

ASSEMBLY BILL

No. 1764

Introduced by Assembly Member Waldron

February 3, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1764, as introduced, Waldron. Mental health services: assisted outpatient treatment.

Existing law, the Assisted Outpatient Treatment Demonstration Project Act of 2002, known as Laura's Law, until January 1, 2017, grants each county the authority to offer certain assisted outpatient treatment services for its residents by adopting a resolution or through the county budget process and by making a finding that no mental health program, as specified, may be reduced as a result of implementation. Under that law, participating counties are required to provide prescribed assisted outpatient services, including a service planning and delivery process, that are client-directed and employ psychosocial rehabilitation and recovery principles. Existing law authorizes participating counties to pay for the services provided from moneys distributed to the counties from various continuously appropriated funds, including the Mental Health Services Fund when included in a county plan, as specified.

Existing law authorizes designated persons to request the county behavioral health director to file a petition in the superior court for an order for assisted outpatient treatment, for an initial period not to exceed 6 months, for a person who meets specified criteria. Existing law requires the county behavioral health director to investigate the

appropriateness of filing the petition. Existing law also provides specified rights to a person who is the subject of the petition.

This bill would make technical, nonsubstantive changes to those provisions.

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

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

1 SECTION 1. Section 5346 of the Welfare and Institutions Code
2 is amended to read:

3 5346. (a) In any county in which 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.

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

19 (A) The person's mental illness has, at least twice within the
20 last 36 months, been a substantial factor in necessitating
21 hospitalization, or receipt of services in a forensic or other mental
22 health unit of a state correctional facility or local correctional
23 facility, not including any period during which the person was
24 hospitalized or incarcerated immediately preceding the filing of
25 the petition.

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

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

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

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

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

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

17 (b) (1) A petition for an order authorizing assisted outpatient
18 treatment may be filed by the county behavioral health director,
19 or his or her designee, in the superior court in the county in which
20 the person who is the subject of the petition is present or reasonably
21 believed to be present.

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

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

27 (B) Any person who is the parent, spouse, or sibling or child
28 18 years of age or older of the person who is the subject of the
29 petition.

30 (C) The director of any public or private agency, treatment
31 facility, charitable organization, or licensed residential care facility
32 providing mental health services to the person who is the subject
33 of the petition in whose institution the subject of the petition
34 resides.

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

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

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

3 (3) Upon receiving a request pursuant to paragraph (2), the
4 county behavioral health director shall conduct an investigation
5 into the appropriateness of the filing of the petition. The director
6 shall file the petition only if he or she determines that there is a
7 reasonable likelihood that all the necessary elements to sustain the
8 petition can be proven in a court of law by clear and convincing
9 evidence.

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

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

13 (B) Facts that support the petitioner's belief that the person who
14 is the subject of the petition meets each criterion, provided that
15 the hearing on the petition shall be limited to the stated facts in
16 the verified petition, and the petition contains all the grounds on
17 which the petition is based, in order to ensure adequate notice to
18 the person who is the subject of the petition and his or her counsel.

19 (C) That the person who is the subject of the petition is present,
20 or is reasonably believed to be present, within the county where
21 the petition is filed.

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

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

29 (A) That the licensed mental health treatment provider has
30 personally examined the person who is the subject of the petition
31 no more than 10 days prior to the submission of the petition, the
32 facts and reasons why the person who is the subject of the petition
33 meets the criteria in subdivision (a), that the licensed mental health
34 treatment provider recommends assisted outpatient treatment for
35 the person who is the subject of the petition, and that the licensed
36 mental health treatment provider is willing and able to testify at
37 the hearing on the petition.

38 (B) That no more than 10 days prior to the filing of the petition,
39 the licensed mental health treatment provider, or his or her
40 designee, has made appropriate attempts to elicit the cooperation

1 of the person who is the subject of the petition, but has not been
2 successful in persuading that person to submit to an examination,
3 that the licensed mental health treatment provider has reason to
4 believe that the person who is the subject of the petition meets the
5 criteria for assisted outpatient treatment, and that the licensed
6 mental health treatment provider is willing and able to examine
7 the person who is the subject of the petition and testify at the
8 hearing on the petition.

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

15 (d) (1) Upon receipt by the court of a petition submitted
16 pursuant to subdivision (b), the court shall fix the date for a hearing
17 at a time not later than five days from the date the petition is
18 received by the court, excluding Saturdays, Sundays, and holidays.
19 The petitioner shall promptly cause service of a copy of the
20 petition, together with written notice of the hearing date, to be
21 made personally on the person who is the subject of the petition,
22 and shall send a copy of the petition and notice to the county office
23 of patient rights, and to the current health care provider appointed
24 for the person who is the subject of the petition, ~~if any such~~ *that*
25 provider is known to the petitioner. Continuances shall be permitted
26 only for good cause shown. In granting continuances, the court
27 shall consider the need for further examination by a physician or
28 the potential need to provide expeditiously assisted outpatient
29 treatment. Upon the hearing date, or upon any other date or dates
30 to which the proceeding may be continued, the court shall hear
31 testimony. If it is deemed advisable by the court, and if the person
32 who is the subject of the petition is available and has received
33 notice pursuant to this section, the court may examine in or out of
34 court the person who is the subject of the petition who is alleged
35 to be in need of assisted outpatient treatment. If the person who is
36 the subject of the petition does not appear at the hearing, and
37 appropriate attempts to elicit the attendance of the person have
38 failed, the court may conduct the hearing in the person's absence.
39 If the hearing is conducted without the person present, the court

1 shall set forth the factual basis for conducting the hearing without
2 the person's presence.

3 (2) The court shall not order assisted outpatient treatment unless
4 an examining licensed mental health treatment provider, who has
5 personally examined, and has reviewed the available treatment
6 history of, the person who is the subject of the petition within the
7 time period commencing 10 days before the filing of the petition,
8 testifies in person at the hearing.

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

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

30 (A) To adequate notice of the hearings to the person who is the
31 subject of the petition, as well as to parties designated by the person
32 who is the subject of the petition.

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

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

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

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

40 (F) To present evidence.

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

2 (H) To cross-examine witnesses.

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

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

9 (B) If after hearing all relevant evidence, the court finds that
10 the person who is the subject of the petition meets the criteria for
11 assisted outpatient treatment, and there is no appropriate and
12 feasible less restrictive alternative, the court may order the person
13 who is the subject of the petition to receive assisted outpatient
14 treatment for an initial period not to exceed six months. In
15 fashioning the order, the court shall specify that the proposed
16 treatment is the least restrictive treatment appropriate and feasible
17 for the person who is the subject of the petition. The order shall
18 state the categories of assisted outpatient treatment, as set forth in
19 Section 5348, that the person who is the subject of the petition is
20 to receive, and the court may not order treatment that has not been
21 recommended by the examining licensed mental health treatment
22 provider and included in the written treatment plan for assisted
23 outpatient treatment as required by subdivision (e). If the person
24 has executed an advance health care directive pursuant to Chapter
25 2 (commencing with Section 4650) of Part 1 of Division 4.7 of
26 the Probate Code, any directions included in the advance health
27 care directive shall be considered in formulating the written
28 treatment plan.

29 (6) If the person who is the subject of a petition for an order for
30 assisted outpatient treatment pursuant to subparagraph (B) of
31 paragraph (5) of subdivision (d) refuses to participate in the assisted
32 outpatient treatment program, the court may order the person to
33 meet with the assisted outpatient treatment team designated by the
34 director of the assisted outpatient treatment program. The treatment
35 team shall attempt to gain the person's cooperation with treatment
36 ordered by the court. The person may be subject to a 72-hour hold
37 pursuant to subdivision (f) only after the treatment team has
38 attempted to gain the person's cooperation with treatment ordered
39 by the court, and has been unable to do so.

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

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

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

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

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

(f) If, in the clinical judgment of a licensed mental health treatment provider, the person who is the subject of the petition has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the licensed mental health treatment provider, efforts were made to solicit compliance, and, in the clinical judgment of the licensed mental health treatment provider, the person may be in need of involuntary admission to a hospital for evaluation, the provider may request that persons designated under Section 5150 take into custody the person who is the subject of the petition and transport him or her, or cause him or her to be transported, to a hospital, to be held up to 72 hours for examination by a licensed mental health treatment provider to determine if the person is in need of treatment pursuant to Section 5150. Any continued involuntary retention in a hospital beyond the initial 72-hour period shall be pursuant to Section 5150. If at any time during the 72-hour period the person is determined not to meet the criteria of Section 5150, and does not agree to stay in the hospital as a voluntary patient, he or she shall be released and any subsequent involuntary detention in a hospital shall be pursuant to Section 5150. Failure to comply with an order of assisted outpatient treatment alone may not be grounds for involuntary civil commitment or a finding that the person who is the subject of the petition is in contempt of court.

1 (g) If the director of the assisted outpatient treatment program
2 determines that the condition of the patient requires further assisted
3 outpatient treatment, the director shall apply to the court, prior to
4 the expiration of the period of the initial assisted outpatient
5 treatment order, for an order authorizing continued assisted
6 outpatient treatment for a period not to exceed 180 days from the
7 date of the order. The procedures for obtaining any order pursuant
8 to this subdivision shall be in accordance with subdivisions (a) to
9 (f), inclusive. The period for further involuntary outpatient
10 treatment authorized by any subsequent order under this
11 subdivision may not exceed 180 days from the date of the order.

12 (h) At intervals of not less than 60 days during an assisted
13 outpatient treatment order, the director of the outpatient treatment
14 program shall file an affidavit with the court that ordered the
15 outpatient treatment affirming that the person who is the subject
16 of the order continues to meet the criteria for assisted outpatient
17 treatment. At these times, the person who is the subject of the order
18 shall have the right to a hearing on whether or not he or she still
19 meets the criteria for assisted outpatient treatment if he or she
20 disagrees with the director's affidavit. The burden of proof shall
21 be on the director.

22 (i) During each 60-day period specified in subdivision (h), if
23 the person who is the subject of the order believes that he or she
24 is being wrongfully retained in the assisted outpatient treatment
25 program against his or her wishes, he or she may file a petition for
26 a writ of habeas corpus, thus requiring the director of the assisted
27 outpatient treatment program to prove that the person who is the
28 subject of the order continues to meet the criteria for assisted
29 outpatient treatment.

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