

# THE LANTERMAN-PETRIS-SHORT ACT: An Overview

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# Road map

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



# Disability Rights Laws

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- 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

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- Federal: Due Process - 14<sup>th</sup> 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 ?

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- 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

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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

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- “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

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- 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

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- 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

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- 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

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- 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)

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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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

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## 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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