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SB 43 – Conservatorship Reform

SUMMARY

Under current law, a petition for conservatorship can be filed when a person is "gravely disabled." When a petition is made, a temporary conservatorship can be established and a conservatorship investigation commences. This bill would ensure that the court is able to consider relevant testimony related to medical history in the medical record during conservatorship proceedings by creating a hearsay exception for medical history contained in the medical record.

This bill would also modernize the definition of "gravely disabled" within the Lanterman-Petris-Short (LPS) Act to better meet the needs of individuals experiencing severe mental illness. SB 43 would include under the definition of "gravely disabled" a condition in which, as a result of a mental health disorder or substance use disorder, there is a substantial risk of serious harm to a person's mental or physical health.

BACKGROUND

The LPS Act of 1967 was the state's attempt to deinstitutionalize those experiencing serious mental health disorders and shift to community-based services. Unfortunately, following the closure of many state institutions, those services did not follow.

Changes at both the state and federal level followed, further slashing federal funding for community mental health and shifting mental health program responsibility to the counties. Voters then passed the Mental Health Services Act in 2004 to provide dedicated funding for community supports and services, and prevention and early intervention. While this funding has shown so much promise and helped provide access to critical care to many Californians, including through full service partnerships, there are still many barriers to providing the appropriate and timely care to many struggling at the margins, disconnected from treatment.

The law establishes the rights, protections, and process for the provision of involuntary behavioral health treatment for someone who is "gravely disabled" or a danger to themselves or others. LPS consists of various evaluation and treatment periods, ranging from 72-hours up to renewable periods of one year under a conservatorship.

When a conservatorship petition is made to provide treatment to an individual believed to be "gravely disabled," the person may be placed under a temporary conservatorship to allow for additional investigation. A conservatorship investigation is conducted by a public guardian employed by the county, and a report is filed with the court, which includes information on the subject of the petition's medical, psychological, financial, family, vocational, and social condition. WIC 5008.2 also makes clear that relevant historical information about the course of one's mental disorder shall be considered when it has a direct bearing on the determination of whether the person is gravely disabled.

In 2016, the California Supreme Court held in People v. Sanchez, that when any expert witness relates to the jury case-specific out-of-court statements (such as a treating psychiatrists medical notes contained in the medical record), and treats those statements as true and accurate to support the expert witness' opinion, those statements may constitute hearsay unless they fall under an existing hearsay exemption.

There are concerns, instances of which have already come to fruition, that important medical record information may is likely to be considered hearsay within conservatorship proceedings due to Sanchez. In response to the LPS Audit in 2020, LA County wrote that the Legislature should: "Add state law that would allow medical experts to share details with a court about a proposed conservatee that are observed by other medical personnel and staff as recorded in a medical record and not just those directly observed as limited by People v.

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Sanchez, 63 Cal 4th 665." That is what this hearsay exception intends to accomplish.

While the state continues its work to improve and expand behavioral health infrastructure, bring real accountability and outcomes to behavioral health dollars, increase access to community care and higher levels of treatment like AOT, there are still too many falling through the cracks and onto the streets. Estimates by the Treatment Advocacy Center are that as many as one-third of California's population experiencing homelessness are also living with a serious mental illness. That could mean, even conservatively, tens of thousands of those living houseless in the community are also experiencing a – likely untreated, or undertreated – mental illness.

The focus of the LPS Act on the ability to provide for one's food, clothing, and shelter is inadequate to address the real needs in our communities and often leads to criminalization and jail rather than treatment. Reporting by CalMatters using state data indicated that up to one-third of incarcerated Californians live with documented mental illness. More recently, they also reported that: "After the California Department of Corrections and Rehabilitation transferred one severely mentally ill inmate 39 times between 2016 and 2020, he committed suicide in Kern Valley State Prison" and that "California moved mentally ill prisoners three times more often on average than other prisoners from 2016 to 2021, according to a CalMatters analysis of state prison data." People are being shifted around in jails rather than receiving appropriate treatment before they get there.

We also see repeated, tragic stories about family members and friends with little hope left at getting their loved ones appropriate care, hoping that they are arrested into this revolving door before they hurt someone or themselves.

While some may point to the State Auditor's recommendation that the criteria are adequate and consistently applied, this is not a finding corroborated by many in the behavioral health community. The Legislature has taken, and will continue to prioritize, steps to develop access to community-based treatment, early intervention, supported decision-making, assisted outpatient treatment, and every other step along the continuum to prevent the need for LPS Act holds and conservatorships. The recently passed CARE Act will provide for earlier intervention and ideally prevent more individuals from becoming "gravely disabled." However, this existing system will continue to be the safety net if an individual is unable to complete a CARE plan and further deteriorates.

THIS BILL

This bill would create a hearsay exemption for information contained in a medical record, presented by an expert witness, in order to ensure all relevant information is presented to, and considered by, the court when making a gravely disabled determination.

It would also update the definition of "gravely disabled" to include a new focus on preventing serious physical and mental harm stemming from a person's inability to provide for their needs for nourishment, personal or medical care, shelter, or attend to self-protection or personal safety, due to their mental or substance use disorder. When making a determination about the risk of harm, the bill would ask the court to consider when a person is unable to appreciate the nature of their disorder and that their decision-making is impaired due to their lack of insight into their mental or medical disorders.

SUPPORT

Big City Mayors Coalition (Cosponsor)
Psychiatric Physicians Alliance of CA (Cosponsor)
CA State Association of Psychiatrists (Cosponsor)
NAMI California (Cosponsor)

FOR MORE INFORMATION

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