

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

SB 1394 (Eggman)
Version: February 18, 2022
Hearing Date: March 29, 2022
Fiscal: No
Urgency: No
AWM

SUBJECT

Conservatorships: gravely disabled persons

DIGEST

This bill changes the maximum amount of time by which a temporary 30-day conservatorship pending the resolution of a petition for a conservatorship under the Lanterman-Petris-Short (LPS) Act may be extended, when the potential conservatee requests a court or jury trial on the issue of whether they are gravely disabled, from six months to 180 days.

EXECUTIVE SUMMARY

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. The LPS Act was intended to balance the goals of maintaining the constitutional right to personal liberty and choice in mental health treatment with the goal of safety when an individual may be a danger to oneself or others. To achieve this balance, the LPS Act provides for a series of short-term involuntary treatment periods of increasing duration for people determined to be a danger to themselves or others, or “gravely disabled,” which may culminate in a conservatorship of up to one year. The short-term involuntary treatment periods do not require judicial review unless the person subject to the hold files a writ of habeas corpus. The subject of a conservatorship petition, however, is entitled to request a court or jury trial on the question of whether they are gravely disabled, and the finding must be made beyond a reasonable doubt.

One of the temporary measures authorized under the LPS Act is the establishment of a temporary conservatorship of a person who is already the subject of petition for a full conservatorship under the LPS Act. The temporary conservatorship may be established by the court at the recommendation of the officer investigating the facts of the conservatorship petition, if the court is satisfied that the report shows the necessity of

the temporary conservatorship. This temporary conservatorship generally expires at the sooner of 30 days or when the court holds a hearing on the issue of whether or not the individual is gravely disabled. However, if the person requests a court or jury trial, the temporary conservatorship can be extended until the date of the disposition of the issue of grave disability by the finder of fact, for a maximum of up to six months.

According to the author, the six-month extension has caused confusion in some conservatorship proceedings. Specifically, courts have been unsure whether the statutory six months should be understood as six calendar months (e.g, January 1 to July 1) or 180 calendar days. The author reports that some temporary conservatorships have ended prior to a decision on the issue of grave disability as a result of this confusion. To resolve the issue, this bill changes the maximum six-month extension to a maximum 180-day extension.

This bill is sponsored by the author. There is no known support or opposition. If this bill passes out of this Committee, it will be heard by the Senate Public Safety Committee.

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.)
 - 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 a series of escalating detentions for involuntary treatment of a person who meets the criteria above that 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 14 or 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.)
 - d) 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.)
- 3) 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).)
 - 4) Provides that, if a person for whom a full LPS conservatorship is sought is the subject of a temporary conservatorship at the recommendation of the investigating officer, 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. (Welf. & Inst. Code, § 5352.1.)

This bill:

- 1) Amends the maximum amount of time by which a court may extend a 30-day LPS Act temporary conservatorship when the person has requested a 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.
- 2) Makes certain nonsubstantive technical and conforming changes.

COMMENTS

1. Author’s comment

According to the author:

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.

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 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

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.

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), pending before the Senate Health Committee, would expand the definition of “gravely disabled” to include the inability, as a result of a mental health disorder, to provide for one’s own personal or medical care, or self-protection and safety.

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 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 hold must be reviewed at a certification hearing before an appointed hearing officer unless the individual seeks judicial review via a petition for habeas corpus.¹⁴

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.¹⁵ Like the 14-day hold, the 30-day "temporary conservatorship" must be reviewed by a hearing officer or, at the request of the individual, in a habeas corpus proceeding.¹⁶ 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.¹⁷ If the person is found to no longer meet the

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).

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

¹⁵ *Id.*, § 5270.15.

¹⁶ *Id.*, § 5270.15(b).

¹⁷ *Id.*, § 5270.15(b)(2).

requirements for the 30-day hold before the 30 days is up, the certification must be terminated.¹⁸

“This series of temporary detentions may culminate in a proceeding to determine whether the person is so disabled that [they] should be involuntarily confined for up to one year.”¹⁹ 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.²⁰ An LPS conservatorship is intended to provide individualized treatment, supervision, and placement for the gravely disabled individual.²¹ 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.²²

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.²³ Because an LPS conservator’s powers often include the power to confine a person in a treatment facility, courts have 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.²⁴ 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.²⁵

Once a full LPS conservatorship is established, the conservatee may petition for rehearing twice during the one-year conservatorship.²⁶ At a rehearing, a conservatee need only prove by a preponderance of the evidence that they are no longer gravely disabled.²⁷

¹⁸ *Ibid.*

¹⁹ *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at p. 541.

²⁰ Welf. & Inst. Code, § 5350.

²¹ *Id.*, § 5350.1.

²² *Id.*, §§ 5352.1, 5354.

²³ Welf. & Inst. Code, § 5350, 5365.

²⁴ *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235; *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at pp. 537-538

²⁵ Welf. & Inst. Code, § 5352.1(c).

²⁶ *Id.*, § 5364.

²⁷ *Conservatorship of Everette M.* (1990) 219 Cal. App. 3d 1567, 1573.

3. This bill changes the duration of the maximum extension for a temporary conservatorship established while a petition for a conservatorship under the LPS Act is pending, from six months to 180 calendar days

This bill makes a minor modification to the LPS statutory scheme set forth above. Due process requires that a person who is the subject of an LPS conservatorship have the right to a court or jury trial on the question of whether they are gravely disabled.²⁸ The demand must be made within five days of the hearing on the petition for conservatorship.²⁹ The court or jury trial then must begin within 10 days of the date of the demand, unless counsel for the individual requests a continuance, which the court may grant for up to 15 days.³⁰

In some cases, the person who is the subject of a conservatorship petition may already have been placed in a temporary conservatorship at the recommendation of the officer investigating the conservatorship petition.³¹ This temporary conservatorship generally expires automatically at the earlier of 30 days or the date when the court holds a hearing on the question of whether the person is gravely disabled. If, however, the person has requested a court or jury trial on the question of whether they are gravely disabled, the temporary conservatorship may be extended until the date of the disposition of the issue by the court or jury, for a maximum of six months.³² According to the author and stakeholders, 30-day temporary conservatorships are, in practice, rarely extended for six months, and extensions of that length were mostly due to complications arising from the COVID-19 pandemic.

This bill changes the six-month maximum period to a 180-day maximum period. According to the author, there has been confusion in the courts over the meaning of “six months,” specifically, whether the term should be interpreted to mean six calendar months or 180 calendar days. Changing the term from six months to 180 calendar days will avoid this confusion, and also bring the statute’s terminology in line with other LPS provisions that use a 180-day time period.³³

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 a short-term emergency measure 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

²⁸ Welf. & Inst. Code, § 5350(d)(1).

²⁹ *Ibid.*

³⁰ *Id.*, § 5350(d)(2).

³¹ *Id.*, § 5352.1(a).

³² *Id.*, § 5352.1(c).

³³ *See id.*, §§ 5300, 5304; *see also id.*, § 5346 (AOT term may not exceed 180 days).

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.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 1416 (Eggman, 2022) expands the definition of a "gravely disabled" condition under the LPS Act to include the inability, as a result of a mental health disorder, to provide for the basic personal needs of personal or medical care or self-protection and safety. SB 1416 is pending before the Senate Health Committee.

Prior Legislation: SB 40 (Wiener, Ch. 467, Stats. 2019) modified the housing conservatorship pilot program enacted in SB 1045 (Wiener, Ch. 845, Stats. 2018) to provide that, if a proposed conservatee, while in a temporary housing conservatorship, demands a court or jury trial on the issue of whether the proposed conservatee is incapable of caring for their own health and well-being due to a serious mental illness and substance use disorder, the court may extend the temporary conservatorship until the date of the disposition of the issue by the court or jury trial. The extension may not exceed seven days, unless the trial is ongoing at the time of extension, in which case the extension may last up to an additional seven days.
