



# SB 43 Implementation

## Will History Repeat Itself?

By Aaron J. Byzak

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We may look back and say that SB 43 was one of the most consequential pieces of behavioral health legislation in decades. The question is whether or not those consequences will be positive or negative.

First, a little background. For 50 years in California, the [Lanterman-Petris-Short \(LPS\) Act](#) has established a narrow criterion under which a person can be held against their will for behavioral health treatment. For half a century, a person needed to be determined to be a danger to themselves, others, or gravely disabled to be placed on what is often referred to as a 5150, an involuntary hold by law enforcement and mental health providers. The criteria were relatively limited.

After experiencing a rapid rise in homelessness, which is dramatically impacted by mental health and severe substance use disorders, in 2023, the [California legislature passed SB 43](#), a law that expands the definition of what qualifies as “gravely disabled” under LPS to include individuals suffering from severe substance use disorder, or co-occurring mental health disorder and severe substance use disorder, and who are unable to access necessary medical care or provide for their personal safety.

Now, law enforcement, public health, social service, and healthcare providers are [working together](#) to figure out how to implement these new rules when they [go into effect](#) in San Diego County on January 1, 2025.

The purpose of this article is to document my thoughts (and concerns) relative to this pending implementation.

Let me begin by recognizing that the passage of SB 43 is, in my opinion, a tacit admission by the California Legislature that they, and multiple generations of legislatures before them, have failed to effectively address the issues of homelessness, mental illness, and severe substance use disorder in our population.

In fact, one could argue that their efforts over time have actually made the situation worse. How so?

When families and friends come together to address a loved one’s addiction, intervention specialists often recommend setting clear boundaries and expectations – and strong consequences for failure to get clean. Addicts need a rock bottom. These consequences often include cutting of ties, no longer supporting them financially, and more. As my wife astutely observes, our government has stepped into the role as head of a dysfunctional family but is not willing to hold its addicted family members to account for their behavior. Instead of setting clear standards of acceptable behavior, the government and many of their nonprofit partners now actually facilitate the addiction through so-called “harm reduction” efforts that include [free drug paraphernalia](#) including meth pipes, needles, and more. The government has become the great enabler who then acts surprised when those behaviors lead the afflicted to an early grave.

As a further example, in 2016, the [California Legislature adopted Housing First](#) as a funding methodology for homelessness services, which prohibits housing providers who receive government funding from requiring sobriety for accessing services. They refer to shelters that require sobriety as “high barrier” shelters – or as one of my colleagues who runs a successful non-Housing First shelter calls it, “high expectations.” Much has been made about whether or not Housing First works, including arguments made [for](#) and [against](#).

In my opinion, Housing First has been a disaster, as evidenced in part by the dramatic rise of homelessness in California since its implementation (see [chart](#) below). In addition to the mistake of setting low standards, I believe it is a mistake to choose a one-size-fits-all funding methodology for an issue (homelessness) that has a variety of root causes.

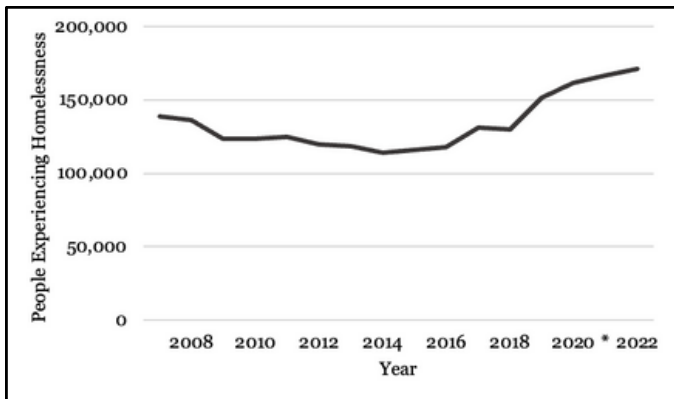


Chart: Turner Center for Housing Innovation | UC Berkeley (2023)

The legislature via policy, and the electorate via statewide initiatives such as [Prop 47](#), have also loosened laws regarding many activities that were previously illegal, ranging from drug possession and sales to a wide array of other criminal behaviors. [District Attorneys have also been elected](#) throughout the state who see criminals as victims and refuse to send them to prison for their crimes.

The legislature has also passed a variety of highly restrictive policies impacting land use, water use, utilities, and more that have reduced the availability (or supply) of housing, thereby driving up the cost, which makes it less likely for anyone to be able to afford to live here – especially those living on the margins of society. Additionally, court decisions, such as [Martin v. City of Boise](#), have made it nearly impossible for law enforcement to enforce camping bans on public property, although relief may come from the [United States Supreme Court](#) this year.

As the combined result of these policy, practice, and court decisions, we have witnessed an explosion of homelessness, the emergence of open-air drug markets in major cities, massive overdose death increases, rampant crime and criminality, and more. The poor (and too often, even the wealthy) have minimal access to mental health services outside of hospital emergency departments, and thousands of people are essentially left to languish on the streets with little hope for a positive future. The system is broken.

I know it well because my sister is one of the people who the system has failed. My sister, who is now 49 years old, has for years suffered from co-occurring mental health and severe substance abuse disorder and was homeless on the streets of San Diego for more than a decade. She would frequently be brought in by law enforcement on a 5150 for mental health issues and released a short time later after being fed a sandwich and given some medications. As a drug addict, often her erratic behavior was

chalked up to her substance use, and she was allowed to sit in the emergency room and detox, released as soon as she started behaving somewhat normally. Rarely was she given access to long-term or definitive services, and even if she was, she would often refuse it. She, like many others in her situation, is not a willing participant. Many don't want treatment or even believe they need it. Many don't want to follow society's rules and prefer to live on the margins where they can get high and not have to work. As a family member, it is profoundly frustrating to watch.

Here I am, someone with more than 30 years of experience in healthcare emergency services, policy, and health system operations, who is well-versed in the system and highly connected to people in positions of power and influence within policy, social services, and the healthcare space, and I couldn't help my sister navigate it. No matter what I did, it was like putting a bandaid on a gaping wound.

I convey this to say that part of me looks at SB 43 with hope, thinking, wow, if only we had SB 43 years ago, perhaps we wouldn't be where we are now. Perhaps, just maybe, this is what we need.

However, the experienced, cynical part of me knows better. Here are some concerns I have:

- The legislature is desperate for a solution to issues that are increasingly a source of frustration for the electorate (homelessness, mental illness, drug addiction). But rather than reassessing their prior policy decisions and reversing course, they have chosen to double down on arguably one of the most broken areas of our behavioral health system (episodic emergency care).
- The health system is not prepared for even a small influx of newly qualified 5150 holds. LPS-designated hospital emergency rooms don't have the staff, space, or expertise to accommodate the needs of those suffering from severe substance use disorder or co-occurring mental health and severe substance use disorders. Not only do the hospitals not have those capabilities now, but there's also little likelihood that such capabilities will be available in the near future. Much has been made about the [overwhelming need for behavioral health providers](#) throughout the state (and country), and while some effort has been put into remedying this situation, those efforts will likely fall far short of demand for services.

- Even if they did have the needed number of appropriately trained staff members to handle an influx, reimbursement policy and practices don't reimburse at a level that makes the services sustainable, especially in a state where the legislature seemingly does everything in their power to drive up the cost of labor to keep pace with the cost of living they also drove up with their policies. When labor and operating costs rise, but reimbursement stays stagnant (or drops in relative terms), the growing delta between cost and reimbursement builds in a deficit that puts other critical healthcare services at risk.
- The model we're using is fundamentally flawed. The County of San Diego's Board of Supervisors and Behavioral Health Services leaders have rightly recognized that the current system, which relies too heavily on episodic, emergency stabilization services rather than prevention, early intervention, and long-term care, is broken. Yet, SB 43 will rely on the exact same failed approach but for those suffering from severe substance use disorder. Is the broken system likely to work better after adding additional consumer demand into that broken system, or will it further erode outcomes? I think the likely outcome is clear.
- There are deep concerns about the potential impact of such legislation on the civil rights of those it impacts. What is the balance that must be struck between the needs of society and the rights of individuals? This concern has been fundamental to opposition to LPS criteria expansion over the years, and those concerns are likely going to play out over time.
- Is there a built-in political incentive for politicians, particularly at the local level, to pressure law enforcement to use the expanded definition of gravely disabled to take more people off the street with the goal of giving the appearance of cleaned-up streets in advance of elections or other major events? (This happened in San Francisco recently when the streets were miraculously cleaned up to impress world leaders, including Chinese dictator Xi Jinping, ahead of the Asia-Pacific Economic Cooperation Leaders' (APEC) Summit in 2023.)
- Do law enforcement officers have the requisite training or comfort in determining who is exhibiting signs of severe substance use disorder, and how is that term even defined for their purposes?

I'm sure there are other concerns that I have left out



or not effectively enumerated here. My apologies for any oversight.

## LOOKING FORWARD

We now have less than six months to figure this out. While many advocates have expressed hope that SB 43 will remedy many of the challenges our system has faced over time, from what I've seen and heard thus far, my confidence is not high. And if there's one thing I've learned over more than 30 years in healthcare and 20 years in health policy, betting on the failure of government policy to live up to its promises is a safe one to make.

It has been said that the best predictor of future behavior is past behavior. Without a fundamental philosophical shift in our approach to policy, I fear that we will simply repeat the mistakes of the past.

I wouldn't be surprised if we find ourselves in several years looking back on SB 43 not with a keen understanding of root causes for its failure, but rather seeking to put yet another bandaid on an even bigger gaping wound.

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