

LPS 5150

Making It Work

Presented by
Mike Phillips, Esq.
Jewish Family Services Patient Advocacy
Program

Legislative Intent of LPS

- End inappropriate, indefinite, and involuntary commitment
- Provide prompt evaluation and treatment
- Guarantee and protect public safety
- Safeguard individual rights
- Encourage full use of agencies and resources
- Provide consistent standards
- Least restrictive setting

Misconceptions versus Local Interpretation

- The LPS Act is nearly 50 years old
- The law is often intentionally broad in areas to allow for maximum adherence to legislative intent when resources and geography vary wildly from county to county
- Legitimate differences of opinion as to what the law means
- Local agendas, turf wars, and the silo effect
- All of the above can give rise to urban legend

3

5150 Overview

- 5150: Detain and transport to an LPS facility
- 5151: Assessment to determine the appropriateness of the involuntary detention
- 5152: Admission involuntarily, pursuant to the above

4

Must an Individual Be Taken to the Nearest LPS Facility?

5

Must an Individual Be Taken to the Nearest LPS Facility?

- Law suggests that any LPS facility is an acceptable destination
- Law enforcement often wants nearest facility
- Hospitals should not refuse or divert based on proximity
- Advisable to write 5150s to “any LPS facility”
- Ideally, patient preference and insurance status should be taken into account by law enforcement

6

Must an Original 5150 Follow the Patient?

7

Must an Original 5150 Follow the Patient?

- The word “original” does not exist anywhere in the LPS code
- Expensive couriers
- Ambulances delayed or turned back
- Understandable preference for an original, but patient care should not be delayed or prevented for lack of an original
- Solution: an original or copy is acceptable

8

Can You Cross County Lines with a 5150 or 5250?

9

Can You Cross County Lines with a 5150 or 5250?

- LPS is California law and should have statewide application unless otherwise stated
- Many counties do not have inpatient facilities, and have no choice but to utilize the facilities of other counties
- EMTALA obligations may apply
- Less clear as to how to handle 5270 (30-day holds), as each county must authorize implementation

10

Must Law Enforcement Consider Voluntary Versus Involuntary Transport Under 5150?

11

Must Law Enforcement Consider Voluntary Versus Involuntary Transport Under 5150?

- Law speaks to preference for voluntary treatment in the clinical context
- Law Enforcement is not clinically trained
- The facility “shall require an application in writing”
- Concerns about Law Enforcement providing voluntary transport versus avoiding paperwork

12

LPS Facilities Should Not Accept a Patient if the 5150 is Absent or Deficient

13

LPS Facilities Should Not Accept a Patient if the 5150 is Absent or Deficient

- 5150 provides immunity to the individual who is detaining and transporting, not the receiving facility
- EMTALA obligations may apply
- Decision to continue the detention or admit the patient should be documented in the medical record
- Consider creating a new 5150

14

When Does the 72-Hour Clock Start?

15

When Does the 72-Hour Clock Start?

- LPS speaks to “detention” in both the context of law enforcement and treatment
- 72 hours of “evaluation and treatment”
- No incentive to detain individuals in a patrol car or emergency department
- Cleaner to start clock at admission, with respect to keeping track of maximum hold times

16

Must a Patient Be Placed on an Involuntary Hold for Transport?

17

Must a Patient Be Placed on an Involuntary Hold for Transport?

- 5150 makes no reference to ambulance and emergency personnel
- Desert Ambulance case (later reversed) states that the legislature intentionally did not include the above
- No duty imposed on emergency personnel
- No immunities exist under LPS

18

Must a Patient Be Placed on an Involuntary Hold for Transport?

- Ethical and legal considerations for placing a voluntary patient on an involuntary hold
- DOJ weapons reporting may kick in
- Inter-hospital transfers not addressed anywhere in LPS
- Solutions: Authorize emergency personnel to transport under 5150 and provide immunities; provide pathway for voluntary transfer

19

Can an Emergency Physician Discontinue a 5150 Detention?

20

Can an Emergency Physician Discontinue a 5150 Detention?

- No 72-hour hold exists yet, so arguably ED staff can document and then stop the detention
- No immunity exists in LPS for the above
- Many hospital counsel/risk administration fear discontinuing a 5150 detention before the patient is assessed at an LPS facility
- Don't shred a 5150 when you can't find a bed

21

Can an Emergency Physician Discontinue a 5150 Detention?

- Not discontinuing a detention that is no longer appropriate impacts emergency departments and violates the individual's civil rights
- Facilities sometimes use back-to-back "serial" 5150s because they cannot locate an LPS bed
- Washington Supreme Court case: psychiatric boarding is unlawful

22

Solutions

- Use LPS reform to clarify how to discontinue a detention and provide immunity for doing so
- Reduce impact on EDs by releasing patients who do not meet criteria
- Eliminate barriers to admission for patients who do meet criteria
- Take advantage of and foster the provision of services at lower levels of care

23

SB 82

- Investment in Mental Health Wellness Act of 2013
- Provides grant funds to improve access to and capacity for crisis services
- Establishes specific selection criteria for grant awards

24

Building Cooperative Relationships

- Bring the relevant parties to the table: facilities and treating clinicians, law enforcement, EMS, transport, county administration, consumers and families
- Establish productive community meetings that meet regularly
- Hold each other accountable
- Win the war, not the battle

25

Building Cooperative Relationships

- Transparency: Call out community problem areas and expect the entire community to work to solve it
- Bring solutions to the table
- Work for solutions within the system, making better use of existing resources while also advocating for system change

Weapons Reporting Requirements for Mental Health Clients

27

WIC CODE §8100(a)

- Applies to voluntary inpatient treatment
- A person shall not possess, control, purchase, receive, attempt to purchase or receive any firearms or deadly weapons while receiving treatment in an inpatient facility if they are a danger to self or others
- Once the person is discharged from the facility, the prohibition ends

28

WIC CODE §8100(b)(1)

- If Tarasoff applies, a person shall not possess, control, purchase, receive, attempt to purchase or receive any firearms or deadly weapons
- 5-year weapons ban
- Psychotherapist must report to law enforcement
- Law enforcement must report to DOJ
- Person can petition Court to have this right restored

29

WIC CODE §8101

- Any person who knowingly supplies, sells, gives, or allows possession or control of a deadly weapon to these persons shall be punishable by imprisonment not exceeding one year and/or a fine not exceeding \$1000
- Doing the above with respect to firearms results in 2, 3, or 4 years in prison
- “Deadly weapons” means knives, daggers, swords, explosives, martial arts weapons, etc.

30

WIC CODE §8102

- Local law enforcement ability to remove weapons found on or around a person
- Any person detained or examined for his or her mental condition
- Is found to own or possess any firearm or deadly weapon
- Shall have said weapons confiscated by any law enforcement agency or peace officer
- Custody of weapons shall be retained by law enforcement

31

WIC CODE §8102 (continued)

- Law enforcement has 30 days from Patient's release to petition the Superior Court for authority to destroy weapons
- 30 days may be extended to 60 days upon a showing of good cause for the extension
- No response by Patient leads to default judgment
- If proceedings are not initiated, law enforcement must make weapons available for return
- Only applies to weapons confiscated. Person can buy new weapons immediately. No ongoing weapons ban
- Officers sometimes fail to fill out this form and initiate process. This leads to weapons being returned

32

WIC CODE §8103(e)(1)

Persons on LPS conservatorship:

- No person on conservatorship shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or deadly weapon IF:
Court finds that the above would present a danger to self or others
- Weapons ban ends when conservatorship ends

33

WIC CODE §8103(f)(1)

- If admitted to a facility pursuant to 5152 (5150, 5151, 5152)
- No owning, possessing, controlling, receiving, purchasing (or attempting to do any of the above)
- Criteria must be Danger to Self and/or Others
- Grave Disability does not apply
- 5-year weapons ban
- Stopovers at non-LPS facilities problematic
- No ban initiated if person brought to facility under 5150 but not admitted to facility as inpatient

34

WIC CODE §8103(g)(1)

- If a person is further certified under 5250 (14-day hold), 5260 (2nd 14-day hold for imminent danger to self), or 5270.15 (30-day hold)
- No owning, possessing, controlling, receiving, purchasing (or attempting to do any of the above)
- All criteria apply (grave disability now included)
- 5-year weapons ban

35

WIC CODE §8108

- Civil immunity granted to mental health facilities and psychotherapists for reporting under this chapter
- Tarasoff is codified in California Civil Code §43.92 (1985)
- Tarasoff is codified in WIC Code §5328(r). This is an exception to confidentiality for inpatient psychiatric treatment

36

Federal Law

- Federal law provides for a lifetime firearms prohibition for persons who have been “adjudicated as a mental defective”
- 27 CFR 178.32(a)(4)
- Department of Justice interprets this to apply to persons placed on a 5250, 5260, or 5270.15 and who have lost their certification review hearing
- There is some debate about this interpretation

37

Voluntary Firearm Removal

- Program initiated by local San Diego hospital
- Social workers engage patients and families about guns, provide education, and strongly encourage the removal of firearms
- Addresses the close correlation between households owning firearms and firearm suicide
- Welfare checks are initiated on relevant patients who refuse to have firearms removed

38

Current State and Federal Reporting

- California is well ahead of all other states in reporting relevant data to the Federal database
- Many states are not reporting at all, or disagree with what the phrase “adjudicated as a mental defective” means
- California DOJ reports a need for more staffing to retrieve weapons from those on the list
- Local law enforcement can work with DOJ to retrieve weapons

39

Moving Forward ...

- Before there can be an informed discussion on changing current law, we need to understand current law
- It is apparent that many individuals in law enforcement, treating facilities, and the mental health community are not aware of current reporting requirements
- Implementation of discussion and training opportunities at the local level are underway

40

Contact Info


Mike Phillips, Esq.

Director of Patient Advocacy

mikep@jfssd.org

CELL: 619-300-2222

41




**be the
Catalyst**

Advancing behavioral health in your hospital

CHA's 9th Annual
Behavioral Health Care
Symposium

QUESTIONS?



CALIFORNIA
HOSPITAL
ASSOCIATION
Center for Behavioral Health



**be the
Catalyst**

Advancing behavioral health in your hospital

CHA's 9th Annual
Behavioral Health Care
Symposium

Thank you

Mike Phillips, Esq.
mikep@jfssd.org

