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Camhpra

AB 1971 (SANTIAGO) – OPPOSE

May 9, 2018

Honorable Lorena Gonzalez-Fletcher
Chair, Assembly Appropriations Committee
California State Assembly
Capitol Building, Room 2114
Sacramento, CA 95814

RE: AB 1971 (SANTIAGO) – OPPOSE

Dear Assembly Member Gonzalez-Fletcher:

The signatory members below all advance and protect the civil rights of Californians with disabilities and regret to inform you that we respectfully **oppose AB 1971.**

This bill seeks to expand the "gravely disabled" definition contained within the Lanterman-Petris-Short Act (LPS) to allow counties to seek and obtain conservatorships of individuals that, they believe, are otherwise unable to provide for their own care. We are opposed to this expansion.

Background:

In 1968, the LPS was enacted to provide a protective legal structure for the involuntary civil commitment of individuals who, due to a mental illness, pose a danger to self or to others, or who are gravely disabled. LPS defines "gravely disabled" as an individual's inability, as a result of a mental health disorder, to provide for his or her basic personal needs for food, clothing or shelter. An individual who is gravely disabled can be held for a short period (i.e. WIC 5150, 5250) and eventually, put on a conservatorship where the conservator ensures provision of food, clothing, and shelter. Most individuals on conservatorships live in locked, psychiatric institutions.

The Legislature has also established Assisted Outpatient Treatment Demonstration Project Act (AOT), known as "Laura's Law", to allow counties to provide services for individuals with serious mental illnesses when a court determines that a person is unlikely to survive safely in the community without supervision and the person has a history of lack of compliance with treatment for his or her mental illness. Lack of compliance is evidenced by a person's mental illness being a substantial factor in necessitating hospitalization within the last 36 months. To implement an AOT program, a county must opt into the program and meet specific planning and service delivery requirements. The County of Los Angeles has opted into full implementation of AOT.

AB 1971 (Santiago), sponsored by LA County, would expand the definition of “gravely disabled” to include “medical treatment if the failure to receive medical treatment results in a deteriorating physical condition or death. For purposes of this subdivision, "medical treatment" means the administration or application of remedies for a mental health condition, as identified by a licensed mental health professional, or a physical health condition, as identified by a licensed medical professional.”

(The City of San Francisco, is also sponsoring SB 1045 (Wiener) that massively expands involuntary conservatorships by creating, *outside of LPS and Laura’s Law*, a new type of conservatorship for homeless individuals with mental illness *or* severe substance abuse disorders and is pending in the Senate Appropriations Committee.)

We are opposed to AB 1971 because it: 1) needlessly expands LPS to permit an undefined standard by which to impose involuntary care for individuals in a restrictive and confined environment; 2) proposes a solution that does not meet the sponsors’ goals of addressing homelessness and medical care; 3) is dangerously expansive at the expense of individual rights; and, 4) does nothing to ensure that those proposed to be conserved under the expansion will be provided with adequate food, clothing, housing, or medical and behavioral health care.

This bill needlessly expands LPS to permit an undefined standard by which to impose involuntary care for individuals in a restrictive and confined environment.

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 be causing resistance to care when in fact the lack of housing, services or medical care and the intrusive conditions placed on receiving them results in individuals living on the streets in order to retain their self-determination.

Additionally, current law already allows for 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 by courts when found necessary. There has been no showing of current barriers in existing law or practice that prevent counties from providing the care and services they propose in this bill.

Additionally, AOT already allows for the involuntary treatment of individuals "unable to carry out transactions necessary for survival or to provide for basic needs" if voluntary care has been rejected. 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 prevent counties from providing the care and services they propose with this bill.

This bill does not propose a solution that meets the sponsors' goals of addressing homelessness and the need for behavioral health care.

Nothing in this bill expands housing or access to medical services for individuals who are homeless and have behavioral and medical health treatment needs. Expanding voluntary services (e.g. Full-Service Partnerships, permanent supported housing) and access to quality, integrated medical care is more cost efficient, more effective, and more humane. Indeed, solutions that foster independence and self-direction are more successful than the forced and involuntary care this bill proposes.

Involuntary treatment means the county has the duty to treat and house the conservatees, which includes making physical and mental health services actually available. This bill puts the cart before the horse since the county is already unable to provide services and housing. The county cannot deliver these services; pretending that the only people who need services are the ones that do not want them is just not a solution.

This bill is dangerously expansive at the expense of individual rights.

AB 1971 uses a host of terms to expand the definition of "gravely disabled." It adds the new element of "medical care" and then muddles that with terms such as "failure to receive medical treatment," "deteriorating physical condition," and "administration or application of remedies for a mental health condition". Most significantly, the bill states that a "grave disability" is the inability to provide for one's "medical treatment" which is then defined as the "administration of remedies for a mental health condition" even though a grave disability is itself an inability to provide basic personal needs "a result of a mental disorder." Thus, "medical treatment" means "mental health treatment" and a person who has a mental health condition can be involuntarily held for the mental health condition itself and not whether the person is a danger to themselves or others.

When the bill was first amended by the author the term “medical treatment” was added to the definition of “basic personal needs” with the proviso that the failure to receive the treatment would result in “substantial physical harm or death”. The amendment taken in the Health Committee greatly expanded, and indeed confused, the scope of medical treatment. The Legislative findings and declarations support this confused approach.

The addition of “medical care” to the definition of “gravely disabled” in AB 1971 suggests that persons with behavioral health care needs are not accessing medical care because of an inability to accept care. In actuality, the most common reason is that health care is usually not available to someone who is homeless. It seems to be incontrovertible there is a crisis-level shortage of housing in Los Angeles and a lack of medical care available to those who are homeless.

The expanse of this bill, whether intended or not, raise significant concerns for us and it appears the objectives are more about a round-up of homeless individuals than about providing services and housing so that these individuals could decide for themselves to accept treatment. While we do not impute any illicit motives to either the sponsors or authors of this bill, the dearth of a *workable* solution threatens unintended outcomes when the language is so vague and confused.

This bill does nothing to ensure that the proposed conservatees under the expansion will be provided adequate food, clothing, housing, or medical and behavioral health care if a conservatorship is established.

We assert there is no point to more aggressive intervention if there is no place to house and treat the people who need help. Nothing in this bill expands services or creates more housing, or medical or mental health care, which is what the real problem is. There are already significant delays in receiving services in LA and throughout the state -- ER, specialty services, substance abuse treatment, full service partnerships and transitional and supported housing are not readily available. Which raises the question, if those services are available, why are they not being used now for those who do not need conservatorships?

It should also be noted, LPS conservators do not have the power to force physical health treatment on individuals held for psychiatric care. The law requires a probate order for involuntary medical treatment.

Thus, we believe that changing the definition of "grave disability" will not solve the problems the bill seeks to remedy, i.e. ensuring that there are housing and services for those in need. This is particularly the case when weighed against individuals' loss of freedoms and their rights to self-direction and self-determination.

The California State Auditor recently examined the fund balances of local mental health agencies' Mental Health Services Act (Prop. 63) fund balances reporting that statewide there is $2.5 billion in fund balances. The total in Los Angeles is $737,000 of which $236,000 is in reserves and accumulated interest. To truly address the issues presented to by this bill LA County needs to ensure that there are sufficient and effective housing and services, such as supportive housing. These funds in LA and statewide should be used for real solutions and not the approach taken here.

Fundamental questions that remain unanswered regarding the need for this bill should be answered before it moves forward.

As noted above, we do not believe that this bill has a specified a clear or factual underpinning to support moving away from the LPS statute that has served for decades to balance the needs of individuals with behavioral illnesses and the protection of their own and others safety or why Laura's Law cannot be deployed to reach the very individuals this bill seeks to assist. We do not pose these questions rhetorically. We have probed the sponsors for answers to the following questions but have been wholly dissatisfied. There has been no thoughtful documentation provided that would support veering from the existing LPS balance. We would suggest these questions be posed:

1. **Why can't the stated goals behind this bill be accomplished under existing law? Where are the legal or operational barriers that stand in the way of "leaving people on the streets that are mentally ill and in need of medical attention"?**
2. **How many new conservatorships will be established under this bill? In Los Angeles and statewide?**
3. **Once the conservatorships are established, how will the following be provided:**
    a. **What housing will be provided to the new conservatees and where will it be provided?**
    b. **How will food and clothing be provided to the new conservatees?**

   c. **What health care and behavioral health care will be provided to the new conservatees and how will it be provided?**

4. **What are the projected costs for the food, clothing, housing and health and behavioral health care for the new conservatees, what are the sources of the costs, and will the additional costs be displacing services in other areas?**

Bill Costs

We suspect that because these questions remain largely unanswered the costs are difficult for this committee to estimate. The broad scope of the bill would increase costs dramatically. The increased number of Individuals to be conserved under the bill would be significant since the very intent is to reach those that are not being conserved under the existing law. The courts, county conservators' offices, and county mental health programs will see significant costs in just the processing of the conservatorships. Additionally, once conservatorships are established the county then becomes responsible for the food, clothing, housing, medical care and behavioral health care.

Conclusion

For these reasons, we collectively and respectfully oppose this bill. Please contact us if you have any questions about our position or if we can provide any further information.

Sincerely,

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 Association of Social Rehabilitation Agencies
California Pan-Ethnic Health Network
Coalition on Homelessness San Francisco
Disability Right Advocates
Disability Rights California
Disability Rights Education and Defense Fund
Law Foundation of Silicon Valley
National Health Law Program
Sacramento Regional Coalition to End Homelessness
Western Center on Law and Poverty

Western Regional Advocacy Project

CC: Honorable Members, Assembly Appropriations Committee
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