

AMENDED IN SENATE APRIL 7, 2022

**SENATE BILL**

**No. 1416**

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**Introduced by Senator Eggman**

February 18, 2022

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1416, as amended, Eggman. Mental health services: gravely disabled persons.

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 also provides for a conservator of the person or estate to be appointed for a person who is gravely disabled. Existing law, for the purposes of involuntary commitment and conservatorship, defines "gravely disabled," among other things, as a condition in which a person, as a result of a mental health disorder, is unable to provide for the basic personal needs of food, clothing, or shelter.

This bill would also include under the definition of "gravely disabled" a condition in which a person, as a result of a mental health disorder, is unable to provide for the basic personal needs of ~~personal~~ or medical care or self protection and ~~safety~~. *safety, as specified*. By increasing the level of service required of county mental health departments, this bill would impose a state-mandated local program.

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~~ a 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” ~~means an inability~~  
21    ~~to provide for the person’s basic personal needs for food, clothing,~~  
22    ~~or shelter.~~ *has the same definition as in paragraph (1) of*  
23    *subdivision (h) of Section 5008 of the Welfare and Institutions*  
24    *Code.*

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

29    (A) Telephone calls or other contacts required pursuant to this  
30    paragraph shall commence at the earliest possible time when the

1 treating physician and surgeon has determined the time at which  
2 the person will be medically stable for transfer.

3 (B) ~~In no case shall the~~ *The* contacts required pursuant to this  
4 paragraph *shall not* begin after the time when the person becomes  
5 medically stable for transfer.

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

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

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

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

15 (2) In the opinion of the treating physician and surgeon, or a  
16 clinical psychologist with the medical staff privileges or  
17 professional responsibilities provided for in Section 1316.5, the  
18 person, as a result of a mental health disorder, is still a danger to  
19 themselves, or others, or is gravely disabled, as defined in  
20 paragraph (1) of subdivision (a).

21 (c) In addition to the immunities set forth in subdivision (a), a  
22 licensed general acute care hospital, as defined in subdivision (a)  
23 of Section 1250, that is not a county-designated facility pursuant  
24 to Section 5150 of the Welfare and Institutions Code, a licensed  
25 acute psychiatric hospital, as defined by subdivision (b) of Section  
26 1250, that is not a county-designated facility pursuant to Section  
27 5150 of the Welfare and Institutions Code, licensed professional  
28 staff of those hospitals, or a physician and surgeon, providing  
29 emergency medical services in any department of those hospitals  
30 to a person at the hospital shall not be civilly or criminally liable  
31 for the actions of a person detained up to 24 hours in those hospitals  
32 who is subject to detention pursuant to subdivision (a) after that  
33 person's release from the detention at the hospital, if all of the  
34 following conditions exist during the detention:

35 (1) The person has not been admitted to a licensed general acute  
36 care hospital or a licensed acute psychiatric hospital for evaluation  
37 and treatment pursuant to Section 5150 of the Welfare and  
38 Institutions Code.

39 (2) The release from the licensed general acute care hospital or  
40 the licensed acute psychiatric hospital is authorized by a physician

1 and surgeon or a clinical psychologist with the medical staff  
2 privileges or professional responsibilities provided for in Section  
3 1316.5, who determines, based on a face-to-face examination of  
4 the person detained, that the person does not present a danger to  
5 themselves or others and is not gravely disabled, as defined in  
6 paragraph (1) of subdivision (a). In order for this paragraph to  
7 apply to a clinical psychologist, the clinical psychologist shall have  
8 a collaborative treatment relationship with the physician and  
9 surgeon. The clinical psychologist may authorize the release of  
10 the person from the detention, but only after the clinical  
11 psychologist has consulted with the physician and surgeon. In the  
12 event of a clinical or professional disagreement regarding the  
13 release of a person subject to the detention, the detention shall be  
14 maintained unless the hospital's medical director overrules the  
15 decision of the physician and surgeon opposing the release. Both  
16 the physician and surgeon and the clinical psychologist shall enter  
17 their findings, concerns, or objections in the person's medical  
18 record.

19 (d) Notwithstanding any other law, an examination, assessment,  
20 or evaluation that provides the basis for a determination or opinion  
21 of a physician and surgeon or a clinical psychologist with the  
22 medical staff privileges or professional responsibilities provided  
23 for in Section 1316.5 that is specified in this section may be  
24 conducted using telehealth.

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

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

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

38 (h) This section does not expand the scope of licensure of  
39 clinical psychologists.

1 SECTION 1.

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

4 5008. Unless the context otherwise requires, the following  
5 definitions shall govern the construction of this part:

6 (a) "Evaluation" consists of multidisciplinary professional  
7 analyses of a person's medical, psychological, educational, social,  
8 financial, and legal conditions that appear to constitute a problem.  
9 Persons providing evaluation services shall be properly qualified  
10 professionals and may be full-time employees of an agency  
11 providing face-to-face, including telehealth, evaluation services,  
12 part-time employees, or persons employed on a contractual basis.

13 (b) "Court-ordered evaluation" means an evaluation ordered by  
14 a superior court pursuant to Article 2 (commencing with Section  
15 5200) or by a superior court pursuant to Article 3 (commencing  
16 with Section 5225) of Chapter 2.

17 (c) "Intensive treatment" consists of hospital and other services  
18 as indicated. Intensive treatment shall be provided by properly  
19 qualified professionals and carried out in facilities qualifying for  
20 reimbursement under the California Medical Assistance Program  
21 (Medi-Cal) set forth in Chapter 7 (commencing with Section  
22 14000) of Part 3 of Division 9, or under Title XVIII of the federal  
23 Social Security Act and regulations thereunder. Intensive treatment  
24 may be provided in hospitals of the United States government by  
25 properly qualified professionals. This part does not prohibit an  
26 intensive treatment facility from also providing 72-hour evaluation  
27 and treatment.

28 (d) (1) "Referral" means referral of persons by each agency or  
29 facility providing assessment, evaluation, crisis intervention, or  
30 treatment services to other agencies or individuals. The purpose  
31 of referral is to provide for continuity of care, and may include,  
32 but need not be limited to, informing the person of available  
33 services, making appointments on the person's behalf, discussing  
34 the person's problem with the agency or individual to which the  
35 person has been referred, appraising the outcome of referrals, and  
36 arranging for personal escort and transportation when necessary.  
37 Referral shall be considered complete when the agency or  
38 individual to whom the person has been referred accepts  
39 responsibility for providing the necessary services. All persons  
40 shall be advised of available precare services that prevent initial

1 recourse to hospital treatment or aftercare services that support  
2 adjustment to community living following hospital treatment.  
3 These services may be provided through county or city mental  
4 health departments, state hospitals under the jurisdiction of the  
5 State Department of State Hospitals, regional centers under contract  
6 with the State Department of Developmental Services, or other  
7 public or private entities.

8 (2) Each agency or facility providing evaluation services shall  
9 maintain a current and comprehensive file of all community  
10 services, both public and private. These files shall contain current  
11 agreements with agencies or individuals accepting referrals, as  
12 well as appraisals of the results of past referrals.

13 (e) “Crisis intervention” consists of an interview or series of  
14 interviews within a brief period of time, conducted by qualified  
15 professionals, and designed to alleviate personal or family  
16 situations that present a serious and imminent threat to the health  
17 or stability of the person or the family. The interview or interviews  
18 may be conducted in the home of the person or family, or on an  
19 inpatient or outpatient basis with the therapy or other services, as  
20 appropriate. The interview or interviews may include family  
21 members, significant support persons, providers, or other entities  
22 or individuals, as appropriate and as authorized by law. Crisis  
23 intervention may, as appropriate, include suicide prevention,  
24 psychiatric, welfare, psychological, legal, or other social services.

25 (f) “Prepetition screening” is a screening of all petitions for  
26 court-ordered evaluation as provided in Article 2 (commencing  
27 with Section 5200) of Chapter 2, consisting of a professional  
28 review of all petitions; an interview with the petitioner and,  
29 whenever possible, the person alleged, as a result of a mental health  
30 disorder, to be a danger to others, or to themselves, or to be gravely  
31 disabled, to assess the problem and explain the petition; when  
32 indicated, efforts to persuade the person to receive, on a voluntary  
33 basis, comprehensive evaluation, crisis intervention, referral, and  
34 other services specified in this part.

35 (g) “Conservatorship investigation” means investigation by an  
36 agency appointed or designated by the governing body of cases in  
37 which conservatorship is recommended pursuant to Chapter 3  
38 (commencing with Section 5350).

39 (h) (1) For purposes of Article 1 (commencing with Section  
40 5150), Article 2 (commencing with Section 5200), and Article 4

1 (commencing with Section 5250) of Chapter 2, and for the purposes  
2 of Chapter 3 (commencing with Section 5350), “gravely disabled”  
3 means either of the following:

4 (A) A condition in which a person, as a result of a mental health  
5 disorder, is unable to provide for their basic personal needs for  
6 food, clothing, shelter, ~~personal~~ or medical care, or self protection  
7 and safety. *A person is unable to provide for their basic personal*  
8 *needs for medical care or self protection and safety when the*  
9 *person is at risk of substantial bodily harm, dangerous worsening*  
10 *of any concomitant serious physical illness, significant psychiatric*  
11 *deterioration, or mismanagement of their basic needs that could*  
12 *result in substantial bodily harm.*

13 (B) A condition in which a person, has been found mentally  
14 incompetent under Section 1370 of the Penal Code and all of the  
15 following facts exist:

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

20 (ii) There has been a finding of probable cause on a complaint  
21 pursuant to paragraph (2) of subdivision (a) of Section 1368.1 of  
22 the Penal Code, a preliminary examination pursuant to Section  
23 859b of the Penal Code, or a grand jury indictment, and the  
24 complaint, indictment, or information has not been dismissed.

25 (iii) As a result of a mental health disorder, the person is unable  
26 to understand the nature and purpose of the proceedings taken  
27 against them and to assist counsel in the conduct of the person’s  
28 defense in a rational manner.

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

31 (2) For purposes of Article 3 (commencing with Section 5225)  
32 and Article 4 (commencing with Section 5250), of Chapter 2, and  
33 for the purposes of Chapter 3 (commencing with Section 5350),  
34 “gravely disabled” means a condition in which a person, as a result  
35 of impairment by chronic alcoholism, is unable to provide for their  
36 basic personal needs for food, clothing, or shelter.

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

39 (i) “Peace officer” means a duly sworn peace officer as that  
40 term is defined in Chapter 4.5 (commencing with Section 830) of

1 Title 3 of Part 2 of the Penal Code who has completed the basic  
2 training course established by the Commission on Peace Officer  
3 Standards and Training, or a parole officer or probation officer  
4 specified in Section 830.5 of the Penal Code when acting in relation  
5 to cases for which the officer has a legally mandated responsibility.

6 (j) "Postcertification treatment" means an additional period of  
7 treatment pursuant to Article 6 (commencing with Section 5300)  
8 of Chapter 2.

9 (k) "Court," unless otherwise specified, means a court of record.

10 (l) "Antipsychotic medication" means medication customarily  
11 prescribed for the treatment of symptoms of psychoses and other  
12 severe mental and emotional disorders.

13 (m) "Emergency" means a situation in which action to impose  
14 treatment over the person's objection is immediately necessary  
15 for the preservation of life or the prevention of serious bodily harm  
16 to the patient or others, and it is impracticable to first gain consent.  
17 It is not necessary for harm to take place or become unavoidable  
18 prior to treatment.

19 (n) "Designated facility" or "facility designated by the county  
20 for evaluation and treatment" means a facility that is licensed or  
21 certified as a mental health treatment facility or a hospital, as  
22 defined in subdivision (a) or (b) of Section 1250 of the Health and  
23 Safety Code, by the State Department of Public Health, and may  
24 include, but is not limited to, a licensed psychiatric hospital, a  
25 licensed psychiatric health facility, and a certified crisis  
26 stabilization unit.

27 ~~SEC. 2.~~

28 *SEC. 3.* If the Commission on State Mandates determines that  
29 this act contains costs mandated by the state, reimbursement to  
30 local agencies and school districts for those costs shall be made  
31 pursuant to Part 7 (commencing with Section 17500) of Division  
32 4 of Title 2 of the Government Code.