

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

SB 402 (Wahab)
Version: January 3, 2024
Hearing Date: January 11, 2024
Fiscal: No
Urgency: No
AWM

SUBJECT

Involuntary commitment

DIGEST

This bill, as the author has agreed to amend it, clarifies that a county may designate certain licensed mental health professionals to take a person into custody, or cause them to be taken into custody, for a 72-hour hold for assessment, evaluation, and treatment under the Lanterman-Petris-Short (LPS) Act. The bill, as the author has agreed to amend it, defined “licensed mental health professional” and clarifies that a licensed mental health professional need not be an employee or a contractor of a county in order to be designated.

EXECUTIVE SUMMARY

The LPS Act permits a county to involuntarily detain a person for treatment of a mental health disorder, substance abuse disorder, or, in some cases, chronic alcoholism. The goal of the LPS Act is to detain a person for the shortest amount of time necessary, and accordingly provides for a series of holds of different lengths that may culminate in a one-year conservatorship.

Typically, a person’s point of entry into the LPS Act system is through a 72-hour hold known as a “5150 hold.”¹ A 5150 hold is initiated by a peace officer or person designated by the county – who may be a mental health professional – when there is probable cause to believe that the person is a danger to themselves or others or gravely disabled as a result of their mental health or substance abuse disorder. When a person is brought to a county-designated facility, the staff must independently determine whether the person can be treated by a means other than a 5150 hold; if the facility determines that the person cannot be served without being detained, the facility may detain the person for up to 72 hours for assessment, evaluation, and crisis intervention.

¹ See Welf. & Inst. Code, § 5150.

If, at the end of the 5150 hold, the person remains a risk to themselves or others, or remains gravely disabled, the county facility may continue to hold the person for longer periods to continue the treatment.

In recent years, mental health advocates have questioned whether the involuntary detention system is effective, in part because the trauma of being taken into custody by a peace officer and involuntarily detained can exacerbate, rather than alleviate, a mental health disorder. The author and supporters of this bill argue that giving mental health professionals a greater role in the 5150 hold process could improve outcomes. As drafted, the bill permits any “licensed mental health professional” – defined to include a psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor who has completed all required clinical experience – to take a person into custody on a 5150 hold. While these individuals may be qualified to assess whether a person is in need of mental health intervention, permitting private citizens – mental health professionals with no connection to the state or county – to take other citizens into custody carries troubling due process implications.

In recognition of this issue, the author agreed in the Senate Health Committee to amend the bill to clarify that a county may designate licensed mental health professionals, as defined, to take persons into custody for a 5150 hold. The amendments further clarify that a licensed health mental professional does not need to be the direct staff of, or contracted by, the county in order to be designated. The bill was heard the day before this Committee is hearing the bill, so there was not time to cross the amendments and they will instead be taken in this Committee. Because the author has already agreed to amend the bill, this analysis going forward discusses the bill as proposed to be amended.

This bill is sponsored by the author and is supported by over 40 individuals. This bill is opposed by CalVoices, the County Behavioral Directors Association, Disability Rights California, and Mental Health America of California. The Senate Health Committee passed this bill out with a vote of 9-1.

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) As relevant to this bill, defines “gravely disabled” as:
 - 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.² (Welf. & Inst. Code, § 5008(h)(1)(A).)
- b) A condition in which a person has been found mentally incompetent under section 1370 of the Penal Code, and other specified conditions exist. (Welf. & Inst. Code, § 5008(h)(1)(B).)
- 3) Defines a “peace officer” as a duly sworn peace officer as defined in Chapter 4.5 of Title 3 of Part 2 of the Penal Code who has completed the basic training course established by the Commission on Peace Officer Standards and Training, or any parole officer or probation officer specified in Penal Code section 830.5 when acting in relation to cases for which the officer has a legally mandated responsibility. (Welf. & Inst. Code, § 5008(i).)
- 4) Defines a “designated facility” or a “facility designated by the county for evaluation and treatment” as a facility that is licensed or certified as a mental health treatment facility or a hospital, as defined, by the State Department of Public Health, and may include, but is not limited to, a licensed psychiatric hospital, a licensed psychiatric health facility, and a certified crisis stabilization unit. (Welf. & Inst. Code, § 5008(n).)
- 5) Provides that, if a person is gravely disabled as a result of mental illness, or a danger to themselves or others, then a peace officer, staff of a designated treatment facility or crisis team, or other professional person designated by the county,³ 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”). The 72-hour period begins at the time the person is first detained. (Welf. & Inst. Code, § 5150(a).)
- 6) Requires, when a person has been taken into custody under 5), the professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county to assess the person to determine whether the person can be properly served without being detained. If, in the judgment of the professional person in charge of the designated facility, member of the attending staff, or designated professional person, the person can be properly served without being detained, the person shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis. (Welf. & Inst. Code, § 5150(c).)

² A county may elect, by adoption of a resolution of its governing body, to delay implementation of this definition of “gravely disabled” until January 1, 2026 (Welf. & Inst. Code, § 5008(h)(4); in such a case, the “gravely disabled” definition in Welfare and Institutions Code section 5008(h)(1)(A) would be limited to 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 (*see* SB 43 (Eggman, Ch. 637, Stats. 2023)).

³ This term includes members of a mobile crisis team designated by the county.

- 7) Provides that if, in the judgment of the professional person in charge of the designated facility, member of the attending staff, or the designated professional person, the person cannot be properly served without being detained, the admitting facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the peace officer, professional person in charge of the designated facility, member of the attending staff, or designated professional person, and stating that the peace officer, professional person in charge of the designated facility, member of the attending staff, or designated professional has probable cause to believe that the person is, as a result of a mental health disorder, a danger to others, or to themselves, or gravely disabled. The application shall also record whether the historical course of the person's mental disorder was considered in the determination, pursuant to 8). (Welf. & Inst. Code, § 5150(e).)
- 8) Provides that, when determining if probable cause exists to take a person into custody under a 5150 hold, an authorized person under 5) shall consider available relevant information about the historical course of the person's mental disorder if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others, themselves, or is gravely disabled as a result of the mental health disorder. "Information about the historical course of the person's mental disorder" includes evidence presented by the persons providing mental health or related to support to the person, evidence presented by the person's family members, and evidence presented by the person or their designee. (Welf. & Inst. Code, § 5150.5.)
- 9) Establishes a series of escalating detentions for involuntary treatment following a 5150 hold, provided that the person continues to meet the definition of "gravely disabled," which may culminate in a renewable one-year conservatorship. (Welf. & Inst. Code, §§ 5250, 5260, 5270.1, 5270.35, 5270.70, 5350.)

This bill, as the author has agreed to amend it:

- 1) Authorizes a licensed mental health professional designated by the county to, upon probable cause, take, or cause to be taken, the person into custody for a 5150 hold.
- 2) Defines "licensed mental health professional" as a psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or a licensed professional clinical counselor who has completed all required supervised clinical experience.
- 3) Requires, when a licensed mental health professional designated by the county has taken, or caused someone to be taken, into custody, and when, in the judgment of the professional person in charge of the designated facility, member of the attending staff, or the designated professional person, the person taken into custody cannot be

properly served without being detained, the licensed mental health professional to complete an application in writing stating the circumstances under which the person's condition was called to their attention and stating that they have probable cause to believe that the person is, as a result of a mental health disorder, a danger to others, or to themselves, or gravely disabled. The application shall also record whether the historical course of the person's mental disorder was considered in the determination.

COMMENTS

1. Author's comment

According to the author:

SB 402 is vital legislation that will allow for appropriately trained and licensed mental health professionals to initiate the placement of an individual experiencing a mental health crisis on a 72 hour hold – or what is called a 5150 hold. Currently, mental health professionals are significantly limited in providing support to vulnerable populations. Even with Prop. 63 allowing for CBOs to provide prevention & early intervention services, the current framework reveals limitations that hinder our ability to respond adeptly to mental health crises by first responders and healthcare professionals. This proposal seeks to rectify this by authorizing a broader spectrum of licensed mental health professionals – such as Licensed Marriage & Family Therapists (LMFT), Licensed Clinical Social Workers (LCSW), and Licensed Professional Clinical Counselors (LPCC) – to intervene promptly in mental health emergencies; all of whom work one-on-one with those struggling with mental health. This strategic expansion aligns with contemporary best practices, ensures more inclusive crisis response, reduces the burden on law enforcement, and ultimately enhances public safety. This bill can save lives.

2. The LPS Act framework

The California Legislature has long sought to achieve the right balance between providing for the safety and well-being of those suffering from severe mental illness, those who are seen as gravely disabled or at risk of harming themselves or others, and recognizing their inherent due process and civil rights. In the 1960s, the Legislature enacted the LPS Act to develop a statutory process under which individuals could be involuntarily held and treated in a mental health facility in a manner that safeguarded their constitutional rights.⁴ The goals of the Act include “ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety,

⁴ See Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.

safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program.”⁵

The LPS Act provides for involuntary commitment for varying lengths of time for the purpose of treatment and evaluation, provided certain requirements are met.⁶ The LPS Act also authorizes the establishment of LPS conservatorships, which can result in involuntary commitment for the purposes of treatment, if an individual is found to meet the “grave disability” standard.⁷

Typically, a person is generally brought into the LPS Act process through what is commonly referred to as a “5150 hold.” This allows an approved facility to involuntarily commit a person for 72 hours for evaluation and treatment if they are determined to be, as a result of a mental health disorder, a threat to themselves or others, or gravely disabled.⁸ The peace officer or other authorized person who detains the individual must know of a state of facts that would lead a person of ordinary care and prudence to believe that the individual meets this standard.⁹ When making this determination, the peace officer, or other authorized person, may consider the individual’s past conduct, character, and reputation, and the historical course of the individual’s mental illness, so long as the case is decided on facts and circumstances presented to the detaining person at the time of detention.¹⁰ If, at the end of the 72-hour period, the person remains gravely disabled, the LPS Act provides for a series of additional involuntary holds of increasing length – which may include a 14-day hold, a 30-day hold, and another 30-day hold – which can culminate in the establishment of a one-year conservatorship for the gravely disabled person.¹¹

The initial holds – the 5150 hold, the 14-day hold, and the first 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.¹² Only if a county decides to seek a second 30-day hold or a conservatorship does the detained person receive judicial review.¹³

The vast majority of persons detained in a 5150 hold do not end up in conservatorships. According to the California Department of Health Care Services (DHCS), there were 120,402 adults placed in a 5150 hold in the 2020-2021 fiscal year; of those persons, 48,282 were held for the additional 14 days of treatment, 3,299 were held for the additional 30-

⁵ *Id.*, § 5001.

⁶ *Id.*, §§ 5150 et seq.

⁷ *Id.*, §§ 5350 et seq.

⁸ Welf. & Inst. Code, § 5150.

⁹ *People v. Triplett* (1983) 144 Cal.App.3rd 283, pp. 287-288.

¹⁰ Welf. & Inst. Code, § 5150.05; *Heater v. Southwood Psychiatric Center* (1996) 42 Cal.App.4th 1068.

¹¹ Welf. & Inst. Code, §§ 5250, 5270.15, 5270.70, 5350.

¹² *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 541.

¹³ Welf. & Inst. Code, §§ 5270.70, 5350.

day treatment hold, and 2,254 were placed in temporary conservatorships.¹⁴

Accordingly, for many Californians, the 5150 hold represents the most significant – and most traumatic – imposition of state control into their lives. Opponents of the bill argue that involuntary inpatient hospitalization is ineffective, and in fact counterproductive, for treating persons with mental health issues, noting that involuntary hospitalization is often carceral and violent. The trauma of being detained in a 5150 hold may be exacerbated by the fact that, in many cases, the person is brought to the health facility by a law enforcement officer.

3. This bill, as the author has agreed to amend it, clarifies that a county may designate certain licensed mental health professionals to place individuals in 5150 holds

As the author agreed to amend it in the Senate Health Committee, this bill permits a county to designate certain licensed mental health professionals to place persons into a 5150 hold. The “licensed mental health professionals” who may be designated by a county are psychiatrists, psychologists, licensed clinical social workers, licensed marriage and family therapists, and licensed professional clinical counselors who have completed all required supervised clinical experience. The amendments also clarify that a licensed mental health professional need not be an employee of, or contracted by, the county in order for the county to designate them under this bill. By limiting the bill to licensed mental health professionals designated by the county, the author appears to have ameliorated the due process concerns raised by the current draft.

This bill is intended to encourage counties to employ more mental health professionals, rather than peace officers, to bring persons into 5150 holds; as many of the opponents note, having a peace officer bring a person in on a 5150 hold can be counterproductive to the goal of treatment. This bill is thus consistent with similar measures to encourage counties to reduce the reliance on peace officers’ involvement in 5150 holds. AB 1143 (McCarty, Ch. 399, Stats. 2021), for example, established express statutory authorization for mobile crisis units and gave counties greater authorization to create training programs for potential designees.

SUPPORT

Over 40 individuals

OPPOSITION

CalVoices

County Behavioral Directors Association

¹⁴ DHCS, California Involuntary Detentions Data Report, FY 2020-2021, p. 4. The report also listed 8,368 persons being placed in “permanent conservatorships”; although the report does not clarify, it may be that this refers to conservatorships under the Probate Code for persons with developmental disabilities. (*Id.*)

Disability Rights California
Mental Health America of California

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 43 (Eggman, Ch. 637, Stats. 2023) expanded the definition of “gravely disabled,” for purposes of involuntarily detaining an individual with a severe substance use disorder, or a co-occurring mental health disorder and a severe substance abuse disorder, or chronic alcoholism, that is unable to additionally provide for personal safety or necessary medical care.

AB 2291 (Muratsuchi, 2022) among other things, would have required a county, when releasing a person who is homeless from involuntary detention in a 5150 hold, to offer the person a local crisis bed or recuperative care upon their release. AB 2291 died in the Assembly Health Committee.

AB 2275 (Wood, Ch. 960, Stats. 2022) among other things, clarified that the 72-hour window for a 5150 hold commences when the person is first detained.

AB 1443 (McCarty, Ch. 399, Stats. 2021) permitted any county to develop training and procedures related to taking, or causing to be taken, a person into custody for an involuntary detention, as specified; and required the County of Sacramento to develop a written policy for training and procedures for designating persons who are employed by the City of Sacramento and who meet specified criteria to involuntarily detain individuals.

PRIOR VOTES:

Senate Health Committee (Ayes 9, Noes 1)
