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

SB 340 (Stern)
Version: April 26, 2021
Hearing Date: May 4, 2021
Fiscal: No
Urgency: No
JT

SUBJECT

Lanterman-Petris-Short Act: hearings

DIGEST

This bill enables people with personal knowledge of a person who is certified for involuntary detention for intensive treatment under the Lanterman-Petris Short Act (Act) to request to testify in judicial challenges to the certification.

EXECUTIVE SUMMARY

"Involuntary commitment to a mental treatment facility implicates an important, constitutionally-protected liberty interest of the person committed. '"[A] State cannot constitutionally confine… a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends" without good cause.'" (*Doe v. Gallinot* (9th Cir. 1982) 657 F.2d 1017, 1021.) The Act provides for a carefully calibrated series of temporary detentions for evaluation and treatment, which must be authorized through informal administrative hearings that are subject to judicial review.

This bill provides that a family member, friend, or acquaintance with personal knowledge of the person receiving treatment may make a request to testify in a judicial challenge to a certification for intensive treatment under the Act. The request must be submitted in writing to the counsel of either party. The counsel or their designee must determine whether the testimony will assist in the proceedings, and, within a reasonable time, respond to the requester, in writing, with an approval or denial. The bill specifies that these changes do not affect or alter the court's ability to determine the admissibility of testimony.

The bill is supported by the California Downtown Association and the National Alliance on Mental Illness. The bill has no known opposition. The bill passed the Senate Health Committee by a vote of 11-0.

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) 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) 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.)
    b) Provides that 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. (§ 5250.) Provides for an additional 14 days (§ 5260) and 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment (§ 5270.15).

3) Provides that all hearings under the LPS Act are presumptively nonpublic. (§ 5118.)

4) Establishes provisions governing the administrative review of certification of a person for intensive treatment. Specifically:
    a) 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 person has filed a petition for the writ of habeas corpus. (§§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.)
    b) When two professional persons sign the certification, notice of the certification must be personally delivered to the person, their attorney or a designated advocate, and sent to anyone else the person designates. (§§ 5251, 5253.)

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

c) When the notice is delivered, the person must be informed of their rights with respect to the hearing, including the right to the assistance of another person to prepare for the hearing or to answer other questions and concerns regarding their involuntary detention or both. (§ 5254.)
d) At the hearing, which must be held within four days of delivery of the notice (§ 5256), a designee of the director of the psychiatric facility must present evidence in support of the certification decision, and the district attorney or the county counsel may present additional evidence. (§ 5256.2.)
e) The hearing must be conducted in an impartial and informal manner to encourage free and open discussion by participants. (§ 5256.4(b).) The person has the right to: assistance by an attorney or advocate, present evidence, request the attendance of facility employees, and question persons presenting evidence in support of the certification. (*Id.* at (a).)
f) All evidence that is relevant to establishing that the person certified is or is not, as a result of mental disorder or impairment by chronic alcoholism, a danger to others or self, or gravely disabled, must be admitted at the hearing and considered by the hearing officer. (*Id.* at (d).)

5) Provides for judicial review of a certification review hearing. Specifically:
a) Provides that every person detained by certification for intensive treatment has a right to a hearing by writ of habeas corpus for their release, as provided, at any time during the period of intensive treatment pursuant to the 14-day or 30-day periods described above. (§ 5275; Cal. Const., art. I, § 11.)
b) Requires that the person be informed of their right to judicial review by habeas corpus and their right to counsel, including court-appointed counsel. (§ 5254.1.)
c) Requires that judicial review for a habeas corpus proceeding be in the superior court for the county in which the facility providing intensive treatment is located or in the county in which the 72-hour evaluation was conducted, if the patient or a person acting on their behalf informs the professional staff of the evaluation facility (in writing) that judicial review will be sought. (§ 5276.)
d) Requires that a person requesting to be released be informed of their right to counsel by the member of the treatment staff and by the court. (*Id.*) If the person so elects, the court must immediately appoint the public defender or other attorney to assist them in the preparation of a petition for the writ of habeas corpus and, if the person so elects, to represent them in the proceedings. (*Id.*)
e) Requires that reasonable attempts be made by the mental health facility to notify family members or any other person designated by the patient, of the time and place of the judicial review, unless the patient requests that this information not be provided. The patient must be advised by the

facility that is treating the patient that he or she has the right to request that the information not be provided. (*Id.*)

f) Requires the court to either release the person or order an evidentiary hearing to be held within two judicial days after the petition is filed. (*Id.*) Requires the court to release the person immediately if the court finds: (a) they do not meet the criteria for detention, (b) they had not been advised of, or had accepted, voluntary treatment, or (c) that the facility is not equipped and staffed to provide intensive treatment, or is not designated by the county to provide intensive treatment. (*Id.*)

6) Requires that when applying the definition of mental disorder, for purposes of specified provisions under the Act, including the judicial review provisions described above, that the historical course of the person's medical disorder be considered, and defines "historical course" 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. (§ 5008.2.) Facilities must make every reasonable effort to make information provided by the patient's family available to the court. (*Id.*)

7) Requires entities to make reasonable attempts, as specified, to notify family members or any other person designated by a person being involuntarily detained of the time and place of a hearing, unless the person requests that this information not be provided, as specified. (§§ 5256.4(c), 5270.15(b)(1), 5276.)

This bill:

1) Provides that a family member, friend, or acquaintance with personal knowledge of the person receiving treatment may make a request to testify in the judicial review proceedings. The request must be submitted in writing to the counsel of either party. The counsel or their designee must determine whether the testimony will assist in the proceedings, and, within a reasonable time, respond to the requester, in writing, with an approval or denial.

2) Provides that these changes do not affect or alter the court's ability to determine the admissibility of testimony.

COMMENTS

1. Author's statement

The author writes:

> Millions of Californians live with a mental illness, nearly two million of whom are living with a serious mental illness, meaning they are at a greater risk of early mortality, incarceration, and homelessness. People with serious mental illnesses may not always seek or receive treatment voluntarily, which frequently means they are placed in the LPS system. Voluntary treatment and care is always best, but involuntary treatment through the LPS system can be an option of last resort when needed. Decisions around involuntary treatment should be based on accurate and comprehensive information about a person's condition and their ability to care for themselves.
>
> Family and friends are often intimately involved in their loved ones' care. At least 8.4 million Americans provide care to a loved one with a mental illness, providing on average 32 hours of care per week. Unlike doctors or police, families and friends can speak to a person's pattern of behavior and put their current condition in a broader context.
>
> SB 340 requires the court to allow family members, friends, or acquaintances who know the person to provide testimony during a conservatorship hearing about whether they believe their relative or friend should truly be conserved.

2. Involuntary detention for treatment and evaluation under the LPS Act

   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.)

Under the LPS framework, "[o]ne of the principal powers which the court may grant a conservator is the right to place a conservatee in an institution." (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 223 (*Roulet*).) A person found to be gravely disabled may be involuntarily confined for up to one year. (§ 5361.) If, at the end of that year, the conservator determines that the conservatorship is still required, the conservator may petition the superior court for reappointment (*id.*), a process that may repeat itself for as

long as the person remains gravely disabled. "In effect, these statutes assure in many cases an unbroken and indefinite period of state-sanctioned confinement. 'The theoretical maximum period of detention is *life* as successive petitions may be filed . . . .' [Citation.]" (*Roulet*, *supra*, 23 Cal.3d at 224; italics in original.) "In addition to physical restraint, '[t]he gravely disabled person for whom a conservatorship has been established faces the loss of many other liberties …'" (*Id.* at 227.) "Moreover, a person suffering from a grave mental disorder is obviously in a poor position to influence or monitor counsel's efforts on his behalf. Accordingly, the Legislature and this court have built several layers of important safeguards into conservatorship procedure." (*Conservatorship of Ben C.* (2007) 40 Cal. 4th 529, 540.)

b. Certification review hearings

"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.) The act limits involuntary commitment to successive periods of increasingly longer duration, beginning with a 72-hour detention for evaluation and treatment (§ 5150), which may be extended by certification for 14 days of intensive treatment (§ 5250); that initial period may be extended for an additional 14 days if the person detained is suicidal. (§ 5260.) The 14-day certification may be extended for an additional 30-day period for further 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 person has filed a petition for the writ of habeas corpus. (§§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.)

c. Judicial review of certification proceedings

The California Constitution guarantees the right to habeas corpus to seek judicial review of unlawful criminal and civil detentions. (Cal. Const., art. I, § 11; *see Ex parte McCullough* (1868) 35 Cal. 97, 100.) "'"[I]t is well settled that the writ of habeas corpus does not afford an all-inclusive remedy available at all times as a matter of right. It is generally regarded as a special proceeding. "'Where one restrained pursuant to legal proceedings seeks release upon habeas corpus, the function of the writ is merely to determine the legality of the detention by an inquiry into the question of jurisdiction and the validity of the process upon its face, and whether anything has transpired since the process was issued to render it invalid.'"'" (*In re Cook* (2019) 7 Cal.5th 439, 452.) Every person certified for intensive treatment under the Act has a right to judicial review by a petition for habeas corpus in the superior court. (*St. Joseph Hosp. v. Kuyper* (1983) 146 Cal.App.3d 1086, 1088; § 5275.)

Section 5276 requires that judicial review be in the superior court for the county in which the facility providing intensive treatment is located or in the county in which the

72-hour evaluation was conducted if the patient or a person acting on their behalf informs the professional staff of the evaluation facility (in writing) that judicial review will be sought. A person requesting to be released must be informed of their right to counsel by the member of the treatment staff and by the court. (*Id.*) If the person so elects, the court must immediately appoint the public defender or other attorney to assist them in the preparation of a petition for the writ of habeas corpus and, if the person so elects, to represent them in the proceedings. (*Id.*)

Section 5276 also requires that reasonable attempts be made by the mental health facility to notify family members or any other person designated by the patient, of the time and place of the judicial review, unless the patient requests that this information not be provided. The patient must be advised by the facility that is treating the patient that they have the right to request that the information not be provided. (*Id.*) The court must either release the person or order an evidentiary hearing to be held within two judicial days after the petition is filed. (*Id.*) The court must release the person immediately if the court finds: (1) they do not meet the criteria for detention, (2) they had not been advised of, or had accepted, voluntary treatment, or (3) that the facility is not equipped and staffed to provide intensive treatment, or is not designated by the county to provide intensive treatment. (*Id.*) In essence, these habeas corpus hearings are an independent review of the allegations set forth in the certification notice. (*St. Joseph Hosp. v. Kuyper*, *supra*, 146 Cal.App.3d at 1089.)

3. <u>Enables individuals with personal knowledge to request to testify in judicial proceedings reviewing certification decisions</u>

This bill provides that a family member, friend, or acquaintance with personal knowledge of the person receiving treatment may make a request to testify in the judicial proceedings to review certifications for intensive treatment. The request must be submitted in writing to the counsel of either party. The counsel or their designee must determine whether the testimony will assist in the proceedings, and, within a reasonable time, respond to the requester, in writing, with an approval or denial. The bill specifies that these changes do not affect or alter the court's ability to determine the admissibility of testimony.

In support, the National Alliance on Mental Illness writes:

> SB 340 will ensure participation of family, friends, or knowledgeable acquaintances in LPS Act hearings where the stakes for individuals with severe mental illness are extremely high. Learning from loved ones about an individual's past history is often a reliable way to anticipate the future course of illness.

In support, the California Downtown Association writes:

> This bill will ensure that our most vulnerable have the best protection and advocacy available to them and that the care and treatment they receive is appropriately tailored to their individual needs.

SUPPORT

California Downtown Association
National Alliance on Mental Illness – California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 578 (Jones, 2021) protects the privacy of an individual subject to a petition under the Act by clarifying, consistent with case law, that a hearing held under the Act is presumptively closed to the public. The bill is pending in the Assembly.

SB 516 (Eggman & Stern, 2021) permits evidence considered in the certification review hearing to include information regarding the person's medical condition, as specified, and how that condition bears on certifying the person as a danger to self or other, or as gravely disabled. The bill is pending in the Senate Appropriations Committee.

Prior Legislation: SB 565 (Portantino, Ch. 218, Stats. 2017) required a mental health facility to make reasonable attempts to notify family members or any other person designated by a person 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 11, Noes 0)

****