

File No. 230267

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Public Safety and Ngbh Services

Date: May 25, 2023

Board of Supervisors Meeting:

Date: _____

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OTHER

- Senate Bill 43 – Dated April 27, 2023
- Senate Bill 363 – Dated May 18, 2023
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Prepared by: John Carroll

Date: May 19, 2023

Prepared by: _____

Date: _____

Prepared by: _____

Date: _____

1 [Supporting California State Senate Bill Nos. 43 and 363 (Eggman) - Legislation Modernizing
2 Our Behavioral Health Continuum]

3 **Resolution urging the California State Legislature to pass California State Senate Bill**
4 **Nos. 43 and 363, introduced by California Senator Susan Eggman, to amend the**
5 **Lanterman-Petris-Short Act and Chapter 2 of Division 2 of the Health and Safety Code.**
6

7 WHEREAS, California State Senate Bill Nos. 43 and 363 constitute a pair of bills
8 introduced by Senator Susan Eggman to improve California’s behavioral health system by
9 requiring the State Department of Health Care Services to develop a real-time database to
10 display information about beds in specified types of facilities and updating the outdated
11 definition of “grave disability” signed into law by Governor Reagan; and

12 WHEREAS, These bills would reform California’s response to the behavioral health
13 needs of individuals suffering from severe mental illness; and

14 WHEREAS, The effects of California’s failure to provide adequate mental health care
15 for this population is reflected in the fact that a majority of the unhoused, unsheltered people
16 living on San Francisco’s streets suffer from some sort of psychiatric condition, addiction, or
17 both, and our local psychiatric emergency services are on diversion over 40% of the time; and

18 WHEREAS, SB 43 would amend the Lanterman-Petris-Short Act to expand the
19 definition of “gravely disabled” to also include a condition that will result in substantial risk of
20 serious harm to the physical or mental health of a person due to a mental health disorder or a
21 substance use disorder; and

22 WHEREAS, The bill defines “serious harm” for purposes of these provisions to mean
23 significant deterioration, debilitation, or illness due to a person’s inability to carry out specific
24 tasks, including, among other things attending to needed personal or medical care and self-
25 protection or personal safety; and

1 WHEREAS, Existing law establishes the hearsay rule, under which evidence of a
2 statement is generally inadmissible if it was made other than by a witness while testifying at a
3 hearing and is offered to prove the truth of the matter stated; and

4 WHEREAS, Existing law sets forth exceptions to the hearsay rule to permit the
5 admission of specified kinds of evidence; and

6 WHEREAS, Under SB 43, for purposes of an expert witness in any proceeding relating
7 to the appointment or reappointment of a conservator, the statements of specified health
8 practitioners or a licensed clinical social worker included in the medical record would not be
9 hearsay; and

10 WHEREAS, SB 363 would require the State Department of Health Care Services, in
11 consultation with the State Department of Public Health and the State Department of Social
12 Services, to develop a real-time, internet-based dashboard to collect, aggregate, and display
13 information about beds in specified types of facilities; and

14 WHEREAS, The bill would require the dashboard to display information about chemical
15 dependency recovery hospitals, acute psychiatric hospitals, and mental health rehabilitation
16 centers, among other types of facilities; and

17 WHEREAS, The bill would require the database to include minimum specific
18 information, including the contact information for a facility's designated employee, the types of
19 diagnoses or treatments for which the bed is appropriate, and the target populations served at
20 the facility; and

21 WHEREAS, The bill would authorize the department to impose a plan of correction or
22 assess penalties against a facility that fails to submit data accurately, timely, or as otherwise
23 required and would establish a process for facilities to appeal these penalties; and

24 WHEREAS, From 1959 to 1973, the number of patients in State mental hospitals
25 plummeted from 37,000 to 7,000; and

1 WHEREAS, In the years since the Lanterman-Petris-Short Act was signed into law,
2 California has continued to neglect its responsibility to manage an effective continuum of
3 behavioral health care, delegating all responsibility to counties; and

4 WHEREAS, In 2022, Senator Eggman introduced a package of eight bills modernizing
5 California’s Behavioral Health Continuum; and

6 WHEREAS, On June 17, 2022, the Board of Supervisors voted to pass File 220397, a
7 resolution in support of Senate Bill Nos. 929, 965, 970, 1035, 1154, 1227, 1238, and 1416;
8 and

9 WHEREAS, SB 965 and 1416 would have expanded the definition of “grave disability”
10 and created an exemption to the hearsay rule for expert witnesses reading the statements of
11 specified health practitioners included in the medical record in any proceeding relating to the
12 appointment or reappointment of a conservator; and

13 WHEREAS, The Assembly did not pass SB 965 and 1416 during the 2022 legislative
14 session; and

15 WHEREAS, SB 43 and 363 are endorsed by the Big City Mayors coalition,
16 representing the 13 largest cities and roughly 11 million residents in California; and

17 WHEREAS, SB 43 and 363 are endorsed by the National Alliance on Mental Illness
18 California, the California State Association of Psychiatrists, and the Psychiatric Physicians’
19 Alliance of California; now, therefore, be it

20 RESOLVED, That the Board of Supervisors supports California Senate Bill Nos. 43
21 and 363; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the
23 Board to transmit a copy of this Resolution to San Francisco’s state legislative delegation, and
24 the Office of the Chief Clerk of the Assembly and Office of the Secretary of the Senate.
25

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

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

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.

AMENDED IN SENATE MAY 18, 2023

SENATE BILL

No. 363

Introduced by Senator Eggman
(Coauthors: Senators Allen and Rubio)
(Coauthor: Assembly Member Gallagher)

February 8, 2023

An act to add Article 7.1 (commencing with Section 1323.2) to Chapter 2 of Division 2 of the Health and Safety Code, relating to health and care facilities, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 363, as amended, Eggman. Facilities for inpatient and residential mental health and substance use disorder: database.

Existing law generally requires the State Department of Public Health to license, inspect, and regulate health facilities, defined to include, among other types of health facilities, an acute psychiatric hospital. Existing law generally requires the State Department of Social Services to license, inspect, and regulate various types of care facilities, including, among others, a community crisis home. Existing law requires the State Department of Health Care Services to license and regulate facilities that provide residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services.

This bill would require, by January 1, ~~2025~~, 2026, the State Department of Health Care Services, in consultation with the State Department of Public Health and the State Department of Social Services, and by conferring with specified stakeholders, to develop a real-time, internet-based database to collect, aggregate, and display

information about beds in specified types of facilities, such as chemical dependency recovery hospitals, acute psychiatric hospitals, and mental health rehabilitation centers, among others, to identify the availability of inpatient and residential mental health or substance use disorder treatment. The bill would require the database to include a minimum of specific information, including the contact information for a facility's designated employee, the types of diagnoses or treatments for which the bed is appropriate, and the target populations served at the facility, and have the capacity to, among other things, enable searches to identify beds that are appropriate for individuals in need of inpatient or residential mental health or substance use disorder treatment.

This bill would authorize the department to impose a plan of correction or assess penalties against a facility that fails to submit data accurately, timely, or as otherwise required and would establish a process for facilities to appeal these penalties. The bill would create the Available Care for Inpatient and Residential Mental Health or Substance Use Disorder Treatment Database Maintenance and Oversight Fund for the receipt of any penalties. Because the bill would continuously appropriate moneys in the fund for administrative costs of implementing the database, it would create an appropriation.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Article 7.1 (commencing with Section 1323.2)
2 is added to Chapter 2 of Division 2 of the Health and Safety Code,
3 to read:

4
5 Article 7.1. Availability of Inpatient and Residential Mental
6 Health and Substance Use Disorder Treatment Beds

7
8 1323.2. (a) (1) The State Department of Health Care Services,
9 in consultation with the State Department of Public Health and the
10 State Department of Social Services, shall develop a real-time,
11 internet-based database to collect, aggregate, and display
12 information about beds in all of the following facilities to identify
13 the availability of inpatient and residential mental health or
14 substance use disorder treatment:

- 1 (A) General acute care hospitals designated as part of
2 supplemental psychiatric unit or chemical dependency service.
3 (B) Chemical dependency recovery hospitals.
4 (C) Acute psychiatric hospitals and licensed long-term care
5 facilities with a mental health program approval or certification
6 from the State Department of Health Care Services.
7 (D) Psychiatric health facilities.
8 (E) Mental health rehabilitation centers.
9 (F) Inpatient psychiatric facilities.
10 (G) Crisis stabilization units.
11 (H) Licensed community care facilities with a mental health
12 program approval or certification from the State Department of
13 Health Care Services.
14 (I) Licensed residential alcoholism or drug abuse recovery or
15 treatment facilities.
16 (2) The facilities specified in paragraph (1) shall submit accurate
17 and timely data to the database in a form and manner prescribed
18 by the State Department of Health Care Services in consultation
19 with the State Department of Public Health and the State
20 Department of Social Services.
21 (3) The database shall be operational by January 1, ~~2025~~ 2026.
22 (b) (1) Except as described in paragraph (3), the database
23 created pursuant to subdivision (a) shall include, at a minimum,
24 all of the following:
25 (A) The contact information for the facility's designated
26 employee.
27 (B) The facility's license type.
28 (C) Whether the facility provides substance use disorder
29 treatment, mental health treatment, medical treatment, or any
30 combination of those treatments.
31 (D) Whether the bed is secure for the treatment of a person who,
32 as a result of a mental health disorder, is a danger to others or to
33 themselves or gravely disabled, pursuant to Part 1 (commencing
34 with Section 5000) of Division 5 of the Welfare and Institutions
35 Code.
36 (E) The types of diagnoses or treatments for which the bed is
37 appropriate.
38 (F) The age ranges for which the bed is appropriate.
39 (G) Whether the bed is available.

1 (H) Whether the bed is available for children subject to a
2 petition, and those adjudicated a dependent, pursuant to Section
3 300 of the Welfare and Institutions Code, nonminor dependents
4 as defined in subdivision (v) of Section 11400 of the Welfare and
5 Institutions Code, or minors subject to a petition, and those
6 adjudicated a ward, pursuant to Section 601 or 602 of the Welfare
7 and Institutions Code.

8 (I) For perinatal residential alcoholism or drug abuse recovery
9 or treatment facilities, whether the bed is available for a minor
10 child of individuals receiving treatment at the facility.

11 (J) The target populations served at the facility.

12 (K) The levels of care provided at the facility, including, but
13 not limited to, medically or clinically managed detoxification.

14 (L) Specific services available, by bed, to assist with determining
15 appropriate placement for treatment, including, but not limited to,
16 medications for addiction treatment.

17 (M) Type of payment accepted at the facility.

18 (2) The database created pursuant to subdivision (a) shall have
19 the following capabilities, at minimum:

20 (A) To collect data.

21 (B) To enable searches to identify beds that are appropriate for
22 individuals in need of inpatient or residential mental health or
23 substance use disorder treatment.

24 (3) The database shall not include any information relating to
25 state hospitals under the jurisdiction of the State Department of
26 State Hospitals.

27 (4) The database and the information contained therein shall be
28 maintained in a manner that complies with all applicable state and
29 federal confidentiality laws. The database and the information
30 contained therein shall not be publicly available, and the State
31 Department of Health Care Services may limit access to entities
32 authorized by the department in a manner that is consistent with
33 state and federal confidentiality laws.

34 (c) (1) The State Department of Health Care Services shall have
35 the authority to impose a plan of correction or assess civil money
36 penalties pursuant to paragraph (2), or both, against a facility
37 specified in subdivision (a) that fails to submit data accurately,
38 timely, or as required pursuant to this section.

39 (2) The department may determine a reasonable length of time
40 for completion of a plan of correction. The department may issue

1 a notice of imposition of civil money penalties if the facility fails
2 to complete a plan of correction by the time specified. The
3 department may assess penalties against a facility in the amount
4 of one hundred dollars (\$100) per day from the date of notice of
5 imposition of penalties.

6 (3) A facility may submit a written appeal to the department
7 within 15 working days of the issuance of the notice specified in
8 paragraph (2). The facility shall include any supporting
9 documentation and explain any mitigating circumstances. The
10 department shall make a determination on the appeal within 30
11 calendar days of receipt of a complete appeal.

12 (4) A facility may request a formal hearing within 30 calendar
13 days of the department's determination on the appeal pursuant to
14 paragraph (3). Except for licensed residential alcoholism or drug
15 abuse recovery or treatment facilities, hearings to review the
16 imposition of civil money penalties shall be conducted pursuant
17 to the requirements set forth in Section 100171. Civil money
18 penalties against a facility shall continue to accrue until the
19 effective date of the final decision of the department.

20 (5) Notwithstanding Section 100171, hearings to review the
21 imposition of civil money penalties against licensed residential
22 alcoholism or drug abuse recovery or treatment facilities shall be
23 conducted pursuant to the requirements set forth in Section
24 11834.37.

25 (6) The State Department of Health Care Services may obtain
26 a court order to recover unpaid civil money penalties against a
27 facility identified in subdivision (a).

28 (d) The Available Care for Inpatient and Residential Mental
29 Health or Substance Use Disorder Treatment Database Maintenance
30 and Oversight Fund is hereby created in the State Treasury, to be
31 administered and overseen by the State Department of Health Care
32 Services. Civil money penalties assessed and collected pursuant
33 to this section shall be deposited into this fund. Notwithstanding
34 Section 13340 of the Government Code, the funds deposited in
35 this fund shall be continuously appropriated, without regard to
36 fiscal year, to the State Department of Health Care Services for
37 purposes of funding its administrative costs associated with
38 implementing this section.

39 (e) The department shall confer with stakeholders to inform the
40 development of the database. Stakeholders represented in this

1 process shall include, but are not limited to, the State Department
2 of Public Health, the State Department of Social Services, the
3 County Behavioral Health Directors Association of California, the
4 California Hospital Association, organizations representing
5 providers, consumers, and family members, organizations that
6 have experience providing inpatient psychiatric level of care or
7 services in a general acute care hospital, chemical dependency
8 recovery hospital or an acute psychiatric hospital, licensed
9 long-term care facilities with a mental health program approval or
10 certification from the State Department of Health Care Services,
11 organizations that have experience providing psychiatric crisis
12 stabilization, organizations that have experience providing services
13 in community care facilities with a State Department of Health
14 Care Services mental health program approval or certification,
15 psychiatric health facilities and mental health rehabilitation centers,
16 and organizations that have experience providing residential
17 alcoholism or drug abuse recovery or treatment services. The
18 department and stakeholders shall consider strategies for facility
19 use of the database.

20 (f) (1) The State Department of Health Care Services and the
21 State Department of Social Services may enter into exclusive or
22 nonexclusive contracts, or amend existing contracts, on a bid or
23 negotiated basis for purposes of administering or implementing
24 the requirements of this section.

25 (2) Contracts entered into or amended pursuant to this section
26 shall be exempt from Chapter 6 (commencing with Section 14825)
27 of Part 5.5 of Division 3 of Title 2 of the Government Code,
28 Section 19130 of the Government Code, and Part 2 (commencing
29 with Section 10100) of Division 2 of the Public Contract Code,
30 and shall be exempt from the review or approval of any division
31 of the Department of General Services.

32 (g) Notwithstanding Chapter 3.5 (commencing with Section
33 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
34 the State Department of Health Care Services may implement,
35 interpret, or make specific this section, in whole or in part, by
36 means of information notices, provider bulletins, or other similar
37 instructions, without further regulatory action.

O

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2023 MAR -7 PM 4:20

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor [] inquires..."
- 5. City Attorney Request
- 6. Call File No. [] from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the Board on []

Doyle

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Mandelman; Satai; Melgar, Engardio

Subject:

Supporting California State Senate Bill Nos. 43 and 363 (Eggman) - Legislation Modernizing Our Behavioral Health Continuum

Long Title or text listed:

Resolution urging the California State Legislature to pass California State Senate Bill Nos. 43 and 363, introduced by California Senator Susan Eggman to amend the Lanterman-Petris-Short Act and Chapter 2 of Division 2 of the Health and Safety Code.

Signature of Sponsoring Supervisor:

Doyle