

Conservatorships, Mandated Treatment, Institutes of Mental Disease (IMD) and Incompetent to Stand Trial (IST)

Behavioral Wellness Commission April 23rd, 2019
By Sharon Byrne, Chair

Conservatorships

LPS (Lanterman-Petris-Short) Conservatorships – candidate must be considered 'severely and gravely disabled' by mental disease. A public guardian is appointed by the court as part of the conservatorship process.

County-Unique?: In Santa Barbara county, it seems to be easier to get a decision to conserve someone than in other counties. *This needs verification.*

Supervisor Williams expressed concern in a budget hearing that we conserve people at a high rate in Santa Barbara county, and the costs are escalating. The volume of conservatorships has increased over the past 5 years.

Yet there is feeling among some in the community that we don't conserve enough people, or quickly enough, that loved ones need to be forced into treatment, and the path to do so is too long.

To get someone committed, for example, you have to indicate the person is capable of harming themselves or others.

Part of the problem here is there is no bright-line standard for who should be conserved. Gravely and severely disabled is subjective criteria, and there's no bright-line standard. Trying to fully diagnose somebody is a labor-intensive process on the part of the county and family. Sharper language in the requirements, more engagement with the family, particularly if the family.

Part of this comes from the ambiguity of how the process works within Be Well and the Public Guardian (flow chart this and use gating process to show the problem of getting through) and those who are conserved are on the county's nickel.

Proposed Legislation:

SB640, presently in committee, sponsored by Senator Moorlach from Ventura, seeks to clarify the definition of severely and gravely disabled. As of April 10th, read in hearing for testimony only. Key text from leginfo.legislature.ca.gov:

This bill would change the definition of "gravely disabled" for these purposes to read, in part, a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about, or providing for, the person's own basic personal needs for food, clothing, ~~shelter, or medical care or~~ *shelter* without significant supervision and assistance from another person and, as a result of being incapable of making these informed decisions, the person is at risk of substantial bodily harm, dangerous worsening of a concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of the person's essential needs that could result in bodily harm. *The bill would authorize this condition to be demonstrated by the person's treatment history and recent*

acts or omissions. By increasing the level of service required of county mental health departments, this bill would impose a state-mandated local program.

Institutes for Mental Disease (IMD's)

IMDs are actually the key reason this topic was agendaized for the Behavioral Wellness Commission. When conserved, the intention is for the patient to go into an Institute of Mental Disease (IMD). These are locked-down facilities.

It was our understanding that all IMD placements are contracted out. No such facilities exist in Santa Barbara County. They are private, for-profit facilities, and with increasing demand for conservatorships and placement, they are increasing their cost.

IMD placements cost between \$225 / day and \$1000 / day.

These costs are **not reimbursable** by MediCal. That means they are paid out of the county's general fund contribution to Behavioral Wellness' annual budget, currently at \$5 million annually.

Immediate acute crisis care is served by a stay in the county's Psychiatric Health Facility (PHF), which costs \$2,250 per day for acute care. When the patient is at a less high need of care, it transfers them to a lower billing rate of \$1,500 per day. While PHF visits are reimbursable by MediCal, at acute levels of care, the reimbursement rate is 50%. At the (less) administrative level, reimbursement is 0%.

The big gap here for Santa Barbara County is that acute care and IMD placements are highest-cost and lowest reimbursement, at half or none. Attempts at the state level to place caps on IMD costs have failed.

That puts great pressure on the county's general fund contribution, and opens risk to the county from increasing demand and cost, with no ceiling.

Incompetent to Stand Trial / Criminal Justice / 5150, and the intersection with acute needs for mental health care.

Does this tie with the feeling that we are too law-enforcement and incarceration-focused?

Section 5150 of the California Welfare and Institutions Code states that any California peace officer can insist on the confinement of a person who is exhibiting "probable cause" to make him or her believe that the behavior called to their attention is the "result of a mental disorder, a danger to others, or to himself or herself, or gravely disabled."

There are three conditions that can make someone eligible for a 5150 hold. However, only one condition needs to be met to involuntarily hold someone. Such conditions must be present in the context of a mental illness. The three conditions are:

1. If the person is a danger to him/herself: For example, someone who is suicidal and/or has a plan to do harm him/her self falls into this category.

2. If the person is a danger to others: Someone who is a threat to the safety of others.
3. If the person is gravely disabled:
 1. Adults – The person’s mental illness prevents him/her from being able to provide for shelter, clothing and/or food, and they have no one to assist. The homeless may not necessarily be eligible if they are able to seek housing when weather demands. Such inabilities must stem from the psychiatric condition.
 2. Minors (Under 18)- The person is unable to provide for his/her food, clothing and/or shelter even if they are being provided. An example of this may be someone not eating because they believe they are trying to be poisoned.

Santa Barbara County is the only county in California where enforcement officers are not allowed to write 5150 holds, where an individual exhibiting grave mental health distress could be placed in hospital for observation for up to 72 hours and possibly begin to access treatment.

This likely leads to a more incarceration rather than treatment-centered methodology in Santa Barbara County when those suffering from mental illness intersect with the criminal justice system.

Incompetent to Stand Trial:

Rod has number of ISTs, moved to DHS, and the performance of WellPath in the jail. We need to get these numbers officially. 20-30 ISTs in jail. 3 are conserved with no place to go.

Under **California** law, a defendant is mentally **incompetent to stand trial** if, as a result of a mental disorder or developmental disability, he cannot: (1) understand the nature of the criminal proceedings; or (2) assist counsel in the conduct of a defense in a rational manner.

There are individuals presently in Santa Barbara County Jail or in the criminal justice system that have been deemed incompetent to stand trial. Some these are destined for state hospitals, particularly Felony-ISTs. If they await transfer to the state mental hospital by staying in the PHF rather than the jail, the Behavioral Wellness Department incurs costs from these cases that are NOT reimbursable except by general fund contributions from the county, or the 1991 Realignment fund contribution, the latter of which has been flat for years. Public guardians are involved in these cases as well, and that cost is also borne by the county.

At our commission meeting, a public defender spoke up that she had a client who’d been waiting for transfer to state hospital for 6-7 months, and had resided at the PHF all that time. The felony IST waiting list is very backlogged, 7-9 months or more. Some ISTs are staying in the jail.

A jail census conducted twice in the past two years found **that more than half** of those in the jail had prior contact with the Behavioral Wellness. This is higher than other counties.

Legislation: Senate Bill 684 passed 2017 requires sheriffs to deliver ISTs to state hospitals for up to 3 years and then returned to court for trial. If still IST, then allows initiation of conservatorship proceedings.

Jail Based Competency Treatment – this was brought up, but I can't remember the context.

Deterrence / Alternative Approaches that show some promise:

1. **Behavioral Wellness building relationships with enforcement departments to leverage the Crisis Stabilization Unit.** Ideally, 911 calls that end up being about a mental health crisis can leverage this facility, located near the jail. Enforcement can check in someone experiencing crisis, rather than booking them in the jail. Procedures need to be followed, such as ensuring the patient has no weapons or illegal substances on their person. Once checked in, Be Well staff can work with the patient for up to 23 hours to get them stabilized. This facility's location near the jail also makes it ideal for late-night release of inmates who might still need treatment. There are clothes available, a bed, showers, food, and intake services for those needing them. CSU staff also are able to work in the PHF in case a patient needs more acute crisis treatment.
2. **Stepping Up Initiative** – this approach identifies points where mental illness and criminal justice intersection could happen earlier in the process. That would lead to greater odds of connecting someone to care rather than jail.
3. **Co-Response between Behavioral Wellness and Law Enforcement:** in pilot program with SBSO, Be Well personnel arrive on scene for 911 calls suspected to be mental-health related.

Questions for Follow-Up:

1. Understanding difference between the \$2250/ Day PHF stay vs a \$1500 / month residency at Pescadero Lofts with services daily. There could be an awareness campaign around this, perhaps as part of the ballot initiative.
2. Why does state MediCal not fund IMD's and ISTs in hospital? That leads to a never-ending cost spiral for a county's general fund.
3. Explore why IMD / conservative population keeps growing? Is there something unique in Santa Barbara county? Is there a role for the Commission to play in creating community awareness?