SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1184 (Eggman)
Version: April 22, 2024
Hearing Date: April 30, 2024
Fiscal: No
Urgency: No
AWM

SUBJECT

Mental health: involuntary treatment: antipsychotic medication

DIGEST

This bill establishes a procedure for a person involuntarily detained under the Lanterman-Petris-Short (LPS) Act to seek a redetermination of their capacity to refuse medication at the commencement of a subsequent hold period.

EXECUTIVE SUMMARY

The LPS Act authorizes a series of involuntary detentions, which may culminate in the establishment of a year-long conservatorship, for a person who is found to be "gravely disabled" as a result of a mental health disorder, a severe substance use disorder, or a co-occurring mental health disorder and severe substance use disorder. While the "gravely disabled" standard is a high bar for involuntarily detaining a person for treatment, a person who meets the "gravely disabled" standard does not automatically lose their right to refuse consent to medical treatment, including antipsychotic medication. Before a person detained under the LPS Act may be involuntarily medicated with antipsychotic medication, a court must conduct an evidentiary hearing and find, by clear and convincing evidence, that the person lacks capacity to give or withhold consent. These hearings are known as "*Riese* hearings," after the Court of Appeal case establishing the procedure.

As noted by the author and sponsor, the statutes addressing capacity determinations and *Riese* hearings have not been kept current with the Legislature's addition of subsequent involuntary treatment periods. As a result, the statutes do not clearly establish when and how a finding of incapacity in one hold period carries over to a subsequent hold. According to the author and sponsors, the need for a new *Riese* hearing at the start of each new hold period leads to gaps in treatment with antipsychotic medication, which can be harmful to the patient's recovery. Other stakeholders argue that these gaps in treatment are easily avoided with adequate

planning and case management. The opponents argue that allowing a single capacity determination to run for the duration of all of a patient's holds is contrary to the Constitutional mandate of bodily autonomy.

This bill is intended to avoid counterindicated pauses in treatment while still protecting an individual's due process rights. As currently drafted, the bill allows a finding of incapacity to run for the duration of a person's involuntary detention, even through subsequent holds. The bill also allows an involuntarily detained person to seek a redetermination of the initial capacity determination, effectively shifting the burden from the facility to the individual to file a petition. After discussions with stakeholders and Committee staff, the author has agreed to amend the bill to reinstate current law requiring a new hearing at the start of each new hold period and placing the burden on the facility to file a petition at the start of each new hearing; the amendments will also allow a finding of incapacity from a prior detention period to run into a subsequent hold period if and only if a facility has filed a new petition for a capacity determination, and only until the time it takes the finder of fact to issue a new capacity determination. The subsequent petition is subject to existing requirements relating to when a petition must be set for hearing and heard, so the extension should generally last no more than 24 hours; in no cases can the petition be heard beyond 72 hours from when the petition was filed.

This bill is sponsored by the California State Association of Psychiatrists and is supported by the Psychiatric Physicians Alliance of California. This bill is opposed by ACLU California Action, Cal Voices, CAMHPRA, Disability Rights California, and The Law Foundation of Silicon Valley. The Senate Health Committee passed this bill with a vote of 11-0.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the LPS Act, which provides for the involuntary detention for treatment and evaluation of people who are gravely disabled or a danger to self or others. (Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.)

2) Defines "grave disability" as any of the following:
   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 their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care;[1]

[1] A county, by adoption of a resolution of its governing body, may elect to defer adoption of this particular definition until January 1, 2026, and instead use the prior definition that defines "grave disability" as a condition in which a person, as a result of a mental disorder, or impairment by chronic

   b) A person who has been found incompetent to stand trial pursuant to the Penal Code, as specified; and
   c) For purposes of certain types of detention and the establishment of a conservatorship, a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care. (Welf. & Inst. Code, § 5008(h)(1).)

3) Establishes a series of escalating detentions for involuntary treatment of a person who meets the criteria above, which may culminate in a renewable 1-year conservatorship for a person determined to be gravely disabled. Specifically:
   a) 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, take that person into custody for a period of up to 72 hours for assessment, evaluation, crisis intervention, or placement in a designated treatment facility (known as a "5150 hold"). (Welf. & Inst. Code, § 5150.)
   b) A person who has been detained for 72 hours may be further detained for up to 14 days of intensive treatment if the person continues to pose a danger to self or others, or to be gravely disabled, and the person has been unwilling or unable to accept voluntary treatment. (Welf. & Inst. Code, § 5250.)
   c) After the 14 days, a person may be detained for an additional 14 days if the person threatened to take their own life and continues to present an imminent threat of taking their own life, as specified; or for 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (Welf. & Inst. Code, §§ 5260, 5270.15.)

4) Requires the 14- and 30-day intensive treatment detentions to be certified after a hearing to determine whether probable cause exists for the continued detention, conducted by a court-appointed commissioner or referee, or a certification review hearing officer who must be either a state-qualified administrative law hearing officer or a medical professional as specified. (Welf. & Inst. Code, §§ 5254, 5254.1, 5256, 5256.1, 5256.2, 5256.4, 5256.5, 5270.15.)

5) Provides that, if after 15 days of the 30-day hold for intensive treatment, it appears that the person remains gravely disabled and unwilling or unable to accept treatment voluntarily, the professional person in charge of the facility may file a petition in the superior court for the county in which the facility providing intensive treatment is located, seeking approval for up to an additional 30 days of intensive treatment.
   a) Upon the filing of a petition, the court shall appoint counsel for the detained person if they do not already have counsel.

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alcoholism, is unable to provide for the person's basic personal needs for food, clothing, or shelter. (Welf. & Inst. Code, § 5008(h)(4).)

   b) The court shall deny the petition or order an evidentiary hearing be held within two days.
   c) The court may order up to 30 days of intensive treatment upon making certain findings, including that the facility providing intensive treatment is equipped and staffed to provide the required treatment and the person is likely to benefit from continued treatment. (Welf. & Inst. Code, § 5270.70.)

6) Provides that a person in charge of a facility providing a 5150 hold or 14- or 30-day involuntary detention for intensive treatment may recommend an LPS conservatorship for the person treated, when the person being treated is unwilling or unable to accept voluntary treatment; if the county conservatorship investigator agrees, the county must petition the superior court to establish an LPS conservatorship. If the finder of fact finds, beyond a reasonable doubt, that the person is gravely disabled, a conservatorship of up to one year, with the possibility of a renewal as provided, shall be established. (Welf. & Inst. Code, §§ 5350 et seq.)

7) Provides that a legally competent adult has the right to refuse medical treatment. (*Cruzan v. Director, Missouri Dept. of Health* (1990) 497 U.S. 261; *Bartling v. Superior Court* (1984) 163 Cal.App.3d 186, 193-194.)

8) Provides that no person may be presumed to be incompetent on the basis of receiving involuntary treatment under the LPS Act. (Welf. & Inst. Code, § 5331.)

9) Provides that a person confined under the LPS Act shall not be deemed incapable of refusing treatment solely by virtue of being diagnosed as having a mental health disorder. (Welf. & Inst. Code, § 5326.5.)

10) Defines "antipsychotic medication" as any medication customarily prescribed for the treatment of symptoms of psychoses and other severe mental and emotional disorders. (Welf. & Inst. Code, § 5008(l).)

11) Provides that a person involuntarily detained under the LPS Act may not be administered antipsychotic medication involuntarily in non-emergency situations unless a court has determined that the person is incompetent to give consent. (*Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1320.)

12) Provides that antipsychotic medication may not be administered to any person detained under a 5150 hold, 14-day hold, or 30-day hold unless one of the following occurs:
   a) The person does not refuse the medication, following disclosure of the right to refuse and the provision of specified information.
   b) The person refuses the medication; treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient; and the person is determined to lack capacity to refuse treatment, pursuant to 9).

  c) In the case of an emergency, as defined, the person may be treated over their objection prior to a hearing, provided that the antipsychotic medication treats only the emergency condition. (Welf. & Inst. Code, § 5332.)

13) Provides the following requirements for a hearing to determine whether an involuntarily detained person has the capacity to refuse antipsychotic medication:
  a) The person subject to the hearing has the right to representation by an advocate or legal counsel.
  b) The petition for the capacity hearing must be filed with the superior court and delivered to the person who is the subject of the hearing, along with notice that the person has the right to the assistance of the patients' rights advocate or an attorney to prepare for the hearing.
  c) As soon after the filing of the petition for a capacity hearing is practicable, an attorney or patients' rights advocate shall meet with the person to discuss the capacity hearing process and assist in preparation for the hearing.
  d) A capacity hearing shall be heard within 24 hours of the filing of the petition whenever possible, with the possibility of a 24-hour extension if either party needs time to prepare, and another 24-hour extension in the case of a hardship. In no event shall a hearing be held more than 72 hours after the petition is filed.
  e) Capacity hearings shall be held in an appropriate location at the facility where the person is receiving treatment and conducted by a superior court judge, court-appointed commissioner or referee, or court-appointed hearing officer who must be provided with training in the issues specific to capacity hearings.
  f) The person who is the subject of the hearing must be given an oral notification of the determination of the hearing at the conclusion of the hearing, and they may appeal the determination to the superior court or to the court of appeal, or seek a writ of habeas corpus, as provided; however, treatment may be initiated pending the appeal. (Welf. & Inst. Code, §§ 5333 & 5334.)

14) Provides that, in a court proceeding on whether the person lacks capacity under 13), the person's incapacity must be established by clear and convincing evidence. (*Riese*, *supra*, 209 Cal.App.3d at p. 1322.)

15) Provides that a determination of a person's incapacity to refuse treatment with antipsychotic medication made pursuant to 9) shall remain in effect only for the duration of a 5150 hold or the initial 14-day hold, or both, until capacity has been restored or by court determination, whichever is sooner. (Welf. & Inst. Code, § 5336.)

This bill:

1) Clarifies that any person who is subject to a detention pursuant to an initial or subsequent 30-day hold has the right to refuse treatment with antipsychotic

medication subject to the existing procedures in the LPS Act, including treatment over the person's objection in case of an emergency, and pursuant to the changes made in this bill.

2) Permits a person who was found to lack capacity at a capacity hearing to file a petition to request a redetermination on the question of capacity at the commencement of any subsequent detention period (i.e., a 14-day hold for a person who presents an imminent threat of taking their own life or the initial or subsequent 30-day hold).

3) Requires the facility where a person is receiving treatment to inform the person and their advocate of their right to request a redetermination on the question of incapacity under 2).

4) Provides that a capacity redetermination hearing shall be conducted in the same manner as capacity hearings, as provided.

5) Provides that a party to a redetermination hearing may raise new information or evidence not raised in the original capacity hearing or a prior redetermination hearing.

6) Provides that the question of capacity shall be reviewed de novo and under the same burden of proof applied in the initial capacity hearing.

7) Permits a person who is the subject of a capacity redetermination hearing to appeal the determination to the superior court or court of appeal.

8) Provides that treatment may continue pending a redetermination of incapacity.

9) Modifies the statute setting forth the duration of a determination of a person's incapacity, to state that a determination shall remain in effect only for the duration of the detention period described in Welfare and Institutions Code section 5150, 5250, 5260, 5270.15, or 5270.70 until capacity has been restored according to standards developed under the LPS Act, or by a court determination, whichever is sooner.

COMMENTS

1. Author's comment

According to the author:

> While it should always be our goal to get people with serious mental illnesses into voluntary treatment, it is a sad reality that some severely mentally ill individuals lack the capacity to recognize their illness or to seek help for it. In

> some of these cases, a person is so ill that they become a danger to themselves or others, or fall into the category of being gravely disabled. In these scenarios, it is sometimes necessary to involuntarily confine and treat a patient in order to stabilize them with the goal of restoring their capacity and helping them live a fuller life; something we all want for our fellow human beings. It is, appropriately, a high bar under existing law to place someone into an involuntary hold and in these situations we have a tremendous obligation to the person being held to ensure they receive the appropriate care. Unfortunately, under existing law, involuntary treatment during a hold can be discontinued when it is not clinically indicated to do so, simply because a person is in the process of transitioning from one hold stage to another. This bill preserves due process protections while ensuring that the person can continue to be treated until a determination has been made that their capacity has been restored.

2. <u>Background on the LPS Act</u>

The LPS Act authorizes a series of involuntary detentions, which may culminate in the establishment of a year-long conservatorship, for a person who is found to be "gravely disabled." [2] Until this year, the definition of "gravely disabled" was limited to persons who were unable to provide for their basic personal needs for food, clothing, and shelter as a result of a mental health or, in the case of holds other than a 5150 hold, as a result of impairment by chronic alcoholism.[3]

In 2023, however, the Legislature passed, and the Governor signed, SB 43 (Eggman, Ch. 637, Stats. 2023), which expanded the definition of "gravely disabled" in two main ways. First, SB 43 added severe substance abuse disorders, or co-occurring mental health and severe substance use disorders, to the list of conditions a person could be suffering and be gravely disabled. Second, SB 43 expanded the list of limitations the mental health, substance abuse, or co-occurring mental health and substance abuse disorder, or chronic alcoholism, could cause to render a person gravely disabled, to include the person's basic personal needs for personal safety or medical care. SB 43 took effect on January 1, 2024, but gave counties the option to delay implementation of the new definition until January 1, 2026.[4]

While the LPS Act sets a high bar for involuntarily detaining a person for treatment, a person who meets the "gravely disabled" standard does not automatically lose their right to refuse consent to medical treatment, including antipsychotic medication.[5] Generally speaking, adults have a constitutionally protected right to bodily autonomy,

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[2] Welf. & Inst. Code, § 5008(h). The LPS Act also authorizes detention and involuntary treatment for persons who, as a result of a mental health disorder, are a danger to themselves or others (Welf. & Inst. Code, §§ 5150, 5250); this category is not pertinent to this analysis.
[3] Former Welf. & Inst. Code, § 5008(h).
[4] *See* Welf. & Inst. Code, § 5008(h)(4).
[5] *Riese*, *supra*, 209 Cal.App.3d at p. 1318.

including the right to refuse medical treatment.[6] This right to refuse consent is especially acute with respect to antipsychotic medication because "[t]reatment with antipsychotic drugs not only affects the patient's bodily integrity but the patient's mind, 'the quintessential zone of privacy.' "[7] Determining whether a person retains capacity to consent or refuse medication "is uniquely a judicial, not a medical function."[8] Accordingly, before a person detained under the LPS Act may be involuntarily medicated with antipsychotic medication, a court must conduct an evidentiary hearing and find, by clear and convincing evidence, that the person lacks capacity to give or withhold consent.[9] These hearings are known as "*Riese* hearings," after the Court of Appeal case establishing the procedure.

3. *Riese* hearings

As explained by the Senate Health Committee's analysis of this bill, a *Riese* hearing:

> …is conducted by a hearing officer at the facility where the individual is receiving treatment or by a judge in court. The hearing officer will determine whether the individual has the capacity to consent to or refuse medication as a form of treatment. An individual's representative helps them prepare for the hearing and will answer questions or discuss concerns that they may have about the hearing process. If an individual disagrees with the capacity hearing decision, they may appeal the decision to a superior court or to a court of appeal. Their patients' rights advocate or attorney can assist them with filing an appeal.

The determination of whether the person lacks capacity should focus primarily on three factors:

- "[W]hether the patient is aware of [their] situation (e.g., if the court is satisfied of the existence of psychosis, does the individual acknowledge the condition)."[10]
- "[W]hether the patient is able to understand the benefits and the risks of, as well as the alternatives to, the proposed intervention," including the possible side effects of medication and the possibility that alternatives will be less effective.[11]
- "[W]hether the patient is able to understand and knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought [citation] and otherwise participate in the treatment decision by means of rational thought process."[12] Absent "a clear link between the individual's

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[6] *Id.* at p. 1317; *Cruzan v. Director, Missouri Dept. of Health* (1990) 497 U.S. 261; *Bartling v. Superior Court* (1984) 163 Cal.App.3d 186, 193-194; *see* Cal. Const., art. I, § 1.
[7] *Riese*, *supra*, 209 Cal.App.3d at p. 1318.
[8] *Id.* at p. 1321. (internal quotation marks omitted).
[9] *Id.* at p. 1322.
[10] *Ibid.*
[11] *Id.* at pp. 1322-1323.
[12] *Id.* at p. 1323.

> delusional or hallucinatory perceptions and [their] ultimate decision, it should be assumed that [they are] using rational modes of thought."[13]

If the court finds that the patient has capacity to give informed consent to antipsychotic medication and refuses to do so, the patient may not be medicated against their will.[14] If, however, the court determines that the patient is incapable of giving informed consent, the treating facility may administer antipsychotic medication to the patient.[15]

Under current law, a court's determination that an individual lacks capacity at a *Riese* hearing remains in effect only for the duration of a 5150 or initial 14-day hold, or until capacity is restored.[16] The law does not specifically address involuntary treatment with antipsychotic medication during one or both of the 30-day holds, or the 14-day intensive treatment for suicidal persons. The sponsor notes that some courts' local rules require a renewed *Riese* hearing for each new phase of involuntary treatment, i.e., a *Riese* hearing at the 14-day, 30-day, and second 30-day stages. This is an odd way to put it. The statute codifying the provision allowing a single finding of incapacity for the 5150 and 14-day hold was enacted after the implementation of the initial 30-day hold, indicating that the Legislature deliberately elected not to extent a single finding of incapacity past the initial 14-day hold.[17] As such, the requirement of a new capacity petition at the start of each subsequent detention period is a legal requirement, not a matter left to the discretion of individual courts.

The author and supporters of the bill also report that, due to some courts' schedules, patients are going off of medication during the days between the start of the new hold period and when the court can schedule a *Riese* hearing. These gaps in treatment are, according to the author and supporters, clinically counterindicated and can expose patients to clinical risks and increase the length of stay in inpatient settings. Other stakeholders report that, in many jurisdictions, there is no treatment gap because the courts and stakeholders have worked together to provide hearings as needed, including same-day hearings. Opponents of the bill argue that this bill is unnecessary because, with better planning and clearer mandates to the courts, all petitions could be heard without delay, as contemplated by existing statutes.

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[13] *Ibid.* (internal quotation marks omitted).
[14] *Ibid.*
[15] *Ibid.*
[16] Welf. & Inst. Code, § 5336.
[17] *See* SB 2678 (Allen, Ch. 1517, Stats. 1988) (adopting initial 30-day hold period); SB 665 (Petris, Ch. 681, Stats. 1991) (codifying the right to refuse antipsychotic medication absent a finding of incapacity and providing that an incapacity order extends only through the 5150 and initial 14-day hold).

4. This bill is intended to avoid circumstances in which a person who is being treated with antipsychotic medication pursuant to a court order has to go off and on medication while a new determination of capacity is pending.

In order to address the asserted treatment gap, this bill, as currently in print, eliminates the requirement that a facility seek a new determination of incapacity at the start of each new hold and instead establishes a procedure by which a person who was determined to lack capacity may seek a redetermination at the commencement of a subsequent hold. Consistent with the change set forth above, the facility may continue treating a patient with antipsychotic medication pursuant to a prior finding of incapacity while the redetermination petition is pending; if the court finds that the patient has regained capacity, all involuntary treatment must cease.

The redetermination procedure established by this bill is nearly identical to the initial capacity determination, except the redetermination must be sought by the patient. The bill requires the treatment facility, at the start of any subsequent hold, to inform the patient of their right to seek a redetermination of capacity. If the patient decides to seek a redetermination, they may file a petition for redetermination in the same manner as a facility files a petition for a capacity determination. The proceeding will be conducted the same—the facility still retains the burden of proof and must establish lack of capacity by clear and convincing evidence—and the question of capacity must be considered de novo, meaning no deference is given to the prior capacity determination. Either party may introduce new information or evidence that was not introduced in the original capacity hearing or a prior capacity redetermination. A patient who is the subject of a capacity redetermination may appeal the finding to the superior court or the court of appeal; this is consistent with the right of appeal in original capacity hearings. Additionally, the LPS Act provides a patient with the right to file a petition for habeas corpus if they believe they are being improperly detained.[18]

After discussions with the author and stakeholders, it became clear that placing the burden on the involuntarily detained person to file a petition for a redetermination of capacity is not practical and likely does not adequately protect their constitutional rights.[19] Stakeholders also argue that placing the burden on the involuntarily medicated person—who may be unable to function due to being heavily medicated—to seek a redetermination could violate the Americans with Disabilities Act (ADA) and pile even more work on already-overburdened public defenders and advocates.

In light of these concerns, the author has agreed to delete the provisions allowing a single capacity determination to last for the duration of all a person's detention periods and establishing the redetermination procedure. Instead, the bill will permit a finding of incapacity and order for antipsychotic medication from a prior hold to remain into effect into a subsequent hold on a short-term basis in cases where a new capacity

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[18] *Id.*, § 5275.
[19] *Riese*, *supra*, 209 Cal.App.3d at p. 1318.

determination is pending. The amendments make clear that the order will remain in effect in a subsequent detention period only if the facility has filed a new petition for a finding of capacity at the start of the new detention period; if the facility has not taken steps to seek a new capacity finding, the order from the prior detention period ceases to have any legal effect. This provision makes clear that a facility cannot rely on a single order for multiple periods—the extension is available only as a stopgap measure for facilities that are actively seeking a new order. The amendments also make clear that this extension is time-limited: the order from the prior detention period remains in effect only until the new order is issued, pursuant to existing statutory time limits. These existing limits are strict: a petition generally should be heard within 24 hours of filing, and in no event can the hearing be held beyond 72 hours of the filing of the petition.[20] Accordingly, the extension authorized under the bill, as amended, should generally run for no more than 24 hours, and up to 72 hours at the outside.

These amendments return the burden of petitioning for a capacity order to the facility, and come close to the *status quo ante* of limiting a capacity order to only the hold period in which it was granted. Some stakeholders argue that the justification for this bill—that capacity hearings cannot be scheduled in a way that avoids treatment gaps—does not justify curtailing patients' due process rights, even for a limited period; they argue that due process requires the state to bear the administrative burden of providing timely hearings, and that it is inconsistent with due process to shift that burden onto the patient and make them wait. Going forward, the author may wish to consult with stakeholders to determine if hearings can be held more frequently in lieu of extending orders.

5. Amendments

As noted above, the author has agreed to amend this bill to address due process concerns. The amendments are set forth below, with deletions in strikethrough and additions in bold/underline, subject to any nonsubstantive changes the Office of Legislative Counsel may make.

Amendment 1

At pages 4, delete lines 39-40 and at page 5, delete lines 1-21 (the entire subdivision (g) of Section 5334).

Amendment 2

At page 5, modify Section 5336 as follows:

5336 **(a)**. A**ny** determination of a person's incapacity to refuse treatment with antipsychotic medication made pursuant to Section 5334 shall remain in effect only for the duration of the detention period described in Section 5150 **or 5250, or both, or**

[20] Welf. & Inst. Code, § 5334(a).

~~5250, 5260, 5270.15, or 5270.70~~ until capacity has been restored according to standards developed pursuant to subdivision (c) of Section 5332, or by court determination, whichever is sooner.

<u>(b) (1) An order for treatment with antipsychotic medication made pursuant to Section 5332 shall remain in effect at the beginning of a detention period described in Section 5260, 5270.15, or 5270.70, provided that a petition for a new determination on the question of capacity has been filed pursuant to Section 5334.</u>

<u>(2) An order for treatment with antipsychotic medication from a prior detention period pursuant to paragraph (1) shall remain in effect until the court hears a petition for the current detention period and issues a decision as set forth in Section 5334.</u>

<u>(3) Subdivision (b) does not apply to a person whose capacity has been restored according to standard developed pursuant to subdivision (c) of Section 5332.</u>

6. <u>Arguments in support</u>

According to the California State Association of Psychiatrists:

> Superior Courts in many Counties enforce "local rules" that limit the *Riese* [ruling] to the phase of the involuntary detention, requiring discontinuation of involuntary treatment, and redundant submittal of *Riese* petition (and hearings) at the conclusion of a 14-day hold for patients that continue to be detained under WIC 5270.15 (30-day hold), and under 5270.55 (second 30-day hold). These local rules may also apply to other involuntary detentions (second 14-day, 180-day, temporary conservatorships).
>
> Medications must be carefully titrated and monitored; stopping or interrupting such medication at arbitrary points during Lanterman-Petris-Short (LPS) detention, based on local court rules, exposes patients to unjustified clinical risks. This can also prolong the length of stay in inpatient settings. Nothing in SB 1184 would alter the current ability of individuals to petition for the discontinuation of treatment.

7. <u>Arguments in opposition</u>

According to Disability Rights California:

> SB 1184 shifts the burden for filing a petition for capacity redetermination to the patient. Under current law, psychiatrists are required to file a petition to continue administration of involuntary medication. Shifting this administrative burden is inappropriate and compromises due process because the patient is under significant duress subject to involuntary detention and medication.

> Current law requires certification review hearings be affirmatively conducted for any individual placed on a Section 5250 or 5270.15 hold, regardless of whether they request one. This provides an important due process check for individuals subject to significant deprivations of civil liberty. SB 1184 would de-couple civil commitment and involuntary medication due process requirements, raising concerns…
>
> The author states the bill is needed because current legal requirements may result in treatment gaps. Existing law requires capacity petitions “be heard within 24 hours of the filing of the petition whenever possible” and “be held in a manner compatible with, and the least disruptive of, the treatment being provided to the person.” We believe state law already addresses the issue the author is trying to solve, and any trouble is with local implementation. For example, if a facility plans to place a patient on a new hold and continue involuntary medication, they will time the filing of the new hold with the capacity petition on a day when the capacity petition can be heard by the court. This practice eliminates any gap in involuntary medication treatment that might otherwise occur and is widely utilized throughout the state. To the extent local jurisdictions or individual facilities are struggling with “treatment gaps,” this is an issue of these entities not following best practices and failing to comply with existing state law requirements.

SUPPORT

California State Alliance of Psychiatrists (sponsor)
Psychiatric Physicians Alliance of California

OPPOSITION

ACLU California Action
Cal Voices
CAMHPRA
Disability Rights California
The Law Foundation of Silicon Valley

RELATED LEGISLATION

Pending Legislation:

SB 1317 (Wahab, 2024) eliminates the sunset on provisions that protect inmates in a county jail from being administered any psychiatric medication without prior informed consent, as specified and that impose additional criteria that must be satisfied before a county department of mental health or other designated department may administer involuntary medication. SB 1317 is pending before the Senate Appropriations Committee.

SB 1238 (Eggman, 2024) expands the definition of a "designated facility" and "facility designated by the county" under the LPS Act and authorizes the State Department of Health Care Services to license and ensure reimbursement is provided for facilities that admit patients who are diagnosed only with a severe substance use disorder. SB 1238 is pending before the Senate Appropriations Committee.

Prior Legislation:

SB 43 (Eggman, Ch. 637, Stats. 2023) among other things, expanded the definition of "gravely disabled," for purposes of involuntarily detaining an individual under the LPS Act, to include an individual with a severe substance use disorder (SUD), or a co-occurring mental health disorder and a severe SUD, or chronic alcoholism, who is unable to provide for food, clothing, shelter, personal safety or necessary medical care.

SB 1227 (Eggman, Ch. 619, Stats. 2022) modified the LPS Act to allow a second 30-day intensive treatment hold for a person who has been certified as "gravely disabled" on top of the existing 3-day, 14-day, and 30-day treatment holds; the second 30-day treatment hold must be approved by a court pursuant to a petition filed by the professional in charge of the intensive treatment, as specified.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)

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