June 11, 2019

Honorable Mark Stone
Chair, Assembly Judiciary Committee
California State Senate
Capitol Building, Room 3146
Sacramento, CA 95814

RE: SB 40 (Wiener) as amended April 25, 2019 – OPPOSE

Dear Assembly Member Stone:

The signatory members listed below all advance and protect the civil rights of Californians with disabilities who are experiencing homelessness and substance abuse and regret to inform you that we respectfully oppose SB 40. This bill is scheduled for hearing in the Assembly Judiciary Committee on June 18, 2019.

The Requirements of SB 1045.

Last year, the Legislature enacted SB 1045 (Wiener, Chapter 845, Statutes of 2018), conditionally establishing in designated counties a procedure for the appointment of a conservator 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 for the purpose of providing housing and services designed to enable such persons to live in the most independent,
least restrictive housing feasible in the local community. We and a coalition of advocacy organizations opposed SB 1045 because, among other things, it significantly expanded involuntary detention and services without any assurances that housing and services would be provided.

The author agreed to amendments to SB 1045 addressing some of the opponents’ primary concerns with that bill, i.e. the need for services and supportive housing provided in a voluntary setting. For example, SB 1045 was amended to require that the establishment of a conservatorship pursuant to its provisions is subject to a court finding that the local behavioral health director has previously petitioned to obtain a court order authorizing Assisted Outpatient Treatment (AOT), also known as Laura’s Law, for the person and that the petition was denied or the AOT was insufficient to treat the person’s mental illness and that the AOT would be insufficient to treat the person in lieu of a conservatorship. We believe that the amendment requiring the opportunity for voluntary treatment, and the services and housing that accompany it, was critical to the passage of SB 1045.

The SB 40 Retreat from Judicial Review, Voluntary Services and Supportive Housing Required in SB 1045.

SB 40 would amend SB 1045, before it is even implemented, the requirement that the county first pursue AOT through the court and, instead, would leave determinations of the appropriateness of AOT to the discretion of the local behavioral health director or the director’s designee. Under this bill, the implementing counties have limited judicial check on whether the individual sought to be conserved should be offered voluntary treatment, services and supportive housing as the Legislature required in SB 1045.

SB 40 was significantly amended while in the Senate Judiciary and Public Safety Committees to correct several constitutional and related infirmities, including the deletion of the 180-day window following the 12-month period in which the detentions could occur. Additionally, the length of the conservatorship has been changed from one year to six months, and the conservator must file reports with the court justifying the conservatorship every 60 days. If the court is not satisfied that the conservatorship continues to be justified, the court may shorten or terminate the conservatorship. Compressing the timeframes for the establishment and
SB 40 (Wiener) as amended April 25, 2019 – OPPOSE
Page 3 of 5

duration of a conservatorship added procedural protections. Additionally, the amendments eliminated a definition of “serious mental illness and substance use disorder” that raised several significant concerns.

However, the amendments did not remedy the retreat from the requirement in SB 1045 that voluntary services be offered to an individual before a conservatorship could be imposed and still enables the county behavioral health director to unilaterally make a determination that AOT does not apply or is insufficient without providing an adequate enforcement mechanism or accountability. SB 40 still leaves the determination of whether an offer of voluntary AOT to a county bureaucrat and not the court despite the fact that the finding must be made “as a matter of law” and by “clear and convincing evidence” which are legal determinations that should be made by a court and not a bureaucrat. In short, the determination lacks judicial review of a fundamental determination before an individual is involuntarily held.

SB 40 Provides No Assurances that Housing with Wraparound services Will Be Available to Proposed Conservatee.

Throughout the debate on SB 1045 and now SB 40, we have raised the fact that this legislation does not provide resources or assurances that adequate resources are available to those who may be conserved pursuant to this new conservatorship. There is no point to more aggressive interventions if there is no place to house and treat the people who need help. Like SB 1045, there is nothing in this bill which expands services or creates more housing, or medical or mental health care, which is what the real problem is.

The San Francisco Chronicle has reported on a broken behavioral health system in San Francisco: “Something isn’t working within San Francisco’s behavioral health care system, city officials admit, but they don’t know exactly what’s wrong or what they need to do to fix it.” San Francisco Chronicle, April 12, 2019, updated April 14, 2019 (https://www.sfchronicle.com/politics/article/Fixing-San-Francisco-s-behavioral-health-system-13761497.php). As the article notes, “the city is considering expanding its conservatorship program, which forces chronically homeless and severely mentally ill into care. That could add more people to a system already struggling to accommodate current demand.” On April 15, the Chronicle reported that since 2012, “San
Francisco has lost more than a third of licensed residential facilities that serve people younger than 60, and more than a quarter of those serving older clients.” San Francisco Chronicle, April 15, 2019 (https://www.sfchronicle.com/bayarea/article/SF-board-and-care-homes-for-seriously-mentally-13766754.php?utm_source=newsletter&utm_medium=email&utm_content=headlines&utm_campaign=sfc_morningfix).

This bill still has it backwards. Adequate services, housing and supports should be in place before expanding the number of persons that San Francisco wants to hold involuntarily. Forcing more people involuntarily into a broken system is not the answer.

Indeed, The San Francisco Board of Supervisors voted last week to move forward with the implementation of SB 1045. Throughout the debate there was repeated concern that there is inadequate housing and services available for those that would be conserved under SB 1045. Unfortunately, SB 40 does nothing to ensure that housing and services be available even though the bill is removing the requirement that voluntary care be made available through AOT.

EVEN THOUGH SB 1045 IS A PILOT PROJECT IT DOES NOT CONTAIN AN ADEQUATE EVALUATION OF THE PROJECT, PARTICULARLY IN LIGHT OF THE SB 40 RETREAT.

Pursuant to SB 1045, a county that implements the pilot project need only conduct an evaluation that “shall include an assessment of the number and status of persons who have been conserved under that chapter, the effectiveness of these conservatorships in addressing the short- and long-term needs of those persons, and the impact of conservatorships” established pursuant to the pilot. In light of the SB 40 retreat there should be a more thorough and revealing evaluation of the pilot that should, at a minimum, include an assessment of the service and delivery planning process for the program; types, locations and duration of placements of those conserved; services and treatment available in the placements; and demographic data of those conserved.

As we feared during the debates on SB 1045, the motives behind the bill were more about looking for easy solutions to solve problems that flow from the lack of adequate supportive housing and treatment services than about making housing and services available. The amendments to SB 1045 last
year moved the bill in the direction of assuring those services would be made available. The retreat of SB 40 from those requirements confirms that the pilot counties do not stand ready to address the real problems or respect individual rights.

For these reasons, we collectively and respectfully oppose SB 40. Please contact us if you have any questions about our position or if we can provide any further information.

Sincerely,

Disability Right California
American Civil Liberties Union
Western Center on Law and Poverty

cc: Honorable Members, Assembly Judiciary Committee
    Leora Gershenzon, Deputy Chief Counsel, Assembly Judiciary Committee
    Honorable Scott Wiener, California State Senate
    Brayden Borcherding, Legislative Director, Office of Senator Wiener
    Paul Dress, Consultant, Assembly Republican Caucus Committee