

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 565 (Jones)
Version: March 8, 2021
Hearing Date: April 13, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

State Department of State Hospitals: facility expansion: report

DIGEST

This bill requires the Department of State Hospitals (department), by July 1, 2022, to develop a plan and submit a report to the Legislature on the topic of expanding the department's capacity to commit conservatees under the Lanterman-Petris-Short (LPS) Act, and to implement the plan by January 1, 2027.

EXECUTIVE SUMMARY

The State Auditor recently released a report on LPS that found that while counties have sufficient authority to detain individuals with severe mental illnesses and subject them to involuntary treatment, there are major gaps in the capacity to provide these services at the county and state level. At the state level, the department operates a civil commitment treatment program with units at the Department of State Hospitals-Napa in Northern California and at the Department of State Hospitals-Metropolitan in Norwalk in Southern California. The Auditor found that LPS conservatees on the waitlist for intensive treatment in locked settings at state hospital facilities had been waiting an average of a year to receive care because of a shortage of available treatment beds. The Auditor recommended that the Legislature require the department to report about the cost of expanding its facilities' capacity to accommodate the waitlisted LPS conservatees.

This bill implements that recommendation by requiring the department, by July 1, 2022, to develop a plan to expand the capacity of its facilities to reduce wait times for LPS conservatees to 60 days or less, and to report to the Legislature the anticipated costs of implementing the plan. The bill also requires the department to implement the plan by January 1, 2027. The bill is author-sponsored and supported by the California Association of Psychiatric Technicians. The bill passed the Senate Health Committee by 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 § 5000 et seq.)¹ 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. (§ 5008(h)(1)(A),(2).)
- 2) Establishes, in the California Health and Human Services Agency, the State Department of State Hospitals. (§ 4000.) Provides that the department has jurisdiction over the Atascadero, Coalinga, Metropolitan, Napa, and Patton State Hospitals, and specified admission, evaluation, and stabilizations centers. (§ 4100.) Requires that the department govern those hospitals by uniform rule and regulation. (§ 4101.)

This bill:

- 1) Requires the department, on or before July 1, 2022, to develop a plan to expand the capacity of its facilities to reduce wait times for a person committed to a department facility pursuant to the LPS Act to 60 days or less.
- 2) The bill would require the department, on or before July 1, 2022, to submit to the Legislature a copy of the plan and a report regarding the anticipated cost of implementing the plan.
- 3) Requires the department, on or before January 1, 2027, to implement that plan.

COMMENTS

1. Author’s statement

The author writes:

Under the Lanterman-Petris-Short Act, counties can refer individuals who are gravely disabled to state hospital facilities to receive treatment, often an individual’s only option. However, due to the limited capacity of state facilities and an increasing number of county referrals, these individuals are placed on waitlists for excessive periods of time. On average, this waitlist delays treatment for a year and sometimes for multiple years, putting these individuals and their

¹ All further section references are to the Welfare and Institutions Code unless otherwise specified.

caregivers at risk of harm. SB 565 will address the critical capacity shortage in state hospitals, better enabling vulnerable Californians to receive expedient and essential treatment.

2. Involuntary detention for treatment and evaluation under the LPS Act

Before the 1950s, people with serious mental illnesses were typically confined in expansive state-run institutions, often for their entire lives, based on a mere finding by a physician that the person had a mental illness and was in need of treatment. Following a series of exposes² and the advocacy efforts of civil rights attorneys and mental health professionals, this model gave way to an approach that instead privileged individual liberty. States like California began “deinstitutionalizing” psychiatric patients, allowing them to seek treatment in their own community, premised on the largely unrealized expectation that the resources to provide the treatment would be available.

Signed into law in 1967 by Governor Ronald Reagan, the LPS Act includes among its goals “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, 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.” (§ 5001.)

Under the LPS framework, “[o]ne of the principal powers which the court may grant a conservator is the right to place a conservatee in an institution.” (*Conservatorship of Roulet* (1979) 23 Cal.3d 219, 223 (*Roulet*)). A person found to be gravely disabled may be involuntarily confined for up to one year. (§ 5361.) If, at the end of that year, the conservator determines that the conservatorship is still required, the conservator may petition the superior court for reappointment (*id.*), a process that may repeat itself for as long as the person remains gravely disabled. “In effect, these statutes assure in many cases an unbroken and indefinite period of state-sanctioned confinement. ‘The theoretical maximum period of detention is *life* as successive petitions may be filed’ [Citation.]” (*Roulet, supra*, 23 Cal.3d at 224; italics in original.) “In addition to physical restraint, ‘[t]he gravely disabled person for whom a conservatorship has been established faces the loss of many other liberties’” (*Id.* at 227.) “Moreover, a person

² One journalist described “the frightful squalor these unfortunates live in--beds jammed against one another, holes in the floor, gaping cracks in the wall, long rows of hard, unpainted benches, dirty toilets, dining halls where the food is slopped out by unkempt patient attendants and, above all, the terrifying atmosphere of hopelessness in institutions where thousands of patients are penned in day after day and night after night endlessly staring at blank walls.” Another author described mental hospitals as “buildings swarming with naked humans herded like cattle and treated with less concern, pervaded by a fetid odor so heavy, so nauseating, that the stench seemed to have almost a physical existence of its own.” (Gordon, Sara, *The Danger Zone: How the Dangerousness Standard in Civil Commitment Proceedings Harms People with Serious Mental Illness* (2016) 66 Case W. Res. 657, 660, fn. 30.)

suffering from a grave mental disorder is obviously in a poor position to influence or monitor counsel's efforts on his behalf. Accordingly, the Legislature and this court have built several layers of important safeguards into conservatorship procedure."

(*Conservatorship of Ben C.* (2007) 40 Cal. 4th 529, 540.) "Before a person may be found to be gravely disabled and subject to a year-long confinement, the LPS Act provides for a carefully calibrated series of temporary detentions for evaluation and treatment." (*Id.* at 541.)

3. Implements a State Auditor recommendation

The State Auditor recently released an audit of the implementation of the LPS Act in Los Angeles, San Francisco, and Shasta Counties.³ While the Auditor concluded that there was no evidence to justify an expansion of the LPS Act's criteria to include additional situations in which individuals may be involuntarily treated,⁴ the Auditor found major gaps in the State's capacity to care for conservatees: people on the waitlist for intensive treatment in locked settings at state hospital facilities had been waiting an average of a year to receive care because of a shortage of available treatment beds; while they waited, some of the individuals received inadequate care.⁵

Responsibilities for treating individuals with mental illnesses under LPS have devolved to the counties over the years. Whereas in 1959, over 37,000 people were confined in state hospitals, by 2019, roughly 6,000 individuals were in state hospitals.⁶ Over 84 percent of these individuals are diverted from the criminal justice system after being found incompetent to stand trial for certain felonies (IST defendants).⁷ As the Auditor explained, IST defendants have priority over LPS conservatees:⁸ whereas IST defendants must be placed in a state hospital within 60 days, LPS conservatees waited an average of 345 days.⁹ The Auditor found that "[w]hile the average monthly population of individuals being treated under the LPS Act in state hospital facilities increased by about 28 percent from 2014 to 2018, the average number of individuals

³ *Lanterman-Petris-Short Act: California Has Not Ensured That Individuals With Serious Mental Illnesses Receive Adequate Ongoing Care* (July 28, 2020) Report 2019-119, Public Letter, available at <https://www.auditor.ca.gov/reports/2019-119/index.html> (as of Jul. 28, 2020) (Auditor's LPS Report).

⁴ *Id.* at 21.

⁵ *Id.* at 2.

⁶ *Id.* at 10.

⁷ *Id.* at 25.

⁸ *Id.* at 24; see e.g. *In re Loveton* (2016) 244 Cal.App.4th 1025, 1044 (ordering state to admit IST defendants for mental health within 60 days); Pen. Code §§ 1367, 1370. Under both the federal and California state constitutions, "a person charged ...with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant." (*Jackson v. Indiana* (1972) 406 U.S. 715, 738, fn. omitted; see also *In re Davis* (1973) 8 Cal.3d 798, 801.)

⁹ Auditor's LPS Report, *supra*, note 2 at 24.

waiting for placement in a state hospital facility who were receiving treatment through the LPS Act increased by more than 500 percent.”¹⁰ The Auditor continued:

Despite the upward trend in the need for space at its facilities, State Hospitals has not acted to significantly increase its capacity to treat individuals on conservatorships. The director of State Hospitals stated that it has largely focused its requests for additional funding on the criminal justice population that it has a mandate to serve. In response to our request for the cost to reduce and stabilize its waitlist for individuals receiving treatment under the LPS Act, State Hospitals estimated that it needs an additional 330 beds and that the cost for staffing to support these new beds would be about \$85 million annually, in addition to one-time construction costs between \$250 million and \$425 million. However, the department cautioned that these numbers are preliminary and rough order-of-magnitude estimates and are not the result of a formal operational budget estimate or a formal construction estimate process performed by the Department of General Services.¹¹

The Auditor concluded by recommending that the Legislature require the department to report about the cost of expanding its facilities’ capacities to reduce and stabilize the LPS waitlist.¹² The Auditor recommended that the report include a range of options including, but not limited to, reducing the LPS waitlist to limit wait times to under 60 days.¹³

This bill implements that recommendation by requiring the department, by July 1, 2022, to develop a plan to expand the capacity of its facilities to reduce wait times for LPS conservatees to 60 days or less, and to report to the Legislature the anticipated costs of implementing the plan. The bill also requires the department to implement the plan by January 1, 2027. Without funding, this latter requirement is arguably premature.

SUPPORT

California Association of Psychiatric Technicians

OPPOSITION

None known

RELATED LEGISLATION

¹⁰ *Id.* at 25. The Auditor noted that counties also appeared to have a shortage of beds. Although San Francisco and Shasta had failed to fully assess their needs in this regard, Los Angeles reported that it needed more than 1,500 additional beds to serve individuals who need longer-term, around-the-clock treatment. (*Id.* at .26.)

¹¹ *Id.* at 25-26.

¹² *Id.* at 38.

¹³ *Id.*

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Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)
