

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

SB 1035 (Eggman)
Version: April 27, 2022
Hearing Date: May 3, 2022
Fiscal: No
Urgency: No
AWM

SUBJECT

Mental health services: assisted outpatient treatment

DIGEST

This bill provides that, when a court orders an individual to assisted outpatient treatment (AOT), the court may hold status hearings with the individual and their treatment team to inquire about the person's progress, including medication adherence; and that, when the director of an outpatient program files its regular affidavits with the court about whether an individual in an AOT plan continues to meet the criteria for AOT, the director should also report information about the individual's adherence to prescribed medication.

EXECUTIVE SUMMARY

The Lanterman-Petris-Short (LPS) Act encompasses various schemes for the treatment of individuals with severe mental illness, including, as a last resort, the establishment of a conservatorship for an individual who is gravely disabled. Assisted outpatient treatment (AOT) is a mechanism for courts in participating counties to order a person to receive assisted outpatient mental health treatment to prevent them from deteriorating to a level that would require a conservatorship. A person who is the subject of an AOT petition is first given the opportunity to voluntarily develop a treatment plan with the local mental health department; if they refuse, they can be ordered to AOT if the court finds that it is the least restrictive treatment appropriate and feasible for the person. The court order implementing AOT must include the categories of treatment the person will receive pursuant to the treatment plan.

This bill would clarify that the court overseeing an AOT treatment plan may conduct status hearings with the person in treatment and the treatment team regarding the progress relating to the categories of treatment listed in the treatment plan, and may inquire about the individual's medication adherence, if medication is part of the plan. The bill further requires the director of an outpatient program supervising an

individual within a court-ordered AOT plan, when providing its regular affidavits to the court about whether the individual continues to meet the criteria for AOT, should simultaneously submit a report on the individual's adherence to prescribed medication.

This bill is sponsored by the Big City Mayors coalition, the California State Association of Psychiatrists, and the Psychiatric Physicians Alliance of California and supported by the California State Sheriffs' Association, the Inland Empire Coalition of Mayors, and the Steinberg Institute. This bill is opposed by Cal Voices and the Depression and Bipolar Support Alliance. This bill passed out of the Senate Health Committee with a vote of 10-0.

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, div. 5, pt. 1, §§ 5000 et seq.)
 - a) "Grave disability" is defined 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. (Welf. & Inst. Code, § 5008(h)(1)(A), (2).)
- 2) Establishes Laura's Law, which sets forth the procedures and requirements for AOT. (Welf. & Inst. Code, div. 5, pt. 1, ch. 2, art. 9, § 5345.)
- 3) Authorizes a county behavioral health director, or the director's designee, to file in superior court a petition for an order authorizing AOT for an individual, at the request of:
 - a) A person 18 years of age or older with whom the person who is the subject of the petition resides.
 - b) A person who is the parent, spouse, or sibling or child 18 years or older of the person who is the subject of the petition.
 - c) The director of a public or private agency, treatment facility, charitable organization, or licensed residential care facility providing mental health services to the person who is the subject of the petition in whose institution the subject of the petition resides.
 - d) The director of a hospital in which the person who is the subject of the petition is hospitalized.
 - e) A licensed mental health treatment provider who is either supervising the treatment of, or treating for a mental illness, the person who is the subject of the petition.
 - f) A peace officer, parole officer, or probation officer assigned to supervise the person who is the subject of the petition.

- g) A judge of a superior court before whom the person who is the subject of the petition appears. (Welf. & Inst. Code, § 5346(b)(1).)
- 4) Provides that a person may be ordered to AOT if the court finds, by clear and convincing evidence, that the facts stated by the verified petition establish all of the following criteria:
- a) The person is 18 years of age or older.
 - b) The person is suffering from a mental illness, as defined.
 - c) There has been a clinical determination that, in view of the person's treatment history and current behavior, at least one of the following is true:
 - i. The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.
 - ii. The person is in need of AOT in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or to others, as defined for purposes of a 5150 hold.
 - d) The person has a history of lack of compliance with treatment for the person's mental illness, in that at least one of the following is true:
 - i. The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
 - ii. The person's mental illness has resulted in one or more acts of serious and violent behavior toward themselves or another, or threats, or attempts to cause serious physical harm to themselves or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
 - e) The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health department, or the director's designee, provided that the treatment plan includes specified services, and the person continues to fail to engage in treatment.
 - f) Participation in the AOT program would be the least restrictive placement necessary to ensure the person's recovery and stability.
 - g) It is likely that the person will benefit from assisted outpatient treatment. (Welf. & Inst. Code, § 5346(a).)
- 5) Provides that, upon receipt of a petition for AOT, the court must fix the date for a hearing no later than five court days from the date the petition is received, and the petitioner must personally serve the person who is the subject of the petition and send copies to specified treatment providers.
- 6) Provides that the court may not order AOT unless an examining licensed mental health treatment provider who has personally examined, and has reviewed the

available treatment history of, the person who is the subject of the petition within 10 days after the petition was filed, testifies at the hearing.

- a) The examining mental health professional may appear before the court by videoconferencing means.
 - b) If the person who is the subject of the petition refuses to be examined at the request of the court, and the court finds reasonable cause to believe that the allegations of the petition are true, the court may order any person designated to take custody of a person for a 5150 hold to take custody of the person for examination by a licensed mental health treatment provider as soon as is practicable. Detention of the person may not exceed 72 hours. (Welf. & Inst. Code, § 5346(d)(1)-(3).)
- 7) Provides that the person who is the subject of an AOT petition has the following rights:
- a) To receive adequate notice of the hearings, as well to have notice provided to parties designated by the person who is the subject of the petition.
 - b) To receive a copy of the court-ordered evaluation.
 - c) To counsel. If the person has not retained counsel, the court shall appoint a public defender.
 - d) To be informed of the right to judicial review by habeas corpus.
 - e) To be present at the hearing unless the person waives the right to be present.
 - f) To present evidence.
 - g) To call witnesses on their behalf.
 - h) To appeal decisions, and to be informed of the right to appeal. (Welf. & Inst. Code, § 5346(d)(4).)
- 8) Provides that if, after hearing all relevant evidence, the court finds that the person who is the subject of the petition does not meet the criteria for AOT, the court must dismiss the petition. (Welf. & Inst. Code, § 5346(d)(5)(A).)
- 9) Provides that if, after hearing all relevant evidence, the court finds that the person who is the subject of the petition meets the criteria for AOT, and that there is no appropriate and less restrictive alternative, the court may order the person to receive AOT for an initial period not to exceed six months. The order shall specify that the proposed treatment is the least restrictive treatment appropriate and feasible for the person, and state the categories of treatment that the person is to receive. (Welf. & Inst. Code, § 5346(d)(5)(B).)
- 10) Requires the court, in its order requiring AOT, to include the following:
- a) A statement that the proposed treatment is the least restrictive treatment appropriate and feasible for the person who is the subject of the petition.
 - b) The categories of AOT that the person is to receive; the court may not order treatment that has not been recommended by a licensed mental health

treatment provider and included in the written treatment plan. (Welf. & Inst. Code, § 5346(d)(5)(B).)

- 11) Provides that where, in the clinical judgment of a licensed mental health treatment provider, the person has failed to comply with the AOT ordered by the court, efforts were made to secure compliance, and the person may be in need of involuntary admission to a hospital for evaluation, the provider may request that the person be taken into custody by persons authorized to execute a 5150 hold for an examination and to determine if the person is in need of a 5150 hold. The hold may last up to 72 hours. Failure to comply with an AOT order alone may not be grounds for involuntary civil commitment or a finding that the person who is the subject of the petition is in contempt of court. (Welf. & Inst. Code, § 5346(f).)
- 12) Requires the director of the outpatient treatment program to file affidavits with the court, at intervals of not fewer than 60 days, affirming that the person continues to meet the criteria for AOT; the person who is the subject of the order has the right to a hearing on whether they meet the criteria if they disagree with the affidavit. If the person who is the subject of the order believes they are being wrongfully retained in AOT in the middle of a 60-day period, the person may file a petition for a writ of habeas corpus to require the director to prove that the person continues to meet the criteria. (Welf. & Inst. Code, § 5346(h), (i).)
- 13) Provides that a person has the right to refuse medication, including antipsychotic medication, unless they have been specifically determined to be incompetent by a court. (*Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1320.)
- 14) Prohibits an AOT treatment plan from requiring involuntary medication unless the court has separately determined in a capacity hearing that the individual lacks capacity. (Welf. & Inst. Code, §§ 5348(c), 5332-5336.)

This bill:

- 1) Authorizes a court to conduct status hearings with an individual in a court-ordered AOT plan and their treatment team to receive information regarding progress related to the categories of treatment listed in the treatment plan, including to inquire about medication adherence.
- 2) Requires the director of an outpatient treatment program overseeing an individual in an AOT plan, when filing the statutorily required affidavits on whether the individual continues to meet the criteria for AOT, to also report to the court on the individual's adherence to prescribed medication.

COMMENTS

1. Author's comment

According to the author:

Assisted Outpatient Treatment has long been an effective, if underutilized, tool for providing appropriate and intensive outpatient treatment in a least restrictive setting to Californians that have been repeatedly hospitalized or come into contact with law enforcement due to their serious mental illness. SB 1035 will encourage medication compliance, an essential aspect of recovery, by allowing courts to conduct status hearings and require reporting on treatment adherence, including adherence with medications. This is a best practice identified by experienced and knowledgeable AOT judges and the State Auditor in its report on LPS. 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 allowing an individual to stay stable and safe in their community.

2. The AOT framework

As an alternative to commitment and a conservatorship under the LPS Act, state law provides for court-ordered outpatient treatment through Laura's Law, or the Assisted Outpatient Mental Health Treatment Program (AOT) Demonstration Project. In participating counties, the court may order a person into an AOT program if the court finds that the person meets existing involuntary commitment requirements under the LPS Act or other specified commitment requirements, and AOT would be the least restrictive level of care necessary to ensure the person's recovery and stability in the community.¹ A county may opt out of implementing Laura's Law if its governing body passes a resolution stating its reasons for doing so.² While Laura's Law was initially codified with a sunset provision, the sunset was eliminated in 2020.³

One of the objects of Laura's Law is to prevent individuals with severe mental illnesses from deteriorating to a level that would require a 5150 hold under the LPS Act. Laura's Law allows for family members, relatives, cohabitants, treatment providers or their supervisors, or peace officers to initiate the AOT process with a petition.⁴ If the individual meets the AOT eligibility requirements, an individual preliminary care plan is developed to meet that person's needs.⁵ If this process results in the person

¹ Welf. & Inst. Code, §§ 5346 et seq.

² *Id.*, § 5349.

³ See A.B. 1976 (Eggman, Ch. 140, Stats. 2020).

⁴ Welf. & Inst. Code, § 5346(b)(2).

⁵ *Id.*, § 5346(b)(5)(A)(ii).

voluntarily engaging with treatment, then the patient is deemed to no longer meet the criteria and the petition is no longer available.⁶

If, however, the individual declines to voluntarily participate in treatment, the petition for AOT is heard by a superior court. The subject of the AOT petition has the right to be represented by counsel in the proceeding, and counsel must be provided for them if necessary.⁷ To grant a petition for AOT, a court must find by clear and convincing evidence that the person is unlikely to survive safely in the community without supervision, that they have a history of failing to comply with a treatment program, that their condition is substantially deteriorating, and that the treatment will prevent the person from becoming gravely disabled or a danger to self or others.⁸ The AOT must include a treatment plan submitted by the local mental health provider and approved by the court.⁹

AOT may be ordered for up to six months and subsequently renewed.¹⁰ While an AOT is ongoing, the director of the local AOT program must submit an affidavit within 60-day intervals affirming that the person continues to meet the AOT criteria, which may be challenged by filing a writ of habeas corpus.¹¹ A person who fails to comply with their AOT treatment plan can be referred for a 72-hour hold under the LPS Act.¹²

3. This bill clarifies that the court may inquire about, and the director of an outpatient program must report on, an individual in AOT's adherence to medication

Current law requires a court, when ordering a person to receive AOT, to set forth in the order the categories of treatment that the person will receive, as established by licensed mental health professionals in the person's treatment plan.¹³ The court may not order any treatment not set forth in the plan.¹⁴ The AOT provisions require the director of the program through which an individual receives AOT to provide affidavits at 60-day intervals setting forth to the court whether the individual continues to meet the criteria for AOT,¹⁵ but the law does not expressly authorize the court to hold status hearings to inquire about the individual's progress.

This bill would give the court greater oversight capabilities and more information about the individual's adherence to the treatment plan. Specifically, this bill provides a statutory authorization for the court to hold status conferences with an individual in

⁶ *Ibid.*

⁷ *Id.*, § 5346(c).

⁸ Welf. & Inst. Code, § 5346(a).

⁹ *Id.* at § 5346(e).

¹⁰ *Id.* at § 5346(d), (g).

¹¹ *Id.* at § 5346(i)

¹² *Id.* at § 5346(f).

¹³ *Id.*, § 5346(d)(5)(B).

¹⁴ *Ibid.*

¹⁵ *Id.*, § 5346(h).

AOT and their treatment team to inquire about the individual's progress, including whether the individual is adhering to any prescribed medication. The bill also requires the director of an outpatient program, when providing its affidavits to the court at 60-day intervals about whether an individual in AOT continues to meet the criteria for AOT, to also submit a report on the individual's medication adherence.

As the bill's sponsor and supporters note, medication is often a key component of an AOT treatment plan. Allowing the court to inquire about an individual's adherence to prescribed medication, and providing the court with regular updates about the individual's adherence, could give the court a more complete picture regarding the person's progress in AOT. The recent amendments to the bill may address many of the opponents' concerns about involuntary medication, while still giving the court the authority it needs to achieve a holistic picture of whether an individual in AOT is truly on the path to recovery.

4. Arguments in support

According to the Psychiatric Physicians Alliance of California, one of the co-sponsors of the bill:

Assisted Outpatient Treatment 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. While SB 1035 can be characterized as a clarification, we feel it is important to ensure that there is no ambiguity on the ability to include self-administered medication in a court-ordered treatment plan. 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.

5. Arguments in opposition

According to Cal Voices, writing in opposition:¹⁶

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. If the aim is long-term recovery, SB 1035 misses the mark, and we urge the Legislature to prioritize voluntary services, rather than involuntary services with forced medication.

¹⁶ The opposition is writing in response to a prior version of the bill.

SUPPORT

Big City Mayors Coalition (co-sponsor)
California State Association of Psychiatrists (co-sponsor)
Psychiatric Physicians Alliance of California (co-sponsor)
California State Sheriffs' Association
Inland Empire Coalition of Mayors
Steinberg Institute

OPPOSITION

Cal Voices
Depression and Bipolar Support Alliance

RELATED LEGISLATION

Pending Legislation:

SB 1338 (Umberg, 2022) establishes the Community Assistance, Recovery, and Empowerment (CARE) Court Program, which authorizes a court to order an adult person who is suffering from a mental illness and a 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. SB 1338 is pending before the Senate Appropriations Committee.

SB 1238 (Eggman, 2022) requires the State Department of Health Care Services, in consultation with each council of governments, to determine the existing and projected need for behavioral health services, including AOT, for each region in a specified manner and would require, as part of that process, councils of governments to provide the department-specified data. SB 1238 is pending before the Senate Appropriations Committee.

AB 2830 (Bloom, 2022) would implement the CARE Act and CARE courts and is virtually identical to this bill. AB 2830 is pending before the Assembly Judiciary Committee.

Prior Legislation:

SB 782 (Glazer, 2021) as heard by this Committee, would have implemented a State Auditor recommendation to ensure former LPS Act conservatees are eligible for AOT. SB 782 was held in the Assembly Rules Committee after it was significantly amended.

SB 507 (Eggman, Ch. 426, Stats. 2021) broadened the 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; permitted specified individuals to testify at an AOT hearing via videoconferencing, as specified; and permitted a court to order AOT for eligible conservatees, as specified, when certain criteria are met.

AB 1976 (Eggman, Ch. 140, Stats. 2020) implemented Laura's Law statewide, effective July 1, 2021; permitted counties to opt out of providing AOT services, as specified; and deleted the sunset date for Laura's Law.

PRIOR VOTES:

Senate Health Committee (Ayes 10, Noes 0)
