets forth consequences for the failure to develop a treatment plan has been removed. The author has agreed to add this provision back into the statute.

h. Restrictions on terminating a conservatorship

An LPS Act conservatorship lasts for a maximum of one year;[42] if, at the end of the year, the person is still gravely disabled, the county must petition to have the conservatorship renewed and the person has a right to a jury trial on whether they are still gravely disabled.[43] If the person meets their treatment goals before the one-year automatic termination period, the county must report that fact to the court and the court must terminate the conservatorship.[44]

This bill imposes restrictions on when a conservatorship can be terminated prior to the one-year automatic termination. First, the bill specifies that when the county determines that the conserved person is no longer gravely disabled, the county must file a report with the court establishing that the treatment goals and request that the court terminate the conservatorship. Second, the bill prohibits the termination of a conservatorship if the conserved person cannot be located during the conservatorship unless there is proof that the person is no longer gravely disabled. Third, in circumstances when a conservatorship is administratively terminated because the person cannot be located, the bill requires the court to consider the fact that the conservatorship was terminated "early" in a subsequent LPS Act proceeding that occurs within six months of the termination and establishes a presumption that the person needs additional intervention.

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[41] *Ibid.*
[42] *Id.*, §§ 5352.6, 5361; *e.g.*, *Conservatorship of K.P.*, *supra*, 11 Cal.5th at pp. 709-710.
[43] Welf. & Inst. Code, § 5361.
[44] *Id.*, § 5352.6.

Opponents of the bill argue that "[t]his change could lead to undue delays in lifting conservatorships in violation of state and federal laws." For example, the bill's provision requiring a county to "request" that the court terminate a conservatorship when the county determines that an individual is no longer gravely disabled seems to contemplate the possibility that the court could decline to do so. In such a case, a person would remain in a conservatorship even though their treating medical professionals believe the conservatorship is no longer appropriate. Moreover, the bill does not spell out under what circumstances a court can reject a request to terminate a conservatorship or how the county would go about seeking reconsideration; nor does it indicate that the conserved person's counsel would have any involvement, even though the conserved person's legal status is at issue. This provision thus does seem likely to keep people in conservatorships after they are no longer gravely disabled, depriving them of their significant liberty interests without any clear due process.

The author has agreed to modify the provision relating to the termination of a conservatorship when the conservatee becomes no longer gravely disabled prior to the one-year mark. Under these amendments, when the county determines that the conservatee's goals have been reached and the conservatee is no longer gravely disabled, the county will be required to notify the court and provide (1) the progress review establishing that the conservatee is no longer gravely disabled, and (2) the care coordination plan for the person after the termination of the conservatorship. Upon receipt of these two documents, the court shall terminate the conservatorship; the court may also refer the person to AOT or CARE court as a step-down measure.

The author has also agreed to amend the provisions relating to the subsequent consideration of a conservatorship that was terminated prior to the one-year mark. These amendments provide that, if a county is aware that a proposed conservatee was in a conservatorship that terminated before the one-year mark when filing a petition for a new LPS Act conservatorship, the county must include that information in its petition; this information may then be considered as part of the proposed conservatee's relevant history under Section 5008.2 of the Welfare and Institutions Code.

i. Probate Code conservatorship investigation and coordination

Current law requires the county conservatorship investigator to investigate all alternatives to conservatorship and, in its report to the court, set forth all of the available alternatives.[45]

This bill requires (1) the investigator to specifically investigate the alternative of a Probate Code conservatorship, with or without major neurocognitive disorder powers; (2) in a county where Probate Code conservatorships are investigated by a separate entity than LPS Act conservatorships, both the Probate Code conservatorship investigator and the LPS Act conservatorship investigator to review the conservatorship

[45] Welf. & Inst. Code, § 5354.

"to ensure the continuity of evaluations"; and (3) for the report to the court to discuss a Probate Code conservatorship as an alternative to the LPS Act conservatorship.

Stakeholders have expressed concern that the proposed coordination between the Probate Code investigators and LPS Act investigators is neither realistic nor an efficient use of county resources.

j. Investigation report and transmittal

As noted above, the conservatorship investigator is required to set forth the less-restrictive alternatives to an LPS Act conservatorship in its report to the court, whether or not the investigator recommends an LPS Act conservatorship.[46] A copy of the report must be transmitted to the party who originally recommended the conservatorship and the person proposed to be conserved.[47]

This bill requires the investigator's report, when the investigator recommends against an LPS Act conservatorship, to include a recommended individualized plan for treatment and care drawn from the list of less-restrictive alternatives.[48] Additionally, because this bill expands the list of persons who may recommend a conservatorship—discussed above in Comment 5.d—the bill would require the report to be provided to a private physician or psychiatrist who made the recommendation, even though the report likely contains the person's confidential medical, financial, and personal information. The bill also specified that the report must be transmitted to the recommending person whether or not the investigator recommends an LPS Act conservatorship.

Opponents of the bill express concern about both of these provisions. First, with respect to the requirement that an investigator set forth an individualized treatment plan within their report, opponents argue that (1) recommending treatment is not within the expertise of the investigator, and (2) the suggested treatment plan would serve no purpose because the court in such a case has no basis for requiring the person to seek the proposed, or any other, treatment. Second, providing the conservator's report to physicians or psychiatrists who are not county employees or designated by the county could violate the proposed conservatee's right to privacy.[49] Records obtained in the course of providing services under the LPS Act are confidential,[50] and while information can be disclosed by an investigator as needed during the course of the proceedings,[51] it is unclear that there is a basis for providing this confidential information to a private physician or psychiatrist after the fact.

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[46] *Ibid.*
[47] *Ibid.*
[48] *Ibid.*
[49] *See* Cal. Const., art. I, § 1.
[50] Welf. & Inst. Code, § 5328.
[51] *Ibid.*

k. Use of CARE court reports

Reports, evaluations, diagnoses, and other information filed with a CARE court related to a respondent's health are confidential.[52] This bill provides that these CARE records may be shared only by a court order or with the consent of the respondent; and that such information may be used outside a CARE Act proceeding for a purpose such as an LPS Act conservatorship only with a court order. These provisions are intended to clarify when and how a conservatorship investigator can obtain CARE Act records.

6. Arguments in support

According to one of the bill's sponsors, the California State Association of Psychiatrists:

> [T]here is no avenue for outpatient psychiatrists and emergency physicians to submit a petition to the county Public Guardian/Conservator's Office (PC) for consideration of a behavioral health conservatorship (LPS conservatorship), even where they believe the criteria is met. Similarly, when an individual's needs exceed the capabilities of a probate conservatorship, the county agency investigating probate conservatorship cannot request an LPS conservatorship investigation.
>
> Under current law, for patients who are assessed as needing an evaluation, a county approved facility may concur that a person is gravely disabled and unable to provide for their basic needs. In these circumstances, this determination may lead to the submission of an LPS conservatorship investigation request to the county PC. It is at the discretion of the PC investigator to decide whether to submit a petition for a LPS conservatorship, and they are not required to determine whether the person has demonstrated an inability to follow-through with previous plans. If no LPS conservatorship petition is sought, regardless of the reason, the county PC is not required to identify less restrictive interventions that may support the individual. This often leaves the referring physician with no alternative county options for the patient who they have already deemed unable to meet basic needs.
>
> In the circumstance of a behavioral health LPS conservatorship being granted, the treating facility – and the treating facility alone – is required to complete an Individualized Treatment Plan (ITP) within 10 days. This ITP's purpose is to help the person transition from grave disability to independence. Currently, there are no requirements as to how facilities should set appropriate goals. This has led to marked variability in the quality of these ITPs, and with inconsistent results after the LPS conservatorship is terminated.

[52] Welf. & Inst. Code, § 5976.5.

To remedy these deficiencies, SB 367 will (1) create defined 5150 assessment criteria to minimize quick release post-assessment, (2) allow additional treatment providers and judicial officers to refer individuals to the PC to ensure gravely disabled individuals who cycle through emergency departments are referred regardless of whether they are currently in an inpatient psychiatric facility, (3) require PC consideration of a patient's ability to follow through with a verbalized willingness to self-care and include less restrictive alternatives that can meet patient needs in their report to the referring party should they determine that an LPS conservatorship petition will not be filed, and (4) create defined next steps for patients in their ITP following a determination on the appropriateness of an LPS Conservatorship petition.

7. Arguments in opposition

According to the California State Association of Counties, the County Behavioral Health Directors Association, the Rural County Representatives of California, and the Urban Counties of California:

Throughout the text of the bill, the court's oversight of due process, the conservatorship investigator, and the county behavioral health treatment providers' responsibilities are blurred and conflated, placing judges and public guardians in inappropriate roles to either make or oversee treatment decisions that should be left to clinicians.

Finally, the bill seeks to restrict counties' ability to lift a conservatorship when they have lost contact with a person, forcing the counties and courts to retain their jurisdiction, potentially for years, and in a way that is not tied to the most relevant and current conditions, thereby upending the very due process protections enshrined in the US Constitution and at the core of the LPS Act.

This bill seeks to remedy a fundamental challenge with the initial establishment of the LPS Act as a significant unfunded mandate, however, without addressing the root cause of the inconsistencies cited by the author and sponsors. As the bill is written, there will be a massive increase of individuals who will be conserved under LPS due to the bill's expansion of both who may be involuntarily detained, for how long, and who may make conservatorship referrals. By expanding the scope of LPS through new and varied referral sources, this will lead to increased demand for unfunded county assessments, evaluations, court-related, and treatment costs, in addition to public guardian staff. These changes would be unsustainable as additional unfunded mandates. It is imperative that the bill creates a tie-in which triggers state reimbursements for the necessary services and costs associated with the increased caseload of LPS Conservatorships that SB 367 will create.

While the author's desire is to ensure greater consistency in how counties perform assessments and to further increase referral sources into conservatorship, these changes to the statute will not result in the desired changes, primarily due to the absence of state funding to support the LPS Act overall to ensure more uniform implementation, or to ensure counties can staff up and pay for the expanded demand for assessments, detentions, and conservatorships. Without that needed change to the Act, along with additional investments to expand the local response system and services tied to this legislation, providers, consumers, families, and other core stakeholders will remain frustrated and confused as to why these policy changes are not realized.

SUPPORT

California State Association of Psychiatrists (co-sponsor)
San Diego Mayor Todd Gloria (co-sponsor)
Families Advocating for the Seriously Mentally Ill
One individual

OPPOSITION

Cal Voices
California Peer Watch
California State Association of Counties
California State Association of Public Administrators, Public Guardians, and Public Conservators
California Youth Empowerment Network
CAMHPRO
Citizens Commission on Human Rights, California Chapter
County Behavioral Health Directors Association
County of Sacramento
Disability Rights California
Mental Health America of California
Rural County Representatives of California
Urban Counties of California
One individual

RELATED LEGISLATION

Pending legislation:

SB 331 (Menjivar, 2025) defines "mental health disorder" within the LPS Act and makes a number of changes to the CARE Act. SB 331 is pending before this Committee and is set to be heard on the same date as this bill.

AB 416 (Krell, 2025) authorizes an emergency physician, as defined, to take, or cause to be taken, a person into custody for a 5150 hold. AB 416 is pending before the Assembly Judiciary Committee.

Prior legislation:

SB 43 (Eggman, Ch. 637, Stats. 2023) among other things, expanded the definition of "gravely disabled," for purposes of involuntarily detaining an individual under the LPS Act, to include an individual with a severe substance use disorder (SUD), or a co-occurring mental health disorder and a severe SUD, or chronic alcoholism, who is unable to provide for food, clothing, shelter, personal safety or necessary medical care.

SB 1227 (Eggman, Ch. 619, Stats. 2022) modified the LPS Act to allow a second 30-day intensive treatment hold for a person who has been certified as "gravely disabled" on top of the existing 3-day, 14-day, and 30-day treatment holds; the second 30-day treatment hold must be approved by a court pursuant to a petition filed by the professional in charge of the intensive treatment, as specified.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)

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Appendix A

The amendments to the bill are set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make. This mock-up includes only Sections 3 and 4 of the existing bill, and the new Section 7, because those are the only sections being amended. Additions are in bold and underline; deletions are in strikethrough.

SEC. 3. Section 5352 of the Welfare and Institutions Code is amended to read:

5352. (a) A professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment may recommend conservatorship for a person in their care who is gravely disabled **as a result of mental health disorder or impairment by chronic alcoholism** to the officer providing conservatorship investigation for the person's county of residence prior to their admission as a patient in such a facility if the professional person determines either of the following:

(1) The person is unwilling to accept voluntary treatment.

(2) The person has demonstrated an inability to accept voluntary treatment due to ~~an~~ apparent incapacity ~~as described in Section 811 of the Probate Code~~.

(b) An individual or entity described in subdivision (c) may recommend conservatorship for a person without that person being an inpatient in a facility that provides comprehensive evaluation or intensive treatment if both of the following conditions apply:

(1) The individual or entity has examined and evaluated the person and has determined that they are gravely disabled **as a result of mental health disorder or impairment by chronic alcoholism**.

(2) The individual or entity has determined that future examination on an inpatient basis is not necessary for a determination that the person is gravely disabled.

(c) The conservatorships described in subdivision (b) may be recommended by any of the following individuals or entities:

(1) The professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment, or their designee.

(2) The professional person in charge of providing mental health treatment at a county jail, or their designee.

(3) A physician who has provided treatment **within the past year** to the person being recommended for conservatorship for ~~a~~ **the** condition that is **causing the grave disability** ~~contributing to that person being gravely disabled~~.

(4) A psychiatrist who has provided treatment **within the past year** to the person being recommended for conservatorship for ~~a~~ **the** condition that is **causing the grave disability** ~~contributing to that person being gravely disabled~~.

(5) The county agency providing investigations for conservatorships of the person established pursuant to Article 1 (commencing with Section 1800) of Chapter 1 of Part 3 of Division 4 of the Probate Code.

(6) The judicial officer overseeing a competency hearing, as authorized by Penal Code section 1370.01.

~~(7) The judicial officer overseeing the CARE process, as defined in Section 5971, following a finding, made after consultation with a licensed psychiatrist or licensed psychologist who satisfies the conditions of subdivision (c) of Section 2032.020 of the Code of Civil Procedure, that the individual is unlikely to complete the CARE process due to grave disability.~~

(d) ~~(1) If the officer providing conservatorship investigation does not concur with a recommendation, the party who provided the recommendation may appeal to the associated LPS court. If the court concurs with the appellant, the outcome of the appeal shall be limited to returning the case for a new investigation. A form may be created by the Judicial Council to facilitate this process, but in the absence of that form, a pleading may be utilized pursuant to this subdivision.~~

~~(2)~~ If the officer providing the conservatorship investigation concurs with a recommendation provided pursuant to this section, they shall petition the superior court in the county of residence of the patient to establish conservatorship.

(e) If temporary conservatorship is indicated, that fact shall be alternatively pleaded in the petition. The officer providing conservatorship investigation or other county officer or employee designated by the county shall act as the temporary conservator.

SEC. 4. Section 5352.6 of the Welfare and Institutions Code is amended to read:

5352.6. (a) (1) Within 10 days after conservatorship of the person has been established under the provisions of this article, an individualized treatment plan shall be created unless treatment is specifically found not to be appropriate by the court.

(2) The treatment plan shall be developed by the Short-Doyle Act community mental health service, the staff of a facility operating under a contract to provide such services

in the individual's county of residence, or the staff of a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide inpatient psychiatric treatment. **If a treatment plan is not developed as provided herein then the matter shall be referred to the court by the Short-Doyle Act community mental health service, or the staff of a facility operating under a contract to provide such services, or the conservator, or the attorney of record for the conservatee.**

(3) The person responsible for developing the treatment plan shall encourage the participation of the client and the client's family members, when appropriate, in the development, implementation, revision, and review of the treatment plan.

(4) (A) The individualized treatment plan shall specify the following goals:

(i) Stabilization.

(ii) The individual's evidence-based treatment.

(iii) Movement to a less-restrictive setting.

(B) All of the goals in this paragraph shall include the criteria by which accomplishment of the goals can be judged and a plan for review of the progress of treatment.

(5) The goals of the treatment plan shall be equivalent to reducing or eliminating the behavioral manifestations of grave disability.

(6) After a treatment plan is developed, a copy shall be filed with the court by the Short-Doyle Act community mental health service, the staff of a facility operating under a contract to provide such services, the conservator, or the attorney of record for the conservatee.

(7) (A) If a treatment plan does not meet the goals and criteria specified in this subdivision, the court shall order the treating agency to remedy any perceived defects within 10 days of the order.

(B) Appropriate treatment shall continue while the treatment plan is being remedied.

(8) The conservator is responsible for ensuring the completion and utilization of the treatment plan at the conservatee's treatment settings.

(b) **(1)** If the progress review determines that the goals have been reached and the conservatee is no longer gravely disabled, a person designated by the county shall ~~do both of the following:~~

~~(1) File a copy of the~~ **report to the court that the conservatee is no longer gravely disabled and file copies of the** progress **review establishing that the conservatee is no longer gravely disabled and the care coordination plan for post-termination** ~~report with the court to establish that the goals have been met~~.

(2) ~~Request that the court terminate the conservatorship~~ **Upon receipt of the report and documents in paragraph (1), the court shall terminate the conservatorship**.

(3) Upon termination of the conservatorship, the court may refer the individual to assisted outpatient treatment pursuant to Section 5346, if the county offers assisted outpatient treatment, or to CARE court pursuant to Section 5978.

(c) If the conservator fails to report to the court that the conservatee is no longer gravely disabled, as provided in this section, then the matter shall be referred to the court by the Short-Doyle Act community mental health service, the staff of a facility operating under a contract to provide such services, or the attorney of record for the conservatee.

(d) (1) If a conservatee cannot be located at any point during the conservatorship's one-year term, the court shall not terminate the conservatorship prior to the one-year mark without proof that the treatment plan goals have been achieved and the individual is no longer gravely disabled.

(**e**~~2~~) (**1**~~A~~) **When a county filing a petition under this Part is aware that the person who is the subject of a petition was, within the prior six months, a conservatee in a conservatorship that was terminated before the automatic one-year termination date, the county shall set forth this information, including the circumstances that gave rise to the termination, in its petition.** ~~The court shall consider the fact that the previous conservatorship was terminated early in a subsequent hearing under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000)), provided that the hearing occurs within six months of the previous termination.~~

(**2**~~B~~) **Information submitted pursuant to paragraph (1) shall be considered pursuant to Section 5008.2**~~The facts considered by the court in subparagraph (A) create a presumption at that hearing that the individual needs additional intervention~~.

[…]

SEC. 7 Section 5795.4 is added to the Welfare and Institutions Code:

(a) At any point after the entry of a CARE agreement pursuant to subdivision (a) of Section 5977.1, or the adoption of a CARE plan pursuant to paragraph (2) of subdivision (d) of Section 5977.1, the court may order the respondent to an evaluation pursuant to Section 5206 without a petition from the county if the court believes the respondent has become gravely disabled.

(b) Before issuing an order pursuant subdivision (a), the court must do all of the following:

(1) Set a status review hearing.

(2) Order the county to include in its report setting forth information on whether the respondent is, as a result of a mental disorder or severe substance use disorder, gravely disabled.

(3) Determine, after the hearing at which the county behavioral health agency and the respondent are given an opportunity to be heard, that the respondent appears to be gravely disabled as a result of a mental disorder or severe substance use disorder and has refused or failed to accept evaluation voluntarily.