

AMENDED IN SENATE MAY 7, 2013
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~~ 5151, and 5259.3 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:

1 5001. The provisions of this part shall be construed to promote
2 the legislative intent as follows:

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

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

9 (c) To guarantee and protect public safety.

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

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

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

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

20 (h) To provide consistent standards for protection of the personal
21 rights of persons receiving services under this part and under Part
22 1.5 (commencing with Section 5585).

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

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

28 5008. Unless the context otherwise requires, the following
29 definitions shall govern the construction of this part:

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

38 (b) “Court-ordered evaluation” means an evaluation ordered by
39 a superior court pursuant to Article 2 (commencing with Section

1 5200) or by a court pursuant to Article 3 (commencing with Section
2 5225) of Chapter 2.

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

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

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

36 (e) “Crisis intervention” consists of an interview or series of
37 interviews within a brief period of time, conducted by qualified
38 professionals, and designed to alleviate personal or family
39 situations which present a serious and imminent threat to the health
40 or stability of the person or the family. The interview or interviews

1 may be conducted in the home of the person or family, or on an
2 inpatient or outpatient basis with such therapy, or other services,
3 as may be appropriate. The interview or interviews may include
4 family members, significant support persons, providers, or other
5 entities or individuals, as appropriate and as authorized by law.
6 Crisis intervention may, as appropriate, include suicide prevention,
7 psychiatric, welfare, psychological, legal, or other social services.

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

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

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

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

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

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

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

38 (iii) As a result of a mental health disorder, the person is unable
39 to understand the nature and purpose of the proceedings taken

1 against him or her and to assist counsel in the conduct of his or
2 her defense in a rational manner.

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

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

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

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

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

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

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

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

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

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

1 and consumers of mental health services. The list of services on
2 the Internet Web site should be updated at least annually by the
3 county.

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

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

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

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

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

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

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

24 5150. (a) When a person, as a result of a mental health
25 disorder, is a danger to others, or to himself or herself, or gravely
26 disabled, a peace officer, professional person in charge of an
27 evaluation facility designated by the county, member of the
28 attending staff, as defined by regulation, of an evaluation facility
29 designated by the ~~county~~, *county, designated members of a mobile*
30 *crisis team*, or professional person designated by the county may,
31 upon probable cause, take, or cause to be taken, the person into
32 custody for assessment, evaluation, and crisis intervention, or place
33 him or her in a facility designated by the county as a facility for
34 *72-hour* evaluation and treatment. These facilities shall be licensed
35 or certified as mental health treatment facilities *or hospitals, as*
36 *defined in subdivision (a) or (b) of Section 1250 of the Health and*
37 *Safety Code*, by the State Department of Health Care Services or
38 the State Department of Public Health. Assessment, as defined in
39 Section 5150.4, and evaluation and crisis intervention, as defined
40 in subdivisions (a) and (e) of Section 5008, may be provided by a

1 professional person in charge of an evaluation facility designated
2 by the county, or by a professional person designated by the county.

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

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

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

1 (e) At the time a person is taken into custody for evaluation, or
 2 within a reasonable time thereafter, unless a responsible relative
 3 or the guardian or conservator of the person is in possession of the
 4 person’s personal property, the person taking him or her into
 5 custody shall take reasonable precautions to preserve and safeguard
 6 the personal property in the possession of or on the premises
 7 occupied by the person. The person taking him or her into custody
 8 shall then furnish to the court a report generally describing the
 9 person’s property so preserved and safeguarded and its disposition,
 10 in substantially the form set forth in Section 5211, except that if
 11 a responsible relative or the guardian or conservator of the person
 12 is in possession of the person’s property, the report shall include
 13 only the name of the relative or guardian or conservator and the
 14 location of the property, whereupon responsibility of the person
 15 taking him or her into custody for that property shall terminate.
 16 As used in this section, “responsible relative” includes the spouse,
 17 parent, adult child, domestic partner, grandparent, grandchild, or
 18 adult brother or sister of the person.

19 (f) (1) Each person, at the time he or she is first taken into
 20 custody under this section, shall be provided, by the person who
 21 takes him or her into custody, the following information orally in
 22 a language or modality accessible to the person. If the person
 23 cannot understand an oral advisement, the information shall be
 24 provided in writing. The information shall be in substantially the
 25 following form:

26
 27 My name is _____ .
 28 I am a _____ .
 29 (peace officer/mental health professional)
 30 with _____ .
 31 (name of agency)
 32 You are not under criminal arrest, but I am taking you for an examination by
 33 mental health professionals at _____ .
 34 _____
 35 (name of facility)
 36 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.

(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.

We feel this is true because

(list of the facts upon which the allegation of dangerous

1 or gravely disabled due to mental disorder is based, including pertinent
2 facts arising from the admission interview).

3 You will be held for a period up to 72 hours. During the 72 hours you may
4 also be transferred to another facility. You may request to be treated at a facility
5 of your choice. You will be given a choice of treatment providers. *However,*
6 *while we make an effort to honor these requests, we cannot guarantee that you*
7 *will be treated by a specific facility or provider.*

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

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

20
21 (2) If the notice is given in a county where weekends and
22 holidays are excluded from the 72-hour period, the patient shall
23 also be given the following information:

24
25 The 72-hour period does not include weekends or holidays. Your 72-hour
26 period began _____
27 (date/time)

28
29 (i) For each patient admitted for 72-hour evaluation and
30 treatment, the facility shall keep with the patient's medical record
31 a record of the advisement given pursuant to subdivision (h), which
32 shall include all of the following:

- 33 (1) The name of the person performing the advisement.
- 34 (2) The date of the advisement.
- 35 (3) Whether the advisement was completed.
- 36 (4) The language or modality used to communicate the
37 advisement.
- 38 (5) If the advisement was not completed, a statement of good
39 cause.

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

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

5 5151. If the facility for 72-hour treatment and evaluation admits
6 the person, it may detain him or her for evaluation and treatment
7 for a period not to exceed 72 hours. Saturdays, Sundays, and
8 holidays may be excluded from the 72-hour period if the State
9 Department of Health Care Services certifies for each facility that
10 evaluation and treatment services cannot reasonably be made
11 available on those days. The certification by the department is
12 subject to renewal every two years. The department shall adopt
13 regulations defining criteria for determining whether a facility can
14 reasonably be expected to make evaluation and treatment services
15 available on Saturdays, Sundays, and holidays.

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

21 SEC. 8. Section 5156 of the Welfare and Institutions Code is
22 repealed.

23 SEC. 9. Section 5157 of the Welfare and Institutions Code is
24 repealed.

25 *SEC. 10. Section 5259.3 of the Welfare and Institutions Code*
26 *is amended to read:*

27 5259.3. (a) Notwithstanding Section 5113, if the provisions
28 of Section 5257 have been met, the professional person in charge
29 of the facility providing intensive treatment, his or her designee,
30 *the professional person designated by the county*, the medical
31 director of the facility or his or her designee described in Section
32 5257, the psychiatrist directly responsible for the person's
33 treatment, or the psychologist shall not be held civilly or criminally
34 liable for any action by a person released before the end of 14 days
35 pursuant to this article.

36 (b) The professional person in charge of the facility providing
37 intensive treatment, his or her designee, *the professional person*
38 *designated by the county*, the medical director of the facility or his
39 or her designee described in Section 5257, the psychiatrist directly
40 responsible for the person's treatment, or the psychologist shall

1 not be held civilly or criminally liable for any action by a person
2 released at the end of the 14 days pursuant to this article.

3 (c) The attorney or advocate representing the person, the
4 court-appointed commissioner or referee, the certification review
5 hearing officer conducting the certification review hearing, and
6 the peace officer responsible for the detainment of the person shall
7 not be civilly or criminally liable for any action by a person
8 released at or before the end of 14 days pursuant to this article.

9 (d) The amendments to this section made by Assembly Bill 348
10 of the 2003–04 Regular Session shall not be construed to revise
11 or expand the scope of practice of psychologists, as defined in
12 Chapter 6.6 (commencing with Section 2900) of Division 2 of the
13 Business and Professions Code.

14 ~~SEC. 10.~~

15 *SEC. 11.* If the Commission on State Mandates determines that
16 this act contains costs mandated by the state, reimbursement to
17 local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.