

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

AB 1376 (Juan Carrillo)
Version: June 26, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
CK

SUBJECT

Emergency medical services: liability limitation

DIGEST

This bill provides that a private provider of ambulance services, and employees of that provider, when operating in accordance with the standards, regulations, policies, and protocols of local emergency medical services agencies, shall not be criminally or civilly liable for the continued detainment of a person when that detainment is requested by a peace officer, facility staff, or other professionals authorized to detain persons, as specified.

EXECUTIVE SUMMARY

The Lanterman-Petris-Short (LPS) Act governs the involuntary detention for evaluation and mental health treatment of people who may be dangerous or gravely disabled. The Act provides for incrementally increasing involuntary holds before a person may be found to be gravely disabled and subject to a year-long confinement under a conservatorship. Typically, this process is initiated in response to an acute emergency in which county behavioral health services, mobile crisis teams, law enforcement, or medical professionals determine whether there is probable cause that the person is gravely disabled or a danger to themselves or others, in which case the person may be detained in an approved facility for up to 72 hours for further evaluation and treatment.

Given the involvement of third parties in the care that is provided to such detained persons, concerns have arisen around their exposure to liability for their part in effectuating the detention absent specific statutory authorization to do so. This bill provides immunity from liability for the detainment of a person, as specified, by a private provider of ambulance services licensed by the California Highway Patrol, and any employees of that provider. There is no known support or opposition to the bill. The bill passed out of the Senate Health Committee on a 12 to 0 vote.

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 § 5000 et seq.)
- 2) 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 (§ 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 (§ 5250).)
 - c) After the 14 days, a person may be detained for an additional 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (Welf. & Inst. Code §§ 5260 (§ 5260), 5270.15.)
- 3) Provides that individuals authorized to detain a person for 72-hour treatment and evaluation, or to certify a person for intensive treatment, or to file a petition for post-certification treatment for a person shall not be held either criminally or civilly liable for exercising this authority in accordance with the law. (Welf. & Inst. Code § 5278.)
- 4) Provides that authorized persons shall not be civilly or criminally liable for any action by a person after they are released pursuant to the LPS Act. (Welf. & Inst. Code §§ 5113, 5154, 5173, 5259.3, 5267, 5306.)
- 5) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person’s want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)

- 6) Provides that no person who, in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This applies only to medical, law enforcement, and emergency personnel, as specified. (Health & Saf. Code § 1799.102(a).)
- 7) Extends to all other persons not covered by the above who are rendering medical or nonmedical care or other assistance in such situations immunity from civil damages resulting from any act or omission other than acts or omissions constituting gross negligence or willful or wanton misconduct. (Health & Saf. Code § 1799.102(b).)

This bill:

- 1) Provides that a private provider of ambulance services licensed by the California Highway Patrol and any employees of that provider, when operating in accordance with the standards, regulations, policies, and protocols of local emergency medical services agencies, shall not be criminally or civilly liable for the continued detainment of a person when that detainment is requested by a peace officer, facility staff, or other professionals authorized to detain persons in transporting, and continuing the detainment, of the following:
 - a) a person properly detained in accordance with Section 5150, 5250, or 5260 to a facility designated by the county for evaluation and treatment;
 - b) a person who is detained for evaluation and treatment in a hospital or other facility to a designated facility for psychiatric treatment in accordance with Section 5150, 5250, or 5260; or
 - c) a person who is in an acute care hospital, medical clinic, or other psychiatric evaluation facility to a designated facility for psychiatric treatment, if so ordered by the attending physician, a professional staff person in charge of a facility designated by the county for evaluation and treatment, a member of the attending staff, or a professional staff person designated by the county, in accordance with Section 5250 or 5260.
- 2) Requires a private provider of ambulance services requested to provide transportation of persons to provide care according to the policies and procedures established by the local emergency medical services agency in the county that the provider operates and the policies of the California Emergency Medical Services Authority.
- 3) Clarifies that it does not relieve the provider of ambulance services, or any of its employees, from liability for injuries caused by negligence, gross negligence, recklessness, or willful misconduct on the part of the provider or its employees while transporting a person to a designated facility.

- 4) Prohibits a private provider of ambulance services that provides transportation to a designated facility from requiring a person who is voluntarily agreeing to transport to be placed on an involuntary hold as a precondition to that transport.

COMMENTS

1. The LPS Act

The LPS Act 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.) The Act 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, 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”). (§ 5150.) 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. (§ 5250.) After the 14 days, a person may be detained for an additional 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to voluntarily accept treatment. (§ 5260.)

2. Providing legal cover for providers of ambulance services

As described, the LPS Act authorizes specified persons to detain or to take into custody individuals who met the criteria laid out. However, it does not extend to other providers that may be involved in the process, namely those providing ambulance services.

In many of these detentions, ambulance transport is involved at some point. Concerns have been raised by those providing ambulance services that they may be exposed to potential liability for such detentions, given they have not been granted statutory authority to do so.

This bill grants private providers of ambulance services that are licensed by the California Highway Patrol and their employees criminal and civil immunity for the continued detainment of a person when that detainment is requested by a peace officer, facility staff, or other professionals authorized to detain persons during the transportation and continuing detainment of:

- a person properly detained in accordance with Section 5150, 5250, or 5260 of the LPS Act to a facility designated by the county for evaluation and treatment;
- a person who is detained for evaluation and treatment in a hospital or other facility to a designated facility for psychiatric treatment in accordance with Section 5150, 5250, or 5260; or
- a person who is in an acute care hospital, medical clinic, or other psychiatric evaluation facility to a designated facility for psychiatric treatment, if so ordered by the attending physician, a professional staff person in charge of a facility designated by the county for evaluation and treatment, a member of the attending staff, or a professional staff person designated by the county, in accordance with Section 5250 or 5260.

This immunity is in line with immunities already granted in connection with LPS detentions. Section 5278 of the Act provides that individuals authorized to detain a person for 72-hour treatment and evaluation, or to certify a person for intensive treatment, or to file a petition for post-certification treatment for a person shall not be held either criminally or civilly liable for exercising this authority in accordance with the law.

It should be noted that this immunity is limited to the actual detention and does not relieve the companies or their employees of their other obligations. The bill specifically provides that a private provider of ambulance services requested to transport persons in these situations must provide care according to specified policies and procedures. More directly, it specifically clarifies that the bill does not relieve the provider, or its employees, from liability for injuries caused by negligence, gross negligence, recklessness, or willful misconduct on the part of the provider or its employees while transporting a person to a designated facility.

According to the author:

The mental health crisis is at an all-time high. Occasionally, a mental health patient undergoing an episode may need to be detained for their safety and the safety of others. These detainments are typically conducted by law enforcement personnel. Due to the vast workload of law enforcement, ambulance services are often called upon to provide the transportation from the location of detainment to an appropriate mental health facility. This is critical for the destigmatization of mental health episodes because being placed in the back of an ambulance rather than the back of a law enforcement vehicle signifies this person is being treated as a health patient, instead of as a criminal. However, since ambulance workers are not explicitly listed as personnel who can detain these patients, there is ambiguity in law as to the legality of these transportations. AB 1376 provides clarity by ensuring that ambulance

services who provide these transportations are doing so under the protection of law.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 43 (Eggman, 2023) expands the definition of “gravely disabled,” for purposes of involuntarily detaining an individual or establishing a conservatorship under the Lanterman-Petris-Short (LPS) Act, as a condition in which a person, as a result of a mental health or substance use disorder, is at substantial risk of serious harm or is currently experiencing serious harm, as defined, to their physical or mental health; and creates an exception to the rule against hearsay that allows an expert witness to rely on the out-of-court statements of medical professionals, as defined, who treated the person who is the subject of the conservatorship petition. SB 43 is currently in the Assembly Health Committee.

SB 868 (Wilk, 2023) requires local educational agencies to equip each classroom with a trauma kit and to offer training to employees on the use of such kits. Employees who render emergency care with such kits are granted qualified immunity from civil damages, as provided. SB 868 is currently in the Assembly Education Committee.

Prior Legislation: AB 1443 (McCarty, Ch. 399, Stats. 2021) established procedures for the designation of professionals and members of mobile crisis teams to perform functions related to 72-hour detentions of individuals for mental health evaluation and treatment under the LPS Act. It provided immunity for these designated personnel in certain circumstances.

PRIOR VOTES:

Senate Health Committee (Ayes 12, Noes 0)
Assembly Floor (Ayes 66, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
