

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

SB 507 (Eggman)
Version: March 25, 2021
Hearing Date: April 6, 2021
Fiscal: No
Urgency: No
JT

SUBJECT

Mental health services: assisted outpatient treatment

DIGEST

This bill, with respect to judicial proceedings to order assisted outpatient treatment: (1) makes former conservatees eligible, (2) permits remote testimony, and (3) requires information regarding the person's capacity to give informed consent regarding psychotropic medication to be provided to the court, as specified.

EXECUTIVE SUMMARY

The Lanterman-Petris-Short (LPS) Act encompasses various schemes for the treatment of individuals with severe mental illness. 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. According to a recent State Auditor report, AOT's eligibility criteria have been construed to preclude former conservatees from being stepped-down to AOT, resulting in the need to re-convince almost a quarter of the people released from conservatorships.

This bill seeks to implement the Auditor's recommendation to change the AOT eligibility criteria in order to make it applicable to former conservatees. The bill also addresses other issues raised in the Auditor's report. Specifically, in AOT proceedings, the bill would allow for remote testimony and would require information related to the person's capacity to give informed consent regarding psychotropic medication to be provided to the court, as specified. The bill is sponsored by the Psychiatric Physicians Alliance of California and is supported by the County Behavioral Health Directors Association of California, the California State Association of Psychiatrists, the California Psychological Association, and the State Building and Construction Trades Council of California. The bill has no known opposition. The bill passed the Senate Health Committee by a vote of 11-0. Clarifying amendments are proposed on page 9.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the LPS Act (Welf. & Inst. Code § 5000 et seq.)¹, which, among other things, provides for an escalating series of temporary detentions of a person who is gravely disabled or a danger to self, culminating in a proceeding to establish a year-long conservatorship for those who are gravely disabled. (§§ 5150 et seq., 5250 et seq., 5270 et seq., 5350 et seq.)
- 2) 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).)
- 3) Authorizes, in participating counties, a court to order a person age 18 or older into AOT if the court finds by clear and convincing evidence that all of the following criteria are met:
 - a) the person is suffering from a serious mental illness, as defined, and is unlikely to survive safely in the community without supervision, based on a clinical determination;
 - b) the person has a history of a lack of compliance with treatment for mental illness, as specified;
 - c) the county mental health director or designee has offered the person an opportunity to participate in a treatment plan, the person continues to fail to engage in treatment, and the person’s condition is substantially deteriorating;
 - d) in view of the person’s treatment history and current behavior, 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 others; and
 - e) AOT would be the least restrictive placement necessary to ensure the person’s recovery and stability, and the person is likely to benefit from the treatment. (§ 5346(a).)
- 4) Provides that a petition for an order authorizing AOT may be filed by the county behavioral health director, or the director’s designee, in the superior court in the county in which the person who is the subject of the petition is present or reasonably believed to be present. (*Id.* at (b)(1).) Requires that the petition be accompanied by an affidavit of a licensed mental health treatment provider stating either of the following:
 - a) That the licensed mental health treatment provider has personally examined the person who is the subject of the petition no more than 10

¹ All further section references are to the Welfare and Institutions code unless otherwise indicated.

days prior to the submission of the petition, the facts and reasons why the person who is the subject of the petition meets the criteria for AOT, that the licensed mental health treatment provider recommends AOT for the person who is the subject of the petition, and that the licensed mental health treatment provider is willing and able to testify at the hearing on the petition; or

- b) That, no more than 10 days prior to the filing of the petition, the licensed mental health treatment provider, or the provider's designee, has made appropriate attempts to elicit the cooperation of the person who is the subject of the petition, but has not been successful in persuading that person to submit to an examination, that the licensed mental health treatment provider has reason to believe that the person who is the subject of the petition meets the criteria for AOT, and that the licensed mental health treatment provider is willing and able to examine the person who is the subject of the petition and testify at the hearing on the petition. (*Id.* at (b)(5).)
- 5) Provides that upon the hearing date, or upon any other date or dates to which the proceeding may be continued, the court shall hear testimony. If it is deemed advisable by the court, and if the person who is the subject of the petition is available and has received notice, the court may examine in or out of court the person who is the subject of the petition who is alleged to be in need of AOT. If the person who is the subject of the petition does not appear at the hearing, and appropriate attempts to elicit the attendance of the person have failed, the court may conduct the hearing in the person's absence. If the hearing is conducted without the person present, the court must set forth the factual basis for conducting the hearing without the person's presence. (*Id.* at (d)(1).)
 - 6) Prohibits the court from ordering 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 the time period commencing 10 days before the filing of the petition, testifies in person at the hearing. (*Id.* at (d)(2).)
 - 7) Provides that the person who is the subject of the petition has the right to:
 - a) be represented by counsel at all stages of an AOT proceeding (*id.* at (c));
 - b) adequate notice of the hearing;
 - c) a copy of the court-ordered evaluation;
 - d) legal representation at all stages of the proceedings (by the public defender, if the person has not retained counsel); and
 - e) to be present at the hearing, to call or cross-examine witnesses, and to appeal decisions (*id.* at (d)(4)).

- 8) Provides that if the court finds that the person meets the criteria for AOT and there is not an appropriate and feasible less restrictive alternative, the court may order the person who is the subject of the petition to receive AOT for an initial period not to exceed six months, which may be renewed. (*Id.* at (d)(5)(B), (g).) Requires that the court fashion the order to specify the least restrictive treatment appropriation that is feasible for the person. (*Id.* at (d)(5)(B).)
- 9) Provides that if a person fails to comply with the order, as specified, efforts must be made to solicit compliance, and provides that if those efforts are unsuccessful the person may be held up to 72 hours for examination pursuant to section 5150. (*Id.* at (f).)
- 10) Requires the director of the AOT program, at intervals of up to 60 days, to file an affidavit with the court affirming that the person continues to meet the criteria for AOT, and enables the person to file a writ of habeas corpus to challenge this. (*Id.* at (h)(i).)

This bill:

- 1) Broadens criteria to permit AOT in order to prevent a relapse or deterioration that would result in a person becoming gravely disabled or a serious harm to self or others, as specified, without also requiring the person's condition to be substantially deteriorating.
- 2) Permits the subject of the petition for AOT services or an examining mental health professional to appear before the court for testimony by videoconferencing means.
- 3) Requires an examining mental health professional's affidavit to the court to address the issue of whether the subject of the petition has the capacity to give informed consent regarding psychotropic medication.

COMMENTS

1. Author's statement

The author writes:

In 2002, California enacted "Laura's Law" which allows judges to order Assisted Outpatient Treatment (AOT) for people with severe mental illness if they have a history of being jailed, hospitalized and are a danger to themselves or others. In 2020, the State Auditor released a report on the implementation of the LPS Act and recommended several changes and updates to AOT programs. The report found that individuals exiting involuntary holds have not been enrolled consistently in subsequent care to help them transition safely into the community

while staying connected to vital resources. About one in four individuals placed on conservatorships cycle back to restrictive settings, despite having successfully recovered their abilities to provide for basic needs at the time their conservatorships ended. The report also found high numbers of individuals subject to multiple short-term (5150) holds have not received continuing care in the intervals between those holds. This bill will update the eligibility requirements for AOT programs to capture those individuals who have cycled through multiple short-term holds as well as those who have recently left conservatorships, allowing counties to provide effective treatment to individuals in the least restrictive setting.

2. The LPS Act

a. LPS conservatorships

Signed into law in 1967 by Governor Ronald Reagan, the LPS Act includes among its goals “ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program.” (§ 5001.) The LPS Act “governs the involuntary detention, evaluation, and treatment of persons who, as a result of mental disorder, are dangerous or gravely disabled,” (*Conservatorship of John L.* (2010) 48 Cal.4th 131, 142), meaning that they are unable to meet their basic personal needs for food, clothing, or shelter. (§ 5008(h)(1)(A).) “Before a person may be found to be gravely disabled and subject to a year-long confinement, the LPS Act provides for a carefully calibrated series of temporary detentions for evaluation and treatment.” (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541.)

“This series of temporary detentions may culminate in a proceeding to determine whether the person is so disabled that he or she should be involuntarily confined for up to one year.” (*Conservatorship of Ben C., supra*, 40 Cal.4th at 541; § 5361.) The Act authorizes the superior court to appoint a conservator of the person for one who is determined to be gravely disabled (§ 5350 et seq.), so that they may receive individualized treatment, supervision, and placement (§ 5350.1). Although an LPS conservatorship expires after a year, the conservator may petition the superior court for reappointment. (§§ 5361, 5362).

b. Assisted outpatient treatment

AB 1421 (Thomson, Ch. 1017, Stats. 2002) established the Assisted Outpatient Treatment Demonstration Project Act of 2002, also known as Laura’s Law, named after a woman who was one of three people killed in Nevada County by a person with mental illness

who was not following his prescribed mental health treatment. For participating counties, Laura’s Law establishes a mechanism for courts in participating counties to order a person to receive assisted outpatient mental health treatment. (§ 5345 et seq.)

One of the objects of AOT is to prevent individuals with severe mental illnesses from deteriorating to a level that would require involuntary confinement. Among other things, 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. (§ 5346(a).) AOT may be ordered for up to six months and subsequently renewed. (*Id.* at (d), (g).) The director of the 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. (*Id.* at (i).) A person who fails to comply can be referred for the 72-hour hold for involuntary treatment under section 5150. (*Id.* at (f).)

Nineteen counties have adopted Laura’s Law. The Department of Health Care Services reports that “[d]ata indicates [assisted outpatient treatment] and program support are contributing factors in helping clients avoid or reduce hospitalization, homelessness, and incarceration.”² In Nevada County, for instance, Laura’s Law reduced hospitalization 46.7 percent; incarceration, 65.1 percent; homelessness, 61.9 percent; and emergency contacts 33.1 percent.³ As a result, Laura’s Law saved Nevada County \$213,300 in incarceration costs and \$75,000 in hospital costs.⁴

3. Implements the State Auditor’s recommendation to ensure former conservatees are eligible for AOT

The State Auditor recently released an audit of the implementation of the LPS Act in Los Angeles, San Francisco, and Shasta Counties.⁵ In addition to concluding that there was no evidence to justify an expansion of the LPS Act’s criteria to include additional situations in which individuals may be involuntarily treated,⁶ the Auditor found that

² *Laura’s Law: Assisted Outpatient Treatment Demonstration Project Act of 2002*, Department of Health Care Services (March, 2020), available at https://www.dhcs.ca.gov/formsandpubs/Documents/Legislative%20Reports/Lauras_Law_May2016-April2017.pdf (as of Mar. 27, 2021).

³ *Myths About Laura’s Law (AB 1421)* Mental Illness Policy Org, available at <https://mentalillnesspolicy.org/states/california/lauraslawmyths.html> (as of Mar. 27, 2021).

⁴ *Id.*

⁵ *Lanterman-Petris-Short Act: California Has Not Ensured That Individuals With Serious Mental Illnesses Receive Adequate Ongoing Care* (July 28, 2020) Report 2019-119, Public Letter, available at <https://www.auditor.ca.gov/reports/2019-119/index.html> (as of Mar. 27, 2021).

⁶ *Id.* at 21.

the eligibility criteria for AOT precluded its application to individuals in existing conservatorships.⁷ The Auditor wrote:

Specifically, to receive this treatment, individuals' conditions must be substantially deteriorating. Further, within specified recent time frames, either they must have been hospitalized or received services in a mental health unit at least twice, or they must have committed, attempted, or threatened serious acts of violence toward themselves or others as a result of their mental health conditions. In contrast, state law requires that conservatorships end when a court determines that individuals are no longer gravely disabled – in other words, they are able to care for their own basic needs. Thus, these individuals are unlikely to satisfy the criterion that they are substantially deteriorating. Because the requirements to exit a conservatorship are inconsistent with the eligibility criterion for assisted outpatient treatment, individuals are left without access to the type of help that could stop them from cycling through the crisis care system.

Counties could transition individuals who leave conservatorships to involuntary assisted outpatient treatment if the Legislature expanded the eligibility criteria for that treatment. Counties could then use involuntary assisted outpatient treatment as a bridge from an LPS Act conservatorship to less intensive, voluntary services in the community while still providing services that could help individuals remain stable and healthy. Although this step-down approach would represent a continuation of involuntary care, the LPS Act includes numerous protections to prevent indefinite enrollment in involuntary assisted outpatient treatment. For example, initial enrollment cannot exceed six months, and once a court orders an individual to participate in assisted outpatient treatment, the director of the treatment program must file a written statement with the court every 60 days to affirm that the individual continues to meet the program's criteria. Finally, during each 60-day interval, the individual can petition the court to require that the director of the program prove that the individual still meets those criteria.⁸

To implement the Auditor's recommendation, this bill would broaden the criteria to permit AOT in order to prevent a relapse or deterioration that would result in a person becoming gravely disabled or a serious harm to self or others, as specified, without also requiring the person's condition to be substantially deteriorating.

This bill overlaps with SB 782 (Glazer), which will be heard in this Committee on the same day as this bill. That bill incorporates the existing AOT scheme while making it clear that a conservatee or former conservatee who is at risk of deteriorating is nonetheless eligible for AOT, provided that the other requirements of existing law are

⁷ *Id.* at 46.

⁸ *Id.*

satisfied. The bills appear to be compatible and the authors have indicated an intent to work together going forward.

4. Remote testimony in AOT proceedings

The Auditor found that many conservatorships in Los Angeles ended when doctors failed to provide essential testimony in court proceedings. As a result, the court could no longer authorize involuntary treatment, even though some individuals may have needed it.⁹ Nearly 20 percent of the conservatorships that ended in fiscal year 2017-18 did so because the doctor did not testify in court.¹⁰ Many doctors had limited availability and testifying in court is not a reimbursable service for private doctors.¹¹ The Auditor recommended using expert witnesses when the doctors are not available;¹² however, these witnesses will not have direct knowledge of the person and their testimony could be insufficient. The Auditor also recommended scheduling conservatorship hearings and trials to align with doctors' schedules.¹³

This bill, for AOT proceedings, would permit an examining mental health professional to testify via videoconferencing means. The bill also permits the subject of the AOT petition to testify via videoconferencing means.

5. Providing courts with information regarding capacity to consent to medication

Section 5346 provides that a petition for an order authorizing AOT may be filed by the county behavioral health director, or the director's designee, in the superior court in the county in which the person who is the subject of the petition is present or reasonably believed to be present. (*Id.* at (b)(1).) The petition must be accompanied by an affidavit of a licensed mental health treatment provider stating either that the person has personally examined the person, or attempted to examine the person but could not secure their cooperation. The affidavit must include information regarding why the provider believes AOT is appropriate for the person and must indicate that the provider can testify as to this belief. (*Id.* at (b)(5).)

This bill would additionally require that affidavit address the issue of whether the person has capacity to give informed consent regarding psychotropic medication. This change is in response to the State Auditor's finding that counties face limitations in offering AOT to some individuals because the provisions governing AOT do not expressly allow medication to be ordered as part of a treatment plan.¹⁴

⁹ *Id.* at 28.

¹⁰ *Id.* at 30.

¹¹ *Id.* at 31.

¹² *Id.* at 38.

¹³ *Id.*

¹⁴ *Id.* at 44.

The author argues:

The LPS audit indicated that many of the individuals who were placed on repeated short-term holds or conservatorships struggled to maintain their stability after leaving the treatment facilities, in large part because they frequently failed to take medication that was essential to managing their symptoms and maintaining themselves successfully in a community setting. A lack of capacity to exercise insight into their mental illness is common and can cause some people to stop taking their medication. Although the LPS Act permits courts to order AOT plans that provide coordination and access to medication, it explicitly prohibits involuntary medication except pursuant to WIC sections 5332-5336, and is silent on court orders for self-administered medication. The audit findings recommended that counties be allowed to provide express authority to include medication requirements in court-ordered AOT plans as long as the medication is self-administered. In this bill, requiring the examiner to address the issue of whether a defendant has the capacity to give informed consent regarding psychotropic medication flags the medication issue for both the court and the treatment team and is the first step in establishing a successful strategy for medication adherence.

6. Clarifying amendments

The author has agreed to clarifying amendments that do the following:

- Make it clear that a person subject to a petition has the right to appear in person unless they opt to appear remotely.
- Relocate the changes to Section 5346 to the parts of that section that correspond most closely with those changes. Section 5346(b)(5) governs the affidavit. But the amendments about remote testimony are in that part. Section 5346(d) governs testimony. But the amendments about the affidavit are in that part. The amendments switch those.
- Add coauthors.

The amendments are as follows:

Amendment 1

In the heading, below line 1, insert:
(Coauthors: Senators Melendez and Rubio)

Amendment 2

On page 4, in line 28, after "(5)" insert:
(A)

Amendment 3

On page 4, in line 32, strike out “(A)” and insert:
(i)

Amendment 4

On page 4, in line 40, strike out “Appearances before the court for”, on page 5, strike out lines 1 to 4, inclusive, in line 5, strike out “(B)” and insert:
(ii)

Amendment 5

On page 5, in line 15, strike out “Appearances before the court for testimony”, strike out lines 16 to 19, inclusive, and insert:
(B) An examining mental health professional in their affidavit to the court shall address the issue of whether the defendant has capacity to give informed consent regarding psychotropic medication.

Amendment 6

On page 6, in line 12, after the period insert:
The person who is the subject of the petition shall maintain the right to appear before the court in person, but may appear by videoconferencing means if they choose to do so.

Amendment 7

On page 6, in line 18, after the period insert:
An examining mental health professional may appear before the court by videoconferencing means.

Amendment 8

On page 6, in line 19, strike out “(A)”

Amendment 9

On page 6, strike out lines 39 and 40 and on page 7, strike out lines 1 and 2

SUPPORT

Psychiatric Physicians Alliance of California (sponsor)
California Behavioral Health Directors Association
California State Association of Psychiatrists
California Psychological Association
State Building and Construction Trades Council of California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: *See* Comment 3.

Prior Legislation: AB 1976 (Eggman, Ch. 140, Stats. 2020) implemented Laura's Law statewide, effective July 1, 2021; permits 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 11, Noes 0)
