



April 2, 2019

Honorable Hannah-Beth Jackson
Chair, Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, CA 95814

RE: SB 40 (Weiner) As Amended March 4th - Conservatorship: serious mental illness and substance use disorders – OPPOSE

Dear Senator Jackson,

On behalf of our 700,000 members, the California State Council of the Service Employees International Union (SEIU California), including our public guardian members, and behavioral health frontline workers, must regrettably oppose SB 40 (Weiner) which seeks to amend SB 1045 (Weiner) Chapter 845, Statutes of 2018 in order to substantially modify the pilots to allow for a conservatorship on the basis of a substance use disorder (SUD) and to undermine due process protections built into existing public conservatorships. SEIU strongly opposes the concept of compulsory treatment for substance use disorders as it is ineffective in addressing addiction recovery and in light of the growing body of evidence that individuals are far more likely to suffer fatal overdoses or become more psychotic following periods of compulsory, as opposed to voluntary, substance use disorders treatment.

LPS Conservatorships for Mental Illness

Existing law allows for the establishment of a Lanterman-Petris-Short (LPS) conservatorship whereby the Courts can make a determination that due to a person's mental illness, they are unable to care for their basic needs for food, shelter, and clothing. The Court will then appoint a public conservator to assume responsibility for care and protection of the conservatee – which includes granting the conservator the ability to compel mental health treatment in a locked facility, over the objections of the conservatee, provided a psychiatrist determines medical necessity. LPS conservatorships are limited to adults with mental illnesses listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM). The most common illnesses are serious, biological brain disorders, such as: schizophrenia, bi-polar disorder (manic depression), schizoaffective disorder, clinical depression, and obsessive compulsive disorder. LPS conservatorships are not for individuals with organic brain disorders, brain trauma, developmental disabilities, alcohol or drug addiction, or dementia, *unless* they also have one of the serious brain disorders listed in the DSM. In current practice, individuals who have co-occurring mental illness and substance use disorders may be conserved should they meet the LPS conservatorship criteria of being unable to care for their basic needs for food, clothing, and shelter, and our public guardians have some experience with how conservatorships fall short of meeting the needs of individuals with substance use disorders.

SB 1045 (Weiner) of 2018 – Pilots for Mental Health and SUD Conservatorships

SB 1045 of 2018 allowed for the Counties of Los Angeles and San Diego and the City and County of San Francisco to opt in to a pilot, until January 1, 2024, to test a new type of conservatorship in California law which applies to individuals who are unable to care for their own well-being and health due to both a serious mental illness and a substance use disorder. The requirement that criteria include both a substance use disorder and a mental illness is new in California law. It also required evidence of frequent detentions for evaluation and treatment under Section 5150 of the Welfare and Institutions Code (WIC), and side-stepped many of the due process requirements of the existing LPS conservatorships.

In the alternative, counties who wish to establish an SB 1045 pilot, must determine that they have sufficient capacity to carry out the pilot, which includes ensuring that there is an availability of supportive community housing with wraparound services and available beds; trained public conservators; psychiatric, psychological, and outpatient mental health counseling services; SUD services; family supports; and services tailored to specific populations, such as individuals who are disabled, elders, and/or lesbian, gay, bisexual, and transgender individuals.

Furthermore, SB 1045 pilots require that a potential conservatee has already been denied a petition for assisted outpatient treatment (AOT), or that AOT would be insufficient to treat the person in the instant matter in lieu of a conservatorship. The AOT provision was appropriate as the target population for SB 1045 were individuals with both serious mental illness and substance use disorders.

SB 40 – As Amended on March 4th

Rather than rely on the existing criteria established for SB 1045 pilots, that an individual have both a mental illness and substance use disorder which keep them from meeting their basic needs, SB 40 effectively allows pilot counties to establish a new type of conservatorship in California law based solely on forced treatment for substance use disorders. This bill is being brought forward before any of the SB 1045 pilots has been approved at the county-level in order to reverse certain key protections added by the legislature in last year's bill. Instead, SB 40 would remove the requirement that an individual receive the persistent outreach and attempts to bring them into voluntary services under AOT. In addition, it would allow for creation of an SUD-specific conservatorship, de-linked from an underlying mental illness.

Under the proposed definition, this bill would create a process for establishment of temporary conservatorships, which would expire in 30 days but which, if the individual exercises his or her right to request a court or jury trial, could be extended for up to 6 months, for a substance abuse disorder. During that time, the individual could be involuntarily detained and subject to involuntary inpatient treatment; however, there is no requirement or assurance that the individual would actually receive necessary treatment or services based on an individualized assessment, as the safeguards being amended out of SB 1045 through this bill would have provided.

Compulsory SUD Treatment is Ineffective and Dangerous

SEIU opposes the creation of conservatorships which target forced treatment for SUD, as there is mounting evidence that compulsory drug treatment increases an individual's risk of death due to overdose post-release – often twofold or more when compared with individuals who voluntarily seek drug treatment. In fact, there are several Southeast Asian nations that have compulsory drug treatment laws, and the United Nations has called on those nations to adopt evidence-informed, rights-based approaches in the alternative given that

voluntary treatment for drug dependence is more effective in addressing drug dependence and the associated health-related harms.¹

While data on both the short- and long-term outcomes following involuntary commitment for substance use are limited, outdated, and conflicting, recent research² suggests that coerced and involuntary treatment is actually less effective in the long-term, and more dangerous in terms of fatal overdose risk.

For example, in Massachusetts, the state Department of Public Health found that individuals who received involuntary SUD treatment were more than twice as likely to die of drug-related overdoses than those without a history of involuntary treatment.

A recent study in North Carolina³ found that, in the first two weeks after being released from prison, former inmates were 40 times more likely to die of an opioid overdose than someone in the general population. This risk was 74 times higher in the first two weeks post-release for heroin overdoses. A full year after release, overdose-related deaths were still 10-18 times higher for individuals post-incarceration due in large part to the involuntary period of sobriety, and lower tolerance, along with a lack of support services and continued voluntary recovery post-incarceration. In California, because we lack locked SUD treatment beds, the experience of those who have detoxed or become sober through incarceration is apt. In fact, we question how an individual who receive these services since they are not currently available in a compulsory fashion in California.

The evidence we have simply does not support the concept that commitments will deter individuals from ongoing substance abuse. On the contrary, individuals are more likely to sustain sobriety when their recovery and abstinence are self-motivated. Any voluntary intervention will only work with an appropriate continuum of care, with step-downs, supportive housing and wraparound services available in the mid-to-long term to sustain recovery gains. Given the a shortage of quality substance use disorder treatment on an inpatient and outpatient basis for individuals *voluntarily* seeking care, forced treatment which fills those slots with individuals who are so likely to relapse and get worse is all the more inappropriate.

We know what works to address mental illness and SUD. The current model of conservatorship allows for compulsory mental health treatment based on the experience that if an individual can start to treat their mental illness, they can then start to address the other factors impacting their health – such as co-occurring physical health or substance use disorder needs. There also exist limited, but extremely effective medication assisted treatment options for some substance use disorders, such as opioids and alcohol, which are again, much more effective when entered into voluntarily and with supports. Offering greater access to these medication assisted treatment options, in combination with evidence-supported outpatient and community-based residential treatment can often be much more effective in truly addressing the needs of the severe

¹ United Nations Joint Statement regarding compulsory drug detention and rehabilitation centres, “United Nations entities call on States to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community,” https://www.unodc.org/documents/southeastasiaandpacific/2012/03/drug-detention-centre/JC2310_Joint_Statement6March12FINAL_En.pdf

² D.Werb, A.Kamarulzaman, M.C.Meacham, C.Rafful, B.Fischer, S.A.Strathdee, E.Wood, The effectiveness of compulsory drug treatment: A systematic review, *International Journal of Drug Policy*, Volume 28, February 2016, Pages 1-9, <https://doi.org/10.1016/j.drugpo.2015.12.005>

³ Shabbar I. Ranapurwala PhD, MPH, Meghan E. Shanahan PhD, Apostolos A. Alexandridis MPH, Scott K. Proescholdbell MPH, Rebecca B. Naumann PhD, MPH, Daniel Edwards Jr MRP, and Stephen W. Marshall PhD, MPH, Opioid Overdose Mortality Among Former North Carolina Inmates: 2000–2015, *American Journal of Public Health*, Accepted: April 27, 2018 Published Online: August 08, 2018 <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2018.304514>

substance use disorders. Most importantly, these treatment options do not come with the increased risk of death when entered into voluntarily.

SEIU opposed SB 1045 on the basis that it allowed for consideration of both serious mental illness and substance use disorders in establishing a conservatorship, however, that law still required the conservatee to have a serious mental illness, treatable through compulsory mental health medication and treatment. When it was signed into law, we hoped that allowing for a place and time-limited pilot would provide the legislature with the opportunity to assess the effectiveness of a conservatorship specifically targeted at both mental illness and SUD. Provisions related to AOT, therefore, made sense in the context of this type of conservatorship.

Our concern with SB 40 is that, by defining “serious mental illness or substance use disorder,” it will in effect allow for the pilots to conserve individuals on the basis of functional impairment caused by SUD alone, which runs contrary to the evidence and to the pilots approved by the legislature only last year and thus far not implemented.

Should the legislature decide to override the professional judgement and experience of our public guardians with individuals with co-occurring mental illness and SUD, as well as a growing body of evidence that shows worse outcomes for individuals undergoing compulsory drug treatment, SEIU would urge inclusion of a rigorous evaluation of outcomes for pilot participants by a qualified, independent research team to assess what type of forced treatment individuals received while in the pilot, and for how long, what sort of step-down services, if any, were provided, whether individuals were provided supportive housing, how they fared when they were out of a locked facility, and what, if any adverse or positive outcomes may have occurred, including death, additional 5150s, or sobriety and stability. These outcomes should be tracked for at least a year following the end of the conservatorship for each participant. This will be the only way to assess whether what is proposed in SB 40 is safe and whether conservatees are actually able to receive appropriate services through this process.

It is for all the aforementioned reasons, that SEIU must regretfully oppose SB 40, and respectfully urges you to vote “NO” when this measure comes before you.

Sincerely,



Michelle Doty Cabrera
Healthcare Director

CC: Honorable Members of the Senate Judiciary Committee
Honorable Scott Weiner, 11th Senate District
Eric Dang, Office of Pro Tem Toni Atkins
Marjorie Swartz, Office of Pro Tem Toni Atkins