



OFFICE OF THE AGENCY DIRECTOR
1000 San Leandro Blvd., Suite 300
San Leandro, CA 94577
TEL (510) 618-3452
FAX (510) 351-1367

November 28, 2023

The Honorable Board of Supervisors
Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

SUBJECT: APPROVE THE RESOLUTION TO DEFER IMPLEMENTATION OF THE EXPANSION TO THE DEFINITION OF GRAVELY DISABLED, ASSOCIATED WITH SENATE BILL 43, UNTIL JANUARY 1, 2026 AS ALLOWABLE PER THE NEW REGULATORY REQUIREMENTS

RECOMMENDATION

Approve the Resolution to defer implementations of the changes to Welfare and Institutions Code section 5008 made by Senate Bill 43 which expands the definition of gravely disabled for conservatorship to be inclusive of certain substance use disorders.

DISCUSSION/SUMMARY

Senate Bill 43 (SB 43) was signed into law by the Governor on October 10, 2023. This new legislation significantly broadens involuntary treatment criteria under the Lanterman-Petris-Short (LPS) Act which has historically included factors related to danger to self, danger to others, and grave disability. SB 43 expands the definition of gravely disabled to include a person who, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder (SUD), or as a result of impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care. Given these additional SUD provisions and inclusion of personal safety or necessary medical care, counties are working to ensure the safe implementation of these new requirements. Pursuant to the new law, SB 43 also allows for counties to seek County Board of Supervisor approval to defer implementation of SB 43 until January 1, 2026. As of October 2023, over 30 of California's 58 counties (Mental Health/Behavioral Health Departments) have indicated an intention to defer implementation while system planning is engaged.

It is critical that Alameda County Behavioral Health Care Services (ACBH) ensures the ongoing provision of quality, safe, and compassionate community based mental health treatment options to those who meet the expanded definition of grave disability. Given its statutory role in the designation of LPS facilities and clinicians, the department is required to evaluate the system's ability to respond to any legislative changes impacting the behavioral health needs of Alameda County residents. The expansion of the definition of grave disability will require a significant effort in coordinating, training, and/or building and expanding the treatment, workforce, delivery networks, housing capacity and models for locked treatment settings or models of care for involuntary SUD treatment to successfully meet the conservatorship needs of the local county population. Analysis of this

new legislation also indicates a necessity for hospitals (local and statewide) to understand the changes to LPS criteria in order to safely treat, coordinate care, and manage the implications of SB 43 as they relate to operational process and patients' rights. Given the historical trends regarding inpatient hospitalization within Alameda County, as well as the system capacity improvements in recent years, the department is acutely aware of the complexities related to demographic overrepresentation of certain communities; the intersections between 5150s and law enforcement; the availability of psychiatric resources, and the need to strengthen system collaboration to ensure that individuals who meet LPS criteria for involuntary hospitalization are treated humanely.

ACBH and the Social Services Agency (SSA) Office of the Public Guardian-Conservator (PGC) work in partnership to support individuals under mental health conservatorship, with the PGC administering the LPS conservatorships and ACBH providing or contracting with Community Based Organizations (CBOs) to provide specialty mental health treatment. Specific planning and coordination between PGC and ACBH will also be imperative to successful implementation. ACBH further recognizes the importance of collaboration with the local courts and CBO provider systems, and coordination with *patients' rights advocates (*pursuant to Welfare and Institutions Code [WIC] Sections 5520 and 5328, and the California Code of Regulations [CCR] Section 863.1 (a)). This planning, coordination, training, and system investment is fundamental particularly during this time of significant statewide change impacting the care of individuals with behavioral health needs.

Considering the potential impact of these changes on populations most vulnerable to involuntary hospitalization is also essential to ensure that Alameda County is in a position to continually regard SB 43 through an equity lens. For example, according to the California Department of Healthcare Access and Information (HCAI) Black/African American and Latinx Californians were 57.2% and 154.5%, respectively, more likely to be placed on a 5150 where they were placed on an involuntary psychiatric commitment after being clinically determined to present as a danger to themselves or others due to a mental illness. During Fiscal Year (FY) 2022-2023, data also revealed similar disparities in Alameda County, wherein African American clients treated within the system represented approximately 36% of all 5150s, while representing only 9.72% of total county population as a whole in 2023.

The department anticipates that the expanded LPS criteria included in SB 43 will ensure that a greater number of individuals will be served through this legislative change. Given this fact, it is important for the system to regard the distinct needs of Alameda County's residents to adequately prepare through training, stakeholder engagement, resource coordination, and planning. As noted above, SB 43 allows counties to defer implementation of this law until January 1, 2026 as opposed to implementing the changes effective January 1, 2024. In alignment with the provisions of this new regulation, ACBH is therefore seeking approval from your Board to defer the implementation of the changes made to WIC § 5008 (SB 43) until January 1, 2026.

SELECTION CRITERIA

Not Applicable.

FINANCING

Approval of this recommendation will have no impact on net County cost.

VISION 2026 GOAL

This Resolution meets the 10X goal pathway of **Healthcare for All** in support of the shared vision of a **Thriving and Resilient Population**.

Sincerely,

DocuSigned by:

CB284AE84C50405...
Colleen Chawla, Director
Health Care Services Agency

CC/RML/wv

COUNTY OF ALAMEDA, BOARD OF SUPERVISORS

RESOLUTION NO. R-2023-639

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF
ALAMEDA DEFERRING IMPLEMENTATION OF THE CHANGES MADE TO
WELFARE AND INSTITUTIONS CODE SECTION 5008 BY SENATE BILL 43
(2023-2024 REG SESSION)**

WHEREAS, the Lanterman-Petris-Short (LPS) Act (Welfare and Institutions Code section 5100, et seq.) provides for the evaluation and treatment of a person who is “gravely disabled,” which is in part defined to mean 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; and

WHEREAS, Senate Bill 43 (2023-2024 Reg. Session), Statutes 2023, Chapter 637 (SB 43), signed by the Governor on October 10, 2023, expands the definition of “gravely disabled” to include a person who, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder, or as a result of impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care; and

WHEREAS, this expanded definition of gravely disabled becomes effective on January 1, 2024; and

WHEREAS, the responsibility for administering the LPS system falls largely with counties; and

WHEREAS, SB 43’s expansion of the definition of a grave disability will require a significant effort in building and expanding the treatment, workforce, delivery networks, housing capacity and models for locked treatment settings or models of care for involuntary SUD treatment to successfully meet the conservatorship needs of the population; and

WHEREAS, as a result of SB 43, the County will need to develop criteria for a “severe SUD” grave disability assessment, as no such assessment currently exists, as well as protocols for designating individuals to perform severe SUD grave disability assessments; and

WHEREAS, as a result of SB 43’s expanded LPS criteria, the County will need to determine whether an individual is unable to survive safely in community or provide for necessary medical care without involuntary detention as a result of severe SUD, and the

County will therefore need to develop policies and procedures for how these determinations will be made; and

WHEREAS, it is expected that hospitals may not have sufficient qualified professional persons to perform the assessments needed to remove involuntary holds, when appropriate, or recommend conservatorship when appropriate; and there is currently no locked treatment capacity for individuals with severe SUD, and limited capacity for individuals with a co-occurring mental health disorder and severe SUD; and

WHEREAS, SB 43 is expected to expand the demand for services provided by Alameda County Public Guardian-Conservator, County Counsel, and Alameda County Behavioral Health Care Services Agency; and

WHEREAS, the Board of Supervisors, County of Alameda, acknowledges it is critical that we provide quality, affordable, accessible, and compassionate community-based behavioral health treatment options to those who meet the expanded definition of a grave disability; and

WHEREAS, SB 43 will require the build out of additional and novel treatment capacity such as locked SUD treatment facilities which currently do not exist in Alameda County; and

WHEREAS, the breadth of that effort requires more time than SB 43's effective date allows; and

WHEREAS, the breadth of that effort will require considerable County and stakeholder planning, collaboration and dedication in order to successfully implement changes in order to effectively meet the Vision 2026 10X pathways goals of **Healthcare for All, Eliminate Poverty and Hunger, and Crime Free County** in support of a shared vision of a **Thriving & Resilient Population, a Healthy Environment, and Safe & Livable Communities**; and

WHEREAS, Alameda County has a responsibility to prepare for the likely increase in 5150 hold disparities as supported by data from the California Department of Healthcare Access and Information (HCAI) that demonstrates that Black/African American and Latinx Californians were 57.2% and 154.5% respectively, more likely to be placed on a 5150 hold; and

WHEREAS, in recognition of the foregoing, the Legislature enacted Welfare and Institutions Code section 5008, subdivision (h)(4), which provides that a county, by adoption of a resolution of its governing body, may elect to defer implementation of the changes made to this section by SB 43 until January 1, 2026, thereby postponing implementation of the revised definition of gravely disabled.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors for County of Alameda as follows:


1. Pursuant to Welfare and Institutions Code section 5008, subdivision (h)(4), as enacted by SB 43, the County of Alameda hereby elects to defer implementation of the changes made by that bill to Welfare and Institutions Code section 5008 by January 1, 2026.
2. Adopted by the Board of Supervisors of the County of Alameda, State of California, this on December 19, 2023, by the following vote:

AYES: 5 - Marquez, Haubert, Tam, Carson, Miley

NOES: 0

EXCUSED: 0

ABSTAINED: 0



President of the Board of Supervisors
County Of Alameda, State of California

ATTEST:

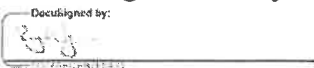
Anika Campbell-Belton

Clerk, Board of Supervisors

BY: 

APPROVED AS TO FORM:

Donna R. Ziegler, County Counsel

BY: 

Raymond Leung, Deputy County Counsel

(SEAL)

12/19/23 Agenda
Item #6

Campbell-Belton, Anika, CBS

From: Stephanie Allan <stepbad@yahoo.com>
Sent: Monday, December 18, 2023 3:42 PM
To: Clerk of the Board
Subject: Vote no on Agenda Item 6

TO: The Alameda County Board of Supervisors

RE: Agenda Item 6

FROM: Stephanie Allan

Unfortunately I have a conflict that prevents me from speaking in person. I am writing to urge you not to pass the delay in implementation of SB-43. This, as you know, permits people with Severe Mental Illnesses (SMI) and Substance Use Disorders (SUD) to be taken into custody if they can't manage their own safety or medical care "5150'd," if you will. A delay would only result in more suffering for people and their families who are afflicted with SMI and/or SUD. There are too many such people on our streets and too many dying.

The Behavioral Health Department says it can't implement SB 43 now or in the near future. They should be held accountable for their proposed delay. With the passage of the CARE Courts legislation last year and SB 43 in this legislative session, the Governor and Legislature are sending a clear message to counties that the caring for the SMI and those with SUD is a priority. It is no longer acceptable to ignore, delay or procrastinate as the Behavioral Health Dept. proposes to do.

People who are SMI and/or have a SUD cannot care for themselves. Nor can they make rational decisions about their care. They are vulnerable to violence or accidents when they are on the streets. Often their families have no idea where they are and in other cases have been the target of violence brought on by a delusional condition. Too many commit suicide out of despair, terrorized by their SMI. Others over-dose and die.

This is the 21st century. But our care for the SMI and those with SUD looks more like the 19th century. No more excuses. No more delays. Vote no on Agenda Item 6 and tell the Behavioral Health Dept. to do its job.

**** This email was sent from an external source. If you do not know the sender, do not click on links or attachments. ****

cc: BOS, CAO, CBS

Perkins, Cheryl, CAO

12/19/23 BOO meeting
Items #3, 4, 5, 6, 65

From: Alison Monroe <amonroe@jps.net>
Sent: Monday, December 18, 2023 1:52 PM
To: Clerk of the Board
Cc: AC FASMI
Subject: Agenda items for Tuesday Dec. 19: 3, 4, 6, 65

Dear Supervisors,

As you know, I am the mom of a person with schizophrenia who died this fall of a meth overdose, and I am a co-founder of FASMI.

Given that experience, I have comments about several items on tomorrow's agenda that would not fit into a two-minute speech. I hope you find them useful.

Item [3](#) adopts the 800-plus-page Mental Health Services Act three-year plan for FY 2023-4 through 2025-26. If we adopt this, we need to say that MHSA has failed, in this county, at helping the very sickest. That may be because it is for voluntary treatment only and no one in the system is empowered to speak for the very sickest. MHSA has created an expensive constituency of contractors and employees who deal with mild to moderate mental illness only, and furthermore who fight hospitalization, conservatorship, and efforts at reform. Its public participation process is burdensome but ineffective; it boils down, focus-groups, and generalizes recommendations until they have little meaning. I welcome the passage of Proposition 1 this March because it will cut back some of this entrenched bureaucracy that counties do not have the political will to cut.

I would like you to ask questions about Item [4](#). It approves eight new full-time-equivalent positions at ACBH at a cost of \$1.2 M a year. ACBH plans to ask for 12 more positions soon. the question is: Isn't it time to anticipate the end of former levels of MHSA funding, and hire people who are going to help the SMI directly?. Hiring two people in Adult and Older Adult Services who are going to oversee discharge planning and try to speed up discharges from Villa is just triage. It won't help the problem at Villa Fairmont, which is that there are too few beds there, and very few beds (board-and-cares) to which it is relatively safe to discharge people who are at great risk of relapse. Triage will not make that problem go away. We need to build and staff actual hospitals and residences.

I oppose Item [6](#), which defers implementation of SB-43, the expanded definition of Grave Disability, for two years. No family member that I know supports this delay. Most of ACBH's arguments for delay are just arguments that the current system is overburdened and falling apart, which we already know. The current system leaves hundreds of people on the street who need treatment and safety, often condemning them to an early death, even if they meet current disability criteria. The most concrete argument against implementing SB 43 soon is that the county wants locked facilities for substance abusers now. I don't believe we need those now and in any case I don't see them being built in two years. If first responders, in their on-the spot decisions on whose lives to save, happen to conserve someone who has SUD only and no SMI, such people can be housed at least for a while in medical hospitals and residential facilities, where they may be too ill to elope. A conserved person does not have to be in a locked facility: my daughter had no bed in a locked facility when she died.

And here's a question we need to ask about item [65](#), which is an agreement to purchase a new "use of force simulator" for sheriff employees. Could we ask if this simulator includes encounters with the seriously mentally ill in crisis? How is it programmed to model those events? Many of our family members have been killed by inappropriate use of force by police.

Supervisors, thank you for listening

CC: BOS, CAO, CBS