

2025 | **CONSENT LAW SEMINAR** | **BURBANK**

Behavioral Health

Overview

- Involuntary Holds
 - LPS background
 - New due process rights (AB 2275)
 - Expansion of gravely disabled (SB 43)
 - Designation basics
 - Data reporting (SB 929)
- LPS Conservatorships
 - *In re Lerke*

Legislative Intent of the LPS (Lanterman-Petris-Short) Act

- To end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders, developmental disabilities, and chronic alcoholism, and to eliminate legal disabilities
- To provide prompt evaluation and treatment of persons with mental health disorders or impaired by chronic alcoholism
- To guarantee and protect public safety
- To safeguard individual rights through judicial review
- To provide individualized treatment, supervision, and placement services by a conservatorship program for persons who are gravely disabled
- 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
- To protect persons with mental health disorders and developmental disabilities from criminal acts
- To provide consistent standards for protection of the personal rights
- To provide services in the least restrictive setting appropriate to the needs of each person

Involuntary Holds (*Simplified...*)

LPS Holds	Gravely Disabled	Danger to Self	Danger to Others
72-Hour Welfare & Institutions (W&I) § 5150	One or all may apply		
14-Day W&I § 5250	One or all may apply		
14-day W&I § 5260		X	
30-Day W&I § 5270 (if County adopts)	X		
T-Con/Conservatorship	X		

SB
43!

But, What About 1799.111?

Remember: required to make, and document, repeated unsuccessful efforts to find mental health treatment.

- Acute or psychiatric hospitals that are **NOT** LPS Designated
 - Licensed professional staff, or physician providing emergency services, in any department
- No civil or criminal liability —
 - For detaining a person if **statutory conditions** are met; or
 - For the actions of a detained person after release if **statutory conditions** are met
- 24 hours only!
- Additional conditions –
 - Must comply with all state laws and regulations relating to seclusion and restraint, and psychiatric medications for psychiatric patients
 - Detained person retains his/her legal rights regarding consent for medical treatment
 - Person must be credited for time detained if he/she placed on a subsequent 5150 hold

The LPS Act vs. Reality

STEP 1: 5150 – “hold and transport” (to designated LPS facility)

Medical clearance
Placement
Arranging safe transfer

STEP 2: 5151 – “assess and admit” (for evaluation & treatment, if least restrictive alternative)

AB 2275 – The 5150 Clock and Due Process

72-hour clock starts when the custodial hold is placed at WIC §5150

- §5151 specifically notes the start time from when detention first begins at §5150

New due process rights begin:

- when the clock “strikes” 72 hours, and
- the patient still meets criteria, and
- is unwilling to receive voluntary services, and
- has not been certified for intensive treatment under 5250



AB 2275 – The 5150 Clock and Due Process (cont.)

Due process rights at 72 hours include:

- Notification of Patients' Rights Advocate
- Notification of individual designated by county to provide information to patient
- Scheduling of hearing to occur before end of Day 7
- Provision of assistance (attorney, PRA) to patient in preparing for hearing

SB 43 and Involuntary Holds

(h) (1) For purposes of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), *Article 3 (commencing with Section 5225)*, and Article 4 (commencing with Section 5250) of Chapter 2, and for the purposes of Chapter 3 (commencing with Section 5350), "gravely disabled" means ~~either~~ *any* of the ~~following:~~ *following, as applicable:*

(A) A condition in which a person, as a result of a mental health disorder, *a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder*, is unable to provide for ~~his or her~~ *their* basic personal needs for food, clothing, ~~or shelter:~~ *shelter, personal safety, or necessary medical care.*

New Definitions

- “*Severe substance use disorder*” means a diagnosed substance-related disorder that meets the diagnostic criteria of “severe” as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders
- This is six or more of the eleven symptoms listed in the substance-related disorder criteria

New Definitions (cont.)

- “*Personal safety*” means the ability of one to survive safely in the community without involuntary detention or treatment pursuant to this part
- “*Necessary medical care*” means care that a licensed health care practitioner, while operating within the scope of their practice, determines to be necessary to prevent serious deterioration of an existing physical medical condition which, if left untreated, is likely to result in serious bodily injury as defined in section 15610.67

What Will the New Definition Apply to?

- **5150** or 72-hour detention
- **5256 (b)** or new probable cause hearings (as of January 1, 2023) that occur when someone is detained pursuant to 5150, beyond 72 hours (AB-2275)
- **5250** or 14-day hold
- **5270.15 or 5270.70** (30-day hold for grave disability only) and (as of January 1, 2023) a second 30-day hold (grave disability only)
- **5350** or LPS Conservatorship
- **Section 1799.111** (Non-LPS Facilities)

Minors?

- Under age 18, not emancipated
- “Gravely disabled minor” is defined as –
 - » a minor who, as a result of a mental disorder, is unable to use the elements of life that are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others. Intellectual disability, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder.
- However, any minor held beyond 72 hours shall be pursuant to the LPS Act.

Designation Process

WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 5. COMMUNITY MENTAL HEALTH SERVICES [5000 - 5987] *(Division 5 repealed and added by Stats. 1967, Ch. 1667.)*

PART 1. THE LANTERMAN-PETRIS-SHORT ACT [5000 - 5550] *(Heading of Part 1 amended by Stats. 1968, Ch. 1374.)*

CHAPTER 2. Involuntary Treatment [5150 - 5349.1] *(Chapter 2 added by Stats. 1967, Ch. 1667.)*

ARTICLE 1. Detention of Persons with a Mental Health Condition for Evaluation and Treatment [5150 - 5155] *(Heading of Article 1 amended by Stats. 2024, Ch. 948, Sec. 12.)*

5150. (a) When a person, as a result of a mental health disorder, is a danger to others, or to themselves, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. The 72-hour period begins at the time when the person is first detained. At a minimum, assessment, as defined in Section 5150.4, and evaluation, as defined in subdivision (a) of Section 5008, shall be conducted and provided on an ongoing basis. Crisis intervention, as defined in subdivision (e) of Section 5008, may be provided concurrently with assessment, evaluation, or any other service.

Designated Professionals

Designated professionals include:

- Peace officer
- Professional person in charge of a designated facility
- Member of the attending staff of a designated facility
- Designated members of a mobile crisis team
- Professional person designated by the county

Welf. & Instit. Code § 5150(a)

AB 416 (*pending*) – Emergency Physicians

- Current draft would add “emergency physicians” to list of designated professionals
- Emergency physicians must –
 - provide medical screening and treatment of patients in ED of hospital,
 - complete county training, and
 - complete application and approval process



SB 1238 – Designated Facilities

- Expands **range of facilities that can treat individuals with severe substance use disorder**
 - Authorizes counties to designate appropriate facilities, subject to DHCS requirements, for one or more services, including evaluation and treatment and intensive treatment
 - DHCS to approve county designation of facilities
- DHCS, in consultation with stakeholders, will issue **updated regulations regarding designation requirements**
- DHCS will issue **guidance regarding Medi-Cal reimbursement** for covered services provided to individuals with severe substance use disorder

Designated Facilities

“Designated facility,” “facility designated by the county for evaluation and treatment,” or “facility designated by the county to provide intensive treatment” means a facility that meets designation requirements established by DHCS, including, but not limited to:

- Psychiatric health facilities licensed by DHCS
- Psychiatric residential treatment facilities licensed by the DHCS
- Mental health rehabilitation centers licensed by DHCS
- Provider sites certified by DHCS or a mental health plan to provide crisis stabilization
- General acute care hospitals
- Acute psychiatric hospitals
- Chemical dependency recovery hospitals
- Hospitals operated by the U.S. Department of Veterans Affairs

Designated Facilities (cont.)

A county may designate a facility for the purpose of providing one or more of the following services:

- Providing evaluation and treatment pursuant to Section 5150, *et seq.*
- Providing intensive treatment pursuant to Section 5250, *et seq.*
- Providing additional intensive treatment pursuant to Section 5260, *et seq.*
- Providing additional intensive treatment pursuant to Section 5270.10, *et seq.*
- Providing postcertification treatment pursuant to Section 5300, *et seq.*

A county may designate a facility, as is appropriate and based on capability, for the purpose of providing one or more types of treatment listed above without designating the facility to provide all treatments.

SB 929 – Data Collection

BHIN 23-015 – April 2023

- Phase I of data collection
 - » Items 1, 2, 3 and 4

BHIN 23-013 – March 2024

- Phase II of data collection

BHIN 24-043 – December 2024

- Phase III of data collection
(includes FAQs)



LPS Designated and Approved Facilities

WIC §5402(a) (amended) – current data being collected:

- (1) Number of persons in designated and approved facilities
 - » admitted or detained for 72-hour evaluation and treatment,
 - » admitted for 14-day and 30-day periods of intensive treatment, and
 - » admitted for 180-day post-certification intensive treatment in each county
- (18) And, for each person above, whether they were admitted or detained for:
 - » Danger to self
 - » Danger to others
 - » Grave disability due to a mental health disorder
 - » Grave disability due to a severe substance use disorder
 - » Grave disability due to a mental health disorder and a severe substance use disorder



LPS Designated and Approved Facilities (cont.)



WIC §5402(a) (amended) – current data being collected:

- (2) Number of persons transferred to mental health facilities pursuant to section 4011.6 of the Penal Code.
- (3) Number of persons for whom temporary conservatorships are established.
- (4) Number of persons for whom conservatorships are established.
- (5) Number of persons
 - » admitted or detained for 72-hour evaluation and treatment, 14-day and 30-day periods of intensive treatment, or 180-day post-certification intensive treatment *either once, between two and five times, between six and eight times, and greater than eight times*
- (10) Demographic information including.
- (11) Number of county contracted beds.

LPS Designated and Approved Facilities (cont.)



WIC §5402(a) (amended) – current data being collected:

- (7) Number of services provided or offered to individuals
 - » admitted or detained for 72-hour evaluation and treatment,
 - » admitted for 14-day and 30-day periods of intensive treatment, and
 - » admitted for 180-day post-certification intensive treatment in each county
 - » transferred to mental health facilities pursuant to Penal Code § 4011.6,
 - » on temporary LPS conservatorships, and
 - » on LPS conservatorships.

Services include assessment, evaluation, crisis intervention, medication treatment, psychiatric and psychological treatment services, as well as payer information or funding used to pay for services.

“Other Entity” Data Reporting

Phase III Data Requirements Attachment C

Terminology	Definition
Designated and Approved Facility	For the purposes of W&I Code Section 5402, “designated and approved facility” or “facility designated by the county for evaluation and treatment” means a facility that is designated by a county board of supervisors to provide assessment, evaluation, crisis intervention, and treatment under the LPS Act (W&I Code § 5000, et seq.) or the Children’s Civil Commitment and Mental Health Treatment Act (W&I Code § 5585, et seq.) and approved by the Department pursuant to Section 821 of Title 9 of the California Code of Regulations.
Other Entity	<p>For the purposes of W&I Code Section 5402, “each other entity involved in implementing Section 5150” means any facility, entity, or person not included as a designated facility that is involved in implementing W&I Code Section 5150. Other entities involved in implementing W&I Code Section 5150 include, but are not limited to:</p> <ul style="list-style-type: none">(a) Peace officers, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.(b) Professional persons designated by a county behavioral health director pursuant to W&I Code Section 5121 to perform functions under section 5150, including, but not limited to, members of mobile crisis teams.(c) Hospital emergency rooms/departments.

Other Entities

WIC §5402(a) (amended) – current data being collected:

- (1), (18) Number of persons admitted or detained for 72-hour evaluation and treatment for:
 - » Danger to self
 - » Danger to others
 - » Grave disability due to a mental health disorder
 - » Grave disability due to a severe substance use disorder
 - » Grave disability due to a mental health disorder and a severe substance use disorder
- (2) Number of persons transferred to mental health facilities pursuant to section 4011.6 of the Penal Code.
- (5) Number of persons detained or admitted for 72-hour evaluation and treatment either once, between two and five times, between six and eight times, and greater than either times.
- (10) Demographic information.
- (11) Number of country contracted beds.

Other Entities (cont.)



WIC §5402(a) (amended) – current data being collected:

- (7) Number of services provided or offered to individuals admitted or detained for 72-hour evaluation and treatment,

Services include assessment, evaluation, crisis intervention, medication treatment, psychiatric and psychological treatment services, as well as payer information or funding used to pay for services.

Conservatorships



Conservatorships: Overview

	LPS	Probate
<i>Description</i>	Involuntary mental health treatment and estate management	Protective services and estate management
<i>Population served</i>	Persons gravely disabled due to mental disorder and in need of involuntary treatment (<i>SB 43 expansion!</i>)	Persons unable to provide for personal needs for physical health, food, clothing and/or shelter or unable to resist fraud of undue influence
<i>Who can initiate?</i>	Evaluation by designated facility and application to Public Guardian (PG) Investigation by PG	Anyone through petition to Court
<i>Duration</i>	One year, unless renewed	Indefinite

“Murphy” Conservatorships (Welf. & Instit. Code 5008(h)(1)(B))

- Individual found mentally incompetent under Penal Code section 1370 and:
 - Accused of felony involving death, great bodily harm, or a serious threat to the physical well-being of another person;
 - Probable Cause finding;
 - As a result of a mental health disorder, unable to understand the nature and purpose of the proceedings taken against them and to assist counsel; and,
 - Represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder.

In re Lerke (2024)

- Lerke was found incompetent to stand trial and placed on a Murphy Conservatorship one day before he reached his maximum commitment date under Penal Code section 1370.
- State Hospital was determined to be least restrictive level of care; he remained in the county jail awaiting a state hospital bed after his max two-year commitment period.
- Filed a writ of habeas corpus challenging the legality of being held in a county jail while he waited for a state hospital bed.
 - Argued that it violated the statutory provisions of the LPS Act, and his equal protection, and due process rights under the constitution.

Filed 12/19/24

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JOHNATHON LERKE

D084051

on

(Super. Ct. Nos. CD292512 &
MH118518)

Habeas Corpus.

In re Lerke (2024) (cont.)

- The Court found that “nothing in the statutory scheme explicitly or implicitly authorized Lerke’s indefinite confinement in a county jail while awaiting a state hospital bed....”
- “...Th[e] interim placement may not be the county jail and must be one of the placements authorized by [the LPS Act]. Lerke’s continued confinement in the county jail was therefore unauthorized and unlawful.”

2025 | **CONSENT LAW SEMINAR** | **BURBANK**

Questions?