

Date of Hearing: May 18, 2020

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 2015 (Eggman) – As Amended March 10, 2020

SUBJECT: Certification for intensive treatment: review hearing.

SUMMARY: Authorizes the evidence presented in support of certification of an individual for involuntary detention by determination as a danger to themselves or others or gravely disabled, under what is known as a 5250 hold, for no more than 14 days of intensive treatment related to mental health disorders or impairment by chronic alcoholism, to include information regarding the person's medical condition and how that condition bears on the certification of the person as either a danger to themselves or others or gravely disabled. Requires the hearing officer to consider the information in the determination of probable cause for certification.

EXISTING LAW:

- 1) Establishes the Lanterman-Petri-Short Act (LPS) 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. (See Background section for a more comprehensive description of the LPS process.)
- 2) Defines "gravely disabled" as a condition in which a person, as a result of a mental disorder or impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, or shelter, or a condition in which a person has been found mentally incompetent, as specified.
- 3) Defines "a danger to himself or herself or others, or gravely disabled" to also refer to the condition of being a danger to self or others, or gravely disabled, as a result of the use of controlled substances rather than by mental disorder.
- 4) Provides that if a person is gravely disabled as a result of mental illness, or a danger to self or others, then a peace officer, staff of a designed treatment facility or crisis team, or other professional person designated by the county, may, upon probable cause, place that person into custody for a period of up to 72 hours for assessment, evaluation, crisis intervention or placement in a designated treatment facility.
- 5) Allows a person who has been detained for 72 hours to be detained for up to an additional 14 days of intensive treatment if the person continues to pose a danger to self or others, or is gravely disabled, and the person has been unwilling or unable to accept voluntary treatment. Allows a person who has been detained for 14 days of intensive treatment to be detained for up to 30 additional days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment.
- 6) Allows the professional person in charge of a facility providing 72-hour, 14-day, or 30-day treatment to recommend an LPS conservatorship to the county conservatorship investigator for a person who is gravely disabled and is unwilling or unable to voluntarily accept treatment, and requires the conservatorship investigator, if the investigator concurs with the

recommendation, to petition the superior court to establish an LPS conservatorship. Grants to the person for whom the LPS conservatorship is sought the right to demand a court or jury trial on the issue of whether they are gravely disabled.

- 7) Allows, under the LPS Act, a court to order an imminently dangerous person to be confined for further inpatient intensive health treatment for an additional 180 days, as provided.
- 8) Deems a person not gravely disabled, for purposes of an involuntary hold for up to an additional 14-day intensive treatment and appointment of a conservator, if the person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide the person's basic personal needs for food, clothing, or shelter.
- 9) Requires that a conservator under an LPS conservatorship place the conservatee in the least restrictive alternative placement, as provided. Gives the LPS conservator the right, if specified in the court order, to require the conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatees being gravely disabled.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

1) **PURPOSE OF THIS BILL.** According to the author, psychiatrists identified that they often felt they had to release patients that no longer met the current criteria for a hold although the patient was so disabled by a severe mental illness that they lacked the capacity to manage their health issues and to seek sufficient medical care. The failure in the law to specifically address this means patients suffering from a debilitating mental illness miss the opportunity to receive adequate and extended medical care while receiving treatment for their mental health condition. Unfortunately, those experiencing severe mental illness in our communities cycle through a revolving door of crisis intervention, stabilization, incarceration or hospitalization, and release. A shortage of services has resulted in a rise of more mentally ill persons in jails than hospitals or parked in emergency rooms awaiting an available bed. County jails and emergency rooms are not equipped with the proper resources nor were they designed to evaluate and treat the mentally ill. Short-term involuntary treatment is available only to stabilize the individual and often does not provide an ample amount of time for a patient to get treatment. There is no question that we must do more to invest in community recourses and provide early intervention. This bill seeks to support individuals that face serious health risks by ensuring that they have the opportunity and resources to manage medical issues that are or can become complicated and acute without medical treatment.

2) **BACKGROUND.**

a) **LPS Act.** The LPS Act was signed into law in 1967 and provides for involuntary commitment for varying lengths of time for the purpose of treatment and evaluation, provided certain requirements are met. Additionally, the LPS Act provides for LPS conservatorships, resulting in involuntary commitment for the purposes of treatment if an individual is found to meet the criteria of being a danger to themselves or others or is gravely disabled as defined. The LPS Act provides for a conservator of the person, of the

estate, or of both the person and the estate for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism or use of controlled substances. The person for whom such a conservatorship is sought has the right to demand a court or jury trial on the issue of whether they meet the gravely disabled requirement. The purpose of an LPS conservatorship is to provide individualized treatment, supervision, and placement for the gravely disabled person. Current law also deems a person as not being gravely disabled for purposes of a conservatorship if they can survive safely without involuntary detention with the help of responsible family, friends, or others who indicate they are both willing and able to help. The LPS Act, along with the court ordered outpatient services available through Laura's Law provides a robust system for mandating intensive inpatient and outpatient care, along with general oversight, for those who may not be able to care for themselves.

- i) **5150's.** Typically one first interacts with the LPS Act through what is known as a 5150 hold, which allows a peace officer or other authorized individual as specified to commit a person for an involuntary detention of up to 72 hours for evaluation and treatment if they are determined to be, as a result of a mental health disorder, a threat to self or others, or gravely disabled. The peace officer or other authorized individual who initially detains the individual must determine and document that the individual meets this standard. When making the determination, the peace officer or other authorized person may consider the individual's historical course, which includes evidence presented by a person who has provided or is providing mental health or related support services to the person on the 5150 hold; evidence presented by one or more members of the family of the person on the 5150 hold; and, evidence presented by the person on the 5150 hold, or anyone designated by that person, if the historical course of the person's mental disorder has a reasonable bearing on making a determination that the person requires a 5150 hold.
- ii) **5250's.** Following the 72-hour hold under a 5150, a person may be certified for intensive treatment, which initially permits a hold for an additional period not to exceed 14-days, without court review, if they are found to still be a danger to self or others, or gravely disabled. When determining whether the person is eligible for a 14-day hold, the professional staff of the agency or facility providing evaluation services must find that the person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis. A notice of certification is required for all persons certified for intensive treatment, and a copy of the notice for certification is required to be personally delivered to the person certified, the person's attorney, or the attorney or advocate, as specified.
- iii) **5270's.** If, after the initial 14 days, a person is still found to remain gravely disabled and unwilling or unable to accept voluntary treatment, the person may be certified for an additional period of not more than 30 days of intensive treatment. A person cannot be found at this point to be gravely disabled if they can survive safely without involuntary detention with the help of responsible family, friends, or others who indicate they are both willing and able to help.
- iv) **5350's.** At the expiration of the 14 days period (or subsequent 30 day period) of intensive treatment, a person may be confined for further treatment under the LPS for an additional period, not to exceed 180 days if one of the following exists:

- (1) They have attempted, inflicted, or made a serious threat of substantial physical harm to either themselves or another after having been taken into custody, and while in custody, and who, as a result of mental disorder, presents a demonstrated danger of inflicting substantial physical harm upon others;
 - (2) They have attempted, or inflicted physical harm to themselves or another that resulted in them being taken into custody, and who presents, as a result of mental disorder, a demonstrated danger of inflicting substantial physical harm upon others; and,
 - (3) They have made a serious threat of substantial physical harm to themselves or another within seven days of being taken into custody, that threat having at least in part resulted in their being taken into custody, and they present, as a result of mental disorder, a demonstrated danger of inflicting substantial harm to others.
- v) **5450's.** Enacted through the passage of AB 1045 (Weiner) Chapter 845, Statutes of 2018 and AB 40 (Weiner), Chapter 467, Statutes of 2019, the counties of San Francisco, San Diego and Los Angeles, with approval from respective county board of supervisors, may establish a five-year pilot program creating a new "housing conservatorship" for individuals who are unable to care for themselves due to serious mental illness and substance use disorder (SUD) and who could not be sufficiently helped under previously existing law. If the board of supervisors of a designated county elects to participate and meets specified criteria for establishing the pilot, a conservator for a person, who is incapable of caring for their own health and well-being due to a serious mental illness and SUD, as evidenced by at least eight detentions in a 12 month period for evaluation and treatment under a 72 involuntary hold (a 5150 hold), may be established, if specified requirements are met.
- b) **Joint Legislative Audit Committee (JLAC).** At its June 26, 2019, hearing, JLAC approved a request by Senator Henry Stern to conduct a comprehensive audit of the LPS Act. Expected to be released in late April 2020, the goal of the audit is to examine application of the LPS Act throughout the state to determine if any updates, clarifications or improvements are needed to ensure the equal application of California's mental health commitment procedures. Because each county has its own administrative infrastructure, budget, and significantly different levels and types of mental health services available, this audit should ultimately result in a better understanding of how California's involuntary patient population is being determined and how they are receiving care.

Under the audit, three counties, including Los Angeles County and two counties chosen by the State Auditor, will be reviewed as follows:

- i) A review and evaluation of the laws, rules, and regulations significant to the audit objectives;
- ii) A review of the statewide oversight of the implementation of the LPS Act;
- iii) Collection of specific LPS data for each of the counties for the most recent three years, including the following:
 - (1) Number of individuals placed under involuntary holds, referral sources for those holds and number of individuals placed under consecutive initial holds;
 - (2) The number of individuals placed under subsequent holds;
 - (3) The number of individuals placed into new and renewed conservatorships;
 - (4) The average length of conservatorships; and,
 - (5) The number of terminated conservatorships and the reasons for the termination;

- iv) An assessment of the counties' implementation of the LPS Act for the last three years and comparison of the counties to one another by reviewing at least the following:
 - (1) The counties' definition of the criteria for involuntary treatment holds (probable cause, mental disorder, and danger to self or others, grave disability) and whether each county has consistently applied its definitions; and,
 - (2) The counties' criteria for placing individuals into conservatorship and making least restrictive environment determinations, and whether the counties have consistently followed those criteria.
 - v) A determination of how the counties fund their implementation of the LPS Act and whether access to funding is a barrier to LPS implementation;
 - vi) An assessment of the availability of treatment resources in each county and to the extent possible determination of whether there are barriers to achieving the intent of the LPS Act; and,
 - vii) A review and assessment of any other issues that are significant to the audit.
- c) **Administration and Legislative Focus on Mental Health.** Governor Newsom's 2020 State of the State address focused almost entirely on how California can better serve its constituents – particularly, the homeless, the mentally ill and those suffering from other behavioral health issues such as substance use abuse. Governor Newsom stated, "Let's call it what it is, a disgrace that the richest state in the richest nation – succeeding across so many sectors is failing to properly house, heal, and humanely treat so many of its own people." As with any complex issue, there is no single solution. A multi-faceted approach to address the systemic problems of homelessness, mental health and SUD must be considered. To that end, there are a number of efforts underway within both the administration and the Legislature.

The Governor's administration is evaluating the Mental Health Services Act (MHSA) and LPS Act, both of which were established decades ago. The Administration is expected to release recommendations for reform or modification of both these landmark programs later this spring, some of which may necessitate ballot initiatives. Additionally, a California Health and Human Services Agency Behavioral Health Task Force has been established for the purpose of addressing the urgent mental health and SUD needs across California. The Task Force will advise the Administration's effort to advance statewide behavioral health services, prevention, and early intervention to stabilize conditions before they become more severe. The Department of Health Care Services through its multi-year initiative, California Advancing and Innovating Medi-Cal (CalAIM), is breaking new ground in efforts to revise the existing Medi-Cal program to improve the quality of life and health outcomes of our population by implementing broad delivery system, program and payment reform. Significant efforts within CalAIM are aimed at behavioral health reform promoting a more patient centric model of care for individuals suffering from mental illness and/or SUDs.

The Legislature is evaluating the effectiveness of the LPS system, through the above referenced JLAC audit. Once the audit is released there are no fewer than a dozen bills poised and ready to serve as vehicles aimed at addressing provisions of the LPS identified in the audit as needing reform. Additionally, several bills have been introduced that seek to broaden the locales and types of mental health services which may be provided under the MHSA beyond that which the original initiative authorized.

- 3) **SUPPORT.** The California Psychiatric Association (CPA), sponsor of this bill, states that when an individual with a mental disorder lacks the capacity to provide for their basic human needs of food, clothing, and shelter, the law considers them gravely disabled and allows treatment over objection of the patient in order to stabilize their mental illness, restore their capacity, and reduce the risk of harm the individual exposes themselves to. However, current law fails to address the needs of those individuals with a mental illness who lack the capacity to provide for their medical needs. Many of these individuals will be admitted to a psychiatric inpatient unit under a 72-hour, 5150 hold. Subsequently, the patient may be certified for a further 14-day period of intensive treatment under a 5250 hold if the treatment team feels like the individual cannot be safely released into the community after 72 hours. The 5250 certification is subject to court scrutiny. The certification may be upheld by a hearing officer, or the officer may find insufficient evidence justifying the certification and the patient will be ordered released. Psychiatrists will often certify a severely mentally ill patient with serious health issues for a 5250 and provide evidence of the seriousness of their health condition and their inability to care for it. In conclusion, CPA states current law prevents the hearing officer from considering that evidence resulting in unsafe release because it creates a blindness relative to the physical health condition of the patient. This bill would correct this situation by allowing evidence of a person's medical condition to be introduced into evidence and considered in the release determination.
- 4) **SUPPORT, IF AMENDED.** The California Hospital Association (CHA) in a support if amended position, states that this bill proposes allowing information about a person's medical status and how it bears on their ability to survive safely without involuntary detention to be considered by the officer presiding over a certification hearing. Under existing law, a patient on a psychiatric hold retains their right to consent to or refuse medical care. Freestanding, acute psychiatric hospitals, where many of these patients are treated, specialize in providing acute psychiatric, not medical, health care. If patients are detained because of a medical condition, hospitals would be forced to go through a separate, lengthy court process to seek authorization to treat the refusing patient's medical condition, release them, or to appoint a conservator. Not only would this delay access to medically necessary care, but it is time and cost prohibitive. CHA concludes by stating the bill should be amended to: a) clarify that the information about medical status may be presented to support involuntary detention to treat the mental health disorder or chronic alcoholism and that treating the behavioral health issue is key to eventually resolving any medical issues; b) allow the patient to be detained while being transferred to or receiving services at a facility that can provide diagnosis or treatment of the medical condition; and, c) require the patient receive a referral for continuing medical treatment upon discharge release from the involuntary detention.
- 5) **OPPOSE.** Access California in opposition states that the LPS Act specifically limits involuntary commitment to those who are gravely disabled due to a severe mental health condition and not physical health. This bill would create a slippery slope where persons with a medical condition, who also happen to have a mental health condition, would be subject to involuntary confinement in a mental health facility, which is a clear violation of the civil rights of those with serious medical conditions who may have an array of reasons for the severity of their medical condition unrelated to their mental health. In conclusion, Access California states that this bill is an unreasonable expansion of California's involuntary commitment laws to a population which would not be appropriately served under the LPS Act.

6) RELATED LEGISLATION.

- a) AB 1976 (Eggman) modifies existing law related to the Assisted Outpatient Treatment Demonstration Project (AOT or also known as Laura’s Law) by authorizing a county to offer the mental health programs in combination with one or more counties. Requires a county or group of counties to offer those mental health programs unless a county opts out by a resolution passed by the governing body stating the reasons for opting out and any facts or circumstances relied on in making that decision. Repeals the expiration of Laura’s Law, thereby extending it indefinitely. AB 1976 is pending hearing in the Assembly Health Committee.
- b) AB 2679 (Gallagher) adds the County of Butte to those counties authorized until January 1, 2024, through the passage of SB 1045 (Weiner) and SB 40 (Weiner), to establish a “housing conservatorship” process, if the board of supervisors authorizes the application of these provisions subject to specified requirements, for the appointment of a conservator for a person who is incapable of caring for the person’s own health and well-being due to a serious mental illness and SUD, as specified. AB 2679 is pending hearing in the Assembly Health Committee.
- c) AB 2899 (Jones-Sawyer) authorizes the extension of time a person may be certified for intensive treatment following an initial 72 hour hold for a period longer than the existing 14 days, as determined by the professional staff providing the evaluation related to the mental health disorder or impairment by chronic alcoholism and that the professional staff providing the evaluation has analyzed the person’s condition and has found the person is, as a result of a mental health disorder or impairment by chronic alcoholism, a danger to others, or to self, or gravely disabled, and that the person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis. AB 2899 is pending hearing in the Assembly Health Committee.
- d) SB 1251 (Moorlach) authorizes the expansion of the housing conservatorship pilot project process authorized through passage of SB 1045 (Weiner) and SB 40 (Weiner) for a person who is incapable of caring for the person’s own health and well-being due to a serious mental illness and SUD, to any county or city and county to adopt these conservatorship provisions within their jurisdictions. SB 1251 has been double referred to Senate Committees on Judiciary and Public Safety.

7) PREVIOUS LEGISLATION.

- a) AB 1275 (Santiago) of 2019, would have required each county to establish an outreach team to provide outreach services to individuals with a history of mental illness or SUD who are unable to provide for urgently needed medical care and who are homeless or at risk of experiencing homelessness. AB 1275 died on the Senate inactive file.
- b) AB 1572 (Chen) and SB 640 (Moorlach) of 2019, would have changed the definition of “gravely disabled” to mean 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 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. AB 1572 and SB 640 died pursuant to Joint Rules 56.

- c) SB 590 (Stone) of 2019, would have added persons with chronic alcoholism to the existing prepetition screening process in the LPS Act that permits any individual to request a county-designated entity to provide a comprehensive screening to determine if the person impaired by chronic alcoholism is a danger to self or others, or gravely disabled. SB 590 died in the Assembly Appropriations.
- d) AB 1971 (Santiago, Friedman, and Chen) of 2018, would have expanded the definition of "gravely disabled" in the county of Los Angeles until January 1, 2024, to include a person's inability to provide for their basic personal needs for medical treatment, as specified, and contained specified reporting requirements. AB 1971 died on the Senate inactive file.
- e) SB 1045 (Weiner) and SB 40 (Weiner), established a pilot program, until January 1, 2024, for Los Angeles and San Diego Counties, and the City and County of San Francisco, upon authorization by their respective boards of supervisors, to implement a "housing conservatorship" procedure for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by eight or more 5150 detentions in a 12 month period for evaluation and treatment.
- f) SB 565 (Portantino), Chapter 218, Statutes of 2017, requires a mental health facility to make reasonable attempts to notify family members or any other person designated by the patient at least 36 hours prior to a review hearing for certification to be held involuntarily for an extended 14 days or 30 days, after an initial 5150 hold, as specified.
- g) AB 191 (Wood), Chapter 184, Statutes of 2017, adds licensed marriage and family therapists and licensed professional clinical counselors to the list of authorized health providers permitted to sign a notice of certification when a patient is certified as needing intensive treatment pursuant to a 5150 hold.
- h) AB 1539 (Chen) of 2017, would have expanded the definition of "gravely disabled" to include an individual who is unable to provide for his or her basic need for medical care as a result of a mental health disorder or chronic alcoholism. AB 1539 was not heard in the Assembly Health Committee.
- i) AB 1194 (Eggman), Chapter 570, Statutes of 2015, requires, for purposes of determining whether a person is a danger to self or others, an individual making that determination to consider available relevant information about the historical course of the person's mental disorder if the individual concludes that the information has a reasonable bearing on the determination, and prohibits the individual from being limited to consideration of the danger of imminent harm.
- j) SB 364 (Steinberg), Chapter 567, Statutes of 2014, makes several changes to the LPS Act regarding involuntary commitment that ensures clarity and consistency in the 5150 process to enable people with a mental health disorder or chronic alcoholism to obtain assessment, referral, and treatment as appropriate in the least restrictive setting as possible; broadened the types of facilities a county can designate for 5150 purposes; and

encouraged counties to provide training of personnel authorized to write and release 5150 holds.

8) **AMENDMENTS:** In an effort to remove opposition to the bill, the author has agreed to the following amendments.

a) **Medical Treatment only for the Duration of Mental Health Hold.** The author wishes to clarify that an individual receiving both mental health and physical health services under an involuntary LPS mental health hold may not be detained longer than the duration of treatment for the mental health diagnosis as follows:

“If at the conclusion of the certification review hearing the person conducting the hearing finds that there is probable cause that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person may be detained for involuntary care, protection, and treatment related to the mental disorder or impairment by chronic alcoholism pursuant to Sections 5250 and 5270.15. *However, this section shall not be interpreted to allow a patient to be detained longer than otherwise allowed for diagnosis or treatment of their mental health condition.*”

b) **Need for Ongoing Medical Care:** The author wishes to clarify that when individuals who have been receiving both medical and mental health treatment, but are discharged from the LPS hold, they are informed of the recommendation to continue receiving medical care, as follows:

“..... Nothing herein shall prohibit the person from remaining at the facility on a voluntary basis or prevent the facility from providing the person with appropriate referral information concerning mental health services. *If the person needs continuing medical treatment after the involuntary detention to treat the mental health disorder or chronic alcoholism is terminated, the facility’s medical director or designee shall inform the patient that continuing medical treatment is recommended.*”

REGISTERED SUPPORT / OPPOSITION:

Support

California Psychiatric Association (sponsor)
 California Psychological Association
 California Treatment Advocacy Coalition
 Crestwood Behavioral Health, Inc.
 Sutter Health
 Tenet Healthcare Corporation

Opposition

California Behavioral Health Planning Council
 Cal Voice (formerly NorCal MHA)

Analysis Prepared by: Judith Babcock / HEALTH / (916) 319-2097