

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

AB 2154 (Berman)
Version: May 24, 2024
Hearing Date: June 18, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Mental health: involuntary treatment

DIGEST

This bill requires a facility in which a person detained under the Lanterman-Petris-Short (LPS) Act to provide a copy of the patient's bill of rights to the family member of a detained person, as defined, provided that certain conditions relating to the patient's privacy are met.

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. Persons involuntarily detained under the LPS Act retain a number of rights, ranging from rights relating to their quality of life in detention – such as the right to wear their own clothes and purchase items at the canteen – to rights relating to the right to refuse invasive medical treatment – such as psychosurgery or convulsive treatment. These rights are compiled into a patients' handbook that must be provided to involuntarily detained person upon their admission to a facility under the LPS Act.

This bill requires a facility to give family members and certain close friends, as defined, of a person detained under the LPS Act a copy of the patients' bill of rights, so that close family and friends are informed about the detained person's rights and can better advocate for them. To protect patient privacy, the facility's obligation exists only in circumstances when the detained person has consented to the handbook being provided or authorized the release of their health information to that person, or where the family member or friend otherwise knows that the person is detained at the facility; the bill also specifies that a facility should not disclose any of the detained person's

protected health information. The facility may provide the copy of the handbook in paper form or electronically, and must also provide a copy to the detained person.

This bill is sponsored by the author and is supported by the California Association of Psychiatric Technicians, the California Commission on Aging, Disability Rights California, and the National Alliance on Mental Illness. The Committee has not received timely opposition to this bill. 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
 - 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. (Welf. & Inst. Code, §§ 5150, 5250, 5260, 5270.15, 5270.50, 5350.)
- 4) Provides that a person involuntarily detained for evaluation or treatment under the LPS Act, a person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined, and a person committed to a state

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

hospital has the following rights, which may not be waived by the person's parent, guardian, or conservator:

- a) To wear their own clothes, to keep and use their own personal possessions including their toilet articles, and to keep and be allowed to spend a reasonable sum of their own money for canteen expenses and small purchases.
 - b) To have access to individual storage space for their private use.
 - c) To see visitors each day.
 - d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.
 - e) To have ready access to letter-writing materials, including stamps, and to mail and receive unopened correspondence.
 - f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental condition which depends on the induction of convulsion by any means, and insulin coma treatment.
 - g) To refuse psychosurgery, which is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery, and all other forms of brain surgery if the surgery is performed for specified purposes, but excludes prefrontal sonic treatment wherein there is no destruction of brain tissue, as specified.
 - h) To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.
 - i) Other rights, as specified by regulation. (Welf. & Inst. Code, § 5325.)
- 5) Requires the rights set forth in 4) to be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patients in all facilities providing services to a person involuntarily detained under the LPS Act or otherwise being treated at a mental health facility or committed to a state hospital. (Welf. & Inst. Code, § 5235.)
- 6) Requires every patient, in addition to the rights set forth in 4), to be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the State Department of Health Care Services (DHCS) and the State Department of State Hospitals (DSH) to be frequently misunderstood, ignored, or denied. (Welf. & Inst. Code, § 5325.)
- 7) Requires, upon admission to a facility at which psychiatric evaluation or treatment is offered, each patient, including a person involuntarily detained under the LPS Act, to be given a copy of DHCS's prepared patients' rights handbook; and for each person committed to a state hospital, upon admission, to be immediately given a copy of DSH's prepared patients' rights handbook. (Welf. & Inst. Code, § 5325.)

- 8) Provides that, upon request of a family member of a patient, or other person designated by the patient, a public or private treatment facility shall give the family member or designee notification of the patient's diagnosis, prognosis, medications prescribed and the side effects, if any, and the patient's progress, if the patient has been notified of the request and authorizes its disclosure. If a request for information is made by the spouse, parent, child, or sibling of the patient and the patient is unable to authorize the release, the requester shall be given notification of the patient's presence in the facility, except to the extent prohibited by federal law. (Welf. & Inst. Code, § 5328.1(a).)
- 9) Provides that, upon the admission of any mental health patient to a 24-hour public or private health facility, the facility shall make reasonable attempts to notify the patient's next of kin or any other person designated by the patient, of the patient's admission, unless the patient requests that this information is not provided. The facility shall also make reasonable attempts to notify the patient's next of kin or designated person of the patient's release, transfer, serious illness, injury, or death upon request of the recipient, unless the patient requests that this information not be provided. The patient shall be advised by the facility that they have the right to request that this information not be provided. (Welf. & Inst. Code, § 5328.1(b).)
- 10) Provides that no public or private entity or public or private employee shall be liable for damages caused or alleged to be caused by the release of information or failure to release information pursuant to 8)-9). (Welf. & Inst. Code, § 5328.1(c).)
- 11) Establishes state and federal regimes restricting the disclosure of a patient's health information in specified circumstances, including:
 - a) The Health Insurance Portability and Accountability Act of 1996 (HIPAA), which establishes policies and procedures for maintaining the privacy and the security of individually identifiable health information. (Pub. L. No. 104-191 (Aug. 21, 1996) 110 Stat. 1936.)
 - b) The Confidentiality of Medical Information Act, which establishes policies and procedures for the disclosure of medical information by providers. (Civ. Code, div. 1, pt. 2.6, §§ 56 et seq.)

This bill:

- 1) Requires, when a person is involuntarily detained for assessment, evaluation, or treatment under the LPS Act, the facility to which the person is brought to offer and provide a copy of DHCS's prepared patients' rights handbook to a family member of the detained person under any of the following circumstances:
 - a) The person authorizes the disclosure of their detention information pursuant to Welfare and Institutions Code section 5328.1

- b) The family member is physically present at the facility where the person is involuntarily detained and has knowledge that the individual is involuntarily detained there.
 - c) The family member has been notified of the person's presence in the facility pursuant to Welfare and Institutions Code section 5328.1.
 - d) The person has consented to the family member being provided the handbook.
- 2) Provides that a handbook provided to a family member pursuant to 1) may be provided as a printed or digital copy, and that the facility may also provide a referral to the Patients' Rights Advocacy Directory website or other organization with related expertise.
 - 3) Requires, if a handbook is provided to a family member pursuant to 1), the facility to offer and provide a printed or digital copy of the handbook to the person detained.
 - 4) Defines "family member" for purposes of 1) as any of the following:
 - a) The person's spouse or domestic partner.
 - b) The person's adult child.
 - c) The person's parent or legal guardian.
 - d) The person's grandparent.
 - e) The person's adult sibling.
 - f) The person's adult grandchild.
 - g) An adult relative or close personal friend who has demonstrated special care and concern for the person and is familiar with the person's personal values and beliefs to the extent known.
 - 5) Provides that 1)-3) do not authorize the disclosure of patient information that is protected under HIPAA, the Confidentiality of Medical Information Act, or the LPS Act.

COMMENTS

1. Author's comment

According to the author:

AB 2154 would ensure that if a person is involuntarily detained under the Lanterman-Petris-Short Act, then a family member of the person detained would be provided a copy of the Department of Health Care Services' patients' rights handbook. This would provide family members with valuable information and resources to enable them to support their loved ones during a mental health crisis. In addition, by understanding the rights of their loved ones who have been involuntarily detained, family members will be better equipped to ensure that they receive appropriate treatment, which could expedite recovery. By providing

information and resources to family members, this would further ensure that the patient's rights are realized. AB 2154 importantly includes parameters to ensure privacy and does not authorize the disclosure of protected patient information.

2. Background on the LPS Act process

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 the initial 72-hour hold – known as 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

The first three LPS Act holds – the 5150 hold, a 14-day hold, and an initial 30-day hold – may be certified by a health professional or reviewed by a hearing officer, but do not require judicial review unless the individual files a writ of habeas corpus.⁵ A county may, after 15 days of the initial 30-day detention, seek a court order authorizing a second 30 days; the individual must be appointed by counsel in such a proceeding.⁶ If a county proceeds with a petition to place a person into a conservatorship, the individual must also be represented, and the finder of fact must find that a person is gravely disabled beyond a reasonable doubt.⁷

Persons who are involuntarily detained or placed into a conservatorship under the LPS Act retain a number of rights while in detention.⁸ For example, patients do not

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 *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541.

⁶ Welf. & Inst. Code, § 5270.70.

⁷ *Ben C.*, *supra*, 40 Cal.4th at p. 541.

⁸ Welf. & Inst. Code, §§ 5325-5337.

automatically lose their right to reject antipsychotic medication;⁹ instead, antipsychotic medication can be administered over a patient's objection only if a court specifically finds that the individual is incompetent to give informed consent.¹⁰ Patients also retain rights related to their quality of life, such as wearing their own clothing and using their own toilet articles; having access to individual storage space for private use; and seeing visitors and being able to make phone calls.¹¹ These rights must be prominently posted in the predominant languages of the community at each facility and each patient must be notified of their rights at admission.¹² Additionally, the patients' rights must be compiled into a patients' rights handbook, which must be immediately provided to a person admitted to the facility under the LPS Act.¹³

3. This bill requires a family member of a person detained pursuant to the LPS Act to be given a copy of the patient rights' handbook in specified circumstances

This bill requires facilities to provide close family and friends of persons detained under the LPS Act with copies of the patients' rights handbook, so that those closest to involuntarily detained persons are informed and in a better position to advocate for their loved ones. The author has worked with stakeholders to ensure that facilities protect patients' privacy.

The specific requirements of the bill are as follows:

- A facility must offer and provide a copy of the patients' rights handbook to the family member of a detained person when (1) the involuntarily detained person has authorized the disclosure of their detainment information to that family member under existing law; (2) the family member is present at the facility where the person is detained and knows that the individual is involuntarily detained there; (3) the family member has been notified of the detained person's presence in the facility under existing law; or (4) the detained person has consented to the family member being provided with a copy of the handbook.
- The facility may also provide a referral to the Patients' Rights Advocacy Directory website or a referral to a similar organization with related expertise.
- The facility may provide the handbook as a physical or digital copy.
- If a family member is provided with a copy of the handbook, the detained person must be offered and provided with a printed or digital copy of the handbook.
- A "family member" is defined to include the detained person's spouse or domestic partner, adult child, parent or legal guardian, grandparent, adult sibling, or adult grandchild or an adult relative or close personal friend who has demonstrated special care and concern for the person and is familiar with their personal values, to the extent those values are known.

⁹ *Id.*, §§ 5325.2, 5357.

¹⁰ *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1320-1322.

¹¹ Welf. & Inst. Code, § 5325(a)-(i).

¹² *Id.*, § 5325.

¹³ *Ibid.*

The bill also expressly states that it does not authorize the disclosure of patient information that is protected under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the state Confidentiality of Medical Information Act, or the LPS Act.

4. Arguments in support

According to the California Association of Psychiatric Technicians:

As you are aware, existing law allows for the involuntary detention of individuals who, due to mental health disorders, pose a danger to themselves or others or are gravely disabled. During this involuntary detention period, individuals are entitled to certain rights, including access to a copy of the State Department of Health Care Services' prepared patients' rights handbook. However, there is currently a gap in ensuring that family members of the detained individual are also provided with this crucial information.

Assembly Bill 2154 seeks to rectify this oversight by requiring facilities where individuals are involuntarily detained to provide a copy of the patient's rights handbook to a family member of the detained person. This simple yet significant amendment ensures that family members, who often play a vital role in the individual's support and care, are informed about their loved one's rights and the resources available to them.

The definition of "family member" in this bill, which includes spouses, domestic partners, parents, and legal guardians, reflects the diverse familial relationships that exist and acknowledges the importance of involving these individuals in the treatment and care process.

By extending access to the patient's rights handbook to family members, Assembly Bill 2154 not only promotes transparency and accountability within our mental health care system but also empowers families to advocate effectively for their loved ones' well-being.

SUPPORT

California Association of Psychiatric Technicians
California Commission on Aging
Disability Rights California
National Alliance on Mental Illness

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

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.

AB 2338 (Gipson, Ch. 782, Stats. 2022) created a list of relatives who can make medical decisions for an incapacitated adult who does not otherwise have a legally recognized health care decisionmaker.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)
Assembly Floor (Ayes 75, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Health Committee (Ayes 15, Noes 0)
