

Senate Bill 43 Overview



Department of Health Services
Behavioral Health Services





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What is Senate Bill 43?



What is Senate Bill 43?



- On October 10, 2023, Governor Newsom signed Senate Bill 43 [Bill Text - SB-43 Behavioral health. \(ca.gov\)](#), which made substantive changes to the Lanterman-Petris-Short (LPS) Act and a related provision of the Health and Safety Code (HSC).
- On March 25, 2024, the California Department of Health Care Services (DHCS) issued Behavioral Health Information Notice (BHIN) 24-011 to summarize the changes.
- Senate Bill 43 (Eggman) Chapter 637, Statutes of 2023 expands California’s criteria for involuntary detention and conservatorship which is based on a person’s mental health disorder or severe substance use disorder (SUD), including alcoholism, resulting in the person’s inability to provide for their basic needs for food, clothing shelter, personal safety or necessary medical care.
- Senate Bill 43 expands California’s Lanterman-Petris-Short (LPS) conservatorship law by updating the criteria for determining if a person is “gravely disabled” the standard for LPS conservatorship eligibility.

What is Sacramento County's responsibility under this law?

- **All Counties are required to “implement” this law no later than January 1, 2026.**
- Each county has flexibility regarding when this law should be implemented. Implementation is complex and involves multiple systems. Sacramento County decided to delay implementation. To have a thoughtful implementation, Division of Behavioral Health Services (BHS) is engaging with system partners in a collaborative process to determine how this law could be best applied in Sacramento. Gaps in service and workforce are being identified and discussed collaboratively throughout County and system partners.

Grave Disability (GD) Definition

- *“The previous definition of grave disability was written in the 1970s. Today’s societal challenges are different than they were 50 years ago.”*

- SF City Attorney David Chui

Grave disability definition prior to SB 43 implementation: 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.

• *NEW grave disability definition under SB 43: A condition in which a person, as result of a mental health disorder, severe substance use disorder* or a co-occurring mental health disorder and severe substance use disorder, is at risk for serious harm or currently experiencing serious harm as a result of being unable to provide for their basic needs of food, clothing, shelter, personal safety* or necessary medical care*.

**Counties have until January 1, 2026 under existing law to implement the new definition of grave disability.*

Senate Bill 43 expands the definition of Grave Disability in two important ways:

1. The law provides a legal basis for conserving individuals who are Gravely Disabled due to the impacts of a severe substance use disorder alone. This adds to the current definition that only allows for conservatorships based on serious mental illness or chronic alcoholism.
2. The expanded definition adds inability to provide for necessary medical care, and or personal safety to the current definition of food, clothing, and shelter that *is related to mental illness or substance use disorder, or co-occurring (MH Disorder & Severe Substance Use Disorder)*.



New GD Definition and Minors

Senate Bill 43 did not amend the definition of grave disability for minors. This remains the same.

W&I Code 5585.25

“Gravely disabled minor” means a minor who, as a result of a mental disorder, is unable to use the elements of life that are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others. Intellectual disability, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder.



New Gravely Disabled Definition

Gravely Disabled, under Senate Bill 43, is defined as a condition in which a person as a result on **one** of the following:

- Mental Health Disorder
- Severe Substance Use Disorder
- Co-occurring (MH Disorder & Severe Substance Use Disorder)

Is **unable to provide** for his or her basic personal needs for food, clothing, shelter, personal safety or necessary medical care, as defined below:

- ❖ **Personal Safety**: The ability of one to survive safely in the community without involuntary detention or treatment. Specifically:
 - ❖ An individual incapable of defending themselves against ongoing victimization because of one of the conditions listed above.
 - ❖ An individual expressing a level of incapacity so substantial in their decision making, because of one of the conditions listed above, that placed themselves at serious risk of severe injury and/or death.

New Gravely Disabled Definition Cont'd.

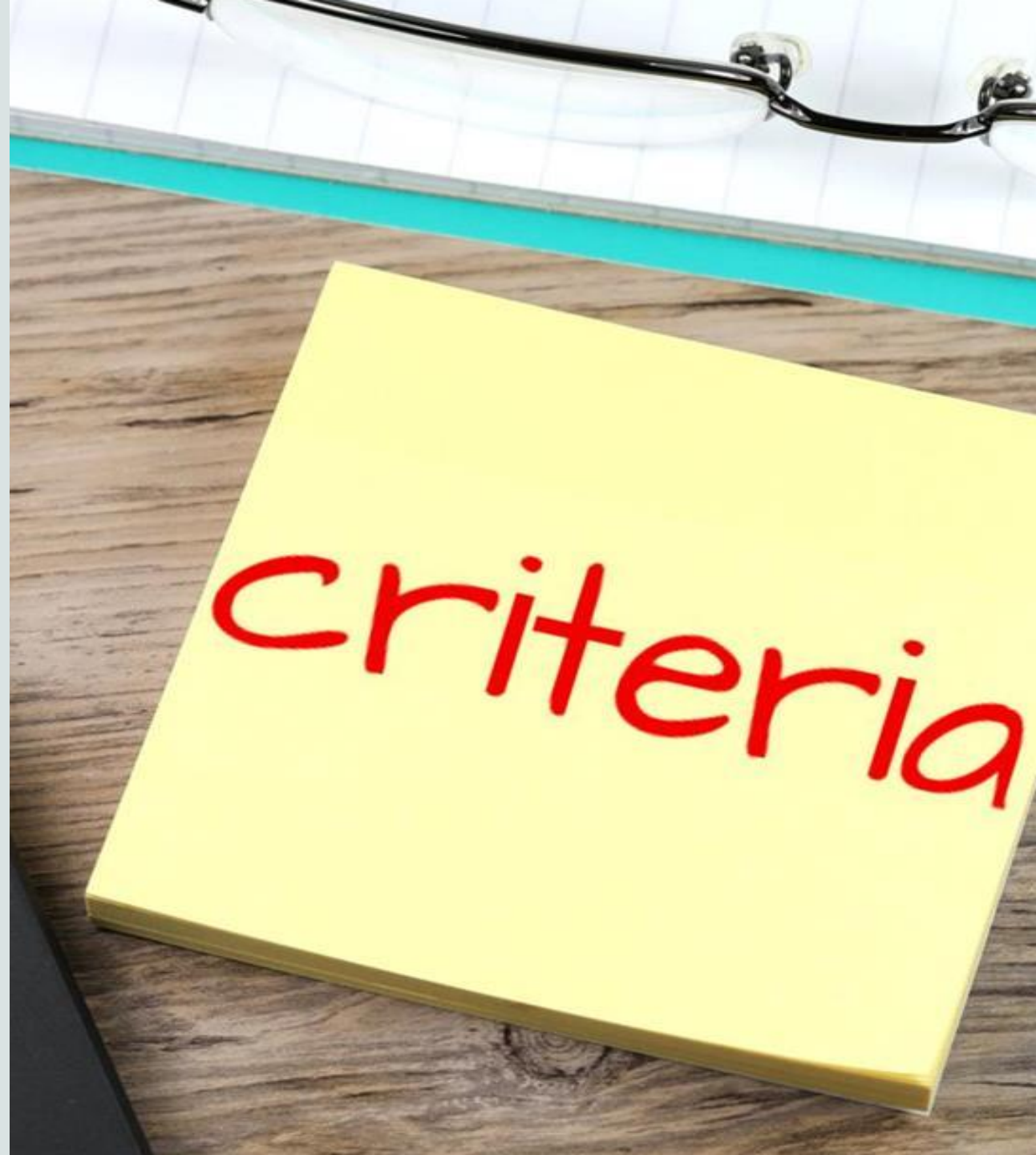
- ❖ **Necessary Medical Care**: Care that a licensed healthcare practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of a physical medical condition either existing or identified when contacted, which, if left untreated is likely to result in serious bodily injury or death as defined in section 15610.67:
- ❖ Any injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of bodily member, organ of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation.

New Gravely Disabled Definition Cont'd.

- ❖ **Necessary Medical Care**: Care that a licensed healthcare practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of a physical medical condition either existing or identified when contacted, which, if left untreated is likely to result in serious bodily injury or death as defined in section 15610.67:
- ❖ An individual incapable Any injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of bodily member, organ of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation.



SUD DSM-5 Criteria



Severe SUD Definition & Criteria

Functionally, Senate Bill 43 allows people to be placed on 5150's and other involuntary holds based on their "severe" SUD.

'Severe substance use disorder' means a diagnosed substance-related disorder that meets the diagnostic criteria of 'severe' as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders.' (W&I, § 5008(o) [as added by Senate Bill 43, effective 1-1-24].)

- ❖ **"Severe" SUD** is defined as *a diagnosis substance-related disorder that means the diagnostic criteria of "severe" according to the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) at the time of evaluation for involuntary detention. In other words, this is not over the past 12 months, as is the typical diagnostic period outlined in the DSM-5. According to the DSM-5, severity of SUDs is measured on a continuum based on the number of symptoms present of a total of eleven (11) criteria, with a "severe" diagnosis being defined as when 6 or more of the 11 criteria are present. (See next slide for criteria)*

SUD DSM-5 Criteria

According to DSM-5, severity of SUDs is measured on a continuum based on the number of symptoms present of a total of eleven (11) criteria, with a “severe” diagnosis being defined as when **6 or more** of the 11 criteria are present, as noted below.

DSM-5 Criteria for SUD

1. Use in larger amounts or for longer periods of time than intended.
2. Unsuccessful efforts to cut down or quit.
3. Excessive time spent getting, using, intoxicated, and recovering from effects.
4. Craving or Intense desire/urge to use substance.
5. Failure to fulfill major obligations.
6. Continued use despite social/interpersonal problems.
7. Activities/hobbies reduced or given up.
8. Recurrent use in physically hazardous situations.
9. Recurrent use despite physical or psychological problems caused by or worsened by use.
10. Tolerance.
11. Withdrawal.

Mild SUD: 2-3 symptoms

Moderate SUD: 4-5 symptoms

Severe SUD: 6+ symptoms

Non-Clinicians

Importantly, non-clinicians who are LPS designated to place holds (e.g., law enforcement, other non-clinicians) are not expected to make a DSM diagnosis for a SUD, as it would be out of their area of expertise or scope of practice, but simply need to describe the **observable** behavior or conditions (i.e. symptoms) that justify a 5150 being placed due to a severe SUD, which should include and be consistent with the DSM criteria noted above and which could meet **probable cause** for detaining someone due to a severe SUD.



Observable Functional Impairments Related to Severe SUD

Examples of observable functional impairments one might see in the community when determining grave disability criteria based on a severe SUD related to:

Necessary Medical Care

- Signs of malnourishment (loss of weight or dehydration).
- Unwillingness to eat when food is provided.
- Irrational beliefs about food that is available (e.g., it is poisoned).
- Inability to articulate a plan for getting food.
- Unwillingness to clothe oneself when clothing is provided.
- Unable to utilize shelter when provided or to formulate a reasonable plan for shelter.
- Inability to engage in personal hygiene.
- Inability to utilize medical care when needed and available.
- Wound care and infection issues that are likely to lead to loss of limb or life if not treated.
 - Untreated comorbidities such as HIV, Diabetes, or Cancer liver/kidney disease that is life-threatening.
 - Extreme physical pain.

Observable Functional Impairments Related to Severe SUD cont.

Examples of observable functional impairments one might see in the community when determining grave disability criteria based on a severe SUD related to:

Personal Safety

- Running in and out of traffic.
- An individual incapable of defending themselves against ongoing victimization
- Being assaulted, abused, exploited or victim of crime.
- Unhygienic/uninhabitable conditions at home or other home safety issues such as arson.
- Inability to care for hygiene, cleanliness, needles, which leads to illness (especially if doesn't rise to level of serious bodily injury).
- Failure to thrive (may be a crossover with medical care).
- Multiple near-fatal overdoses requiring inpatient hospitalization (note: Narcan reversals alone would not meet this criteria).

Further Exploration

Likely ***not*** an example of a severe SUD without additional information/context:

- An individual experiencing an overdose.
- An individual with a substance use disorder experiencing homelessness.

The **probable cause** standard would not be met by any of these examples on their own but instead the totality of the person's situation. Subjective as well as objective observations from collateral (family members) and/or self-reporting accounts of functioning impairments are to be considered (per W&I Code 5150.05), even though they are insufficient for probable cause alone. Collateral information is additional support information.

Welfare & Institutions Code Section 5150

“When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, or an evaluation facility designated by the county, designated members of a mobile crisis team...or other professional person designated by the county may, upon **probable cause**, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation... (cont.)



Gravely Disabled Adult

Documentation May Include:

- Signs of malnourishment or dehydration;
- Inability to articulate a plan for obtaining food;
- No food available or at hand;
- Irrational beliefs about food that is available (i.e. poisoned, inedible, can't eat for some reason);
- Destruction, loss, giving away clothing to the point they cannot clothe themselves;
- Inability to formulate a reasonable plan to obtain shelter.

Patients' Rights Under Civil Commitment

5150s & 5250s

- ❖ **Placement** – Patient does NOT make placement decisions (they cannot choose to leave LPS facilities)
- ❖ **Medication** – Patients MAY retain the ability to make medication decisions, EXCEPT in emergency situations or if their medication capacity is overruled through a *Riese hearing* (WIC 5332-5334)

LPS Conservator (per Court Order)

- ❖ Placement (may, but does **not** always imply a locked facility)
- ❖ Medication
- ❖ Other rights that can be removed:
 - *Right to manage money*
 - *Right to make medical treatment decisions*
 - *Right to vote*
 - *Right to enter into contracts*
 - *Right to a driver's license*
 - *Right to own a firearm*

Senate Bill 43 & the LPS Act

This new definition applies to the three primary LPS Act processes:

- 1) Crisis Intervention: Assessment, evaluation and crisis intervention or placement in an LPS-designated facility for evaluation and treatment for up to 72 hours (W&I Code § 5150).
- 2) Intensive Treatment: Up to 14 days (W&I Code § 5250); if necessary and appropriately authorized, the intensive treatment period for grave disability may be extended for up to two periods of 30 days each (W&I Code § 5270.15, 5270.70).
- 3) Conservatorship: Up to one year, and renewable, for ongoing behavioral health treatment and support (W&I Code § 5350).



Senate Bill 43 & the LPS Act Cont'd.

Conservatorship Standard

- Diagnosis of a severe SUD would need to be determined by a clinician working within their scope of practice.
- The evaluation would need to show that the severe SUD itself is the reason why the person lacks decision-making ability and why the individual meets the grave disability criteria for inability to provide for food, clothing, shelter, personal safety, or medical care, consistent with the 5150 standard and examples.
- The chronic nature of the individual's condition and historical course of the individual's illness will also be considered by the clinician.

Case Examples: MAY Qualify under Senate Bill 43

- Alex is a middle-aged man **with Alcohol Use Disorder** who **continues to drink despite severe damage of his liver** along with physical symptoms of liver failure (e.g., jaundice). He has numerous prior attempts to stop drinking including in previous SUD treatment programs, but he cannot get below a 0.08 blood alcohol level. Multiple agencies are working to connect him to services as he drinks continuously and is **no longer able to demonstrate understanding of his situation or reasoning in his decision-making regarding treatment.**
- Brianna is a women in her mid-twenties **with Stimulant Use Disorder** who is **severely malnourished, unhoused, and medically compromised with an antibiotic-resistant infection.** She repeatedly **declines to be assisted with medical care or housing placement** in order to keep using methamphetamine. Even when she stops using meth for several days and clears the active drug from her system, she **refuses assistance without being able to articulate a plan for managing her infection or nutrition.**

Case Examples: Likely NOT Qualify Under Senate Bill 43

- Chloe is a middle-aged woman **with multiple substance use disorders**. On admission to the emergency department 2 days ago, **she was intoxicated and unable to describe where she was or how to find shelter and food**. Today, she has metabolized the substances she used and is at baseline and say that she would like to be transported to a shelter where she's been living and has been receiving medical care and food. She refuses mental health/substance use treatment services despite demonstrating understanding about her behaviors when she was admitted and the short- and long-term consequences of doing so.
- Dan is an older adult who has been **seen in the emergency department multiple times due to wandering into the street while intoxicated**. He displays some insight into his inability to stop using drugs and the risks associated with use and is seeking help. While he AWOL'ed from care once before, he demonstrates a willingness to go to substance use treatment and to engage in harm reduction services.

What will this look like and where will individuals go?

Where can an Individual go to have an initial evaluation?

5150 Entry Points

Mental Health Urgent Care Clinic

Emergency Departments

Crisis Stabilization Units

Acute Psychiatric Hospitals

Where will Individuals Go for Involuntary Treatment?

Involuntary Mental Health

Emergency Departments

Crisis Stabilization Units

Inpatient Psychiatric Facilities

Involuntary Substance Use

Emergency Departments

Currently Sierra Vista Hospital has 8 Alcohol Detox Beds

Where will Individuals Go for Voluntary Treatment?

Voluntary Mental Health

24/7 Immediate Service: Mental Health Urgent Care Clinic

Sacramento County Outpatient Specialty Mental Health Services

Voluntary Substance Use

24/7 Immediate Service: Crisis Receiving for Behavioral Health

Sacramento County Outpatient Substance Use Prevention and Treatment Services

Types of Facilities

The following facility types – after designation by counties and approval by DHCS – may admit individuals who are gravely disabled due to a severe substance use disorder only:

- **General acute care hospitals (GACHs)** with distinct part units providing chemical dependency recovery services as a supplemental service (as defined in HSC § 1250(a) and HSC § 1250.3(e)-(g));
- **Acute psychiatric hospitals (APHs)** with distinct part units providing chemical dependency recovery services as a supplemental service (as defined in HSC § 1250(b) and HSC § 1250.3(e)-(g)); and
- **Certified crisis stabilization units (CSUs)** in accordance with § 1840.338 and § 1840.348 of Title 9 of the California Code of Regulations.

Hospitals can apply to provide chemical dependency recovery services as a supplemental service.

- **Senate Bill 43 did not change the facility designation requirements that exist in state law.**

Legislation Alert: Senate Bill 1238

Future changes through Senate Bill 1238: Definition of ‘health facility’ signed by Governor 9/27/2024

- This bill will allow psychiatric health facilities (PHFs) to accept standalone SUD diagnosed individuals on 5150 when specified requirements are met.
- This bill expands the definition of “psychiatric health facility” to also include a facility that provides 24-hour inpatient care and services for people with standalone severe substance use disorders as medically necessary and appropriate.
- This bill authorizes DHCS to implement, interpret, or make specific these provisions and provide notices of instruction to Counties until the time when **regulations are adopted no later than December 31, 2027.**

How Many People will Senate Bill 43 Affect?

We can't be sure! Here is the information we have so far:

- Counties who went live January 1, 2024, report low numbers of Severe Substance Use Disorder only individuals on involuntary holds.
- Counties who went live January 1, 2024, report that the individuals requiring involuntary holds past 5150 are presenting with Mental Health only or Co-Occurring Mental Health and Substance Use diagnoses.
- We are counting on you to help us track how many individuals enter our various systems utilizing the new grave disability criteria!



How is Senate Bill 43 different?

Eligibility Criteria	Assisted Outpatient Treatment (AOT)	Community Assistance, Recover, and Empowerment (CARE) Act	Senate Bill 43
Access is a petition through the courts	★	★	
History of severe and chronic mental illness	★	★	
Must be diagnosed with Schizophrenia or other psychotic disorders		★	
Voluntary treatment program	★	★	
Must meet criteria for Grave Disability for 5150 hold			★
Severe substance use disorder or co-occurring mental health and substance use disorder			★
History of repeated hospitalizations or incarcerations related to untreated or under treated mental illness and/or history of violent behaviors to self or others	★		

Resources & Important Links

- **BHS Senate Bill 43 Info Site:**
- <https://dhs.saccounty.gov/BHS/Pages/SB43.aspx>
- **988 Suicide And Crisis Hotline**
- <https://988lifeline.org/>
- **Crisis Receiving For Behavioral Health (CRBH)**
- <https://www.wellspacehealth.org/services/behavioral-health-prevention/crisis-receiving-for-behavioral-health-2>
- **Substance Use Prevention and Treatment Services**
- <https://dhs.saccounty.gov/BHS/Documents/SUPT/GI-BHS-SUPT-Community-Resource-List.pdf>
- **Mental Health Urgent Care Clinic (MHUCC)**
- <https://www.tpcp.org/program/urgent-care/>

QUESTIONS?

