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

o 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.
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> 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.
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> 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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