


## MEMORANDUM

<b>DATE</b>	July 20, 2018
<b>TO</b>	Board of Psychology
<b>FROM</b>	 Jason Glasspiegel Central Services Coordinator
<b>SUBJECT</b>	Agenda Item #22(b)(2)(A) – AB 1971 (Santiago) Mental Health Services: Involuntary Detention: Gravely Disabled

**Background:**

Existing law authorizes the involuntary commitment and treatment of persons with specified mental health disorders if that person is a danger to others, or to himself or herself, or is gravely disabled.

This bill would, until January 1, 2024, expand the definition of “gravely disabled” for these purposes, as implemented in the County of Los Angeles, to also include 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 medical treatment, if the failure to receive medical treatment, as defined, results in a deteriorating physical condition that a medical professional, in his or her best medical judgment, attests in writing, will more likely than not, lead to death within 6 months, as specified.

**Location:** Senate Committee on Appropriations

**Status:** 07/03/18 – Read for the second time and amended. Re-referred to the Committee on Appropriations.

**Votes:** 06/26/18 – Senate Judiciary (5-1-1)  
06/20/18 – Senate Health (7-2-0)  
05/30/18 – Assembly Floor (75-0-3)  
05/25/18 – Assembly Committee on Appropriations (16-0-1)  
04/10/18 – Assembly Committee on Health (15-0-0)

**Action Requested:**

No action is required. Staff will continue to watch AB 1971 (Santiago) as this bill impacts the ways in which psychologists interact with the process of involuntary commitment and treatment of the gravely disabled.

Attachment A: AB 1971 (Santiago) Bill Text

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**AB-1971 Mental health services: involuntary detention: gravely disabled.** (2017-2018)

**SECTION 1.** *The Legislature finds and declares all of the following:*

*(a) The large and growing number of persons with mental health disabilities living on the streets and revolving in and out of hospitals, jails, and prisons in the state is a problem of serious concern for California counties.*

*(b) Data from the State Department of Health Care Services for the 2015–16 fiscal year identified 94,133 individuals received outpatient mental health services in county jails and 2,356 individuals were admitted to jail-based psychiatric inpatient units. The Department of Corrections and Rehabilitation estimates that among the 129,000 inmates receiving prison-based mental health services, approximately 35,000 individuals have severe mental illness.*

*(c) Expert consensus identifies a number of factors contributing to the crises of homelessness and the criminalization of persons with severe mental illness, among which are insufficient community resources, including both psychiatric inpatient and outpatient treatment options, as well as appropriate affordable housing options.*

*(d) Among the population of homeless persons with a severe mental illness, there are increasing reports of untreated medical conditions that endanger the health and well-being of those individuals. In far too many cases, these conditions worsen into serious medical emergencies, a number of which tragically result in death.*

*(e) Data from the State Department of Health Care Services for the 2015–16 fiscal year also identifies the following involuntary detentions for persons with severe mental illness by category:*

*(1) 72-hour adult holds for evaluation and treatment for 136,874 individuals.*

*(2) 14-day intensive treatment holds for 55,870 individuals.*

*(3) 30-day intensive treatment holds for 3,514 individuals.*

*(4) Temporary conservatorships for 1,955 individuals.*

*(5) Permanent conservatorships for 4,643 individuals.*

*(f) The criteria for grave disability, which is defined as an inability to provide for one's own basic personal needs for food, clothing, and shelter as a basis for detention and treatment under these holds, has been identified as a source of concern for several reasons.*

*(1) The grave disability criteria is subject to various interpretations statewide, resulting in unequal application of the law from county to county.*

*(2) Existing law does not recognize the inability of an individual to provide for his or her own basic personal needs for health as an element contributing to grave disability, resulting in many avoidable tragedies that directly stem from the neglect of medical conditions.*

*(g) It is therefore the intent of the Legislature to include a person's inability to provide for his or her basic personal needs for health as an additional element of the grave disability standard, consistent with the original aims of the Lanterman-Petris-Short Act, which seeks to:*

*(1) Provide prompt evaluation and treatment of persons with mental health disorders.*

*(2) Provide individualized treatment, supervision, and placement services by conservatorship for persons gravely disabled.*

*(3) Safeguard individual rights through judicial review.*

*(4) Provide services in the least restrictive setting appropriate to the needs of each person receiving services.*

*(h) The Legislature recognizes that application of this clarifying standard may provide earlier intervention than what is currently possible. It is the intent of the Legislature in applying this clarifying standard to prevent the further deterioration of a person's health and mental health condition, avoid the need for more intensive and costly interventions later on, avoid increased morbidity and mortality, reduce homelessness, and decrease the prevalence of severe mental illness in our jails and prisons. This standard will allow more efficient use of existing resources to treat more people at lower levels of care, effectively freeing up dollars formerly spent on higher levels of care for use in the mental health system generally.*

*(i) The Legislature also recognizes that this clarifying standard will allow some individuals who are now neglected because they do not fall under the current varying interpretations of the gravely disabled standard, to access substitute decisionmakers in the form of conservators appointed to assist them in stabilizing their illnesses and support them on their path of recovery.*

*(j) In order to provide more consistent interpretations of the definition of "gravely disabled," the Legislature also declares that counties should consider, to the extent possible, the individual's ability to make informed decisions about providing for his or her own basic needs for food, clothing, shelter, or medical treatment.*

**SEC. 2.** Section 1799.111 of the Health and Safety Code is amended to read:

**1799.111.** (a) Subject to subdivision (b), a licensed general acute care hospital, as defined in subdivision (a) of Section 1250, that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, a licensed acute psychiatric hospital, as defined in subdivision (b) of Section 1250, that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, licensed professional staff of those hospitals, or any physician and surgeon, providing emergency medical services in any department of those hospitals to a person at the hospital ~~shall is~~ not ~~be~~ civilly or criminally liable for detaining a person if all of the following conditions exist during the detention:

(1) The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges, clinical privileges, or professional responsibilities provided in Section 1316.5, the person, as a result of a mental *health* disorder, presents a danger to himself or herself, or others, or is gravely disabled. For purposes of this paragraph, "gravely disabled" means ~~an inability to provide for his or her basic personal needs for food, clothing, or shelter. either of the following:~~

*(A) Except as provided in subparagraph (B), an inability to provide for his or her basic personal needs for food, clothing, or shelter.*

*(B) In the County of Los Angeles, 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, shelter, or medical treatment, if the failure to receive medical treatment results in a deteriorating physical condition that a medical professional, in his or her best medical judgment, attests in writing, will more likely than not, lead to death within six months. For purposes of this paragraph, "medical treatment" means the administration or application of remedies for a mental health condition, as identified by a licensed mental health professional, or a physical health condition, as identified by a licensed medical professional.*

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

(A) Telephone calls or other contacts required pursuant to this paragraph shall commence at the earliest possible time when the treating physician and surgeon has determined the time at which the person will be medically stable for transfer.

(B) In no case shall the contacts required pursuant to this paragraph begin after the time when the person becomes medically stable for transfer.

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

(4) There is probable cause for the detention.

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

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

(2) In the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges or professional responsibilities provided for in Section 1316.5, the person, as a result of a mental *health* disorder,

is still a danger to himself or herself, or others, or is gravely disabled, as defined in paragraph (1) of subdivision (a).

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

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

(2) The release from the licensed general acute care hospital or the licensed acute psychiatric hospital is authorized by a physician and surgeon or a clinical psychologist with the medical staff privileges or professional responsibilities provided for in Section 1316.5, who determines, based on a face-to-face examination of the person detained, that the person does not present a danger to himself or herself or others and is not gravely disabled, as defined in paragraph (1) of subdivision (a). In order for this paragraph to apply to a clinical psychologist, the clinical psychologist shall have a collaborative treatment relationship with the physician and surgeon. The clinical psychologist may authorize the release of the person from the detention, but only after he or she has consulted with the physician and surgeon. In the event of a clinical or professional disagreement regarding the release of a person subject to the detention, the detention shall be maintained unless the hospital's medical director overrules the decision of the physician and surgeon opposing the release. Both the physician and surgeon and the clinical psychologist shall enter their findings, concerns, or objections in the person's medical record.

(d) ~~Nothing in this section shall~~ *This section does not* affect the responsibility of a general acute care hospital or an acute psychiatric hospital to comply with all state laws and regulations pertaining to the use of seclusion and restraint and psychiatric medications for psychiatric patients. Persons detained under this section shall retain their legal rights regarding consent for medical treatment.

(e) A person detained under this section shall be credited for the time detained, up to 24 hours, in the event he or she is placed on a subsequent 72-hour hold pursuant to Section 5150 of the Welfare and Institutions Code.

(f) The amendments to this section made by the act adding this subdivision shall not be construed to limit any existing duties for psychotherapists contained in Section 43.92 of the Civil Code.

(g) ~~Nothing in this section is intended to~~ *This section does not* expand the scope of licensure of clinical psychologists.

*(h) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.*

**SEC. 3.** *Section 1799.111 is added to the Health and Safety Code, to read:*

**1799.111.** *(a) Subject to subdivision (b), a licensed general acute care hospital, as defined in subdivision (a) of Section 1250, that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, a licensed acute psychiatric hospital, as defined in subdivision (b) of Section 1250, that is not a county-designated facility pursuant to Section 5150 of the Welfare and Institutions Code, licensed professional staff of those hospitals, or any physician and surgeon, providing emergency medical services in any department of those hospitals to a person at the hospital is not civilly or criminally liable for detaining a person if all of the following conditions exist during the detention:*

*(1) The person cannot be safely released from the hospital because, in the opinion of the treating physician and surgeon, or a clinical psychologist with the medical staff privileges, clinical privileges, or professional responsibilities provided in Section 1316.5, the person, as a result of a mental health disorder, presents a danger to himself or herself, or others, or is gravely disabled. For purposes of this paragraph, "gravely disabled" means an inability to provide for his or her basic personal needs for food, clothing, or shelter.*

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

(A) Telephone calls or other contacts required pursuant to this paragraph shall commence at the earliest possible time when the treating physician and surgeon has determined the time at which the person will be medically stable for transfer.

(B) In no case shall the contacts required pursuant to this paragraph begin after the time when the person becomes medically stable for transfer.

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

(4) There is probable cause for the detention.

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

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

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

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

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

(2) The release from the licensed general acute care hospital or the licensed acute psychiatric hospital is authorized by a physician and surgeon or a clinical psychologist with the medical staff privileges or professional responsibilities provided for in Section 1316.5, who determines, based on a face-to-face examination of the person detained, that the person does not present a danger to himself or herself or others and is not gravely disabled, as defined in paragraph (1) of subdivision (a). In order for this paragraph to apply to a clinical psychologist, the clinical psychologist shall have a collaborative treatment relationship with the physician and surgeon. The clinical psychologist may authorize the release of the person from the detention, but only after he or she has consulted with the physician and surgeon. In the event of a clinical or professional disagreement regarding the release of a person subject to the detention, the detention shall be maintained unless the hospital's medical director overrules the decision of the physician and surgeon opposing the release. Both the physician and surgeon and the clinical psychologist shall enter their findings, concerns, or objections in the person's medical record.

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

(e) A person detained under this section shall be credited for the time detained, up to 24 hours, in the event he or she is placed on a subsequent 72-hour hold pursuant to Section 5150 of the Welfare and Institutions Code.

(f) The amendments to this section made by the act adding this subdivision shall not be construed to limit any existing duties for psychotherapists contained in Section 43.92 of the Civil Code.

(g) This section does not expand the scope of licensure of clinical psychologists.

(h) This section becomes operative on January 1, 2024.

**SEC. 4.** Section 5011 is added to the Welfare and Institutions Code, to read:

**5011.** (a) Notwithstanding subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008, the definition of "gravely disabled," for purposes of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), and Article 4 (commencing with Section 5250) of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), as implemented in the County of Los Angeles, shall include 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 medical treatment, if the failure to receive medical treatment results in a deteriorating physical condition that a medical professional, in his or her best medical judgment, attests in writing, will more likely than not, lead to death within six months. For purposes of this subdivision, "medical treatment" means the administration or application of remedies for a mental health condition, as identified by a licensed mental health professional, or a physical health condition, as identified by a licensed medical professional.

(b) The establishment of a conservatorship pursuant to Section 5350 for a person who is "gravely disabled" because he or she has a condition in which the person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for medical treatment, as specified in subdivision (a), is subject to a finding by the court that the behavioral health director of the county or the city and county has met both of the following criteria:

(1) The behavioral health director of the county or the city and county has offered and has made best efforts to provide the proposed conservatee with voluntary treatment for applicable mental health disorders, which must include, but not be limited to, an individual personal services plan for services, as described in Section 5348, and the proposed conservatee refused the voluntary treatment or the voluntary treatment failed to treat the person's mental illness.

(2) The behavioral health director of the county or the city and county has offered and has made best efforts to provide the proposed conservatee with proposed treatment for the physical health condition included in the proposed conservatee's individual personal services plan, and the proposed conservatee refused that voluntary physical health treatment.

(c) (1) On or before January 1, 2023, the County of Los Angeles shall submit a report to the Legislature evaluating the impact of the county's implementation of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), and Article 4 (commencing with Section 5250) of Chapter 2, and Chapter 3 (commencing with Section 5350) between January 1, 2019, and June 30, 2022, inclusive, with the inclusion in the definition of "gravely disabled," of 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 medical treatment, as specified in subdivision (a). The report shall include, but not be limited to, all of the following information:

(A) The number of individuals detained pursuant to Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), and Article 4 (commencing with Section 5250) of Chapter 2 because they had a condition in which the individual, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for medical treatment, as specified in subdivision (a).

(B) The number of conservatorships approved pursuant to Chapter 3 (commencing with Section 5350) for individuals with a condition in which the individual, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for medical treatment, as specified in subdivision (a).

(C) Whether the county expanded assisted outpatient treatment services provided pursuant to Article 9 (commencing with Section 5345) of Chapter 2 between January 1, 2019, and June 30, 2022, inclusive.

(2) The report shall be submitted in compliance with Section 9795 of the Government Code.

(d) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

**SEC. 5.** The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique mental health disorder issues in the County of Los Angeles.

**SEC. 6.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.