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Katherine Douglas *Public Comment - Disability Rights California*

From: Jenny Olson <Jenny.Olson@disabilityrightsca.org>
Sent: Tuesday, December 12, 2023 3:40 PM
To: Supervisor Das Williams
Cc: Eric Harris; Steve Lavagnino; Laura Capps; Joan Hartmann; Supervisor Nelson; sbcob
Subject: Request for Board to Defer Implementation of California Senate Bill 43
Attachments: SB 43 Letter to Santa Barbara County Board of Supervisors re Delaying Implementation.pdf

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Dear Chair Williams and Honorable County Board of Supervisors:

Disability Rights California (DRC) respectfully submits the attached letter and requests the Board to defer implementation of California Senate Bill 43, as permitted by that legislation. Please reach out to Eric Harris, Director of Public Policy, at Eric.Harris@disabilityrightsca.org or by phone at (916) 504-5940 should you have any questions.

If you would like this letter in an accessible Word format, please reach out to Jenny.olson@disabilityrightsca.org.

Thank you for your consideration.

Best Regards,

Jenny Olson
Senior Executive Assistant on behalf of Eric Harris

Eric M. Harris
Director of Public Policy
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December 12, 2023

Via Email

The Honorable Das Williams
Santa Barbara County Board of Supervisors
105 E Anapamu St, Board of Supervisors, 4th Floor
Santa Barbara, CA 93101

Re: Request for Santa Barbara County Board of Supervisors to Defer
Implementation of California Senate Bill 43 until January 1, 2026

Dear Chair Williams:

Disability Rights California (DRC) is California's federally designated Protection and Advocacy agency. We work to protect and advance the rights of people with disabilities, including people who will be impacted by implementation of California Senate Bill 43 (Eggman, 2023)(SB 43).¹ **DRC urges the Board to defer implementation of SB 43 until January 1, 2026.** The Board is authorized to defer implementation until January 1, 2026, pursuant to Welfare & Institutions Code Section 5008(h)(4).

Deferred implementation is necessary. The County needs time to prepare for forthcoming implementation challenges caused by SB 43, which will greatly increase the number of people being treated in the County's already overburdened emergency rooms, hospitals, and behavioral health systems. In addition, the County should prioritize efforts to reduce unnecessary institutionalization, including through: (1) conducting a data-informed assessment of county behavioral healthcare needs and resources; and (2)

¹ SB 43 (Eggman) Chapter 637, Statutes of 2023.

investing in community-based behavioral health services to meet those needs.

A. The County Should Defer Implementation Because Existing Behavioral Health Systems are Already Overburdened and are not Prepared for SB 43 Implementation Challenges.

SB 43 expands the bases for involuntarily holding someone under the Lanterman-Petris-Short Act (LPS), including—for the first time—on the basis of a substance use disorder.² County behavioral health systems are already forced to operate beyond their capacity under existing LPS criteria. Workforce shortages, overstressed emergency departments, and insufficient LPS-designated facilities barely begin to describe the situation. Implementation of SB 43 will only exacerbate these and other problems faced by overburdened county systems.

In a recent study published by the California Health Care Foundation, counties throughout the state pointed to problems with patient “throughput”—flow across the system of care—being obstructed by a lack of capacity at one or more different levels, causing ripple effects throughout the system.³ These bottlenecks are especially severe at the point when a person is placed on an involuntary LPS hold.⁴ Many people placed on 5150 holds languish for days in hospital emergency departments while they await referrals to community-based services or transfer to inpatient care, if necessary. This places increased stress on emergency departments and does not serve the treatment needs of patients.

The infrastructure that many counties are planning for under the State’s Behavioral Health Continuum Infrastructure Program (BHCIP)⁵ will not be available soon enough to absorb additional involuntary holds that will result from SB 43. Sixty-five percent of the \$2.2 billion in infrastructure funding

² Welf. & Inst. Code § 5008(h)(1)(A) (as amended by SB 43)

³ California Health Care Foundation, *Medi-Cal Behavioral Health Services: Demand Exceeds Supply Despite Expansions*, September 2021 at 7-8 (<https://www.chcf.org/wp-content/uploads/2021/09/RegionalMarketAlmanac2020CrossSiteAnalysisBH.pdf>).

⁴ *Id.*

⁵ Department of Health Care Services, *Behavioral Health Continuum Infrastructure Program (BHCIP)*, February 15, 2023 (available at: <https://www.dhcs.ca.gov/services/MH/Pages/BHCIP-Home.aspx>).

under BHCIP was only put out for RFA the second half of 2022.⁶ Given the time it takes to build out infrastructure, most projects funded by BHCIP are not likely to be available in the near future. Moreover, BHCIP only funds brick-and-mortar infrastructure, not service delivery, and therefore will not address the significant workforce challenges that counties face.⁷

An increase in the number of people placed on LPS holds will also impact over-burdened county systems outside of behavioral health. Patients' rights advocates and public defenders will have higher caseloads because more people placed on involuntary holds means more people entitled to legal representation in due process hearings. Similarly, county counsel offices and court systems will experience increased costs resulting from higher LPS caseloads. Public guardian offices—which are already stretched far beyond capacity—will be required to manage larger caseloads as more people are subjected to LPS conservatorships.

SB 43 will only exacerbate these systemic problems. The County should defer implementation in order to prepare its behavioral health system to meet the challenges posed by SB 43.

B. The County Should Defer Implementation in Order to Build Out Community Behavioral Health Housing and Services Based on a Data-Informed Assessment of Need.

The County should also defer implementation in order to build out community-based behavioral-health services that prevent involuntary hospitalization and help behavioral health clients thrive. As the California State Auditor has found, investment in existing behavioral health services is necessary to “adequately car[e] for Californians with serious mental illnesses....”⁸ Consistent with the State Auditor’s findings, the County

⁶ Department of Health Care Services, *Behavioral Health Infrastructure Program and Community Care Expansion Listening Session*, October 2021, at slide 16 (available at: <https://ahpnet.adobeconnect.com/p5w2e0xlbaax/>).

⁷ State of California, Department of Health Care Services, *Assessing the Continuum of Care for Behavioral Health Services in California: Data, Stakeholder Perspectives, and Implications* (January 10, 2022) at 23 (<https://www.dhcs.ca.gov/Documents/Assessing-the-Continuum-of-Care-for-BH-Services-in-California.pdf>) (hereinafter, “DHCS Assessment”).

⁸ California State Auditor, *Lanternman-Petris-Short Act: California Has Not Ensured that Individuals With Serious Mental Illnesses Receive Adequate Ongoing Care* 2, 21 (July 2020) (<http://auditor.ca.gov/pdfs/reports/2019-119.pdf>).

should invest in community-defined, evidence-based housing and services, including affordable, accessible housing and Assertive Community Treatment (ACT).

- **Affordable, accessible housing with voluntary supports** addresses the needs of chronically homeless people with disabilities.⁹ Such housing should be offered on a Housing First basis, which is an evidence-based, client-centered approach that recognizes housing as necessary to make other voluntary life changes, such as seeking treatment or medical care.¹⁰
- **Assertive Community Treatment (ACT)** is an evidence-based practice that utilizes a multidisciplinary team approach to provide a wide range of community-based intensive services to people living with severe mental health disabilities.¹¹ ACT is proven to be effective for people who have not been adequately served by traditional service delivery approaches.¹² While all California counties are required to provide Full Service Partnerships (FSP), Cal. Code of Regulations § 3620, and counties may provide ACT through their FSP programs, ACT generally provides a more engaged level of service than the standard FSP.¹³

Investment in community-based housing and ACT services is the only way to successfully address the root causes that led to SB 43's enactment.¹⁴

Investment in these services is also necessary to address health disparities, which will only worsen with SB 43's implementation. As noted

⁹ See, e.g., California Statewide Housing Plan, Definitions (<https://statewide-housing-plan-cahcd.hub.arcgis.com/pages/definitions>).

¹⁰ *Id.*; see also Welf. & Inst. Code § 8255. The goal of Housing First is to provide housing to people quickly, with as few obstacles as possible, along with voluntary support services according to their needs.

¹¹ DHCS Assessment at 60.

¹² Substance Abuse and Mental Health Services Administration (SAMHSA), *Assertive Community Treatment Evidence-Based Practice Kit: Building Your Program* at 5 (https://store.samhsa.gov/sites/default/files/d7/priv/buildingyourprogram-act_1.pdf).

¹³ *Id.* at 16. See also 9 Cal. Code Regs. § 3620. ACT is different than Assisted Outpatient Treatment (AOT) because it is meant to be provided in accordance with recovery principles, including consumer choice, not involuntarily under a court order.

¹⁴ See, e.g., M. Susan Ridgely, et al., *The Effectiveness of Involuntary Outpatient Treatment: Empirical Evidence and the Experience of Eight States*, RAND Health and RAND Institute for Civil Justice at 32 (2001)

https://www.rand.org/pubs/monograph_reports/MR1340.html.

by the County Behavioral Health Director's Association (CBHDA), an analysis of discharge data from the California Department of Healthcare Access and Information showed that "compared to their White counterparts, Black and Latinx Californians were 57.2% and 154.5%, respectively, more likely to be placed on a 5150 hold."¹⁵

By connecting people to the treatment and services they actually need, the County can help people with mental-health disabilities and substance use disorder to not only avoid hospitalization, but to recover and thrive. To maximize the benefit of its investment, the County should invest in these services based on a data-informed assessment of County residents' behavioral healthcare needs and gaps in County services.

C. Conclusion

We urge you to adopt a resolution formally deferring implementation of SB 43 until January 1, 2026, as authorized by law. We further urge you to use the time afforded by the implementation delay to (1) conduct a data-informed assessment of county behavioral healthcare needs and resources; and (2) invest in community-based behavioral health services, including housing and ACT services, in order to meet those needs.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Harris". The signature is fluid and cursive, with a prominent "E" and "H".

Eric Harris
Director of Public Policy
Disability Rights California

Cc: Santa Barbara County Board of Supervisors

¹⁵ County Behavioral Health Directors Association, *SB 43 (Eggman) Behavioral Health: OPPOSE at 2* (March 13, 2023).