

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1265**

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

February 22, 2013

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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 amended, 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, upon the release of a person from intensive treatment or postcertification treatment described above, authorize the professional staff of the agency or facility that provided the treatment to 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~~ a county where services are available as  
4 provided in Section 5348, a court may order a person who is the  
5 subject of a petition filed pursuant to this section to obtain assisted  
6 outpatient treatment if the court finds, by clear and convincing  
7 evidence, that the facts stated in the verified petition filed in  
8 accordance with this section are true and establish that all of the  
9 requisite criteria set forth in this section are met, including, but  
10 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.

1 (4) The person has a history of lack of compliance with  
2 treatment for his or her mental illness, in that at least one of the  
3 following is true:

4 (A) The person's mental illness has, at least twice within the  
5 last 36 months, been a substantial factor in necessitating  
6 hospitalization, or receipt of services in a forensic or other mental  
7 health unit of a state correctional facility or local correctional  
8 facility, not including any period during which the person was  
9 hospitalized or incarcerated immediately preceding the filing of  
10 the petition.

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

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

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

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

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

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

33 (b) (1) A petition for an order authorizing assisted outpatient  
34 treatment may be filed by the county mental health director, or his  
35 or her designee, in the superior court in the county where the person  
36 who is the subject of the petition is present or reasonably believed  
37 to be present.

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

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

3 (B) Any person who is the parent, spouse, or sibling or child  
4 18 years of age or older of the person who is the subject of the  
5 petition.

6 (C) The director of any public or private agency, treatment  
7 facility, charitable organization, or licensed residential care facility  
8 providing mental health services to the person who is the subject  
9 of the petition in whose institution the subject of the petition  
10 resides.

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

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

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

18 (G) The professional staff of an agency or facility, as specified  
19 in Section 5349.3.

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

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

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

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

36 (C) That the person who is the subject of the petition is present,  
37 or is reasonably believed to be present, within the county where  
38 the petition is filed.

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

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

8 (A) That the licensed mental health treatment provider has  
9 personally examined the person who is the subject of the petition  
10 no more than 10 days prior to the submission of the petition, the  
11 facts and reasons why the person who is the subject of the petition  
12 meets the criteria in subdivision (a), that the licensed mental health  
13 treatment provider recommends assisted outpatient treatment for  
14 the person who is the subject of the petition, and that the licensed  
15 mental health treatment provider is willing and able to testify at  
16 the hearing on the petition.

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

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

34 (d) (1) Upon receipt by the court of a petition submitted  
35 pursuant to subdivision (b), the court shall fix the date for a hearing  
36 at a time not later than five days from the date the petition is  
37 received by the court, excluding Saturdays, Sundays, and holidays.  
38 The petitioner shall promptly cause service of a copy of the  
39 petition, together with written notice of the hearing date, to be  
40 made personally on the person who is the subject of the petition,

1 and shall send a copy of the petition and notice to the county office  
2 of patient rights, and to the current health care provider appointed  
3 for the person who is the subject of the petition, if that provider is  
4 known to the petitioner. Continuances shall be permitted only for  
5 good cause shown. In granting continuances, the court shall  
6 consider the need for further examination by a physician or the  
7 potential need to provide expeditiously assisted outpatient  
8 treatment. Upon the hearing date, or upon any other date or dates  
9 to which the proceeding may be continued, the court shall hear  
10 testimony. If it is deemed advisable by the court, and if the person  
11 who is the subject of the petition is available and has received  
12 notice pursuant to this section, the court may examine in or out of  
13 court the person who is the subject of the petition who is alleged  
14 to be in need of assisted outpatient treatment. If the person who is  
15 the subject of the petition does not appear at the hearing, and  
16 appropriate attempts to elicit the attendance of the person have  
17 failed, the court may conduct the hearing in the person's absence.  
18 If the hearing is conducted without the person present, the court  
19 shall set forth the factual basis for conducting the hearing without  
20 the person's presence.

21 (2) The court shall not order assisted outpatient treatment unless  
22 an examining licensed mental health treatment provider, who has  
23 personally examined, and has reviewed the available treatment  
24 history of, the person who is the subject of the petition within the  
25 time period commencing 10 days before the filing of the petition,  
26 testifies in person at the hearing.

27 (3) If the person who is the subject of the petition has refused  
28 to be examined by a licensed mental health treatment provider,  
29 the court may request that the person consent to an examination  
30 by a licensed mental health treatment provider appointed by the  
31 court. If the person who is the subject of the petition does not  
32 consent and the court finds reasonable cause to believe that the  
33 allegations in the petition are true, the court may order any person  
34 designated under Section 5150 to take into custody the person who  
35 is the subject of the petition and transport him or her, or cause him  
36 or her to be transported, to a hospital for examination by a licensed  
37 mental health treatment provider as soon as is practicable.  
38 Detention of the person who is the subject of the petition under  
39 the order may not exceed 72 hours. If the examination is performed  
40 by another licensed mental health treatment provider, the

1 examining licensed mental health treatment provider may consult  
2 with the licensed mental health treatment provider whose  
3 affirmation or affidavit accompanied the petition regarding the  
4 issues of whether the allegations in the petition are true and whether  
5 the person meets the criteria for assisted outpatient treatment.

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

8 (A) To adequate notice of the hearings to the person who is the  
9 subject of the petition, as well as to parties designated by the person  
10 who is the subject of the petition.

11 (B) To receive a copy of the court-ordered evaluation.

12 (C) To counsel. If the person has not retained counsel, the court  
13 shall appoint a public defender.

14 (D) To be informed of his or her right to judicial review by  
15 habeas corpus.

16 (E) To be present at the hearing unless he or she waives the  
17 right to be present.

18 (F) To present evidence.

19 (G) To call witnesses on his or her behalf.

20 (H) To cross-examine witnesses.

21 (I) To appeal decisions, and to be informed of his or her right  
22 to appeal.

23 (5) (A) If after hearing all relevant evidence, the court finds  
24 that the person who is the subject of the petition does not meet the  
25 criteria for assisted outpatient treatment, the court shall dismiss  
26 the petition.

27 (B) If after hearing all relevant evidence, the court finds that  
28 the person who is the subject of the petition meets the criteria for  
29 assisted outpatient treatment, and there is no appropriate and  
30 feasible less restrictive alternative, the court may order the person  
31 who is the subject of the petition to receive assisted outpatient  
32 treatment for an initial period not to exceed 12 months. In  
33 fashioning the order, the court shall specify that the proposed  
34 treatment is the least restrictive treatment appropriate and feasible  
35 for the person who is the subject of the petition. The order shall  
36 state the categories of assisted outpatient treatment, as set forth in  
37 Section 5348, that the person who is the subject of the petition is  
38 to receive, and the court may not order treatment that has not been  
39 recommended by the examining licensed mental health treatment  
40 provider and included in the written treatment plan for assisted

1 outpatient treatment as required by subdivision (e). If the person  
2 has executed an advance health care directive pursuant to Chapter  
3 2 (commencing with Section 4650) of Part 1 of Division 4.7 of  
4 the Probate Code, any directions included in the advance health  
5 care directive shall be considered in formulating the written  
6 treatment plan.

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

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

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

26 (2) That the services have been offered to the person by the  
27 local director of mental health, or his or her designee, and the  
28 person has been given an opportunity to participate on a voluntary  
29 basis, and the person has failed to engage in, or has refused,  
30 treatment.

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

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

35 (f) If, in the clinical judgment of a licensed mental health  
36 treatment provider, the person who is the subject of the petition  
37 has failed or has refused to comply with the treatment ordered by  
38 the court, and, in the clinical judgment of the licensed mental health  
39 treatment provider, efforts were made to solicit compliance, and,  
40 in the clinical judgment of the licensed mental health treatment

1 provider, the person may be in need of involuntary admission to  
2 a hospital for evaluation, the provider may request that persons  
3 designated under Section 5150 take into custody the person who  
4 is the subject of the petition and transport him or her, or cause him  
5 or her to be transported, to a hospital, to be held up to 72 hours for  
6 examination by a licensed mental health treatment provider to  
7 determine if the person is in need of treatment pursuant to Section  
8 5150. Any continued involuntary retention in a hospital beyond  
9 the initial 72-hour period shall be pursuant to Section 5150. If at  
10 any time during the 72-hour period the person is determined not  
11 to meet the criteria of Section 5150, and does not agree to stay in  
12 the hospital as a voluntary patient, he or she shall be released and  
13 any subsequent involuntary detention in a hospital shall be pursuant  
14 to Section 5150. Failure to comply with an order of assisted  
15 outpatient treatment alone may not be grounds for involuntary  
16 civil commitment or a finding that the person who is the subject  
17 of the petition is in contempt of court.

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

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

39 (i) During each 60-day period specified in subdivision (h), if  
40 the person who is the subject of the order believes that he or she

1 is being wrongfully retained in the assisted outpatient treatment  
2 program against his or her wishes, he or she may file a petition for  
3 a writ of habeas corpus, thus requiring the director of the assisted  
4 outpatient treatment program to prove that the person who is the  
5 subject of the order continues to meet the criteria for assisted  
6 outpatient treatment.

7 (j) Any person ordered to undergo assisted outpatient treatment  
8 pursuant to this article, who was not present at the hearing at which  
9 the order was issued, may immediately petition the court for a writ  
10 of habeas corpus. Treatment under the order for assisted outpatient  
11 treatment may not commence until the resolution of that petition.

12 SEC. 2. Section 5349.3 is added to the Welfare and Institutions  
13 Code, to read:

14 5349.3. (a) Upon the release of a person from involuntary  
15 treatment pursuant to Section 5257, 5264, 5270.35, or 5304, the  
16 professional staff of the agency or facility that provided that  
17 treatment may evaluate whether that person meets the criteria  
18 established in subdivision (a) of Section 5346 for assisted  
19 outpatient treatment.

20 (b) If that person meets the criteria in subdivision (a) of Section  
21 5346, the professional staff of the agency or facility may request  
22 the county mental health director, or his or her designee, to file a  
23 petition in the superior court pursuant to subdivision (b) of Section  
24 5346 for assisted outpatient treatment.

25 (c) This section shall apply only in counties that elect to  
26 implement Laura's Law pursuant to Section 5349.