

ASSEMBLY BILL

No. 1265

**Introduced by Assembly Member Conway
(Coauthors: Assembly Members Achadjian, Beth Gaines, Gorell,
Hagman, Harkey, and Morrell)**

February 22, 2013

An act to amend Section 5346 of, and to add Section 5349.3 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1265, as introduced, Conway. Mental health: assisted outpatient treatment.

Existing law, known as Laura's Law, until January 1, 2017, regulates designated assisted outpatient treatment services, which a county may, by resolution, choose to provide for its residents. In a county where assisted outpatient treatment services are available, a court may order a person to obtain assisted outpatient treatment for an initial period not to exceed 6 months if the court finds the requisite criteria are met, as specified.

This bill would authorize the court to order a person to obtain assisted outpatient treatment for an initial period not to exceed 12 months.

Existing law, the Lanterman-Petris-Short Act, authorizes the involuntary detention for a period of 72 hours for evaluation of persons who are dangerous to self or others, or gravely disabled, as defined. Existing law provides that if a person is detained for 72 hours or under court order for evaluation and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism if certain conditions are met, as specified. Under existing law, a person may be

certified for intensive treatment for an additional period of time if he or she remains gravely disabled or unwilling or unable to accept voluntary treatment or if he or she was suicidal, as specified, or may be confined for postcertification treatment for up to 180 days if he or she has, among other things, attempted or inflicted physical harm upon another person, as specified.

This bill would provide that upon the release of a person from intensive treatment or postcertification treatment described above, the professional staff of the agency or facility that provided the treatment shall evaluate whether the person meets the criteria for assisted outpatient treatment. This bill would authorize the professional staff to request the county mental health director to file a petition in the superior court for assisted outpatient treatment if that person meets that criteria. This bill would provide that these provisions apply only in a county that elects to implement Laura’s Law.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5346 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 5346. (a) In any county ~~in which~~ *where* services are available
- 4 as provided in Section 5348, a court may order a person who is
- 5 the subject of a petition filed pursuant to this section to obtain
- 6 assisted outpatient treatment if the court finds, by clear and
- 7 convincing evidence, that the facts stated in the verified petition
- 8 filed in accordance with this section are true and establish that all
- 9 of the requisite criteria set forth in this section are met, including,
- 10 but not limited to, each of the following:
- 11 (1) The person is 18 years of age or older.
- 12 (2) The person is suffering from a mental illness as defined in
- 13 paragraphs (2) and (3) of subdivision (b) of Section 5600.3.
- 14 (3) There has been a clinical determination that the person is
- 15 unlikely to survive safely in the community without supervision.
- 16 (4) The person has a history of lack of compliance with
- 17 treatment for his or her mental illness, in that at least one of the
- 18 following is true:
- 19 (A) The person’s mental illness has, at least twice within the
- 20 last 36 months, been a substantial factor in necessitating

1 hospitalization, or receipt of services in a forensic or other mental
2 health unit of a state correctional facility or local correctional
3 facility, not including any period during which the person was
4 hospitalized or incarcerated immediately preceding the filing of
5 the petition.

6 (B) The person's mental illness has resulted in one or more acts
7 of serious and violent behavior toward himself or herself or
8 another, or threats, or attempts to cause serious physical harm to
9 himself or herself or another within the last 48 months, not
10 including any period in which the person was hospitalized or
11 incarcerated immediately preceding the filing of the petition.

12 (5) The person has been offered an opportunity to participate
13 in a treatment plan by the director of the local mental health
14 department, or his or her designee, provided the treatment plan
15 includes all of the services described in Section 5348, and the
16 person continues to fail to engage in treatment.

17 (6) The person's condition is substantially deteriorating.

18 (7) Participation in the assisted outpatient treatment program
19 would be the least restrictive placement necessary to ensure the
20 person's recovery and stability.

21 (8) In view of the person's treatment history and current
22 behavior, the person is in need of assisted outpatient treatment in
23 order to prevent a relapse or deterioration that would be likely to
24 result in grave disability or serious harm to himself or herself, or
25 to others, as defined in Section 5150.

26 (9) It is likely that the person will benefit from assisted
27 outpatient treatment.

28 (b) (1) A petition for an order authorizing assisted outpatient
29 treatment may be filed by the county mental health director, or his
30 or her designee, in the superior court in the county ~~in which~~ *where*
31 the person who is the subject of the petition is present or reasonably
32 believed to be present.

33 (2) A request may be made only by any of the following persons
34 to the county mental health department for the filing of a petition
35 to obtain an order authorizing assisted outpatient treatment:

36 (A) Any person 18 years of age or older with whom the person
37 who is the subject of the petition resides.

38 (B) Any person who is the parent, spouse, or sibling or child
39 18 years of age or older of the person who is the subject of the
40 petition.

1 (C) The director of any public or private agency, treatment
2 facility, charitable organization, or licensed residential care facility
3 providing mental health services to the person who is the subject
4 of the petition in whose institution the subject of the petition
5 resides.

6 (D) The director of a hospital in which the person who is the
7 subject of the petition is hospitalized.

8 (E) A licensed mental health treatment provider who is either
9 supervising the treatment of, or treating for a mental illness, the
10 person who is the subject of the petition.

11 (F) A peace officer, parole officer, or probation officer assigned
12 to supervise the person who is the subject of the petition.

13 (G) *The professional staff of an agency or facility, as specified*
14 *in Section 5349.3.*

15 (3) Upon receiving a request pursuant to paragraph (2), the
16 county mental health director shall conduct an investigation into
17 the appropriateness of the filing of the petition. The director shall
18 file the petition only if he or she determines that there is a
19 reasonable likelihood that all the necessary elements to sustain the
20 petition can be proven in a court of law by clear and convincing
21 evidence.

22 (4) The petition shall state all of the following:

23 (A) Each of the criteria for assisted outpatient treatment as set
24 forth in subdivision (a).

25 (B) Facts that support the petitioner's belief that the person who
26 is the subject of the petition meets each criterion, provided that
27 the hearing on the petition shall be limited to the stated facts in
28 the verified petition, and the petition contains all the grounds on
29 which the petition is based, in order to ensure adequate notice to
30 the person who is the subject of the petition and his or her counsel.

31 (C) That the person who is the subject of the petition is present,
32 or is reasonably believed to be present, within the county where
33 the petition is filed.

34 (D) That the person who is the subject of the petition has the
35 right to be represented by counsel in all stages of the proceeding
36 under the petition, in accordance with subdivision (c).

37 (5) The petition shall be accompanied by an affidavit of a
38 licensed mental health treatment provider designated by the local
39 mental health director who shall state, if applicable, either of the
40 following:

1 (A) That the licensed mental health treatment provider has
2 personally examined the person who is the subject of the petition
3 no more than 10 days prior to the submission of the petition, the
4 facts and reasons why the person who is the subject of the petition
5 meets the criteria in subdivision (a), that the licensed mental health
6 treatment provider recommends assisted outpatient treatment for
7 the person who is the subject of the petition, and that the licensed
8 mental health treatment provider is willing and able to testify at
9 the hearing on the petition.

10 (B) That no more than 10 days prior to the filing of the petition,
11 the licensed mental health treatment provider, or his or her
12 designee, has made appropriate attempts to elicit the cooperation
13 of the person who is the subject of the petition, but has not been
14 successful in persuading that person to submit to an examination,
15 that the licensed mental health treatment provider has reason to
16 believe that the person who is the subject of the petition meets the
17 criteria for assisted outpatient treatment, and that the licensed
18 mental health treatment provider is willing and able to examine
19 the person who is the subject of the petition and testify at the
20 hearing on the petition.

21 (c) The person who is the subject of the petition shall have the
22 right to be represented by counsel at all stages of a proceeding
23 commenced under this section. If the person so elects, the court
24 shall immediately appoint the public defender or other attorney to
25 assist the person in all stages of the proceedings. The person shall
26 pay the cost of the legal services if he or she is able.

27 (d) (1) Upon receipt by the court of a petition submitted
28 pursuant to subdivision (b), the court shall fix the date for a hearing
29 at a time not later than five days from the date the petition is
30 received by the court, excluding Saturdays, Sundays, and holidays.
31 The petitioner shall promptly cause service of a copy of the
32 petition, together with written notice of the hearing date, to be
33 made personally on the person who is the subject of the petition,
34 and shall send a copy of the petition and notice to the county office
35 of patient rights, and to the current health care provider appointed
36 for the person who is the subject of the petition, ~~if any such~~ *that*
37 provider is known to the petitioner. Continuances shall be permitted
38 only for good cause shown. In granting continuances, the court
39 shall consider the need for further examination by a physician or
40 the potential need to provide expeditiously assisted outpatient

1 treatment. Upon the hearing date, or upon any other date or dates
2 to which the proceeding may be continued, the court shall hear
3 testimony. If it is deemed advisable by the court, and if the person
4 who is the subject of the petition is available and has received
5 notice pursuant to this section, the court may examine in or out of
6 court the person who is the subject of the petition who is alleged
7 to be in need of assisted outpatient treatment. If the person who is
8 the subject of the petition does not appear at the hearing, and
9 appropriate attempts to elicit the attendance of the person have
10 failed, the court may conduct the hearing in the person's absence.
11 If the hearing is conducted without the person present, the court
12 shall set forth the factual basis for conducting the hearing without
13 the person's presence.

14 (2) The court shall not order assisted outpatient treatment unless
15 an examining licensed mental health treatment provider, who has
16 personally examined, and has reviewed the available treatment
17 history of, the person who is the subject of the petition within the
18 time period commencing 10 days before the filing of the petition,
19 testifies in person at the hearing.

20 (3) If the person who is the subject of the petition has refused
21 to be examined by a licensed mental health treatment provider,
22 the court may request that the person consent to an examination
23 by a licensed mental health treatment provider appointed by the
24 court. If the person who is the subject of the petition does not
25 consent and the court finds reasonable cause to believe that the
26 allegations in the petition are true, the court may order any person
27 designated under Section 5150 to take into custody the person who
28 is the subject of the petition and transport him or her, or cause him
29 or her to be transported, to a hospital for examination by a licensed
30 mental health treatment provider as soon as is practicable.
31 Detention of the person who is the subject of the petition under
32 the order may not exceed 72 hours. If the examination is performed
33 by another licensed mental health treatment provider, the
34 examining licensed mental health treatment provider may consult
35 with the licensed mental health treatment provider whose
36 affirmation or affidavit accompanied the petition regarding the
37 issues of whether the allegations in the petition are true and whether
38 the person meets the criteria for assisted outpatient treatment.

39 (4) The person who is the subject of the petition shall have all
40 of the following rights:

- 1 (A) To adequate notice of the hearings to the person who is the
2 subject of the petition, as well as to parties designated by the person
3 who is the subject of the petition.
- 4 (B) To receive a copy of the court-ordered evaluation.
- 5 (C) To counsel. If the person has not retained counsel, the court
6 shall appoint a public defender.
- 7 (D) To be informed of his or her right to judicial review by
8 habeas corpus.
- 9 (E) To be present at the hearing unless he or she waives the
10 right to be present.
- 11 (F) To present evidence.
- 12 (G) To call witnesses on his or her behalf.
- 13 (H) To cross-examine witnesses.
- 14 (I) To appeal decisions, and to be informed of his or her right
15 to appeal.
- 16 (5) (A) If after hearing all relevant evidence, the court finds
17 that the person who is the subject of the petition does not meet the
18 criteria for assisted outpatient treatment, the court shall dismiss
19 the petition.
- 20 (B) If after hearing all relevant evidence, the court finds that
21 the person who is the subject of the petition meets the criteria for
22 assisted outpatient treatment, and there is no appropriate and
23 feasible less restrictive alternative, the court may order the person
24 who is the subject of the petition to receive assisted outpatient
25 treatment for an initial period not to exceed ~~six~~ 12 months. In
26 fashioning the order, the court shall specify that the proposed
27 treatment is the least restrictive treatment appropriate and feasible
28 for the person who is the subject of the petition. The order shall
29 state the categories of assisted outpatient treatment, as set forth in
30 Section 5348, that the person who is the subject of the petition is
31 to receive, and the court may not order treatment that has not been
32 recommended by the examining licensed mental health treatment
33 provider and included in the written treatment plan for assisted
34 outpatient treatment as required by subdivision (e). If the person
35 has executed an advance health care directive pursuant to Chapter
36 2 (commencing with Section 4650) of Part 1 of Division 4.7 of
37 the Probate Code, any directions included in the advance health
38 care directive shall be considered in formulating the written
39 treatment plan.

1 (6) If the person who is the subject of a petition for an order for
 2 assisted outpatient treatment pursuant to subparagraph (B) of
 3 paragraph (5) of subdivision (d) refuses to participate in the assisted
 4 outpatient treatment program, the court may order the person to
 5 meet with the assisted outpatient treatment team designated by the
 6 director of the assisted outpatient treatment program. The treatment
 7 team shall attempt to gain the person’s cooperation with treatment
 8 ordered by the court. The person may be subject to a 72-hour hold
 9 pursuant to subdivision (f) only after the treatment team has
 10 attempted to gain the person’s cooperation with treatment ordered
 11 by the court, and has been unable to do so.

12 (e) Assisted outpatient treatment shall not be ordered unless the
 13 licensed mental health treatment provider recommending assisted
 14 outpatient treatment to the court has submitted to the court a written
 15 treatment plan that includes services as set forth in Section 5348,
 16 and the court finds, in consultation with the county mental health
 17 director, or his or her designee, all of the following:

18 (1) That the services are available from the county, or a provider
 19 approved by the county, for the duration of the court order.

20 (2) That the services have been offered to the person by the
 21 local director of mental health, or his or her designee, and the
 22 person has been given an opportunity to participate on a voluntary
 23 basis, and the person has failed to engage in, or has refused,
 24 treatment.

25 (3) That all of the elements of the petition required by this article
 26 have been met.

27 (4) That the treatment plan will be delivered to the county
 28 director of mental health, or to his or her appropriate designee.

29 (f) If, in the clinical judgment of a licensed mental health
 30 treatment provider, the person who is the subject of the petition
 31 has failed or has refused to comply with the treatment ordered by
 32 the court, and, in the clinical judgment of the licensed mental health
 33 treatment provider, efforts were made to solicit compliance, and,
 34 in the clinical judgment of the licensed mental health treatment
 35 provider, the person may be in need of involuntary admission to
 36 a hospital for evaluation, the provider may request that persons
 37 designated under Section 5150 take into custody the person who
 38 is the subject of the petition and transport him or her, or cause him
 39 or her to be transported, to a hospital, to be held up to 72 hours for
 40 examination by a licensed mental health treatment provider to

1 determine if the person is in need of treatment pursuant to Section
2 5150. Any continued involuntary retention in a hospital beyond
3 the initial 72-hour period shall be pursuant to Section 5150. If at
4 any time during the 72-hour period the person is determined not
5 to meet the criteria of Section 5150, and does not agree to stay in
6 the hospital as a voluntary patient, he or she shall be released and
7 any subsequent involuntary detention in a hospital shall be pursuant
8 to Section 5150. Failure to comply with an order of assisted
9 outpatient treatment alone may not be grounds for involuntary
10 civil commitment or a finding that the person who is the subject
11 of the petition is in contempt of court.

12 (g) If the director of the assisted outpatient treatment program
13 determines that the condition of the patient requires further assisted
14 outpatient treatment, the director shall apply to the court, prior to
15 the expiration of the period of the initial assisted outpatient
16 treatment order, for an order authorizing continued assisted
17 outpatient treatment for a period not to exceed 180 days from the
18 date of the order. The procedures for obtaining any order pursuant
19 to this subdivision shall be in accordance with subdivisions (a) to
20 (f), inclusive. The period for further involuntary outpatient
21 treatment authorized by any subsequent order under this
22 subdivision may not exceed 180 days from the date of the order.

23 (h) At intervals of not less than 60 days during an assisted
24 outpatient treatment order, the director of the outpatient treatment
25 program shall file an affidavit with the court that ordered the
26 outpatient treatment affirming that the person who is the subject
27 of the order continues to meet the criteria for assisted outpatient
28 treatment. At these times, the person who is the subject of the order
29 shall have the right to a hearing on whether or not he or she still
30 meets the criteria for assisted outpatient treatment if he or she
31 disagrees with the director's affidavit. The burden of proof shall
32 be on the director.

33 (i) During each 60-day period specified in subdivision (h), if
34 the person who is the subject of the order believes that he or she
35 is being wrongfully retained in the assisted outpatient treatment
36 program against his or her wishes, he or she may file a petition for
37 a writ of habeas corpus, thus requiring the director of the assisted
38 outpatient treatment program to prove that the person who is the
39 subject of the order continues to meet the criteria for assisted
40 outpatient treatment.

1 (j) Any person ordered to undergo assisted outpatient treatment
2 pursuant to this article, who was not present at the hearing at which
3 the order was issued, may immediately petition the court for a writ
4 of habeas corpus. Treatment under the order for assisted outpatient
5 treatment may not commence until the resolution of that petition.
6 SEC. 2. Section 5349.3 is added to the Welfare and Institutions
7 Code, to read:
8 5349.3. (a) Upon the release of a person from involuntary
9 treatment pursuant to Section 5257, 5264, 5270.35, or 5304, the
10 professional staff of the agency or facility that provided that
11 treatment shall evaluate whether that person meets the criteria
12 established in subdivision (a) of Section 5346 for assisted
13 outpatient treatment.
14 (b) If that person meets the criteria in subdivision (a) of Section
15 5346, the professional staff of the agency or facility may request
16 the county mental health director, or his or her designee, to file a
17 petition in the superior court pursuant to subdivision (b) of Section
18 5346 for assisted outpatient treatment.
19 (c) This section shall apply only in counties that elect to
20 implement Laura’s Law pursuant to Section 5349.