

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

SB 578 (Jones)
Version: March 5, 2021
Hearing Date: March 16, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Conservatorship proceedings

DIGEST

This bill clarifies and strengthens an existing statute that makes proceedings under the Lanterman-Petris Short (LPS) Act presumptively nonpublic.

EXECUTIVE SUMMARY

As a general matter, civil proceedings are presumptively open to the public but can be closed following a noticed hearing in which the court finds that certain overriding considerations apply. This presumption is reversed for a handful of proceedings that are highly sensitive in nature, including certain Family Code and juvenile proceedings, which are presumptively closed to the public.

One such statute is Welfare and Institutions Code section 5118, which provides that any party to a hearing under the LPS act may request that the hearing be open to the public. This has been construed to make LPS proceedings presumptively closed to the public; however, the scope and effect of the statute is not entirely clear on its face. According to a recent report from the State Auditor, there is confusion as to whether proceedings under the LPS Act are in fact presumptively nonpublic, which has resulted in a failure to protect the private medical information of individuals subject to LPS proceedings. The Auditor recommended that the Legislature address this issue expressly.

This bill implements the Auditor's recommendation. Specifically, the bill clarifies, consistent with case law, that all proceedings under the LPS Act are presumptively nonpublic. The bill also enables the individual who is the subject of the proceeding to have friends and family attend a closed hearing, allows other parties to make the proceeding public only if the public interest in an open proceeding outweighs the individual's privacy interest, and requires that the individual be informed of these rights. The bill has no support or opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the right to privacy under the Federal Constitution and California Constitution. (U.S. Const., 14th Amend.; *Griswold v. Connecticut* (1965) 381 U.S. 479, 484; Cal. Const. art. I, § 1.)
- 2) Provides that the public has a presumptive right of access under the First Amendment to the United States Constitution to ordinary civil trials and proceedings. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1212.) Furthermore:
 - a. Provides, under the California Constitution, that “[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I, § (b)(1).)
 - b. Provides that this right of access does not supersede or modify the right of privacy provided under the California Constitution, nor affect any statute, court rule, or other authority protecting that right. (*Id.* at (b)(3).)
- 3) Requires that the sittings of every court be public, except as provided in Section 214 of the Family Code or any other provision of law. (Code Civ. Proc. § 124.)
- 4) Establishes the LPS Act (Part 1 of Welf. & Inst. Code [§ 5000 et seq.])¹, which, among other things, provides for the involuntary detention for treatment and evaluation of people who are gravely disabled or a danger to self or others, (§§ 5150 et seq.; 5350 et seq.), housing conservatorships (§ 5450 et seq.), and assisted outpatient treatment (§ 5345 et seq.). Provides for various types of proceedings under the LPS Act, including certification review hearings (§ 5250 et seq.), bench trials, and jury trials (§ 5303).
- 5) Protects the privacy rights of individuals subject to LPS proceedings. Specifically:
 - a. Provides that all information obtained pursuant to the provision of care under the LPS Act is confidential. (§ 5328.)
 - b. Provides damages for a willful violation of confidentiality provisions under the LPS Act. (§ 5330.)
 - c. Specifies a nonexclusive list of rights including a right to dignity, privacy, and humane care. (§ 5325.1(b).)
 - d. Requires that a court-ordered evaluation under the LPS Act be carried out with the utmost consideration for the privacy and dignity of the proposed conservatee. (§ 5200.)

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

- 6) Provides that any party to a hearing under the LPS Act may demand that the hearing be made public. (§ 5118.)

This bill:

- 1) Consistent with case law interpreting section 5118 (*See Sorenson v. Superior Court* (2013) 219 Cal.App.4th 409, 439), clarifies that section 5118 applies to all proceedings under the LPS Act and makes them presumptively nonpublic.
- 2) Eliminates an obsolete provision.
- 3) Enhances protection of the individual's information under section 5118 by:
 - a. Enabling the individual to request the presence of a family member or friend without waiving the right to keep the proceeding nonpublic.
 - b. Subjecting other parties' ability to request that the trial be open to a finding by the judge or hearing officer that the public interest in scrutinizing the case outweighs the individual's interest in privacy.
 - c. Requiring that the judge or hearing officer inform the individual of their rights pursuant to the bill.

COMMENTS

1. 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.) 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.)

Typically, one first interacts with the LPS Act through a section 5150 evaluation and detention in response to an acute emergency. In a 5150 evaluation, county behavioral health services, mobile crisis teams, law enforcement, or medical professionals determine if there is probable cause that a person is gravely disabled or a danger to themselves or others, in which case the person may be detained in an approved facility

for up to 72 hours for further evaluation and treatment. (§ 5150.) Following a 72-hour hold, the individual may be held for an additional 14 days, without court review. (§ 5250.) After the 14-day period, a person found by a superior court to be imminently dangerous may be involuntarily committed for an additional 180 days. (§§ 5300, 5301.) If the person is not imminently dangerous but is still found to be gravely disabled and unwilling or unable to accept voluntary treatment, they may be certified for an additional 30 days of 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 detainee has filed a petition for the writ of habeas corpus. (§§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.)

“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). Because an involuntary civil commitment constitutes a deprivation of liberty and places a stigma upon the conservatee’s reputation, due process under the California Constitution requires that a finding of grave disability in an LPS jury trial must be unanimous and based upon proof beyond a reasonable doubt. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235; see *Conservatorship of Ben C.*, *supra*, 40 Cal.4th at 541 [“[b]ecause of the important liberty interests at stake, correspondingly powerful safeguards protect against erroneous findings”].)

2. Implements the State Auditor’s recommendation to clarify that LPS proceedings are presumptively closed to the public, and enhances privacy protections

The United States Supreme Court has held that there is a First Amendment right of public access to criminal proceedings. “As a matter of law and virtually immemorial custom, public trials have been the essentially unwavering rule in ancestral England and in our own Nation. [Citation.] Such abiding adherence to the principle of open trials ‘[reflects] a profound judgment about the way in which law should be enforced and justice administered.’ [Citation.]” (*Richmond Newspapers v. Va.* (1980) 448 U.S. 555, 593, Brennan, J., concurring.) “Open trials assure the public that procedural rights are respected, and that justice is afforded equally. Closed trials breed suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law. Public access is essential, therefore, if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice.” (*Id.* at 595.) The California Supreme Court held that this right of access presumptively applies to ordinary civil trials and proceedings. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1212.)

However, court proceedings may be closed to the public if there are compelling reasons to do so. (*In re Marriage of Lechowick* (1998) 65 Cal.App.4th 1406, 1413 [citation omitted].) Code of Civil Procedure section 124 provides that “[e]xcept as provided in Section 214 of the Family Code or any other provision of law, the sittings of every court shall be public.” The Legislature has enacted several provisions closing certain proceedings to the public. (*See, e.g.,* Family Code §§ 1818 [conciliation proceedings], 7643 [paternity hearings], 7884 [proceeding to declare a child free from parental custody and control], 8611 [adoption proceedings]; Welf. & Inst. Code §§ 676(a) [juvenile court hearings].)

One such provision is section 5118, which provides that “any party to the proceeding may demand that the hearing be public, and be held in a place suitable for attendance by the public.” In *Sorenson v. Superior Court* (2013) 219 Cal.App.4th 409 (*Sorenson*), the Fourth District Court of Appeal held that this section embraces involuntary conservatorship proceedings, including jury trials. (*Id.* at 416.) The court reasoned that there has been no historical tradition of keeping LPS proceedings open to the public, and there is limited utility in making them public: LPS proceedings do not have the character of criminal or civil trials in which public scrutiny significantly enhances the truth-finding process; section 5118 enables a party to allow public access, thereby checking any judicial abuses of power; and unlike criminal proceedings, the public has no interest in seeing that an LPS person is punished. (*Id.* at 445-446.) “A conclusion that LPS trials are presumptively public proceedings would cause proposed involuntary conservatees to suffer the embarrassment and stigma of public scrutiny to their alleged mental difficulties and to their personal psychiatric records.” (*Id.* at 448.) Finally, the court stated that this conclusion was consistent with the patient’s general privacy rights and right to assert confidentiality under the psychotherapist-patient privilege. (*Id.*)

According to the State Auditor, however, there is some confusion on this point. The Auditor recently released an audit of the implementation of the LPS Act in Los Angeles, San Francisco, and Shasta Counties.² 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,³ the Auditor found that Los Angeles’s Department of Mental Health and Superior Court engaged in practices that failed to ensure that individuals subject to a conservatorship received adequate privacy protections.⁴ Unlike in Shasta and San Francisco, the Auditor reported, Los Angeles Superior Court held conservatorship proceedings in public settings instead of safeguarding the confidentiality of individuals’ private health information, effectively treating conservatorship proceedings as public unless specifically requested to be closed by the individual.⁵ The Auditor stated that this practice contravened case law and

² *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 Jul. 28, 2020).

³ *Id.* at 21.

⁴ *Id.* at 28.

⁵ *Id.* at 29.

recommended that the Legislature provide explicit statutory direction to courts to protect the private information of individuals in such proceedings.⁶ Specifically, the Auditor recommended explicitly closing LPS proceedings to the public unless the subjects of the proceedings direct otherwise.⁷

This bill would implement the Auditor's recommendation by clarifying section 5118, consistent with the interpretation of the statute in *Sorenson* that all proceedings under the LPS Act are presumptively nonpublic. While the court's holding was specific to jury trials, it stated: "[t]he various contexts under which the LPS Act calls for a 'hearing,' and the Act's interchangeable use of the words 'hearing' and 'trial,' lead us to conclude that the presumptive nonpublic 'hearing' language in section 5118 was intended to apply to court trials and jury trials, as well as to other hearings under the Act." (*Id.* at 443; *see also id.* at 439 [section 5118 applies to "any hearing under the LPS Act" and "embraces the LPS Act in its entirety"].) In arriving to this conclusion, the court described various types of proceedings, including certification reviews conducted by nonjudicial officers, bench trials, and jury trials under various portions of the LPS Act. (*Id.* at 442-443.) Consistent with *Sorenson*, the bill would list such proceedings as examples of proceedings covered under section 5118.⁸ As such, the bill provides needed clarity regarding the longstanding presumptively private character of all LPS proceedings. The author writes:

Case law holds that court proceedings for LPS conservatorships are presumptively non-public, but some courts continue to defy precedent and hold them publicly by default. This puts individuals' confidential medical information, and their personal reputation, at risk. SB 578 protects the dignity of vulnerable Californians and ensures they retain their right to privacy, no matter what courthouse they visit.

The bill would also enhance protections of the individual's information by (1) enabling the individual to request the presence of a family member or friend without waiving the right to keep the proceeding nonpublic, (2) requiring that if another party demands that the hearing be open, the person conducting the hearing may grant this request upon finding that the public interest in scrutinizing the case outweighs the individual's interest in privacy, and (3) requiring that the judge or hearing officer inform the individual of their rights pursuant to the bill. These provisions further protect the individual while retaining flexibility to avoid unintended consequences.

⁶ *Id.*

⁷ *Id.* at 38.

⁸ Section 5118 applies to any "hearing under this part" – referring to the LPS Act (Part 1 of Division 5 of the Welfare and Institutions Code) – a term defined to expressly include LPS conservatorship proceedings but applicable to the entirety of the LPS Act. Section 5118 is located in Chapter 1 of Part 1 of Division 5, which contains general provisions applicable to the entire act.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 429 (Dahle, 2021) is a reintroduction of AB 2745, described below.

Prior Legislation: AB 2745 (Dahle, 2020) would have authorized certain proceedings under the Uniform Parentage Act to be held in closed court. The bill died in the Senate Judiciary Committee.
