



**LEGISLATION AND
COMMUNICATIONS UNIT**

1831 K Street
Sacramento, CA 95811-4114
Tel: (916) 504-5800
TTY: (800) 719-5798
Toll Free: (800) 776-5746
Fax: (916) 504-5807
www.disabilityrightsca.org

**California State Assembly Committees on Judiciary and Health
Joint Informational Hearing on the Lanterman-Petris-Short Act
December 15, 2021**

Position Statement of Disability Rights California

About Disability Rights California

Disability Rights California (DRC) works for a world where all people with disabilities have power and are treated with dignity and respect. In this world, people with disabilities are supported, valued, included in their communities, afforded the same opportunities as people without disabilities, and make their own decisions.

DRC is California's federally mandated protection and advocacy system for Californians with disabilities, including mental health disabilities. DRC advocates for systems changes that enable people with mental health disabilities to access treatment in the least restrictive settings in their communities, provides patients' rights advocacy services to patients committed to the Department of State Hospitals, and provides technical support to statewide county patients' rights advocates mandated to provide advocacy services to patients committed under the Lanterman-Petris-Short (LPS) Act.

DRC appreciates the opportunity to provide this position statement that suggests improvements to greatly benefit our clients who are committed, or are at risk of being committed, under the LPS Act.

Summary of Recommendations

The LPS Act has been called a "Magna Carta for the Mentally Ill" that "established the most progressive ... commitment procedures in the

country.”¹ However, the reality of an LPS commitment—whether short or long-term—is a serious deprivation of personal autonomy that has long-lasting detrimental effects on every aspect of a person’s life, including housing, employment, and personal relationships. Therefore, DRC makes the following recommendations for the Legislature to improve the LPS Act.

Recommendation 1: As set forth below, DRC calls on the Legislature to strengthen the LPS Act’s protections against inappropriate involuntary commitment of people with mental health disabilities. In order to bolster LPS protections, we encourage the Legislature to amend the Welfare and Institutions Code to:

- 1) Require documented attempts to engage a proposed conservatee in intensive *voluntary* treatment before recommending a conservatorship; and
- 2) Require a conservatorship investigation report to document considered alternatives to conservatorship and justify why an LPS conservatorship is more appropriate than any possibilities for less-restrictive implementation of conservatorship.

Recommendation 2: The Legislature should also declare that all people detained on LPS holds and conservatorships have the right to appropriate treatment and take steps to make this a reality.

- 1) In order to ensure that people involuntarily detained under the LPS Act receive treatment appropriate to their needs, the Legislature should add language to the Welfare and Institutions Code that:
 - a. Explicitly states that a person involuntarily detained for treatment under the LPS Act has the right to receive appropriate, individualized treatment that is tailored to meet the needs of their immediate situation;

¹ *In re Qawi*, 32 Cal.4th 1, 17 (2004) (quoting Assembly Subcommittee on Mental Health Services, *Dilemma of Mental Commitments in California* (1978) foreword by Assemblyman Louis Papan). [“Return to Main Document”](#)

- b. Expressly requires effective transition planning for people released from both short-term LPS holds and long-term LPS conservatorships.
- 2) To facilitate effective discharge planning and also create more options to allow people to avoid LPS holds altogether, the Legislature must also take steps to expand access to intensive community-based treatment options and explore possibilities for standardizing the use of Psychiatric Advance Directives in California.

Recommendation 3: Finally, the Legislature should improve transparency about LPS Holds and Conservatorships by:

- 1) Requiring the Department of Health Care Services and Counties to comply with their obligations to report information about LPS Holds and Conservatorships by adding an enforcement section to Welfare and Institutions Code section 5402.
- 2) Adding language to the Welfare and Institutions Code that requires the Judicial Council to study and report on LPS conservatorships, similar to the requirement established by Assembly Bill 1194 for probate conservatorships.

Recommendations

- 1. The Legislature should amend the Welfare and Institutions Code to provide additional safeguards to ensure that an LPS conservatorship is in fact the least restrictive alternative for a person.**

In codifying the LPS Act, the California Legislature intended to “end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders.”² However, for many individuals, this promise is illusory. Instead, the LPS Act often results in “an unbroken and indefinite period of state-sanctioned confinement.”³

² Welf. & Inst. Code § 5001(a). [“Return to Main Document”](#)

³ *Conservatorship of Roulet*, 23 Cal.3d 219, 224 (1979). [“Return to Main Document”](#)

To strengthen the LPS Act’s protections against inappropriate involuntary commitment of people with mental health disabilities, the Legislature should make the following changes to the Welfare and Institutions Code:

A. Add language that specifically requires a conservatorship investigator or other designees to attempt to engage a proposed conservatee in intensive voluntary treatment before recommending a conservatorship.

Similar to the process of engagement required before a person can be court-ordered into Assisted Outpatient Treatment (AOT) pursuant to Welfare and Institutions Code section 5345, *et seq.*, the Legislature should add language to the Welfare and Institutions Code that requires the conservatorship investigator or other designees to attempt to engage a proposed LPS conservatee in voluntary treatment prior to recommending a conservatorship. Requiring would accord with the LPS Act’s express goal of providing “services in the least restrictive setting appropriate to the needs of each person receiving services.”⁴

Though AOT is a less severe deprivation of rights than an LPS conservatorship, it has more safeguards to ensure that a person actually requires involuntary treatment. For example, a person is only eligible for AOT if they have been offered and decline the opportunity to participate voluntarily in a treatment plan that includes a community-based, mobile, multidisciplinary, highly trained mental health team that uses a high staff-to-client ratio of no more than 10 clients per team member.⁵ Among many others, the voluntary services that must be offered to clients referred to AOT include housing and a personal services coordinator.⁶

The Legislature should add language to the Welfare and Institutions Code that requires an identical process of engagement in intensive voluntary services, such as Full-Service Partnership services, prior to recommending an LPS conservatorship as the least restrictive alternative for a person. If a conservatorship is ultimately recommended after attempts to engage the proposed conservatee in voluntary treatment, the investigation report

⁴ Welf. & Inst. Code § 5001(i). [“Return to Main Document”](#)

⁵ Welf. & Inst. Code §§ 5346(a)(5), 5348(a)(1). [“Return to Main Document”](#)

⁶ Welf. & Inst. Code §§ 5348(a)(2)(J), 5348(a)(3). [“Return to Main Document”](#)

required by Welfare and Institutions Code section 5354 should contain the following: (1) a detailed description of all engagement efforts; (2) the proposed conservatee's responses; and (3) an explanation of the investigator's opinion that the proposed conservatee is not willing or able to accept voluntary treatment or would not benefit from AOT (for counties that have implemented it).

B. Amend the Welfare and Institutions Code to require a conservatorship investigation report to provide additional information about considered alternatives to conservatorship and possibilities for less-restrictive implementation of conservatorship.

The Legislature should amend sections 5354, 5355, and 5356 of the Welfare and Institutions Code to require the conservatorship investigator to: (1) document and justify why an LPS Conservatorship is more appropriate than any alternatives; (2) document and justify choice of conservator over alternatives; (3) document and justify restrictions on conservatees' rights; and (4) provide this more detailed written information to Court at the time of the original petition for LPS conservatorship as well as at the time of a petition for re-appointment.

First, the Legislature should amend Welfare and Institutions Code section 5354 to require the report of the conservatorship investigator ("investigation report") to contain additional information if the investigator recommends an LPS conservatorship. Specifically, the Legislature should require the investigation report to provide details about all of the available alternatives to conservatorship that the investigator considered.⁷ The Legislature should also require the report to explain why the investigator did not believe that any of these alternatives were suitable.

Second, section 5355 requires the conservatorship investigator to designate "the most suitable" person or entity to serve as conservator. The Legislature should require the investigation report to describe all of the people and entities that were considered to act as conservator. The report should include written justification for why a particular person or entity is

⁷ Currently, Welfare and Institutions Code section 5354(a) only requires an investigation report to set forth alternatives "[i]f the officer providing conservatorship investigation recommends *against* conservatorship." (emphasis added). ["Return to Main Document"](#)

designated to serve as conservator and why other possible people or entities were rejected.

Next, section 5356 requires the investigation report to contain recommendations concerning the powers to be granted to, and the duties imposed upon, the conservator, the legal disabilities to be imposed upon the conservatee, and the proper placement for the conservatee. The Legislature should amend the Welfare and Institutions Code to specifically require the investigation report to provide written justification for *why* specific recommendations were made and alternatives were rejected. The goal of this would be to avoid depriving people conserved under the LPS Act of rights without considering less restrictive alternatives. In the event that the investigator recommends placement in a locked facility, the investigation report should include an explanation of why that is the least restrictive and most appropriate placement to meet a proposed conservatee's needs.

Lastly, the Legislature should add language to the Welfare and Institutions Code that specifically requires the above not just at the time of the original petition for LPS conservatorship, but also at the time of any subsequent petitions for re-appointment.

2. The Legislature should affirm that all people detained on LPS holds and conservatorships have the right to appropriate treatment and take steps to make this a reality.

The legislative intent of the LPS Act includes the requirement to “provide prompt evaluation and treatment of persons with mental health disorders.”⁸ However, as enumerated below, many Californians detained under the LPS Act do not receive appropriate care and treatment at all points along the continuum of LPS holds.

The Legislature should take the following actions to ensure that people involuntarily detained under the LPS Act receive treatment appropriate to their needs:

A. Add language to the Welfare and Institutions Code that explicitly states that a person involuntarily detained for

⁸ Welf. & Inst. Code § 5001(b). [“Return to Main Document”](#)

treatment under the LPS Act has the right to receive appropriate, individualized treatment that is tailored to meet the needs of their immediate situation.

At all points along the LPS continuum, from 5150 holds to permanent conservatorships, many involuntarily detained people are not receiving appropriate treatment to address the mental health symptoms or other causes that led to the detention.

For example, through investigation work conducted as part of our role as California’s protection and advocacy agency, DRC has discovered that many people on 5150 holds statewide remain in hospital emergency departments for excessive periods of time while they wait for placement in an LPS-designated facility—often for close to or more than the 72 hours contemplated by the hold.⁹ This process is often called “stacked” or “serial” 5150s.¹⁰ While they are in emergency departments, these people—who may be in psychiatric crisis—do not have access to services that will help them recover. They may be in the general milieu of the emergency department, surrounded by chaos and without any privacy. Or, they may be in a bare, single room that contains nothing more than a hospital bed. They may see an attending psychiatrist once a day, be prescribed medications, and receive general social work services. But, they do not have access to programming that would be available in a mental health program. Often, people have their clothing and personal belongings taken from them as safety precautions and cannot have visitors while they are in the emergency department. In all circumstances, patients on 5150s in emergency departments are observed on a 24/7 basis, either by hospital

⁹ For example, In addition to the concerns stated in the body of this paper, the longer someone stays in an emergency department, the greater the chance is that they will not have timely access to the due process protections required by the LPS Act. See *Doe v. Gallinot*, 657 F.2d 1017 (9th Cir. 1982) (certification review hearing must take place within seven days of confinement on a 5150 hold). [“Return to Main Document”](#)

¹⁰ Regarding the practice of serial 5150s in San Benito County, an expert study jointly commissioned by DRC and the County concluded that they are a misuse of authority and “suspend a person’s civil liberties in attempt to provide necessary involuntary treatment.” See James Featherstone, LCSW, *Review of San Benito Behavioral Health Services*, April 12, 2020, at 17 (https://www.disabilityrightsca.org/system/files/file-attachments/Review_of_San_Benito_Behavioral_Health_Services.pdf). [“Return to Main Document”](#)

staff, security, or law enforcement personnel. None of these circumstances evokes a therapeutic environment in which a person can recover from a mental health crisis.

On the opposite end of the LPS continuum, the State Auditor concluded that many people on LPS conservatorships are not receiving care appropriate for their needs.¹¹ For example, people conserved under the LPS Act who require a State Hospital level of care may wait approximately one year for placement, usually in a facility that does not meet their treatment needs.¹² Conversely, many people on LPS conservatorships who are currently placed in State Hospital facilities no longer require that level of care, yet have not been discharged to less-restrictive settings.¹³

If California is going to allow for the involuntary detention of people with mental health disabilities for treatment, it is imperative that the Legislature take steps to strengthen statutory language requiring appropriate treatment for the conditions that allegedly necessitate it.

B. Add language to the Welfare and Institutions Code that expressly requires effective transition planning for people released from both short-term LPS holds and long-term LPS conservatorships.

The State Auditor found that, in two of the three counties studied—Los Angeles and San Francisco—less than 10% of people released from LPS holds were linked to county mental health treatment services.¹⁴ This statistic indicates the need to create a right to robust transition planning for people released from both short-term LPS holds and long-term LPS conservatorships. Recently, in its findings of an investigation of Alameda County, the United States Department of Justice opined that effective

¹¹ Auditor of the State of California, *Lanterman-Petris-Short Act: California Has Not Ensured That Individuals With Serious Mental Illnesses Receive Adequate Ongoing Care* (July 2020) at 22 (<http://auditor.ca.gov/pdfs/reports/2019-119.pdf>). [“Return to Main Document”](#)

¹² *Id.* [“Return to Main Document”](#)

¹³ *Id.* at 23. [“Return to Main Document”](#)

¹⁴ *Id.* at 32. [“Return to Main Document”](#)

discharge planning can help people with mental health disabilities transition out of and avoid re-entering psychiatric institutional care.¹⁵

Transition and discharge planning should begin upon admission to a psychiatric facility.¹⁶ In the case of a conservatorship, a conservator should continually assess a person's ability to receive care in a less-restrictive setting and start planning for transition well in advance of a court hearing that may result in termination of a conservatorship, irrespective of whether the conservator thinks that termination is in a client's best interest. Problematically, many people who prevail in legal challenges to short-term holds and long-term conservatorships receive inadequate transition planning and are discharged from facilities with little more than a bus pass, and maybe the number for their county's mental health access line.

C. Expand access to intensive community-based treatment options and supportive services, including housing.

As the State Auditor observed, involuntary holds are but one component of a more comprehensive mental health care system, and people who receive crisis intervention are not always effectively served by that broader system.¹⁷ To facilitate effective discharge planning and also create more options to allow people to avoid unnecessary LPS holds, the Legislature must take steps to expand access to intensive community-based treatment options and equip counties to address the needs of people in psychiatric crisis who do not require involuntary treatment.

First, DRC endorses the State Auditor's recommendation that the Legislature amend the Mental Health Services Act to specifically identify people who are transitioning from LPS commitments—short-term holds and long-term conservatorships—as a population that MHSA funds must target.¹⁸ To this end, the Legislature should require each person exiting an

¹⁵ See United States Department of Justice Civil Rights Division, *Investigation of Alameda County, John George Psychiatric Hospital, and Santa Rita Jail* (April 22, 2021) at 4 (<https://www.justice.gov/crt/case-document/file/1388891/download>). [“Return to Main Document”](#)

¹⁶ *Id.* at 37. [“Return to Main Document”](#)

¹⁷ *Id.* at 21. [“Return to Main Document”](#)

¹⁸ *Id.* at 65. [“Return to Main Document”](#)

LPS commitment to be screened for Full-Service Partnership eligibility and enrolled if they are eligible and consent after a period of engagement, if necessary. In conjunction, these people should be enrolled in Medi-Cal, if eligible, so that the counties can draw down federal dollars for eligible services.

Second, the Legislature can allocate additional MHSA or other funding to counties to increase the availability of community-based treatment that may prevent LPS holds and conservatorships. However, given the State Auditor's findings regarding unspent MHSA funds, this step should be taken with caution.¹⁹ The Legislature could consider requiring counties to produce spending plans for unspent MHSA funds before their allocations are increased.

Third, whether through MHSA or other sources, the Legislature can fund and provide oversight over crisis intervention systems that reduce involuntary detentions. Through our statewide work, DRC has found that most existing crisis intervention systems are often not well-equipped to handle people who voluntarily seek services, which results in improper placement of 5150 holds on people who are actually willing and able to accept voluntary treatment in the community or inpatient, if medically necessary. Programs that promote voluntary access to treatment for people for whom it is appropriate include non-law enforcement mobile crisis teams that can link people to appropriate community-based resources; 23-hour Crisis Stabilization Units that stabilize and release people with linkages to community-based services, instead of serving as *de facto* conduits to longer-term involuntary care; and peer respite centers that clients can access voluntarily when they are in crisis.

Last, the Legislature must continue to plan for and allocate funds towards permanent supportive housing to support people transitioning off of LPS holds. Lack of stable housing is a persistent barrier to mental health recovery. In a state with as much wealth as California, there is a moral imperative to create pathways to permanent supportive housing for people living with serious mental illness who are at risk for involvement in the LPS system.

¹⁹ *Id.* at 56. ["Return to Main Document"](#)

D. Explore possibilities for standardizing the use of Psychiatric Advance Directives in California.

Psychiatric Advance Directives (PADs) are a form of Supported Decision-Making. They are legal documents that memorialize a person's preferences for future mental health treatment, and allow for appointment of a proxy to interpret those preferences during a crisis. In psychiatric emergencies, when a person may experience symptoms that prevent them from engaging in conversations about care, symptoms, diagnosis, and treatment preferences, a PAD may allow them to retain autonomy over treatment choices by providing a blueprint for their choices and information about who to contact to help make decisions about care. PADs embody a recovery-oriented model by encouraging clients to predetermine their wishes for times of future mental health crisis.

In June 2021, the Mental Health Services and Oversight Commission (MHSOAC) approved an MHSOAC Innovation program entitled "Psychiatric Advance Directives: Multi-County Collaborative."²⁰ Following the lead of these counties, the Legislature should explore opportunities to standardize the use of PADs in California, as many other states have done.²¹ In California, PADs would be especially useful for providing more timely access to appropriate, person-directed access to care for people detained on 5150 holds who are experiencing acute symptoms. They could help speed the process of discharging people into appropriate community-based care.

3. The Legislature should improve access to publicly-available data about LPS Holds and Conservatorships.

There is very little transparency about how many Californians are committed under the LPS Act, both on short-term holds and long-term conservatorships. This lack of information makes it all but impossible to hold accountable the patchwork of systems that serve people committed under the LPS Act. In addition, incomplete information about the statewide

²⁰ See Mental Health Services Oversight and Accountability Commission, Minutes of Teleconference Meeting, June 24, 2021 (https://mhsaac.ca.gov/wp-content/uploads/MHSOAC_Minutes_06242021.pdf). ["Return to Main Document"](#)

²¹ See National Resource Center on Psychiatric Advance Directives (<https://nrc-pad.org/>). ["Return to Main Document"](#)

number of people funneled into the intensive, costly levels of care contemplated by involuntary treatment under the LPS Act makes it extremely difficult for the state and local jurisdictions to plan for appropriate care.

The Legislature should take the following steps to improve transparency about LPS Holds and Conservatorships:

A. Require the Department of Health Care Services and Counties to comply with their obligations to report information about LPS Holds and Conservatorships by adding an enforcement mechanism to Welfare and Institutions Code section 5402.

Welfare and Institutions Code section 5402 requires the Department of Health Care Services (DHCS) to yearly collect and publish quantitative information about LPS holds and conservatorships. To allow DHCS to meet this requirement, county officials and facilities that provide services to people held under the LPS Act must provide DHCS with the required information.

Though the statute clearly enumerates requirements of DHCS, the Counties, and detaining facilities, the publicly-available data is woefully incomplete, with many counties providing incomplete data or not providing any data at all for the most-recently available fiscal year.²² The Legislature should amend Welfare and Institutions Code section 5402 to include an enforcement mechanism that requires compliance with its stated reporting requirements.

B. Add language to the Welfare and Institutions Code that requires the Judicial Council to study and report on LPS conservatorships, similar to the requirement established by Assembly Bill 1194 for probate conservatorships.

Assembly Bill 1194 adds Section 1458 to the Probate Code, which requires the Judicial Council, on or before January 1, 2024, to study and make a

²² DHCS California Involuntary Detentions Data Report, Fiscal Year 2019/2020 (https://www.dhcs.ca.gov/Documents/CSD_YV/MHSA/FY19-20-Involuntary-Detention-Report.pdf). [“Return to Main Document”](#)

report to the Legislature about court effectiveness in probate conservatorship cases, including the effectiveness of protecting legal rights of conservatees. The Legislature should add language to the Welfare and Institutions Code that requires the Judicial Council to conduct a similar study about LPS conservatorship cases. To this end, the Legislature should require the Judicial Council to study and report on a statewide sampling of small, medium, and large county court caseload statistics from one fiscal year, including both temporary and permanent LPS conservatorships, including the following, at a minimum:

1. The number of petitions filed requesting appointment of an LPS conservator, the number of those petitions granted, and the number denied;
2. The number of cases in which the court appoints a Public Defender to represent the proposed conservatee;
3. The number of cases in which the proposed conservatee exercised their right to oppose the petition for appointment or re-appointment, by Jury Trial or other means;
4. The number of cases in which a county Public Guardian or Public Conservator office is appointed as an LPS conservator, and the number of cases in which an alternative person is appointed as an LPS conservator, with descriptions of who those alternative conservators are;
5. The number of cases in which a person on an LPS conservatorship is placed in a locked facility, including Institutions for Mental Disease (IMDs);
6. The number of cases in which a person on an LPS conservatorship is placed somewhere other than a locked facility, with descriptions of each alternative placement;
7. For each person on an LPS conservatorship, the total amount of time the person has been conserved at the point in time of the study (including the temporary conservatorship period);
8. The number of cases in which a person on an LPS conservatorship petitions the court under Welfare and Institutions Code section 5358.3 for a hearing to contest rights denied under section 5357 or

power granted to the conservator under section 5358, and the outcome of each petition;

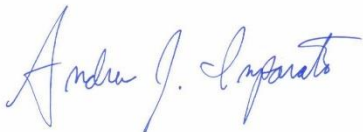
9. The number of cases in which a person on an LPS conservatorship petitions the court for a rehearing under Welfare and Institutions Code section 5364, and the outcome of each petition; and
10. The number of cases in which a person on an LPS conservatorship challenges their placement or conditions of confinement pursuant to Welfare and Institutions Code section 7250 or Penal Code section 1473, and the outcome of each petition.

Conclusion

As outlined above, the Legislature can take concrete steps to ensure that people committed, or at risk of commitment, under the LPS Act have access to legal protections and community-based services that ensure their right to treatment in the least restrictive setting appropriate to their needs.

Again, thank you for the opportunity to provide these recommendations. DRC staff is available for follow-up discussions of recommendations provided herein.

Sincerely,



Andrew J. Imparato
Executive Director
Disability Rights California



Eric Harris
Director of Public Policy
Disability Rights California