

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 929 (Eggman) – As Amended June 6, 2022

SENATE VOTE: 38-0

SUBJECT: Community mental health services: data collection.

SUMMARY: Expands the Department of Health Care Services' (DHCS) existing responsibility to collect and publish information about involuntary detentions under the Lanterman-Petris-Short (LPS) Act to include additional information, such as clinical outcomes, services provided, and availability of treatment beds. Specifically, **this bill:**

- 1) Requires DHCS to report to the Legislature on or before May 1, of each year, information concerning the operation of the LPS system. Requires the report to include an evaluation of the effectiveness of achieving the legislative intent of this bill.
- 2) Requires the report to include all of the following:
 - a) Number of persons admitted or detained for 72-hour (Section 5150) evaluation and treatment, admitted for 14-day and 30-day (Sections 5250 and 5270) periods of intensive treatment and admitted for 180-day (Section 5350) postcertification intensive treatment in each county;
 - b) Number of persons transferred to mental health facilities under the Penal Code in each county;
 - c) Number of persons for whom temporary conservatorships are established in each county;
 - d) Number of persons for whom conservatorships are established in each county;
 - e) Clinical outcomes for individuals placed in each type of hold;
 - f) Services provided to individuals in each category;
 - g) Waiting periods for individuals prior to receiving an evaluation under Section 5150 or 5151 of the LPS Act and waiting periods for individuals prior to receiving care, including the reasons for waiting periods;
 - h) If the source of admission is an emergency department, the date and time of services and release from emergency care;
 - i) Demographic data of those receiving care. Requires demographic data to include age, sex, gender identity, race, ethnicity, primary language, and sexual orientation;
 - j) An assessment of all contracted beds; and,
 - k) Prohibits DHCS from reporting any demographic data that would permit identification of individuals.
- 3) Requires each local mental health director, each facility providing services to persons in the LPS system, and every other entity involved in implementing Section 5150 to provide the DHCS with any information, records, and reports they deem necessary for the purposes of this bill. Prohibits DHCS from having access to any patient name identifiers.
- 4) Prohibits information published under this bill to contain patient name identifiers and to contain statistical data only.

- 5) Requires DHCS to make the report publicly available on its internet website.
- 6) Requires DHCS, on or before July 1, 2023, to convene a stakeholder group to make recommendations on the methods to be used for efficiently providing DHCS with information required under this bill. Requires the stakeholder group to include the County Behavioral Health Directors Association of California (CBHDA), the California Hospital Association, representatives of Medi-Cal managed care plans, representatives of private insurance plans, other organizations representing the various facilities where individuals could be detained under temporary holds or a conservatorship, and other appropriate entities or agencies as determined by DHCS.
- 7) Allows the stakeholder group to consider options that include, but are not limited to, all of the following:
 - a) Creation of a web portal similar to the Office of the Attorney General's Mental Health Reporting System;
 - b) Modifications to the existing Patient Discharge Data Set used by hospitals for reporting to the Department of Health Care Access and Information;
 - c) Opportunities available through California's Health Care Data Exchange Framework Initiative; and,
 - d) Requiring uniform and centralized reporting directly from providers to the county and the state.

EXISTING LAW:

- 1) Establishes the LPS Act to end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders, developmental disabilities, and chronic alcoholism, as well as to safeguard a person's rights, provide prompt evaluation and treatment, and provide services in the least restrictive setting appropriate to the needs of each person.
- 2) Defines "gravely disabled" as a condition in which a person, as a result of a mental disorder or impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, or shelter, or a condition in which a person has been found mentally incompetent, as specified.
- 3) Defines "a danger to themselves or others, or gravely disabled" to also refer to the condition of being a danger to self or others, or gravely disabled, because of the use of controlled substances rather than by mental disorder.
- 4) Provides that if a person is gravely disabled as a result of mental illness, or a danger to self or others, then a peace officer, staff of a designated treatment facility or crisis team, or other professional person designated by the county, may, upon probable cause, place that person into custody for a period of up to 72 hours for assessment, evaluation, crisis intervention or placement in a designated treatment facility.
- 5) Allows a person who has been detained for 72 hours to be detained for up to an additional 14 days of intensive treatment if the person continues to pose a danger to self or others, or is gravely disabled, and the person has been unwilling or unable to accept voluntary treatment. Allows a person who has been detained for 14 days of intensive treatment to be detained for

up to 30 additional days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment.

- 6) Allows the professional person in charge of a facility providing 72-hour, 14-day, or 30-day treatment to recommend an LPS conservatorship to the county conservatorship investigator for a person who is gravely disabled and is unwilling or unable to voluntarily accept treatment, and requires the conservatorship investigator, if the investigator concurs with the recommendation, to petition the superior court to establish an LPS conservatorship. Grants to the person for whom the LPS conservatorship is sought the right to demand a court or jury trial on the issue of whether they are gravely disabled.
- 7) Allows, under the LPS Act, a court to order an imminently dangerous person to be confined for further inpatient intensive health treatment for an additional 180 days, as provided.
- 8) Deems a person not gravely disabled, for purposes of an involuntary hold for up to an additional 14-day intensive treatment and appointment of a conservator, if the person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide the person's basic personal needs for food, clothing, or shelter.
- 9) Requires that a conservator under an LPS conservatorship place the conservatee in the least restrictive alternative placement, as provided. Gives the LPS conservator the right, if specified in the court order, to require the conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatee's being gravely disabled.
- 10) Requires the DHCS to collect and publish annually quantitative information concerning the operation of various provisions of the LPS Act relating to community mental health services, including the number of persons admitted for evaluation and treatment periods, transferred to mental health facilities, or for whom certain conservatorships are established.
- 11) Requires each local mental health director, and each facility providing services to persons under the 5150 hold, to provide the DHCS, upon its request, with any information, records, and reports that the DHCS deems necessary for purposes of the data collection and publication.

FISCAL EFFECT: This bill, as amended, has not been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, this bill is intended to address a data shortfall that exists on what services are provided to those under various LPS Act holds and related outcomes. Due to our fragmented mental health system, many different entities are involved in the identification, investigation, treatment, and follow-up for those with a severe mental illness experiencing grave disability, or dangerousness to self or others. Current data reporting requirements are inadequate to track the disposition and outcomes for these individuals. Historically, changes to treatment law and service delivery system configurations at both the state and federal level followed the passage of LPS, resulting in the slashing of federal funding for community mental health, and shifting mental health program

responsibility to the counties. Voters then passed the Mental Health Services Act in 2004 to provide dedicated funding for community supports and services, and prevention and early intervention. Shifting responsibility to the counties can provide for more nuanced decision-making around local needs, but it has also hindered our ability to fully understand how programs have worked across the state. The author concludes that throughout all of these changes, we have lacked crucial data about how the LPS Act has worked and some additional ways that services provided under involuntary detention treatment orders can be improved to ensure the best outcomes.

2) BACKGROUND.

- a) **LPS Act.** The LPS Act was signed into law in 1967 and provides for involuntary commitment for varying lengths of time for the purpose of treatment and evaluation, provided certain requirements are met. Additionally, the LPS Act provides for LPS conservatorships, resulting in involuntary commitment for the purposes of treatment if an individual is found to meet the criteria of being a danger to themselves or others or is gravely disabled as defined. The LPS Act provides for a conservator of the person, of the estate, or of both the person and the estate for a person who is gravely disabled because of a mental health disorder or impairment by chronic alcoholism or use of controlled substances. The person for whom such a conservatorship is sought has the right to demand a court or jury trial on the issue of whether they meet the gravely disabled requirement. The purpose of an LPS conservatorship is to provide individualized treatment, supervision, and placement for the gravely disabled person. Current law also deems a person as not being gravely disabled for purposes of a conservatorship if they can survive safely without involuntary detention with the help of responsible family, friends, or others who indicate they are both willing and able to help. The LPS Act, along with the court ordered outpatient services available through Laura's Law provides a robust system for mandating intensive inpatient and outpatient care, along with general oversight, for those who may not be able to care for themselves.
- i) **5150's.** Typically one first interacts with the LPS Act through what is known as a 5150 hold, which allows a peace officer or other authorized individual as specified to commit a person for an involuntary detention of up to 72 hours for evaluation and treatment if they are determined to be, as a result of a mental health disorder, a threat to self or others, or gravely disabled. The peace officer or other authorized individual who initially detains the individual must determine and document that the individual meets this standard. When making the determination, the peace officer or other authorized person may consider the individual's historical course, which includes evidence presented by a person who has provided or is providing mental health or related support services to the person on the 5150 hold; evidence presented by one or more members of the family of the person on the 5150 hold; and, evidence presented by the person on the 5150 hold, or anyone designated by that person, if the historical course of the person's mental disorder has a reasonable bearing on making a determination that the person requires a 5150 hold.
- ii) **5250's.** Following the 72-hour hold under a 5150, a person may be certified for intensive treatment, which initially permits a hold for an additional period not to exceed 14-days, without court review, if they are found to still be a danger to self or others, or gravely disabled. When determining whether the person is eligible for a 14-

day hold, the professional staff of the agency or facility providing evaluation services must find that the person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis. A notice of certification is required for all persons certified for intensive treatment, and a copy of the notice for certification is required to be personally delivered to the person certified, the person's attorney, or the attorney or advocate, as specified.

- iii) **5270's.** If, after the initial 14 days, a person is still found to remain gravely disabled and unwilling or unable to accept voluntary treatment, the person may be certified for an additional period of not more than 30 days of intensive treatment. A person cannot be found at this point to be gravely disabled if they can survive safely without involuntary detention with the help of responsible family, friends, or others who indicate they are both willing and able to help.
- iv) **5350's.** At the expiration of the 14 days period (or subsequent 30 day period) of intensive treatment, a person may be confined for further treatment under the LPS for an additional period, not to exceed 180 days if one of the following exists:
 - (1) They have attempted, inflicted, or made a serious threat of substantial physical harm to either themselves or another after having been taken into custody, and while in custody, and who, as a result of mental disorder, presents a demonstrated danger of inflicting substantial physical harm upon others;
 - (2) They have attempted, or inflicted physical harm to themselves or another that resulted in them being taken into custody, and who presents, as a result of mental disorder, a demonstrated danger of inflicting substantial physical harm upon others; and,
 - (3) They have made a serious threat of substantial physical harm to themselves or another within seven days of being taken into custody, that threat having at least in part resulted in their being taken into custody, and they present, as a result of mental disorder, a demonstrated danger of inflicting substantial harm to others.
- v) **5450's.** Enacted through the passage of AB 1045 (Weiner), Chapter 845, Statutes of 2018, and AB 40 (Weiner), Chapter 467, Statutes of 2019, the counties of San Francisco, San Diego, and Los Angeles, with approval from respective county boards of supervisors, may establish a five-year pilot program creating a new "housing conservatorship" for individuals who are unable to care for themselves due to serious mental illness and substance use disorder (SUD) and who could not be sufficiently helped under previously existing law. If the board of supervisors of a designated county elects to participate and meets specified criteria for establishing the pilot, a conservator for a person, who is incapable of caring for their own health and well-being due to a serious mental illness and SUD, as evidenced by at least eight detentions in a 12 month period for evaluation and treatment under a 72 involuntary hold (a 5150 hold), may be established, if specified requirements are met.
- d) **Assembly Joint Hearing on LPS Act.** On December 15, 2021, the Assembly Health and Judiciary Committees held a joint informational hearing entitled "The LPS Act: How Can it be Improved?" One of the biggest concerns expressed throughout the hearing was the lack of coordination between the treatment facilities, county mental health departments, courts, and the public conservators around the care and treatment provided to individuals

detained on involuntary holds. Another key issue discussed during the hearing was the almost total lack of reliable data about the nature, types, and numbers of holds throughout the state in general and more importantly for patient care by individual counties. A review of the data contained on the DHCS website reflects the following for the fiscal years 2005-06; 2010-11; and 2019-20.

Year	72-Hour Evals (Adult)	14-Day Intensive Treatment	Add'l 14- Day Intensive Treatment (Suicide)	30-Day Intensive Treatment	180-Post Certification Intensive Treatment	Temp. Conserva- torships	Perm. Conserva- torships
2005- 2006	138,295	57,386	269	3,569	21	5,371	10,226
2010- 2011	133,913	68,469	231	4,367	333	4,592	8,692
2018- 2019	98,475	49,416	304	4,722	3,282	1,372	4,380

This is the full extent of data collected related to both the use and effectiveness of the LPS system. What must be noted in these reports is that a little over 50% of the counties either do not have a reporting requirement since they do not have a “designated facility” within their county, do not report the requested data at all or provide incomplete data making it nearly impossible to determine at any point in time what the actual LPS caseload is or has been for any given year. Such lack of data also makes it difficult to fully understand the extent to which the LPS system is used, and to evaluate the act in order to plan and forecast services and resources needed to provide appropriately for the LPS population. Additionally, under existing law, there are no consequences to counties who fail to either report data or provide incomplete data. AB 2275 (Wood and Stone) of 2022 and SB 929 (Eggman) also of 2022 address issues raised during the hearing and are aimed at enhancing LPS reporting requirements in order to obtain meaningful data upon which to evaluate the LPS Act.

- 3) **SUPPORT.** The Psychiatric Physicians Alliance of California (PPAC), sponsor of this bill, states that this bill is intended to address a data shortfall that exists for services provided to those under various LPS Act holds by quantifying outcomes and quality measures. Current law limits reporting to raw numbers of individuals placed on each type of involuntary hold. The purposes of transparency and oversight for these services, as well as identifying barriers in access to and quality of care, require more than the raw data currently reported. PPAC concludes that more comprehensive data would tell us what is working well and help us identify best practices. It would also identify what is not working well.

The Depression and Bipolar Support Alliance (DBSA) states in a support position, that the state clearly lack crucial and appropriate data about how the LPS Act has worked and some additional ways that services provided under involuntary treatment orders can be improved to ensure the best outcomes. DBSA states that DHCS is currently required to collect and

publish data on the numbers of holds under the LPS Act, but there are numerous challenges to getting a complete picture of what is provided and how it impacts outcomes.

- 4) **SUPPORT IF AMENDED.** CBHDA states in a support if amended position that DHCS's current responsibility to collect and publish data has been inconsistent due to unclear instructions on what data should be collected from whom and conflicting interpretations of existing laws and regulations. For example, counties and patients' rights entities are both required to receive and report data, but often encounter barriers with compelling accurate and thorough reporting from independently run health facilities, which may or may not be contracted or linked to county behavioral health, as those facilities have no requirement to report to counties or the state under current law. In addition, because the law is focused on facility-based reporting, large swaths of involuntary holds are not captured, including those placed by law enforcement. CBHDA concludes that the result is uneven and inadequate reporting of the current landscape of involuntary holds.

5) **RELATED LEGISLATION.**

- a) AB 2220 (Muratsuchi) creates the Homeless Courts Pilot Program to be administered by the Judicial Council to provide comprehensive community-based services to achieve stabilization for, and address the specific legal needs of, chronically homeless individuals. Requires programs seeking grant funds to provide any number of specified services or program components, including, but not limited to, a diversion program enabling participating defendants to have infractions, misdemeanor, or felony charges dismissed upon completion of a program, and a dedicated county representative to assist defendants with housing needs. AB 2220 was held in the Assembly Appropriations Committee.
- b) AB 2242 (Santiago) makes various changes to processes for mental health services, including requiring the development of a care continuation plan a model discharge plan for counties and hospitals to follow when discharging those held under temporary holds or a conservatorship, and requires DHCS to collect and publish annually further quantitative information concerning the operation of the LPS Act. AB 2242 is pending in the Senate Health Committee.
- c) AB 2275 (Wood) makes various clarifications and changes to the processes for involuntary detentions under the LPS Act, including specifying timeframes for when involuntary holds begin and for conducting certification review hearings and judicial reviews. Requires DHCS to collect and publish information concerning the operation of the LPS Act, including expanding the entities required to report information to DHCS. Requires the Mental Health Services Oversight and Accountability Commission to prepare an annual report based on the data received from DHCS's data collection. AB 2275 is pending in the Senate Judiciary Committee.
- d) AB 2853 (Lackey) requires DHCS to establish guidelines for the application of the LPS Act to ensure uniform application by counties. Requires the guidelines to include at a minimum, an explanation of how to determine if a person meets the definition of gravely disabled a danger to themselves or a danger to others. AB 2853 was held in the Assembly Judiciary Committee.

- e) SB 1227 (Eggman) authorizes an additional 30-day period of treatment under the LPS Act, if the patient is still in need of intensive treatment and the certification for the additional 30-day treatment period has begun. SB 1227 is pending in the Assembly Judiciary Committee.
- f) SB 1338 (Umberg and Eggman) establishes the CARE Court Program to connect a person struggling with untreated mental illness and SUDs with a court-ordered CARE plan. Authorize a court to order an adult person who is suffering from a mental illness and a SUD and who lacks medical decision-making capacity to obtain treatment and services under a CARE plan that is managed by a CARE team, as specified. Requires each county to participate in providing services under the program. SB 1338 is pending in the Assembly Health Committee.
- g) SB 1416 (Eggman) expands the definition of “gravely disabled” under the LPS Act to include a condition in which a person, as a result of a mental health disorder, is unable to provide for the basic personal needs of personal or medical care or self-protection and safety. SB 1416 is pending in the Assembly Judiciary Committee.

6) PREVIOUS LEGISLATION.

- a) SB 640 (Moorlach) of 2020 would have added to the definition of “gravely disabled” for those who are being detained in a hospital that is not a county-designated facility, as specified, a condition in which the person is incapable of making informed decisions about, or providing for, one’s own basic personal needs, as specified. SB 640 died in the Senate Health Committee.
- b) AB 1946 (Santiago and Friedman) of 2020 would have, in part, expanded the definition of “gravely disabled” to also include a condition in which a person is unable to provide for their basic personal needs for medical treatment, if the failure to receive medical treatment, as defined, would likely result in serious bodily harm or death, as attested in writing by a medical professional in their best medical judgment. AB 1946 would have required each county to submit a report to the Legislature evaluating the impact of the county’s implementation of the expanded definition of “gravely disabled,” as specified. AB 1946 was held in the Assembly Health Committee due to the shortened legislative calendar brought on by the COVID-19 pandemic.
- c) SB 590 (Stone) of 2019 would have added a person who is impaired by chronic alcoholism to the existing prepetition screening process in the LPS Act, which permits any individual to request a county-designated entity to provide a comprehensive screening to determine if the person impaired by chronic alcoholism is a danger to self or others, or gravely disabled. SB 590 died in the Assembly Appropriations Committee.
- d) AB 1275 (Santiago) of 2019 would have required DHCS to establish a three-year pilot project whereby specified counties create outreach teams to provide services to those with a history of mental illness or substance use disorders who are unable to provide for needed medical care and who are homeless or at risk of experiencing homelessness. AB 1275 died on the Senate Floor inactive file.

- e) AB 1971 (Santiago, Friedman, and Chen) of 2018 would have expanded the definition of “gravely disabled” until January 1, 2024, as implemented in the County of Los Angeles, to include a person’s inability to provide for his or her basic personal needs for medical treatment, as specified, and contained specified reporting requirements. AB 1971 died on the Senate Floor inactive file.
- f) AB 2156 (Chen) of 2018 would have expanded the definition of “gravely disabled” to include a condition in which a person is incapable of making informed decisions about, or providing for medical care without significant supervision and assistance from another person and, as a result of being incapable of making these informed decisions, the person is at risk of substantial bodily harm, dangerous worsening of a concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of his or her essential needs that could result in bodily harm. AB 2156 died in the Assembly Health Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

Big City Mayors (cosponsor)
California State Association of Psychiatrists (cosponsor)
Psychiatric Physicians Alliance of California (cosponsor)
Alameda County Families Advocating for the Seriously Mentally Ill
City of Oakland
City of Riverside
Depression and Bipolar Support Alliance - California
Govern for California
League of California Cities
San Diego Regional Chamber of Commerce

Opposition

None on file.

Analysis Prepared by: Judith Babcock / HEALTH / (916) 319-2097