SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No:	SB 1221	**Hearing Date:**	April 21, 2026
Author:	Stern		
Version:	April 16, 2026		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Lanterman-Petris-Short Act: conservatorships***

HISTORY

Source: California District Attorneys Association

Prior Legislation: SB 820 (Stern), Ch. 330, Stats. of 2025
SB 35 (Umberg), Ch. 283, Stats. of 2023
SB 1187 (Beall), Ch. 1008, Stats. of 2018

Support: California State Association of Psychiatrists; California State Sheriffs' Association; Los Angeles County District Attorney's Office; Riverside County District Attorney; San Diego County District Attorney's Office

Opposition: ACLU California Action; CA Youth Empowerment Network; Cal Voices; California Attorneys for Criminal Justice; California Public Defenders Association; County Behavioral Health Directors Association; Disability Rights California; Justice2Jobs Coalition; La Defensa; Mental Health America of California; Smart Justice California

PURPOSE

The purpose of this bill is to makes various changes to the conservatorship process, including: 1) prohibiting a court from determining a person has the ability to provide for their basic personal needs based on the fact that the person has temporary access to those basic personal needs while incarcerated; 2) requiring the evaluation of whether a person represents a substantial danger of physical harm (as part of the broader determination of whether a person is gravely disabled) to be made based upon their ability to be nonviolent outside of an incarcerated setting; and 3) permitting district attorneys to be present at conservatorship hearings to represent public safety interests, access relevant documents, and challenge the conservator's placement recommendation.

Existing law requires, if during the pendency of an action and prior to judgment, a doubt arises in the mind of the judge as to the mental competence of the defendant, the judge to state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. Requires the court, at the request of the defendant or defendant's counsel or upon its own motion, to recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to the mental competence of the defendant at that point in time. (Pen. Code, § 1368, subd. (a).)

Existing law requires the court, if counsel informs the court that they believe the defendant is or may be mentally incompetent (IST), to order that the question of the defendant's mental competence is to be determined. Authorizes the court, if counsel informs the court that they believe the defendant is mentally competent, to order a determination by the court of the defendant's mental competence. (Pen. Code, § 1368, subd. (b).)

Existing law requires all proceedings in the criminal prosecution to be suspended when an inquiry into the present mental competence of the defendant has been commenced by the court until the question of the present mental competence of the defendant has been determined, except as provided. (Pen. Code, § 1368, subd. (c).)

Existing law outlines the process by which the question of mental competence must proceed. (Pen. Code, § 1369.)

Existing law provides that Section 1370 applies to a person who is charged with a felony or alleged to have violated the terms of probation for a felony or mandatory supervision and is incompetent as a result of a mental health disorder. (Pen. Code, § 1367, subd. (b).)

Existing law requires the criminal process to resume, the trial on the offense charged or hearing on the alleged violation to proceed, and judgment to be pronounced if the defendant is mentally competent. (Pen. Code, § 1370, (a)(1)(A).)

Existing law requires the trial, the hearing on the alleged violation, or the judgment to be suspended, if the defendant is found mentally incompetent (and is not charged with an offense that would make the defendant ineligible for mental health diversion). Requires the court to do all of the following: 1) determine whether restoring the person to mental competence is in the interests of justice; 2) if restoring the person to mental competence is in the interests of justice, the court must state its reasons orally on the record and the case shall proceed, as provided; 3) if restoring the person to mental competence is not in the interests of justice, the court must conduct a mental health diversion hearing, and, if the court deems the defendant eligible, grant diversion for a period not to exceed two years from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the complaint, whichever is shorter. (Pen. Code, § 1370, subd. (a)(1)(B)(i)-(iii).)

Existing law requires, at the end of two years from the date of commitment (or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter), a defendant who has not recovered mental competence to be returned to the committing court. Requires custody of the defendant to be transferred without delay to the committing county and must remain with the county until further order of the court. Prohibits the court from ordering the defendant returned to the custody of the DSH under the same commitment. (Pen. Code, § 1370, subd. (c)(1).)

Existing law requires the court, whenever a defendant is returned to the court and it appears to the court that the defendant is gravely disabled, as defined (LPS or Murphy conservatorship), to order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant. Requires hearings in the conservatorship proceedings to be held in the superior court in the county that ordered the commitment, and

requires the court to transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. Requires the court to notify those parties of the outcome of the conservatorship proceedings. (Pen. Code, § 1370, subd. (c)(3).)

Existing law requires the court, if a change in placement is proposed for a defendant who is committed as a Lanterman-Petris-Short Act (LPS) conservatee or Murphy conservatee, to provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which the criminal charges or revocation proceedings are pending. (Pen. Code, § 1370, subd. (c)(5).)

Existing law provides that the criminal action remains subject to dismissal except for proceedings alleging a violation of mandatory supervision, or in those instances where the defendant has been placed under a Murphy conservatorship. (Pen. Code, § 1370, subd. (d).)

Existing law establishes the LPS Act to end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders, developmental disabilities, and chronic alcoholism, as well as to safeguard a person's rights, provide prompt evaluation and treatment, and provide services in the least restrictive setting appropriate to the needs of each person. Permits involuntary detention of a person deemed to be a danger to self or others, or "gravely disabled" for periods of up to 72 hours for evaluation and treatment, or for up-to 14 days and up-to 30 days for additional intensive treatment in "county-designated facilities." (Welf. & Inst. Code, §§ 5000, et seq.)

Existing law permits a conservator of a person, or the estate, or of both the person and the estate, to be appointed for someone who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism, and who remains gravely disabled after periods of intensive treatment. (Welf. & Inst. Code, § 5350.)

Existing law defines "gravely disabled," for purposes of evaluating and treating an individual who has been involuntarily detained or for placing an individual in conservatorship, as:

- A condition in which a person, as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder, is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care (referred to as "standard LPS conservatees"); or,

- A condition in which a person has been found mentally incompetent but can be restored to competence in a state hospital in the interests of justice, or are charged with specified offenses, and all of the following facts exist (referred to as "Murphy conservatees"):

    - The complaint, indictment, or information pending against the person at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person;
    - There has been a finding of probable cause on a complaint, a preliminary examination, or a grand jury indictment, and the complaint, indictment, or information has not been dismissed;

- As a result of a mental health disorder, the person is unable to understand the nature and purpose of the proceedings taken against them and to assist counsel in the conduct of their defense in a rational manner; and,
- The person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder.
  (Welf. & Inst. Code, § 5008, subds. (h)(1)(A) & (h)(1)(B).)

Existing law defines "designated facility," "facility designated by the county for evaluation and treatment," or "facility designated by the county to provide intensive treatment" as a facility that meets designation requirements established by the Department of Health Care Services (DHCS), including, but not limited to:

- Psychiatric health facilities; psychiatric residential treatment facilities; and mental health rehabilitation centers licensed by DHCS, or provider sites certified by either DHCS or a mental health plan to provide crisis stabilization;
- General acute care hospitals; acute psychiatric hospitals; and chemical dependency recovery hospitals licensed by the California Department of Public Health (CDPH); and,
- Hospitals operated by the U.S. Department of Veterans Affairs.
  (Welf. & Inst. Code, § 5008, subd. (n)(1)(A)-(H).)

Existing law requires a county district attorney, at any judicial proceeding related to community mental health services, to present allegations that a person is a danger to self or others, or gravely disabled as a result of mental disorder or impairment by chronic alcoholism, unless the board of supervisors, by ordinance or resolution, delegates such duty to the county counsel. (Welf. & Inst. Code, § 5114.)

Existing law requires the officer providing conservatorship investigation to investigate all available alternatives to conservatorship, including, but not limited to, assisted outpatient treatment, and the Community Assistance, Recovery, and Empowerment (CARE) Act and to recommend conservatorship to the court only if no suitable alternatives are available. Requires the officer to render to the court a report prior to the hearing. Requires a copy of the report to be transmitted to the individual who originally recommended conservatorship; to the person or agency, if any, recommended to serve as conservator; and, to the person recommended for conservatorship. Permits the court to receive the report in evidence and consider the contents in rendering its judgment. (Welf. & Inst. Code, § 5354, subd. (a).)

Existing law requires a conservator to place a Murphy conservatee in various settings, including in a placement that achieves the purposes of treatment of the conservatee and protection of the public. (Welf. & Inst. Code, § 5358, subd. (a)(1)(B).)

Existing law requires first priority for a Murphy conservatee to be placement in a facility that achieves the purposes of treatment of the conservatee and protection of the public. Requires the court to determine the most appropriate placement for the conservatee. Requires the court to also determine those persons to be notified of a change of placement, and additionally require the conservator to notify the district attorney or attorney representing the originating county prior to any change of placement. (Welf. & Inst. Code, § 5358, subd. (c)(2).)

This bill provides that for an IST defendant, the evaluation of whether the person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder

(as part of the broader determination of whether a person is gravely disabled) must be evaluated based upon the person's ability to be nonviolent outside of an incarcerated setting. Prohibits the fact that the person has not had an overt act of violence while incarcerated from being a basis to conclude that the person does not represent a substantial danger of physical harm to others.

This bill prohibits a court from determining a person's ability to provide for their basic personal needs based on the fact that the person has temporary access to those basic personal needs while incarcerated.

This bill adds district attorneys to the list of entities who receive a copy of the conservatorship investigation report required to be submitted to the court, if an investigation was initiated for an IST defendant returned to the court because their competency was not restored.

This bill authorizes the court to receive the conservatorship investigation report in evidence and may read and consider its contents in rendering its judgment. Authorizes the court, if the individual has been appointed a conservator under WIC section 5350, to alternatively set a new competency hearing if the investigation includes competency findings by a psychiatrist or psychologist that the person is competent. Authorizes the district attorney to challenge the recommendation of the public conservator after the conservatorship investigation for an abuse of discretion in a contested hearing before a judge. Specifies that the district attorney has the burden of proof.

This bill authorizes a county with a population greater than 750,000 to consider prioritizing the placement of Murphy conservatees in a DSH hospital if at least 40 of those conservatees are waiting for placement in a state hospital.

This bill permits the district attorney to review all filed documents regarding the investigation, initiation, termination, or modification of, and to be present and represent public safety interests at all hearings that consider, a Murphy conservatorship of a person, to provide input to the court about appropriate placement or interim placement by the public conservator, without regard to whether any conservatorship is initiated.

This bill permits the district attorney of the county that made the commitment to be present at a hearing to transfer a Murphy conservatee to an alternative placement.

This bill permits the district attorney to be present and represent public safety interests at any hearing to determine whether an individual satisfies the requirements of a Murphy conservatorship.

COMMENTS

1. Need For This Bill

According to the author:

> SB 1221 was introduced in response to the decision issued in *In re Lerke* (2024) 107 Cal.App.5th 685. In *Lerke*, the Fourth Appellate District announced that Murphy conservatees cannot be temporarily housed at a county detention facility pending delivery to DSH. The *Lerke* decision seriously jeopardized public safety by eliminating the conservator's ability to house individuals at a county detention

facility pending delivery to a DSH or other facility that ensures public safety. Furthermore, victims and the public were distraught, confused, and angry with a system where there was no transparency or representative of public safety present that would explain the process. Within weeks of the *Lerke* decision, victims, their families, and the public were faced with the prospect of charged murderers, rapists, and arsonists on Murphy conservatorship being released into the community because DSH were not available. Despite a legislatively defined role that provides for district attorneys to represent victims and public safety, they were denied access to these hearings across the state, including in San Diego County. As counties statewide struggled to find placements, weaknesses within the current statutes addressing Murphy conservatees became apparent.

2. Mental Competency in Criminal Proceedings

The Due Process Clause of the U.S. Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Existing law provides that if a person has been charged with a crime and is not able to understand the nature of the criminal proceedings or is to assist counsel in his or her defense, the court may determine that the offender is incompetent to stand trial (IST). (Pen. Code § 1367.) When the court issues an order for a hearing into the present mental competence of the defendant, all proceedings in the criminal prosecution are suspended until the question of present mental competence has been determined. (Pen. Code, §1368, subd. (c).)

In order to determine mental competence, the court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. (Pen. Code, § 1369, subd. (a).) The examining expert(s) must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (b).)

A determination of the defendant's competency to stand trial is generally decided by a jury. (Pen. Code, § 1369.) A formal trial is not required when jury trial has been waived. (*People v. Harris* (1993) 14 Cal.App.4th 984.) The burden of proof is on the party seeking a finding of incompetence. (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460.) Because a defendant is initially presumed competent to stand trial (*Medina v. California* (1992) 505 U.S. 437; Pen. Code, § 1369, subd. (c)(3)), this usually means that the defense bears the burden of proof to establish incompetence. As a result, the defense counsel must first present evidence to support a finding of mental incompetence. The defendant's mental incompetence must proven by a preponderance of the evidence. (Pen. Code, § 1369, subd. (c)(3).)

For defendants charged with a felony, if after an examination and hearing the defendant is found IST, the criminal proceedings are suspended and the court must order the defendant to be referred to the Department of State Hospitals (DSH), or to any other available public or private treatment facility, including a community-based residential treatment system if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, except as specified. (Pen. Code §§ 1368, subd. (c), 1370, subd. (a)(1)(B).) The court may also make a determination as to whether the defendant is an

appropriate candidate for mental health diversion pursuant to Penal Code section 1001.36. (Pen. Code, § 1370, subd. (a)(1)(B).)

The maximum term of commitment for an IST defendant charged with a felony is two years, however, no later than 90 days prior to the expiration of the defendant's term of commitment, if the defendant has not regained mental competence must be returned to the committing court and the court is prohibited from ordering the defendant returned to the custody of DSH. (Pen. Code, § 1370, subd. (c)(1).) Upon the defendant's return to the court, the court must order the conservatorship investigator of the county of commitment to initiate conservatorship proceedings under the LPS Act if it appears to the court that the defendant is gravely disabled. (Pen. Code, § 1370, subd. (c)(3).) With the exception of proceedings alleging a violation of mandatory supervision, or in those instances in which the defendant has been placed under a Murphy conservatorship, the criminal action may be dismissed in the interest of justice. (Pen. Code, § 1370, subd. (d).)

3. LPS Act

Enacted in 1967, the LPS Act governs the involuntary commitment and treatment of gravely disabled individuals through a conservatorship program. Among its many goals are ending the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders, providing prompt evaluation and treatment of persons with mental health, guaranteeing and protecting public safety, safeguarding individual rights through judicial review, and providing individualized treatment, supervision, and placement services by a conservatorship program for individuals who are gravely disabled. (Welf. & Inst. Code, § 5001.)

There are two distinct categories of conservatorships under the LPS Act based on the statute's definition of "gravely disabled": an LPS conservatorship pursuant to Welfare and Institutions Code section 5008, subdivision (h)(1)(A); and a Murphy conservatorship pursuant to Welfare and Institutions Code section 5008, subdivision (h)(1)(B). For more information on the LPS conservatorship, please see the Senate Health Committee analysis of this bill.

4. Murphy Conservatorship

As noted above, a conservatorship pursuant to Section 5008, subdivision (h)(1)(B), is known as a Murphy conservatorship. Welfare and Institutions Code section 5008, subdivision (h)(1)(B), defines "gravely disabled" as:

> A condition in which a person has been found IST and all of the following facts exist:
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> - The complaint, indictment, or information pending against the person at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person;
> - There has been a finding of probable cause on a complaint, a preliminary examination, or a grand jury indictment, and the complaint, indictment, or information has not been dismissed;
> - As a result of a mental health disorder, the person is unable to understand the nature and purpose of the proceedings taken against them and to assist counsel in the conduct of their defense in a rational manner; and,

- The person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder.

If a conservatorship is established, a Murphy conservatee must be placed in a placement that achieves the purposes of treatment of the conservatee and protection of the public. (Welf. & Inst. Code, § 5358, subd. (a)(1)(B).) The placement may include a medical, psychiatric, nursing, or other state-licensed facility, or a state hospital, county hospital, hospital operated by the Regents of the University of California, a U.S. government hospital, or other nonmedical facility approved by the DHCS an agency accredited by the department. (Welf. & Inst. Code, § 5358, subd. (a)(2).)

A conservator has the right, if specified in the court order, to require their conservatee to receive treatment related specifically to remedying or preventing the recurrence of the cause of the conservatee being gravely disabled. (Welf. & Inst. Code, § 5358, subd. (b).) First priority must be placement in a facility that achieves the purposes of treatment of the conservatee and protection of the public. (Welf. & Inst. Code, § 5358, subd. (c)(2).) The court must determine the individuals to be notified of a change of placement, and requires the conservator to notify the district attorney or attorney representing the originating county prior to any change of placement. (*Ibid*.)

The conservator is prohibited from transferring a Murphy conservatee to a less restrictive alternative placement without a hearing and court approval. (Welf. & Inst. Code, § 5358, subd. (d)(1).) The conservator may not transfer the conservatee without providing written notice of the proposed change of placement and the reason therefor to the court, the conservatee's attorney, the county patient's rights advocate, the district attorney of the county that made the commitment, and any other persons designated by the court to receive notice. (Welf. & Inst. Code, § 5358, subd. (d)(2).) If any person designated to receive notice objects to the proposed transfer within 10 days after receiving notice, the matter must be set for a further hearing and court approval. (*Ibid*.)

A Murphy conservatorship automatically terminates after one year unless the conservator successfully petitions for reappointment for a succeeding one-year term. (Welf. & Inst. Code, § 5361, subds. (a), (b).)

5. *In re Lerke*

This bill was introduced in response to *In re Lerke* (2024) 107 Cal.App.5th 685, a case involving a Murphy conservatee confined in a county jail while awaiting transfer to the state hospital. Lerke was charged with multiple felony sex offenses, and a month after charges were filed, criminal proceedings were suspended and Lerke was referred for a mental competency examination. He was found IST and committed to the state hospital for competency restoration treatment. Lerke did not regain competency during his two-year commitment and was returned to the county. The day before the criminal court conducted a hearing on his competency, the mental health court established a Murphy conservatorship and ordered his placement at the state hospital. Lerke was held in custody at the county jail until placement in the state hospital was available.

Lerke's counsel in the criminal case petitioned the criminal court to dismiss the case against him because he has been deemed non-restorable. The court denied the request, finding that the basis for the Murphy conservatorship would no longer exist if the criminal case were dismissed.

Counsel in the conservatorship proceeding requested Lerke be transferred to the county psychiatric hospital pending placement at the state hospital. The request was denied.

In response, Lerke filed a habeas petition challenging his confinement in the county jail. He alleged that he was being held in custody on the criminal case beyond the maximum statutory commitment date, in violation of his statutory and constitutional rights. Lerke requested his immediate release, or alternatively, transfer to an appropriate treatment facility.[1]

The appellate court held:

> The criminal court had no legal authority to order Lerke's continued detention in county jail after his commitment had expired and he was no longer subject to competency restoration treatment. The provisions of Penal Code section 1370 that dictated Lerke's placement during his competency restoration treatment were no longer applicable.
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> Nor did the provisions of the Welfare and Institutions Code governing Murphy conservatorships explicitly or implicitly authorize Lerke's continued confinement in county jail while awaiting a state hospital bed. (*In re Lerke* (2024) 107 Cal.App.5th 685, 700.)

The court further explained:

> Section 5358, subdivision (a)(2) sets forth a complete list of the authorized treatment facilities at which a conservatee may be placed under the LPS Act. The list in subdivision (a)(2) does not include county jail. A "nonmedical facility" is included on the list only if it is "approved by the State Department of Health Care Services or an agency accredited by the State Department of Health Care Services." (§ 5358, subd. (a)(2).)
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> …
>
> Our reading of this provision comports with the overall statutory scheme, which is structured to allow an orderly transition from competency proceedings to a Murphy conservatorship—without extending the defendant's confinement in the county jail beyond the maximum term of commitment for competency restoration. As noted, the law requires that the defendant be returned to the criminal court no later than 90 days before the expiration of the maximum term of commitment. (Pen. Code, § 1370 subd. (c)(1).) This guarantees a 90-day window period for (1) the criminal court to decide whether to release the defendant or direct the initiation of conservatorship proceedings, and (2) the mental health court to order a conservatorship and determine an appropriate placement. Nothing in the statutory scheme contemplates the defendant's continued confinement in the county jail after the maximum term of commitment for competency restoration has expired.

[1] Lerke's petition was denied because he was transferred to a county psychiatric hospital, an authorized treatment facility, during the pendency of the appellate court proceedings. Although technically moot, the court exercised its discretion to decide the case on the merits because the case presented a recurring issue of public importance and an issue that may otherwise evade appellate review.

> We also find it significant that a Murphy conservatorship automatically terminates after one year, subject to renewal for additional one-year periods. (§ 5361.) We cannot infer that the Legislature impliedly decided to allow Murphy conservatees to languish in county jail for months or even years at a time while waiting for a proper treatment facility for much or all of their one-year term of conservatorship. (*Id*. at pp. 701-702.)

6. Treatment Beds in California

According to a 2022 RAND report based on 2021 information, California needs 50.5 inpatient psychiatric beds per 100,000 adults: 26.0 per 100,000 at the acute level and 24.6 per 100,000 at the subacute level, or 7,945 and 7,518 beds, respectively.[2] At the community residential level, RAND estimated a need of 22.3 beds per 100,000 adults.[3]

California has a shortfall of approximately 1,971 beds at the acute level (6.4 additional beds required per 100,000 adults) and a shortage of 2,796 beds at the subacute level (9.1 additional beds required per 100,000 adults), or 4,767 subacute and acute beds combined, excluding state hospital beds.[4] If state hospitals were included in this estimate, the shortage of acute inpatient beds would shrink to 267, and there would be no observable shortage in beds at the subacute level.[5] Separately, RAND estimated a shortage of 2,963 community-based residential beds.[6]

Among its recommendations, the report stated:

> [The state should] [c]onsider focusing on building or remodeling infrastructure for the most hard-to-place populations. Specific subpopulations appear to contribute disproportionately to bottlenecks in the current system, including an inability to transfer patients with criminal justice involvement from the subacute level of care to community residential settings. Given this, the state might need to consider alternative arrangements for placing such populations, such as community-based and outpatient competency restoration programs. Here, California could learn from other mental health systems across the United States and internationally.[7]

7. DSH and CalMHSA MOU on DSH Beds

The California Mental Health Services Authority (CalMHSA) is a Joint Powers of Authority formed in 2009 by counties throughout the state "to work on collaborative, multi-county projects that improve behavioral health care for all Californians." DSH and CalMHSA have an MOU whereby counties reimburse DSH for the use of DSH hospital beds and services, provided pursuant to the LPS Act. The term of the current MOU is July 1, 2025 to June 30, 2027.[8] The

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[2] McBain et al., *Adult Psychiatric Bed Capacity, Need, and Shortage Estimates in California—2021* (Jan. 18, 2022), p. 3 <https://www.rand.org/pubs/research_reports/RRA1824-1-v2.html>.
[3] *Ibid*.
[4] McBain et al., *supra*, at p. 3.
[5] *Ibid*.
[6] *Ibid*.
[7] McBain et al., *supra*, at p.4.
[8] DSH, *County Use of State Hospital Beds Memorandum of Understanding, California Department of State Hospitals and The California Mental Health Services Authority (CalMHSA) and Participating Counties* <https://marin.granicus.com/MetaViewer.php?view_id=33&event_id=4056&meta_id=1393184>.

MOU includes LPS bed allocations that were developed using a county-specific methodology based on a combination of population size, behavioral health population adjustment, and historical DSH bed utilization. (*Id*. at Exh. 5.) The total number of LPS-designated beds allocated for fiscal year 2025-2025 is 581 beds. (*Ibid*.) Of those 581 beds, the MOU allots 213 beds to Los Angeles County. (*Ibid*.) Under the terms of the MOU, a county has the discretion to determine which individuals eligible for placement to place in available DSH beds.

8. Effect of This Bill

This bill makes substantial changes to the laws related to conservatorships and raises several policy questions.

Provisions that affect the court's "gravely disabled" determination

First, this bill provides that for an IST defendant, the evaluation of whether the person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder (as part of the broader determination of whether a person is gravely disabled) must be evaluated based upon the person's ability to be nonviolent outside of an incarcerated setting. A court is prohibited from concluding that a person does not represent a substantial danger of physical harm to others based on the fact that the person has not had an overt act of violence while incarcerated. Second, this bill prohibits a court from determining that a person has the ability to provide for their basic personal needs based on the fact that the person has temporary access to those basic personal needs while incarcerated.

Is a person's behavior within a carceral setting relevant to the court's determination? While it is true that many people may be more inclined to behave while incarcerated, many people are unable or unwilling to do so. The Committee may wish to consider whether this language should be narrowed. For example, it could be amended to read:

5008. (h)(1)(B)(iv) This clause shall be evaluated *primarily* based upon the person's ability to be nonviolent outside of an incarcerated setting. The fact that the person has not had an overt act of violence while incarcerated shall not be *the sole* basis to conclude that the person does not represent a substantial danger of physical harm to others.

Provisions related to the district attorney

This bill authorizes a district attorney to attend several types of civil court proceedings as well as have access to confidential records related to conservatorship proceedings.

Specifically, this bill adds district attorneys to the list of entities who receive a copy of the conservatorship investigation report required to be submitted to the court, if an investigation was initiated for an IST defendant returned to the court because their competency was not restored. This report includes all relevant aspects of the person's medical, psychological, financial, family, vocational, and social condition, and *information obtained from the person's* family members, close friends, social worker, or *principal therapist*.

The opposition argues that it is not clear whether or how this information may be subsequently used by a prosecutor. As a result, they argue that this provision will have a chilling effect and result in defense counsel advising clients to hold back information from their therapists.

This bill also permits the district attorney to review *all* filed documents *regarding the investigation, initiation, termination, or modification of*, and to be present and represent public safety interests at all hearings that consider, a Murphy conservatorship of a person, to provide input to the court *about appropriate placement* or interim placement by the public conservator, without regard to whether any conservatorship is initiated. This bill additionally permits the district attorney of the county that made the commitment to be present at a hearing to transfer a Murphy conservatee to an alternative placement. This bill additionally permits the district attorney to be present and represent public safety interests at any hearing to determine whether an individual satisfies the requirements of a Murphy conservatorship.

Finally, this bill authorizes the court to set a new competency hearing if a conservatorship investigation includes competency findings by a psychiatrist or psychologist that the person is competent, and authorizes the district attorney to challenge the recommendation of the public conservator after the conservatorship investigation.

The opponents of this bill assert that permitting a district attorney to participate in these types of civil court proceedings—when the ultimate determinations are outside of the scope of the office's expertise—is unnecessary and inappropriate. They argue that existing law already provides flexibility with respect to district attorney involvement where appropriate.

Should the district attorney be included in these various proceedings and should they have access to all of the types of private information authorized under the provisions of the bill? If so, should there be some prohibitions on the use of that information by the district attorney? Should the district attorney be able to challenge the recommendation of the public conservator? Have there been widespread issues across the state with public conservators abusing their discretion such that a statutory change is necessary? Should the district attorney be permitted to revisit the competency issue once the statutory timeline on competency restoration has expired under Penal Code section 1370 and a conservatorship has been established (following referral by the court for conservatorship investigation due to the IST defendant's competency not being restored and the defendant appearing "gravely disabled")?

<u>Provision related to DSH beds</u>

This bill authorizes a county with a population greater than 750,000 to consider prioritizing the placement of Murphy conservatees in a DSH hospital if at least 40 of those conservatees are waiting for placement in a state hospital.

9. Argument in Support

According to the California District Attorneys Association:

> A recent court opinion, *In Re Lerke* (2024) 107 Cal.App.5th 685 held a Murphy Conservatee could not be detained, even temporarily, in a county detention facility pending a placement becoming available at the Department of State Hospitals. This decision created chaos throughout California. Public Conservators in many counties scrambled to temporarily place defendants charged with (and some convicted of) murder, rape and arson who were conserved on Murphy conservatorships who were held on an interim basis at a county detention facility. The most dangerous incompetent, non-restorable defendants were being quickly moved subject to this legal change without transparency for victims or the public

because both the public and the District Attorney were excluded from these proceedings creating fear and distrust amongst the public.

Senate Bill 1221 addresses the issues created by the *Lerke* decision requiring the Department of State Hospitals to prioritize Murphy conservatorships because they pose a significant and serious risk of harm to the public above other conservatees who have not been found to be currently dangerous. Also, this bill clarifies the District Attorney's role as an independent voice for public safety during Murphy conservatorship hearings. The District Attorney provides an essential voice for victims and public safety providing information regarding risk and dangerousness to courts to complement the Public Conservator's investigation and conclusions. considering conservatorships relating to public safety.

SB 1221 addresses a pressing need for individuals who have been conserved with serious criminal conduct pending. This fixes the issues that became apparent to victims and the public after the *Lerke* decision upended the interim placement for Murphy Conservatees. SB 1221 will ensure that appropriate therapeutic, safe treatment placement is available for defendants who have been conserved on Murphy conservatorships.

10. Argument in Opposition

Smart Justice California writes:

The Lanterman-Petris-Short (LPS) Act carefully balances individual liberty with the need for involuntary treatment by limiting conservatorships to individuals who, as a result of a mental health disorder, are presently a danger to themselves or others or are gravely disabled. SB 1221 shifts the inquiry from current clinical presentation to predictions of future functioning, a change that invites speculation and risks expanding conservatorships beyond their intended scope.

As drafted, the bill restricts qualified mental health experts from considering a person's lack of violence in a custodial setting as evidence that the individual does not pose a substantial danger of physical harm. This limitation on clinical judgment excludes what may be the most probative evidence of a person's current risk. Many individuals with severe mental illness spend extended periods in custody (even on minor charges), while awaiting placement in a state hospital, resolution of mental health diversion, or completion of a sentence. An individual's conduct in custody, including voluntary engagement in treatment, adherence to prescribed medication, and participation in programming can provide meaningful evidence of stability that should be considered in assessing future risk. SB 1221 restricts that consideration.

The bill also creates ambiguity regarding the relevant timeframe for evaluating a person's potential for nonviolence outside of a custodial setting. This lack of clarity raises significant due process concerns. Civil detention cannot be predicated on speculative future conditions, yet the bill appears to move in that direction. In doing so, it departs from long-standing constitutional limitations and risks sweeping individuals into involuntary treatment based on conjecture rather than demonstrated need.

Additionally, SB 1221 authorizes the District Attorney to access and review all conservatorship investigation materials, including highly sensitive medical and psychiatric information, without meaningful safeguards. The bill does not clearly limit how this information may be used or prohibit its use in subsequent criminal proceedings. The predictable result is a chilling effect where defense counsel will be compelled to advise clients against participating fully in evaluations if their statements may later be accessed by prosecutors. This undermines the purpose of the evaluation in the first place.

The bill further authorizes the District Attorney to participate in conservatorship hearings in certain cases, to receive investigative reports, and to challenge the recommendations of the Public Conservator. Injecting a prosecutorial agency into these civil proceedings, particularly where County Counsel already represents the Public Guardian, blurs the distinction between civil and criminal systems. If a county determines that the District Attorney should play a role in these matters, existing law already provides that flexibility. SB 1221 unnecessarily upends this locally controlled framework and imposes a one-size-fits-all approach that may not reflect the needs or values of individual counties.

Finally, the bill requires the Department of State Hospitals to prioritize placement of individuals deemed gravely disabled due to incompetency and related criminal charges over all others. This reprioritization removes the Department's discretion to manage its waitlist, promote equitable access, and prioritize individuals based on clinical need, potentially shifting scarce resources away from those most in need.

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