SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 43 (Eggman)
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AWM

SUBJECT

Behavioral health

DIGEST

This bill expands the definition of "gravely disabled," for purposes of involuntarily detaining an individual or establishing a conservatorship under the Lanterman-Petris-Short (LPS) Act, as a condition in which a person, as a result of a mental health or substance use disorder, is at substantial risk of serious harm or is currently experiencing serious harm, as defined, to their physical or mental health; and creates an exception to the rule against hearsay that allows an expert witness to rely on the out-of-court statements of medical professionals, as defined, who treated the person who is the subject of the conservatorship petition.

EXECUTIVE SUMMARY

The California Legislature has long sought to achieve the right balance between providing for the safety and well-being of those suffering from severe mental illness, those who are seen as gravely disabled or at risk of harming themselves or others, and recognizing their inherent due process and civil rights. In the 1960s, the Legislature enacted the LPS Act to develop a statutory process under which individuals in mental health crisis could be involuntarily held and treated in a mental health facility in a manner that safeguarded their constitutional rights. Under the LPS Act, a person is "gravely disabled" if they, as a result of a mental disorder, are unable to provide for their basic personal needs for food, clothing, or shelter.

The LPS Act's involuntary treatment and conservatorship framework was intended to be the measure of last resort in a robust program of mental health and wraparound services provided by counties. For a variety of reasons, many of the other services were never established or never properly funded.

Today, California is facing a mental health crisis. Without a range of community mental health services, many Californians suffering from mental health issues end up in jails and prisons, or in cycles of involuntary detention under the LPS Act and homelessness. Additionally, many, including the State Auditor, have found that there are insufficient resources for persons who are already in the LPS Act system, resulting in, for example, waits of over a year for high-level care or continuing care in the broader mental health system.

None of the stakeholders weighing in on this bill argues that our current system is working. To the contrary, there is a remarkable consensus that the system is broken and in dire need of reform. The disagreement is over what should be done to improve mental health care in the state.

This bill seeks reform in the form of (1) expanding who may be involuntarily detained and placed in a conservatorship under the LPS Act, and (2) allowing a person to be placed in an LPS Act conservatorship on the basis of medical hearsay.

First, this bill expands the definition of "gravely disabled," for purposes of who can be involuntarily detained and treated against their will under the LPS Act. The bill's expanded definition includes a condition in which a person, as a result of a mental health disorder or substance use disorder, or both, is at substantial risk of serious harm or is currently experiencing serious harm to their physical or mental health. "Serious harm" means significant deterioration, debilitation, or illness due to the person's failure to satisfy the need for nourishment, attend to necessary personal or medical care, utilize adequate shelter, be appropriately or adequately clothed,[1] or attend to self-protection or safety, and "a substantial risk of serious harm" may be evidenced by the fact that the person previously suffered adverse effects to their mental health disorder or substance abuse disorder, their condition is again deteriorating, they are unable to understand their disorder, and their decisionmaking is impaired due to their lack of insight into their disorder. The LPS Act does not currently cover persons suffering from substance use disorder, so this definition represents a significant expansion in terms of who may be involuntarily treated and the nature of the services that counties will have to offer.

Second, this bill provides that, when a medical expert relies on a proposed LPS Act conservatee's medical records in a proceeding to appoint or reappoint a conservator under the LPS Act, the statements of specified health professionals in the medical records are not hearsay. By doing so, the bill limits the application of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*), which held that experts may not testify about case-specific hearsay about which the expert has no independent knowledge. With this hearsay exception, a person could be placed under an LPS Act conservatorship without any of their actual treating medical professionals testifying at the hearing. The author

[1] The author has agreed to amendments to remove the reference to being "appropriately" clothed.

has agreed to amendments to clarify which medical professionals' statements may be provided as hearsay by a medical expert.

This bill is sponsored by the Big City Mayors Coalition, the California State Association of Psychiatrists, NAMI – CA, and the Psychiatric Physicians Alliance of California, and is supported by numerous organizations and entities, including several cities, and approximately 340 individuals. This bill is opposed by numerous organizations, including Disability Rights California, the San Francisco Public Defender, and groups dedicated to expanding mental health treatment access, and approximately 28 individuals. This bill passed out of the Senate Health Committee with a vote of 12-0.

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 or a danger to self or others. (Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.)

2) Defines "grave disability" as a condition in which a person, as a result of a mental disorder, or impairment by chronic alcoholism, is unable to provide for the person's basic personal needs for food, clothing, or shelter. (Welf. & Inst. Code, § 5008(h)(1)(A), (2).)
    a) When applying the definition of a mental disorder for purposes of, among other things, a 14-day involuntary hold, the historical course of the person's medical disorder be considered; "historical course" is defined to include evidence presented by persons who have provided, or are providing, mental health or related support services to the patient, the patient's medical records as presented to the court, including psychiatric records, or evidence voluntarily presented by family members, the patient, or any other person designated by the patient. (Welf. & Inst. Code, § 5008.2.)

3) Establishes a series of escalating detentions for involuntary treatment of a person who meets the criteria above, which may culminate in a renewable 1-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.)

4) Establishes the following review procedures for the 14-day and 30-day intensive treatment detentions set forth in 3(b) and 3(c):
   a) The person certified must be notified that they are entitled to a certification review hearing to determine whether probable cause exists for the continued detention related to the mental disorder or chronic alcoholism, or, in lieu of the hearing, to seek judicial review by habeas corpus. (Welf. & Inst. Code, §§ 5254, 5254.1, 5270.15.)
   b) A certification review hearing must be held within four days of the date the person was certified for additional treatment unless postponed at the request of the attorney or advocate for the person certified. (Welf. & Inst. Code, § 5256.)
   c) The certification review must be conducted by either a court-appointed commissioner or referee, or a certification review hearing officer who must be either a state-qualified administrative law hearing officer or a medical professional as specified. (Welf. & Inst. Code, § 5256.1.)
   d) At the hearing, evidence in support of the certification must be presented by a person designated by the director of the facility in which the person is being detained, and a district attorney or county counsel may, at their discretion, also present evidence. (Welf. & Inst. Code, § 5256.2.)
   e) The person certified must be present at the hearing unless they, with the assistance of counsel or an advocate, waive that right. The person may represent themselves or be represented by counsel, and may present evidence in their defense. (Welf. & Inst. Code, § 5256.4(a).)
   f) The hearing must be conducted in an impartial and informal manner and the person conducting the hearing is not bound by the rules of procedure or evidence applicable in judicial proceedings. All evidence relevant to establishing that the person certified is or is not gravely disabled must be admitted and considered. (Welf. & Inst. Code, § 5256.4(b), (d).)
   g) If the person conducting the hearing finds, at the conclusion of the hearing, that there is no probable cause to believe that the person certified is gravely disabled, then the person certified may no longer be involuntarily detained. (Welf. & Inst. Code, § 5256.5.)
   h) As an alternative to the hearing procedures above, the person certified may seek judicial review by a writ of habeas corpus. The person certified has the right to counsel, appointed by the county if necessary, in the habeas proceeding. The person must be released if the court finds that the person is not gravely disabled or a danger to themselves or others, had not been advised of the option of voluntary treatment, had accepted voluntary

treatment, or the facility providing the intensive treatment is not equipped to do so. (Welf. & Inst. Code, § 5276.)

5) Provides that, at the end of a 30-day detention for intensive treatment, unless the facility proceeds pursuant to 6), the person must be released unless:
    a) The person agrees to receive further treatment on a voluntary basis;
    b) The patient is the subject of a conservatorship petition, as set forth in 6); or
    c) The patient is a petition for postcertification treatment of a dangerous person pursuant to article 6 of part 1 of division 5 of the Welfare and Institutions Code. (Welf. & Inst. Code, § 5270.35(b).)

6) Provides that, if after 15 days of the 30-day hold of intensive treatment it appears that the person remains gravely disabled and unwilling or unable to accept treatment voluntarily, the professional person in charge of the facility may file a petition in the superior court for the county in which the facility providing intensive treatment is located, seeking approval for up to an additional 30 days of intensive treatment.
    a) Upon the filing of a petition, the court shall appoint counsel for the detained person if they do not already have counsel.
    b) The court shall deny the petition or order an evidentiary hearing be held within two days.
    c) The court may order up to 30 days of intensive treatment upon making certain findings, including that the facility providing intensive treatment is equipped and staffed to provide the required treatment and the person is likely to benefit continued treatment. (Welf. & Inst. Code, § 5270.70.)

7) Provides that a person in charge of a facility providing a 5150 hold or 14- or 30-day involuntary detention for intensive treatment for 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. (Welf. & Inst. Code, §§ 5350 et seq.)
    a) If, while a petition for a full LPS conservatorship is pending, the investigating officer recommends a "temporary conservatorship" until the petition is ruled on, the court may establish a temporary conservatorship of no more than 30 days, until the point when the court makes a ruling on whether the person is "gravely disabled." (Welf. & Inst. Code, § 5352.1.)

8) If a conservatorship referral was not made during the 14-day period and it appears during a 30-day period that the person is likely to require the appointment of a conservator, the referral for a conservatorship must be made to allow sufficient time for conservatorship investigation and other related procedures.

a) If a temporary conservatorship is obtained pursuant to the pending petition, the temporary conservatorship period must run concurrently with a 30-day intensive treatment period, not consecutively.
b) The maximum involuntary detention period for gravely disabled persons pursuant to the 5150 hold and the 14-day and 30-day intensive treatment detentions is 47 days. (Welf. & Inst. Code, § 5270.55.)

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

10) 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).)

11) 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).)

12) 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.)

13) 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. (Evid. Code, § 1200(a).)

14) Establishes the hearsay rule, which states that, except as provided by law, hearsay evidence is inadmissible. (Evid. Code, § 1200(b), (c).)

15) Provides exceptions to the hearsay rule for specified out-of-court statements. (*E.g.*, Evid. Code, div. 10, ch. 2, §§ 1220 et seq.)

16) Authorizes an expert witness, when so designated by the court, to offer testimony in the form of an opinion that is:
a) Related to a subject that is sufficiently beyond the common experience that the opinion of an expert would assist the trier of fact; and
b) Based on matter (including the expert's special knowledge, skill, experience, training, and education) perceived by or personally known to the expert or made known to the expert at or before the hearing, whether or not

> admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion on that subject matter, unless the expert is precluded by law from using such matter as a basis for the opinion. (Evid. Code, § 801.)

17) Allows an expert witness—including an expert witness in an LPS trial—to rely on hearsay in reaching their opinion, but prohibits the expert from relating in testimony any case-specific hearsay if those facts were not elicited as non-hearsay at trial or fall within a hearsay exception. (*People v. Sanchez* (2016) 63 Cal.4th 665, 685-686; *Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1283-1284.)

This bill:

1) Adds, for purposes of the LPS Act, a definition of "gravely disabled," as a condition that will result in substantial risk of serious harm or is currently experiencing serious harm to the physical or mental health of the person due to all of the following:
    a) A mental health disorder.
    b) A substance use disorder, including alcohol use disorder.

2) Defines "serious harm," for purposes of 1), as significant deterioration, debilitation, or illness due to the person's inability to do one or more of the following:
    a) Satisfy the need for nourishment.
    b) Attend to necessary personal or medical care.
    c) Seek adequate shelter.
    d) Be appropriately or adequately clothed.
    e) Attend to self-protection or personal safety.

3) Permits a substantial risk of serious harm to the physical or mental health of the person, for purposes of 1), to be evidenced by the fact that the person previously suffered adverse effects to their physical or mental health in the historical course of their mental health or substance use disorder and their condition is again deteriorating.

4) Provides that the existence of a mental health disorder or substance use disorder diagnosis does not alone establish a substantial risk of serious harm to the physical or mental health of a person under 1).

5) Requires a court to consider a person's inability to appreciate the nature of their disorder and that their decisionmaking is impaired due to their lack of insight into their mental health diagnosis when evaluating a substantial risk of serious harm under 1).

6) Incorporates the new definition into the statute immunizing certain medical facilities for detaining persons under the LPS Act, as specified.

7) Creates an exemption to the rule against hearsay by stating that, for purposes of an expert witness's opinion in a proceeding relating to the appointment or reappointment of a conservator under the LPS Act, the statements of a health practitioner or a social worker included in the medical record are not hearsay.

8) Defines "health practitioner" for purposes of 7) to include:
    a) A physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, clinical counselor, or any other person licensed under Division 2 of the Business and Professions Code (which includes chiropractors, massage and music therapists, and veterinarians).
    b) An emergency medical technician I or II, paramedic, or any other person certified to perform emergency medical services under Division 2.5 of the Health and Safety Code.
    c) A psychological assistant, who is unlicensed but in preparation for licensure as a psychologist, provided the person is registered as a "registered psychological associate," is under the supervision of a licensed psychologist, and certain other conditions are met.
    d) A marriage and family therapist trainee, who is unlicensed but currently enrolled in a master's or doctoral degree program that would qualify the person for licensure.
    e) An unlicensed associate marriage and family therapist
    f) A licensed social worker.

9) Provides that 7) does not prevent a party from calling as a witness the author of any statement contained in the medical record, whether or not the author was relied on by the expert witness.

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

COMMENTS

1. Author's comment

According to the author:

> This bill would modernize the definition of "gravely disabled" within the Lanterman-Petris-Short Act to provide for the needs more accurately and comprehensively of individuals experiencing a substantial risk of serious harm due to a mental health or substance use disorder. SB 43 would include under the definition of "gravely disabled" a condition in which a person is unable to

> provide for the basic needs for nourishment, personal or medical care, adequate shelter, adequate clothing, self-protection, or personal safety. Involuntary treatment is a serious intervention, and one that should only be used as a last resort. This bill would also ensure that the court is considering the contents of the medical record and that, during conservatorship proceedings, relevant testimony regarding medical history can be considered in order to provide the most appropriate and timely care. Our current model is leaving too many people suffering with significant psychotic disorders in incredibly unsafe situations, leading to severe injury, incarceration, homelessness, or death. While well-intentioned, the dated criteria in LPS no longer work for today's needs and have contributed to the mass incarceration of those with mental illness. This bill will help to provide dignity and treatment to those who are the most difficult to reach.

2. The LPS Act process, alternatives, and pending measures

The LPS Act was deliberately narrowly tailored to apply only to persons in crisis; it was "not intended to provide involuntary treatment to those who are mentally ill but not in danger to themselves or others who are able to provide for their own basic needs."[2] The involuntary commitment and conservatorship process under the LPS Act is summarized thoroughly in the Senate Health Committee's analysis of this bill, which is incorporated herein by reference. To summarize briefly: 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" as a result of a mental health disorder or substance abuse disorder.[3]

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.[4] A county may, after 15 days of the initial 30-day detention, seek a court order authorizing a second 30 days; the individual must be appointed by counsel in such a proceeding.[5] If a county proceeds with a petition to place a person into a conservatorship, the individual must also be represented, and the finder of fact must find that a person is gravely disabled beyond a reasonable doubt.[6] Persons who are involuntarily detained or placed into a conservatorship under the LPS Act do not automatically lose their right to reject antipsychotic medication;[7] instead,

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[2] Auditor for the State of California, Report 2019-119, *Lanterman-Petris-Short Act: California Has Not Ensured That Individuals With Serious Mental Illnesses Receive Adequate Ongoing Care* (Jul. 2020), p 21 (State Auditor's Report).
[3] Welf. & Inst. Code, § 5008(h). The LPS Act also authorizes detention and involuntary treament 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.
[4] *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541.
[5] Welf. & Inst. Code, § 5270.70.
[6] *Ben C.*, *supra*, 40 Cal.4th at p. 541.
[7] Welf. & Inst. Code, §§ 5325.2, 5357.

antipsychotic medication can be administered over a patient's objection only if a court specifically finds that the individual is incompetent to give informed consent.[8]

Since the beginning of the century, the Legislature has implemented programs intended as less restrictive alternatives to involuntary confinement under the LPS Act. In 2002, the Legislature passed Laura's Law, which created a pilot program for assisted outpatient treatment (AOT).[9] AOT allows courts and behavioral health departments to create a court-ordered treatment plan for persons who, as a result of a mental illness, are substantially deteriorating and/or are in need of assistance to present a relapse that would render them gravely disabled for purposes of a 5150 hold.[10] Laura's Law has been made permanent and is available across the state except in counties that specifically opted out of providing AOT.[11] And last year, the Legislature enacted the CARE Court program, through which individuals with schizophrenia or other psychotic disorders who were identified by behavioral health professionals or family members could participate in the creation of a court-ordered treatment plan.[12] Both programs are intended to catch individuals with mental health problems before their conditions deteriorate to the point of crisis.

The Legislature is also currently considering another bill brought by this author to require the creation of a real-time online database to collect, aggregate, and display information about the availability of beds in facilities dedicated to treating persons with mental health disorders and substance abuse disorders.[13] As set forth in the author's statement in this Committee's analysis for SB 363:

> While California has seen a small increase in the number of psychiatric beds since 2012, we are still falling well below nationally established standards of 40-60 beds per 100,000 adults and have 30% fewer beds than we had in 1995. Finding beds in this environment is hard. Hospital emergency departments continue to be frontline responders in behavioral health crises, and often board patients until an open bed in an appropriate facility is found. The backdrop here is that 16% of California adults live with serious mental illness, and 60% of those individuals do not receive any treatment whatsoever.[14]

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[8] *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1320-1322.
[9] *See* AB 1421 (Thomson, Ch. 1017, Stats. 2002); Welf. & Inst. Code, § 5345.
[10] Welf. & Inst. Code, § 5346.
[11] *See* AB 1976 (Eggman, Ch. 140, Stats. 2020).
[12] SB 1338 (Umberg, Ch. 319, Stats. 2022). The first cohort of counties are scheduled to implement CARE Court no later than October 1, 2023. (Welf. & Inst. Code, § 5970.5(a).)
[13] SB 363 (Eggman, 2023).
[14] Sen. Comm. on Judiciary, analysis of Sen. Bill No. 363 (2023-2024 Reg. Sess.) as amended Feb. 8, 2023, p. 4.

At this time, there is also a dearth of data on the implementation of the LPS Act. Beginning in 2025, the Department of Health Care Services will be required to collect data and annually publish a report setting forth information including the number of persons detained on 72-hour, 14-day, and 30-day holds in each county; the number of persons for whom conservatorships are established in each county; the number of persons admitted or detained on multiple holds, in tiers of once, two to five times, six to eight times, and more than eight times; and the waiting periods for an evaluation or treatment services for people detained and held.[15]

3. California's mental health crisis

Virtually all of the stakeholders involved in this bill agree that California is experiencing a mental health crisis. The Big City Mayors Coalition describes "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" and argue that "[w]e have reached a crisis point of seriously mentally ill Californians languishing in our communities." The California Medical Association agrees, stating that "[w]e are in the midst of a worsening behavioral health crisis and the failure to address this definition has led to tragedy for more and more families desperate to get help for their loved ones."

The City of Murrieta describes the ongoing struggle:

> Almost daily, City of Murrieta staff work with individuals who are living on the streets experiencing significant struggles with their mental health needs that are not meeting the current criteria for grave disability. By not fitting these criteria, they are essentially falling through the services gap and must get worse before they meet the current definition of grave disability to get access to care. This delay in care caused by the current grave disability definition is causing a decline in the mental and physical health of these vulnerable individuals and is leading to a reduction in quality of life and life expectancy. Often, the City's homeless services team sees homelessness occur when a family is unable to access the support needed for their family member, and, eventually this inability to get their loved ones into appropriate care leads to homelessness. By expanding the definition of gravely disabled, those with the highest barriers may be able to get appropriate mental health care, and/or families may have access to support for loved ones needing more care than is currently provided.
>
> Cities are on the front lines of addressing homelessness and need additional tools and resources to end the current homelessness crisis. The City of Murrieta recognizes that for unsheltered individuals with severe behavioral health needs, access to a comprehensive care system can be

[15] Welf. & Inst. Code, § 5402.

> essential to address their homelessness. In Murrieta's experience, tending to the needs of those with the most severe behavioral health needs has consumed hundreds of hours of staff time from the homeless outreach team…It's often a circular, recurring, very well-intended effort, but never truly getting to the root cause of the issue to help the individual in a meaningful way to improve their quality of life.

4. This bill significantly expands the definition of "gravely disabled" for purposes of determining who may be involuntarily detained and ordered to a conservatorship under the LPS Act

This bill expands the definition of "gravely disabled," for purposes of who can be involuntarily detained and treated against their will under the LPS Act, to include a condition in which a person, as a result of a mental health disorder or substance use disorder, or both, is at substantial risk of serious harm or is currently experiencing serious harm to their physical or mental health. The bill defines "serious harm" to mean significant deterioration, debilitation, or illness due to the person's failure to satisfy the need for nourishment, attend to necessary personal or medical care, utilize adequate shelter, be adequately clothed, or attend to self-protection or safety. The bill also provides that a substantial risk of serious harm may be evidenced by the fact that the person previously suffered adverse effects to their mental health disorder or substance abuse disorder, their condition is again deteriorating, they are unable to understand their disorder, and their decisionmaking is impaired due to their lack of insight into their disorder. The bill clarifies that the existence of a mental health or substance abuse disorder does not, alone, establish a substantial risk of serious harm.

According to the author, the bill's new definition of "gravely disabled" is inspired by a report published by the Substance Abuse and Mental Health Services Administration (SAMHSA) including policy recommendations for states' involuntary commitment laws.[16] The specific language of the definition is substantially similar to the definition of "gravely disabled" used by the California Department of Corrections and Rehabilitation for purposes of determining when an incarcerated person may be subject to a program of diagnosis or treatment "without being subject to discipline or other deprivation."[17] The fact that this bill's definition is parallel to a definition used for persons who have already lost, through criminal proceedings, a significant degree of liberty may explain some of the concerns expressed below in Part 5.

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[16] SAMHSA, Report, Civil Commitment and the Mental Health Care Continuum: Historical Trends and Principles for Law and Practice (2019), *available at* https://www.samhsa.gov/resource/ebp/civil-commitment-mental-health-care-continuum-historical-trends-principles-law (link current as of April 21, 2023).

[17] *See* Cal. Code Regs., tit. 15, §§ 3999.98 (definition of "gravely disabled), 3363 (circumstances under which an inmate or parolee may or may not refuse treatment).

a. The bill's definition of "disabled" within the mental health context

For persons suffering from a mental health disorder, this bill widens the number of people eligible for involuntary detention and treatment. Instead of focusing on persons currently in crisis, the bill's definition of gravely disabled appears to permit involuntary treatment of persons who are suffering from a mental health disorder but have not yet reached a crisis stage. One new feature of this bill's definition is the authorization to determine that a person is at "risk of serious harm" on the basis of their mental health history, provided that they lack insight into their mental health disorder.

The precise scope of the bill's new definition is up for debate. The author and sponsors state that this expansion is aimed at treating people who are seriously deteriorating but before they reach a crisis point. For example, the California State Association of Psychiatrists (CSAP), one of the sponsors of the bill, writes:

> [T]he current definition and interpretation of "gravely disabled" does not accurately reflect the realities CSAP is seeing in its communities and on the streets. Additionally, CSAP continues to see the struggles of community members that cycle in and out of hospitalizations, shelters, and jails without getting the concrete connection to needed medication and treatment…This [bill's] 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, CSAP is encouraging

The California Medical Association also expresses support for the bill's provision "require[ing] the court to consider when a person is unable to appreciate the nature of their disorder and that their decision-making is impaired due to their lack of insight into their mental or medical disorders." Many opponents, however, argue that the bill's definition will substantially expand the definition, allowing large numbers of people who are competent to make their own decisions to nevertheless be detained and treated against their will. These issues are discussed further below in Parts 5.a and b.

b. This bill would allow, for the first time, persons suffering from substance abuse disorder to be detained and treated involuntarily

In addition to expanding the definition of "gravely disabled" for persons who are experiencing mental health issues, the bill adds to the definition of "gravely disabled" persons who are suffering from substance abuse disorder even without a concomitant mental health disorder. Persons with a substance abuse disorder could be involuntarily detained and treated under the same terms as a person with a mental health disorder, as discussed above. According to stakeholders, this measure is also intended to help persons who currently fall into a gap between the LPS Act and Probate Code conservatorship frameworks, namely, persons who have mental or cognitive issues that

render them capable of caring for themselves while still posing a danger to themselves or to society.

Many of the opponents argue that is an unprecedented expansion of the state's involuntary treatment authority and question whether the LPS Act is the correct framework for treating these individuals. They also argue that the state does not currently have infrastructure, outside our prisons and jails, to handle substance abuse disorder treatments. This issue is addressed further in Part 5.e, below.

5. Concerns raised by this bill's definition of "gravely disabled"

a. Liberty concerns

"[P]ersonal liberty is a fundamental interest, second only to life itself, as an interest protected under both the California and United States Constitutions."[18] The liberty interest and a person's right to self-determination is so strong that "a competent adult has the right to refuse medical treatment, even treatment necessary to sustain life."[19] These rights enshrine the overarching principle that people must be free to make their own choices about their own lives—whether and when to have children, whom to love, and even, under some circumstances, when to die—and that these choices are not subject to second-guessing by the government.

Of course, freedom of "choice" is illusory when an adult lacks capacity to understand their circumstances and give meaningful consent with an understanding of the likely consequences. In such situations, the state's *parens patriae* power allows the state to protect persons incapable of protecting themselves,[20] including through the establishment of a conservatorship of the person and the administration of medication without the person's consent.[21] Yet the state's willingness to help, no matter how pure the motives, does not permit it to overrule the objections of persons capable of taking care of themselves.[22]

This bill's expansion of the definition of "gravely disabled" appears to bring into the ambit of the LPS Act persons who are suffering from such severe mental health problems that they are no longer competent to take care of themselves or make their

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[18] *People v. Olivas* (1976) 17 Cal.3d 236, 251.
[19] *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 530. This right is located in California's constitutional right of privacy, which " 'guarantees to the individual the freedom to choose to reject, or refuse to consent to, intrusions of [their] bodily autonomy.' " (*Id.* at pp. 53-532.)
[20] *Wendland*, *supra*, 26 Cal.4th at p. 535.
[21] *Riese*, *supra*, 209 Cal.App.3d at pp. 1320-1322.
[22] *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 225 ("The law must strive to make certain that only those truly unable to take care of themselves are being assigned conservators under the LPS Act and committed to mental hospitals against their will"); *see also Olmstead v. United States* (1928) 277 U.S. 438, 479 ("Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent").

own healthcare decisions. But the County of Kern and other opponents argue that the bill's expanded definition is so broad that it encompasses persons who are presently competent. The County Behavioral Health Directors Association, who has submitted a letter of concern, also writes:

> Under the criteria proposed in this bill, there would be no requirement to prove that an individual lacks capacity to make decisions for themselves, or that they are at imminent risk of harming themselves or others. This would constitute an enormous, gross overreach of the state's power.

The state's current approach to mental health is to involuntarily treat a person's mental illness when the mental illness is the cause of some other harms. This bill appears to move towards a system where the existence of mental illness itself justifies involuntary treatment, and the possibility of future harms justify forcibly treating someone even though they are currently saying no. There is also a concern that the provision allowing a person's "lack of insight" into their condition could give rise to a Catch-22—if a person's disagreement with a diagnosis or treatment plan can be treated as evidence that they lack insight into their disorder, there is no way out of a "gravely disabled" finding.

b. The interplay between the definition of "gravely disabled" and due process

The Fourteenth Amendment to the United States Constitution prohibits a state from "depriv[ing] any person of life, liberty, or property without due process of law."[23] The United States Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."[24] In the words of the California Supreme Court, "[o]ne has only to imagine the horror experienced by a competent person falsely committed [under the LPS Act] in order to appreciate that freedom is openly on trial at a civil commitment proceeding."[25]

The author notes that SB 43 does not take away any of the procedural protections currently provided under the LPS Act. As such, any person brought in for involuntary treatment would still be provided with procedural protections, including counsel and judicial review at the later stages of the process.

But procedural protections may not be sufficient where a law is substantively overbroad. A law that encompasses both harmful and non-harmful conduct, leaving it to law enforcement and the courts to sort out whom should be detained and who

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[23] U.S. Const., 14th amend.
[24] *Addington v. Texas* (1979) 441 U.S. 418, 425; *see also People v. Barrett* (2012) 54 Cal.4th 1081, 1098 (civil commitment proceedings require due process safeguards).
[25] *Roulet*, *supra*, 23 Cal.3d at p. 223.

should not, may run afoul of the Due Process Clause even if other procedural protections are provided.[26]

Here, the breadth of this bill's definition of "gravely disabled" may render procedural protections inadequate to prevent undue deprivations of personal freedom. A court or jury reviewing a detained person's case would be bound to apply the factors set forth in the definition, regardless of whether, to their eyes, the person appeared to be competently refusing treatment. Moreover, the "gravely disabled" definition applies before the bill's most significant procedural protections kick in, including when a person is first detained and placed on a 72-hour hold for evaluation. This can be an invasive, disruptive, traumatic experience, even if a person is ultimately released as not qualifying for involuntary detention. A reviewing court, employing a strict scrutiny analysis, would balance the state's interest in the definition against the competing individual interests and the risks of unreliable outcomes; [27] it is possible that the apparently high risk of detaining competent persons would supersede the state's interest in such an expansive definition.

Relatedly, there is a question of whether the bill's definition is overly vague. A statute is unconstitutionally vague if it fails to "(1) give[] fair notice of the practice to be avoided, and (2) provide[] reasonably adequate standards to guide enforcement."[28] The current definition of "gravely disabled" has been held to "reflect a legislative determination to meet the constitutional requirements of precision," and to be "sufficiently precise to exclude unusual or nonconformist lifestyles" while "provid[ing] fair notice of the proscribed conduct to the proposed conservatee."[29]

As a coalition of the bill's opponents have noted, this bill's definition of "gravely disabled" includes a number of terms—such as whether a person can "attend to necessary personal care" or "seek adequate shelter"—that have no commonly understood meanings and offer no objective standards for decisionmakers to apply. They argue that this "lack of guidance creates an improper 'arbitrary and discriminatory' decision-making in violation of individuals' constitutional rights."

c. Equal protection concerns

In 1965, as part of the Legislature's examination of its civil commitment system that culminated in the passage of the LPS Act, an Assembly subcommittee noted that "[t]he majority of people passing through a commitment court have two things in common;

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[26] *E.g.*, *Papachristou v. City of Jacksonville* (1972) 405 U.S. 156, 165. To use an absurd example, imagine if the Legislature expanded the crime of arson to include "going for a jog." Because the court and the jury would be compelled to apply the law (arson includes jogging) to the facts (the defendant was jogging), all the procedural protections in the world could not save unfortunate joggers from being tried and convicted of arson.

[27] *See Barrett*, *supra*, 54 Cal.4th at p. 1099.

[28] *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 702.

[29] *Conservatorship of Chambers* (1977) 71 Cal.App.3d 277, 284.

they are poor and they often need a variety of services."[30] This over-commitment of the poor was exacerbated when so-called middle-class standards for normalcy were applied, even though those standards often failed to take into account the unique pressures and features of living in poverty.[31]

Persons suffering from poverty are still over-represented in the system, namely homeless people.[32] There are also racial and gender disparities in the application of the LPS Act. According to the County Behavioral Health Directors Association, the LPS Act is disproportionately used to detain Black and Hispanic individuals, and to detain women much more frequently than men; a coalition of opponents also report that, in one county, over half of the individuals held more than 10 times in the county's facilities were African American, even though African American individuals made up less than 11 percent of the county's population. Cal Voices reports that:

> [p]atients of color often have their cultural beliefs cast as psychiatric symptoms: an elderly Vietnamese woman labeled delusional and gravely disabled because of her cultural belief in curses; a Palestinian immigrant labeled psychotic because of he wore a hospital blanket as a keffiyeh; a Hmong man labeled "lacking insight" because he held Hmong beliefs that what Western medicine calls "psychosis" can be a transitory state before receiving the gift of shamanism.

Opponents express concern that the bill's definition will exacerbate the racial and ethnic disparities in the LPS Act system. In particular, they express concern that the bill's vague terms could exacerbate the racial and gender disparities in involuntary treatment, giving rise to an as-applied equal protection issue.

In particular, there are concerns that, because law enforcement officers can take persons into custody for 72-hour holds,[33] these officers—who are not medical professionals—will make custody decisions based on biases and disproportionately against populations such as individuals experiencing homelessness and people of color. Fear of being taken into custody—particularly on the basis of substance use disorder—could also dissuade persons from seeking the assistance of law enforcement, depriving them of protections.

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[30] California Assem. Interim Com. on Ways and Means, Subcom. on Mental Health Services, *The Dilemma of Mental Commitments in California: A Background Document* (1966), pp. 33-34 ("The 1966 Dilemma Report").
[31] *Id*. at pp. 35-36.
[32] *See* Choi, *Mental Health Conservatorship Among Homeless People with Serious Mental Illness*, Psychiatric Services 76(6) (Jun. 22), pp. 5-7.
[33] Welf. & Inst. Code, §§ 5008(i), 5150(a).

d. Americans with Disabilities Act concerns

According to a coalition of opponents, including Disability Rights California (DRC):

> SB 43 also conflicts with Title II of the Americans with Disabilities Act (ADA), which mandates that people with mental health disabilities have a right to access treatment and services in the most integrated setting appropriate. (42 U.S.C. §§ 12131-12134.) Applying this mandate, the United States Supreme Court has held that the unnecessary institutionalization of individuals with disabilities in hospitals or other locked facilities is a form of discrimination prohibited by the ADA. (*Olmstead v. L.C.* (1999) 527 U.S. 581, 597.) By expanding the definition of grave disability, SB 43 will result in the unnecessary institutionalization of people with disabilities, without regard to whether integrated community services are appropriate, in violation of the ADA and related law. (*Id.*)

e. Staffing, bed, scope, and funding concerns

Several of the bill's opponents have noted that the state's LPS Act infrastructure is already strained to the breaking point. For example:

- The California Behavioral Health Planning Council reports that "[c]urrently many individuals placed on 5150 holds languish for days in hospital emergency departments as they await referrals to community-based services or placement in appropriate settings."
- DRC and a coalition of other opponents note that "[o]n top of issues related to infrastructure and funding availability for services, California is in the midst of a historic behavioral health workforce shortage. The Legislature and the Administration are making efforts to address this crisis. However, as with the state's infrastructure investments, it may take time to fully realize efforts to expand the behavioral health workforce."

The analysis of the Senate Health Committee also discusses the bed shortage for patients currently covered by the LPS Act. It notes that, at the county level, California has a statewide shortage of 1,971 beds at the acute level of care and a shortage of 2,796 beds at the subacute level of care. This shortage is lessened if the tally includes beds in state hospitals; however, as the State Auditor has noted, the state hospitals have an average wait time of about one year for LPS Act patients because the state hospitals are so burdened by individuals committed through the justice system (e.g., persons who have been found incompetent to stand trial and cannot be held in a community facility).[34] Opponents of the bill also note that patients suffering from effects of substance use disorder are even less likely to be given a bed in a facility other than an emergency room because policies de-prioritize persons suffering from substance issues.

[34] State Auditor's Report, *supra*, at p. 23.

Beds are not the only area of concern. The State Auditor also found that there are current shortcomings in the provision of ongoing care to persons exiting involuntary holds or conservatorships.[35] These services may include wellness visits, therapy services, assisted outpatient treatment, psychiatric services, and housing assistance.[36] Persons leaving the LPS Act system without such services appear to be more likely to be involuntarily detained multiple times.[37] The bill does not add additional protections to ensure that persons exiting involuntary treatment are provided with ongoing care or for the expansion of ongoing care services to account for the added population covered by the bill's expanded definition.

Additionally, as the County of Kern notes, this bill expands the definition of "gravely disabled" to include, for the first time, persons suffering from a substance abuse disorder, but counties have no infrastructure for involuntary treatment for substance abuse disorders outside of jails and prisons. The County Behavioral Health Directors Association of California also notes funding issues with the substance abuse expansion:

> [T]he federal and state governments provide no reimbursement for long-term residential and inpatient drug treatment, even under Medi-Cal…If courts were to order involuntary SUD treatment, they would not be bound by what Medi-Cal or other insurance payers would cover, leaving counties with a significant unfunded mandate. This structural lack of reimbursement, across our major public and private insurance payers, has directly led to the scarcity of SUD residential and inpatient treatment capacity. Furthermore, there are very few treatment settings that have the capacity to serve individuals with complex co-occuring medical, SUD and mental health treatment needs.

The author and some of the bill's supporters are aware of many of the shortcomings in the system. Regarding some of the infrastructural problems—namely as lack of space for substance abuse disorder treatment—will be resolved, at least in part, when facilities can be reimbursed for the care at the same rate as they are for mental health disorders; it is unclear how this would work in light of overall capacity issues.

More fundamentally, however, there appears to be a philosophical difference in how the supporters and opponents view the appropriate order in which the state should tackle its mental health system shortcomings. The opponents would have the state first collect data on the LPS Act system and build up its infrastructure—including significant investment in voluntary and community treatment, discussed below in 5.f—then determine whether expanding involuntary treatment under the LPS Act is necessary and supported by the evidence. The author and sponsor, however, argue that the state's

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[35] *Id.* at p. 31.
[36] *Ibid.*
[37] *Id.* at p. 32.

mental health crisis justifies placing more people into our already-overburdened system.

f. Efficacy concerns

Many stakeholders argue that this bill is misguided because the type of involuntary treatment provided under the LPS Act does more harm than good. A coalition of opponents, including Disability Rights California, notes that there is no evidence suggesting that expanding the scope of persons who may be involuntarily treated will result in positive long term outcomes. Regarding substance abuse disorder specifically, the California Association of Alcohol and Drug Program Executives (CAADPE)—who is opposed unless the bill is amended to remove substance use disorder (SUD) as an independent basis for grave disability—writes:

> CAADPE believes that expanding the definition of gravely disabled to apply to individuals with SUD, who do not also have a diagnosed serious mental illness, will lead to the involuntary detention and treatment of these individuals under a conservatorship. Many peer-reviewed studies of research from around the world show that coerced and involuntary treatment for SUD is actually less effective in terms of long-term substance abuse outcomes, and more dangerous in terms of overdose risk. We are also concerned that involuntary SUD treatment could result in overrepresentation of people of color, LGBTQ+, and other historically marginalized people being forced into more coercive treatment, which is often traumatizing.

Most of the bill's opponents argue that, rather than expand the use of involuntary treatment, the state should expand its voluntary services and make them more available to persons before they reach a crisis point. For example, the San Francisco Public Defender's Office writes:

> Instead, the Legislature should invest in evidence-based, community-defined programs that are proven to meet the needs of Californians living with serious mental disabilities, including affordable, accessible housing with voluntary support services and Assertive community Treatment. Our clients and community members suffering from severe mental health disorders and substance dependency cannot access or receive adequate treatment or follow-up services. Sufficient resources, the development of a comprehensive continuum of care, and a robust workforce such as treatment providers and case managers are critical to implementing any state-mandated treatment legislation.

6. This bill creates a limited hearsay exception for medical records relied on by a medical expert in proceedings to appoint or reappoint a conservator under the LPS Act

California's hearsay rule provides: " 'Hearsay evidence' is 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. . . . Except as provided by law, hearsay evidence is inadmissible."[38] The general exclusion of hearsay from evidence is premised on the notion that out-of-court statements are inherently more unreliable than live testimony. Specifically, hearsay statements are not made under oath, the adverse party has no opportunity to cross-examine the declarant, and the jury cannot observe the declarant's demeanor while making the statements.[39]

In *People v. Sanchez*,[40] the California Supreme Court clarified that an expert witness may not, consistent with the hearsay rule, present case-specific testimonial hearsay, consistent with the Sixth Amendment's right to confront witnesses.[41] While *Sanchez* was limited to criminal cases, subsequent cases extended its new hearsay rule to civil cases and to LPS Act cases.[42]

This bill would abrogate *Sanchez* in the LPS Act context by allowing expert witnesses testifying in a proceeding to appoint or reappoint a conservator under the LPS Act to testify about information contained in a medical record without a hearsay bar. This proposal originally came from the County of Los Angeles's response to the State Auditor's report on the implementation of the LPS Act, which requested a legislative change to the hearsay rule that would allow a medical expert to share the observations of other medical professionals and staff at LPS Act proceedings.[43]

As a matter of law, it appears that this statutory expansion of the hearsay rule does not offend current constitutional case law. While the California Supreme Court has recognized that conservatorship proceedings are comparable to those in criminal proceedings because of the potential loss of liberty,[44] the court has not gone so far as to hold that civil commitment proceedings require all of the constitutional rights granted to criminal defendants.[45] Similarly, although courts have referred to a proposed conservatee's "right" to cross-examine witnesses at an LPS Act conservatorship

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[38] Evid. Code, § 1200.
[39] *People v. Duarte* (2000) 24 Cal.4th 603, 610.
[40] (2016) 63 Cal.4th 665.
[41] *Id.* at pp. 679-680.
[42] *E.g.*, *Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1284.
[43] State Auditor's Report, *supra*, at p. 84 (response from Los Angeles County Department of Mental Health).
[44] *Roulet, supra*, 23 Cal.3d at p. 225 (" '[B]ecause involuntary commitment is incarceration against one's will regardless of whether it is called "civil" or "criminal" [citation], the choice standard of proof implicates due process consideration which must be resolved by focusing not on the theoretical nature of the proceedings but rather on the actual consequences of commitment to the individual' ").
[45] *E.g.*, *Ben C.*, *supra*, 40 Cal.4th at p. 543.

proceeding,[46] it does not appear that the courts have determined that this is a due process imperative that would limit the Legislature's ability to craft a hearsay exception.

As a matter of policy, allowing this hearsay testimony in LPS Act hearings would certainly make hearings faster. In the context of involuntary detention and conservatorships, however, faster is not necessarily better. In 1966, prior the enactment of the LPS Act, the average length of a commitment hearing in 1966 was 4.7 minutes;[47] "[t]here [was] evidence to suggest that the filing of the petition virtually insure[d] commitment and that subsequent psychiatric and judicial evaluation [was] ceremonial rather than functional."[48]

The author's statement on this bill indicates this provision is being offered to permit medical evidence to be introduced at a conservatorship hearing. The law does not prohibit the introduction of medical evidence at conservatorship hearings; it simply does not permit it to be introduced as hearsay. Under current law, therefore, the medical professionals who have concluded that the proposed conservatee is gravely disabled have to testify in court and be subject to cross-examination, so that the conservatee's counsel can test the basis for those conclusions.

This bill would prioritize the considerations of court efficiency and medical professionals' time by allowing a medical expert to recount the observations and opinions of the proposed conservatee's treating medical professionals wholesale, despite not being able to independently verify the medical conclusions being presented. The proposed conservatee's counsel would have no way to meaningfully question the medical opinions being presented to the court; if the file contained an error or faulty assumption, that material would be passed on as fact.[49] Without any way to test the evidence supporting the state's assertions of grave disability, there is a risk that LPS Act conservatorships could resemble the "ceremonial rather than functional" commitment hearings of the 1950s and 1960s. Going forward, the author may wish to work with stakeholders to determine whether this provision can be amended to provide balance between efficiency and the proposed conservatee's ability to test the evidence against them.

7. Amendments

The author has agreed to amendments to clarify portions of the definition of "gravely disabled" and which categories of medical professionals may have their statements presented as hearsay by a medical expert. The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

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[46] *Chambers*, *supra*, 71 Cal.App.3d at p. 287, fn. 17; *see also Conservatorship of Tian L.* (2007) 149 Cal.App.4th 1022, 1029-1030.
[47] The 1966 Dilemma Report, *supra*, at p. 47.
[48] *Id.* at p. 23, fn. 21.
[49] *See People v. Jeffrey G* (2017) 13 Cal.App.5th 501, 509 ("If the underlying hearsay is not true, the opinion is rendered irrelevant to the case at hand").

Amendment 1

On page 8, in line 26, strike "appropriately or"

Amendment 2

On page 9, in line 5, after "establish" insert "serious harm or"

Amendment 3

On page 10, modify Welfare and Institutions Code section 5122(a) as follows:

5122(a) For purposes of an expert witness in a proceeding relating to the appointment or reappointment of a conservator pursuant to Chapter 3 (commencing with Section 5350) or Chapter 5 (commencing with Section 5450), the statements of a health practitioner**, as defined in subdivision (d),** ~~**described in paragraphs (21) to (25), inclusive, of subdivision (a) of Section 11165.7 of the Penal Code, or a social worker licensed pursuant to Chapter 14 (commencing with Section 4991) of Division 2 of the Business and Professions Code,**~~ included in the medical record are not hearsay.

Amendment 4

On page 10, after line 19, add:

(d) "Health practitioner" means a physician and surgeon, psychiatrist, psychologist, resident, intern, registered nurse, licensed clinical social worker or associate clinical social worker, marriage and family therapist, licensed professional clinical counselor, any emergency medical technician I or II, paramedic, or person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, an unlicensed marriage and family therapist intern registered under Section 4980.44 of the Business and Professions Code.

SUPPORT

Big City Mayors Coalition (co-sponsor)
California State Association of Psychiatrists (co-sponsor)
NAMI – CA (co-sponsor)
Psychiatric Physicians Alliance of California (co-sponsor)
AEsynergy
Bay Area Council
California Association of Psychiatrists
California Downtown Association

California Medical Association
City of Bakersfield
City of Carlsbad
City of Eureka
City of Moorpark
City of Murrieta
City of Redwood City
City of Santa Monica
City of South Gate
City of Thousand Oaks
City of West Hollywood
City of Whittier
CLARE|Matrix
Cloverdale Community Outreach Committee
Family Advocates for Individuals with Serious Mental Illness in the Sacramento Region
Families Advocating for the Seriously Mentally Ill
Govern for California
Heart Forward LA
Housing that Heals
League of California Cities
NAMI Contra Costa County
NAMI Nevada County
NAMI Santa Clara County
NAMI Urban LA LPS Conservatorship Programs
National Alliance on Mental Illness – California
Psynergy Programs, Inc.
San Diego City Attorney's Office
Stories from the Frontline
Treatment Advocacy Center
Union of American Physicians and Dentists
Approximately 340 individuals

OPPOSITION

ACLU California Action
API Equity-LA
Being Alive
Black Women for Wellness
Cal Voices
California Advocates for Nursing Home Reform
California Association of Alcohol and Drug Prevention Executives
California Association of Mental Health Patients' Rights Advocates
California Association of Social Rehabilitation Agencies
California Behavioral Health Planning Council

California Black Health Network
California Pan-Ethnic Health Network
California Youth Empowerment Network
CAMHPRO
Caravan for Justice
Citizens Commission on Human Rights
Corporation for Supportive Housing
County of Kern
CRLA Foundation
Depression and Bipolar Support Alliance – CA
Disability Rights California
Empowering Pacific Islander Communities
Hmong Cultural Center of Butte County
Law Foundation of Silicon Valley
LGBTQ+ Collaborative
Lift Up Love Always
Mental Health America of California
National Harm Reduction Coalition
National Health Law Program
Native American Health Center
Orange County Equality Coalition
Pacific Asian Counseling Services
Peers Envisioning & Engaging in Recovery Services
Project Amiga
Racial & Ethnic Mental Health Disparities Coalition
Sacramento Homeless Union
Sacramento Regional Coalition to End Homelessness
Safe Black Space
San Bernardino Free Them All
San Francisco Public Defender's Office
South Asian Network
Southeast Asia Resource Action Center
The Sidewalk Project
Western Center on Law & Poverty
Western Regional Advocacy Project
28 individuals

RELATED LEGISLATION

Pending Legislation:

SB 363 (Eggman, 2023) requires, by January 1, 2025, the State Department of Health Care Services to develop a real-time online database to collect, aggregate, and display information about beds in specified types of facilities, to identify the availability of inpatient and residential mental health or substance use disorder treatment, and have the capacity to, among other things, enable searches to identify beds that are appropriate for individuals in need of inpatient or residential mental health or substance use disorder treatment. SB 363 is pending before the Senate Appropriations Committee.

SB 232 (Niello, 2023) changes the definition of "gravely disabled under the LPS Act to include a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about, or providing for, their own basic personal needs for food, clothing, shelter, or medical care without significant supervision and assistance from another person and, as a result of being incapable of making these informed decisions, the person is at risk of substantial bodily harm, dangerous worsening of a concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of essential needs that could result in bodily harm; or a condition in which a person has an incapacity to provide informed consent to treatment due to anosognosia. SB 232 is pending before the Senate Health Committee.

AB 1601 (Alvarez, 2023) authorizes a paramedic or emergency medical technician to take a person to be taken into custody for a 72-hour hold under the LPS Act. AB 1601 is pending before the Assembly Health Committee.

Prior Legislation:

SB 1338 (Umberg, Ch. 319, Stats. 2022) implemented the CARE Act, which will implement a statewide framework for court-ordered mental illness treatment and services.

SB 1227 (Eggman, Ch. 619, Stats. 2022) modified the Lanterman-Petris-Short (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, without needing to file a conservatorship petition or seek judicial review.

SB 1154 (Eggman, 2022) would have required, by January 1, 2024, the State Department of Public Health, in consultation with the State Department of Health Care Services and the State Department of Social Services, and by conferring with specified stakeholders, to develop a real-time, internet-based database to collect, aggregate, and display information about beds in inpatient psychiatric facilities, crisis stabilization units, residential community mental health facilities, and licensed residential alcoholism or

drug abuse recovery or treatment facilities in order to facilitate the identification and designation of facilities for the temporary treatment of individuals in mental health or substance use disorder crisis. SB 1154 died in the Assembly Appropriations Committee.

SB 965 (Eggman, 2022) was virtually identical to the hearsay portion of this bill and would have created, in a proceeding under the LPS Act, an exception to the rule against hearsay that allows an expert witness to rely on the out-of-court statements of medical professionals, as defined, who have treated the person who is the subject of the conservatorship petition. SB 965 died in the Assembly Judiciary Committee.

SB 929 (Eggman, Ch. 539, Stats. 2022) requires DHCS to collect and publish annually quantitative data relating to the LPS Act, beginning May 1, 2025, including information relating to, among other things, the number of persons detained for 72-hour evaluation and treatment, clinical outcomes for individuals placed in each type of hold, and needs for treatment beds, as specified.

AB 2020 (Gallagher, 2021) would have authorized a county to elect between two definitions of "gravely disabled" for the LPS. AB 2020 died in the Assembly Health Committee.

AB 1946 (Santiago, 2020) would have expanded the definition of "gravely disabled" under the LPS Act. AB 1946 died in the Assembly Health Committee.

SB 640 (Moorlach, 2019) would have authorized a county to elect between two definitions of "gravely disabled" for the LPS. SB 640 failed passage in the Senate Health Committee.

AB 1572 (Chen, 2019) would have expanded the definition of "gravely disabled" under the LPS Act. AB 1572 died in the Assembly Health Committee.

AB 2156 (Chen, 2018) was substantially similar to AB 1572 (Chen, 2019). This bill died in the Assembly Health Committee

AB 1971 (Santiago, 2018) would have expand the definition of "gravely disabled" under the LPS Act. AB 1971 died on the Senate Floor.

AB 1539 (Chen, 2017) would have expanded the definition of "gravely disabled" similar to AB 1971 (Santiago, 2018). This bill died without a hearing in Assembly Health Committee.

PRIOR VOTES:

Senate Health Committee (Ayes 12, Noes 0)

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