

THE LANTERMAN-PETRIS-SHORT ACT: An Overview

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Road map

- Federal and state legal protections
- History of the LPS Act
- Inpatient Civil Commitment
- Conservatorships
- Assistive Outpatient Treatment
- Legislative changes to LPS



Disability Rights Laws

- Americans with Disabilities Act (ADA)/Rehabilitation Act/
Olmstead v. L.C., 527 U.S. 581 (1999)
- Public entities must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- The “most integrated setting” is one that enables Individuals with disabilities to interact with persons without disabilities to the fullest extent possible
- [CA Olmstead Plan](#) to increase HCBS

Constitutional rights at stake

- Federal: Due Process - 14th Amendment (deprivation of liberty)
- C.A. Const., art 1, § 7 (due process, equal protection)
- U.S. Supreme Court cases
 - *Addington v. Texas*, 441 U.S. 418 (1979)
 - *Foucha v. Louisiana*, 504 U.S. 71 (1992)
 - *United States v. Comstock*, 130 S. Ct. 1949 (2010)
- Right to judicial review
 - legal review standards of commitment vary
- Right to Counsel
- Racial disparities in involuntary commitment

Why the LPS Act ?

- A long history of institutionalization and segregation
- Widespread abuse in state hospitals
- State mental hospitals were largely closed in the 1960s and '70s (deinstitutionalization)
- No community-based services were available
- Funding was not allocated for community-based services

LPS Act, enacted in 1967

Purpose: (WIC 5001)

- (a) To end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders, developmental disabilities, and chronic alcoholism, and to eliminate legal disabilities.
- (b) To provide prompt evaluation and treatment of persons with mental health disorders or impaired by chronic alcoholism.
- (c) To guarantee and protect public safety.
- (d) To safeguard individual rights through judicial review.
- (e) To provide individualized treatment, supervision, and placement services by a conservatorship program for persons who are gravely disabled.
- (f) To encourage the full use of all existing agencies, professional personnel, and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures.
- (g) To protect persons with mental health disorders and developmental disabilities from criminal acts.
- (h) To provide consistent standards for protection of the personal rights of persons receiving services under this part and under Part 1.5 (commencing with Section 5585).
- (i) **To** provide services in the least restrictive setting appropriate to the needs of each person receiving services under this part and under Part 1.5 (commencing with Section 5585).

LPS Involuntary commitments

LPS Act: Civil Commitments

- “5150 hold” (WIC 5150)
 - for up to 72 hour period for evaluation & treatment
 - Probable cause to believe the person is a danger to self, others or gravely disabled
 - As a result of a mental health disorder
- “5250 hold” - 14-day certification for intensive treatment
 - Continues to be a danger to self/others or gravely disabled
 - Unwilling to accept voluntary treatment
 - Right to a certification review hearing within 4 days
 - Right to writ of habeas corpus
- Competency to make psychiatric medication decisions is separate determination (WIC 5332)

Extended involuntary holds

- Person remains gravely disabled, 30-day additional hold (WIC 5270.15)
 - If used in the county
 - If not used, can be placed under Temporary Conservatorship
- Dangerous to self (suicidal), may be recertified for another 14-day hold (WIC 5260)
- If imminently dangerous to others, the court may order a 180-day post-certification commitment (WIC 5301); renewable
 - Based on a petition for post-certification
 - Outpatient status can be revoked

Some special rules for minors

- Children's Civil Commitment and Mental Health Treatment Act of 1988 (WIC 5585 et seq.)
 - Voluntary treatment is not available
 - “Gravely disabled minor” –
unable to use the elements of life essential to health, safety and development, including food, clothing, and shelter, even though provided to the minor by others
 - Multidisciplinary professional analyses required
- Minor wards and dependents of the court
 - Follow LPS civil commitment (72 hour hold, 14-day certification)
 - Have ability to seek voluntary inpatient or outpatient tx on the advice of counsel (WIC 6552)

LPS Conservatorships

Temporary Conservatorship – 30 days

- Temporary conservatorship process
 - Provider/mental health professional evaluation & petition
 - Person remains both gravely disabled and unwilling or incapable of accepting treatment voluntarily
 - Public Guardian's start conservatorship investigation
 - Examine all possible alternatives
 - Makes recommendation to Court
 - Comprehensive report
 - Recommends removal of certain rights
 - Designate suitable conservator
- Court orders temporary conservatorship for up to 30 days
 - investigator's report and affidavit from recommending MH professional
 - Right to writ of habeas corpus

“Permanent” LPS Conservatorship – 1 yr

- Permanent conservatorship can be established after a hearing prior to the expiration of the 30-day T-con
 - The LPS conservatorship will last for 1 year (renewable)
 - Legal standard: beyond a reasonable doubt
- Court hearing within 30 days of the petition for conservatorship
 - Right to counsel
 - Right to a jury trial – must request within 5 days after hearing on conservatorship petition
 - Request for trial can extend T-con

Powers of LPS conservator (per court order)

- Placement, including hospitalization
- Psychiatric medication authorization
- Other rights that can be removed
 - Right to manage money
 - Right to make medical treatment decisions
 - Right to vote
 - Right to enter into contracts
 - Right to a drivers license
 - Right to own a firearm
- Rehearing to challenge conservatorship (6 mos)

Expansion of Conservatorships - Pilots

- SB 1045 (2018) expanded basis for “housing” conservatorships in San Francisco, Los Angeles, and San Diego
- Criteria: incapable of caring health and well-being due to a serious mental illness and substance use disorder
- Based on frequent detentions for 72 hour holds (8 or more detentions in the preceding 12 month)
- AOT petition denied, or determined *would be* insufficient
- Lasts 6 months; may seek renewal
- Counties must establish a working group to evaluate effectiveness
- Sunsets January 1, 2024

Assisted Outpatient Treatment “Laura’s Law”

Laura's Law enacted in 2002

- January 1, 2003 (AB1421): California enacted court-ordered outpatient treatment - Assisted Outpatient Treatment (AOT)
- Modeled after Kendra's Law in New York (Kendra Webdale, January 1999)
- Counties given the option to implement
- No funding attached to the legislation

Key features of AOT / Laura's Law

- Referred by a qualified party
- The person is in the county or reasonable believed to be in the county
- All nine criteria are met W&I Code 5346(a)
- The treatment plan involves services actually available from County Behavioral Health
- An exam of client was completed or attempted

AOT Criteria

- County resident, minimum age 18
- Serious Mental Disorder (W&I Code 5600.3)
- The person is unlikely to survive safely in the community
- History of lack of compliance with mental health treatment, indicated by:
 - Hospitalized: 2x in the last 36 months
 - Treated in jail/prison: 2x in the last 36 months
 - OR, Serious & violent acts, threats or attempts to harm self/others: 1x in the last 48 months
- Voluntary treatment has been offered and refused
- Condition is substantially deteriorating
- Least restrictive placement
- Necessary to prevent 5150 condition
- Will benefit from treatment

Rights of person to oppose AOT

- Notice of the hearings
- Copy of the court-ordered evaluation
- Right to counsel
- Right to judicial review by writ of habeas corpus
- To be present at the hearing
- To present evidence
- To call witnesses on their behalf
- To cross-examine witnesses
- To appeal decisions, and to be informed of the right to appeal

AOT orders

- For an initial period not to exceed six months (renewable for 180 days)
- Shall specify that the proposed treatment is the least restrictive treatment appropriate and feasible for the person
- Categories of assisted outpatient treatment (in Section 5348), the person is to receive
- Involuntary medication requires separate court order
- Any directions included in the advance health care directive shall be considered in formulating the written treatment plan (Probate Code Section 4650)
- Affidavit by AOT program must be filed every 60 days with court

Legislative Changes to AOT

Recent Changes to AOT/Laura's Law

- 2020 legislation, AB 1976 (Eggman) requires counties to participate in Laura's Law unless they opt out
- Counties who opt out from participation through the passage of a resolution identifying the reasons
 - Legislation repeals the sunset date of Laura's Law
 - Prohibits a county from reducing existing voluntary mental health programs
 - Authorizes superior court judge to petition for AOT services

Recently expanded AOT criteria

2021 legislation, SB 507(Eggman) effective January 1, 2022 makes additional changes to AOT:

- Broadens criteria to permit AOT to prevent a relapse or deterioration that would result in a person becoming gravely disabled or a serious harm to self or others, without also requiring the person's condition to be substantially deteriorating
- Requires mental health professional's affidavit to determine whether the person has the capacity to give informed consent regarding psychotropic medication
- Authorizes a petition for AOT for a conservatee who is seeking/petitioning to end the conservatorship

Recent Efforts to Change LPS

Legislative efforts to broaden/change LPS

2019-2021 bills:

- AB 1971, AB 1861, AB 1946, AB 1340 (Santiago)
- AB 2404 (Ramos)
- AB 2899 (Jones-Sawyer)
- AB 3130 (Kiley)
- AB 574, AB 1572 (Chen)
- SB 1250, SB 1251, SB 1254 (Moorlach)
- State Auditor's July 2020 Report on LPS – no evidence to justify expanding commitment criteria

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