



San Mateo County Bill Analysis Form

Date Submitted: June 21, 2022
Submitted Department: County Executive's Office
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Reviewed and Approved by County Attorney
☒ Yes ☐ No

Reviewed and Approved by County Executive
☒ Yes ☐ No ☐ N/A

Senate Bill 965 Senator Eggman, District 5, Conservatorships: medical record: hearsay rule.

Version Date: April 28, 2022
☐ New bill ☒ Amended Bill ☐ Gut & Amend

Recommended Position

☐ Sponsor ☐ Support
☐ Support if Amended ☐ Oppose
☒ Other & Describe: The Health System and the County Attorney's Office request the Board support this measure.

Summary

Senate Bill (SB) 965 (Eggman) would ensure that the court can consider relevant testimony related to medical history in the medical record during conservatorship proceedings by creating a hearsay exception for medical history contained in the medical record.

Background/Analysis

Under existing law, the Lanterman-Petris-Short (LPS) Act of 1967 establishes the rights, protections, and process for the provision of involuntary behavioral health treatment for someone who is "gravely disabled" as a result of a mental health disorder and is unable to provide for his or her basic personal needs for food, clothing, or shelter. LPS consists of various evaluation and treatment periods, ranging from 72 hours and up to renewable periods of one year under a conservatorship. The LPS Act provides for a conservator of the person, of the estate, or of both the person and the estate for a person who is gravely disabled.

When a conservatorship petition is made to provide treatment to an individual considered "gravely disabled," the person may be placed under a temporary conservatorship to allow for additional investigation. A conservatorship investigation is conducted by a public guardian employed by the county, and a report is filed with the court, including information on the subject of the petition's medical, psychological, financial, family, vocational, and social condition. Relevant historical information about the course of

one's mental disorder shall be considered when it directly affects the determination of whether the person is gravely disabled.

In both criminal and civil law, hearsay evidence—an out-of-court statement offered for the truth of its content—is generally inadmissible, with certain narrow exceptions. Hearsay statements are unreliable because they are not made under oath, an adverse party has no opportunity to cross-examine the declarant, and the jury cannot observe the declarant's demeanor while making the statements. In 2016, the California Supreme Court held in *People v. Sanchez* (*Sanchez*) that when an expert witness relates to the jury case-specific out-of-court statements (such as a treating psychiatrist's medical notes contained in the medical record) and treats those statements as true and accurate to support the expert witness' opinion, those statements may constitute hearsay unless they fall under an existing hearsay exemption.

Challenge

There are concerns, instances of which have already come to fruition, that important medical record information is likely to be considered hearsay within conservatorship proceedings due to *Sanchez*.

As a result of the *Sanchez* case precedent, to testify about the violent episode or similar specific facts regarding the person's grave disability, the psychiatrist would either need

to have seen this occur or the person would need to tell the psychiatrist about it. This prevents the judge from getting a complete picture of a conservatee's mental health history.

The County must work around the *Sanchez* rule by calling the conservatee's treating doctor to testify. However, that can be detrimental to the doctor-patient relationship because the treating doctor is testifying in court against their patient. Additionally, there is a shortage of psychiatrists, making it difficult for the treating psychiatrist to take time away from work and for other patients to provide testimony.

In all, the *Sanchez* rule significantly limits the usefulness of expert testimony in an LPS trial and makes it more challenging to establish grave disability for individuals who are a danger to themselves or others.

Recommended Solution

Under SB 965, for an expert witness in any proceeding relating to the appointment or reappointment of a conservator, the statements of specified health practitioners or a licensed clinical social worker included in the medical record would not be hearsay. Additionally, 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 upon request within a reasonable time before the proceeding.

Departments Impacted & Why

SB 965 would make it much easier for the County Attorney's Office to present key evidence in contested LPS conservatorship trials, increasing the success rate of establishing and re-establishing LPS conservatorships. Increasing the success rate of setting and re-establishing mentally ill individuals on annual LPS conservatorships will reduce the instances of conservatees cycling in and out of the system and would reduce the need for delivery of services by SMMC Psychiatric Emergency Services, the acute psychiatric ward, the Sheriff's Office, and potentially other social services providers within the County.

By modifying the hearsay rule concerning LPS trials, SB 965 would allow the County to use more forensic expert psychologists and psychiatrists at trial rather than the

treating doctor, which would prevent adverse impacts resulting from conservatees' treating doctors testifying against them at trial. SB 965 would also give the County Attorney's Office better flexibility in obtaining evaluations and allow the court to see much more evidence on the conservatee's mental health history at trial.

Fiscal Impact

SB 965 would have no direct fiscal impact on the County of San Mateo.

Support

Big City Mayors (co-sponsor)
California State Association of Psychiatrists (co-sponsor)
City of San Diego
Inland Empire Coalition of Mayors
Steinberg Institute

Opposition

ACLU California Action
California Public Defenders Association
Disability Rights California

Status

2/9/22—Introduced
4/27/22—Passed the Senate Committee on Judiciary with amendments
5/9/22—Passed the Senate Floor
5/19/2022—Assigned to the Assembly Judiciary Committee