

Date of Hearing: July 6, 2021

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 507 (Eggman) – As Amended June 28, 2021

SENATE VOTE: 38-0

SUBJECT: MENTAL HEALTH SERVICES: ASSISTED OUTPATIENT TREATMENT

KEY ISSUE: IN ORDER TO BETTER MEET THE NEEDS OF INDIVIDUALS WHO MAY BENEFIT FROM ASSISTED OUTPATIENT TREATMENT (AOT), SHOULD THE CRITERIA TO QUALIFY FOR AOT BE MODIFIED; SHOULD CERTAIN PERSONS BE ALLOWED TO APPEAR BEFORE THE COURT IN AOT PROCEEDINGS BY VIDEO CONFERENCE; AND SHOULD A MECHANISM BE ESTABLISHED FOR PERSONS LEAVING THE CONSERVATORSHIP SYSTEM TO QUALIFY FOR AOT?

SYNOPSIS

In order to better meet the needs of individuals, including former conservatees, who may benefit from Assisted Outpatient Treatment (AOT), this bill, among other things, modifies the criteria to qualify for AOT; allows certain persons to appear before the court by video conferencing; and provides a mechanism for persons leaving the conservatorship system to qualify for AOT.

Signed into law in 1967 by Governor Ronald Reagan, the LPS Act (Act) includes among its goals “ending the inappropriate and indefinite commitment of the mentally ill.” AB 1421 (Thomson, Chap. 1017, Stats. 2002) amended the LPS and established the AOT Demonstration Project Act of 2002, also known as Laura’s Law, named after a young woman who was killed, along with two others, while home from her college winter break and working at the Nevada County Department of Mental Health. Laura’s Law established a mechanism for courts, initially only in counties that opted to participate, to order a person to receive assisted outpatient mental health treatment. One of the objects of AOT is to prevent individuals with severe mental illnesses from deteriorating to a level that would require involuntary confinement. 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.” The State Auditor recently released an audit of the implementation of the LPS Act in Los Angeles, San Francisco, and Shasta Counties which found, among other things, that the eligibility criteria for AOT precluded its application to individuals in existing conservatorships. The bill would also address this issue by providing a mechanism for those leaving the conservatorship system to be evaluate for AOT.

The bill is supported by a large number of medical, psychiatric, and psychological associations, as well as the Judicial Council of California (if amended to modify its provisions about videoconferencing). Because of the Committee’s and author’s limited time to consider those amendments, they will not be taken in this Committee, but the analysis points out that the author may wish to take them in the future, should the bill be approved by the Committee. The bill is opposed by Disability Rights California, Cal Voices, and California Association of Social Rehabilitation Agencies.

SUMMARY: In order to better meet the needs of individuals, including former conservatees, who may benefit from Assisted Outpatient Treatment (AOT), modifies the criteria to qualify for AOT; allows certain persons to appear before the court by video conferencing; and provides a mechanism for persons leaving the conservatorship system to qualify for AOT. Specifically, **this bill:**

- 1) Modifies the criteria for a person to qualify for Assisted Outpatient Treatment (AOT) in the following ways (assuming that other criteria also are met):
 - a) Provides an additional way for a person to qualify for AOT: in a case where there has been a clinical determination that, in view of the person's treatment history and current behavior, at least one of the following is true:
 - i) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.
 - ii) The person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or to others, as defined in existing law.
 - b) Removes the following as requirements that all persons must meet in order to qualify for AOT:
 - i) The person's condition is substantially deteriorating.
 - ii) In view of the person's treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or to others as defined in exiting law.
 - c) Adds a requirement that an examining mental health professional in their affidavit to the court shall address the issue of whether the defendant has capacity to give informed consent regarding psychotropic medication.
- 2) Allows the following persons to appear before the court by video conferencing if they choose to do so:
 - a) The person who is the subject of the petition, who shall maintain the right to appear before the court in person.
 - b) An examining mental health professional.
- 3) Provides a mechanism, in a county or group of counties where AOT services are available, for a person who is a conservatee who is the subject of a pending petition to terminate their conservatorship to qualify for AOT if the court finds, by clear and convincing evidence, both of the following:
 - a) That the facts stated in the verified petition filed in accordance with this section are true.
 - b) That the person meets the definition of an "eligible conservatee" in 4), below.
- 4) Defines "eligible conservatee" as a person who is all of the following:

- a) A conservatee who is the subject of a pending petition to terminate their conservatorship.
- b) A person who qualifies for AOT because they meet all of the criteria of persons who qualify for AOT.
- c) A person who, if the petition were granted, would benefit from assisted outpatient treatment to reduce the risk of deteriorating mental health while living independently.

EXISTING LAW:

- 1) Establishes the LPS Act (Welfare and Institutions Code Section 5000 *et seq.* All further section references are to the Welfare and Institutions Code, unless otherwise indicated), which, among other things, provides for an escalating series of temporary detentions of a person who is gravely disabled or a danger to self, culminating in a proceeding to establish a year-long conservatorship for those who are gravely disabled. (Sections 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. (Section 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, as specified;
 - 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 likely 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. (Section 5346 (a).)
- 4) Provides that a petition for an order authorizing AOT may be filed by the county behavioral health director, or the director’s designee, in the superior court in the county in which the person who is the subject of the petition is present or reasonably believed to be present. (*Id.* at (b)(1).) Requires that the petition be accompanied by an affidavit of a licensed mental health treatment provider stating either of the following:
 - a) That the licensed mental health treatment provider has personally examined the person who is the subject of the petition no more than 10 days prior to the submission of the petition, the facts and reasons why the person who is the subject of the petition meets the criteria for AOT, that the licensed mental health treatment provider recommends AOT

for the person who is the subject of the petition, and that the licensed mental health treatment provider is willing and able to testify at the hearing on the petition; or

- b) That, no more than 10 days prior to the filing of the petition, the licensed mental health treatment provider, or the provider's designee, has made appropriate attempts to elicit the cooperation of the person who is the subject of the petition, but has not been successful in persuading that person to submit to an examination, that the licensed mental health treatment provider has reason to believe that the person who is the subject of the petition meets the criteria for AOT, and that the licensed mental health treatment provider is willing and able to examine the person who is the subject of the petition and testify at the hearing on the petition. (*Id.* at (b)(5).)
- 5) Provides that upon the hearing date, or upon any other date or dates to which the proceeding may be continued, the court shall hear testimony. If it is deemed advisable by the court, and if the person who is the subject of the petition is available and has received notice, the court may examine in or out of court the person who is the subject of the petition who is alleged to be in need of AOT. If the person who is the subject of the petition does not appear at the hearing, and appropriate attempts to elicit the attendance of the person have failed, the court may conduct the hearing in the person's absence. If the hearing is conducted without the person present, the court must set forth the factual basis for conducting the hearing without the person's presence. (*Id.* at (d)(1).)
- 6) Prohibits the court from ordering AOT unless an examining licensed mental health treatment provider, who has personally examined, and has reviewed the available treatment history of, the person who is the subject of the petition within the time period commencing 10 days before the filing of the petition, testifies in person at the hearing. (*Id.* at (d)(2).)
- 7) 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 (*id.* at (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 (*id.* at (d)(4)).
- 8) Provides that if the court finds that the person meets the criteria for AOT and there is not an 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, which may be renewed. (*Id.* at (d)(5)(B), (g).) Requires that the court fashion the order to specify the least restrictive treatment appropriation that is feasible for the person. (*Id.* at (d)(5)(B).)
- 9) Provides that if a person 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).)

10) 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 to meet the criteria for AOT, and enables the person to file a writ of habeas corpus to challenge this. (*Id.* at (h)(i).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: In order to better meet the needs of individuals, including former conservatees, who may benefit from Assisted Outpatient Treatment (AOT), this bill, among other things, would modify the criteria to qualify for AOT; allows certain persons to appear before the court by video conferencing; and provides a mechanism for persons leaving the conservatorship system to qualify for AOT. According to the author:

Changing the eligibility requirements by including a person's treatment history and current behavior would allow counties to identify individuals who are at serious risk of deterioration and to offer stepdown programs that would provide continued treatment and care to those individuals who would benefit the most from AOT.

Background - The LPS Act. Signed into law in 1967 by Governor Ronald Reagan, the LPS Act (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.” (Section 5001.) The 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. (Section 5008 (h)(1)(A).) “Before a person may be found to be gravely disabled and subject to a year-long confinement, the 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.” (*Id.* at 541; Section 5361.) The Act authorizes the superior court to appoint a conservator of the person for one who is determined to be gravely disabled (Section 5350 *et seq.*), so that they may receive individualized treatment, supervision, and placement (Section 5350.1). Although an LPS conservatorship expires after a year, the conservator may petition the superior court for reappointment. (Sections 5361, 5362.)

Assisted Outpatient Treatment – “Laura’s Law.” AB 1421 (Thomson, Chap. 1017, Stats. 2002) established the AOT Demonstration Project Act of 2002, also known as Laura’s Law, named after a young woman who was killed, along with two others, while home from her college winter break and working at the Nevada County Department of Mental Health. The victims were killed by a heavily armed client of the department, a person with mental illness who was not following his prescribed mental health treatment and became fixated on harming one of the department employees. The killer’s family knew he possessed a number of firearms and had sought help for him, but he had cycled in and out of 72-hour inpatient involuntary holds but did not receive sustained and effective mental health care.

AB 1421 established a mechanism for courts, initially only in counties that opted to participate, to order a person to receive assisted outpatient mental health treatment. 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. (Section 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.” (*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.) 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. (*Myths About Laura’s Law (AB 1421)* Mental Illness Policy Org, available at <https://mentalillnesspolicy.org/states/california/lauraslawmyths.html>.) As a result, Laura’s Law has saved Nevada County an estimated \$213,300 in incarceration costs and \$75,000 in hospital costs. (*Ibid.*) As a result of AB 1976 (Eggman, Chap. 140, Stats. 2020) Laura’s Law is now available in all counties statewide (no need for counties to opt into the program), effective July 1, 2021; counties must opt out of providing AOT services if they do not want to participate. AB 1976 deleted the sunset date for Laura’s Law, which is therefore permanently codified (until/unless changed or repealed by the Legislature).

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. (*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>.) 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, the Auditor found that the eligibility criteria for AOT precluded its application to individuals in existing conservatorships. 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 created a procedural mechanism to evaluate the suitability of persons leaving the conservatorship system for AOT. Counties could then use AOT as a bridge from an LPS Act conservatorship to less intensive, voluntary services in the community while still providing services to 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 outpatient treatment. For example, initial enrollment cannot exceed six months; and once a court orders an individual to participate in AOT, the director of the treatment program would be required to 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 could petition the court to require that the director of the program prove that the individual still meets those criteria. Furthermore, as the result of recent amendments to the bill, a person leaving the conservatorship system would only be placed in the AOT program if they met all of the criteria to qualify for AOT (which are applicable to all persons evaluated for the program).

The bill was recently consolidated with SB 782 (Glazer), which also sought to create a step-down from the conservatorship system to AOT. SB 782 also made it clear that a conservatee or former conservatee who is at risk of deteriorating is nonetheless eligible for AOT.

Remote testimony in AOT proceedings. The Auditor found that many conservatorships in Los Angeles ended when doctors failed to provide essential testimony in court proceedings. As a result, the court could no longer authorize involuntary treatment, even though some individuals may have needed it. Nearly 20 percent of the conservatorships that ended in fiscal year 2017-18 did so because the doctor did not testify in court. (*Lanterman-Petris-Short Act, supra*, at 30.) Many doctors had limited availability and testifying in court is not a reimbursable service for private doctors. (*Id.* at 31.)

The Auditor recommended using expert witnesses when the doctors are not available; however, these witnesses will not have direct knowledge of the person and their testimony could be insufficient. (*Lanterman-Petris-Short Act, supra*, at 38.) The Auditor also recommended scheduling conservatorship hearings and trials to align with doctors' schedules. (*Ibid.*) This bill, for AOT proceedings, would permit an examining mental health professional to testify via videoconferencing means. The bill also permits the subject of the AOT petition to testify via videoconferencing means, but also guarantees that the subject appear in person to testify, if they prefer.

Providing courts with information regarding capacity to consent to medication. Section 5346 provides that a petition for an order authorizing AOT may be filed by the county behavioral health director, or the director's designee, in the superior court in the county in which the person who is the subject of the petition is present or is reasonably believed to be present. (*Id.* at (b)(1).) The petition must be accompanied by an affidavit of a licensed mental health treatment provider stating either that the person has personally examined the person, or attempted to examine the person but could not secure their cooperation. The affidavit must also include information explaining why the provider believes AOT is appropriate for the person and that the provider can testify as to this belief. (*Id.* at (b)(5).)

This bill would additionally require that the affidavit address whether the person has the capacity to give informed consent to the administration of psychotropic medication. This change is in

response to the State Auditor's finding that counties face limitations in offering AOT to some individuals because existing law does not expressly allow medication to be ordered as part of a treatment plan.

Amendments requested by the Judicial Council of California (writing in support of the bill if amended). The Judicial Council writes that it is pleased to support SB 507 because, among other things, the bill would, "help relieve pressure on criminal courts and collaborative justice courts, where such individuals often find themselves involved with the criminal justice system[.]" However, the Judicial Council suggests that the bill's provision regarding remote proceedings should be modified to (1) provide discretion to the court to allow remote appearances, based upon the availability of technology, and (2) make the reference to remote appearance technology neutral to "recognize that technology evolves over time."

The letter from Judicial Council arrived too late for the author to fully consider the proposed amendments and for the Committee to integrate amendments into this analysis. *However, the author may wish to consider amending the bill as follows should the bill be approved by this Committee:*

On page 6, at lines 37 - 39

The person who is the subject of the petition shall maintain the right to appear before the court in person, but may appear ~~by videoconferencing means~~ ***through technology that enables remote appearances, as determined by the court,*** if they choose to do so.

On page 7, at lines 6 – 7:

An examining mental health professional may appear before the court ~~by videoconferencing means~~ ***through technology that enables remote appearances, as determined by the court.***

The language of these proposed amendments is slightly different than the language suggested by the Judicial Council, but is consistent with two bills that allow petitioners and witnesses to appear remotely for court hearings for protective orders: SB 538 (Rubio) and SB 320 by the author of this bill. SB 538 was recently approved (by a unanimous vote) by the Committee. SB 320 will be heard, as proposed to be amended, by the Committee today.

ARGUMENTS IN SUPPORT: The California Psychological Association writes that it supports the bill because, among other things, "Changing the eligibility requirements by including a person's treatment history and current behavior would allow counties to offer step down programs that would provide continued treatment and care to those individuals who would benefit the most." The County Behavioral Health Directors Association of California writes that it "supports this measure as it will provide important clarification on eligibility, provides flexibility on testimony by the examining mental health professional and the subject of the petition, and will provide important information for consideration by the court on the capacity of the individual to provide informed consent for psychotropic medication." The California Medical Association supports the bill because it "adds new criteria for significant risk of deterioration and individuals who meet this criterion and all others. This will help these individuals maintain consistent medication regimes and achieve stability and safety in the community."

ARGUMENTS IN OPPOSITION: Disability Rights California (DRC) writes that it, "opposes legislative efforts to expand involuntary mental health treatment to anyone who is not

imminently dangerous to themselves self or others, or gravely disabled. Effective assistance comes from a collaborative effort between the recipient of treatment and the provider of treatment: “compliance” with treatment can’t be coerced.” Regarding this bill, DRC writes that it objects to SB 507 because it would loosen the criteria under which an individual could be ordered by a judge to be subject to involuntary outpatient commitment regardless of their current commitment status and make it easier to force psychotropic medications on individuals who are mandated into involuntary outpatient treatment.

The California Association of Social Rehabilitation Agencies (CASRA) expresses concerns that are similar to DRC’s about treatment that is not voluntary. Further, they object to the fact that the bill would also make it easier for counties and courts to order individuals into involuntary outpatient commitment by allowing the examining mental health professional to appear before the court via videoconferencing. Finally, CASRA believes that the bill would only further establish the primacy of medications in the treatment of mental illness over other elements of behavioral health care, such as talk therapy, which have no negative health consequences.

Cal Voices write in opposition that, “It is our position that any effort to institutionalize an individual involuntarily is counterproductive to the wellness and recovery model that California embraces, which allows an individual to choose how, when and where they are to receive services/treatment related to mental health and/or substance use.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Medical Association
California Psychological Association
County Behavioral Health Directors Association of California
Judicial Council of California (if amended)
Psychiatric Physicians Alliance of California
State Building and Construction Trades Council of California

Opposition

Cal Voices
California Association of Social Rehabilitation Agencies
Disability Rights California

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