



March 22, 2023

The Honorable Susan Eggman  
 Chair, Senate Health Committee  
 1021 O Street, Room 3310  
 Sacramento, CA 95814

**RE: SB 43 (EGGMAN) as amended February 28, 2023 - OPPOSE**

Dear Senator Eggman:

The organizations submitting this letter advance and protect the rights of Californians living with mental health disabilities. We advocate for voluntary, community-based treatment and services and the expansion of choices, rights, and liberties for people living with mental health disabilities.

**We oppose SB 43.** Based on our extensive experience working with clients and communities across the state, we know that expanding the definition of “gravely disabled” to make it easier to involuntarily detain people undermines the very purpose of the LPS Act and fails to address the real needs of Californians living with mental health disabilities, especially those who are unhoused.

Instead, the Legislature should invest in evidence-based, community-defined programs and services that are proven to meet the needs of Californians living with serious mental disabilities, including affordable, accessible housing with voluntary support services and Assertive Community Treatment.

**We also oppose SB 43** because it reflects poor public policy. First, SB 43 will perpetuate health disparities, disproportionately burdening the unhoused and Black, Indigenous, people of color (BIPOC) and immigrant racial minorities. Second, SB 43 will traumatize individual patients and undermine public health policy by causing patients to distrust behavioral health systems. Third, SB 43 is not supported by any data showing that expanding the definition of “gravely disabled” will lead to positive long-term outcomes. Fourth, SB 43 will exacerbate bottlenecks in the already-strained mental health system, rather than investing in the infrastructure, workforce, and funding needed to meaningfully expand community-based services.

Finally, **we oppose SB 43** because it is unconstitutional on its face and violates the Americans with Disabilities Act (ADA) and related law. The bill conflicts with constitutional due process protections by relying on vague criteria that requires decision-makers to speculate about future conditions. SB 43 will also cause the unnecessary institutionalization of people with disabilities in violation of the ADA. In addition, the use of hearsay evidence by expert witnesses will infringe upon fundamental rights to due process.

**I. SB 43 Undermines the Purpose of the LPS Act.**

The primary purpose of the LPS Act is to “*end* the inappropriate, indefinite, and involuntary commitment of persons with mental disorders....”<sup>1</sup> According to the Author’s fact sheet for SB 43, the bill would “modernize” the definition of “gravely disabled” within the LPS Act to better meet the needs of individuals experiencing severe mental illness. However, expanding the definition of “gravely disabled” to make it *easier* to involuntarily detain people directly conflicts with the purpose of the LPS ACT and does not address the real needs of Californians living with mental health disabilities, especially those who are unhoused.

As the California State Auditor explained, “involuntary holds are but one component of a more comprehensive mental health care system” in

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<sup>1</sup> Welf. & Inst. Code § 5001(a) (emphasis added).

California, and “individuals who receive crisis intervention are not always being effectively served by that broader system.”<sup>2</sup>

While the State Auditor found that “the LPS Act’s [current] criteria for involuntary holds and conservatorships are sufficient to meet the intent of the Act[.]”<sup>3</sup> the State Auditor concluded that expanding criteria for involuntary holds to include standards that are overly broad “could *widen the use of involuntary holds and pose significant concerns about infringement on individual rights.*”<sup>4</sup> Accordingly, following its audit of the LPS Act, the State Auditor specifically found “no evidence to justify such a change” to the LPS criteria.<sup>5</sup>

## **II. SB 43 Does Not Address the Real Needs of Californians Living with Mental Health Disabilities: The Legislature Should Invest in Community-Defined, Evidence-Based Services such as Affordable and Accessible Housing and Assertive Community Treatment.**

Pursuant to the recent LPS Audit, the California State Auditor found that California must invest in its broader behavioral health system in order to “adequately car[e] for Californians with serious mental illnesses....”<sup>6</sup> Consistent with the State Auditor’s findings, rather than expanding the definition of “gravely disabled” to make it easier to involuntarily institutionalize people, the Legislature should invest in community-defined, evidence-based programs and services that are proven to meet the needs of Californians with serious mental illness. The Legislature should support the expansion of affordable, accessible housing with voluntary support services and Assertive Community Treatment.

**Affordable, accessible housing with voluntary supports** addresses the needs of chronically homeless people with disabilities.<sup>7</sup> Such housing should be offered on a Housing First basis, which is an evidence-based, client-centered approach that recognizes housing as necessary to make

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<sup>2</sup> California State Auditor, *Lanterman-Petris-Short Act: California Has Not Ensured that Individuals With Serious Mental Illnesses Receive Adequate Ongoing Care* (July 2020) at 21 (<http://auditor.ca.gov/pdfs/reports/2019-119.pdf>) (hereinafter, “LPS Audit”).

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 1, 21 (emphasis added).

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.* at 2, 21.

<sup>7</sup> See, e.g., California Statewide Housing Plan, Definitions (<https://statewide-housing-plan-cahcd.hub.arcgis.com/pages/definitions>).

other voluntary life changes, such as seeking treatment or medical care.<sup>8</sup> The goal of Housing First is to provide housing to people quickly, with as few obstacles as possible, along with voluntary support services according to their needs.<sup>9</sup>

While California is making investments to increase access to affordable, accessible housing through initiatives like Project Homekey and No Place Like Home, the Legislature should do more to shore up California's ability to provide affordable, accessible housing on the scale that it is needed. Moreover, the State must match these housing production investments with investments in programming and workforce to ensure the availability, integration, and continuity of supportive services for people who need them.<sup>10</sup> In addition, the State should exercise greater oversight over local jurisdictions to ensure that unhoused people are actually offered and placed in appropriate affordable, accessible housing with voluntary supports.<sup>11</sup>

**Assertive Community Treatment (ACT)** is an evidence-based practice that utilizes a multidisciplinary team approach to provide a wide range of community-based intensive services to people living with severe mental health disabilities.<sup>12</sup> ACT teams operate 24 hours a day, seven days a week, and services are available for as long as needed and wherever they are needed.<sup>13</sup> ACT is a highly integrated, team-based service delivery model, not a case management program, and is proven to be effective for people

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<sup>8</sup> *Id.*; see also Welf. & Inst. Code § 8255.

<sup>9</sup> *Id.*; see also Maria C. Raven, M.D., M.P.H., M.Sc., et al., *A Randomized Trial of Permanent Supportive Housing for Chronically Homeless Persons with High Use of Publicly Funded Services*, Health Services Research 2020;55 (Suppl. 2): 797 at 803 (<https://onlinelibrary.wiley.com/doi/epdf/10.1111/1475-6773.13553>) (UCSF study finding that affordable housing with intensive case management significantly reduced psychiatric emergency room visits and increased the rate of scheduled outpatient mental health visits).

<sup>10</sup> Recent reporting by Cal Matters underscored the challenges that must be addressed to ensure that PSH is used to its full potential in California. See Jackie Botts, *Five Challenges in Expanding California's Permanent Supportive Housing—and Potential Solutions*, Cal Matters, January 17, 2022 (<https://calmatters.org/california-divide/2022/01/california-homeless-permanent-supportive-housing-5-challenges/>).

<sup>11</sup> See, e.g., Nuala Bishari, *In San Francisco, Hundreds of Homes for the Homeless Sit Vacant*, San Francisco Public Press and Pro Publica, February 24, 2022 (<https://www.sfpublishpress.org/in-san-francisco-hundreds-of-homes-for-the-homeless-sit-vacant/>).

<sup>12</sup> State of California, Department of Health Care Services, *Assessing the Continuum of Care for Behavioral Health Services in California: Data, Stakeholder Perspectives, and Implications* (January 10, 2022) at 60 (<https://www.dhcs.ca.gov/Documents/Assessing-the-Continuum-of-Care-for-BH-Services-in-California.pdf>) (hereinafter, "DHCS Assessment").

<sup>13</sup> *Id.*

who have not been adequately served by traditional service delivery approaches.<sup>14</sup> ACT is designed to be delivered with fidelity to an evidence-based model. While all California counties are required to provide Full Service Partnerships (FSP), Cal. Code of Regulations § 3620, and some counties have ACT as part of their FSP programs, ACT generally provides a more engaged level of service than the standard FSP.<sup>15</sup>

The recent behavioral health needs assessment published by DHCS found that ACT is not yet available with fidelity on the scale necessary to support optimal care for people who could benefit from the level of engagement that it offers.<sup>16</sup> The multi-disciplinary teams that provide ACT are not a covered benefit under Medi-Cal, despite their established effectiveness in helping people living with serious mental illness remain in the community.<sup>17</sup> Expanding the availability of high-fidelity ACT in California would address community needs more effectively than expanding involuntary treatment.

### **III. SB 43 is Poor Public Policy.**

#### **A. SB 43 will perpetuate health disparities, particularly for Black, Indigenous, people of color (BIPOC) and immigrant racial minorities.**

Senate Bill 43's expansive grave disability definition will disproportionately impact California's unhoused population.<sup>18</sup> According to a

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<sup>14</sup> Substance Abuse and Mental Health Services Administration (SAMHSA), *Assertive Community Treatment Evidence-Based Practice Kit: Building Your Program* at 5 ([https://store.samhsa.gov/sites/default/files/d7/priv/buildingyourprogram-act\\_1.pdf](https://store.samhsa.gov/sites/default/files/d7/priv/buildingyourprogram-act_1.pdf)).

<sup>15</sup> *Id.* at 16. See also 9 Cal. Code Regs. § 3620 (Full Service Partnership Service Category). ACT is different than Assisted Outpatient Treatment (AOT) because it is meant to be provided in accordance with recovery principles, including consumer choice, not involuntarily under a court order.

<sup>16</sup> DHCS Assessment at 14.

<sup>17</sup> *Id.* at 15. Stakeholders interviewed as part of the DHCS Assessment suggested leveraging the State's proposed SMI/SED 1115 Demonstration Program (otherwise known as the Medi-Cal IMD Exclusion Waiver) to allow Medi-Cal coverage of high-fidelity ACT teams to support programs that would divert people from inpatient hospitalization or incarceration. *Id.* at 131. We oppose any attempt to waive the Medi-Cal IMD Exclusion. However, if the State chooses to move forward with this plan, it should follow the lead of other states that have successfully added ACT to the menu of Medicaid reimbursable services as part of CMS's requirement to expand community-based care in conjunction with approval for Medicaid reimbursement for IMD services.

<sup>18</sup> SB 43 appears to specifically target the unhoused population for involuntary treatment. The SB 43 fact sheet states that "as many as one-third of California's population experiencing homelessness are also living with serious mental illness[, which] could mean, even conservatively, tens of thousands of those living houseless in the community are also experiencing a – likely untreated, or undertreated – mental illness. SB 43 Fact Sheet at 2.

recent UCLA study, people who are unhoused are disproportionately likely to be subject to involuntary holds.<sup>19</sup> Patients who are unhoused at the time of admission also experience longer hospitalizations and are more likely to remain unhoused when discharged.<sup>20</sup> In California’s current housing landscape, there is no guarantee that a person who was unhoused at the beginning of an LPS Act commitment will remain stably housed after the conservatorship ends.<sup>21</sup> The UCLA study concluded that “reliance on conservatorships as a means to secure both longer-term shelter and mental health treatment is a **signal of systemic gaps in California’s safety-net systems of care.**”<sup>22</sup> SB 43 not only reflects these systemic gaps, but threatens to make them worse.

SB 43 will also worsen health disparities by disproportionately burdening Black, Indigenous, people of color and immigrant racial minorities. Rates of serious mental illness in California vary considerably by racial and ethnic groups, with American Indian, Alaska Native, and Black Californians experiencing the highest rates of serious mental illness.<sup>23</sup> Moreover, Californians who are unhoused are disproportionately Black or African American.<sup>24</sup>

Communities of color are also more likely to be unnecessarily institutionalized, even under the current LPS criteria. As but one example, a recent Disability Rights California (DRC) investigation into Alameda County revealed that 55% of individuals involuntarily held over ten (10) times in County psychiatric facilities were African American—even though African Americans make up less than 11% of the County’s population.<sup>25</sup> As noted by

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<sup>19</sup> Kristen R. Choi, Ph.D., R.N., et al., *Mental Health Conservatorship Among Homeless People with Serious Mental Illness*, Psychiatric Services, Psychiatric Servs. June 2022; 73(6) at 5-7 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9132544/pdf/nihms-1806637.pdf>) (hereinafter, “UCLA Study”).

<sup>20</sup> *Id.* at 6.

<sup>21</sup> UCLA Study at 6-8.

<sup>22</sup> *Id.* at 7. (emphasis added).

<sup>23</sup> California Health Care Foundation, *Health Disparities by Race and Ethnicity in California: Pattern of Inequity* (October 2021) at 33 (<https://www.chcf.org/wp-content/uploads/2021/10/DisparitiesAlmanacRaceEthnicity2021.pdf>).

<sup>24</sup> Kate Cimini, *Black people disproportionately homeless in California*, Cal Matters, October 5, 2019 (updated February 27, 2021) (<https://calmatters.org/california-divide/2019/10/black-people-disproportionately-homeless-in-california/>).

<sup>25</sup> Following this investigation, Disability Rights California along with Disability Rights Education and Defense Fund, the Bazelon Center for Mental Health Law, Goldstein, Borgen, Dardarian & Ho, and the Law Office of Aaron J. Fischer filed a federal lawsuit under the Americans with Disabilities Act against Alameda County and Alameda County Behavioral Health Care Services. See *DRC v. County of Alameda*, Case No. 5:20-cv-05256 (N.D. Cal). The lawsuit challenges the unnecessary and illegal segregation of people with

the County Behavioral Health Director’s Association (CBHDA), an analysis of discharge data from the California Department of Healthcare Access and Information showed that “compared to their White counterparts, Black and Latinx Californians were 57.2% and 154.5%, respectively, more likely to be placed on a 5150 hold.”<sup>26</sup> By expanding the criteria for involuntary institutionalization, SB 43 will make this disproportionate impact on communities of color **far worse**.

Instead of expanding tools for involuntary detention that will exacerbate inequality, California must focus its resources on building out voluntary, culturally responsive, and community-based mental health services and affordable, accessible housing options that will fill gaps in the system.

**B. SB 43 will traumatize individual patients and undermine public health policy by causing patients to distrust behavioral health systems.**

Institutionalization is harmful and traumatizing for patients and causes long-term harm to California’s public health policy by leading patients to distrust and disengage from behavioral health systems entirely.

One DRC client described their involuntary institutionalization as one of the worst experiences of their life. Although that client had been working with existing mental health providers, the client was nonetheless involuntarily admitted to a psychiatric facility. At the hospital, the client was tied down with leather restraints, forcibly medicated, and forced to sleep on the floor in a room with other patients. They were not evaluated by a physician for over 24 hours. When they finally saw a doctor, they were evaluated briefly and then discharged without any community-based services or treatment plan.<sup>27</sup>

To this day, that client is terrified of the prospect of being re-institutionalized and distrusts public behavioral health services. **They describe the difference between receiving mental health services in the**

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mental health disabilities, especially African American people with disabilities in psychiatric institutions and the failure to ensure people with disabilities are provided the services they need.

<sup>26</sup> County Behavioral Health Directors Association, *SB 43 (Eggman) Behavioral Health: OPPOSE* at 2 (March 13, 2023).

<sup>27</sup> Compl. at 7-8, *DRC v. County of Alameda*, No. 20-5256 (N.D. Cal. July 30, 2020), ECF No. 1.

**community and receiving them in the hospital as the difference between “healing” and simply being “kept alive.”<sup>28</sup>**

**C. SB 43 is not supported by any data showing that expanding the definition of “gravely disabled” will lead to positive long-term outcomes.**

Any changes to California’s mental health system should be driven by clear data that supports the changes. Although some data collection will begin later this year, it will take some time before meaningful analysis and recommendations can be drawn from that data.<sup>29</sup> **Currently, there is no evidence to suggest that expanding the ability to place people on LPS Act holds under the criteria of “gravely disabled” will lead to good long-term outcomes for people.**<sup>30</sup>

In addition, key data regarding SB 43’s potential impact has yet to be analyzed: for example, how many additional people are expected to be placed on LPS Act holds under the proposed expanded definition of “gravely disabled”? The SB 43 fact sheet roughly estimates that one-third of California’s population experiencing homelessness also live with serious mental illness but stops short of assessing the specific number of individuals who would be directly impacted by the proposed bill. This critical missing data point is necessary to analyze the financial, infrastructure, and workforce effects of this bill.

**D. SB 43 will exacerbate bottlenecks in the already-strained mental health system.**

Expanding the LPS Act’s criteria for involuntary mental health treatment will exacerbate bottlenecks that currently exist in the mental health system and fail to address the core challenges preventing the expansion of community-based mental health services.

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<sup>28</sup> *Id.* at 8.

<sup>29</sup> Senate Bill 929 (Eggman), Chapter 539 , Statutes of 2022, ([https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB929](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB929)).

<sup>30</sup> Greater public availability of civil commitment statistics, including frequency of use, who is affected, durations of commitments, treatment outcomes, and trends over time, is needed to develop evidence-based civil commitment practices. See Nathaniel P. Morris, M.D., *Detention Without Data: Public Tracking of Civil Commitment*, *Psychiatric Services* 2020; 71:741 at 742 (<https://ps.psychiatryonline.org/doi/epdf/10.1176/appi.ps.202000212>).



The bottlenecks that exist at all levels of California’s behavioral health treatment system are well-documented. In a recent study published by the California Health Care Foundation, counties throughout the state pointed to problems with patient “throughput”—flow across the system of care—being obstructed by a lack of capacity at one or more different levels, causing ripple effects throughout the system.<sup>31</sup>

These bottlenecks are especially severe at the point when a person is placed on an involuntary LPS Act hold. Many people placed on 5150 holds languish for days in hospital emergency departments while they await referrals to community-based services or placement in acute psychiatric units, if necessary. This places increased stress on emergency departments and does not serve the treatment needs of patients.

Expanding the definition of “gravely disabled” will only make this problem worse, particularly given existing limitations in infrastructure, staffing, and funding.

The infrastructure that will come online via the State’s Behavioral Health Continuum Infrastructure Program (BHCIP)<sup>32</sup> will not be available soon enough to absorb additional involuntary holds that will result if the changes to the definition of “gravely disabled” under SB 43 are enacted. Sixty-five percent of the \$2.2 billion in infrastructure funding under BHCIP was only put out for RFA the second half of 2022.<sup>33</sup> Given the time it takes to build out infrastructure, most projects funded by BHCIP are not likely to be available in the near future. Moreover, BHCIP only funds brick-and-mortar infrastructure, not service delivery.<sup>34</sup> Without additional funding to provide

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<sup>31</sup> California Health Care Foundation, *Medi-Cal Behavioral Health Services: Demand Exceeds Supply Despite Expansions*, September 2021 at 7-8 (<https://www.chcf.org/wp-content/uploads/2021/09/RegionalMarketAlmanac2020CrossSiteAnalysisBH.pdf>). “For example, if beds, rooms, or services are unavailable in residential and community settings, bottlenecks form that can maroon patients in acute inpatient settings and emergency departments even after they are ready for discharge. Such a bottleneck can exacerbate inpatient bed shortages by forcing those facilities to keep patients longer than necessary at the expense of would-be new arrivals who instead receive care in a community setting which may not be appropriate for their needs. Inadequate residential placements and outpatient services can, in turn, precipitate a crisis, with people ending up at hospital emergency departments because appropriate non-hospital based services are unavailable.” *Id.*

<sup>32</sup> Department of Health Care Services, *Behavioral Health Continuum Infrastructure Program (BHCIP)*, February 15, 2023 (available at: <https://www.dhcs.ca.gov/services/MH/Pages/BHCIP-Home.aspx>).

<sup>33</sup> Department of Health Care Services, *Behavioral Health Infrastructure Program and Community Care Expansion Listening Session*, October 2021, at slide 16 (available at: <https://ahpnet.adobeconnect.com/p5w2e0xlboxx/>).

<sup>34</sup> DHCS Assessment at 23.

services, counties and community-based organizations will struggle to offer expanded services necessary to meet community need.

On top of issues related to infrastructure and funding availability for services, California is in the midst of a historic behavioral health workforce shortage. The Legislature and the Administration are making efforts to address this crisis. However, as with the state’s infrastructure investments, it may take time to fully realize efforts to expand the behavioral health workforce.

Lastly, an increase in the number of people placed on short-term LPS Act holds and conservatorships will also impact over-burdened systems outside of behavioral health. Patients’ rights advocates and public defenders will have higher caseloads because more people placed on involuntary holds means more people entitled to legal representation in due process hearings. Similarly, county counsel offices and court systems will experience increased costs resulting from higher LPS caseloads. Finally, public guardian offices—which are already stretched far beyond capacity—will have to shoulder the burden of managing an increased number of LPS Act conservatees.

**IV. If Enacted, SB 43 Will Violate the Constitution, the Americans with Disabilities Act, and Related Law.**

SB 43 seeks to vastly expand the scope of individuals who can be detained for involuntary mental health treatment under the LPS Act by adding several new bases to support a finding of grave disability.<sup>35</sup> For example, SB 43 significantly expands involuntary criteria by allowing individuals with substance use disorder and alcohol use disorder to be detained and conserved. California has no system of involuntarily treating individuals for these disorders. As noted by the CBHDA, “individuals with SMI [serious mental illness] who need involuntary treatment comprise less than 1% of the general population. However, lifetime prevalence for substance use disorders is closer to 10%.”<sup>36</sup> SB 43’s inclusion of substance use disorder in involuntary criteria represents a 10-fold increase in the number of individuals potentially subject to involuntary commitment on that

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<sup>35</sup> The current definition of “gravely disabled” that SB 43 seeks to change is “[a] condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.” Welf. & Inst. Code § 5008(h)(1)(A).

<sup>36</sup> County Behavioral Health Directors Association, *SB 43 (Eggman) Behavioral Health: OPPOSE* at 2 (March 13, 2023).

basis alone. Further, this raises the question of where these individuals would be held and what system would involuntarily treat them.

The bill also expands the definition of ‘gravely disabled’ in a way that is highly speculative and will lead to detaining people against their will and depriving them of their fundamental rights to privacy and liberty without offering voluntary community-based services.

For example, the proposed expanded definition of gravely disabled will require those making assessments to speculate about who *may* experience “deterioration, debilitation, or illness” in the future, without offering meaningful guidance about how to make such a subjective determination.<sup>37</sup> Although the proposed bill allows consideration of evidence relating to past or present adverse effects, such evidence is not required. Accordingly, individuals conducting these assessments may rely on speculation about future events in making a grave disability finding.

SB 43 is also rife with ambiguous, undefined terms that have no commonly understood meaning that can be applied. For example, the proposed criteria to assess the risk of “serious harm” includes evaluating whether a person can “seek adequate shelter,” “be appropriately or adequately clothed,” “attend to self-protection or personal safety,” and “attend to necessary personal or medical care.” There are no commonly understood meanings to these terms and phrases, and they offer no objective standards upon which those making these assessments may base their criteria determinations. This lack of guidance creates an improper risk of “arbitrary and discriminatory” decision-making in violation of individuals’ constitutional rights. See, e.g., *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971) (invalidating unconstitutionally vague statute due to unascertainable standards).<sup>38</sup>

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<sup>37</sup> SB 43 adds to “gravely disabled” “[a] condition *that will result* in substantial risk of serious harm...” (emphasis added).

<sup>38</sup> Similarly, the vague criteria in SB 43 also fails to provide adequate notice to individuals who could be potentially impacted. Due process requires that a statute be sufficiently definite that “ordinary people can understand what conduct is prohibited...” *Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 1106-07 (1995). SB 43’s use of undefined, subjective criteria will not be clear to individuals facing potential LPS Act holds and conservatorships under an expanded definition of grave disability. In addition, these ambiguous terms will also have the unintended effect of disproportionately impacting people solely on the basis of being unhoused, poor, or the victim of an abusive relationship and subjecting them to involuntary treatment under the proposed language.

SB 43 also conflicts with Title II of the Americans with Disabilities Act (ADA), which mandates that people with mental health disabilities have a right to access treatment and services in the most integrated setting appropriate. 42 U.S.C. §§ 12131-12134.<sup>39</sup> Applying this mandate, the United States Supreme Court has held that the unnecessary institutionalization of individuals with disabilities in hospitals or other locked facilities is a form of discrimination prohibited by the ADA. *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999). By expanding the definition of grave disability, SB 43 will result in the unnecessary institutionalization of people with disabilities without regard to whether integrated community services are appropriate, in violation of the ADA and related law. *Id.*

**V. The Use of Hearsay Evidence by Expert Witnesses will Infringe Upon Fundamental Rights to Due Process.**

SB 43 proposes the creation of a new hearsay exception for health practitioner statements in medical records discussed by an expert witness during conservatorship proceedings. The proposed hearsay exception is inconsistent with the California Supreme Court’s ruling in *People v. Sanchez*, which held that when “any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert’s opinion, the statements are hearsay. It cannot logically be maintained that the statements are not being admitted for their truth.” 63 Cal. 4th 665, 686 (2016).

The general bar against the admission of hearsay evidence is intended to guard against imperfect perception, memory, or accounting and to enhance reliability and fairness in trials. *People v. Sanchez* is the law of this State for criminal cases as well as for LPS civil commitment hearings. See, e.g., *Conservatorship of K.W.*, 13 Cal. App. 5th 1274, 1284 (2017) (assuming that *Sanchez* applies in LPS proceedings).

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<sup>39</sup> See also Section 504 of the Rehabilitation Act, 29 U.S.C. §§ 794 et seq., 28 C.F.R. § 41.51(d); 28 C.F.R. § 35.130(d) (1991); Gov’t Code §§ 11135-11139.

For the above reason, we oppose the creation of a new hearsay exception that would further erode the due process rights afforded to individuals in conservatorship proceedings, without justification.

**VI. Conclusion**

For all the reasons outlined above, we respectfully oppose SB 43.

Sincerely,



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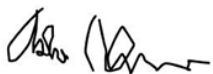
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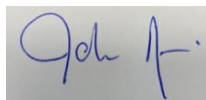
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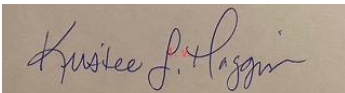
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