

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1443 (McCarty)
Version: July 8, 2021
Hearing Date: July 13, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Mental health: involuntary treatment

DIGEST

This bill establishes procedures for the designation of professionals and members of mobile crisis teams to perform functions related to 72-hour detentions of individuals for mental health evaluation and treatment under the Lanterman-Petris Short (LPS) Act. The bill provides immunity for these designated personnel in certain circumstances.

EXECUTIVE SUMMARY

The LPS Act governs the involuntary detention for evaluation and mental health treatment of people who may be dangerous or gravely disabled. The Act provides for incrementally increasing involuntary holds before a person may be found to be gravely disabled and subject to a year-long confinement under a conservatorship. Typically, this process is initiated in response to an acute emergency in which county behavioral health services, mobile crisis teams, law enforcement, or medical professionals determine whether there is probable cause that the person is gravely disabled or a danger to themselves or others, in which case the person may be detained in an approved facility for up to 72 hours for further evaluation and treatment. Existing law establishes requirements for the treating psychiatrist to authorize a person to be released before the 72 hours elapses. Existing law provides certain actors, including the treating psychiatrist and peace officers, with immunity from civil and criminal liability with respect to any actions by the person after they are released. These provisions aim to ensure that individuals are not involuntarily detained longer than necessary.

This bill would extend similar immunities to certain personnel who, pursuant to procedures established under the bill, are designated to detain and transport people pursuant to section 5150. The bill is sponsored by the City of Sacramento and includes designation procedures specific to Sacramento County. Recent amendments removed all opposition. The bill passed the Senate Health Committee by a vote of 9-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the LPS Act, which provides for the involuntary detention for treatment and evaluation of people who are gravely disabled or a danger to self or others. (Welf. & Inst. Code § 5000 et seq.)¹ Defines “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 the person’s basic personal needs for food, clothing, or shelter. (§ 5008(h)(1)(A),(2).)
- 2) 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 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. (§ 5150.)
- 3) Provides that the county behavioral health director may develop procedures for the county’s designation and training of professionals who will be designated to perform functions under Section 5150. These procedures may include, but are not limited to, the following:
 - a) The license types, practice disciplines, and clinical experience of professionals eligible to be designated by the county.
 - b) The initial and ongoing training and testing requirements for professionals eligible to be designated by the county.
 - c) The application and approval processes for professionals seeking to be designated by the county, including the timeframe for initial designation and procedures for renewal of the designation.
 - d) The county’s process for monitoring and reviewing professionals designated by the county to ensure appropriate compliance with state law, regulations, and county procedures. (§ 5121.)
- 4) With specified exceptions, the facility providing treatment pursuant to these provisions, the superintendent of the facility, the professional person in charge of the facility and their designee, or the peace officer responsible for the detainment of the person cannot be held civilly or criminally liable for any action by a person released at or before the end of the period for which the person was admitted, as specified. (§ 5113.)
- 5) With respect to the 72-hour 5150 hold, the person is required to be evaluated as soon as possible and receive whatever treatment and care their condition requires. The

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

person can be released before the 72 hours have elapsed only if the psychiatrist directly responsible for the person's treatment believes, as a result of the psychiatrist's personal observations, that the person no longer requires evaluation or treatment. However, if both a psychiatrist and psychologist have personally evaluated or examined a person who is placed under a 72 hour hold and there is a collaborative treatment relationship between the two, either the psychiatrist or psychologist may authorize the release of the person from the hold, but only after they have consulted with one another. In the event of a disagreement, the hold must be maintained unless the facility's medical director overrules the decision, as provided. If any other professional person who is authorized to release the person believes they should be released before 72 hours have elapsed, and the psychiatrist directly responsible for the person's treatment objects, the matter must be referred to the medical director of the facility for the final decision, except as specified. (§ 5152(a).)

- 6) Provides that if the provisions of section 5152 have been met, the professional person in charge of the facility providing 72-hour treatment and evaluation, their designee, the medical director of the facility or their designee, the psychiatrist directly responsible for the persons' treatment, or the psychologist cannot be held civilly or criminally liable for any action by a person released before the end of the 72-hour period. (§ 5154(a).) Additionally provides that the peace officer responsible for the detainment of the person cannot be held civilly or criminally liable for any action by a person released at or before the end of the 72-hour period. (*Id.* at (c).)

This bill:

- 1) Authorizes a county behavioral health director to develop a training for the procedures for designation of professionals who perform functions under Section 5150.
- 2) Provides that if a county behavioral health director denies or revokes an individual's designation, the county behavioral health director shall, in writing, notify the person who made the request for designation of the individual and the individual who is the subject of the request for designation describing the reasons for denial or revocation.
- 3) Provides that designated members of a mobile crisis team and designated professional persons cannot be prohibited from transporting a person taken into custody pursuant to Section 5150.
- 4) Provides that if the county behavioral health director of the County of Sacramento develops procedures for designation of professionals who perform functions under Section 5150, the county behavioral health director of the County of Sacramento shall, by April 1, 2022, issue a written policy regarding the procedures, as specified.

The policy must require the county behavioral health director of the County of Sacramento to designate individuals employed by the City of Sacramento who are also members of a mobile crisis team or who are also professional persons if all of the following are true:

- a) The City of Sacramento submits a written request to the county behavioral health director.
 - b) The individuals meet the requirements for designation included in the policy.
 - c) If the county behavioral health director of the County of Sacramento has developed a training, the individuals have completed that training.
- 5) Provides that a member of a mobile crisis team or a professional person who has been designated by the county pursuant to Section 5121 and who detains or transports a person pursuant to Section 5150 shall not, as a result of detaining or transporting the person, be civilly or criminally liable for any action by the person if the person is released at or before the end of the 72 hours.

COMMENTS

1. Author's statement

The author writes:

Currently, law enforcement is being called upon to assist individuals experiencing non-violent, mental health crises which, as we've seen, can lead to tragic consequences. Alternatives to police response for non-violent mental health crisis calls can provide real, more appropriate, care. AB 1443 would address that by allowing cities to expand community policing in their neighborhoods. Specifically, the measure will help ensure mental health professionals are responding to mental health incidents and have the ability to address these situations without the involvement of law enforcement.

2. Background

a. The LPS Act

Signed into law in 1967 by Governor Ronald Reagan, the LPS Act includes among its goals "ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program." (§ 5001.) The LPS Act "governs the involuntary detention,

evaluation, and treatment of persons who, as a result of mental disorder, are dangerous or gravely disabled," (*Conservatorship of John L.* (2010) 48 Cal.4th 131, 142), meaning that they are unable to meet their basic personal needs for food, clothing, or shelter. (§ 5008(h)(1)(A).) "Before a person may be found to be gravely disabled and subject to a year-long confinement, the LPS Act provides for a carefully calibrated series of temporary detentions for evaluation and treatment." (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541.)

"[I]n accordance with the legislative purpose of preventing inappropriate, indefinite commitments of mentally disordered persons, such detentions are implemented incrementally." (*Ford v. Norton* (2001) 89 Cal.App.4th 974, 979 [citation omitted].) Typically, one first interacts with the LPS Act through a section 5150 evaluation and detention in response to an acute emergency. In a 5150 evaluation, county behavioral health services, mobile crisis teams, law enforcement, or medical professionals determine if there is probable cause that a person is gravely disabled or a danger to themselves or others, in which case the person may be detained in an approved facility for up to 72 hours for further evaluation and treatment. (§ 5150.) Following a 72-hour hold, the individual may be held for an additional 14 days, without court review. (§ 5250.) After the 14-day period, a person found by a superior court to be imminently dangerous may be involuntarily committed for an additional 180 days. (§§ 5300, 5301.) If the person is not imminently dangerous but is still found to be gravely disabled and unwilling or unable to accept voluntary treatment, they may be certified for an additional 30 days of intensive treatment. (§ 5270.15.) After the initial 72-hour detention, the 14-day and 30-day commitments each require a certification hearing before an appointed hearing officer to determine probable cause for confinement unless the detainee has filed a petition for the writ of habeas corpus. (§§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.) "This series of temporary detentions may culminate in a proceeding to determine whether the person is so disabled that he or she should be involuntarily confined for up to one year." (*Conservatorship of Ben C., supra*, 40 Cal.4th at 541; § 5361.)

b. Immunity provisions based on the person's actions after release

Consistent with the LPS Act's purpose of "preventing inappropriate, indefinite commitments" temporary involuntary placements can be terminated before the expiration of the commitment period in order to assure a person of an opportunity for early release. "However, the LPS Act also recognizes that the early release of involuntarily committed patients can pose a risk of harm to others. The evaluation and treatment of mentally disordered persons is inherently uncertain and cannot reliably predict future conduct. Nevertheless, the Legislature determined that the act's goal of ending indefinite confinements outweighed the early release potential for harm. Consequently, as a corollary to the early release provisions, the LPS Act exempts specified persons from civil or criminal liability." (*Ford v. Norton* (2001) 89 Cal.App.4th 974, 979 [citation omitted]; see § 5113.)

A broad range of personnel can initiate a 72-hour hold for evaluation and treatment pursuant to section 5150, including staff of the evaluation facility, peace officers, professionals designated by the county, and designated members of a mobile crisis team. (§ 5150(a).) Once admitted to a facility under section 5150, a person must receive an evaluation as soon as possible, but may be released before the 72 hours have elapsed. This decision generally can only be made by the psychiatrist directly responsible for the person's treatment, although in some cases a treating psychologist can authorize an early release in consultation with the psychiatrist, with disputes resolved by the medical director. (§ 5152(a).) So while a broad range of people can initiate a 72-hour detention, only a few treating professionals can authorize an early release.

To advance the goal of ending indefinite commitments, the LPS Act exempts certain individuals from liability following a patient's early release, including the professional person in charge of the facility, their designee, the medical director of the facility or their designate, and the psychiatrist directly responsible for the person's treatment. As long as the provisions relating to early release in section 5152 are followed, those personnel cannot be held civilly or criminally liable for any action by a person released before the end of the 72 hours. (§ 5154(a).) A similar provision applies when the person is released at the end of the 72-hour period. (*Id.* at (b).) Additionally, the peace officer responsible for the detainment of the person cannot be held civilly or criminally liable for any action by a person released at or before the end of the 72 hours. (*Id.* at (c).)

c. Mobile crisis teams

Although mentioned in statute, mobile crisis teams are not specifically defined or regulated. Regarding their services, the Department of Developmental Services website states:

Mobile crisis intervention services with highly trained, specialized staff provide response to an individual in crisis. Mobile crisis services are designed to stabilize and support the individual in their current living arrangement and/or other appropriate setting (e.g. day program, school, community respite, etc.) and/or ensure that they can return as soon as possible after a crisis occurs.

Mobile Crisis Services respond to crisis situations, through intervention and prevention, both on site where the crisis is occurring and/or via phone 24 hours a day. Some vendors include screening and dispatching of crisis response teams for assessment and transport to mental health hospitals, as needed. Though, the goal is to prevent unnecessary hospitalizations and provide increased support to occur in a less restrictive setting. Similarly, a mobile crisis team aims to prevent unnecessary adverse contact with law enforcement. Training may also be provided to the individual, family, and caregivers to assist in developing

and implementing individualized crisis prevention programs and intervention.²

3. Seeks to augment the use of designated professionals and mobile crisis teams who perform functions under Section 5150

This bill addresses designation of, transportation by, and immunity for, mobile crisis teams and professionals who perform functions under Section 5150.

First, the bill authorizes a county behavioral health director to develop a training for the procedures for designation of professionals who perform functions under Section 5150. If a county behavioral health director denies or revokes an individual's designation, the county behavioral health director must, in writing, notify the person who made the request for designation of the individual and the individual who is the subject of the request for designation describing the reasons for denial or revocation.

The bill also adds similar provisions that are specific to the County of Sacramento. These provisions were recently amended into the bill by the Senate Health Committee to limit the bill's scope. Under these provisions, if the county behavioral health director of the County of Sacramento develops procedures for designation of professionals who perform functions under Section 5150, the county behavioral health director of the County of Sacramento must, by April 1, 2022, issue a written policy regarding the procedures, as specified. The policy must require the county behavioral health director of the County of Sacramento to designate individuals employed by the City of Sacramento who are also members of a mobile crisis team or who are also professional persons if all of the following are true:

- The City of Sacramento submits a written request to the county behavioral health director.
- The individuals meet the requirements for designation included in the policy.
- If the county behavioral health director of the County of Sacramento has developed a training, the individuals have completed that training.

The bill additionally provides that designated members of a mobile crisis team and designated professional persons cannot be prohibited from transporting a person taken into custody pursuant to Section 5150.

Relevant to this Committee's jurisdiction, the bill provides that a member of a mobile crisis team or a professional person who has been designated by the county pursuant to the procedures described above and who detains or transports a person pursuant to Section 5150 shall not, as a result of detaining or transporting the person, be civilly or

² Mobile Crisis Services, DDS website <https://www.dds.ca.gov/services/crisis-safety-net-services/mobile-crisis-services/> (as of Jul. 1, 2021).

criminally liable for any action by the person if the person is released at or before the end of the 72 hours.

This provision places these personnel on the similar footing to peace officers by providing them with immunity from civil and criminal liability with respect to the actions of the person after they are released. This only applies to these personnel with respect to the detention and transportation of the individual.

4. Support

This bill is sponsored by the City of Sacramento, which writes:

The City has historically dispatched only traditional emergency services including Police, Fire, and Emergency Medical Services to 911 calls. Last year, the City created the Department of Community Response (DCR). The goal of DCR is to reduce police and fire calls for service for a wide range of crises including, but not restricted to, mental health, homelessness, school response, youth and family crisis, as well as substance use issues. DCR will be comprised of myriad city staff, including social workers, resource responders, code enforcement, homeless response teams, and other staff deemed necessary. Additionally, DCR teams will include various community-based organizations (CBOs) who will work with DCR in a multi-disciplinary model framework to best address the needs of the community.

The primary goal of the DCR is to effectively transfer calls for service that do not require a law enforcement response to alternative first responders, as well as linking people to most suitable services (i.e. mental health, substance use, housing, medical, food) to ensure quality of life for that individual and reduce unnecessary calls to law enforcement or fire. One key area of responsibility is writing 5150 holds and transporting a person subject to a 5150 hold to an appropriate facility. Currently, a county has the ability to approve non-law enforcement staff to write holds and transport people, either voluntarily or involuntarily, to a facility. However, there is little guidance provided on how or when a county should do so.

Sacramento has compiled data which demonstrates the need for qualified staff to respond to specified calls. In 2020, the Sacramento Police Department received almost 18,000 calls for service relating to mental illness and 5150. Further, City staff who are currently qualified and trained to respond to specified calls, including mental illness related calls where a police presence is not warranted, need prior approval by the County before they are able to write 5150 holds. Since there is no statutory

directive for a county to respond to these requests, AB 1442 would provide the needed framework to do so.

SUPPORT

City of Sacramento (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Health Committee (Ayes 9, Noes 0)

Assembly Floor (Ayes 79, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Health Committee (Ayes 15, Noes 0)
