

AMENDED IN SENATE APRIL 15, 2013

AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 364

Introduced by Senator Steinberg

February 20, 2013

An act to amend Sections 5001, 5008, 5150, and 5151 of, to add Sections 5013 and 5121 to, and to repeal Sections 5150.3, 5156, and 5157 of, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 364, as amended, Steinberg. Mental health.

Existing law, the Lanterman-Petris-Short Act, provides for the involuntary commitment and treatment of persons with specified mental disorders and for the protection of the persons so committed. Existing law states the intent of the Legislature, with regard to this act, including to end inappropriate, indefinite, and involuntary commitment of mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism, and to eliminate legal disabilities and to protect mentally disordered persons and developmentally disabled persons.

This bill would state the intent of the Legislature, additionally, to provide consistent standards for protection of the personal rights of persons who are subject to involuntary detention and to provide services in the least restrictive setting appropriate to the needs of the person, as well as making technical changes.

This bill would encourage each county mental health department to post on its Internet Web site a current list, to be updated at least annually, of ambulatory services and other resources for persons with mental

health disorders and substance abuse in the county that may be accessed by providers and consumers of mental health services.

Under existing law, when a person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, he or she may, upon probable cause, be taken into custody by a peace officer, member of the attending staff of an evaluation facility, designated members of a mobile crisis team, or other designated professional person, and placed in a facility designated by the county and approved by the State Department of Social Services as a facility for 72-hour treatment and evaluation. Existing law specifies advisements that are to be given to the person prior to involuntary commitment.

This bill would authorize a county health director to develop procedures for the county's designation and training of professionals who will be designated to perform functions relating to the 72-hour treatment and evaluation. The bill would require the facilities for 72-hour treatment and evaluation to be licensed or certified as mental health treatment facilities by the State Department of Health Care Services or the State Department of Public Health. The bill would also authorize a professional person in charge of an evaluation facility to take custody of a person for this purpose, but would remove that ability for a designated member of a mobile crisis team. The bill would make prescribed changes to the advisements given when the person is taken into custody and when the person is admitted to the facility.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. Section 5001 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 5001. The provisions of this part shall be construed to promote
- 4 the legislative intent as follows:

1 (a) To end the inappropriate, indefinite, and involuntary
2 commitment of persons with severe mental health disorders,
3 developmental disabilities, and chronic alcoholism, and to eliminate
4 legal disabilities.

5 (b) To provide prompt evaluation and treatment of persons with
6 mental health disorders or impaired by chronic alcoholism.

7 (c) To guarantee and protect public safety.

8 (d) To safeguard individual rights through judicial review.

9 (e) To provide individualized treatment, supervision, and
10 placement services by a conservatorship program for persons who
11 are gravely disabled.

12 (f) To encourage the full use of all existing agencies,
13 professional personnel, and public funds to accomplish these
14 objectives and to prevent duplication of services and unnecessary
15 expenditures.

16 (g) To protect persons with mental health disorders and
17 developmental disabilities from criminal acts.

18 (h) To provide consistent standards for protection of the personal
19 rights of persons receiving services under this part and under Part
20 1.5 (commencing with Section 5585).

21 (i) To provide services in the least restrictive setting appropriate
22 to the needs of each person receiving services under this part and
23 under Part 1.5 (commencing with Section 5585).

24 SEC. 2. Section 5008 of the Welfare and Institutions Code is
25 amended to read:

26 5008. Unless the context otherwise requires, the following
27 definitions shall govern the construction of this part:

28 (a) "Evaluation" consists of multidisciplinary professional
29 analyses of a person's medical, psychological, educational, social,
30 financial, and legal conditions as may appear to constitute a
31 problem. Persons providing evaluation services shall be properly
32 qualified professionals and may be full-time employees of an
33 agency providing face to face or telehealth evaluation services or
34 may be part-time employees or may be employed on a contractual
35 basis.

36 (b) "Court-ordered evaluation" means an evaluation ordered by
37 a superior court pursuant to Article 2 (commencing with Section
38 5200) or by a court pursuant to Article 3 (commencing with Section
39 5225) of Chapter 2.

1 (c) “Intensive treatment” consists of such hospital and other
2 services as may be indicated. Intensive treatment shall be provided
3 by properly qualified professionals and carried out in facilities
4 qualifying for reimbursement under the California Medical
5 Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing
6 with Section 14000) of Part 3 of Division 9, or under Title XVIII
7 of the federal Social Security Act and regulations thereunder.
8 Intensive treatment may be provided in hospitals of the United
9 States government by properly qualified professionals. Nothing
10 in this part shall be construed to prohibit an intensive treatment
11 facility from also providing 72-hour treatment and evaluation.

12 (d) “Referral” is referral of persons by each agency or facility
13 providing intensive treatment or evaluation services to other
14 agencies or individuals. The purpose of referral shall be to provide
15 for continuity of care, and may include, but need not be limited
16 to, informing the person of available services, making appointments
17 on the person’s behalf, discussing the person’s problem with the
18 agency or individual to which the person has been referred,
19 appraising the outcome of referrals, and arranging for personal
20 escort and transportation when necessary. Referral shall be
21 considered complete when the agency or individual to whom the
22 person has been referred accepts responsibility for providing the
23 necessary services. All persons shall be advised of available precare
24 services that prevent initial recourse to hospital treatment or
25 aftercare services that support adjustment to community living
26 following hospital treatment. These services may be provided
27 through county mental health departments, State Department of
28 State Hospitals, Short-Doyle programs, or other local agencies.

29 Each agency or facility providing evaluation services shall
30 maintain a current and comprehensive file of all community
31 services, both public and private. These files shall contain current
32 agreements with agencies or individuals accepting referrals, as
33 well as appraisals of the results of past referrals.

34 (e) “Crisis intervention” consists of an interview or series of
35 interviews within a brief period of time, conducted by qualified
36 professionals, and designed to alleviate personal or family
37 situations which present a serious and imminent threat to the health
38 or stability of the person or the family. The interview or interviews
39 may be conducted in the home of the person or family, or on an
40 inpatient or outpatient basis with such therapy, or other services,

1 as may be appropriate. The interview or interviews may include
2 family members, significant support persons, providers, or other
3 entities or individuals, as appropriate and as authorized by law.
4 Crisis intervention may, as appropriate, include suicide prevention,
5 psychiatric, welfare, psychological, legal, or other social services.

6 (f) “Prepetition screening” is a screening of all petitions for
7 court-ordered evaluation as provided in Article 2 (commencing
8 with Section 5200) of Chapter 2, consisting of a professional
9 review of all petitions; an interview with the petitioner and,
10 whenever possible, the person alleged, as a result of a mental health
11 disorder, to be a danger to others, or to himself or herself, or to be
12 gravely disabled, to assess the problem and explain the petition;
13 when indicated, efforts to persuade the person to receive, on a
14 voluntary basis, comprehensive evaluation, crisis intervention,
15 referral, and other services specified in this part.

16 (g) “Conservatorship investigation” means investigation by an
17 agency appointed or designated by the governing body of cases in
18 which conservatorship is recommended pursuant to Chapter 3
19 (commencing with Section 5350).

20 (h) (1) For purposes of Article 1 (commencing with Section
21 5150), Article 2 (commencing with Section 5200), and Article 4
22 (commencing with Section 5250) of Chapter 2, and for the purposes
23 of Chapter 3 (commencing with Section 5350), “gravely disabled”
24 means either of the following:

25 (A) A condition in which a person, as a result of a mental health
26 disorder, is unable to provide for his or her basic personal needs
27 for food, clothing, or shelter.

28 (B) A condition in which a person, has been found mentally
29 incompetent under Section 1370 of the Penal Code and all of the
30 following facts exist:

31 (i) The indictment or information pending against the person at
32 the time of commitment charges a felony involving death, great
33 bodily harm, or a serious threat to the physical well-being of
34 another person.

35 (ii) The indictment or information has not been dismissed.

36 (iii) As a result of a mental health disorder, the person is unable
37 to understand the nature and purpose of the proceedings taken
38 against him or her and to assist counsel in the conduct of his or
39 her defense in a rational manner.

1 (2) For purposes of Article 3 (commencing with Section 5225)
2 and Article 4 (commencing with Section 5250), of Chapter 2, and
3 for the purposes of Chapter 3 (commencing with Section 5350),
4 “gravely disabled” means a condition in which a person, as a result
5 of impairment by chronic alcoholism, is unable to provide for his
6 or her basic personal needs for food, clothing, or shelter.

7 (3) The term “gravely disabled” does not include persons with
8 intellectual disabilities by reason of that disability alone.

9 (i) “Peace officer” means a duly sworn peace officer as that
10 term is defined in Chapter 4.5 (commencing with Section 830) of
11 Title 3 of Part 2 of the Penal Code who has completed the basic
12 training course established by the Commission on Peace Officer
13 Standards and Training, or any parole officer or probation officer
14 specified in Section 830.5 of the Penal Code when acting in relation
15 to cases for which he or she has a legally mandated responsibility.

16 (j) “Postcertification treatment” means an additional period of
17 treatment pursuant to Article 6 (commencing with Section 5300)
18 of Chapter 2.

19 (k) “Court,” unless otherwise specified, means a court of record.

20 (l) “Antipsychotic medication” means any medication
21 customarily prescribed for the treatment of symptoms of psychoses
22 and other severe mental and emotional disorders.

23 (m) “Emergency” means a situation in which action to impose
24 treatment over the person’s objection is immediately necessary
25 for the preservation of life or the prevention of serious bodily harm
26 to the patient or others, and it is impracticable to first gain consent.
27 It is not necessary for harm to take place or become unavoidable
28 prior to treatment.

29 SEC. 3. Section 5013 is added to the Welfare and Institutions
30 Code, to read:

31 5013. (a) It is the intent of the Legislature that referrals
32 between facilities, providers, and other organizations shall be
33 facilitated by the sharing of information and records in accordance
34 with Section 5328 and applicable federal and state laws.

35 (b) Each county mental health department’s Internet Web site
36 is encouraged to include a current list of ambulatory services and
37 other resources for persons with mental health disorders and
38 substance abuse in the county that may be accessed by providers
39 and consumers of mental health services. The list of services on

1 the Internet Web site should be updated at least annually by the
2 county.

3 SEC. 4. Section 5121 is added to the Welfare and Institutions
4 Code, to read:

5 5121. The county mental health director may develop
6 procedures for the county's designation and training of
7 professionals who will be designated to perform functions under
8 Section 5150. These procedures may include, but are not limited
9 to, the following:

10 (a) The license types, practice disciplines, and clinical
11 experience of professionals eligible to be designated by the county.

12 (b) The initial and ongoing training and testing requirements
13 for professionals eligible to be designated by the county.

14 (c) The application and approval processes for professionals
15 seeking to be designated by the county, including the timeframe
16 for initial designation and procedures for renewal of the
17 designation.

18 (d) The county's process for monitoring and reviewing
19 professionals designated by the county to ensure appropriate
20 compliance with state law, regulations, and county procedures.

21 SEC. 5. Section 5150 of the Welfare and Institutions Code is
22 amended to read:

23 5150. (a) When a person, as a result of a mental health
24 disorder, is a danger to others, or to himself or herself, or gravely
25 disabled, a peace officer, professional person in charge of an
26 evaluation facility designated by the county, member of the
27 attending staff, as defined by regulation, of an evaluation facility
28 designated by the county, or professional person designated by
29 the county may, upon probable cause, take, or cause to be taken,
30 the person into custody for assessment, evaluation, and crisis
31 intervention, or place him or her in a facility designated by the
32 county as a facility for evaluation and treatment. These facilities
33 shall be licensed or certified as mental health treatment facilities
34 by the State Department of Health Care Services or the State
35 Department of Public Health. Assessment, as defined in Section
36 5150.4, and evaluation and crisis intervention, as defined in
37 subdivisions (a) and (e) of Section 5008, may be provided by a
38 professional person in charge of an evaluation facility designated
39 by the county, or by a professional person designated by the county.

1 (b) If in the judgment of the professional person designated by
2 the county or professional person in charge of the facility
3 designated by the county providing evaluation and treatment, or
4 his or her designee, the person can be properly served without
5 being detained, he or she shall be provided evaluation, crisis
6 intervention, or other inpatient or outpatient services on a voluntary
7 basis. Nothing in this subdivision shall be interpreted to prevent
8 a peace officer from delivering individuals to a designated facility
9 for assessment under this section. Furthermore, the assessment
10 requirement of this section shall not be interpreted to require peace
11 officers to perform any additional duties other than those specified
12 in Sections 5150.1 and 5150.2.

13 (c) Whenever a person is evaluated by a professional person
14 designated by the county or a professional person in charge of a
15 facility designated by the county and is found to be in need of
16 mental health services, but is not admitted to the facility, all
17 available alternative services provided for pursuant to Section 5151
18 shall be offered as determined by the county mental health director.

19 (d) If, in the judgment of the peace officer, member of the
20 attending staff, the professional person designated by the county,
21 or the professional person in charge of a designated facility, the
22 person cannot be properly served without being detained, the
23 facility shall require an application in writing stating the
24 circumstances under which the person's condition was called to
25 the attention of the peace officer, member of the attending staff,
26 or professional person, and stating that the peace officer, member
27 of the attending staff, or professional person has probable cause
28 to believe that the person is, as a result of a mental health disorder,
29 a danger to others, or to himself or herself, or gravely disabled. If
30 the probable cause is based on the statement of a person other than
31 the peace officer, member of the attending staff, or professional
32 person, the identity of the person and portions of the person's
33 statement relevant to the determination of probable cause shall be
34 documented in the application and the person giving the statement
35 shall be liable in a civil action for intentionally giving a statement
36 which he or she knows to be false. A copy of the application shall
37 be provided to the person being detained.

38 (e) At the time a person is taken into custody for evaluation, or
39 within a reasonable time thereafter, unless a responsible relative
40 or the guardian or conservator of the person is in possession of the

1 person’s personal property, the person taking him or her into
 2 custody shall take reasonable precautions to preserve and safeguard
 3 the personal property in the possession of or on the premises
 4 occupied by the person. The person taking him or her into custody
 5 shall then furnish to the court a report generally describing the
 6 person’s property so preserved and safeguarded and its disposition,
 7 in substantially the form set forth in Section 5211, except that if
 8 a responsible relative or the guardian or conservator of the person
 9 is in possession of the person’s property, the report shall include
 10 only the name of the relative or guardian or conservator and the
 11 location of the property, whereupon responsibility of the person
 12 taking him or her into custody for that property shall terminate.
 13 As used in this section, “responsible relative” includes the spouse,
 14 parent, adult child, domestic partner, grandparent, grandchild, or
 15 adult brother or sister of the person, ~~except that it does not include~~
 16 ~~the person who applied for the petition under this article.~~

17 (f) (1) Each person, at the time he or she is first taken into
 18 custody under this section, shall be provided, by the person who
 19 takes him or her into custody, the following information orally in
 20 a language or modality accessible to the person. If the person
 21 cannot understand an oral advisement, the information shall be
 22 provided in writing. The information shall be in substantially the
 23 following form:
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26 My name is _____ .
 27 I am a _____ .
 28 (peace officer/mental health professional)
 29 with _____ .
 30 (name of agency)
 31 You are not under criminal arrest, but I am taking you for an examination by
 32 mental health professionals at _____ .
 33 _____
 34 (name of facility)

35 You will be told your rights by the mental health staff.
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38 (2) If taken into custody at his or her own residence, the person
 39 shall also be provided the following information:

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You may bring a few personal items with you, which I will have to approve. Please inform me if you need assistance turning off any appliance or water. You may make a phone call and leave a note to tell your friends or family where you have been taken.

~~(3) If the advisement was not completed, the mental health professional at the facility shall complete the advisement.~~

(g) The designated facility shall keep, for each patient evaluated, a record of the advisement given pursuant to subdivision (f) which shall include all of the following:

- (1) The name of the person detained for evaluation.
- (2) The name and position of the peace officer or mental health professional taking the person into custody.
- (3) The date the advisement was completed.
- (4) Whether the advisement was completed.
- (5) The language or modality used to give the advisement.
- (6) If the advisement was not completed, a statement of good cause, as defined by regulations of the State Department of Social Services.

(h) (1) Each person admitted to a designated facility for evaluation and treatment shall be given the following information by admission staff at the evaluation unit. The information shall be given orally and in writing and in a language or modality accessible to the person. The written information shall be available to the person in English and in the language that is the person’s principal means of communication. Accommodations for other disabilities that may impact communication shall also be made. The information shall be in substantially the following form:

My name is _____.

My position here is _____.

You are being placed into the psychiatric unit because it is our professional opinion that, as a result of a mental health disorder, you are likely to (check applicable):

- Harm yourself.
- Harm someone else.
- Be unable to take care of your own food, clothing, and housing needs.

1 We feel this is true because

2 _____
3 (list of the facts upon which the allegation of dangerous
4 or gravely disabled due to mental disorder is based, including pertinent
5 facts arising from the admission interview).

6 You will be held ~~on the ward~~ for a period up to 72 hours. During the 72 hours
7 you may also be transferred to another facility. You may request to be treated
8 at a facility of your choice. You will be given a choice of treatment providers.

9 During these 72 hours you will be evaluated by the hospital staff, and you
10 may be given treatment, including medications. It is possible for you to be
11 released before the end of the 72 hours. But if the staff decides that you need
12 continued treatment you can be held for a longer period of time. If you are
13 held longer than 72 hours, you have the right to a lawyer and a qualified
14 interpreter and a hearing before a judge. If you are unable to pay for the lawyer,
15 then one will be provided to you free of charge.

16 If you have questions about your legal rights, you may contact the county
17 Patients' Rights Advocate at _____
18 (phone number for the county Patients' Rights
19 _____ .
20 Advocacy office)

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23 (2) If the notice is given in a county where weekends and
24 holidays are excluded from the 72-hour period, the patient shall
25 also be given the following information:

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27 The 72-hour period does not include weekends or holidays. Your 72-hour
28 period began _____ .
29 (date/time)
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~~(3) If the advisement was not completed at admission, the
advisement process shall be continued on the ward until completed.~~

33 (i) For each patient admitted for 72-hour evaluation and
34 treatment, the facility shall keep with the patient's medical record
35 a record of the advisement given pursuant to subdivision (h), which
36 shall include all of the following:

- 37 (1) The name of the person performing the advisement.
- 38 (2) The date of the advisement.
- 39 (3) Whether the advisement was completed.

1 (4) The language or modality used to communicate the
2 advisement.

3 (5) If the advisement was not completed, a statement of good
4 cause.

5 SEC. 6. Section 5150.3 of the Welfare and Institutions Code
6 is repealed.

7 SEC. 7. Section 5151 of the Welfare and Institutions Code is
8 amended to read:

9 5151. If the facility for 72-hour treatment and evaluation admits
10 the person, it may detain him or her for evaluation and treatment
11 for a period not to exceed 72 hours. Saturdays, Sundays, and
12 holidays may be excluded from the 72-hour period if the State
13 Department of Health Care Services certifies for each facility that
14 evaluation and treatment services cannot reasonably be made
15 available on those days. The certification by the department is
16 subject to renewal every two years. The department shall adopt
17 regulations defining criteria for determining whether a facility can
18 reasonably be expected to make evaluation and treatment services
19 available on Saturdays, Sundays, and holidays.

20 Prior to admitting a person to the facility for 72-hour treatment
21 and evaluation pursuant to Section 5150, the professional person
22 in charge of the facility or his or her designee shall assess the
23 individual in person to determine the appropriateness of the
24 involuntary detention.

25 SEC. 8. Section 5156 of the Welfare and Institutions Code is
26 repealed.

27 SEC. 9. Section 5157 of the Welfare and Institutions Code is
28 repealed.

29 SEC. 10. If the Commission on State Mandates determines
30 that this act contains costs mandated by the state, reimbursement
31 to local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.