

Senate Bill No. 364

Passed the Senate September 6, 2013

Secretary of the Senate

Passed the Assembly September 3, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 5001, 5008, 5150, 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, 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, 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, among other things.

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 city or 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 and substance use disorders in the city or 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 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 require assessment and evaluation, as defined, to be provided on an ongoing basis and would authorize crisis intervention to be provided concurrently with assessment, evaluation, or any other service. The bill would also authorize a professional person in charge of a facility for evaluation and treatment to take custody of a person for this purpose. 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, and would require that the facility keep a record of the advisement. By requiring local mental health facilities to provide and maintain this additional information, this bill would impose a state-mandated local program.

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.

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

SECTION 1. Section 5001 of the Welfare and Institutions Code is amended to read:

5001. The provisions of this part and Part 1.5 (commencing with Section 5585) shall be construed to promote the legislative intent as follows:

(a) To end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders,

developmental disabilities, and chronic alcoholism, and to eliminate legal disabilities.

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

(c) To guarantee and protect public safety.

(d) To safeguard individual rights through judicial review.

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

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

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

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

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

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

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

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

(b) “Court-ordered evaluation” means an evaluation ordered by a superior court pursuant to Article 2 (commencing with Section 5200) or by a superior court pursuant to Article 3 (commencing with Section 5225) of Chapter 2.

(c) “Intensive treatment” consists of such hospital and other services as may be indicated. Intensive treatment shall be provided by properly qualified professionals and carried out in facilities

qualifying for reimbursement under the California Medical Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9, or under Title XVIII of the federal Social Security Act and regulations thereunder. Intensive treatment may be provided in hospitals of the United States government by properly qualified professionals. Nothing in this part shall be construed to prohibit an intensive treatment facility from also providing 72-hour evaluation and treatment.

(d) “Referral” is referral of persons by each agency or facility providing assessment, evaluation, crisis intervention, or treatment services to other agencies or individuals. The purpose of referral shall be to provide for continuity of care, and may include, but need not be limited to, informing the person of available services, making appointments on the person’s behalf, discussing the person’s problem with the agency or individual to which the person has been referred, appraising the outcome of referrals, and arranging for personal escort and transportation when necessary. Referral shall be considered complete when the agency or individual to whom the person has been referred accepts responsibility for providing the necessary services. All persons shall be advised of available precare services that prevent initial recourse to hospital treatment or aftercare services that support adjustment to community living following hospital treatment. These services may be provided through county or city mental health departments, state hospitals under the jurisdiction of the State Department of State Hospitals, regional centers under contract with the State Department of Developmental Services, or other public or private entities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) “Designated facility” or “facility designated by the county for evaluation and treatment” means a facility that is licensed or certified as a mental health treatment facility or a hospital, as defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code, by the State Department of Public Health, and may include, but is not limited to, a licensed psychiatric hospital, a licensed psychiatric health facility, and a certified crisis stabilization unit.

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

5013. (a) It is the intent of the Legislature that referrals between facilities, providers, and other organizations shall be

facilitated by the sharing of information and records in accordance with Section 5328 and applicable federal and state laws.

(b) Each city or county mental health department is encouraged to include on its Internet Web site a current list of ambulatory services and other resources for persons with mental health disorders and substance use disorders in the city or county that may be accessed by providers and consumers of mental health services. The list of services on the Internet Web site should be updated at least annually by the city or county mental health department.

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

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

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

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

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

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

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

5150. (a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation

and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. At a minimum, assessment, as defined in Section 5150.4, and evaluation, as defined in subdivision (a) of Section 5008, shall be conducted and provided on an ongoing basis. Crisis intervention, as defined in subdivision (e) of Section 5008, may be provided concurrently with assessment, evaluation, or any other service.

(b) The professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county shall assess the person to determine whether he or she can be properly served without being detained. If in the judgment of the professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county, the person can be properly served without being detained, he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis. Nothing in this subdivision shall be interpreted to prevent a peace officer from delivering individuals to a designated facility for assessment under this section. Furthermore, the assessment requirement of this subdivision shall not be interpreted to require peace officers to perform any additional duties other than those specified in Sections 5150.1 and 5150.2.

(c) Whenever a person is evaluated by a professional person in charge of a facility designated by the county for evaluation or treatment, member of the attending staff, or professional person designated by the county and is found to be in need of mental health services, but is not admitted to the facility, all available alternative services provided pursuant to subdivision (b) shall be offered as determined by the county mental health director.

(d) If, in the judgment of the professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or the professional person designated by the county, the person cannot be properly served without being detained, the admitting facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the peace officer, professional person in charge of the facility designated by the

county for evaluation and treatment, member of the attending staff, or professional person designated by the county, and stating that the peace officer, professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county has probable cause to believe that the person is, as a result of a mental health disorder, a danger to others, or to himself or herself, or gravely disabled. If the probable cause is based on the statement of a person other than the peace officer, professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county, the person shall be liable in a civil action for intentionally giving a statement which he or she knows to be false.

(e) At the time a person is taken into custody for evaluation, or within a reasonable time thereafter, unless a responsible relative or the guardian or conservator of the person is in possession of the person's personal property, the person taking him or her into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person. The person taking him or her into custody shall then furnish to the court a report generally describing the person's property so preserved and safeguarded and its disposition, in substantially the form set forth in Section 5211, except that if a responsible relative or the guardian or conservator of the person is in possession of the person's property, the report shall include only the name of the relative or guardian or conservator and the location of the property, whereupon responsibility of the person taking him or her into custody for that property shall terminate. As used in this section, "responsible relative" includes the spouse, parent, adult child, domestic partner, grandparent, grandchild, or adult brother or sister of the person.

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

My name is _____ .

I am a _____ .
(peace officer/mental health professional)

with _____ .
(name of agency)

You are not under criminal arrest, but I am taking you for an examination by
mental health professionals at _____ .

(name of facility)

You will be told your rights by the mental health staff.

(2) If taken into custody at his or her own residence, the person shall also be provided the following information:

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 Health Care Services.

(h) (1) Each person admitted to a facility designated by the county for evaluation and treatment shall be given the following information by admission staff of the facility. 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 primary means of communication. Accommodations for other

disabilities that may affect communication shall also be provided. The information shall be in substantially the following form:

My name is _____ .

My position here is _____ .

You are being placed into this psychiatric facility 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 believe this is true because

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

You will be held for a period up to 72 hours. During the 72 hours you may also be transferred to another facility. You may request to be evaluated or treated at a facility of your choice. You may request to be evaluated or treated by a mental health professional of your choice. We cannot guarantee the facility or mental health professional you choose will be available, but we will honor your choice if we can.

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

If you have questions about your legal rights, you may contact the county Patients' Rights Advocate at _____ (phone number for the county Patients' Rights

_____ Advocacy office)

Your 72-hour period began _____ (date/time)

(2) If the notice is given in a county where weekends and holidays are excluded from the 72-hour period, the patient shall be informed of this fact.

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

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

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

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

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

Prior to admitting a person to the facility for treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention.

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

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

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

5259.3. (a) Notwithstanding Section 5113, if the provisions of Section 5257 have been met, the professional person in charge of the facility providing intensive treatment, his or her designee,

the professional person designated by the county, the medical director of the facility or his or her designee described in Section 5257, the psychiatrist directly responsible for the person's treatment, or the psychologist shall not be held civilly or criminally liable for any action by a person released before the end of 14 days pursuant to this article.

(b) The professional person in charge of the facility providing intensive treatment, his or her designee, the professional person designated by the county, the medical director of the facility or his or her designee described in Section 5257, the psychiatrist directly responsible for the person's treatment, or the psychologist shall not be held civilly or criminally liable for any action by a person released at the end of the 14 days pursuant to this article.

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

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

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

Approved _____, 2013

Governor