

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

SB 1227 (Eggman)
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AWM

SUBJECT

Involuntary commitment: intensive treatment

DIGEST

This bill modifies the Lanterman-Petris-Short (LPS) Act to allow a second 30-day intensive treatment hold for a person who has been certified as “gravely disabled,” in addition to the existing 3-day, 14-day, and 30-day treatment holds, without needing to file a conservatorship petition or seek judicial review.

EXECUTIVE SUMMARY

The *parens patriae* authority gives the state the power to intervene on behalf of those who cannot act in their own best interests. California’s approach to wielding this power over people with mental illnesses shifted dramatically beginning in the second half of the 20th century, as it sought to move from a heavy-handed paternalistic model to a model that better protects the civil and due process rights of the persons subjected to it. This effort culminated with the passage of the LPS Act, which aimed to “end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders” (Welf. & Inst. Code, § 5001) by establishing a process for involuntarily detaining and treating a person found to be gravely disabled or a danger to self or others.

Because a conservatorship involves a major curtailment of liberty, the LPS Act contains several significant procedural safeguards, including a carefully calibrated series of temporary detentions for evaluation and treatment of people who may ultimately necessitate a conservatorship. This process begins with a 72-hour “5150” detention for evaluation and treatment that may be extended by certification for 14 days of intensive treatment. In 1988, the Legislature expanded the series of involuntary holds by adding an additional 30-day period for further intensive treatment, provided that at each juncture probable cause to continue the detention is found at a certification review hearing. If the individual does not appear to be stabilizing during the 30-day hold, the

county may petition for the establishment of a conservatorship, which runs for one year. The subject of a conservatorship proceeding is entitled to numerous procedural safeguards, such as the right to court-appointed counsel and the right to a jury trial on the question of whether they meet the definition of “gravely disabled,” because the deprivation of liberty in a conservatorship is so great. Current law prohibits a county from involuntarily holding a person for longer than 47 days without filing a conservatorship petition, i.e., the total amount of time under a 3-day hold, a 14-day hold, and a 30-day hold.

This bill would expand the time a person can be involuntarily detained without a formal conservatorship hearing by authorizing a second 30-day hold in addition to the existing 3-day, 14-day, and 30-day holds. The bill concomitantly extends the maximum duration during which a person can be held without a conservatorship petition being filed from 47 to 77 days. The bill provides no additional procedural safeguards during the second 30-day hold.

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 County Behavioral Health Directors Association, Families Advocating for the Seriously Mentally Ill, the Inland Empire Coalition of Mayors, and the Steinberg Institute. The bill is opposed by ACLU California Action, the Depression and Bipolar Support Alliance, and Disability Rights California. 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).)
 - b) Provides that, when applying the definition of a mental disorder for purposes of, among other things, a 14-day involuntary detention described in 2)(b), the historical course of the person’s medical disorder be considered; “historical course” is defined to include evidence presented by persons who have provided, or are providing, mental health or related support services to the patient, the patient’s medical records as presented to the court, including psychiatric records, or evidence voluntarily presented by family members, the patient, or any other person designated by the patient. (Welf. & Inst. Code, § 5008.2.)

- 2) Establishes a series of escalating detentions for involuntary treatment of a person who meets the criteria above, which may culminate in a renewable 1-year conservatorship for a person determined to be gravely disabled. Specifically:
 - a) 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 (known as a "5150 hold"). (Welf. & Inst. Code, § 5150.)
 - b) A person who has been detained for 72 hours may be further 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. (Welf. & Inst. Code, § 5250.)
 - c) After the 14 days, a person may be detained for an additional 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (Welf. & Inst. Code, §§ 5260, 5270.15.)

- 3) Establishes the following review procedures for the 14-day and 30-day intensive treatment detentions set forth in 2(b) and 2(c):
 - a) The person certified must be notified that they are entitled to a certification review hearing to determine whether probable cause exists for the continued detention related to the mental disorder or chronic alcoholism, or, in lieu of the hearing, to seek judicial review by habeas corpus. (Welf. & Inst. Code, §§ 5254, 5254.1, 5270.15.)
 - b) A certification review hearing must be held within four days of the date the person was certified for additional treatment unless postponed at the request of the attorney or advocate for the person certified. (Welf. & Inst. Code, § 5256.)
 - c) The certification review must be conducted by either a court-appointed commissioner or referee, or a certification review hearing officer who must be either a state-qualified administrative law hearing officer or a medical professional as specified. (Welf. & Inst. Code, § 5256.1.)
 - d) At the hearing, evidence in support of the certification must be presented by a person designated by the director of the facility in which the person is being detained, and a district attorney or county counsel may, at their discretion, also present evidence. (Welf. & Inst. Code, § 5256.2.)
 - e) The person certified must be present at the hearing unless they, with the assistance of counsel or an advocate, waive that right. The person may represent themselves or be represented by counsel, and may present evidence in their defense. (Welf. & Inst. Code, § 5256.4(a).)
 - f) The hearing must be conducted in an impartial and informal manner and the person conducting the hearing is not bound by the rules of procedure or evidence applicable in judicial proceedings. All evidence relevant to

- establishing that the person certified is or is not gravely disabled must be admitted and considered. (Welf. & Inst. Code, § 5256.4(b), (d).)
- g) If the person conducting the hearing finds, at the conclusion of the hearing, that there is no probable cause to believe that the person certified is gravely disabled, then the person certified may no longer be involuntarily detained. (Welf. & Inst. Code, § 5256.5.)
 - h) As an alternative to the hearing procedures above, the person certified may seek judicial review by a writ of habeas corpus. The person certified has the right to counsel, appointed by the county if necessary, in the habeas proceeding. The person must be released if the court finds that the person is not gravely disabled or a danger to themselves or others, had not been advised of the option of voluntary treatment, had accepted voluntary treatment, or the facility providing the intensive treatment is not equipped to do so. (Welf. & Inst. Code, § 5276.)
- 4) Provides that, at the end of a 30-day detention for intensive treatment, the person must be released unless:
- a) The person agrees to receive further treatment on a voluntary basis;
 - b) The patient is the subject of a conservatorship petition, as set forth in 5); or
 - c) The patient is the subject of a petition for postcertification treatment of a dangerous person pursuant to article 6 of part 1 of division 5 of the Welfare and Institutions Code. (Welf. & Inst. Code, § 5270.35(b).)
- 5) Provides that a person in charge of a facility providing a 5150 hold or 14- or 30-day involuntary detention for intensive treatment may recommend an LPS conservatorship for the person treated when the person being treated is unwilling or unable to accept voluntary treatment; if the county conservatorship investigator agrees, the county must petition the superior court to establish an LPS conservatorship. (Welf. & Inst. Code, §§ 5350 et seq.)
- a) If, while a petition for a full LPS conservatorship is pending, the investigating officer recommends a “temporary conservatorship” until the petition is ruled on, the court may establish a temporary conservatorship of no more than 30 days, until the point when the court makes a ruling on whether the person is “gravely disabled.” (Welf. & Inst. Code, § 5352.1.)
- 6) Requires, when it appears during a 14-day detention that a gravely disabled person is likely to qualify for a conservatorship even after an additional 30 days of intensive treatment, the professional person in charge of the facility should make the conservatorship referral during the 14-day period of intensive treatment. (Welf. & Inst. Code, § 5270.55(a).)
- 7) If a conservatorship referral was not made during the 14-day period and it appears during the 30-day period that the person is likely to require the appointment of a

conservator, the referral for a conservatorship must be made to allow sufficient time for conservatorship investigation and other related procedures.

- a) If a temporary conservatorship is obtained pursuant to the pending petition, the temporary conservatorship period must run concurrently with the 30-day intensive treatment period, not consecutively.
 - b) The maximum involuntary detention period for gravely disabled persons pursuant to the 5150 hold and the 14-day and 30-day intensive treatment detentions is 47 days. (Welf. & Inst. Code, § 5270.55.)
- 8) 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. (Welf. & Inst. Code, § 5350(d).)
- 9) Provides that the court or the jury must find that a person is gravely disabled beyond a reasonable doubt, and in the case of a jury trial, the verdict must be unanimous, in order for a conservatorship to be established. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235.)

This bill:

- 1) Authorizes, for a person being held pursuant to a 30-day intensive treatment hold under Welfare and Institutions Code section 5270.15 (a 30-day hold), the imposition of a second 30-day hold if the patient is still in need of intensive services.
 - a) The bill provides that under no circumstances shall a person be certified for more than two consecutive 30-day holds under section 5270.15.
 - b) The bill does not provide for any additional process for the second 30-day hold, such as a renewed certification proceeding or judicial review.
- 2) Modifies the time frame in which a professional providing treatment may recommend a conservatorship, allowing the recommendation to be made during a 14-day hold, the initial section 30-day hold, or the second 30-day hold.
- 3) Extends the maximum involuntary detention period for gravely disabled persons pursuant to a 5150 hold, a 14-day hold, and two 30-day holds to 77 days.

COMMENTS

1. Author's statement

Current law allows for counties to implement a period of 30 additional days of intensive treatment for those experiencing a mental illness and who are gravely disabled as a result. This law was passed in 1988 and permanent and temporary conservatorships have declined significantly since then. Many factors have contributed to this decline over the years and, while this particular code section

may have been successful at reducing conservatorships, it would be impossible to determine given the concurrent reduction in inpatient bed capacity. Currently, if a person is unlikely to stabilize and become safe to release into the community during a period of 30 days, they should be recommended for a conservatorship investigation.

This bill would allow for a single 30-day extension for someone already receiving these intensive services, and it would maintain the goal of providing this limited additional treatment only to those likely to recover in that time, and by doing so avoid conservatorship. Conservatorship proceedings limit personal rights, can be very costly, and should only be used as a last resort. This bill provides another off-ramp option to conservatorship for those likely to recover with a limited amount of further intensive treatment.

2. The LPS Act and its procedures

The California Legislature has long sought to achieve the right balance between providing for the safety and well-being of those suffering from severe mental illness, those who are seen as gravely disabled or at risk of harming themselves or others, and recognizing their inherent due process and civil rights. In the 1960s, the Legislature enacted the LPS Act to develop a statutory process under which individuals could be involuntarily held and treated in a mental health facility in a manner that safeguarded their constitutional rights.¹ The goals of the Act include ending the inappropriate and indefinite commitment of persons with mental health disorders, developmental disabilities, and chronic alcoholism; providing prompt evaluation and treatment of persons with serious mental disorders or impaired due to chronic alcoholism; 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.²

The LPS Act provides for involuntary commitment for varying lengths of time for the purpose of treatment and evaluation, provided certain requirements are met.³ The LPS Act also authorizes the establishment of LPS conservatorships, which can result in involuntary commitment for the purposes of treatment, if an individual is found to meet the “grave disability” standard.⁴

“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.”⁵ The common thread within the existing LPS

¹ See Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.

² *Id.*, § 5001.

³ *Id.*, §§ 5150 et seq.

⁴ *Id.*, §§ 5350 et seq.

⁵ *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541.

framework is that the person must be found to have a “grave disability” that results in physical danger or harm to the person. This “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.⁶ 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.⁷

Typically, a person is generally brought under the ambit of the LPS act through a 5150 hold. This allows an approved facility to involuntarily commit a person for 72 hours for evaluation and treatment if they are determined to be, as a result of a mental health disorder, a threat to themselves or others, or gravely disabled.⁸ The peace officer or other authorized person who detains the individual must know of a state of facts that would lead a person of ordinary care and prudence to believe that the individual meets this standard.⁹ When making this determination, the peace officer, or other authorized person, may consider the individual’s past conduct, character, and reputation, and the historical course of the individual’s mental illness, so long as the case is decided on facts and circumstances presented to the detaining person at the time of detention.¹⁰

Following a 72-hour 5150 hold, the individual may be held for an additional 14 days without court review if the professional staff of the agency or facility evaluating the individual finds that the individual continues to be, as a result of a mental health disorder or impairment by chronic alcoholism, a threat to themselves or others or gravely disabled.¹¹ The professional staff conducting the evaluation must also find that the individual has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.¹² The individual 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 third parties who are both willing and able to help.¹³ The certification for the 14-day detention must be reviewed at a certification hearing before an appointed hearing officer unless the individual seeks judicial review

⁶ Welf. & Inst. Code, § 5008(h).

⁷ *Id.*, §§ 5250(c), 5350(e); *Conservatorship of Benevuto* (1986) 180 Cal.App.3d 1030; *Conservatorship of Early* (1983) 35 Cal.App.3d 244; *Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453. SB 1416 (Eggman, 2022), expands the definition of “gravely disabled” within the LPS Act to include persons unable to provide for their basic needs for medical care, and defines a person unable to provide for those needs as a person at risk of substantial bodily harm, dangerous worsening of any concomitant physical illness, or serious psychiatric deterioration.

⁸ Welf. & Inst. Code, § 5150.

⁹ *People v. Triplett* (1983) 144 Cal.App.3rd 283, pp. 287-288.

¹⁰ Welf. & Inst. Code, § 5150.05; *Heater v. Southwood Psychiatric Center* (1996) 42 Cal.App.4th 1068.

¹¹ Welf. & Inst. Code, § 5250.

¹² *Id.*, § 5250(c).

¹³ *Id.*, § 5250(d).

via a petition for habeas corpus.¹⁴ The person certified may be represented by, but is not entitled to, counsel at the certification hearing.¹⁵ The detention may continue for the full 14 days if the person conducting the hearing finds that there is probable cause that the person certified is gravely disabled.¹⁶

If professional staff finds that the person is still gravely disabled and unwilling or unable to accept voluntary treatment following their additional 14 days of intensive treatment, they may be certified for an additional period of not more than 30 days of intensive treatment.¹⁷ Like the 14-day detention, the 30-day hold must be reviewed by a hearing officer or, at the request of the individual, in a habeas corpus proceeding.¹⁸ The hearing for the 30-day detention follows the same procedures as the 14-day detention hearing.¹⁹ For the duration of the 30-day treatment, the professional staff of the agency or facility providing the treatment must analyze the person's condition at intervals not to exceed 10 days, and determine whether the person continues to meet the criteria for continued confinement.²⁰ If the person is found to no longer meet the requirements for the 30-day hold before the 30 days is up, the certification must be terminated.²¹

"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."²² 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.²³ An LPS conservatorship is intended to provide individualized treatment, supervision, and placement for the gravely disabled individual.²⁴ The court may establish a temporary 30-day conservatorship while the investigation into whether a full LPS conservatorship is warranted, on the basis of a recommendation from the officer investigating the proposed conservatorship.²⁵

The proposed conservatee has the right to counsel at the hearing on the petition for a full LPS conservatorship – appointed for them, if necessary – and is entitled to demand a jury trial on the issue of their grave disability.²⁶ Because an LPS conservator's powers often include the power to confine a person in a treatment facility, courts have

¹⁴ *Id.*, §§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.

¹⁵ *Id.*, 5256.4.

¹⁶ *Id.*, § 5256.6.

¹⁷ *Id.*, § 5270.15.

¹⁸ *Id.*, § 5270.15(b).

¹⁹ *Ibid.*

²⁰ *Id.*, § 5270.15(b)(2).

²¹ *Ibid.*

²² *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at p. 541.

²³ Welf. & Inst. Code, § 5350.

²⁴ *Id.*, § 5350.1.

²⁵ *Id.*, §§ 5352.1, 5354.

²⁶ Welf. & Inst. Code, § 5350, 5365.

recognized that the liberty, property, and reputational interests at stake are comparable to those in criminal proceedings; consequently, the party seeking imposition of the conservatorship must prove the proposed conservatee's grave disability beyond a reasonable doubt and the finding must be made by the court or a unanimous jury.²⁷ If the potential conservatee requests a court jury trial and is the subject of a temporary 30-day conservatorship at the recommendation of the investigating officer, the temporary conservatorship may be extended until the disposition of the jury trial, for a maximum of six months.²⁸

Once a full LPS conservatorship is established, the conservatee may twice petition for rehearing during the one-year conservatorship.²⁹ At a rehearing, a conservatee need only prove by a preponderance of the evidence that they are no longer gravely disabled.³⁰

3. This bill extends the time in which a person may be involuntarily held for intensive treatment without judicial review

The current system of involuntary holds – a 3-day 5150 hold, then a 14-day intensive treatment hold, then a 30-day hold – has been in place since 1988. In that year, the Legislature authorized the 30-day hold under Welfare and Institutions code section 5270.15.³¹ The stated intent for adding the 30-day intensive hold was

to reduce the number of gravely disabled persons for whom conservatorship petitions are filed and who are placed under the extensive powers and authority of a temporary conservator simply to obtain an additional period of treatment without the belief that a conservator is actually needed and without the intention of proceeding to trial on the conservatorship petition.³²

Nearly 35 years later, it is unclear what effect the added 30-day hold has had on the population intended to be served by the LPS Act. As the author notes, many factors have contributed to the decline in LPS conservatorship petitions over the years, and the reduction in the number of available beds makes it impossible to say if petitions are not being filed due to patient-based or capacity-based reasons.

²⁷ *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235; *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at pp. 537-538

²⁸ Welf. & Inst. Code, § 5352.1(c).

²⁹ *Id.*, § 5364.

³⁰ *Conservatorship of Everette M.* (1990) 219 Cal. App. 3d 1567, 1573.

³¹ See AB 2679 (Allen, Ch. 1517, Stats. 1988).

³² Welf. & Inst. Code, § 5270.10.

In 2020, the State Auditor published a report on its audit of the implementation of the LPS Act in Los Angeles County, San Francisco County, and Shasta County.³³ The audit found, among other things, that the majority of persons initially retained in a 5150 hold did not go on to be placed in even 14-day holds, and that an even smaller number of persons went on to be placed in conservatorships:³⁴

Type of involuntary hold	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019
Los Angeles					
5150 hold	71,018	72,508	73,830	80,047	81,505
14-day hold	15,828	14,156	15,038	15,497	15,820
Conservatorship	4,389	4,919	4,660	4,623	4,698
San Francisco					
5150 hold	4,524	4,086	3,718	4,033	3,837
14-day hold	448	580	592	798	897
Conservatorship	531	531	525	537	601
Shasta					
5150 hold	631	581	504	403	670
14-day hold	148	220	235	246	310
Conservatorship	60	81	86	69	94

The audit further found generally that, although the language of the LPS Act was sufficient to meet the intent of the LPS Act, the state was not adequately caring for Californians with severe mental illnesses.³⁵ Specific problematic areas included the shortage of available treatment beds: the audit found that “people who were on the waitlist for specialized care in state hospital facilities had been waiting an average of one year to receive that care because of a shortage of available treatment beds,” and some received “other care that did not fully meet their needs and did not fully protect them or others around them.”³⁶ The audit also found that the specific counties reviewed also reported bed shortages for a variety of types of care.³⁷

This bill would expand the existing 30-day hold implemented in 1988 to authorize a second 30-day hold for intensive treatment without judicial review, thereby extending the maximum time a person can be held before a conservatorship petition is filed to 77 days. This expansion was not among the measures recommended by the State Auditor.³⁸ The bill’s sponsors argue that this extension will keep more individuals out of conservatorships because the second 30-day hold will give treating professionals more time to stabilize the person being detained, but Committee staff have not been

³³ Auditor of the State of California, Report, *Lanterman-Petris-Short Act: California Has Not Ensured That Individuals With Serious Mental Illnesses Receive Ongoing Care* (Jul. 2020).

³⁴ *Id.*, Appendix C.

³⁵ *Id.*, at p. 2.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Id.* at p. 4.

provided with information regarding what percentage of the population being held for 30 days under section 5270.15 the author believes needs to be detained for another 30 days. The chart provided in the State Auditor's report illustrates that most persons detained in a 5150 hold are released without a 14-day hold, and that most persons in a 14-day hold are not placed in a conservatorship; without data, it is impossible to know how many people still being held after a 14-day hold could avoid a conservatorship if they were detained for two concurrent 30-day holds instead of just one.

Bill opponent Disability Rights California notes that, in light of the statewide shortage of beds and medical professionals to care for persons in LPS Act holds, expanding the time a person can be involuntarily held seems unlikely to provide positive outcomes. They further argue that the lack of data to support the need for an additional 30-day hold makes this bill premature, particularly when pending legislation would create a database of information about beds in various care facilities that will answer some of the questions raised by the State Auditor and potentially provide insight into whether an additional 30-day hold would be beneficial to the persons being detained.³⁹

4. Constitutional considerations in expanding involuntary detention without judicial review

The Fourteenth Amendment to the United States Constitution prohibits a state from "depriv[ing] any person of life, liberty, or property without due process of law."⁴⁰ This clause "guarantees more than fair process, and the 'liberty' it protects is more than the absence of physical restraint."⁴¹ The United States Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."⁴² The California Supreme Court has also held that "personal liberty is a fundamental interest, second only to life itself, as an interest protected under both the California and United States Constitutions."⁴³

To determine whether a person's liberty interest has been violated, a court will balance the person's liberty interest against the relevant state interests.⁴⁴ When the interest at stake is a fundamental constitutional right, strict scrutiny applies, meaning the court will uphold the law only if it is narrowly tailored to promote a compelling government interest.⁴⁵

While the state's *parens patriae* authority gives it a compelling interest in "provid[ing] care for persons who are unable to care for themselves and in preventing an individual

³⁹ See SB 1154 (Eggman, 2022).

⁴⁰ U.S. Const., 14th amend.

⁴¹ *Washington v. Glucksberg* (1997) 521 U.S. 702

⁴² *Addington v. Texas* (1979) 441 U.S. 418, 425.

⁴³ *People v. Olivas* (1976) 17 Cal.3d 236, 251.

⁴⁴ *Love v. State Department of Education* (2018) 29 Cal.App.4th 980, 989.

⁴⁵ *Ibid.*

from harming himself or others,”⁴⁶ the lack of data surrounding this bill’s proposal for an added 30-day involuntary detention under the LPS Act makes it impossible to conclude whether the bill is adequately narrowly tailored in light of the significant liberty interest at stake. The bill’s sponsors and supporters argue that this measure is necessary in order to protect mentally ill persons in need of treatment, and that authorizing a second 30-day hold will prevent the need for conservatorship petitions, but the courts have made clear that the interest in protecting persons suffering from mental illnesses does not ameliorate the need for due process protections.⁴⁷

Without data, the Legislature is left to guess at factors relevant to the due process analysis, such as how many persons would likely be confined under the additional 30-day hold; how many more persons will stabilize after 77 days of detention than are currently stabilizing after 47 days; how many conservatorships will be avoided by adding the extra 30 days of involuntary detention; how would adding a 30-day hold affect the current lack of treatment beds or otherwise strain the system; is there a shorter additional period that would be equally beneficial; and what is the likelihood that persons will be involuntarily confined past the point at which they have stabilized.

The author of this bill has two other bills pending this year that would gather some of the data necessary to determine whether adding another 30-day hold, or a hold of some other duration, would best serve the gravely disabled population. SB 929 (Eggman, 2022), requires the State Department of Health Care Services (DHCS) to gather certain data relating to, among other things, the implementation of the LPS Act and clinical outcomes for individuals placed on each type of hold. SB 1154 (Eggman, 2022) requires the State Department of Public Health, DHCS, and the State Department of Social Services to develop a real-time database of available treatment beds. Without the information that these bills would provide, however, it is difficult to determine whether the additional 30-day hold is narrowly tailored.

If this Committee moves the bill forward notwithstanding the constitutional concerns raised in this analysis, the Committee may wish to ensure, through an amendment, that the additional 30-day hold contains the same procedural safeguards as the first hold.

5 Arguments in support

According to the Psychiatric Physicians Alliance of California, a co-sponsor of the bill:

Additional time may be needed for further treatment – under the circumstances [involved in antipsychotic medication] – when an individual has had a partial or no response to an initial medication. More time is needed to titrate up a dosage

⁴⁶ *State Dept. of State Hospitals v. A.H.* (2018) 27 Cal.App.5th 441, 447.

⁴⁷ See *Roulet, supra*, 23 Cal.3d at p. 225 (“Nor can this court be swayed by the fact that appellant had her liberty taken away, allegedly for her own good.”).

to determine if that may be more effective. In the case of antipsychotic medications, it can take 3-4 weeks or longer to determine if a medication is having the desired effect. If not, then another choice of medication is necessary. This starts the process over again with a new medication.

If the patient refuses medication courts may order medication administered but this too takes time.

If a patient needs treatment for side effects, selecting the right antidote medication, administering it and adjusting that dosage correctly takes time. Some side effects reduce or dissipate after several weeks, and others may not. If severe side effects persist, and patient *[sic]* an alternate selection of an antipsychotic is necessary. And that starts the process all over again. All these things take time...

The need for options that assure that patients are not released before it is safe to release them should be obvious. SB 1227 will help to insure *[sic]* that people are only detained because it is medically necessary, no lower level of care is appropriate, and that these individuals can be released into the community where they can safely reside.

6. Arguments in opposition

According to Disability Rights California, writing in opposition:

First, by allowing an extension of an additional 30 days, SB 1227 defeats a primary purpose of the LPS Act, which is to “end the inappropriate, indefinite, and involuntary commitment of persons with mental disorders.” Instead of expanding the ability to involuntarily confine people with mental health disabilities for extended periods of time, the Legislature should encourage the expansion of evidence-based solutions to institutionalization, including Assertive Community Treatment and Permanent Supportive Housing. Both of these evidence-based interventions are proven to increase engagement in services and reduce the need for involuntary hospitalization.

Second, the Legislature has no data upon which to make an informed decision about whether extending a [30-day hold] for an additional 30 days is an intervention that is likely to lead to sustained positive outcomes for people such that it justifies the increased infringement on liberty. Though there are currently bills pending before the Legislature that will lead to the collection of better data about the LPS system if any of them are enacted, complete data to support this change does not currently exist. Any decision to enact laws that infringe on individual liberties should be driven by clear data, not presumptions.

Third, enabling an additional 30 days of treatment pursuant to a [30-day hold] will exacerbate well-documented bottlenecks in California's behavioral health treatment system. Currently, the State as a whole has neither the workforce nor the infrastructure to accommodate the increased voluntary treatment that would flow from the enactment of SB 1227.

According to ACLU California Action, writing in opposition:

We have seen no evidence that detaining people for an additional 30 days is narrowly tailored and the least restrictive means of accomplishing a compelling governmental interest, consistent with the strict scrutiny test for evaluating governmental restrictions on fundamental freedoms. To pick just one of the many questions that must be answered, what is the evidence-based rationale for 30 days rather than a shorter period? Certainly, the administrative convenience of avoiding or delaying the need to petition for determination of conservatorship would not be sufficient. The LPS Act was previously amended to allow for a 30-day hold in addition to the 14-day holds. This bill proposes that a further 30-day hold should be broadly authorized without, to our knowledge, the specific justification and narrow tailoring necessary to warrant this new requirement. At best it seems that there is only anecdotal information from a small Marin County study of the 30-day hold currently allowed, none of which has any reliable bearing on the question of whether a 60-day hold should be created. While there are currently bills pending before the Legislature that we hope will result in better data about the LPS system, any decision to enact laws that infringe on individual liberties should await that data.

SUPPORT

Big City Mayors (co-sponsor)
California State Association of Psychiatrists (co-sponsor)
Psychiatric Physicians Alliance of California (co-sponsor)
County Behavioral Health Directors Association
Families Advocating for the Seriously Mentally Ill
Inland Empire Mayors Coalition
Steinberg Institute

OPPOSITION

ACLU California Action
Depression and Bipolar Support Alliance
Disability Rights California

RELATED LEGISLATION

Pending Legislation:

SB 1416 (Eggman, 2022) expands the definition of “gravely disabled” within the LPS Act to include persons unable to provide for their basic needs for medical care, and defines a person as unable to provide their basic personal needs for medical care as a person who is at risk of substantial bodily harm, dangerous worsening of any concomitant physical illness, or serious psychiatric deterioration. SB 1416 is pending before the Senate Judiciary Committee and is scheduled to be heard on the same day as this bill.

SB 1338 (Umberg and Eggman, 2022)) implements the CARE Act, which will implement a statewide framework for court-ordered mental illness treatment and services. SB 1338 is pending before Senate Judiciary Committee and is set to be heard on the same date as this bill.

SB 1154 (Eggman, 2022) requires, by January 1, 2024, the State Department of Public Health, in consultation with the DHCS and the State Department of Social Services, and by conferring with specified stakeholders, to develop a real-time, internet-based database to collect, aggregate, and display information about beds in inpatient psychiatric facilities, crisis stabilization units, residential community mental health facilities, and licensed residential alcoholism or drug abuse recovery or treatment facilities in order to facilitate the identification and designation of facilities for the temporary treatment of individuals in mental health or substance use disorder crisis. SB 1154 is pending before the Senate Appropriations Committee.

SB 929 (Eggman, 2022) requires DHCS to collect and publish annually quantitative data relating to the LPS Act, including information relating to, among other things, the number of persons detained for 72-hour evaluation and treatment, clinical outcomes for individuals placed in each type of hold, services provided in each category, waiting periods, and needs for treatment beds, as specified. The bill would additionally require each other entity involved in implementing the provisions relating to detention, assessment, evaluation, or treatment for up to 72 hours to provide data to the department upon its request, as specified. SB 929 is pending before the Senate Appropriations Committee.

SB 516 (Eggman, 2021) provides that a person’s medical condition may be considered in determining their mental condition for purposes of certifying them for a 14- or 30-day involuntary detention for treatment and evaluation under the LPS Act. SB 516 is pending before the Assembly Health Committee.

AB 2830 (Bloom, 2022) implements the CARE Act and CARE courts and is virtually identical to SB 1338 (Umberg, 2022). AB 2830 is pending before the Assembly Judiciary Committee.

Prior Legislation:

AB 2015 (Eggman, 2020), which was substantially similar to SB 516 (Eggman, 2021), would have expanded on the type of information that could be admitted at a hearing on the certification of a person for a 14-day or 30-day detention for intensive treatment, to include matters relating to the historical course of the person's mental illness and treatment compliance. AB 2015 died in the Senate Judiciary Committee.

SB 565 (Portantino, Ch. 218, Stats. 2017) required a mental health facility holding a person under a section 5270.15 30-day hold to make reasonable attempts to notify family members or any other person designated by the patient at least 36 hours prior to the certification review hearing for the additional 30 days of treatment, except as specified.

PRIOR VOTES:

Senate Health Committee (Ayes 10, Noes 0)
