Date of Hearing: April 10, 2018

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 1971 (Santiago) – As Amended March 15, 2018

SUBJECT: Mental health services: involuntary detention: gravely disabled.

SUMMARY: Expands, the definition of "gravely disabled" to mean an inability to provide for his or her basic personal needs for food, clothing, shelter, or medical treatment if the lack of, or failure to receive, that treatment may result in substantial physical harm or death for purposes of involuntary holds and detentions.

EXISTING LAW:

1) Defines "gravely disabled" as an inability to provide for his or her basic personal needs for food, clothing, or shelter.

2) Provides for the involuntary commitment and treatment of individuals with specified mental disorders and for the protection of committed individuals, with the declared goal of ending inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism.

3) Creates a series of processes for individuals to receive mental health treatment while being held involuntarily, known as a "5150 hold," including:
   a) A process for a person to be taken into custody, upon probable cause that they are a danger to self, a danger to others, or gravely disabled as a result of a mental health disorder, for a period of up to 72 hours, as specified;
   b) For a person who has been detained for 72 hours, a process for the person to be detained for up to14 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;
   c) For a person who has been detained for 14 days of intensive treatment, a process for the person to be detained for up to 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to accept treatment voluntarily, or up to 180 days if the person presents a demonstrated danger to others;
   d) A process for the appointment of a conservator, known as a Lanterman-Petris-Short (LPS/LPS Act) conservatorship, for a person who has been involuntarily detained and is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism, to provide individualized treatment, supervision, and placement. Specifies the following for purposes of an LPS conservatorship:
      i) Allows the professional person in charge of a facility providing 72-hour, 14-day, or 30-day treatment to recommend conservatorship to the conservatorship investigator for a person who is gravely disabled and is unwilling or unable to accept voluntary treatment;
      ii) The conservatorship investigator, if he or she concurs with the recommendation, may petition the superior court to establish LPS conservatorship or temporary (up to 30 days) conservatorship;

iii) Requires the conservatorship investigator to investigate all available alternatives and recommend conservatorship only if no suitable alternatives are available. Requires the investigator to provide a report to the court that includes all relevant aspects of the person's medical, psychological, financial, family, vocational and social condition, and information obtained from the person's family members, close friends, and social worker or principal therapist;

iv) Allows the report provided for in iii) above to recommend for or against giving the conservatee the right to: obtain a driver's license; enter into contracts; vote; refuse or consent to medical treatment; and, possess a firearm;

v) Requires LPS conservatorships to terminate after one year, but allows the conservator, if he or she determines that conservatorship is still required, to petition the court for additional one-year periods;

vi) Allows the initiation of LPS conservatorship proceedings upon the recommendation of the medical director of a state hospital, a professional person in charge of a local mental health facility, a local mental health director, or the Chief Deputy Secretary for Juvenile Justice, to the conservatorship investigator, under specified circumstances;

vii) Requires counties to designate the agency or agencies to provide conservatorship investigation. Allows counties to designate that conservatorship services be provided by the public guardian or agency providing public guardian services;

viii) Permits the person for whom conservatorship is sought the right to demand a court or jury trial on the issue of whether he or she is gravely disabled;

ix) Provides that a person cannot be appointed an LPS conservator if the person can survive safely with the help of responsible family, friends, or others who indicate in writing that they are willing and able to help provide food, clothing, or shelter; and,

x) Requires the facility treating a person for whom LPS conservatorship is sought to advise the person that he or she may request that information about the time and place of the conservatorship hearing not be given to family members, in those circumstances where the proposed conservator is not a family member.

4) Establishes "Laura's Law" which permits counties to provide Assisted Outpatient Treatment (AOT) services for people with serious mental illnesses when a court determines that a person's recent history of hospitalizations or violent behavior, and noncompliance with voluntary treatment, indicates the person is likely to become dangerous or gravely disabled without the court-ordered outpatient treatment.

5) Allows a court, after finding that an individual meets the criteria for AOT, and there is no appropriate and feasible less restrictive alternative, to order the individual to receive AOT for an initial period not to exceed six months. If the director of the assisted outpatient program determines that the individual requires further assisted outpatient services, requires that director, prior to expiration of the time period of the treatment, to apply to the court for an extension of the services, not to exceed 180 days.

6) Permits a petition for a court order authorizing AOT to be filed by the county mental health director, or his or her designee, in the superior court in the county where the person requiring treatment is present.

7) Authorizes the following individuals to make a request to the county mental health department for the filing of a petition:
   a) An adult whom the person lives with;
   b) Family members that include adult children, parents, siblings or spouse;
   c) Law enforcement, parole, or probation officer;
   d) Director of a public or private agency providing mental health services to that person;
   e) Hospital director who is providing psychiatric care to that person; or,
   f) Licensed mental health provider who is treating or supervising the person.

8) Grants any person subject to a petition for an order of AOT the right to legal counsel at all steps of the hearing process.

9) Requires the Department of Health Care Services to submit a report and evaluation to the Governor and the Legislature of all counties implementing an AOT program by July 1, 2015.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

1) **PURPOSE OF THIS BILL.** According to the author, more than 800 homeless individuals died on the streets of Los Angeles (LA) County in 2017. It is inhumane to be a bystander when we have the power to do something to save lives. Many of these deaths could have been prevented with suitable medical treatment. The author argues that by changing the definition of "gravely disabled" to consider urgently needed medical treatment as a basic human need when assessing an individual's need for conservatorship while maintaining all statutorily protected safeguards and civil liberties, we will be one step closer to providing proper medical treatment for homeless individuals with mental illness who are suffering on the streets with serious physical ailments.

2) **BACKGROUND.** Section 5150 of the LPS Act allows peace officers, staff-members of county-designated evaluation facilities, or other county-designated professional persons, to take an individual into custody and place them in a facility for 72-hour treatment and evaluation if they believe that, due to a mental disorder, the individual is a danger to himself, herself, or others, or is gravely disabled—i.e., unable to provide for basic personal needs for food, clothing, or shelter due to a mental disability. The LPS Act, enacted in the 1960s, was intended to balance the goals of maintaining the constitutional right to personal liberty and choice in mental health treatment, with the goal of safety. At the time of its enactment, the LPS Act was considered progressive because it afforded the mentally disordered more legal rights than most other states. Since its passage in 1967, the law in the field of mental health has continued to evolve toward greater legal rights for mentally disordered persons.

   a) **LPS conservatorship process**. The LPS Act creates a series of processes for the involuntary treatment of individuals who are unwilling or unable to accept necessary mental health treatment, generally conditional upon the person being gravely disabled or posing a danger to self or others. An LPS conservatorship, which lasts for a year before it must be reinitiated and reapproved, is typically sought after an individual has received 72-hour evaluation and treatment and 14-day intensive treatment and continues to be gravely

disabled. The process begins when the professional staff of the psychiatric facility, after having evaluated and treated the individual, makes a recommendation of conservatorship to the county conservatorship investigator (typically designated as an office in the county, such as the Public Guardian's Office or the Office of the Public Conservator). The county conservatorship investigator is then required to conduct a comprehensive investigation and file a petition for conservatorship only if, after considering all available alternatives to conservatorship, there are no suitable alternatives available.

i) LPS Task Force. The LPS task force was created by the LA County Affiliates of the National Alliance for the Mentally Ill and the Southern California Psychiatric Society. The LPS task force convened in 1999 and 2012 to assess the adult mental health system under the LPS Act and publish recommendations on how to reform the law to better serve the community. The LPS task force recommended the definition of "gravely disabled" should be broadened to include whether an individual has the inability to provide for his or her medical care or personal safety. In both publications the LPS task force recommended the definition of "gravely disabled" should be modified to address the capacity of the person to make informed medical decisions.

ii) LA County Department of Mental Health (DMH) (2017). In collaboration with the LA County Counsel and other relevant departments, DMH analyzed existing mental health laws in California and provided recommendations for the humane treatment of people living with mental illness. DMH supports legislation which defines "grave disability" to include a person's inability to provide medical care for him or herself due to a mental disorder. DMH recommends a consistent and accurate interpretation of the proper basis for finding probable cause for grave disability, danger to self, and danger to others.

b) Other definitions. There is no commonly accepted term for individuals who are gravely disabled or incapacitated; definitions vary widely by state with varying degrees of subjectivity. The State of Oregon defines incapacitated, or incapable of making valid decisions, when an individual can no longer receive and evaluate information effectively or communicate their decisions. The State of Washington defines "gravely disabled" as a condition in which a person, as a result of a mental disorder: i) is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or, ii) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving or would not receive, if released, such care as is essential for his or her health or safety.

c) Assisted Outpatient Treatment. The AOT Demonstration Project, or Laura's Law, allows courts in participating counties to order a person into an AOT program if the court finds that the individual either meets existing involuntary commitment requirements pursuant to Welfare and Institutions Code Section 5150 (is gravely disabled or is a danger to self or others), or the person meets non-5150 criteria including that the person has refused treatment, their mental health condition is substantially deteriorating, and AOT would be the least restrictive level of care necessary to ensure the person's recovery and stability in the community. The law is only operative in those counties in which the county board of supervisors, by resolution, authorizes its application and makes a finding that no voluntary mental health program serving adults, and no children's mental health program, was reduced in order to implement the law.

i) **County Implementation**. Currently, Nevada, Orange, Yolo, and the City and County of San Francisco have approved full implementation of Laura's Law. LA County implemented the law on a limited basis in 2003 and expanded the program county-wide in 2015. Initiating the AOT process begins with a referral submitted by family members, relatives, cohabitants, treatment providers or their supervisors, or peace officers. If individuals meet AOT eligibility requirements, a preliminary care plan is developed. If the individual voluntarily engages with the treatment after initial contact, a petition is no longer necessary and the patient no longer meets the criteria for AOT referral. However if the client declines the preliminary care plan, the AOT team proceeds with a petition and a public defender is assigned to the client. The court must be notified within 10 days of the intervention, and a hearing must be set within five days of the filing of the petition and the judge either grants or rejects the AOT petition. If ordered, AOT is valid for up to 180 days.

   According to information provided LA County, the County has received 1,365 referrals to the AOT program as of February of 2018. Of those, 873 met the criteria for AOT. Sixty-four percent of AOT referrals originated from a licensed treatment provider, 27% were petitioned by a parent, spouse, sibling, or child, and 9% originated from a peace officer.

3) **SUPPORT.** The LA County Board of Supervisors, cosponsors of this bill, states that current law does not explicitly address those who, because of their mental health disorder, are unable to seek needed medical treatment. The sponsor argues that this bill would recognize that urgent medical treatment is a basic need as necessary to wellbeing as food, shelter, or clothing and that the bill maintains an individual's right to be heard in court when detained involuntarily and gravely disabled would need to be determined beyond a reasonable doubt thus, maintaining all statutorily protected safeguards and civil liberties under the LPS Act. The LA County Medical Examiner-Coroner (MEC) reports that the number of deaths among the homeless population in LA County continues to increase, with over 830 people dying on the streets in 2017. According to MEC data, many of these deaths could have been prevented had they received proper medical treatment. Homeless individuals with a co-occurring mental illness could disproportionately account for the increase in death rates among the homeless population.

   The Steinberg Institute, cosponsor of this bill, states that according to local data, there is an increased death rate among the homeless population in LA County. A significant number of these deaths were due to preventable and/or treatable medical conditions such as cardiovascular disease, pneumonia, diabetes, cancer, cirrhosis, severe bacterial infection, and other treatable conditions. The Steinberg Institute notes that although these numbers do not indicate whether or not the deceased homeless individuals suffered from mental illness that impaired their willingness to seek care, LA County has seen a 28% increase in homeless individuals suffering from a mental illness from 2015 to 2017. The cosponsor concludes that by expanding the "gravely disabled" definition to include consideration of medical need where the lack or failure of such treatment may result in substantial physical harm or death, those involved hope to be able to provide care for more homeless individuals and save lives

   The California Psychiatric Association (CPA), cosponsors of this bill, states that this bill proposes to recognize that health is a basic human need like food, clothing, and shelter, and that failure or inability to be able to provide for ones health on the part of a person with a mental disorder is grounds to consider them gravely disabled – thus providing equity to, and

the same rights and protections as, persons considered gravely disabled because they cannot provide for their basic human needs for food, clothing, or shelter. CPA states that psychiatrists often stand by helplessly watching physical harm overtake individuals so disabled by severe mental illness that they lack the capacity to appreciate health risks they are subject to and cannot or do not act in ways to preserve their health. Psychiatrists are helpless because current law does not allow an intervention on behalf of the welfare of a person severely disabled by a mental illness on the basis of medical risks to which the person is exposing themselves. CPA concludes that the current growing and significant crises of homelessness and criminalization of those with a mental illness are based in part on the very shortcomings in our treatment laws identified as early as 1995. The human costs associated with these shortcomings deserve solutions to reduce them and inaction to update our treatment laws to respond to them is unthinkable to psychiatrists.

4) **OPPOSITION.** The American Civil Liberties Union, the California Association of Mental Health Patients' Rights Advocates, the California Pan-Ethnic Health Network, the Coalition on Homelessness San Francisco, the Law Foundation of Silicon Valley, Disability Rights California, the Sacramento Regional Coalition to End Homelessness, and the Western Center on Law on Poverty all write together as a coalition (Coalition) opposed to the bill. The Coalition states in opposition that the bill: needlessly expands the LPS Act to permit an undefined standard by which to impose involuntary care for individuals in a restrictive and confined environment; proposes a solution that does not meet the sponsors' goals of addressing homelessness and medical care; is dangerously expansive at the expense of individual rights; and, does nothing to ensure that those proposed to be conserved under the expansion will be provided with adequate food, clothing, shelter, or medical and behavioral health care. The Coalition notes that current law already allows for involuntary treatment of individuals unable to carry out transactions necessary for survival or to provide basic needs. Homeless individuals refusing available care for life threatening medical conditions meet this definition and are regularly conserved by courts when found necessary. The Coalition notes that there has been no showing of current barriers in existing law or practice that prevents counties from providing the care and services they propose with this bill.

   The Coalition also argues that nothing in this bills expands housing or access to medical services for individuals who are homeless and have behavioral and medical health treatment needs. Expanding voluntary services (e.g. full-service partnerships, permanent supported housing) and access to quality, integrated medical care more cost efficient, more effective, and more humane. Indeed, solutions that foster independence and self-direction are more successful than the forced and involuntary care proposed by this bill. Involuntary treatment means the county has the duty to treat and house the conservatees, which includes making physical and mental health services actually available. This bill puts the cart before the horse since the county is already unable to provide services and housing. The county cannot deliver these services; pretending that the only people who need services are the ones that do not want them is just not a solution.

5) **RELATED LEGISLATION.**

   a) AB 1539 (Chen) expands the definition of "gravely disabled" under the LPS Act to include an individual who is unable to provide for his or her basic need for medical care as a result of a mental health disorder or chronic alcoholism. AB 1539 was held in the Assembly Health Committee.

b) AB 2156 (Chen) expands the definition of "gravely disabled" 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, his or her 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 his or her essential needs that could result in bodily harm. AB 2156 is pending in the Assembly Health Committee and scheduled to be heard on April 10, 2018.

c) SB 1045 (Weiner) establishes a procedure for conservatorships for homeless individuals incapable of caring for the person's own health and well-being due to acute and severe mental illness or a severe substance abuse disorder, as evidenced by high-frequency emergency department use, high-frequency jail detention due to behavior resulting from the person's severe mental illness or substance abuse disorder, or frequent placement under a 72-hour involuntary hold because, based on probable cause, the person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or is gravely disabled, for the purpose of providing appropriate placement in supportive housing that provides wraparound services. SB 1045 is pending in the Senate Judiciary Committee.

6) PREVIOUS LEGISLATION.

a) AB 191 (Wood), Chapter 184, Statutes of 2017, adds licensed marriage and family therapists and licensed professional clinical counselors to the list of authorized health providers permitted to sign a notice of certification when a patient is certified as needing intensive treatment.

b) AB 1300 (Ridley-Thomas) of 2016 would have allowed an emergency physician or psychiatric professional who is not a county-designated professional person, as specified, to detain a person who is a danger to themselves, others, or is gravely disabled for up to 72 hours for evaluation and treatment. AB 1300 was re-referred to Senate Rules Committee.

c) AB 1194 (Eggman), Chapter 570, Statutes of 2015, requires an individual's past history of mental disorder to be taken into consideration regarding an involuntary 72 hour hold and specifies danger is not limited to danger of imminent harm.

d) SB 364 (Steinburg), Chapter 567, Statutes of 2013, broadens the types of facilities that can be used for detainment under the 72 hours of treatment and evaluation under the LPS Act.

7) POLICY COMMENTS. As noted above, LA County is one of a handful of counties to implement AOT, which allows courts in participating counties to order a person into court-ordered medication treatment if the court finds that the individual either meets existing involuntary commitment requirements or the person meets non-5150 criteria including that the person has refused treatment and their mental health condition is substantially deteriorating. Additionally, AOT would provide the least restrictive level of care necessary to ensure the person's recovery and stability in the community. The author states that this bill seeks to target homeless individuals who die as a result of a lack of access to medical treatment due to physical health conditions often exacerbated by mental health conditions. The population the author seeks to target, and the population intended for treatment through AOT, seem to be one and the same. While the program began in 2016 and is therefore in

early stages, it is unclear what deficiencies currently exist in the AOT program that leave county officials unable to serve this population.

8) AUTHORS AMENDMENTS. The author wishes to amend the bill to include findings and declarations related to gravely disabled individuals who require medical care but do not have appropriate access to such care.

9) COMMITTEE AMENDMENTS.

a) The bill currently expands the definition of "gravely disabled" to include individuals unable to provide for their own medical treatment if the lack of, or failure to receive, that treatment may result in substantial physical harm or death. This is extraordinarily broad and many health conditions "may" result in substantial physical harm. The Committee recommends narrowing the provisions of this bill to better capture critically ill individuals, and defining "medical treatment" as the administration or application of remedies for a mental health condition as identified by a licensed mental health professional, or a physical health condition as identified by a licensed medical professional.

b) This bill is substantially similar to AB 2156 (Chen), currently pending in this committee. The Committee recommends combining authors on to one bill.

REGISTERED SUPPORT / OPPOSITION:

Support

California Psychiatric Association (sponsors)
County of Los Angeles (sponsors)
The Steinberg Institute (sponsors)
California Treatment Advocacy Coalition
Los Angeles City Councilmember David Ryu
National Alliance on Mental Illness Los Angeles County Council
National Alliance on Mental Illness Sacramento
The Roy W. Smith Charitable Foundation

Opposition

American Civil Liberties Union
California Association of Mental Health Patients' Rights Advocates
California Pan-Ethnic Health Network
Coalition on Homelessness San Francisco
Law Foundation of Silicon Valley
Disability Rights California
National Health Law Project
Sacramento Regional Coalition to End Homelessness
Western Center on Law on Poverty

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THIRD READING

Bill No: SB 688
Author: Moorlach (R)
Amended: 1/23/18
Vote: 21

SENATE HEALTH COMMITTEE: 8-0, 1/10/18
AYES: Hernandez, Nguyen, Mitchell, Monning, Newman, Nielsen, Pan, Roth
NO VOTE RECORDED: Leyva

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Mental Health Services Act: revenue and expenditure reports

SOURCE: Author

DIGEST: This bill requires each county to prepare its Annual Mental Health Services Act Revenue and Expenditure Report in accordance with generally accepted accounting principles (GAAP), as specified, and requires specified entities to post county reports in a machine-readable format on their respective Internet Web sites.

Senate Floor Amendments of 1/23/18 clarify that county reports are required to be prepared in accordance with GAAP, as determined by the Department of Health Care Services (DHCS), and that DHCS and the Mental Health Services Oversight and Accountability Commission (MHSOAC) are required to post county reports on their respective Internet Web sites in a machine-readable format.

ANALYSIS:

Existing law:

1) Establishes the Mental Health Services Act (MHSA), enacted by voters in 2004 as Proposition 63, which provides funds to counties to expand services and develop innovative programs and integrated service plans for mentally ill

children, adults, and seniors through a 1% income tax on personal income above $1 million to be deposited to the Mental Health Services Fund (the Fund), administered by DHCS.

2) Requires DHCS, in consultation with the MHSOAC and the County Behavioral Health Directors Association of California (CBHDAC), to develop and administer instructions for the Annual MHSA Revenue and Expenditure Report (ARER), as specified.

3) Requires counties to submit ARERs electronically to DHCS and the MHSOAC, and for DHCS and the MHSOAC to post each county's ARER on their respective Internet Web sites in a timely manner.

4) Establishes the MHSOAC to oversee the implementation of the MHSA, develop strategies to overcome stigma, and advise the Governor and the Legislature on ways the state can improve care and services to people with mental illness.

This bill:

1) Requires each county to prepare its ARER in accordance with GAAP, as determined by DHCS.

2) Requires DHCS and the MHSOAC to post each county's ARER in a machine-readable format on their respective Internet Web sites.

Background

1) *MHSA.* The MHSA requires each county mental health department to prepare and submit a three-year plan to DHCS that must be updated each year and approved by DHCS after review and comment by the MHSOAC. Some counties make ARERs available to the public on their own Web sites while others do not. In their three-year plans, counties are required to include a list of all programs for which MHSA funding is being requested and identify how the funds will be spent and what populations will be served. Counties must submit their plans for approval to the MHSOAC before they may spend MHSA funds for innovative projects.

   Additionally, counties are annually required to submit electronically ARERs to DHCS and the MHSOAC. The purpose of the ARERs is to identify the expenditures of MHSA funds that were distributed to each county, quantify the amount of additional funds generated for the mental health system as a result of the MHSA, identify unexpended funds and interest earned on MHSA funds, and

determine reversion amounts, if applicable, from prior fiscal year distributions. An ARER is intended to provide information that allows for the evaluation of all of the following:

a) Children's system of care;

b) Prevention and early intervention strategies;

c) Innovative projects;

d) Workforce education and training;

e) Adults and older adults systems of care; and,

f) Capital facilities and technology needs.

2) *GAAP*. GAAP are accounting standards developed and established by the Financial Accounting Foundation's (FAF) standard-setting boards, both the Financial Accounting Standards Board and the Governmental Accounting Standards Board, for public and private companies, not-for-profit organizations, and state and local governments in the United States. According to the FAF, one of the objectives of GAAP applies to financial reporting for state and local governments in order to provide information that enables taxpayers and others who use governmental financial statements to hold governments accountable. According to the FAF, GAAP includes principles on:

a) *Recognition:* what items should be recognized in financial statements;

b) *Measurement:* what amounts should be reported for each of the elements in financial statements;

c) *Presentation:* what line items, subtotals, and totals should be displayed in financial statements; and,

d) *Disclosure:* what specific information is most important to the users of the financial statements.

3) *ARER compliance with GAAP*. According to DHCS, ARER instructions issued by DHCS to counties for MHSA expenditure reporting currently require reports to adhere to the "Accounting Standards and Procedures for Counties, March 2013 Edition," issued by the California State Controller's Office. The standards and procedures require governmental accounting systems to make it possible both:

a) To present fairly and with full disclosure the financial position and results of financial operations of the governmental unit in conformity with GAAP; and,

b) To determine and demonstrate compliance with finance-related legal and contractual provisions.

One exception, according to DHCS, is the Capital Facility Technological Needs (CFTN) component of the MHSA, which is not required to adhere to GAAP reporting. DHCS states that GAAP requirements applied to the CFTN component would not allow for accurate reporting of funds that would be subject to reversion under MHSA rules. DHCS's current reporting requirement for the CFTN component allows for purchases to be reported as one-time expenses, whereas GAAP reporting, according to DHCS, would create problems for the MHSA as funds that could be subject to reversion would be reported as being spent.

Comments

1) *Author's statement.* According to the author, each county utilizes MHSA funds in their own unique way, in furtherance of the goal of providing mental health services to those in need. While the vast diversity of counties makes this flexibility vital for the success of the funded programs, lack of consistent reporting standards makes data collection and analysis extremely difficult. More than $1.5 billion of MHSA funds have been available in recent years, and up to 5% of the funds may be used for state administrative purposes. While some focused evaluation has shown MHSA programming is implemented with good intentions, there is a question about the effectiveness of some programs within the counties and a comprehensive evaluation is needed. Annually, each county must submit to DHCS an ARER. This report is required be submitted six months after the end of the fiscal year so DHCS may update its Web site with each county's report. This bill improves reporting standards by requiring the ARER to comply with GAAP, and to be submitted electronically in machine-readable format to DHCS. This will ensure a consistency and transparency in reporting, and allows for further evaluation and analysis of the reports.

Related/Prior Legislation

SB 742 (Moorlach, Chapter 77, Statutes of 2017) required, among other things, the city treasurer, if the city has issued bonds, to use a system of accounting and auditing that adheres to GAAP.

AB 2279 (Cooley, 2016) would have required DHCS, based on the ARER, to compile information that includes, among other things, the total amount of MHSA revenue, the amount of MHSA money received and expended for each specified component of the MHSA program, and the amount of MHSA money spent on program administration, as specified. *AB 2279 was vetoed by Governor Brown who stated that DHCS was already in the process of collecting and posting ARERs as well as updated three year program expenditure plans, which would provide much of the information outlined in AB 2279.*

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

SUPPORT: (Verified 1/23/18)

County Behavioral Health Directors Association of California

OPPOSITION: (Verified 1/23/18)

None received

ARGUMENTS IN SUPPORT: The CBHDAC writes in support and states that GAAP is the accounting standard adopted by the Federal Securities and Exchange Commission. CBHDAC argues that in the past, it has been difficult for the state to consistently classify MHSA programs and services and that this bill will remedy this challenge by requiring these financial industry GAAP standards. CBHDAC states that this bill will help provide additional oversight of MHSA funds, and through this increased clarity, counties will more effectively demonstrate the value of the state's investment in these critical services.

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1/24/18 15:33:30

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

SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2017 - 2018 Regular

Bill No:	SB 912	**Hearing Date:**	4/24/2018
Author:	Beall		
Version:	4/12/2018 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Erin Riches		

SUBJECT: Housing: homelessness programs and affordable housing

DIGEST: This bill appropriates $2 billion from the General Fund to homelessness programs, as specified.

ANALYSIS:

Existing law:

1) Establishes the Multifamily Housing Program under the state Department of Housing and Community Development (HCD) to assist the new construction, rehabilitation, and preservation of permanent and transitional rental housing for lower income households through loans to local governments and non- and for-profit developers. Funds are directed to those with incomes up to 60% of area median income (AMI).

2) Establishes the Housing for a Healthy California Program under HCD to fund competitive grants to pay for housing construction or operating costs for chronically homeless Medi-Cal beneficiaries who meet specified criteria, including being eligible for Supplemental Security Income. This program is intended to complement the Whole Person Care Pilot Program under the state Department of Social Services, which incentivizes local governments and agencies to coordinate health, behavioral health, and social services for individuals who have been identified as high users of multiple systems and continue to have poor health outcomes.

3) Establishes the California Emergency Solutions Grants (ESG) Program under HCD. This program provides federal funding to engage homeless individuals and families living on the street; improves the number and quality of emergency shelters for homeless individuals and families; helps operate these shelters; provides essential services to shelter residents; rapidly re-houses homeless

individuals and families; and prevents families and individuals from becoming homeless.

4) Establishes the No Place Like Home Program under HCD. This program provides funds to counties to acquire, design, construct, rehabilitate, or preserve permanent supportive housing for individuals who are experiencing homelessness, experiencing chronic homelessness, at risk of chronic homelessness, and in need of mental health services. Counties must commit to provide mental health services and help coordinate access to other community-based supportive services.

This bill:

Allocates, upon appropriation in the annual Budget Act, $2 billion from the state General Fund to HCD as follows:

1) $1 billion to the Multifamily Housing Program to assist in the new construction, rehabilitation, and preservation of permanent and transitional rental housing for individuals with incomes of up to 60% AMI.

2) $1 billion to address homelessness, particularly among members of vulnerable populations, as follows:

   a) $700 million for grants to cities and counties that agree to provide matching funds to alleviate chronic homelessness within their jurisdictions, including but not limited to:

      i) Rental assistance and flexible housing subsidy pool investments.
      ii) Operating subsidies, including gap financing to make supportive housing projects that offer lower rents financially viable.
      iii) Capital grants.
      iv) Interim housing.
      v) Emergency shelters, navigation centers, and rapid rehousing projects.
      vi) Construction of affordable housing that includes housing for homeless persons. An unspecified portion shall be set aside for the Multifamily Housing Program, with at least 20% of the units available to chronically homeless persons.

   b) $200 million to the Housing for a Healthy California Program.

c) $50 million to the ESG Program for the purpose of addressing the specific needs of homeless youth, as follows:

   i) Requires eligible activities to include, in addition to currently eligible activities, family finding services to locate and engage relatives of homeless youth with the goal of connecting homeless youth who wish to be reconnected with family.
   ii) Requires funded activities to incorporate the Core Components of Housing First as outlined in existing law.
   iii) Requires providers offering services comprehensive, culturally competent, and trauma-informed services to meet the needs of homeless youth, including the specific needs of lesbian, gay, bisexual, and transgender youth; commercially sexually exploited children and young people; youth of color; and survivors of domestic violence.

d) $50 million to the Domestic and Sexual Violence Prevention Complementary Services Fund, upon establishment of that fund, to provide housing and services for survivors of domestic violence.

COMMENTS

1) *Purpose*. The author states that in the last two years, the Legislature has taken giant steps to address the state's housing and homelessness crisis by passing the No Place Like Home initiative in 2016 and a comprehensive housing package of 15 funding and reform bills in 2017. Despite these monumental efforts, the California housing shortage will only be exacerbated by the tax plan passed by the federal government, which reduces the value of the low-income housing tax credit (LIHTC). In addition, over the last 10 years, California has experienced a 34% reduction in federal housing funds. This lack of funds has had a direct impact on homelessness, which rose 14% in California from 2016 to 2017. Despite recent efforts, California has been unable to fill the funding gap from the loss of redevelopment funds and statewide housing bonds passed in the 2000s. This bill proposes to invest $2 billion in one-time funds from the projected $6 billion state budget surplus into housing for the homeless and for low-income families most at risk of becoming homeless. This bill aims to provide funds directly to cities, counties, and non-profits, get the money out the door quickly by investing in existing affordable housing programs, offset federal funding cuts and the reduced value of the LIHTC, and fund programs that end and prevent homelessness.

2) *California's housing crisis.* California is home to 21 of the 30 most expensive rental housing markets in the country, which has had a disproportionate impact

on the middle class and working poor. An individual earning minimum wage must work three jobs, on average, to pay the rent for a two-bedroom unit. Housing units affordable to low-income earners, if available, are often in serious states of disrepair. California also faces a housing shortage. Since the 1980s, the state has failed to produce the estimated 180,000 necessary new housing units per year. According to HCD, California has a 1.5 million unit shortage of housing available to its lowest-income households, who are most at risk of becoming homeless. As a result, low-income families are forced to spend more and more of their income on rent, leaving little else for other basic necessities. High housing costs are a major driver for the increase in homelessness in California. The housing crisis is also impacting middle-income families as housing costs skyrocket and threaten our future and economy. Many young families must postpone or forego homeownership, live in more crowded housing, commute further to work, or, in some cases, choose to live and work elsewhere.

A recent report by HCD highlighted the depths of the state's housing shortage, showing that statewide for very low-, and extremely low- households, California is short about 1.5 million rental units.[1] That same report showed that for moderate and above moderate-income levels, there was a sufficient number of rental housing units, at least on a statewide average basis, indicating that the focus should be on the poorest households.

3) *Funding shortfall at every level.* Historically, the state has funded housing programs through the sale of general obligation bonds. Most recently, the voters approved a $2.1 billion bond through Proposition 46 in 2002 and then a $2.85 billion bond through Proposition 1C in 2006. These funds financed the construction, rehabilitation, and preservation of 183,000 units, including shelter spaces and permanent supportive housing for the homeless. HCD has awarded almost all of the funds made available under these propositions, particularly in its main programs.

Until 2011, the Community Redevelopment Law required redevelopment agencies to set aside 20% of all property tax increment revenue to increase, improve, and preserve the community's supply of low- and moderate-income housing available at an affordable housing cost. In fiscal year 2009-10, redevelopment agencies deposited $1.075 billion of property tax increment revenues into their Low- and Moderate-Income Housing Funds. With the elimination of redevelopment agencies, this source of funding for affordable housing is no longer available.

[1] California's Housing Future: Challenges and Opportunities (Public Draft) – op cit. Extremely low income households earn less than 30% of the area median income (AMI); very low income households earn between 30%-50% of AMI.

According to the Department of Finance and the US Department of Housing and Urban Development, California receives about $627 million/year in funding for three major programs: HOME Investment Partnerships Program (HOME), Emergency Solutions Grants Program, and Community Development Block Grant Program. Over the last ten years, these programs have been reduced by 34%. According to the Department of Finance, the HOME and CDBG programs are most at risk of being cut by 2/3 or cut completely, which means significant cuts in funding for low-income and homeless Californians.

4) *Something old, something new*. This bill allocates funding to a variety of existing and new programs:

   a) The Multifamily Housing Program ($1 billion) is an existing HCD program that is not currently funded, though last year's housing package included allocations that HCD is in the process of implementing. The author notes that the allocation in this bill will help offset the decrease in value of federal tax credits due to federal tax reform and the lowering of the corporate tax rate.

   b) The Housing for a Healthy California Program ($200 million) was established under HCD last year (AB 74, Chiu, Chapter 777, Statutes of 2017) and HCD is in the process of implementing it.

   c) The ESG Program ($50 million) is an existing federal program that directs funding directly to urban (entitlement) areas and through HCD to rural (non-entitlement) areas. In 2016, California entitlement jurisdictions received $20.4 million and HCD received $12 million for non-entitlement jurisdictions.

   d) The Domestic and Sexual Violence Prevention Complementary Services Fund ($50 million) does not yet exist, but the author of this bill has submitted a budget request to establish this fund within the state Office of Emergency Services to provide housing and services for domestic violence survivors. Monies would be distributed through a competitive grant process to organizations addressing domestic and sexual violence.

   e) The bill also allocates $700 million to HCD (no specific program) for grants to cities and counties to address chronic homelessness. The author intends to provide flexible funds for, among other things, private landlords and housing providers for rental subsidies to encourage the use of housing choice vouchers; gap financing to make supportive housing projects pencil-out due

to lower rents; gap financing for supportive housing projects that are ready to go; affordable housing projects with at least 20% set aside for the chronically homeless, to encourage more deeply targeted projects; creative housing solutions for individuals who are awaiting some form of permanent housing; and shelters, navigation centers, and rapid rehousing. Moving forward, the author may wish to consider adding language to this bill providing such direction, as well as language to ensure transparency and accountability for how these funds are expended.

RELATED LEGISLATION:

AB 3171 (Ting, 2018) — establishes the Local Homelessness Solutions Program, which would provide block grants to local governments to address homelessness, to be funded through an unspecified amount from the General Fund. *This bill is pending hearing in the Assembly Housing Committee.*

SB 2 (Atkins, Chapter 364, Statutes of 2017) — establishes the Building Homes and Jobs Act and imposes a $75 fee on real estate transaction documents, excluding commercial and residential real estate sales, to provide funding for affordable housing.

SB 3 (Beall, Chapter 365, Statutes of 2017) — enacts the Veterans and Affordable Housing Bond Act of 2018 and authorizes the issuance of $4 billion in general obligation bonds for affordable housing programs and a veterans' homeownership program, subject to approval by the voters in the November 6, 2018 election.

AB 1618 (Committee on Budget, Chapter 43, Statutes of 2016) — establishes the No Place Like Home Program to further the development of permanent supportive housing for persons who are in need of mental health services and are homeless, chronically homeless, or at risk of homelessness.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 18, 2018.)

SUPPORT:

Affirmed Housing
American Planning Association, California Chapter
Aspiranet
Association of California Cities – Orange County
Bridge Housing
California Apartment Association
California Housing Consortium
California State Association of Counties
California Welfare Directors Association
City of Berkeley
City of El Cerrito
City of Glendale
City of San Jose
City of San Marcos
Community Home Builders and Associates
Corporation for Supportive Housing
County Behavioral Health Directors Association of California
Housing Authority of the County of Santa Barbara
Life Skills Training and Education Programs, Inc. (LifeSTEPS)
Non-Profit Housing Association of Northern California
Pacific Companies
Paulett Taggart Associates, Inc.
Richmond Neighborhood Housing Services Inc.
Rural County Representatives of California
Sacramento County Board of Supervisors
Santa Clara County
Tenderloin Neighborhood Development Corporation
Urban Counties Caucus of California
Western Community Housing, Inc.

OPPOSITION:

None received.

-- END --

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 1045	**Hearing Date:**	April 24, 2018
Author:	Wiener		
Version:	April 9, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SC		

Subject: ***Conservatorship: Chronic Homelessness: Mental Illness and Substance Use Disorders***

HISTORY

Source: City and County of San Francisco

Prior Legislation:
AB 59 (Waldron), Ch. 251, Stats. 2016
AB 193 (Maienschein), 2015, vetoed
AB 2266 (Waldron), 2014, failed in Assembly Judiciary
AB 1265 (Conway), 2013, failed in Assembly Judiciary
SB 364 (Steinberg) Ch. 567, Stats. 2013
AB 2357 (Karnette) Ch. 774, Stats. 2006
AB 1421 (Thomson), Ch. 1017, Stats. 2002
SB 677 (Lanterman-Petris, Short) Ch. 1667, Stats. 1967

Support: American Physician Group; California Psychiatric Association; City of Fairfield; City of Los Angeles; City of Santa Monica; San Diego County District Attorney's Office; Stop Crime SF; Treatment Advocacy Center

Opposition: American Civil Liberties Union; California Advocates for Nursing Home Reform; California Association of Mental Health Patients' Rights Advocates; California Association of Mental Health Peer Run Organizations; California Pan-Ethnic Health Network; CEDAR; Coalition on Homelessness San Francisco; Disability Community Resource Center; Disability Rights Advocates; Disability Rights California; Disability Rights Education and Defense Fund; Homeless Emergency Service Providers Association; Law Foundation of Silicon Valley; National Health Law Project; Sacramento Regional Coalition to End Homelessness; Western Center on Law and Poverty; Western Regional Advocacy Project

THIS ANALYSIS REFLECTS THE BILL AS PROPOSED TO BE AMENDED

PURPOSE

The purpose of this bill is to authorize, until January 1, 2024, a pilot project operative in San Francisco and Los Angeles counties to establish a procedure for the appointment of a conservator for a person who is chronically homeless and incapable of caring for their own health and well-being due to serious mental illness and substance use disorder, as evidenced

by high-frequency emergency department use, high-frequency jail detention, or frequent placement under a 72-hour involuntary hold, as provided.

Existing law states, among other things, that the Legislative intent of the Lanterman-Petris Short (LPS) Act is to end inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism. Existing law also establishes that the LPS Act is intended to eliminate legal disabilities and protect mentally disordered and developmentally disabled persons. (Welf. & Inst. Code, § 5001.)

Existing law defines, as a basis for involuntary commitment under the LPS Act, "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 his (or her) basic personal needs for food, clothing, or shelter. (Welf. & Inst. Code, § 5008, subd. (h)(1)(A),(2).)

Existing law provides that "gravely disabled" does not include persons with intellectual disabilities by reason of that disability alone. (Welf. & Inst. Code, § 5008, subd. (h)(3).)

Existing law provides that when applying the definition of mental disorder for the purposes of the LPS Act, the historical course of the person's mental illness, as determined by available relevant information, shall be considered when it has a direct bearing on the determination of whether the person is a danger to others, or to themselves, or is gravely disabled. The relevant information shall include, but is not limited to, 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, subd. (a).)

Existing law provides that 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. (Welf. & Inst. Code, § 5150.)

Existing law provides that a finding of grave disability must be based on the person's present conditions. (*Conservatorship of Benevuto* (1986) 180 Cal.App.3d 1030.)

Existing law provides that a person is not gravely disabled, as a basis for involuntary commitment under the LPS Act, if the person is capable of safely surviving in freedom with the help of willing and responsible family members, friends, or third parties, and there is credible evidence that such help is available. (*Conservatorships of Early* (1983) 35 Cal.App.3d 685.)

Existing law provides that a person who has been detained for 72 hours may be 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. Existing law further provides that a person who has been detained for 14 days of intensive treatment may be detained for up to 30 additional days of intensive treatment if the person

remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (Welf. & Inst. Code, §§ 5250, 5270.15.)

Existing law allows the professional person in charge of a facility providing 72-hour, 14-day, or 30-day treatment to recommend an LPS conservatorship to the county conservatorship investigator for a person who is gravely disabled and is unwilling or unable to voluntarily accept treatment, and requires the conservatorship investigator, if he or she concurs with the recommendation, to petition the superior court to establish an LPS conservatorship. (Welf. & Inst. Code, § 5350 et seq.)

Existing law provides that the person for whom the LPS conservatorship is sought shall have the right to demand a court or jury trial on the issue of whether he or she is gravely disabled. (Welf. & Inst. Code, § 5350, subd. (d).)

Existing law allows, under the LPS Act, a court to order an imminently dangerous person to be confined for further inpatient intensive health treatment for an additional 180 days, as provided. (Welf & Inst. Code, § 5300 et seq.)

Existing law, under Laura's Law, authorizes, in participating counties, a court to order a person age 18 or older into assisted outpatient treatment (AOT) if the court finds by clear and convincing evidence that all of the following criteria are met:

- The person is suffering from a serious mental illness, as defined in existing law, and is unlikely to survive safely in the community without supervision, based on a clinical determination;

- The person has a history of a lack of compliance with treatment for mental illness that has:

    - At least twice within the last 36 months been a substantial factor in necessitating hospitalization, treatment in a mental health unit of a correctional facility, or incarceration (not including any hospitalization or incarceration immediately preceding the filing of the petition); or

    - Resulted in one or more acts, attempts, or threats of serious violent behavior toward self or others, within the last 48 months (not including any hospitalization or incarceration immediately preceding the filing of the petition);

- The county mental health director or designee has offered the person an opportunity to participate in a treatment plan, the person continues to fail to engage in treatment and the person's condition is substantially deteriorating;

- In view of the person's treatment history and current behavior, the person is in need of AOT in order to prevent a relapse or deterioration which would be likely to result in grave disability or serious harm to the person or others; and

- AOT would be the least restrictive placement necessary to ensure the person's recovery and stability, and the person is likely to benefit from the treatment. (Welf. & Inst. Code, § 5346, subd. (a).)

Existing law authorizes a request for the filing of a petition for an AOT order to be made to the county mental health department by: (1) an adult living with the person who is subject of the petition; (2) the parent, spouse, sibling, or adult child of that person; or (3) specified mental health and law enforcement personnel. (Welf. & Inst. Code, § 5346, subd. (b)(1)-(2).)

Existing law requires the county mental health director or designee to investigate the request, including conducting an examination of the person who is the subject of the petition, and to file the petition only upon a determination that there is a reasonable likelihood that all the necessary elements to sustain the petition can be proved by clear and convincing evidence. (Welf. & Inst. Code, § 5346, subd. (b)(3).)

Existing law requires the petition to state why the subject of the petition meets the criteria for AOT services, and to include an affidavit by the licensed mental health provider who was directed to examine the person by the mental health director, stating that the provider either (1) after personally examining the person, recommends AOT, and is willing to testify at the hearing, or (2) attempted but failed to persuade the person to submit to an examination, but has "reason to believe" that the person meets the criteria for AOT. (Welf. & Inst. Code, § 5346, subd. (b)(4)-(5).)

Existing law provides that the person who is the subject of the petition shall have the right to be represented by counsel at all stages of an AOT proceeding, and if requested by the person, the court shall immediately appoint a public defender or other attorney to assist the person in all stages of the proceedings. The person shall pay the cost of the legal services if he or she is able. (Welf. & Inst. Code, § 5346, subd. (c).)

Existing law requires the court to dismiss the petition if the court finds that the person who is the subject of the petition does not meet the criteria for AOT. (Welf. & Inst. Code, § 5346, subd. (d)(5)(A).)

Existing law authorizes the court, if it finds that the person meets the AOT criteria, and there is no less restrictive alternative, to order the person to receive AOT services, set forth in a written treatment plan as specified, for an initial period not to exceed six months. (Welf. & Inst. Code, § 5346, subd. (d)(5)(B).)

Existing law provides that AOT services shall not be ordered unless the court finds, in consultation with the mental health director or designee, that the specified services are available in the county. (Welf. & Inst. Code, § 5346, subd. (e).)

Existing law requires counties implementing the AOT procedure to provide specified services, which also would be available on a voluntary basis, and would require persons subject to AOT orders to be provided services by trained mobile mental health teams with no more than 10 clients per team member. Additionally, counties can only implement these AOT services as provided. (Welf. & Inst. Code, §§ 5348; 5349.)

Existing law requires implementing counties to work with other interested parties to develop a training and education program to improve delivery of services to mentally ill individuals affected by this bill, which shall include education as to the legal requirements for commitment, and methods to ensure effective treatment and to encourage individuals' informed consent to assistance. (Welf. & Inst. Code, § 5349.1.)

Existing law required the State Department of Health Care Services to submit a report and evaluation of all counties implementing Laura's Law to the Governor and to the Legislature by July 31, 2011. (Welf. & Inst. Code, § 5349.5.)

Existing federal law provides that the meaning of a homeless individual with a disability is an individual who is homeless and has a disability that:

- Meets all of the following:
    - is expected to be long-continuing or of indefinite duration;
    - substantially impedes the individual's ability to live independently;
    - could be improved by the provision of more suitable housing conditions; and
    - is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury; or
- Is a developmental disability; or
- Is the disease of acquired immunodeficiency syndrome or any condition arising from the etiologic agency for acquired immunodeficiency syndrome. (42 U.S.C. § 11360.)

This bill would authorize, until January 1, 2024, a pilot project creating a process to conserve a person who is chronically homeless and incapable of caring for their own health and well-being due to serious mental illness and substance use disorder, as evidenced by high-frequency emergency department use, high-frequency jail detention due to behavior resulting from the person's severe mental illness and substance use disorder, or frequent detention for evaluation and treatment pursuant to the 72 hold provision provided for under the LPS Act.

This bill's provisions apply to the counties of San Francisco and Los Angeles, and may only be implemented upon approval by the county board of supervisors.

This bill requires, prior to approval to participate in the pilot project, the county board of supervisors to make a finding that no voluntary mental health program services adults, and no children's mental health program, may be reduced as a result of the implementation of the provisions of this bill.

This bill requires, prior to approval to participate in the pilot project, the county board of supervisors shall hear from the county mental health department, the county welfare department, and, if one exists, the county department of housing and homeless services on the available resources for the implementation of the provisions in this bill.

This bill requires the county board of supervisors, in order to approve implementation of the pilot project, to determine, based on materials presented, that the following services are available within the county for utilization in connection to the application of this article:

- Supportive housing, with adequate beds available;
- Public Conservators trained on the specifics of this new form of conservatorship;

- Out-patient mental health counseling;
- Coordination and access to medications;
- Psychiatric and psychological services;
- Substance abuse services;
- Vocational rehabilitation;
- Veterans' services; and
- Family support and consultation services.

This bill would provide that in counties participating in the pilot project, the court may appoint the public conservator or the director of a local agency to be tasked with serving as the conservator of these new conservatees if it is in the best interests of the proposed conservatee.

This bill would provide that the proposed conservatee has the right to demand a court or jury trial on the issue of whether they meet the criteria for the appointment of a conservator. Such a demand shall be made within five days following the hearing on the conservatorship petition and the court shall commence the trial within 10 days of the date of the demand. The court shall continue the trial date for a period not to exceed 15 days upon the request of counsel for the proposed conservatee.

This bill would provide the following definitions:

- "Chronically homeless" shall have the same meaning as that term is defined in Section 578.3 of Title 24 of the Code of Federal Regulations, which states:
    - a homeless individual with a disability who:
        - lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and
        - has been homeless and living in such a place continuously for at least 12 months or on at least four separate occasions in the last three years, as long as the combined occasions equal at least 12 months.
    - an individual who has been residing in an institutional care facility, including a jail, a substance abuse or mental health treatment facility, hospital, or other similar facility for fewer than 90 days and meet all of above criteria; or
    - a family with an adult head of household who meets all of the above criteria; (24 C.F.R. Sec. 578.3.)
- "Frequent detention for evaluation and treatment" means four or more detentions for evaluation and treatment in the preceding 12 months;
- "High-frequency emergency department use" means five or more monthly individual patient visits to an emergency department;

- "High-frequency jail detention" means five or more monthly bookings, detentions, or other processing of the person into a jail;

- "Homeless" shall have the same meaning as that term is defined in Section 578.3 of Title 24 off the Code of Federal Regulations, which states:

    - an individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

        - an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

        - an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

        - an individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

    - an individual or family who will imminently lose their primary nighttime residence, provided that:

        - the primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

        - no subsequent residence has been identified; and

        - the individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

    - unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

        - are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

        - have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

- have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

- can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

- any individual or family who:

  - is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

  - has no other residence; and,

  - lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

This bill would provide that the purpose of these new conservatorships is to provide appropriate placement, including a licensed health care or psychiatric facility, or community-based residential care settings, in supportive community housing that provides wraparound services, such as on-site physical and behavioral health services, for a person who is chronically homeless and incapable of caring for the person's own health and well-being due to serious mental illness and substance use disorder, or frequent detention for evaluation and treatment.

This bill would state that in each county participating in the pilot project, the governing board shall designate the agency or agencies to provide the conservatorship investigation, as provided. The governing board may designate that the conservatorship services be provided by the public guardian, public conservator, or agency providing public guardian services.

This bill would provide that all of the following may recommend conservatorship to the party assigned to perform the conservatorship investigation in that particular county if they determine that a person is chronically homeless and incapable of caring for the person's own health and well-being due to serious mental illness and substance use disorder, as evidenced by high-frequency emergency department use, high-frequency jail detention due to behavior resulting from the person's serious mental illness and substance use disorder, or frequent detention for evaluation and treatment:

- the professional person in charge of a hospital facility providing emergency services;

- the county sheriff;

- the director of a county mental health department or a county department of public social services.

This bill would provide that the party assigned to investigate the conservatorship recommendation shall petition the superior court in the county of residence of the person to be conserved if they concur with the recommendation.

This bill would provide that the party completing the conservatorship investigation shall investigate all available alternatives to conservatorship and shall recommend conservatorship to the court only if no suitable alternatives are available. If the investigating party recommends against conservatorship, they shall set forth all the alternatives available.

This bill would provide that the report, resulting from the conservatorship investigation, shall be provided to the court in writing, prior to the hearing. The report shall be comprehensive and include all relevant aspects of the person's medical, psychological, financial, family, vocational, and social conditions, as well as information obtained from a person's family, close friends, social worker, and therapist. The facilities providing medical treatment or intensive treatment or comprehensive evaluation, the sheriff, and the director of the county mental health department, or the county department of public social services, shall disclose any records or information that may facilitate the investigation.

This bill would provide that the conservatorship recommendation report shall be transmitted to the individual who recommended the conservatorship when confidentiality and client privacy laws permit.

This bill would provide that the report shall contain the investigating party's recommendations concerning the powers to be granted to, and the duties imposed upon, the conservator, the legal disabilities to be imposed upon the conservatee, and the proper placement for the conservatee. As well as, an agreement signed by the person or agency recommended to serve as the conservator certifying that the person or agency is able and willing to serve.

This bill would provide that a person or agency shall not be designated as conservator whose interests, activities, obligations, or responsibilities are such as to compromise the person or agency's ability to represent and safeguard the interests of the conservatee.

This bill would provide that if ordered by the court after the conservatorship hearing, a conservator shall place the conservatee in an appropriate placement, including a licensed health care or psychiatric facility, or community-based residential care setting in supportive housing that provides wraparound services, such as on-site physical and behavioral health services.

This bill would provide that a conservatee or any person on the conservatee's behalf with the consent of the conservatee or the conservatee's counsel may petition the court for a hearing to contest the powers granted to the conservator. However, after the filing of the first petition, no further petition shall be submitted for a period of six months.

This bill would provide that at any time the conservatee may petition the superior court for a rehearing as to the conservatee's status as a conservatee. However, after the filing of the first petition for rehearing pursuant to this section, no further petition for rehearing shall be submitted for 30 days.

This bill would provide that a conservatorship initiated pursuant to this chapter shall automatically terminate one year after the appointment of the conservator. If the conservator feels that a conservatorship is still required, the conservator may petition the superior court for the conservator's reappointment as conservator for a succeeding one-year period, indefinitely.

This bill would provide that any supportive housing program in which a conservatee is placed shall release the conservatee at the conservatee's request when the conservatorship terminates. If there is a petition for the one year extension, it shall be transmitted to the supportive housing program at least 30 days before the automatic termination program. The program may hold the conservatee after the end of the termination date only if the conservatorship proceedings have not been completed and the court orders the conservatee to be held until the proceedings have been completed, without limitation.

This bill would require the clerk of the superior court to notify each conservator, conservatee, and person in charge of the supportive housing program in which the conservatee receives services, and the conservatee's attorney, at least 60 days before the scheduled termination of the one year period.

This bill would provide that if the conservator does not petition to reestablish the conservatorship at or before the termination, the court shall issue a decree terminating the conservatorship.

This bill would provide that the Judicial Council may adopt rules, forms, and standards necessary to implement these provisions.

This bill would provide that if the conservator continues in good faith to act within the powers granted to the conservator beyond the one-year period, the conservator may petition for and shall be granted a decree ratifying the conservator's acts as conservator beyond the one-year period. The decree shall provide for a retroactive appointment to provide continuity of authority.

This bill would provide that a hearing shall be held on all petitions under these provisions within 30 days of the date of the petition and that the court shall appoint the public defender or other attorney for the conservatee or proposed conservatee within five days after the date of the petition.

This bill would provide that the counties participating in the pilot project shall establish a working group to conduct an evaluation of the effectiveness of their implementation of these provisions in addressing the needs of chronically homeless persons with serious mental illness and substance use disorders in the county. The working group shall be comprised of the following:

- Representatives of disability rights advocacy groups;
- The county mental health department;
- The county health department;
- The county social services department;
- Law enforcement;

- Staff from hospitals located in the county; and

- The county department of housing and homeless services, if one exists.

This bill requires each working group to prepare and submit a report to the Legislature on its findings and recommendations regarding the implementation of the pilot project no later than January 1, 2023.

COMMENTS

1. Need for this Bill

According to the author of this bill:

> The City and County of San Francisco's data on individuals who interact with the conservatorship office shows that a small fraction of individuals, who encounter treatment services or who are detained by law enforcement, will be frequently evaluated in emergency rooms or psychiatric wards, will be detained, and be temporarily conserved. However, these individuals will be released after either a 14-day or 30-day hold because the effects of their, often, drug-induced psychosis have been treated and are no longer present. However, these individuals are often not eligible for longer conservatorships under the LPS law despite mounting evidence that these individuals will more than likely re-enter the emergency or psychiatric care system, including being put under 14-day and 30-day holds.
>
> SB 1045 creates a new type of conservatorship in the Welfare and Institutions Code that focuses on providing housing with wraparound services to the most vulnerable Californians living on the streets. In order to be considered for conservatorship, an individual must be chronically homeless and suffering from acute mental illness and severe substance use disorder such that those co-occurring conditions have resulted in that individual frequently visiting the emergency room, being frequently detained by police under a 5150, or frequently held for psychiatric evaluation and treatment.
>
> Under this bill, the director of a county mental health or social services department, the county sheriff, the director of a hospital or emergency health facility, or the head of a facility providing intensive services can recommend to the county that a person be conserved. If the county officer investigating the conservatorship agrees with that recommendation, a judge will consider the case of the person to be conserved and only order conservatorship if there are no viable alternatives to caring for that individual, other than conservatorship.

2. The LPS Act

Under the LPS Act, existing law provides for involuntary commitment for varying lengths of time for the purpose of treatment and evaluation, provided certain requirements are met. Additionally, the LPS Act provides for LPS conservatorships, resulting in involuntary commitment for the purposes of treatment, if an individual is found to meet the "grave disability" standard. (Welf. & Inst. Code Sec. 5001 et seq.)

Typically one first interacts with the LPS Act through what is commonly referred to as a 5150 hold. This allows an approved facility to involuntarily commit a person for 72 hours for evaluation and treatment if they are determined to be, as a result of a mental health disorder, a threat to themselves or others, or gravely disabled. (Welf. & Inst. Code Sec. 5150.) The peace officer, or other authorized person, who detains the individual must know of a state of facts that would lead a person of ordinary care and prudence to believe that the individual meets this standard. (People v. Triplett (1983) 144 Cal.App.3rd 283, pp. 287-288.) When making this determination, the peace officer, or other authorized person, may consider the individual's past conduct, character, and reputation, so long as the case is decided on facts and circumstances presented to the detaining person at the time of detention. (Heater v. Southwood Psychiatric Center (1996) 42 Cal.App.4th 1068.)

Following a 72 hour hold, the individual may be held for an additional 14-days, without court review, if they are found to still be, as a result of a mental health disorder, a threat to themselves or others, or gravely disabled. (Welf. & Inst. Code Sec. 5250.) When determining whether the individual is eligible for an additional 14 day confinement, the professional staff of the agency or facility providing evaluation services must find that the individual has additionally been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis. (Welf. & Inst. Code Sec. 5250(c).) Additionally, the individual cannot be found at this point to be gravely disabled if they can survive safely without involuntary detention with the help of responsible family, friends, or third parties who are both willing and able to help. (Welf. & Inst. Code Sec. 5250(d).)

If a person is still found to remain gravely disabled and unwilling or unable to accept voluntary treatment following their additional 14 days of intensive treatment, they may be certified for an additional period of not more than 30 days of intensive treatment. (Welf. & Inst. Code Sec. 5270.15.) This "temporary conservatorship" means that the individual may request judicial review of this involuntary detention, and if judicial review is not requested, the individual must be provided a certification review hearing. Additionally, the professional staff of the agency or facility providing the treatment, must analyze the person's condition at intervals not to exceed 10 days, and determine whether the person continues to meet the criteria for continued confinement. If the person is found to no longer meet the requirements of the 30 day hold, then their certification should be terminated. (Welf. & Inst. Code Sec. 5270.15(b).)

Finally, the LPS Act provides for a conservator of the person, of the estate, or of both the person and the estate for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism. (Welf. & Inst. Code Sec. 5350.) The individual for whom such a conservatorship is sought has the right to demand a court or jury trial on the issue of whether they meet the gravely disabled requirement. The purpose of an LPS conservatorship is to provide individualized treatment, supervision and placement for the gravely disabled individual. (Welf. & Inst. Code Sec. 5350.1.)

The common thread within the existing LPS framework is that the person must be found to have a "grave disability" that results in physical danger or harm to the person. Currently, a "grave disability" finding requires that the person presently be unable to provide for food, clothing, and shelter due to a mental disorder, or severe alcoholism, to the extent that this inability results in physical danger or harm to the person. In making this determination, the trier of fact must consider whether the person would be able to provide for these needs with a family member, friend, or other third party's assistance if credible evidence of such assistance is produced at the LPS conservatorship hearing. (Welf. & Inst. Code Sec. 5008(h)(1)(A),(2); *Conservatorship of*

Benevuto (1986) 180 Cal.App.3d 1030; Conservatorships of Early (1983) 35 Cal.App.3d 685; Conservatorship of Jesse G. (2016) 248 Cal.App.4th 453.) The courts have found that this definition of "gravely disabled" is not unconstitutionally vague or overbroad, but rather is sufficiently precise in that it excludes "unusual or nonconformist lifestyles" and turns on an inability or refusal on the part of the individual to care for their basic personal needs. (*Conservatorship of Chambers* (1977) 71 Cal.App.3d 277.)

This bill creates a new type of conservatorship for chronically homeless with serious mental illness and substance use disorders. The proponents of this bill state that the bill is necessary because existing law allows for some individuals to fall through the cracks in terms of care and services. One of the examples provided by the sponsor of this bill as to why this population cannot be addressed by the current LPS framework is that after a 5150 or 5120 hold, this population is often able to articulate a plan for basic needs such as housing, food, and clothing so they do meet the definition of gravely disabled for LPS conservatorship. Opponents of this bill raise concerns that this bill's use of a "serious mental illness and substance use disorder" standard rather than the "gravely disabled standard is too broad and would because it only applies to homeless persons, the bill creates a different standard involuntary confinement based solely on one's economic status.

3. Laura's Law

Existing law also provides for court ordered outpatient treatment through Laura's Law, or the Assisted Outpatient Mental Health Treatment Program (AOT) Demonstration Project. In participating counties, the court may order a person into an AOT program if the court finds that the person either meets existing involuntary commitment requirements under the LPS Act or the person meets non-involuntary commitment requirements, including that the person has refused treatment, their mental health condition is substantially deteriorating, and AOT would be the least restrictive level of care necessary to ensure the person's recovery and stability in the community. (Welf. & Inst. Code Sec. 5446 et seq.) Laura's Law follows the involuntary commitment procedures established by LPS, but is aimed at providing out-patient treatment through community services. The law is only operative in those counties in which the county board of supervisors, by resolution, authorizes its application and makes a finding that no voluntary mental health program serving adults, and no children's mental health program, may be reduced in order to implement the law. (Welf. & Inst. Code Sec. 5349.) The purpose of this language is to require the county board of supervisors to review their current services available and ensure no reduction to these services will result on account of implementing Laura's Law.

Laura's Law provides participating counties with additional, needed tools for early intervention. It allows for family members, relatives, cohabitants, treatment providers or their supervisors, or peace officers to initiate the AOT process with a petition. Then if the individual is found to meet the AOT eligibility requirements, an individual preliminary care plan is developed to meet that person's needs. If this process results in the person voluntarily engaging with treatment, then the patient is deemed to no longer meet the criteria and the petition is no longer available. However, if the client declines their preliminary plan, then a public defender is assigned and the petition proceeds. Laura's Law requires that the court must be notified within 10 days of the intervention, and a hearing must be set within five days of the filing of the petition. It is then up to the judge to either grant or reject the AOT petition. If an AOT petition is approved by the Court, treatment ordered is valid for up to 180 days. (Welf. & Inst. Code Sec. 5346.)

The initial sunset provision provided for within Laura's Law has now been extended three times, most recently by AB 59 (Waldron, Ch. 251, Stats. 2016) which extended the sunset until January 1, 2022. While AB 59 was moving through the legislative process, the Author's office stated, "Laura's Law provides family members with important tools for initiating outpatient treatment for severely mentally ill adults who are incapable of seeking help on their own. It helps to identify when a patient's condition is significantly worsening and to intervene before the patient becomes too ill and is subject to involuntary civil confinement."

Similar to Laura's law, this bill contains an opt-in provision for the named counties requiring a minimum level of services available within the county before the county board of supervisors may participate in the pilot project. The bill requires the county board of supervisors to make a finding that no voluntary mental health program services adults, and no children's mental health program, may be reduced as a result of the implementation of the provisions in this bill. Prior to making its decision, the county board of supervisors must hear from the county mental health department, the county welfare department, and, if one exists, the county department of housing and homeless services on the available resources. In order to approve participation in the pilot project, the county board of supervisors must determine, based on materials presented, that the following services are available within the county for utilization in connection to the population to be served by this bill:

- Supportive housing, with adequate beds available;
- Public Conservators trained on the specifics of this new form of conservatorship;
- Out-patient mental health counseling;
- Coordination and access to medications;
- Psychiatric and psychological services;
- Substance abuse services;
- Vocational rehabilitation;
- Veterans' services; and
- Family support and consultation services.

This bill's provisions sunset on January 1, 2024, and contains reporting requirements to the Legislature.

4. Argument in Support

According to the San Diego District Attorney's Office:

> SB 1045 will create a new conservatorship that focuses on providing supportive housing with intensive wraparound services to care for the most vulnerable Californians who are chronically homeless, mentally ill and suffer from serious substance use disorders. This program focuses on people who routinely end up in emergency room, psychiatric facilities, jail, or other police custody and for whom

> voluntary support services have repeatedly fail[ed] to have a positive long-term impact. California faces an unprecedented housing afforadability crisis, accompanied by significant untreated mental illness and drug addicition. These conditions, coupled with the limitations of our state and local social services, have left some counties searching for more tools to provide help and support to those Californians in the most need. Many of the successful programs and services across the state have still fallen short of providing meaningful rehabilitation to a small population of residents with severe mental illness and drug addiction who are deteriorating on our streets. Some of these individuals are regularly placed on psychiatric hold, admitted to the emergency room for evaluation, or are arrested for behavior related to severe mental illness or drug addiction. By allowing greater flexibility to conserve these extremely disabled individuals, who are unable to make decisions for themselves, we can keep people out of the criminal justice system and focus on their health and well-being. SB 1045 will provide a narrow, but effective optional tool for counties to deliver services, treatment, and support to the most vulnerable people in California.

5. Argument in Opposition

Disability Rights California opposes this bill for several reasons, some of which are highlighted below:

SB 1045, through the creation of a new type of conservatorship, needlessly expands involuntary care for individuals in a restrictive and confined environment beyond what is current law.

LPS was built upon furthering the personal autonomy rights of all people with disabilities, and particularly the right to self-direction and self-determination. This bill rests on the assumption that mental illness may cause resistance to care when in fact the lack of housing, services or medical care is responsible for the absence of care, or the intrusive conditions placed on receiving care results in individuals living on the streets in order to retain some level of self-determination.

Additionally AOT (Laura's Law) already allows for the involuntary treatment of individuals "unable to carry out transactions necessary for survival or to provide for basic needs." Homeless individuals refusing available care for life threatening medical conditions meet this definition and are regularly conserved under LPS by courts when found necessary. There has not been any showing of current barriers in existing law or practice that prevents counties from providing the care and services they propose with this bill.

. . . .

SB 1045 is dangerously expansive at the expense of individual rights.

SB 1045 steps away from the "gravely disabled" standard and instead uses a "serious mental illness and substance use disorder" standard evidenced by high frequency emergency department use, high frequency jail detention or high frequency 5150 detention. The danger is evident. For example, a high frequency emergency department use is five visits in a month to an emergency room. Why seeking medical care in an

emergency room would provide a basis to hold a person involuntarily for at least one year is unclear.

Furthermore, only people who are homeless are subject to this new standard. This in effect creates a different standard of treatment and involuntary confinement that is based solely on one's economic status. If someone is required to be confined for their own safety, the one's housing status is irrelevant.

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