

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

SB 782 (Glazer)
Version: March 25, 2021
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Fiscal: Yes
Urgency: No
JT

SUBJECT

Assisted outpatient treatment programs

DIGEST

This bill implements a State Auditor recommendation to ensure former Lanterman-Petris-Short (LPS) Act conservatees are eligible for assisted outpatient treatment (AOT).

EXECUTIVE SUMMARY

The LPS Act encompasses various schemes for the treatment of individuals with severe mental illness. 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. If a person fails to comply with a treatment plan under AOT, they may be referred for 72-hour hold to be treated and evaluated, which may lead to a conservatorship. Thus, these schemes are interwoven on the front-end. But not so on the back-end: according to a recent State Auditor report, AOT's eligibility criteria have been construed to preclude former conservatees from being stepped-down to AOT. For some conservatees, being released into the community without supervision or support is too abrupt of a transition; their mental health regresses and they end up being conserved a second time. The Auditor recommended changing state law to expressly make such individuals eligible for AOT.

This bill seeks to implement that recommendation by providing that former conservatees are eligible for AOT if the court finds that the requirements for AOT are otherwise satisfied and AOT would reduce their risk of deteriorating mental health while living independently. The bill is supported by the California Hospital Association, the Psychiatric Physicians Alliance of California, and the Steinberg Institute. It is opposed by the Citizens Commission on Human Rights. 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 (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 or others, 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 that has:
 - i. at least twice within the last 36 months been a substantial factor in necessitating hospitalization, treatment in a mental health unit of a correctional facility, or incarceration (not including any hospitalization or incarceration immediately preceding the filing of the petition); or
 - ii. resulted in one or more acts, attempts, or threats of serious violent behavior toward self or others, within the last 48 months (not including any hospitalization or incarceration immediately preceding the filing of the petition);
 - 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).)

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

- 4) 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 (§ 5346(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 (§ 5346(d)(4)).
- 5) Provides that if the court finds that the person meets the criteria for AOT and there is no 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 (*id.* at (d)(5)(B)), which may be renewed (*id.* at (g)).
- 6) Provides that if a person who 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).)
- 7) 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 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 permits a court, in accordance with existing requirements governing AOT, to order a person to obtain AOT if the court finds that the facts of the petition establish that the person either:

- 1) is a conservatee with a pending petition to terminate a conservatorship and who, if the petition is granted, would benefit from AOT services to reduce the risk of deteriorating mental health while living independently; or,
- 2) is a former conservatee whose petition to terminate conservatorship was granted within the preceding 60 days and who would benefit from AOT services to reduce the risk of deteriorating mental health while continuing to live independently.

COMMENTS

1. Author's statement

The author writes:

According to a state audit released last summer, about 1 in 4 people were placed on a conservatorship for a second time despite having been judged to have successfully recovered from a conservatorship previously. This is a result of individuals not receiving sufficient continued care after exiting their conservatorships. As individuals transition out of conservatorships they need to be able to receive continued care to help ensure they transition back to living independently. SB 782 closes this gap by helping individuals' successfully existing conservatorships to be eligible for involuntary assisted outpatient treatment. Under this bill, involuntary assisted outpatient treatment will provide treatment in a community setting providing a better transition for individuals to live independently.

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

The Psychiatric Physicians Alliance of California, writing in support of the bill, states:

AOT is an evidence-based model with a long history of demonstrating successful outcomes. AOT employs court-supervised intensive outpatient treatment. AOT

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.*

addresses the needs of a small cohort of individuals who are unable to recognize they have a severe mental illness and thereby refuse to take medications or accept other forms of services and supports. Not surprisingly, these individuals suffer a repeated pattern of revolving door hospitalizations, arrests, engage in acts of threat of violence. They are often victimized on the streets, neglect a variety of physical conditions some of which if untreated may result in serious harm or death.

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 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

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.

⁷ *Id.* at 46.

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

Underscoring the Auditor's finding, the Steinberg Institute, which supports the bill, writes:

According to a state audit released last summer, about 1 in 4 people were placed on a conservatorship twice despite having been judged to have successfully recovered from a conservatorship previously. This is a result of people not receiving sufficient care after being released from conservatorships. Currently, counties use these services to provide involuntary treatment in a community setting and allow individuals who need intensive mental health treatment but do not meet the criteria for involuntary holds or conservatorships a less restrictive form of treatment.

To implement the Auditor's recommendation, this bill would permit courts, in participating counties and in accordance with existing law governing AOT petitions, to order a person to obtain AOT if the court additionally finds that the facts of the petition establish that the person either:

- is a conservatee with a pending petition to terminate a conservatorship and who, if the petition is granted, would benefit from AOT services to reduce the risk of deteriorating mental health while living independently; or,
- is a former conservatee whose petition to terminate conservatorship was granted within the preceding 60 days and who would benefit from AOT services to reduce the risk of deteriorating mental health while continuing to live independently.

These provisions are intended to incorporate 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 satisfied.

This bill overlaps with SB 507 (Eggman), which will be heard in this Committee on the same day as this bill. That bill directly addresses the criteria for AOT and thus is compatible with this bill. The authors have indicated an intent to work together going forward.

⁸ *Id.*

4. Stakeholder positions

a. Support

In support, the California Hospital Association writes:

SB 782 would ensure individuals who are leaving or have recently left a conservatorship are eligible for involuntary assisted outpatient mental health treatment programs. This eligibility is key to their well-being because assisted outpatient treatment provides psychiatric care, substance use treatment, and assistance locating housing, in the least restrictive setting possible. It can also provide involuntary treatment in a community setting if needed.

[...]

By allowing a court to order an individual exiting a conservatorship to obtain assisted outpatient treatment if the court finds that the individual would benefit from assisted outpatient treatment, SB 782 would help individuals with mental health and substance use conditions to live independently while receiving the behavioral health care they need and deserve. For these reasons, CHA and its more than 400 hospital and health system members request your “AYE” vote on SB 782.

b. Concerns and opposition

In a letter of concern, County Behavioral Health Directors Association of California (CBHDA) writes:

CBHDA is respectfully expressing concerns over this bill due to the substantial increased cost to existing AOT programs that would result from this bill. Additionally, the benefits of this expansion are unclear as AOT currently does not include involuntary medication as part of the AOT court order. All individuals highlighted in the audit were no longer taking medication upon release from the conservatorship. We recommend the Legislature consider how to improve medication compliance in AOT programs.

Additionally, while the bill contemplates AOT as a “step-down” from conservatorship, it does not take into account existing practices to assist in the transition back into the community from a conservatorship. Common county practice includes when an individual appears to have recovered during their conservatorship, to return the individual back to the community in an unlocked setting while maintaining the conservatorship for a short duration of time to ease the transition. Then upon release from conservatorship, the individual is offered

voluntary services which can include a Full-Service Partnership. These function as existing step-downs.

The Citizens Commission on Human Rights opposes the bill because it does not account for the possibility that the person may have a “physical disease,” which they argue can cause or exacerbate mental illness.

SUPPORT

California Hospital Association
Psychiatric Physicians Alliance of California
Steinberg Institute

OPPOSITION

Citizens Commission on Human Rights

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)
