

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 1394 (Eggman) – As Introduced February 18, 2022

PROPOSED CONSENT

SENATE VOTE: 36-0

SUBJECT: CONSERVATORSHIPS: GRAVELY DISABLED PERSONS

KEY ISSUE: SHOULD THE MAXIMUM AMOUNT OF TIME BY WHICH A TEMPORARY 30-DAY CONSERVATORSHIP MAY BE EXTENDED PENDING THE RESOLUTION OF A PETITION FOR CONSERVATORSHIP BE CHANGED FROM SIX MONTHS TO 180 DAYS?

SYNOPSIS

For individuals who are unable to care for themselves, the Lanterman-Petris-Short (LPS) Act enumerates a process whereby individuals may be involuntarily detained and potentially conserved for evaluation and care. Under the LPS Act, a conservator of the person, of the estate, or of both the person and the estate may be established for a person who is gravely disabled because of a mental health disorder or impairment by chronic alcoholism. The individual 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, and they have the right to be represented by counsel. An LPS temporary conservatorship lasts for 30 days unless the person is awaiting a court or jury trial on the issue of whether they are gravely disabled, in which case the conservatorship may be extended up to six months.

Because “months” as a unit of time is ambiguous, this bill proposes a small but useful change. The bill would change the maximum duration of an extension for a temporary conservatorship, while a petition for a conservatorship under the LPS Act is pending, from six months to 180 calendar days. It is supported by groups who argue it would remove potential confusion about the maximum time of an extension. There is no opposition.

SUMMARY: Modifies the maximum amount of time by which a temporary 30-day conservatorship may be extended, pending the resolution of a petition for a conservatorship under the Lanterman-Petris-Short (LPS) Act when the potential conservatee has requested a court or jury trial on the question of whether they are “gravely disabled” for purposes of establishing a full LPS conservatorship, from six months to 180 days.

EXISTING LAW:

- 1) Establishes the LPS Act to end inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism, and to provide prompt evaluation and treatment of those with mental health disorders or impaired by chronic alcoholism. Defines, as a basis for involuntary commitment under the LPS Act, “grave disability” 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. (Welfare & Institutions Code Section 5001 *et seq.* Unless stated otherwise, all further statutory references are to the Welfare & Institutions Code.)

- 2) Provides that, if a person is gravely disabled as a result of mental illness, or a danger to self or others, a peace officer, staff of a designated treatment facility or crisis team, or other professional person designated by the county, may, upon probable cause, take that person into custody for a period of up to 72 hours for assessment, evaluation, crisis intervention, or placement in a designated treatment facility. (Section 5150.)
- 3) Allows a facility designated for evaluation and treatment that admits a person to detain the person for evaluation and treatment for a period up to 72 hours. Allows Saturdays, Sundays, and holidays to be excluded from the period if the Department of Health Care Services (DHCS) certifies for each facility that evaluation and treatment services cannot reasonably be made available on those days. Requires, prior to admitting a person to a facility for treatment and evaluation, the professional person in charge of the facility or a designee to assess the individual, either face-to-face or by synchronous interaction through telehealth, to determine the appropriateness of the involuntary detention. (Section 5151.)
- 4) Allows a person who has been detained for 72 hours to be detained for up to 14 days of intensive treatment if the person continues to pose a danger to self or others, or to be gravely disabled, and the person has been unwilling or unable to accept voluntary treatment. (Section 5250.)
- 5) Allows a person to be held at the expiration of a 14-day period of intensive treatment for further intensive treatment of up to 14 days if, during the detention period, a person threatened or attempted to take their own life or was detained because they threatened or attempted to their own life and continues to present an imminent threat of taking their own life and other specified conditions. (Section 5260.)
- 6) 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. (Section 5270.15.)
- 7) Requires a certification review hearing to be held within four days of the date on which a person is certified for a 14-day period of intensive treatment or 30 additional days of intensive treatment unless judicial review has been requested or a postponement is requested by the detained person or their attorney or advocate. (Section 5256.)
- 8) Provides every person detained by certification for intensive treatment with a right to a hearing by writ of habeas corpus for their release. Enumerates specified requirements and procedures for judicial review. (Sections 5275, 5276.)
- 9) Provides that a conservator of the person, of the estate, or of the person and the estate may be appointed for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism. Enumerates a procedure for establishing, administering, and terminating a conservatorship. (Section 5350.)
- 10) Provides that a person for whom an LPS conservatorship is sought has the right to demand a court or jury trial on the issue of whether they are gravely disabled. Requires a demand for

court or jury trial to be made within five days following the hearing on the conservatorship petition. (Section 5350 (d).)

- 11) Allows the court to establish a temporary conservatorship for a period not to exceed 30 days and appoint a temporary conservator on the basis of a comprehensive report of an officer providing a conservatorship investigation that meets specified requirements, or on the basis of an affidavit of the professional person who recommended conservatorship stating the reasons for their recommendation, if the court is satisfied that the comprehensive report or affidavit shows the necessity for a temporary conservatorship. (Section 5352.1 (a).)
- 12) Specifies that, except as provided, all temporary conservatorships shall expire automatically at the conclusion of 30 days, unless prior to that date the court has conducted a hearing on the issue of whether the proposed conservatee is gravely disabled. (Section 5352.1 (b).)
- 13) Provides that, if a person for whom a full LPS conservatorship is sought is the subject of a temporary conservatorship, and that person requests a court or jury trial on the issue of whether they are gravely disabled, the court may extend the 30-day temporary conservatorship until the date of the disposition of the issue by the court or jury, provided that the extension is for no more than six months. (Section 5352.1 (c).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This bill proposes a small but useful change to the maximum amount of time allowed for the extension of a 30-day temporary conservatorship if a proposed conservatee requests a court or jury trial on the issue of whether they are gravely disabled. This bill proposes to change the maximum amount of time from six months to 180 days. The author states, regarding the purpose and necessity of this bill:

SB 1394 is intended to be a simple clarification of the upper time limit on a temporary conservatorship. Under current law, a temporary conservatorship can be established by the court when a person is believed to be gravely disabled. This temporary conservatorship ends after a period not to exceed 30 days, but can be extended up to six months for various practical reasons, such as additional investigation time, transportation issues with the client, or stabilization. This bill would simply clarify that, rather than six months, a temporary conservatorship can be extended up to 180 days.

Background on the LPS Act. For individuals who are unable to care for themselves, the LPS Act enumerates a process whereby individuals may be involuntarily detained and potentially conserved for evaluation and care. The LPS Act provides for involuntary commitment, or “holds,” 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 “grave disability” standard. A “grave disability” finding requires that the person presently be unable to provide for food, clothing, and shelter due to a mental disorder, or severe alcoholism, to the extent that this inability results in physical danger or harm to the person. In making this determination, the trier of fact must consider whether the person would be able to provide for these needs with a family member, friend, or other third party’s assistance if credible evidence of such assistance is produced at the LPS conservatorship hearing.

The purpose of an LPS conservatorship is to provide individualized treatment, supervision, and placement for the gravely disabled individual. The individual 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, and they have the right to be represented by counsel. An LPS temporary conservatorship lasts for 30 days unless the person is awaiting a court or jury trial on the issue of whether they are gravely disabled, in which case the conservatorship may be extended up to six months. (This bill proposes to change the six months to 180 days.) A permanent conservatorship lasts for one year and can be renewed.

The use of months as a unit of time in the LPS Act. Within the LPS Act, days and months are both used as units of time. According to the author, the majority of LPS Act hold periods are specified as a number of days. For example, Section 5300 allows for an individual to be confined following a 14-day period of intensive treatment (Section 5250) for a period not to exceed 180 days if deemed imminently dangerous.

It should be noted that, in addition to the section of the LPS Act that would be amended by this bill (Section 5352.1), several other sections in the LPS Act use months as a unit of time. These sections include: Section 5305 (pertaining to postcertification procedures for imminently dangerous persons), Section 5346 (pertaining to Assisted Outpatient Treatment), Section 5358.3 (pertaining to conservatorships for gravely disabled persons), Section 5364 (pertaining to conservatorships for gravely disabled persons), and Sections 5462 and 5463 (pertaining to housing conservatorships).

This bill changes the maximum duration of an extension of a temporary conservatorship, while a petition for a conservatorship under the LPS Act is pending, from six months to 180 calendar days. Months as a unit of time can be ambiguous, as it could refer to 28, 29, 30, or 31 days. This ambiguity may result in varying interpretations of the maximum duration of a temporary conservatorship extension. Changing the maximum duration from six months to 180 calendar days will remove this ambiguity, and also bring the statute's terminology in line with other LPS provisions that use a 180-day time period. However, given that other sections of the LPS Act continue to use months, rather than days, as a unit of time, *the author may wish, in future legislation, to make similar modifications to other sections of the LPS Act.*

To be clear, extensions of this duration—either six months or 180 days—should be extremely rare. The 30-day temporary conservatorship, and its extensions to allow for the potential conservatee's counsel to prepare for trial, are intended to be short-term emergency measures before a determination of whether the person is "gravely disabled" and warrants the establishment of a full LPS conservatorship. Continuing to hold a person in a temporary conservatorship, which does not provide the same due process protections as a full LPS conservatorship, for all but the most dire reasons is contrary to the LPS Act and its procedural safeguards. This bill's change from six months to 180 days does not signal a policy shift toward greater permissiveness for lengthy extensions of temporary conservatorships, but rather only clarifies the duration of the longest possible extension.

ARGUMENTS IN SUPPORT: The Professional Fiduciary Association of California explains the importance of this bill:

This would help avoid potential confusion in the courts over the meaning of "six months," and whether the term should be interpreted to mean six calendar months or 180 calendar

days. This will also bring the statute's terminology into line with other LPS provisions that use a 180-day time period for the rare cases where this is appropriate.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Public Administrators, Public Guardians and Public Conservators
(CAPAPGPC)

Professional Fiduciary Association of California
Steinberg Institute

Opposition

None on file

Analysis Prepared by: Alec Watts / JUD. / (916) 319-2334