

Conservatorship

Inside California's
System of Coercion
and Care for
Mental Illness



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Palos Verdes
Democrats

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TWO VISIONS OF CONSERVATORSHIP

- Conservatorship as overused, abusive, and paternalistic
- Conservatorship as a difficult-to-access, lifesaving intervention



Abdicated Authority: Failure of government leadership, oversight, and coordination that creates both 1) frequent, ineffective coercive interventions and 2) abandonment, abuse, and death among most vulnerable.

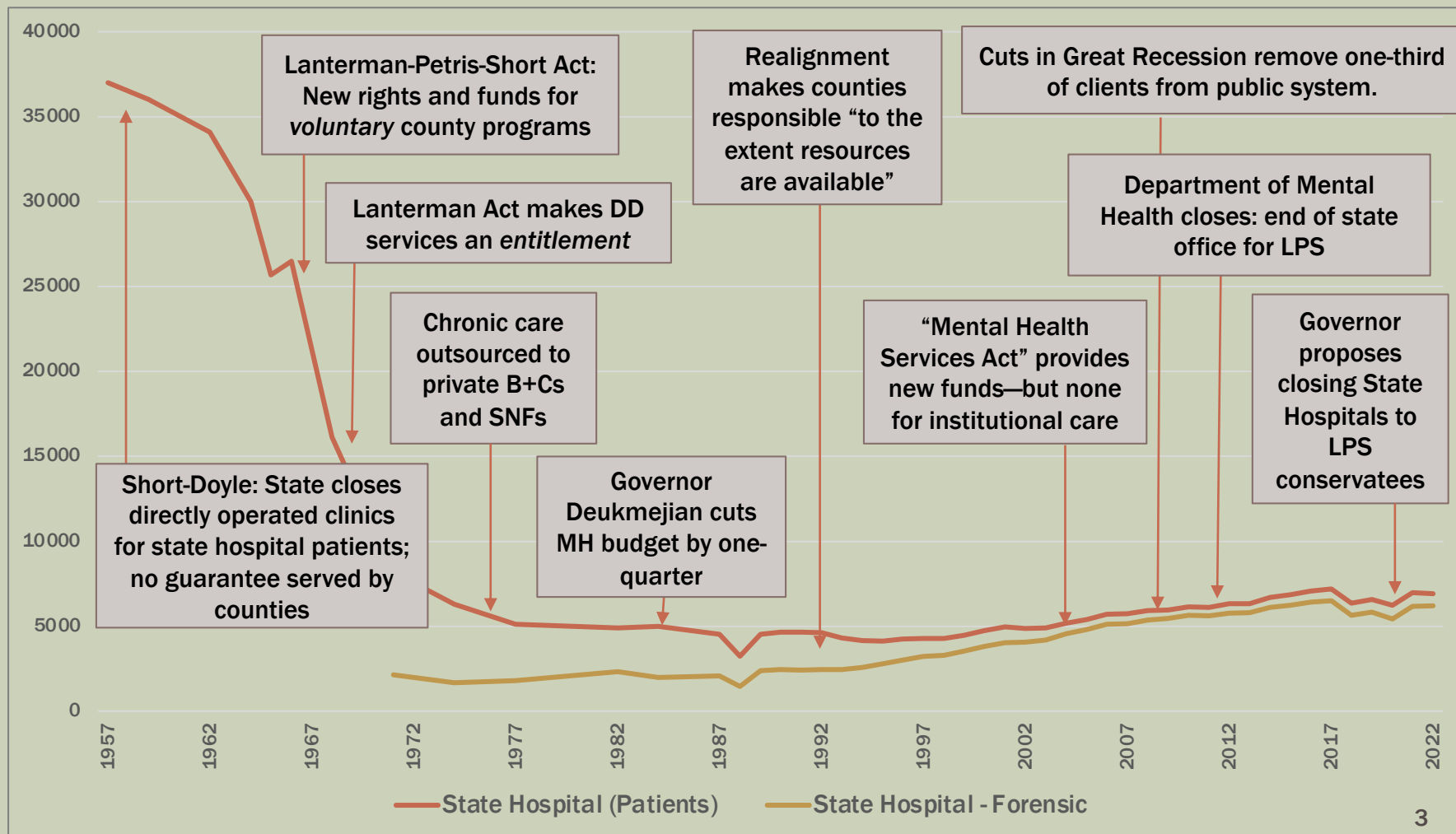
GOALS OF MY TALK

- How did we get here?
 - State's "Abdication of Authority"
 - De-institutionalization's "Second Wave"
 - A crisis of homeless scale, visibility, and acuity

- How does the involuntary treatment system work?
 - Importance of *delegation* and *discretion*
 - Result: frequent, ineffective short-term coercion

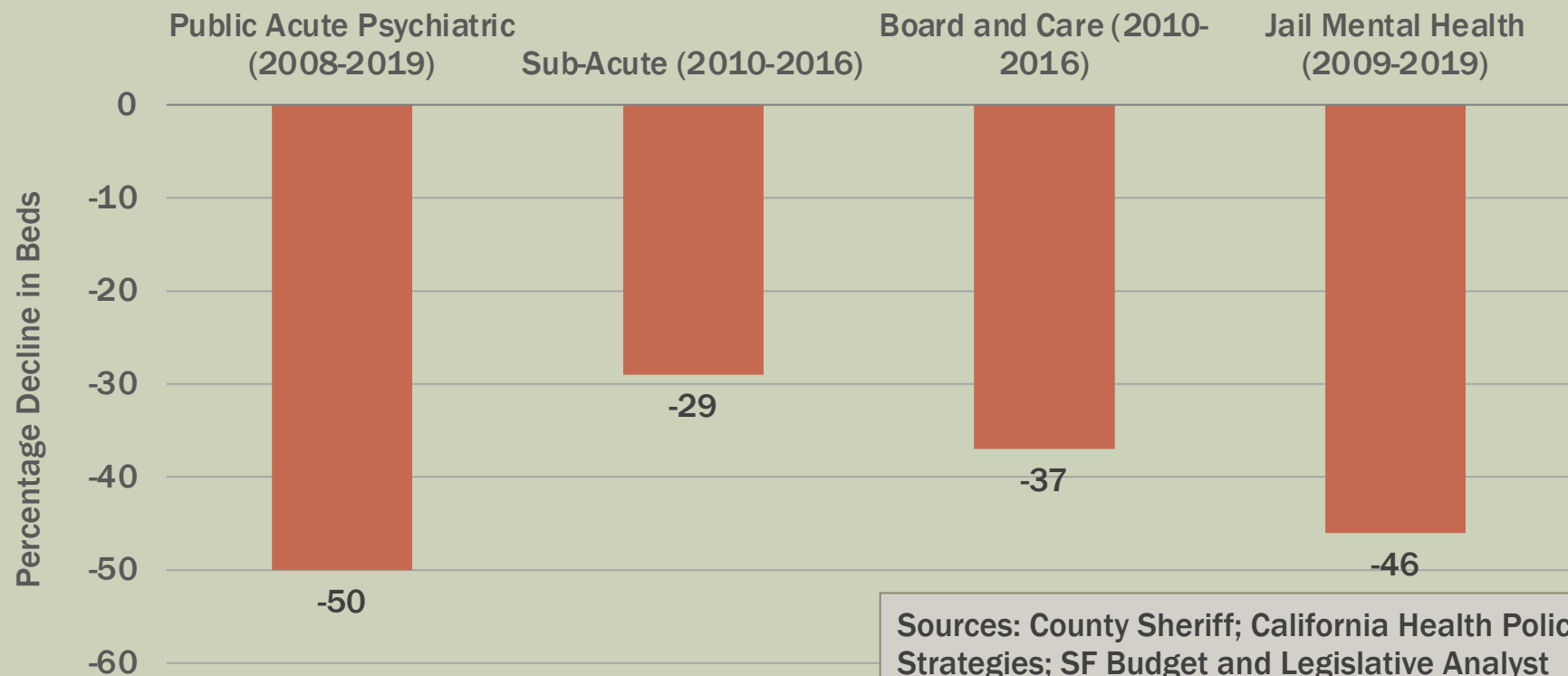
- What can we do?
 - The current moment: concern about "Dying on the Streets"
 - The current route: change "grave disability"
 - The missing pieces of reform

A HISTORY OF “ABDICATING AUTHORITY”



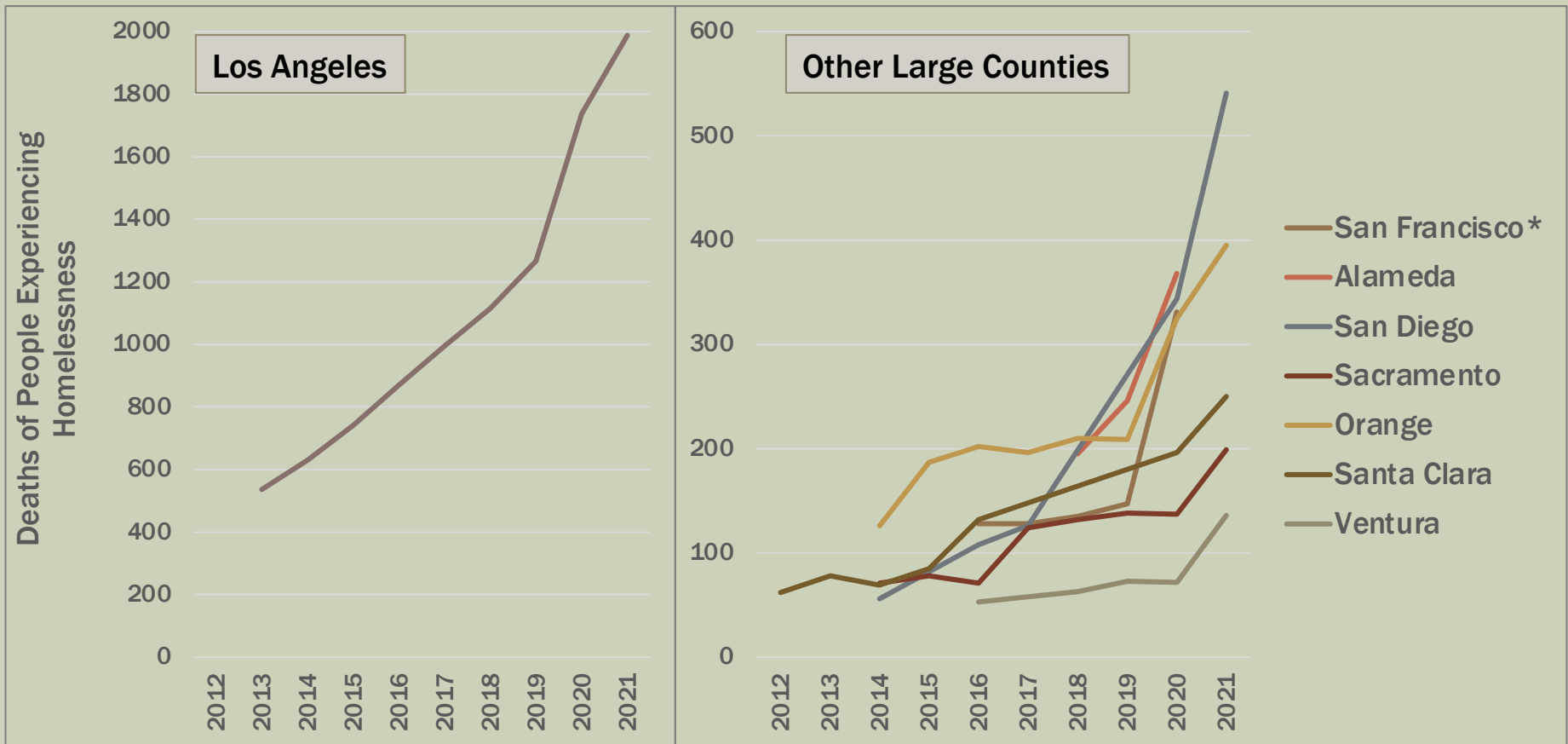
DE-INSTITUTIONALIZATION'S SECOND WAVE

■ Decline in Bed Counts in San Francisco:



HOMELESSNESS: SCALE, VISIBILITY, AND ACUITY

■ Deaths of People Experiencing Homelessness, 2012-Present



Sources: County Coroners / Medical Examiners

THE LPS CONSERVATORSHIP PROCESS

Key legal criteria: Danger to Self, Danger to Others, or Grave Disability

Key legal criteria: “Grave Disability”: Inability to meet basic need for food, clothing, and shelter as a result of a mental disorder.

Emergency hold

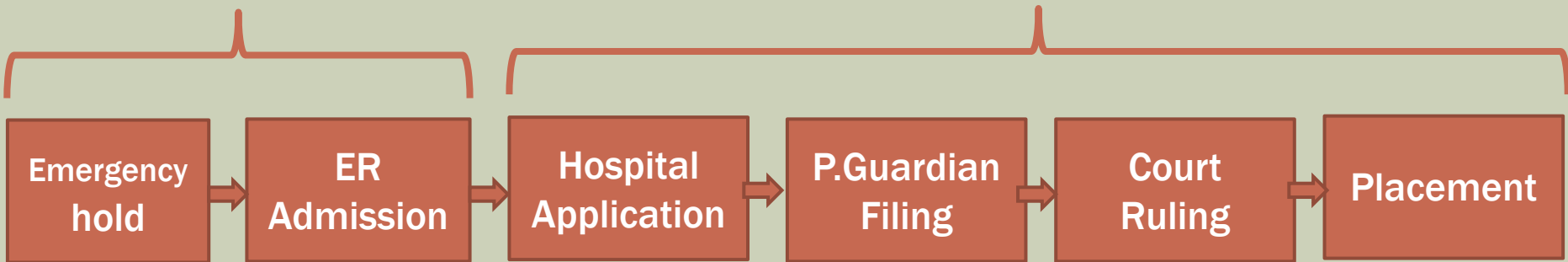
ER Admission

Hospital Application

P.Guardian Filing

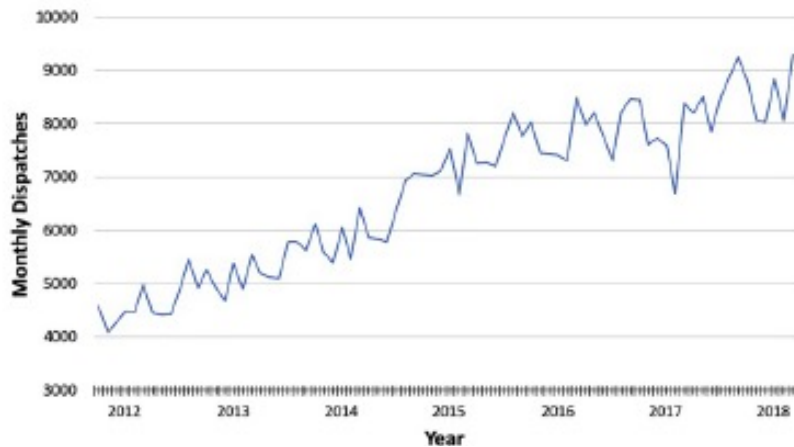
Court Ruling

Placement



HOLDS: DISCRETION FOR DISRUPTION

- “Crisis on the Streets”: Frequent 5150s as population management



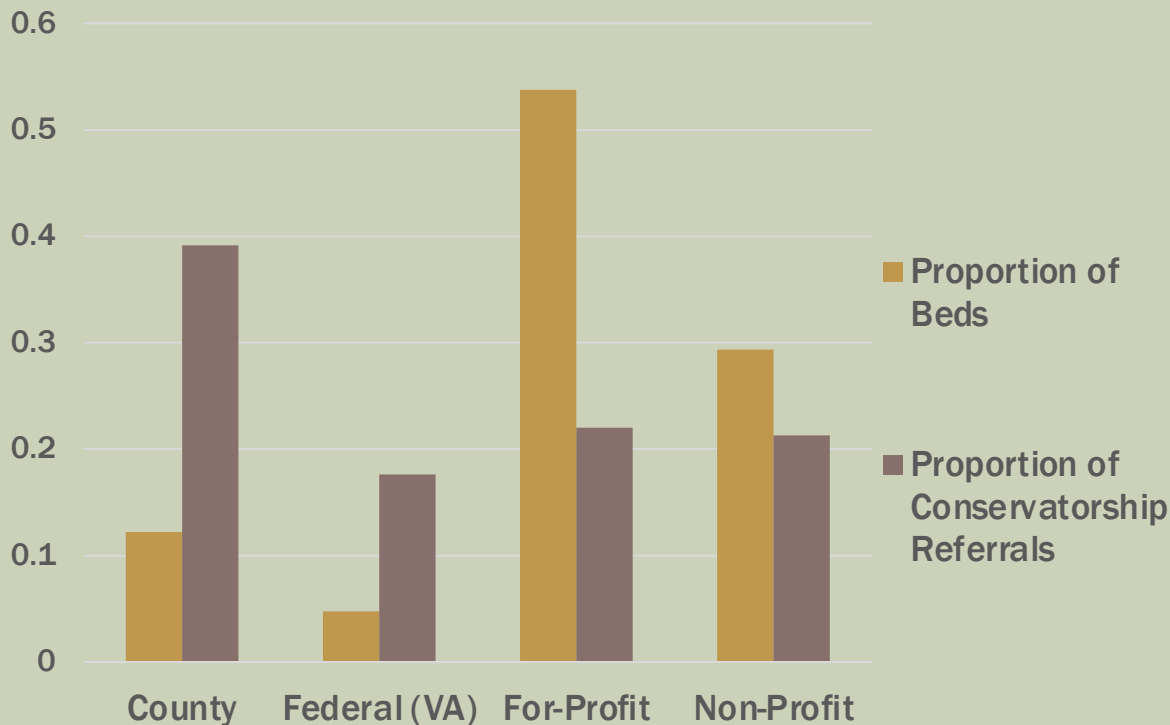
SF PD Dispatches for “Homeless Complaints” (Source: Herring 2019)

“Police see people who are high, and a 5150 is an easy way to get them off the street. The ER won’t admit them, and they come back. The system is kind of functionally-dysfunctioning.”
– County MH Director

- “Decompensating at home”: Resistance to 5150s without repeated, persistent demands from private actors.
- “Dying on the Streets”: Police reluctant to 5150 because they believe (correctly) it is futile.

HOSPITALS: FINANCIAL DISINCENTIVES

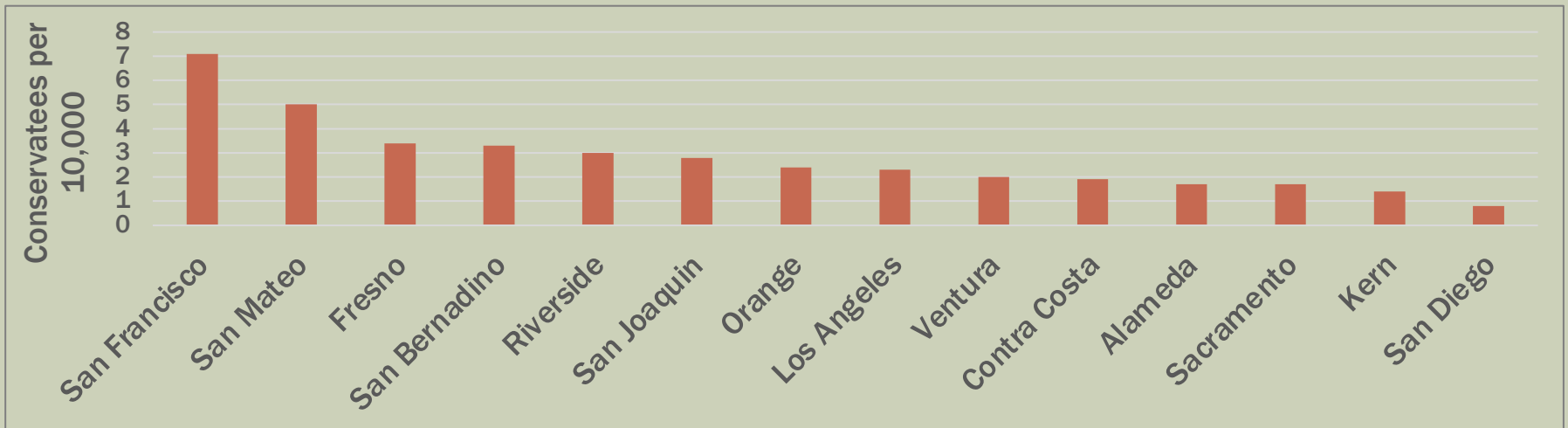
Referrals by Hospital Type (LA County)



“Before you even start the [conservatorship] process, you have to present the case to the conservatorship committee, and they make the decision...with the knowledge that they’ll sit in a bed for however many months, and not allow the hospital to make money on that bed. So they just deny everything...People know that it’s not part of the solution, you have to discharge” – Psychiatry Resident

PUBLIC GUARDIANS: RESOURCE-CONSTRAINTS

- Conservatorship caseloads vary with resources, not need:



- Investigations focused on identifying ‘survival plans’:

“We’ve had clients who are homeless by choice...You or I may not feel that’s good for them, medical health wise or mental health wise, but it’s their choice, and if they can articulate that, ‘I go to the soup kitchen, I go to Goodwill, I have Social Security, and I use that income to buy those clothes, and I have a sleeping bag, that’s what I want,’ well, the doctor may not feel that’s appropriate, but if they’re able to articulate that...we may reject that referral” – Public Guardian

COURTS: EVALUATING ‘SURVIVAL PLANS’

- Court hearings center on whether person can present a minimal “survival plan”:

PD: You testified she wouldn’t accept food from the HOT [Outreach] team on the outside?’

Doctor: ‘That’s correct’

PD: But would she accept food from people not from the HOT team?’

* * *

Public Defender: Where would you seek mental health treatment if you were released?’

Patient: ‘I don’t need treatment, I don’t have any mental illness, and so I wouldn’t go.’

* * *

County Counsel: ‘And you weren’t staying in a shelter, were you? You left.’

Patient: ‘No, I wasn’t.

Public Defender: But you were staying in a bus stop?’

Patient: ‘I was close,’

* * *

Judge: Conservatorship is not used to conserve people just because they’re homeless. I am very concerned about the homeless. But I’m not convinced that her inability to be sheltered is based on a grave disability from a mental illness. The petition is denied.

PLACEMENTS: PRIVATE PREROGATIVES



Locked “IMD”



Unlocked “Board and Care”

“We tried to get a contract with [IMD]—it has a real recovery model, they care about their clients. We got my boss [head of the county Department of Health and Human Services] to take a tour. But we didn’t get it, because we don’t pay as much as other counties. We lost six beds in the last year, and it was very clear that it was because [large county] paid more...We are completely at the mercy of the operators” – Public Guardian

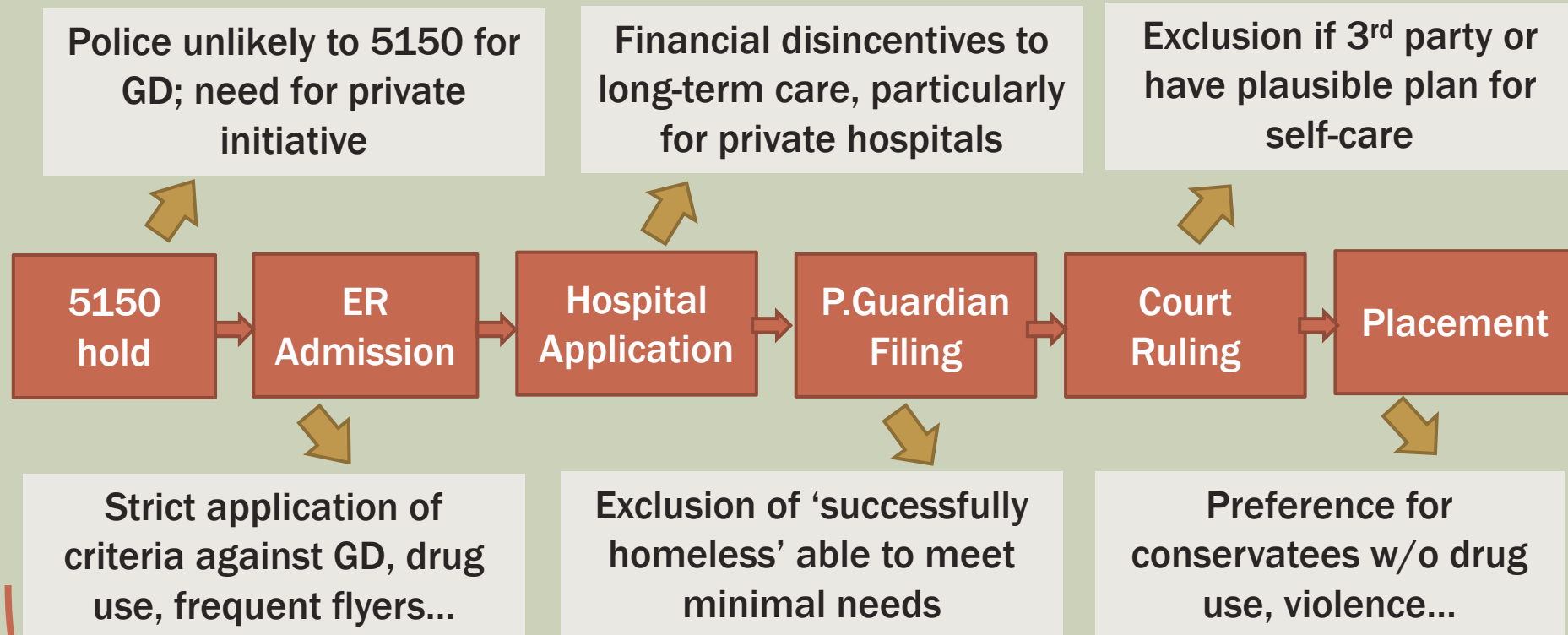
PLACEMENTS: MONOPOLY POWER



- 2/3rds of locked beds controlled by two companies.
 - “Blacklisting” makes some conservatees impossible to place.

“There’s a risk of hav[ing] private companies like Crestwood and Telecare monopolizing this whole thing...The private organizations get to decide who they’ll take, and, ‘Nope, we’re not taking you [her son], you don’t look good on paper’” – Family Member

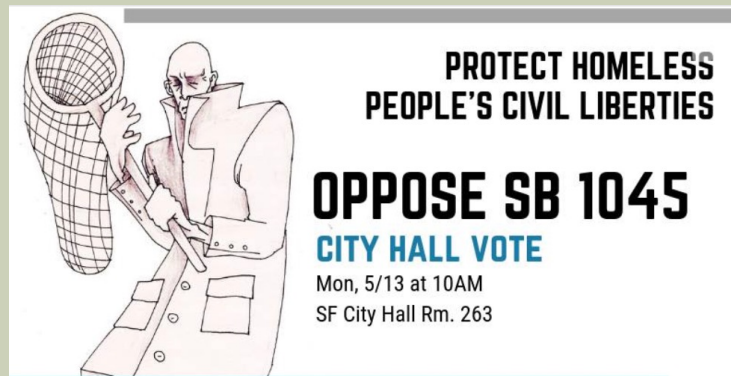
SUMMARY: ABDICATED AUTHORITY IN THE CONTINUUM



Abdicated Authority: No actor has information, resources, or coordinating capacity to mobilize everyone in the continuum.

SB 1045 – A CAUTIONARY TALE


- Extremely contentious legislation to create a new pathway onto conservatorship for people with MI/SUD and 8+ 5150s.







- Three years, hundreds of thousands of dollars later:

BAY AREA

S.F. planned to compel more people into drug and mental health treatment. So far, only two have been helped

 **J.D. Morris**
Feb. 5, 2022 | Updated: Feb. 5, 2022 12:57 p.m.

- SF lacked the authority to make key institutions (hospitals, ERs) participate in the pilot, and they didn't.

CARE COURTS: A THIRD WAY?



■ Reclaiming authority?

- "Double accountability": court mandates county to provide services.
- Ensures persistent outreach over period of court order.

■ Still-absent authority?

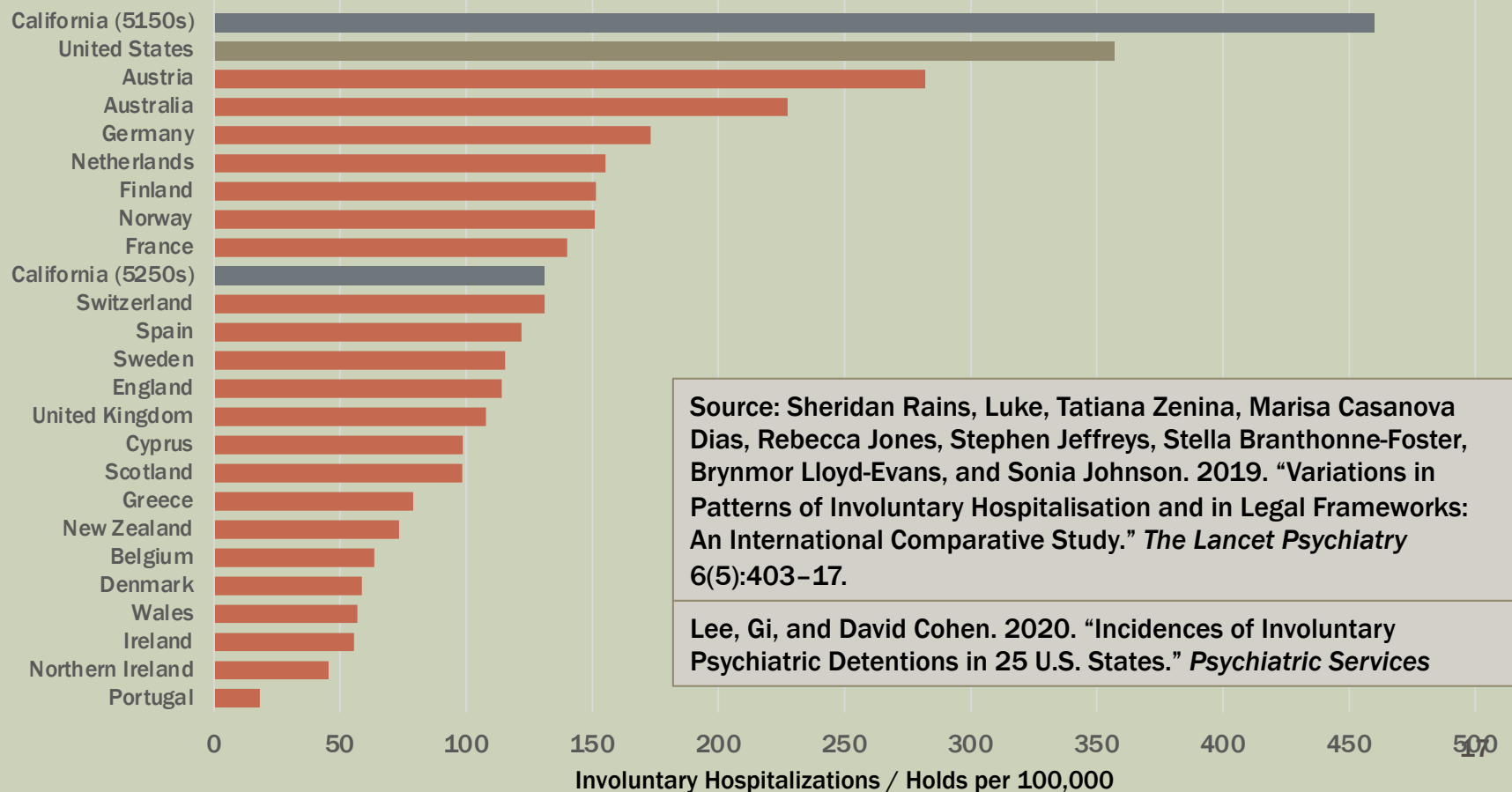
- No funding for PGs, who are supposed to receive people who 'fail' CARE Court
- No guaranteed housing
- Extremely complex to access 15

SB 43: REWRITING GRAVE DISABILITY

- (i) A condition in which a person, as a result of a mental health disorder **or a substance use disorder**...is at substantial risk of serious harm or is currently experiencing serious harm to their **physical or mental health**.
 - (ii) “Serious harm” means significant **deterioration, debilitation, or illness** due to the person’s failure to meet one or more of the following conditions:
 - (I) Satisfy the need for nourishment.
 - (II) **Attend to necessary personal or medical care.**
 - (III) Utilize adequate shelter.
 - (IV) Be appropriately or adequately clothed.
 - (V) **Attend to self-protection or personal safety.**
 - (iii) A substantial risk of serious harm to the physical or mental health of the person may be evidenced by the fact that they previously suffered serious harm to their physical or mental health in the historical course of their mental health disorder or substance use disorder, their condition is again deteriorating, they are **unable to understand their disorder, and their decision-making is impaired due to their lack of insight** into their disorder.
- Rewriting the *law* does not automatically change practices:
 - In practice, “grave disability” changes to match available resources.
 - Clinicians have preferences and prejudices around who to treat (e.g. substance users).
 - Absent state regulation, counties will decide how to interpret and implement (or not).

CONCLUSION: KEY FINDING

- California’s mental health system does not have a lack of coercion, but a lack of authority over the use of that coercion.



Source: Sheridan Rains, Luke, Tatiana Zenina, Marisa Casanova Dias, Rebecca Jones, Stephen Jeffreys, Stella Branthonne-Foster, Brynmor Lloyd-Evans, and Sonia Johnson. 2019. “Variations in Patterns of Involuntary Hospitalisation and in Legal Frameworks: An International Comparative Study.” *The Lancet Psychiatry* 6(5):403–17.

Lee, Gi, and David Cohen. 2020. “Incidences of Involuntary Psychiatric Detentions in 25 U.S. States.” *Psychiatric Services*

CONCLUSION: PRINCIPLES FOR REFORM

1. The state should create an **entitlement guarantee** so that people will only be conserved when they've been offered a full suite of high-quality alternatives.
2. Mental health services need to focus on meeting **social as well as medical needs**, with persistent outreach.
3. The state should have **dedicated leadership** for LPS conservatorship system, promoting best practices, setting objectives, collecting data...
4. The state needs to **regulate a contracting system** that is complicated, unfair, and inefficient for counties, providers, and service users. There is a need for **truly public facilities**.
5. The housing system should be a **full continuum** rather than "one-size-fits-all" (e.g. only independent housing or only hospitals).

THANK YOU!!!

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**If you have comments,
please reach out.**

Please consider ordering my book *directly from Columbia University Press* starting in August.

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