
SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

BILL NO: SB 1035
AUTHOR: Eggman
VERSION: February 15, 2022
HEARING DATE: April 6, 2022
CONSULTANT: Reyes Diaz

SUBJECT: Mental health services: assisted outpatient treatment

SUMMARY: Clarifies that when the court determines a person meets the criteria for assisted outpatient treatment (AOT), the court order is required to state all the categories of AOT treatment the person will receive, including medication when included in the person's treatment plan.

Existing law:

- 1) Implements AOT (known as "Laura's Law") statewide, whereby an entity can petition for a court to order a person over the age of 18 with a mental illness to receive AOT if the court finds the individual meets specified criteria, including: a clinical determination that the person is unlikely to survive safely in the community without supervision; the person has a history of noncompliance with treatment for his or her mental illness; the person's condition is substantially deteriorating; and, participation in AOT would be the least restrictive placement necessary to ensure the person's recovery. Permits a county or group of counties that do not wish to implement Laura's Law to opt out of the requirements of AOT services through a specified process. [WIC §5346]
- 2) Requires the subject of a petition to have specified rights, including to cross-examine witnesses, receive adequate notice of the hearing, and be present at the hearing, unless the subject of the petition waives the right to be present. [WIC §5346]
- 3) Prohibits AOT from being ordered unless the licensed mental health treatment provider recommending AOT to the court has submitted to the court a written treatment plan that includes the specified AOT services. [WIC §5346]
- 4) Prohibits involuntary medication for a person receiving AOT services absent a separate order by the court following a specified process for capacity hearings. [WIC §5348]

This bill: Clarifies that when the court determines a person meets the criteria for AOT, the court order is required to state all the categories of AOT treatment the person will receive, including medication when included in the person's treatment plan.

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

COMMENTS:

- 1) *Author's statement.* According to the author, medication can be an essential tool that allows an individual with serious mental illness to stay safely in their community. Explicitly allowing court-ordered medications to be incorporated into assisted outpatient treatment plans with the clear intent that an individual will self-administer the medication is key to preserving their stability and decreasing their high risk of repeated hospitalization, or arrest and incarceration. This bill will clarify this avenue for recovery to take place in the least restrictive environment possible which is the intent of our State's mental health system.

- 2) *Laura's Law.* Enacted pursuant to AB 1421 (Thompson, Chapter 1017, Statutes of 2002), Laura's Law established a new court-ordered AOT demonstration program aimed at individuals with mental illness who meet specified criteria but who do not meet the criteria (danger to self or others, or gravely disabled) for involuntary commitment to an inpatient facility. The law is named in memory of Laura Wilcox, a 19-year-old college student who was killed by a severely mentally ill man who was not adhering to prescribed mental health treatment. AOT provides counties with the option to implement intensive programs for individuals who have difficulty maintaining their mental health stability in the community and have frequent hospitalizations and contact with law enforcement related to untreated or undertreated mental illness. Laura's Law previously required a county's Board of Supervisors to opt-in by resolution and to make a finding that access to voluntary mental health programs serving adults and children would not be reduced as a result of implementation. The law did not provide for any state or local funding, which has been perceived as one of the barriers to its statewide implementation. No county implemented Laura's Law until Nevada County in 2008. As a way to encourage counties to opt in, SB 585 (Steinberg and Correa, Chapter 288, Statutes of 2013) clarified that Mental Health Services Act funds could be used for AOT services if the county had implemented the program. AB 1976 (Eggman, Chapter 140, Statutes of 2020) implemented Laura's Law statewide, effective July 1, 2021, and permitted counties to opt out of providing AOT services, as specified. According to the Department of Health Care Services' website, the following counties have opted out of providing AOT services by passage of a resolution adopted by their board of supervisors: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, Glenn, Imperial, Inyo, Lake, Lassen, Madera, Merced, Modoc, Mono, Monterey, Plumas, San Benito, San Bernardino, San Joaquin, Santa Cruz, Sierra, Sonoma, Sutter/Yuba, Trinity, and Tuolumne.

The counties that provide AOT services include: Alameda, Contra Costa, El Dorado, Fresno, Humboldt, Kern, Kings, Los Angeles, Marin, Mariposa, Mendocino, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Stanislaus, Tehama, Tulare, Ventura, and Yolo.

- 3) *CSA audit on the LPS Act.* The CSA released *LPS Act: California Has Not Ensured That Individuals with Serious Mental Illnesses Receive Adequate Ongoing Care* on July 28, 2020. The audit focused on the following issues in three counties (Los Angeles, San Francisco, and Shasta):
 - a) Criteria for involuntary detention for those who are a danger to self or others or gravely disabled, due to a mental health condition, and criteria for conservatorship, and whether the counties have consistently followed those criteria;
 - b) Differences in approaches among the counties in implementing the LPS Act, if any;
 - c) Funding sources, and whether funding is a barrier to implementing the LPS Act; and,

- d) Availability of treatment resources in each county.

Relative to this bill, the CSA stated many of the individuals who were placed on repeated LPS short-term holds or conservatorships struggled to maintain their stability after leaving treatment in large part because they frequently failed to take medication that was essential to managing their symptoms and maintaining themselves successfully in a community setting. The CSA found that many individuals were subjected to repeated instances of involuntary treatment without being connected to ongoing care that could help them live safely in their communities, as AOT services have shown to provide. For example, almost 7,400 people in Los Angeles County experienced five or more short-term involuntary holds from fiscal years 2015–16 through 2017–18, but only 9% were enrolled in the most intensive and comprehensive community-based services available in fiscal year 2018–19. The CSA stated that AOT is an effective approach to serving individuals in their communities, and made recommendations for the Legislature to require AOT services in all counties, as well as expand access to AOT to people leaving conservatorship. These recommendations have been implemented through AB 1976 and SB 507 (Eggman and Stern, Chapter 426, Statutes of 2021), respectively. The CSA further recommended that counties be allowed to provide express authority to include medication requirements in court-ordered AOT plans as long as the medication is self-administered. This bill would implement that recommendation, when a written treatment plan is provided to the court by a licensed mental health treatment provider.

- 4) *Double referral.* This bill has been double referred. Should it pass out of this Committee, it will be referred to the Senate Committee on Judiciary.
- 5) *Related legislation.* SB 1338 (Umberg and Eggman) and AB 2830 (Bloom), companion bills, implement the Community Assistance, Recover, and Empowerment (CARE) Court program, a Governor Newsom proposal, which authorizes a court to order an adult person who is suffering from a mental illness and substance use disorder and who lacks medical decisionmaking capacity to obtain treatment and services under a CARE plan that is managed by a CARE team, as specified, and require each county to participate in providing services under the program. *SB 1338 is pending in the Senate Judiciary Committee, and AB 2830 is set to be heard in the Assembly Judiciary Committee on April 19, 2022.*

SB 782 (Glazer) would permit AOT services for eligible conservatees, as specified. *SB 782's provisions were included in SB 507 (Eggman and Stern,) and is currently pending in the Assembly Rules Committee.*

- 6) *Prior legislation.* SB 507 (Eggman and Stern, Chapter 426, Statutes of 2021) broadens criteria to permit AOT for a person who is in need of AOT services, as specified, without also requiring the person's condition to be substantially deteriorating; permits specified individuals to testify at a court hearing via videoconferencing, as specified; and, permits a court to order AOT for eligible conservatees, as specified, when certain criteria are met.

AB 1976 (Eggman, Chapter 140, Statutes of 2020) implements Laura's Law statewide, effective July 1, 2021, and permits counties to opt out of providing AOT services, as specified.

AB 59 (Waldron, Chapter 251, Statutes of 2016) extended the operation of Laura's Law until January 1, 2022.

AB 1193 (Eggman of 2015) would have required a county that has not held a specified public hearing to elect to initiate Laura's Law by January 1, 2017 to hold a hearing by January 1, 2018, and would have required the Board of Supervisors to consider both whether specified programs may be reduced as a result of participation and options for providing services other than court-ordered outpatient treatment. *AB 1193 was held on the Assembly Appropriations suspense file.*

AB 1265 (Conway of 2014) would have permitted an initial court order for AOT services to be extended for up to 12 months (rather than six months), and required that each person discharged from a hospital be considered for AOT in the counties that have implemented Laura's Law. *AB 1265 failed passage in the Assembly Judiciary Committee.*

AB 2266 (Waldron of 2013) would have authorized the court to order a person to receive AOT for an initial period not to exceed 12 months. AB 2266 would have, in a county that elects to implement Laura's Law, upon the release of a person from intensive treatment or post certification treatment, authorized the professional staff of the agency or facility that provided the treatment to evaluate whether the person meets the criteria for AOT. AB 2266 would have authorized the professional staff to request the county mental health director to file a petition in the superior court for AOT if that person met the criteria. *AB 2266 failed passage in the Assembly Judiciary Committee.*

SB 585 (Steinberg and Correa, Chapter 288, Statutes of 2013) specified that counties that elect to implement Laura's Law may, to the extent permissible under state and federal laws, pay for those services using funds distributed to counties from the Mental Health Subaccount, the Mental Health Equity Subaccount, and the Vehicle License Collection Account of the Local Revenue Fund, funds from the Mental Health Account and the Behavioral Health Subaccount, within the Support Services Account of the Local Revenue Fund 2011, funds from the Mental Health Services Fund, and any other funds from which the Controller makes distributions to the counties, for those purposes.

AB 1421 (Thompson, Chapter 1017, Statutes of 2002) enacted Laura's Law.

- 7) *Support.* The Big City Mayors Coalition, the California State Association of Psychiatrists, and the Psychiatric and Physicians Alliance of California, co-sponsors of this bill, and other supporters state that the prevailing factor that determines why individuals cycle back into restrictive settings is medication non-compliance. The CSA's report further determined that 12 other states include court-ordered medication in their outpatient treatment plans, specifying medication plan details and administering practices. Explicitly allowing court-ordered medications to be incorporated into AOT plans with the clear intent that an individual will self-administer the medication is key to preserving their stability and decreasing their high risk of repeated hospitalization, or arrest and incarceration. Supporters argue that AOT has long been an effective, if underutilized, tool for providing appropriate and intensive outpatient treatment to Californians that have been repeatedly hospitalized or have come into contact with law enforcement due to their serious mental illness. Supporters state it is important to ensure that there is no ambiguity on the ability to include self-administered medication in a court-ordered treatment plan. Supporters state that medication may not be a cure-all for the conditions faced by many in our community, but it is a key component of long-term recovery.

- 8) *Opposition.* Cal Voices states that AOT is costly court-ordered treatment for individuals with mental illness and has limited evidence of promoting positive recovery outcomes. Individuals compelled into this form of involuntary treatment are denied the ability to make decisions about their own health and recovery. AOT is only utilized after an individual has refused voluntary services. This bill overlooks the reality that an individual has the right to refuse medical treatment or treatment with medications (except in an emergency) unless a capacity hearing is held and a hearing officer or judge finds that a person does not have the capacity to consent or refuse treatment. While California seeks to expand AOT services, it must be noted that forced treatment with medication will not promote long term recovery. Instead of exploring ways in which individuals can be forced to take medication, California should develop creative strategies to encourage individuals to engage in treatment, which may include medication. Cal Voices states that if the aim is long term recovery, this bill misses the mark, and they urge the Legislature to prioritize voluntary services rather than involuntary services with forced medication.
- 9) *Technical amendment.* To clarify the CSA’s recommendation, and to comply with current law that prohibits involuntary medication, the author may wish to amend this bill to specify medications in the treatment plan would be self-administered.

SUPPORT AND OPPOSITION:

- Support:** Big City Mayors Coalition (co-sponsor)
 California State Association of Psychiatrists (co-sponsor)
 Psychiatric and Physicians Alliance of California (co-sponsor)
 California State Sheriffs’ Association
 Steinberg Institute
- Oppose:** Cal Voices

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