

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: June 14, 2023

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso  
Chief Legislative Analyst

Council File No. 23-0002-S43  
Assignment No. 23-04-0204

SUBJECT: Resolution (Park – Krekorian) to SUPPORT SB 43 (Eggman) and Resolution to increase State funding for psychiatric and substance use disorder treatment beds.

CLA RECOMMENDATION: Adopt Resolution (Park – Krekorian) to include in the City’s 2023-2024 State Legislative Program, SUPPORT for SB 43 to reform California’s Lanterman-Petris-Short (LPS) conservatorship law by updating the definition of “gravely disabled” and adopt the attached Resolution to seek federal and State funding for acute, subacute, and community-based residential psychiatric and substance use disorder treatment beds to meet current and projected needs.

## SUMMARY

Resolution (Park – Krekorian), introduced on March 22, 2023, informs that the LPS Act provides for the involuntary detention and treatment of a person who is a danger to themselves or others or who is “gravely disabled” or unable to provide for their basic personal needs as a result of a mental condition. The Resolution further reports that SB 43 (Eggman), currently pending before the State Senate, would broaden the definition of “gravely disabled” to also include individuals whose mental or physical health is at a substantial risk or serious harm due to a substance use disorder. SB 43 would expand who may be eligible to receive treatment under the LPS Act to include more vulnerable individuals who are unable to provide necessary personal and medical care for themselves. The Resolution therefore requests that the City support SB 43.

This recommendation also includes an additional Resolution to seek federal and State funding for psychiatric and substance use disorder treatment beds in conjunction with support for SB 43, as Los Angeles County does not have sufficient treatment beds to meet current needs, much less adequate beds to accommodate an expansion of eligible individuals to be subject to care under the LPS Act, and state and federal governments do not reimburse long-term residential and inpatient drug treatment, creating barriers for many to receive treatment.

## BACKGROUND

The LPS Act, enacted in 1967, established definitions, guidelines, and procedures for the involuntary commitment and treatment of people who are either “gravely disabled” or are a danger to themselves or others. Under the LPS Act, a person is “gravely disabled” if they, as a result of a mental disorder, are unable to provide for their basic personal needs for food, clothing, or shelter. The LPS Act also established a right to prompt psychiatric evaluation and treatment for individuals in certain situations, and strict due process protections for mental health clients. LPS laws allow certain mental health professionals and other county-designated officials, including police officers, to take individuals into custody for short term holds of up to

14 days or longer-term conservatorships, which governs the treatment and placement of a gravely disabled individual through a third-party decision maker.

The LPS Act sought to end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders and intends that individuals will receive services in the least restrictive setting appropriate to their needs. The LPS Act was intended to be a measure of last resort, in a robust program of mental health and wraparound services provided by counties. Nevertheless, subsequent State efforts to move toward a county-based system for providing mental health care did not provide counties with sufficient resources to establish adequate systems of care. As a result, many individuals with serious mental illness were released from State hospitals into communities and eventually ended up on the streets or cycled in and out of emergency departments and/or incarceration.

SB 43 seeks to reform the LPS act by expanding who may be involuntarily detained and placed in a conservatorship. The LPS Act does not currently cover persons suffering from substance use disorders, so the proposed definition will significantly expand who may be involuntarily treated and the nature of services that counties will have to offer, inasmuch as counties do not have the infrastructure for involuntary substance use treatment outside of jails and prisons. SB 43 will also create an exception to the current medical hearsay rule to allow expert witnesses to rely on out-of-court statements, instead of in-court testimony made by medical professionals for conservatorship petitions, despite court findings that show the importance of providing the person who is subject to a conservatorship hearing the opportunity to cross-examine a doctor to prove if they are gravely disabled or not.

SB 43 also aims to provide treatment to individuals who are not currently assisted by the LPS Act who instead languish in unsafe situations, leading to severe injury, incarceration, homelessness, or death. Supporters of SB 43 argue that the LPS Act's current definition of 'gravely disabled' does not adequately consider a person's inability to recognize their own mental and physical deterioration, leaving vulnerable community members to cycle in and out of hospitalizations, shelters, and jails without receiving concrete connections to needed medication and treatment.

The Department on Disability and many opponents of the bill have concerns about how the bill will affect people with disabilities, particularly those who may not be able to effectively communicate their needs or wants. The Department advises that a guarantee of some level of protection for individuals who may not know how to effectively advocate for themselves should be included in the legislation. The Senate Judiciary Committee's analysis on SB 43 argues that the LPS Act and SB 43 provide sufficient due process protections for individuals, as "any person brought in for involuntary treatment would still be provided with procedural protections, including counsel and judicial review at the later stages of the [conservatorship] process." In addition, a 2019 California State Auditor's report on the LPS Act stated that the law requires a high burden of proof—the same burden of proof as needed to convict someone in a criminal proceeding—in order to place someone on conservatorship.

Additional concerns about the bill include the capacity of law enforcement, public guardians, courts, health care, and the behavioral health workforce to accommodate an increased workload to enforce and implement the bill. A 2021 report from the California Health Care Foundation states that bottlenecks exist at all levels of California's behavioral health treatment system and indicates that problems with throughput in the system are caused by a lack of capacity at one or more different levels of care. The 2019 California State Auditor report also found that there are insufficient resources for persons who are already in the LPS Act system, resulting in waits of over one year for high-level or continuing care in the mental health system. As a result, many individuals in LPS conservatorships wait for appropriate treatment placements in emergency departments or are subjected to repeated instances of involuntary treatment without being connected to ongoing care due to a lack of available community treatment options.

According to a 2019 system needs assessment report, the Los Angeles County Health Agency concluded that more than 1,500 treatment beds were needed to meet demand, especially for individuals with higher acuity. In January 2023, Los Angeles County Supervisors approved a motion to have a consultant report on current and future projected needs for inpatient mental health beds and facilities, and develop a roadmap for the mental health bed continuum of care. The report is expected to be released early next year. While the State has made recent investments in the behavioral health system, especially through the \$2.2 billion Behavioral Health Continuum Infrastructure Program, counties will not be able to absorb additional involuntary detentions that will result if SB 43 is enacted. This report recommends that Council seek federal and State funding for additional psychiatric and substance use disorder treatment beds to accommodate an increase eligible individuals to be subject to care under the LPS Act.

As SB 43 aims to expand the “gravely disabled” definition to include individuals with substance use disorders, an assessment of substance use disorder treatment beds will also be required. Substance use disorder treatment beds range from facilities offering short-term withdrawal management services to longer-term residential detoxification services. However, federal and state governments do not provide reimbursement for long-term residential and inpatient drug treatment, even under Medi-Cal. This lack of supportive funding creates barriers to substance use treatment access for many individuals, especially those with low incomes, as well as a gap in funding for substance use-related conservatorships under SB 43.

Opponents of the bill are concerned that the implementation of SB 43 could result in an overrepresentation of people of color, LGBTQ+ individuals, and other historically marginalized people being forced into coercive substance use disorder treatment, which is often traumatizing. Research suggests that coerced, involuntary treatment is less effective in terms of long-term substance use outcomes and is more dangerous for overdose risk. Instead, opponents argue that voluntary, community-based treatment and services, as well as the expansion of choices, rights, and liberties for people living with behavioral health disabilities, are what the State needs.

While there is no estimate of how many people will be affected by SB 43, the Senate Committee on Health reported that 23 percent of people experiencing homelessness in California—approximately 40,000 individuals—suffer a severe mental health or substance use disorder and can no longer care for themselves. According to the Los Angeles Homeless Services Authority’s Point-in-Time count, 10,636 unhoused individuals in the City reported having a substance use disorder and 9,367 individuals reported having serious mental illness. These numbers represent 28 percent of unhoused individuals with substance use disorders and 25 percent with serious mental illness, though these figures are not mutually exclusive.

This Office recommends that Council adopt Resolution (Park – Krekorian) to support SB 43 and the attached Resolution to seek additional State funding to increase the number of psychiatric treatment beds in the State and cover long-term residential and inpatient substance use disorder treatment to meet current demands. This recommendation aligns with previous City efforts to request federal and State funding to provide adequate psychiatric treatment beds and expand the use of federal and State funds to cover the treatment of substance use, especially for people experiencing homelessness.


#### DEPARTMENTS NOTIFIED

Department on Disability

#### BILL STATUS

|         |  |
|---------|--|
| 12/5/22 | Introduced   |
| 1/18/23 | Referred to Committee on Rules                           |
| 2/28/23 | Amended, re-referred to Committee on Rules               |
| 3/8/23  | Re-referred to Committees on Health and Judiciary        |
| 3/29/23 | Passed as amended, re-referred to Committee on Judiciary |

|         |   |
|---------|---|
| 3/30/23 | Amended, re-referred to Committee on Judiciary                |
| 4/17/23 | Amended, re-referred to Committee on Judiciary                |
| 4/26/23 | Passed as amended, re-referred to Committee on Appropriations |
| 4/27/23 | Amended, re-referred to Committee on Appropriations           |
| 5/8/23  | Placed on Appropriations suspense file                        |
| 5/18/23 | Passed  |
| 5/26/23 | Passed  |
| 6/8/23  | Referred to Committees on Health and Judiciary                |




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Susan Oh  
Analyst

Attachment     1. Resolution (Park – Krekorian)  
                       2. Resolution to seek federal and state funding for additional psychiatric and substance  
                               use disorder treatment beds  
                       3. SB 43 (Eggman)

# ATTACHMENT 1

## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council; and

WHEREAS, the Lanterman-Petris-Short (LPS) Act provides for involuntary detention and mental health treatment for individuals who are found to be a danger to self or others, or are gravely disabled and found to be unable to provide for their basic personal needs as a result of a mental condition; and

WHEREAS, existing law defines "gravely disabled" as either a condition in which a person, due to a mental health disorder, is unable to provide personal needs such as food, clothing, or shelter or is mentally incompetent; and

WHEREAS, State Senator Susan Talamantes Eggman has introduced Senate Bill 43 which would expand the definition of "gravely disabled" to also include a condition that will result in substantial risk of serious harm to the physical or mental health of a person due to a mental health disorder or substance use disorder; and

WHEREAS, the bill defines "serious harm" as causing significant deterioration, debilitation, or illness due to a person's inability to carry out personal or medical care and self-protection; and

WHEREAS, the City should support this legislation because it would broaden the definition of gravely disabled to incorporate more individuals who are vulnerable and are not able to provide necessary personal and medical care to themselves;

NOW, THEREFORE, BE IT RESOLVED, that by adoption of this resolution, the City of Los Angeles hereby includes in its 2023-24 State Legislative Program, SUPPORT for SB 43 (Eggman) which would expand the definition of "gravely disabled" to include conditions that will result in serious harm to the physical and mental health of an individual.

PRESENTED BY: Traci Park  
TRACI PARK  
Councilwoman, 11<sup>th</sup> District

SECONDED BY: Paul Kaborian

ORIGINAL

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MAR 22 2023

# ATTACHMENT 2

## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council; and

WHEREAS, according to a 2021 RAND report, California faces shortages of psychiatric beds at the acute, subacute, and community-residential service levels of adult inpatient and residential care;

WHEREAS, in a 2019 needs assessment report, the Los Angeles County Health Agency reported that more than 1,500 additional treatment beds were needed in Los Angeles County, especially for individuals with higher acuity; and

WHEREAS, psychiatric treatment bed shortages can result in high bed occupancy rates, long wait lists for placements, and overburdened emergency departments and county jails; and

WHEREAS, in September 2021, Governor Newsom signed the Care Act into law, which will provide community-based behavioral health services and support to individuals with serious mental illness through a new civil court process with implementation plans to begin in October; and

WHEREAS, SB 43 (Eggman), currently pending in the State Legislature, intends to reform the Lanterman-Petris-Short Act by expanding the eligibility for who may be involuntarily detained and placed in a conservatorship to include individuals with substance use disorders; and

WHEREAS, while there is high demand for substance use treatment in Los Angeles, especially among the unhoused community, federal and state governments do not provide reimbursement for long-term residential and inpatient drug treatment, even under Medi-Cal; and

WHEREAS, the lack of supportive funding creates barriers to substance use treatment access for many individuals, especially those with low incomes; and

WHEREAS, the implementation of the Care Act and SB 43 will increase demands for psychiatric and substance use disorder treatment beds, which are already strained and insufficient to meet current needs; and

WHEREAS, additional federal and State funds are required to increase the number of acute, subacute, and community-based residential psychiatric and substance use disorder treatment beds and cover substance use treatment to meet current and projected needs;

NOW, THEREFORE, BE IT RESOLVED, with concurrence of the Mayor, that by adoption of this Resolution, the City of Los Angeles hereby includes in its 2023-24 Federal and State Legislative Programs SUPPORT for Federal and State legislation and/or administrative action to increase funding for acute, subacute, and community-based residential psychiatric and substance use disorder treatment beds to meet current and projected needs in Los Angeles County.

# ATTACHMENT 3

AMENDED IN SENATE APRIL 27, 2023

AMENDED IN SENATE APRIL 17, 2023

AMENDED IN SENATE MARCH 30, 2023

AMENDED IN SENATE FEBRUARY 28, 2023

**SENATE BILL**

**No. 43**

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**Introduced by Senator Eggman**  
**(Principal coauthors: Senators Niello and Wiener)**  
**(Principal coauthor: Assembly Member Santiago)**  
**(Coauthors: Senators Allen, Dodd, Menjivar, Roth, Rubio, and Stern)**  
**(Coauthors: Assembly Members Chen, Friedman, Gallagher, Quirk-Silva, and Wicks)**

December 5, 2022

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An act to amend Section 1799.111 of the Health and Safety Code, and to amend Sections 5008, 5350, and 5358 of, and to add Section 5122 to, the Welfare and Institutions Code, relating to mental health.

## LEGISLATIVE COUNSEL'S DIGEST

SB 43, as amended, Eggman. Behavioral health.

Existing law, the Lanterman-Petris-Short Act, provides for the involuntary commitment and treatment of a person who is a danger to themselves or others or who is gravely disabled. Existing law, for purposes of involuntary commitment, defines "gravely disabled" as either a condition in which a person, as a result of a mental health disorder, is unable to provide for their basic personal needs for food, clothing, or shelter or has been found mentally incompetent, as specified.

This bill expands the definition of "gravely disabled" to also include a condition in which a person, due to a mental health disorder or a

substance use disorder, or both, is at substantial risk of serious harm, or is currently experiencing serious harm to their physical or mental health. The bill defines “serious harm” for purposes of these provisions to mean significant deterioration, debilitation, or illness due to a person’s failure to meet certain conditions, including, among other things, attend to needed personal or medical care and attend to self-protection or personal safety. The bill specifies circumstances under which substantial risk of serious harm may be evidenced, as specified. The bill would make conforming changes. To the extent that this change increases the level of service required of county mental health departments, the bill would impose a state-mandated local program.

Existing law also authorizes the appointment of a conservator, in the County of Los Angeles, the County of San Diego, or the City and County of San Francisco, for a person who is incapable of caring for the person’s own health and well-being due to a serious mental illness and substance use disorder. Existing law establishes the hearsay rule, under which evidence of a statement is generally inadmissible if it was made other than by a witness while testifying at a hearing and is offered to prove the truth of the matter stated. Existing law sets forth exceptions to the hearsay rule to permit the admission of specified kinds of evidence.

Under this bill, for purposes of an expert witness in any proceeding relating to the appointment or reappointment of a conservator pursuant to the above-described provisions, the statements of specified health practitioners or a licensed clinical social worker included in the medical record would not be hearsay. The bill would authorize the court to grant a reasonable continuance if an expert witness in a proceeding relied on the medical record and the medical record has not been provided to the parties or their counsel.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1799.111 of the Health and Safety Code  
2 is amended to read:

3     1799.111. (a) Subject to subdivision (b), a licensed general  
4 acute care hospital, as defined in subdivision (a) of Section 1250,  
5 that is not a county-designated facility pursuant to Section 5150  
6 of the Welfare and Institutions Code, a licensed acute psychiatric  
7 hospital, as defined in subdivision (b) of Section 1250, that is not  
8 a county-designated facility pursuant to Section 5150 of the  
9 Welfare and Institutions Code, licensed professional staff of those  
10 hospitals, or any physician and surgeon, providing emergency  
11 medical services in any department of those hospitals to a person  
12 at the hospital is not civilly or criminally liable for detaining a  
13 person if all of the following conditions exist during the detention:

14     (1) The person cannot be safely released from the hospital  
15 because, in the opinion of the treating physician and surgeon, or  
16 a clinical psychologist with the medical staff privileges, clinical  
17 privileges, or professional responsibilities provided in Section  
18 1316.5, the person, as a result of a mental health disorder, presents  
19 a danger to themselves, or others, or is gravely disabled. For  
20 purposes of this paragraph, "gravely disabled" has the same  
21 definition as in paragraph (1) of subdivision (h) of Section 5008  
22 of the Welfare and Institutions Code.

23     (2) The hospital staff, treating physician and surgeon, or  
24 appropriate licensed mental health professional, have made, and  
25 documented, repeated unsuccessful efforts to find appropriate  
26 mental health treatment for the person.

27     (A) Telephone calls or other contacts required pursuant to this  
28 paragraph shall commence at the earliest possible time when the  
29 treating physician and surgeon has determined the time at which  
30 the person will be medically stable for transfer.

31     (B) The contacts required pursuant to this paragraph shall not  
32 begin after the time when the person becomes medically stable for  
33 transfer.

34     (3) The person is not detained beyond 24 hours.

35     (4) There is probable cause for the detention.

36     (b) If the person is detained pursuant to subdivision (a) beyond  
37 eight hours, but less than 24 hours, both of the following additional  
38 conditions shall be met:

1 (1) A discharge or transfer for appropriate evaluation or  
2 treatment for the person has been delayed because of the need for  
3 continuous and ongoing care, observation, or treatment that the  
4 hospital is providing.

5 (2) In the opinion of the treating physician and surgeon, or a  
6 clinical psychologist with the medical staff privileges or  
7 professional responsibilities provided for in Section 1316.5, the  
8 person, as a result of a mental health disorder, is still a danger to  
9 themselves, or others, or is gravely disabled, as defined in  
10 paragraph (1) of subdivision (a).

11 (c) In addition to the immunities set forth in subdivision (a), a  
12 licensed general acute care hospital, as defined in subdivision (a)  
13 of Section 1250, that is not a county-designated facility pursuant  
14 to Section 5150 of the Welfare and Institutions Code, a licensed  
15 acute psychiatric hospital, as defined by subdivision (b) of Section  
16 1250, that is not a county-designated facility pursuant to Section  
17 5150 of the Welfare and Institutions Code, licensed professional  
18 staff of those hospitals, or a physician and surgeon, providing  
19 emergency medical services in any department of those hospitals  
20 to a person at the hospital shall not be civilly or criminally liable  
21 for the actions of a person detained up to 24 hours in those hospitals  
22 who is subject to detention pursuant to subdivision (a) after that  
23 person's release from the detention at the hospital, if all of the  
24 following conditions exist during the detention:

25 (1) The person has not been admitted to a licensed general acute  
26 care hospital or a licensed acute psychiatric hospital for evaluation  
27 and treatment pursuant to Section 5150 of the Welfare and  
28 Institutions Code.

29 (2) The release from the licensed general acute care hospital or  
30 the licensed acute psychiatric hospital is authorized by a physician  
31 and surgeon or a clinical psychologist with the medical staff  
32 privileges or professional responsibilities provided for in Section  
33 1316.5, who determines, based on a face-to-face examination of  
34 the person detained, that the person does not present a danger to  
35 themselves or others and is not gravely disabled, as defined in  
36 paragraph (1) of subdivision (a). In order for this paragraph to  
37 apply to a clinical psychologist, the clinical psychologist shall have  
38 a collaborative treatment relationship with the physician and  
39 surgeon. The clinical psychologist may authorize the release of  
40 the person from the detention, but only after the clinical

1 psychologist has consulted with the physician and surgeon. In the  
2 event of a clinical or professional disagreement regarding the  
3 release of a person subject to the detention, the detention shall be  
4 maintained unless the hospital's medical director overrules the  
5 decision of the physician and surgeon opposing the release. Both  
6 the physician and surgeon and the clinical psychologist shall enter  
7 their findings, concerns, or objections in the person's medical  
8 record.

9 (d) Notwithstanding any other law, an examination, assessment,  
10 or evaluation that provides the basis for a determination or opinion  
11 of a physician and surgeon or a clinical psychologist with the  
12 medical staff privileges or professional responsibilities provided  
13 for in Section 1316.5 that is specified in this section may be  
14 conducted using telehealth.

15 (e) This section does not affect the responsibility of a general  
16 acute care hospital or an acute psychiatric hospital to comply with  
17 all state laws and regulations pertaining to the use of seclusion and  
18 restraint and psychiatric medications for psychiatric patients.  
19 Persons detained under this section shall retain their legal rights  
20 regarding consent for medical treatment.

21 (f) A person detained under this section shall be credited for the  
22 time detained, up to 24 hours, if the person is placed on a  
23 subsequent 72-hour hold pursuant to Section 5150 of the Welfare  
24 and Institutions Code.

25 (g) The amendments to this section made by Chapter 308 of the  
26 Statutes of 2007 do not limit any existing duties for  
27 psychotherapists contained in Section 43.92 of the Civil Code.

28 (h) This section does not expand the scope of licensure of  
29 clinical psychologists.

30 SEC. 2. Section 5008 of the Welfare and Institutions Code is  
31 amended to read:

32 5008. Unless the context otherwise requires, the following  
33 definitions shall govern the construction of this part:

34 (a) "Evaluation" consists of multidisciplinary professional  
35 analyses of a person's medical, psychological, educational, social,  
36 financial, and legal conditions as may appear to constitute a  
37 problem. Persons providing evaluation services shall be properly  
38 qualified professionals and may be full-time employees of an  
39 agency providing face-to-face, which includes telehealth,

1 evaluation services or may be part-time employees or may be  
2 employed on a contractual basis.

3 (b) "Court-ordered evaluation" means an evaluation ordered by  
4 a superior court pursuant to Article 2 (commencing with Section  
5 5200) or by a superior court pursuant to Article 3 (commencing  
6 with Section 5225) of Chapter 2.

7 (c) "Intensive treatment" consists of such hospital and other  
8 services as may be indicated. Intensive treatment shall be provided  
9 by properly qualified professionals and carried out in facilities  
10 qualifying for reimbursement under the California Medical  
11 Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing  
12 with Section 14000) of Part 3 of Division 9, or under Title XVIII  
13 of the federal Social Security Act and regulations thereunder.  
14 Intensive treatment may be provided in hospitals of the United  
15 States government by properly qualified professionals. This part  
16 does not prohibit an intensive treatment facility from also providing  
17 72-hour evaluation and treatment.

18 (d) "Referral" is referral of persons by each agency or facility  
19 providing assessment, evaluation, crisis intervention, or treatment  
20 services to other agencies or individuals. The purpose of referral  
21 shall be to provide for continuity of care, and may include, but  
22 need not be limited to, informing the person of available services,  
23 making appointments on the person's behalf, discussing the  
24 person's problem with the agency or individual to which the person  
25 has been referred, appraising the outcome of referrals, and  
26 arranging for personal escort and transportation when necessary.  
27 Referral shall be considered complete when the agency or  
28 individual to whom the person has been referred accepts  
29 responsibility for providing the necessary services. All persons  
30 shall be advised of available precare services that prevent initial  
31 recourse to hospital treatment or aftercare services that support  
32 adjustment to community living following hospital treatment.  
33 These services may be provided through county or city mental  
34 health departments, state hospitals under the jurisdiction of the  
35 State Department of State Hospitals, regional centers under contract  
36 with the State Department of Developmental Services, or other  
37 public or private entities.

38 Each agency or facility providing evaluation services shall  
39 maintain a current and comprehensive file of all community  
40 services, both public and private. These files shall contain current

1 agreements with agencies or individuals accepting referrals, as  
2 well as appraisals of the results of past referrals.

3 (e) "Crisis intervention" consists of an interview or series of  
4 interviews within a brief period of time, conducted by qualified  
5 professionals, and designed to alleviate personal or family  
6 situations that present a serious and imminent threat to the health  
7 or stability of the person or the family. The interview or interviews  
8 may be conducted in the home of the person or family, or on an  
9 inpatient or outpatient basis with such therapy, or other services,  
10 as may be appropriate. The interview or interviews may include  
11 family members, significant support persons, providers, or other  
12 entities or individuals, as appropriate and as authorized by law.  
13 Crisis intervention may, as appropriate, include suicide prevention,  
14 psychiatric, welfare, psychological, legal, or other social services.

15 (f) "Prepetition screening" is a screening of all petitions for  
16 court-ordered evaluation as provided in Article 2 (commencing  
17 with Section 5200) of Chapter 2, consisting of a professional  
18 review of all petitions; an interview with the petitioner and,  
19 whenever possible, the person alleged, as a result of a mental health  
20 disorder, to be a danger to others, or to themselves, or to be gravely  
21 disabled, to assess the problem and explain the petition; when  
22 indicated, efforts to persuade the person to receive, on a voluntary  
23 basis, comprehensive evaluation, crisis intervention, referral, and  
24 other services specified in this part.

25 (g) "Conservatorship investigation" means investigation by an  
26 agency appointed or designated by the governing body of cases in  
27 which conservatorship is recommended pursuant to Chapter 3  
28 (commencing with Section 5350).

29 (h) (1) For purposes of Article 1 (commencing with Section  
30 5150), Article 2 (commencing with Section 5200), and Article 4  
31 (commencing with Section 5250) of Chapter 2, and for the purposes  
32 of Chapter 3 (commencing with Section 5350), "gravely disabled"  
33 means any of the following:

34 (A) A condition in which a person, as a result of a mental health  
35 disorder, is unable to provide for their basic personal needs for  
36 food, clothing, or shelter.

37 (B) A condition in which a person has been found mentally  
38 incompetent under Section 1370 of the Penal Code and all of the  
39 following facts exist:

1 (i) The complaint, indictment, or information pending against  
2 the person at the time of commitment charges a felony involving  
3 death, great bodily harm, or a serious threat to the physical  
4 well-being of another person.

5 (ii) There has been a finding of probable cause on a complaint  
6 pursuant to paragraph (2) of subdivision (a) of Section 1368.1 of  
7 the Penal Code, a preliminary examination pursuant to Section  
8 859b of the Penal Code, or a grand jury indictment, and the  
9 complaint, indictment, or information has not been dismissed.

10 (iii) As a result of a mental health disorder, the person is unable  
11 to understand the nature and purpose of the proceedings taken  
12 against them and to assist counsel in the conduct of their defense  
13 in a rational manner.

14 (iv) The person represents a substantial danger of physical harm  
15 to others by reason of a mental disease, defect, or disorder.

16 (C) (i) A condition in which a person, as a result of a mental  
17 health disorder or a substance use disorder, or both, is at substantial  
18 risk of serious harm or is currently experiencing serious harm to  
19 their physical or mental health.

20 (ii) "Serious harm" means significant deterioration, debilitation,  
21 or illness due to the person's failure to meet one or more of the  
22 following conditions:

23 (I) Satisfy the need for nourishment.

24 (II) Attend to necessary personal or medical care.

25 (III) Utilize adequate shelter.

26 (IV) Be ~~appropriately~~ or adequately clothed.

27 (V) Attend to self-protection or personal safety.

28 (iii) A substantial risk of serious harm to the physical or mental  
29 health of the person may be evidenced by the fact that they  
30 previously suffered serious harm to their physical or mental health  
31 in the historical course of their mental health disorder or substance  
32 use disorder, their condition is again deteriorating, they are unable  
33 to understand their disorder, and their decisionmaking is impaired  
34 due to their lack of insight into their disorder.

35 (iv) The existence of a mental health disorder or substance use  
36 disorder diagnosis does not alone establish *serious harm* or a  
37 substantial risk of serious harm to the physical or mental health of  
38 a person.

39 (2) For purposes of Article 3 (commencing with Section 5225)  
40 and Article 4 (commencing with Section 5250), of Chapter 2, and

1 for the purposes of Chapter 3 (commencing with Section 5350),  
2 “gravely disabled” means a person described in subparagraph (C)  
3 of paragraph (1).

4 (3) The term “gravely disabled” does not include persons with  
5 intellectual disabilities by reason of that disability alone.

6 (i) “Peace officer” means a duly sworn peace officer as that  
7 term is defined in Chapter 4.5 (commencing with Section 830) of  
8 Title 3 of Part 2 of the Penal Code who has completed the basic  
9 training course established by the Commission on Peace Officer  
10 Standards and Training, or any parole officer or probation officer  
11 specified in Section 830.5 of the Penal Code when acting in relation  
12 to cases for which the officer has a legally mandated responsibility.

13 (j) “Postcertification treatment” means an additional period of  
14 treatment pursuant to Article 6 (commencing with Section 5300)  
15 of Chapter 2.

16 (k) “Court,” unless otherwise specified, means a court of record.

17 (l) “Antipsychotic medication” means any medication  
18 customarily prescribed for the treatment of symptoms of psychoses  
19 and other severe mental and emotional disorders.

20 (m) “Emergency” means a situation in which action to impose  
21 treatment over the person’s objection is immediately necessary  
22 for the preservation of life or the prevention of serious bodily harm  
23 to the patient or others, and it is impracticable to first gain consent.  
24 It is not necessary for harm to take place or become unavoidable  
25 prior to treatment.

26 (n) “Designated facility” or “facility designated by the county  
27 for evaluation and treatment” means a facility that is licensed or  
28 certified as a mental health treatment facility or a hospital, as  
29 defined in subdivision (a) or (b) of Section 1250 of the Health and  
30 Safety Code, by the State Department of Public Health, and may  
31 include, but is not limited to, a licensed psychiatric hospital, a  
32 licensed psychiatric health facility, and a certified crisis  
33 stabilization unit.

34 SEC. 3. Section 5122 is added to the Welfare and Institutions  
35 Code, to read:

36 5122. (a) For purposes of an expert witness in a proceeding  
37 relating to the appointment or reappointment of a conservator  
38 pursuant to Chapter 3 (commencing with Section 5350) or Chapter  
39 5 (commencing with Section 5450), the statements of a health  
40 practitioner described in paragraphs (21) to (25), inclusive, of

1 ~~subdivision (a) of Section 11165.7 of the Penal Code, or a social~~  
2 ~~worker licensed pursuant to Chapter 14 (commencing with Section~~  
3 ~~4991) of Division 2 of the Business and Professions Code;~~  
4 ~~practitioner, as defined in subdivision (d), included in the medical~~  
5 ~~record are not hearsay.~~

6 (b) This section does not prevent a party from calling as a  
7 witness the author of any statement contained in the medical record,  
8 whether or not the author was relied on by the expert witness.

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

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

23 SEC. 4. Section 5350 of the Welfare and Institutions Code is  
24 amended to read:

25 5350. A conservator of the person, of the estate, or of the person  
26 and the estate may be appointed for a person who is gravely  
27 disabled as a result of a mental health disorder or impairment by  
28 chronic alcoholism.

29 The procedure for establishing, administering, and terminating  
30 a conservatorship under this chapter shall be the same as that  
31 provided in Division 4 (commencing with Section 1400) of the  
32 Probate Code, except as follows:

33 (a) A conservator may be appointed for a gravely disabled  
34 minor.

35 (b) (1) Appointment of a conservator under this part, including  
36 the appointment of a conservator for a person who is gravely  
37 disabled, as defined in subparagraph (A) or (C) of paragraph (1)  
38 of subdivision (h) of Section 5008, shall be subject to the list of  
39 priorities in Section 1812 of the Probate Code unless the officer

1 providing conservatorship investigation recommends otherwise  
2 to the superior court.

3 (2) In appointing a conservator, as defined in subparagraph (B)  
4 of paragraph (1) of subdivision (h) of Section 5008, the court shall  
5 consider the purposes of protection of the public and the treatment  
6 of the conservatee. Notwithstanding any other provision of this  
7 section, the court shall not appoint the proposed conservator if the  
8 court determines that appointment of the proposed conservator  
9 will not result in adequate protection of the public.

10 (c) A conservatorship of the estate pursuant to this chapter shall  
11 not be established if a conservatorship or guardianship of the estate  
12 exists under the Probate Code. When a gravely disabled person  
13 already has a guardian or conservator of the person appointed  
14 under the Probate Code, the proceedings under this chapter shall  
15 not terminate the prior proceedings but shall be concurrent with  
16 and superior thereto. The superior court may appoint the existing  
17 guardian or conservator of the person or another person as  
18 conservator of the person under this chapter.

19 (d) (1) The person for whom conservatorship is sought shall  
20 have the right to demand a court or jury trial on the issue of whether  
21 the person is gravely disabled. Demand for court or jury trial shall  
22 be made within five days following the hearing on the  
23 conservatorship petition. If the proposed conservatee demands a  
24 court or jury trial before the date of the hearing as provided for in  
25 Section 5365, the demand shall constitute a waiver of the hearing.

26 (2) Court or jury trial shall commence within 10 days of the  
27 date of the demand, except that the court shall continue the trial  
28 date for a period not to exceed 15 days upon the request of counsel  
29 for the proposed conservatee. Failure to commence the trial within  
30 that period of time is grounds for dismissal of the conservatorship  
31 proceedings.

32 (3) This right shall also apply in subsequent proceedings to  
33 reestablish conservatorship.

34 (e) (1) Notwithstanding subparagraphs (A) and (C) of paragraph  
35 (1) of subdivision (h) of Section 5008, a person is not "gravely  
36 disabled" if that person can survive safely without involuntary  
37 detention with the help of responsible family, friends, or others  
38 who are both willing and able to help provide for the person's  
39 basic personal needs.

1 (2) However, unless they specifically indicate in writing their  
2 willingness and ability to help, family, friends, or others shall not  
3 be considered willing or able to provide this help.

4 (3) The purpose of this subdivision is to avoid the necessity for,  
5 and the harmful effects of, requiring family, friends, and others to  
6 publicly state, and requiring the court to publicly find, that no one  
7 is willing or able to assist a person with a mental health disorder  
8 in providing for the person's basic needs for food, clothing, or  
9 shelter.

10 (4) This subdivision does not apply to a person who is gravely  
11 disabled, as defined in subparagraph (B) of paragraph (1) of  
12 subdivision (h) of Section 5008.

13 (f) Conservatorship investigation shall be conducted pursuant  
14 to this part and shall not be subject to Section 1826 or Chapter 2  
15 (commencing with Section 1850) of Part 3 of Division 4 of the  
16 Probate Code.

17 (g) Notice of proceedings under this chapter shall be given to  
18 a guardian or conservator of the person or estate of the proposed  
19 conservatee appointed under the Probate Code.

20 (h) As otherwise provided in this chapter.

21 SEC. 5. Section 5358 of the Welfare and Institutions Code is  
22 amended to read:

23 5358. (a) (1) When ordered by the court after the hearing  
24 required by this section, a conservator appointed pursuant to this  
25 chapter shall place their conservatee as follows:

26 (A) For a conservatee who is gravely disabled, as defined in  
27 subparagraph (A) or (C) of paragraph (1) of subdivision (h) of  
28 Section 5008, in the least restrictive alternative placement, as  
29 designated by the court.

30 (B) For a conservatee who is gravely disabled, as defined in  
31 subparagraph (B) of paragraph (1) of subdivision (h) of Section  
32 5008, in a placement that achieves the purposes of treatment of  
33 the conservatee and protection of the public.

34 (2) The placement may include a medical, psychiatric, nursing,  
35 or other state-licensed facility, or a state hospital, county hospital,  
36 hospital operated by the Regents of the University of California,  
37 a United States government hospital, or other nonmedical facility  
38 approved by the State Department of Health Care Services or an  
39 agency accredited by the State Department of Health Care Services,

1 or in addition to any of the foregoing, in cases of chronic  
2 alcoholism, to a county alcoholic treatment center.

3 (b) A conservator shall also have the right, if specified in the  
4 court order, to require the conservatee to receive treatment related  
5 specifically to remedying or preventing the recurrence of the  
6 conservatee's being gravely disabled, or to require the conservatee  
7 to receive routine medical treatment unrelated to remedying or  
8 preventing the recurrence of the conservatee's being gravely  
9 disabled. Except in emergency cases in which the conservatee  
10 faces loss of life or serious bodily injury, surgery shall not be  
11 performed upon the conservatee without the conservatee's prior  
12 consent or a court order obtained pursuant to Section 5358.2  
13 specifically authorizing that surgery.

14 (c) (1) For a conservatee who is gravely disabled, as defined  
15 in subparagraph (A) or (C) of paragraph (1) of subdivision (h) of  
16 Section 5008, if the conservatee is not to be placed in the  
17 conservatee's own home or the home of a relative, first priority  
18 shall be to placement in a suitable facility as close as possible to  
19 the conservatee's home or the home of a relative. For the purposes  
20 of this section, suitable facility means the least restrictive  
21 residential placement available and necessary to achieve the  
22 purpose of treatment. At the time that the court considers the report  
23 of the officer providing conservatorship investigation specified in  
24 Section 5356, the court shall consider available placement  
25 alternatives. After considering all the evidence, the court shall  
26 determine the least restrictive and most appropriate alternative  
27 placement for the conservatee. The court shall also determine those  
28 persons to be notified of a change of placement. The fact that a  
29 person for whom conservatorship is recommended is not an  
30 inpatient shall not be construed by the court as an indication that  
31 the person does not meet the criteria of grave disability.

32 (2) For a conservatee who is gravely disabled, as defined in  
33 subparagraph (B) of paragraph (1) of subdivision (h) of Section  
34 5008, first priority shall be placement in a facility that achieves  
35 the purposes of treatment of the conservatee and protection of the  
36 public. The court shall determine the most appropriate placement  
37 for the conservatee. The court shall also determine those persons  
38 to be notified of a change of placement, and additionally require  
39 the conservator to notify the district attorney or attorney

1 representing the originating county prior to any change of  
2 placement.

3 (3) For any conservatee, if requested, the local mental health  
4 director shall assist the conservator or the court in selecting a  
5 placement facility for the conservatee. When a conservatee who  
6 is receiving services from the local mental health program is  
7 placed, the conservator shall inform the local mental health director  
8 of the facility's location and any movement of the conservatee to  
9 another facility.

10 (d) (1) Except for a conservatee who is gravely disabled, as  
11 defined in subparagraph (B) of paragraph (1) of subdivision (h)  
12 of Section 5008, the conservator may transfer the conservatee to  
13 a less restrictive alternative placement without a further hearing  
14 and court approval. When a conservator has reasonable cause to  
15 believe that their conservatee is in need of immediate more  
16 restrictive placement because the condition of the conservatee has  
17 so changed that the conservatee poses an immediate and substantial  
18 danger to themselves or others, the conservator shall have the right  
19 to place the conservatee in a more restrictive facility or hospital.  
20 Notwithstanding Section 5328, if the change of placement is to a  
21 placement more restrictive than the court-determined placement,  
22 the conservator shall provide written notice of the change of  
23 placement and the reason therefor to the court, the conservatee's  
24 attorney, the county patient's rights advocate, and any other persons  
25 designated by the court pursuant to subdivision (c).

26 (2) For a conservatee who is gravely disabled, as defined in  
27 subparagraph (B) of paragraph (1) of subdivision (h) of Section  
28 5008, the conservator may not transfer the conservatee without  
29 providing written notice of the proposed change of placement and  
30 the reason therefor to the court, the conservatee's attorney, the  
31 county patient's rights advocate, the district attorney of the county  
32 that made the commitment, and any other persons designated by  
33 the court to receive notice. If any person designated to receive  
34 notice objects to the proposed transfer within 10 days after  
35 receiving notice, the matter shall be set for a further hearing and  
36 court approval. The notification and hearing is not required for the  
37 transfer of persons between state hospitals.

38 (3) At a hearing where the conservator is seeking placement to  
39 a less restrictive alternative placement pursuant to paragraph (2),  
40 the placement shall not be approved if it is determined by a

1 preponderance of the evidence that the placement poses a threat  
2 to the safety of the public, the conservatee, or any other individual.

3 (4) A hearing as to placement to a less restrictive alternative  
4 placement, whether requested pursuant to paragraph (2) or pursuant  
5 to Section 5358.3, shall be granted no more frequently than is  
6 provided for in Section 5358.3.

7 SEC. 6. If the Commission on State Mandates determines that  
8 this act contains costs mandated by the state, reimbursement to  
9 local agencies and school districts for those costs shall be made  
10 pursuant to Part 7 (commencing with Section 17500) of Division  
11 4 of Title 2 of the Government Code.