



# Board Agenda Item 5

DATE: December 12, 2023

TO: Board of Supervisors

SUBMITTED BY: Susan Holt, Director, Department of Behavioral Health

SUBJECT: Defer Implementation of the changes made to California Welfare & Institutions Code §5008 by Senate Bill 43 Resolution

## RECOMMENDED ACTION(S):

**Adopt resolution electing to defer the January 1, 2024, implementation date of the changes made to California Welfare and Institutions Code §5008 (WIC 5008) by Senate Bill (SB) 43 to January 1, 2026, which expands the criteria of “gravely disabled” and allows law enforcement and Fresno County designated healthcare professionals to place an involuntary hold on a broader population of individuals.**

SB 43 was signed into law on October 10, 2023, with an effective date of January 1, 2023, which expands the definition of gravely disabled persons. California Welfare and Institutions Code section 5008, subdivision (h)(4) provides a provision for counties to defer implementation of the changes made by SB 43 until January 1, 2026, by resolution approved by your Board. Approval of the recommended action will allow the Department of Behavioral Health (DBH) and community stakeholders additional time to implement the changes required by SB 43. This item is countywide.

## ALTERNATIVE ACTION(S):

Should your Board not approve the recommended action, implementation of changes made to WIC 5008 by SB 43 will begin January 1, 2024.

## FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action.

## DISCUSSION:

On October 10, 2023, Senate Bill 43 (SB 43) was signed into law effective January 1, 2024, which updates existing law under the Lanterman-Petris-Short (LPS) Act that provides conservatorship for the ‘gravely disabled’. This new bill creates several significant changes to the LPS by:

- Expanding the state’s “gravely disabled” criteria to allow for the involuntary detention and conservatorship of individuals on the basis of a standalone “severe” substance use disorder or co-occurring mental health disorder and severe SUD; includes individuals who are unable to provide for their basic personal need for personal safety or necessary medical care;
- Defining “necessary medical care” to mean care that a licensed health care practitioner determines to be necessary to prevent serious deterioration of an existing medical condition which is likely to result in serious bodily injury if left untreated;
- Modifying hearsay evidentiary standards for conservatorship hearings in order to expand the array of

testimony that can be submitted into conservatorship proceedings without requiring in-person cross examination; and,

- Requiring DBH to consider less restrictive alternatives such as assisted outpatient treatment (AOT) and CARE Court in conducting conservatorship investigations.

In order to implement the changes made by SB 43, Fresno County will need to develop an extensive array of new policies, procedures, workforce, facilities, and treatment capacity. This modification will expand reporting requirements that align with the new criteria stated in SB 43. As specified in the bill, counties may delay implementation until January 1, 2026, with the passage of a Board Resolution. The resolution will only defer WIC 5008. The addition of WIC 5122 and the amended sections of WIC 5350, 5354, 5402, will still take effect January 1, 2024.

There are concerns that are important to note when implementing the changes made to WIC 5008 by SB 43 within DBH:

- By expanding LPS to capture any person who has a severe SUD, this change in policy would significantly expand the portion of the population potentially subject to detention and conservatorship under LPS from around 1% to around 10% of the population.
- Under LPS, only peace officers and individuals designated by DBH may, with probable cause, detain a person and take them into custody for an assessment.
  - DBH will need to develop criteria for a “severe SUD” grave disability assessment, as no such assessment currently exists.
  - DBH will need to develop criteria and policies, as well as protocols for designating individuals to perform severe SUD grave disability assessments.
  - DBH may need to recruit and hire staff to perform severe SUD grave disability assessments.
  - DBH, law enforcement agencies, hospitals, treatment providers, courts and other justice partners, and community-based organizations will need to collaborate to generate shared understanding of and training related to the new criteria and associated protocols and policies.
- Often, when a person is detained by law enforcement, they are taken to a hospital emergency department or a designated facility for an assessment.
  - SB 43 expands LPS criteria to include an assessment of whether an individual is unable to survive safely in community or provide for necessary medical care without involuntary detention, DBH will need to develop policies and procedures for how these determinations will be made, along with qualified licensed health care providers.
  - Hospitals will need to plan for implementation and determination of qualified designated individuals to perform assessments needed to remove involuntary holds, when appropriate, or recommend conservatorship when appropriate.
  - In addition, because there is no existing infrastructure for locked treatment capacity for individuals with severe SUD, hospitals may be impacted by additional individuals who are boarding (awaiting placement) in the absence of this new treatment capacity.
- Furthermore, there are very few treatment settings that have the capacity to serve individuals with complex co-occurring medical, SUD and mental health treatment needs.
- If conserved based on a severe SUD, clinicians would have no way to determine when a conservatorship should end, since there are no clinical standards to determine when to end involuntary SUD treatment; these standards will require time to develop and communicate across stakeholders.
- By adding physical health conditions as a basis for conservatorship, the state requires DBH to develop a new set of medical services to evaluate and assess physical health risks and status; this does not exist in the current system of care and requires time to plan and develop.

It is recommended to defer implementation of the changes made to WIC 5008 by SB 43 until January 1, 2026, to support this expansion of grave disability criteria in a planful manner in Fresno County. This bill will have significant impacts on multiple systems, including behavioral health, public guardians, courts, public

defenders, hospitals, patient rights advocates, SUD providers, and law enforcement, among others. If the Board does not defer implementation of the changes made to WIC 5008 by SB 43, it can have an adverse effect if this process is completed prematurely without the policies, facilities, and capacity to do so. With additional time, DBH will be able to engage community partners and stakeholders to build a more structured system to accommodate this unprecedented change in this bill. Therefore, it is highly recommended for the action to delay implementation of the changes made to WIC 5008 by SB 43 until January 1, 2026.

The Public Defender's Office, Sheriff's Department, Public Health Department, Superior Court, and Probation Department, all support deferring implementation of the changes made to WIC 5008 by SB 43 and have conveyed support to engage in the community planning process in partnership with DBH.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Resolution  
Additional Information

CAO ANALYST:

Ron Alexander