

AMENDED IN ASSEMBLY MARCH 23, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1800

**Introduced by Assembly Member Thomson and Senator
Perata
(Coauthors: Assembly Members Alquist, Dutra, Kuehl,
Lempert, Mazzoni, Soto, and Washington)**

January 27, 2000

An act to amend Section 2600 of the Penal Code, and to amend Sections 5008, 5250, 5256.5, 5256.6, 5257, 5259.3, 5270.15, 5270.55, 5300, 5301, 5304, ~~5331~~ 5332, 5334, 5336, and 5350 of, ~~to repeal Sections 5325.2, 5332, 5333, 5334, and 5336 of,~~ and to repeal and add Article 4.5 (commencing with Section 5260) of Chapter 2 of Part 1 of Division 5 of the ~~Health and Safety Welfare and Institutions~~ Code, relating to health, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1800, as amended, Thomson. Mental health.

Existing law, the Lanterman-Petris-Short Act, authorizes the involuntary detention for a period of 72 hours for evaluation of persons who are dangerous to self or others, or gravely disabled, as defined. Existing law requires each person admitted to a facility for 72-hour treatment and evaluation to receive an evaluation as soon after he or she is admitted as possible and receive whatever treatment and care his or her condition requires for the full period that he or she is held. Existing law further provides that if a person is detained for

72 hours or under court order for evaluation and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism if certain conditions are met.

This bill would extend the 14-day period of intensive treatment to 28 days, and would make additional conforming changes.

Existing law also provides for a further period of intensive treatment of 180 days after the expiration of the initial period of intensive treatment if certain conditions exist.

This bill would extend that period of intensive treatment to one year and would require that proof of the existence of these conditions be made by clear and convincing evidence.

This bill would redefine the term gravely disabled for purposes of the evaluation of persons to appraise their need for intensive treatment.

Existing law requires that certain procedures be followed in all cases of involuntary 14-day intensive treatment.

This bill would revise those requirements to, instead, provide for the placement of certain persons committed for a 72-hour or 14-day period in community assisted *outpatient* treatment programs, if specific conditions exist, and would require that if the patient does not or cannot abide by the terms of the treatment plan, he or she shall be returned to inpatient treatment for the remaining days of the underlying treatment certification. *It would also permit persons diagnosed with severe and persistent mental illness to receive treatment in community assisted outpatient treatment programs if certain conditions are met.*

Existing law establishes procedures for the provision of psychotropic drugs to patients who have been certified for involuntary treatment.

The bill would revise procedures for the determination of whether a person who is certified to be involuntarily detained for involuntary care, protection, and treatment lacks capacity to refuse treatment with psychotropic drugs.

This bill would appropriate \$350,000,000 to the ~~Controller~~ *State Department of Mental Health* for allocation ~~for the purposes of this bill~~ *to participating counties.*



Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 2600 of the Penal Code is
2 amended to read:

3 2600. A person sentenced to imprisonment in a state
4 prison may during that period of confinement be
5 deprived of such rights, and only such rights, as is
6 reasonably related to legitimate penological interests.

7 Nothing in this section shall be construed to permit the
8 involuntary administration of psychotropic medication
9 unless the process specified in the permanent injunction,
10 dated October 31, 1986, in the matter of Keyhea v.
11 Rushen, 178 Cal. App. 3d 526, has been followed. In
12 addition, the process shall ~~reflect the standard in the~~
13 ~~community for treatment, including the treatment of~~
14 ~~persons who are gravely disabled, as that term is defined~~
15 *utilize the definition of "gravely disabled"* in subdivision
16 (h) of Section 5008 of the Welfare and Institutions Code,
17 and who are routinely provided with food, clothing, and
18 shelter by the penal institution. The judicial hearing for
19 the authorization for the involuntary administration of
20 psychotropic medication provided for in Part III of the
21 injunction shall be conducted by an administrative law
22 judge. The hearing may, at the direction of the director,
23 be conducted at the facility where the inmate is located.

24 Nothing in this section shall be construed to overturn
25 the decision in Thor v. Superior Court, 5 Cal. 4th 725.

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

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

31 (a) "Evaluation" consists of multidisciplinary
32 professional analyses of a person's medical, psychological,
33 educational, social, financial, and legal conditions as may
34 appear to constitute a problem. Persons providing
35 evaluation services shall be properly qualified



1 professionals and may be full-time employees of an
2 agency providing evaluation services or may be part-time
3 employees or may be employed on a contractual basis.

4 (b) “Court-ordered evaluation” means an evaluation
5 ordered by a superior court pursuant to Article 2
6 (commencing with Section 5200) or by a court pursuant
7 to Article 3 (commencing with Section 5225) of Chapter
8 2.

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

22 (d) “Referral” is referral of persons by each agency or
23 facility providing intensive treatment or evaluation
24 services to other agencies or individuals. The purpose of
25 referral shall be to provide for continuity of care, and may
26 include, but need not be limited to, informing the person
27 of available services, making appointments on the
28 person’s behalf, discussing the person’s problem with the
29 agency or individual to which the person has been
30 referred, appraising the outcome of referrals, and
31 arranging for personal escort and transportation when
32 necessary. Referral shall be considered complete when
33 the agency or individual to whom the person has been
34 referred accepts responsibility for providing the
35 necessary services. All persons shall be advised of
36 available precare services which prevent initial recourse
37 to hospital treatment or aftercare services which support
38 adjustment to community living following hospital
39 treatment. These services may be provided through
40 county welfare departments, State Department of



1 Mental Health, Short-Doyle programs or other local
2 agencies.

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

9 (e) “Crisis intervention” consists of an interview or
10 series of interviews within a brief period of time,
11 conducted by qualified professionals, and designed to
12 alleviate personal or family situations which present a
13 serious and imminent threat to the health or stability of
14 the person or the family. The interview or interviews may
15 be conducted in the home of the person or family, or on
16 an inpatient or outpatient basis with such therapy, or
17 other services, as may be appropriate. Crisis intervention
18 may, as appropriate, include suicide prevention,
19 psychiatric, welfare, psychological, legal, or other social
20 services.

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

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

38 (h) (1) For purposes of Article 1 (commencing with
39 Section 5150), Article 2 (commencing with Section 5200),
40 and Article 4 (commencing with Section 5250) of



1 Chapter 2, and for the purposes of Chapter 3
2 (commencing with Section 5350), “gravely disabled”
3 means either of the following:

4 (A) A condition in which a person, as a result of a
5 mental disorder, is unable to provide for his or her basic
6 personal needs for food, clothing, or shelter, or ~~has a prior~~
7 ~~history of mental illness and again presents clear evidence~~
8 ~~of a recurrence that poses a serious risk of substantial~~
9 ~~deterioration that is likely to result in serious~~ *presents, as*
10 *a result of mental disorder, an acute risk of physical or*
11 *psychiatric* harm to the person in the absence of
12 treatment.

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

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

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

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

26 (2) For purposes of Article 3 (commencing with
27 Section 5225) and Article 4 (commencing with Section
28 5250), of Chapter 2, and for the purposes of Chapter 3
29 (commencing with Section 5350), “gravely disabled”
30 means a condition in which a person, as a result of
31 impairment by chronic alcoholism, is unable to provide
32 for his or her basic personal needs for food, clothing, or
33 shelter.

34 (3) The term “gravely disabled” does not include
35 mentally retarded persons by reason of being mentally
36 retarded alone.

37 (i) “Peace officer” means a duly sworn peace officer
38 as that term is defined in Chapter 4.5 (commencing with
39 Section 830) of Title 3 of Part 2 of the Penal Code who has
40 completed the basic training course established by the



1 Commission on Peace Officer Standards and Training, or
2 any parole officer or probation officer specified in Section
3 830.5 of the Penal Code when acting in relation to cases
4 for which he or she has a legally mandated responsibility.

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

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

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

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

21 SEC. 3. Section 5250 of the Welfare and Institutions
22 Code is amended to read:

23 5250. If a person is detained for 72 hours under the
24 provisions of Article 1 (commencing with Section 5150),
25 or under court order for evaluation pursuant to Article 2
26 (commencing with Section 5200) or Article 3
27 (commencing with Section 5225) and has received an
28 evaluation, he or she may be certified for not more than
29 28 days of intensive treatment related to the mental
30 disorder or impairment by chronic alcoholism, under the
31 following conditions:

32 (a) The professional staff of the agency or facility
33 providing evaluation services has analyzed the person’s
34 condition and has found the person is, as a result of mental
35 disorder or impairment by chronic alcoholism, a danger
36 to others, or to himself or herself, or gravely disabled.

37 (b) The facility providing intensive treatment is
38 designated by the county to provide intensive treatment,
39 and agrees to admit the person. No facility shall be
40 designated to provide intensive treatment unless it



1 complies with the certification review hearing required
2 by this article. The procedures shall be described in the
3 county Short-Doyle plan.

4 (c) The person has been advised of the need for, but
5 has not been willing or able to accept, treatment on a
6 voluntary basis.

7 (d) (1) Notwithstanding paragraph (1) of subdivision
8 (h) of Section 5008, a person is not “gravely disabled” if
9 that person can survive safely without involuntary
10 detention with the help of responsible family, friends, or
11 others who are both willing and able to help provide for
12 the person’s basic personal needs for food, clothing, or
13 shelter *and who are willing and able to assist the person*
14 *in meeting his or her medical and psychiatric needs.*

15 (2) However, unless they specifically indicate in
16 writing their willingness and ability to help, family,
17 friends, or others shall not be considered willing or able
18 to provide this help.

19 (3) The purpose of this subdivision is to avoid the
20 necessity for, and the harmful effects of, requiring family,
21 friends, and others to publicly state, and requiring the
22 certification review officer to publicly find, that no one is
23 willing or able to assist the mentally disordered person in
24 providing for the person’s basic needs for food, clothing,
25 or shelter.

26 SEC. 4. Section 5256.5 of the Welfare and Institutions
27 Code is amended to read:

28 5256.5. If at the conclusion of the certification review
29 hearing the person conducting the hearing finds that
30 there is not probable cause to believe that the person
31 ~~certified is, as a result of a mental disorder or impairment~~
32 ~~by chronic alcoholism, a danger to himself or herself, or~~
33 ~~gravely disabled, and lacks the capacity to make informed~~
34 ~~decisions regarding his or her own treatment, or a danger~~
35 ~~to others certified should be involuntarily detained,~~ then
36 the person certified may no longer be involuntarily
37 detained. Nothing in this section shall prohibit the person
38 from remaining at the facility on a voluntary basis or the
39 facility from providing the person with appropriate
40 referral information concerning mental health services.



1 SEC. 5. Section 5256.6 of the Welfare and Institutions
2 Code is amended to read:

3 5256.6. (a) ~~If at the conclusion of the certification~~
4 ~~review hearing the person conducting the hearing finds~~
5 ~~that there is probable cause that the person certified is,~~
6 ~~as a result of a mental disorder or impairment by chronic~~
7 ~~alcoholism, a danger to himself or herself, or gravely~~
8 ~~disabled, and lacks the capacity to make informed~~
9 ~~decisions regarding his or her own treatment, or a danger~~
10 ~~to others, then the person may be detained for~~
11 ~~involuntary care, protection, and treatment related to~~
12 ~~the mental disorder or impairment by chronic alcoholism~~
13 ~~pursuant to Sections 5250 and 5270.15. determines that~~
14 ~~there is probable cause to believe that the person~~
15 ~~certified should be involuntarily detained, that person~~
16 ~~may be detained for involuntary care, protection, and~~
17 ~~treatment related to the mental disorder or impairment~~
18 ~~by chronic alcoholism for which he or she is involuntarily~~
19 ~~detained.~~

20 (b) *If the person certified refuses treatment with*
21 *psychotropic medication within the meaning of Section*
22 *5332, the person conducting the hearing shall also*
23 *determine whether the person certified lacks capacity to*
24 *make an informed refusal of the treatment. If the hearing*
25 *officer determines that the person certified lacks capacity*
26 *to refuse the treatment, the person certified may be*
27 *treated with psychotropic medications without consent*
28 *during the period of certification.*

29 (c) *At the request of the patient, the decisions of the*
30 *certification hearing officer may be reviewed by the*
31 *court pursuant to Section 5275. The court shall consider*
32 *issues of the patient's capacity by hearing evidence de*
33 *novo, as provided in subdivision (f) of Section 5334.*
34 *Unless good cause is shown to the contrary, all capacity*
35 *hearings in the superior court relating to the patient's*
36 *capacity to refuse treatment by psychotropic medications*
37 *shall be heard concurrently with the judicial review*
38 *provided for in Section 5275.*

39 (d) *If the person conducting the certification hearing*
40 *determines that the patient does not lack capacity to*



1 *refuse treatment by psychotropic medications, judicial*
2 *review of the decision may be initiated by the director or*
3 *the director's designee pursuant to subdivision (b) of*
4 *Section 5333 and paragraph (2) of subdivision (e) of*
5 *Section 5334. The superior court shall conduct the*
6 *hearing de novo, as provided in subdivision (f) of Section*
7 *5334.*

8 *(e) If any person is certified for intensive medical*
9 *treatment pursuant to this section, the agency or facility*
10 *providing the treatment shall acquire his or her*
11 *medication history.*

12 SEC. 6. Section 5257 of the Welfare and Institutions
13 Code is amended to read:

14 5257. During the period of intensive treatment
15 pursuant to Section 5250 or 5270.15, only if the psychiatrist
16 directly responsible for the person's treatment believes,
17 as a result of his or her personal observations, that the
18 person certified no longer is, as a result of mental disorder
19 or impairment by chronic alcoholism, a danger to others,
20 or to himself or herself, or gravely disabled, then the
21 person's involuntary detention shall end and the person
22 shall be released. If any other professional person who is
23 authorized to release the person believes the person
24 should be released during the designated period of
25 intensive treatment, and the psychiatrist directly
26 responsible for the person's treatment objects, the matter
27 shall be referred to the medical director of the facility for
28 the final decision. However, if the medical director is not
29 a psychiatrist, he or she shall appoint a designee who is a
30 psychiatrist. If the matter is referred, the person shall be
31 released during the period of intensive treatment only if
32 the psychiatrist making the final decision believes, as a
33 result of his or her personal observations, that the person
34 certified no longer is, as a result of mental disorder or
35 impairment by chronic alcoholism, a danger to others, or
36 to himself or herself, or gravely disabled. Nothing in this
37 section shall prohibit either the person remaining at the
38 facility on a voluntary basis or the facility from providing
39 the person with appropriate referral information
40 concerning mental health services.



1 A person who has been certified for a period of
2 intensive treatment pursuant to Section 5250 shall be
3 released at the end of 28 days unless the patient either:

4 (a) Agrees to receive further treatment on a voluntary
5 basis.

6 (b) Is certified for an additional 180 days of community
7 assisted outpatient treatment pursuant to Article 4.5
8 (commencing with Section 5260).

9 (c) Is certified for an additional 30 days of intensive
10 treatment pursuant to Article 4.7 (commencing with
11 Section 5270.10).

12 (d) Is the subject of a conservatorship petition filed
13 pursuant to Chapter 3 (commencing with Section 5350).

14 (e) Is the subject of a ~~petition~~ *Petition* for
15 Postcertification of an ~~Imminently~~ *a* Dangerous Person
16 filed pursuant to Article 6 (commencing with Section
17 5300).

18 SEC. 7. Section 5259.3 of the Welfare and Institutions
19 Code is amended to read:

20 5259.3. (a) Notwithstanding Section 5113, if the
21 provisions of Section 5257 have been met, the professional
22 person in charge of the facility providing intensive
23 treatment, his or her designee, the medical director of the
24 facility or his or her designee described in Section 5257,
25 and the psychiatrist directly responsible for the person's
26 treatment shall not be held civilly or criminally liable for
27 any action by a person released before the end of 28 days
28 pursuant to this article.

29 (b) The professional person in charge of the facility
30 providing intensive treatment, his or her designee, the
31 medical director of the facility or his or her designee
32 described in Section 5257, and the psychiatrist directly
33 responsible for the person's treatment shall not be held
34 civilly or criminally liable for any action by a person
35 released at the end of the 28 days pursuant to this article.

36 (c) The attorney or advocate representing the person,
37 the court-appointed commissioner or referee, the
38 certification review hearing officer conducting the
39 certification review hearing, and the peace officer
40 responsible for the detainment of the person shall not be



1 civilly or criminally liable for any action by a person
2 released at or before the end of 28 days pursuant to this
3 article.

4 SEC. 8. Article 4.5 (commencing with Section 5260)
5 of Chapter 2 of Part 1 of Division 5 of the Welfare and
6 Institutions Code is repealed.

7 SEC. 9. Article 4.5 (commencing with Section 5260)
8 is added to Chapter 2 of Part 1 of Division 5 of the Welfare
9 and Institutions Code, to read:

10

11 Article 4.5. Community Assisted Outpatient
12 Treatment Programs

13

14 5260. Persons committed pursuant to Sections 5150
15 and 5250 shall be placed in community assisted outpatient
16 treatment programs for 180 days if all of the following
17 conditions exist:

18 (a) ~~The treating physician thinks~~ *A hearing officer*
19 *finds* that he or she requires continuing treatment and
20 care under supervised conditions to maintain and
21 improve recovery and the person is sufficiently stable to
22 benefit from community ~~placement~~ *treatment in an*
23 *appropriate unlocked setting.*

24 (b) The person agrees to community assisted
25 outpatient treatment.

26 (c) The person does not present an immediate harm
27 to self or others.

28 (d) ~~A community assisted treatment program is~~
29 ~~available and willing to accept the person.~~

30 (e)

31 (d) A community treatment plan is prepared by the
32 ~~treating physician and the community treatment~~
33 ~~program~~ *multidisciplinary outpatient treatment team*
34 and is agreed to by all parties.

35 5260.1. *A community assisted outpatient treatment*
36 *program shall include all of the following:*

37 (a) (1) *A multidisciplinary team of providers*
38 *consisting of a combination of physicians, psychologists,*
39 *and other licensed mental health providers, nurses, social*
40 *workers, substance abuse specialists, vocational*



1 *rehabilitation counselors, peer counselors, and an assisted*
2 *outpatient care expeditor. This team shall, in consultation*
3 *with the client and any family members involved in the*
4 *client's day-to-day care, develop and implement an*
5 *individualized community assisted outpatient treatment*
6 *program to ensure the client receives all necessary*
7 *support and care to maximize the effectiveness of*
8 *treatment and reduce the risk of noncompliance and*
9 *subsequent custodial retention pursuant to Section 5150.*

10 (2) *For purposes of this article, "assisted outpatient*
11 *care expeditor" means a current or former mental health*
12 *client who will coordinate all services provided to the*
13 *client pursuant to this section.*

14 (b) *The treatment plan shall include all of the*
15 *following:*

16 (1) *Immediate crisis response 24 hours a day, seven*
17 *days a week.*

18 (2) *Direct coordination of all medical, psychiatric, and*
19 *general health care.*

20 (3) *Help in managing symptoms of mental illness.*

21 (4) *Provision and supervision of prescribed*
22 *medication.*

23 (5) *Supportive therapy including dual diagnosis.*

24 (6) *Periodic blood or urine testing to verify*
25 *compliance.*

26 (7) *Individual or group therapy, or both.*

27 (8) *Day or partial day programs.*

28 (9) *Family support and outreach.*

29 (10) *Client-site requested support in coping with life's*
30 *daily demands including assistance with any or all of the*
31 *following:*

32 (A) *Obtaining financial entitlements through the*
33 *federal Supplemental Security Income (SSI) program,*
34 *the federal Social Security Disability Insurance (SSDI)*
35 *program, and the Medi-Cal program.*

36 (B) *Obtaining available insurance coverage.*

37 (C) *Accessing housing and residential vouchers.*

38 (D) *Learning how to live independently or with a*
39 *roommate.*



1 (E) Accessing treatment for coexisting substance
2 abuse.

3 (F) Accessing vocational service and helping to find
4 employment.

5 (G) Dealing with legal issues.

6 5261. In the event the patient does not or cannot
7 abide by the terms of the agreed upon community
8 treatment plan, including medication compliance, and
9 the person poses ~~a risk of substantial~~ *an acute risk of*
10 *physical or psychiatric* deterioration, the person may, by
11 *court order*, be returned to inpatient treatment for the
12 remaining days of the underlying involuntary treatment
13 certification.

14 5262. *Persons diagnosed with severe and persistent*
15 *mental illness may receive treatment in community*
16 *assisted outpatient treatment programs for 180 days if all*
17 *of the following requirements are met:*

18 (a) *The person agrees to community assisted*
19 *outpatient treatment.*

20 (b) *The person does not present an immediate harm*
21 *to self or others.*

22 (c) *A community treatment plan is prepared by the*
23 *multidisciplinary outpatient treatment team and is*
24 *agreed to by all parties.*

25 SEC. 10. Section 5270.15 of the Welfare and
26 Institutions Code is amended to read:

27 5270.15. Upon the completion of a 28-day period of
28 intensive treatment pursuant to Section 5250, the person
29 may be certified for an additional period of not more than
30 30 days of intensive treatment under both of the following
31 conditions:

32 (a) The professional staff of the agency or facility
33 treating the person has found that the person remains
34 gravely disabled as a result of a mental disorder or
35 impairment by chronic alcoholism.

36 (b) The person remains unwilling or unable to accept
37 treatment voluntarily.

38 Any person certified for an additional 30 days pursuant
39 to this article shall be provided a certification review
40 hearing in accordance with Section 5256 unless a judicial



1 review is requested pursuant to Article 5 (commencing
2 with Section 5275).

3 The professional staff of the agency or facility providing
4 intensive treatment shall analyze the person's condition
5 at intervals of not to exceed 10 days, to determine
6 whether the person continues to meet the criteria
7 established for certification under this section, and shall
8 daily monitor the person's treatment plan and progress.
9 Termination of this certification prior to the 30th day shall
10 be made pursuant to Section 5270.35.

11 SEC. 11. Section 5270.55 of the Welfare and
12 Institutions Code is amended to read:

13 5270.55. (a) Whenever it is contemplated that a
14 gravely disabled person may need to be detained beyond
15 the end of the 28-day period of intensive treatment and
16 prior to proceeding with an additional 30-day
17 certification, the professional person in charge of the
18 facility shall cause an evaluation to be made, based on the
19 patient's current condition and past history, as to whether
20 it appears that the person, even after up to 30 days of
21 additional treatment, is likely to qualify for appointment
22 of a conservator. If the appointment of a conservator
23 appears likely, the conservatorship referral shall be made
24 during the 28-day period of intensive treatment.

25 (b) If it appears that with up to 30 days additional
26 treatment a person is likely to reconstitute sufficiently to
27 obviate the need for appointment of a conservator, then
28 the person may be certified for the additional 30 days.

29 (c) Where no conservatorship referral has been made
30 during the 28-day period and where during the 30-day
31 certification it appears that the person is likely to require
32 the appointment of a conservator, then the
33 conservatorship referral shall be made to allow sufficient
34 time for conservatorship investigation and other related
35 procedures. If a temporary conservatorship is obtained,
36 it shall run concurrently with and not consecutively to the
37 30-day certification period. The conservatorship hearing
38 shall be held by the 30th day of the certification period.
39 The maximum involuntary detention period for gravely
40 disabled persons pursuant to Sections 5150, 5250 and



1 5270.15 shall be limited to 61 days. Nothing in this section
2 shall prevent a person from exercising his or her right to
3 a hearing as stated in Sections 5275 and 5353.

4 SEC. 12. Section 5300 of the Welfare and Institutions
5 Code is amended to read:

6 5300. (a) At the expiration of the 28-day period of
7 intensive treatment, a person may be confined for further
8 treatment pursuant to the provisions of this article for an
9 additional period, not to exceed one year if it is proved by
10 clear and convincing evidence that one of the following
11 exists:

12 (1) The person has attempted, inflicted, or made a
13 serious threat of substantial physical harm upon the
14 person of another after having been taken into custody,
15 and while in custody, for evaluation and treatment, and
16 who, as a result of mental disorder or mental defect,
17 presents a demonstrated danger of inflicting substantial
18 physical harm upon others.

19 (2) The person had attempted, or inflicted physical
20 harm upon the person of another, that act having resulted
21 in his or her being taken into custody and who presents,
22 as a result of mental disorder or mental defect, a
23 demonstrated danger of inflicting substantial physical
24 harm upon others.

25 (3) The person had made a serious threat of substantial
26 physical harm upon the person of another within seven
27 days of being taken into custody, that threat having at
28 least in part resulted in his or her being taken into
29 custody, and the person presents, as a result of mental
30 disorder or mental defect, a demonstrated danger of
31 inflicting substantial physical harm upon others.

32 (b) Any commitment to a licensed health facility
33 under this article places an affirmative obligation on the
34 facility to provide treatment for the underlying causes of
35 the person's mental disorder.

36 (c) Amenability to treatment is not required for a
37 finding that any person is a person as described in
38 paragraph (1), (2), or (3) of subdivision (a). Treatment
39 programs need only be made available to these persons.
40 Treatment does not mean that the treatment be



1 successful or potentially successful, and it does not mean
2 that the person must recognize his or her problem and
3 willingly participate in the treatment program.

4 SEC. 13. Section 5301 of the Welfare and Institutions
5 Code is amended to read:

6 5301. At any time during the 28-day intensive
7 treatment period the professional person in charge of the
8 licensed health facility, or his or her designee, may ask the
9 public officer required by Section 5114 to present
10 evidence at proceedings under this article to petition the
11 superior court in the county in which the licensed health
12 facility providing treatment is located for an order
13 requiring the person to undergo an additional period of
14 treatment on the grounds set forth in Section 5300. The
15 petition shall summarize the facts that support the
16 contention that the person falls within the standard set
17 forth in Section 5300. The petition shall be supported by
18 affidavits describing in detail the behavior that indicates
19 that the person falls within the standard set forth in
20 Section 5300.

21 Copies of the petition for postcertification treatment
22 and the affidavits in support thereof shall be served upon
23 the person named in the petition on the same day as they
24 are filed with the clerk of the superior court.

25 The petition shall be in the following form:

26
27 Petition for Postcertification Treatment of a
28 Dangerous Person
29

30 I, _____, (the professional person in charge of the
31 _____ intensive treatment facility) (the designee of
32 _____ the professional person in charge of the
33 _____, treatment facility) in which _____ has been
34 under treatment pursuant to the certification by _____
35 and _____, hereby petition the court for an order
36 requiring _____ to undergo an additional period of
37 treatment, not to exceed 180 days, pursuant to the
38 provisions of Article 6 (commencing with Section 5300)
39 of Chapter 2 of Part 1 of Division 5 of the Welfare and
40 Institutions Code. The petition is based upon my



1 allegation that (a) _____ has attempted, inflicted, or
 2 made a serious threat of substantial physical harm upon
 3 the person of another after having been taken into
 4 custody, and while in custody, for evaluation, and that, by
 5 reason of mental disorder or mental defect, presents a
 6 demonstrated danger of inflicting substantial physical
 7 harm upon others, or that (b) _____ had attempted or
 8 inflicted physical harm upon the person of another, that
 9 act having resulted in his or her being taken into custody,
 10 and that he or she presents, as a result of mental disorder
 11 or mental defect, a demonstrated danger of inflicting
 12 substantial physical harm upon others, or that (c)
 13 _____ had made a serious threat of substantial physical
 14 harm upon the person of another within seven days of
 15 being taken into custody, that threat having at least in
 16 part resulted in his or her being taken into custody, and
 17 that he or she presents, as a result of mental disorder or
 18 mental defect, a demonstrated danger of inflicting
 19 substantial physical harm upon others.

20 My allegation is based upon the following facts:

21 _____
 22 _____
 23 _____
 24 _____
 25 _____
 26 _____
 27 _____

28 This allegation is supported by the accompanying
 29 affidavits signed by _____.

30
 31 Signed _____
 32

33 The courts may receive the affidavits in evidence and
 34 may allow the affidavits to be read to the jury and the
 35 contents thereof considered in rendering a verdict, unless
 36 counsel for the person named in the petition subpoenas
 37 the treating professional person. If the treating
 38 professional person is subpoenaed to testify, the public
 39 officer, pursuant to Section 5114, shall be entitled to a
 40 continuance of the hearing or trial.



1 SEC. 14. Section 5304 of the Welfare and Institutions
2 Code is amended to read:

3 5304. (a) The court shall remand a person named in
4 the petition for postcertification treatment to the custody
5 of the State Department of Mental Health or to a licensed
6 health facility designated by the county of residence of
7 that person for a further period of intensive treatment not
8 to exceed one year from the date of court judgment, if the
9 court or jury finds, based on clear and convincing
10 evidence, that the person named in the petition for
11 postcertification treatment has done any of the following:

12 (1) Attempted, inflicted, or made a serious threat of
13 substantial physical harm upon the person of another
14 after having been taken into custody, and while in
15 custody, for evaluation and treatment, and who, as a
16 result of mental disorder or mental defect, presents a
17 demonstrated danger of inflicting substantial physical
18 harm upon others.

19 (2) Attempted or inflicted physical harm upon the
20 person of another, that act having resulted in his or her
21 being taken into custody, and who, as a result of mental
22 disorder or mental defect, presents a demonstrated
23 danger of inflicting substantial physical harm upon
24 others.

25 (3) Expressed a serious threat of substantial physical
26 harm upon the person of another within seven days of
27 being taken into custody, that threat having at least in
28 part resulted in his or her being taken into custody, and
29 who presents, as a result of mental disorder or mental
30 defect, a demonstrated danger of inflicting substantial
31 physical harm upon others.

32 (b) The person shall be released from involuntary
33 treatment at the expiration of one year unless the public
34 officer, pursuant to Section 5114, files a new petition for
35 postcertification treatment on the grounds that he or she
36 has attempted, inflicted, or made a serious threat of
37 substantial physical harm upon another during his or her
38 period of postcertification treatment, and he or she is a
39 person who by reason of mental disorder or mental
40 defect, presents a demonstrated danger of inflicting



1 substantial physical harm upon others. The new petition
2 for postcertification treatment shall be filed in the
3 superior court in which the original petition for
4 postcertification was filed.

5 (c) The county from which the person was remanded
6 shall bear any transportation costs incurred pursuant to
7 this section.

8 ~~SEC. 16. Section 5325.2 of the Welfare and Institutions~~
9 ~~Code is repealed.~~

10 ~~SEC. 17. Section 5331 of the Welfare and Institutions~~
11 ~~Code is amended to read:~~

12 ~~5331. No person may be presumed to be incompetent~~
13 ~~because he or she has been evaluated or treated for~~
14 ~~mental disorder or chronic alcoholism, regardless of~~
15 ~~whether such evaluation or treatment was voluntarily or~~
16 ~~involuntarily received. Any person who leaves a public or~~
17 ~~private mental health facility following evaluation or~~
18 ~~treatment for mental disorder or chronic alcoholism,~~
19 ~~regardless of whether that evaluation or treatment was~~
20 ~~voluntarily or involuntarily received, shall be given a~~
21 ~~statement of California law as stated in this paragraph.~~

22 ~~Any person who has been, or is, discharged from a state~~
23 ~~hospital and received voluntary or involuntary treatment~~
24 ~~under former provisions of this code relating to inebriates~~
25 ~~or the mentally ill shall, upon request to the state hospital~~
26 ~~superintendent or the State Department of Mental~~
27 ~~Health, be given a statement of California law as stated~~
28 ~~in this section unless the person is found to be~~
29 ~~incompetent under proceedings for conservatorship or~~
30 ~~guardianship.~~

31 ~~Nothing in this section is intended to prohibit the~~
32 ~~treatment of individuals who are involuntarily detained~~
33 ~~pursuant to Sections 5150 and 5250 while they are in an~~
34 ~~inpatient status. Any determination of a person's~~
35 ~~incapacity shall remain in effect only for the duration of~~
36 ~~the detention periods described in Section 5150 or 5250.~~

37 ~~SEC. 18. Section 5332 of the Welfare and Institutions~~
38 ~~Code is repealed.~~

39 ~~SEC. 19. Section 5333 of the Welfare and Institutions~~
40 ~~Code is repealed.~~



1 ~~SEC. 20. Section 5334 of the Welfare and Institutions~~
2 ~~Code is repealed.~~

3 ~~SEC. 21. Section 5336 of the Welfare and Institutions~~
4 ~~Code is repealed.~~

5 ~~SEC. 22.—~~

6 *SEC. 15. Section 5332 of the Welfare and Institutions*
7 *Code is amended to read:*

8 5332. (a) Antipsychotic medication, as defined in
9 subdivision (l) of Section 5008, may be administered to
10 any person subject to detention pursuant to Section 5150,
11 5250, ~~5260~~, or 5270.15, if that person does not refuse that
12 medication following disclosure of the right to refuse
13 medication as well as information required to be given to
14 persons pursuant to subdivision (c) of Section 5152 and
15 subdivision (b) of Section 5213.

16 (b) If any person subject to detention pursuant to
17 Section 5150, 5250, ~~5260~~, or 5270.15, and for whom
18 antipsychotic medication has been prescribed, orally
19 refuses or gives other indication of refusal of treatment
20 with that medication, the medication shall only be
21 administered when treatment staff have considered and
22 determined that treatment alternatives to involuntary
23 medication are unlikely to meet the needs of the patient,
24 and upon a determination of that person's incapacity to
25 refuse the treatment, in a hearing held for that purpose.

26 (c) ~~Each~~ *For those patients who have not already been*
27 *determined to lack the capacity to refuse treatment with*
28 *psychotropic medications pursuant to Section 5256.6,*
29 *each* hospital in conjunction with the hospital medical
30 staff or any other treatment facility in conjunction with
31 its clinical staff shall develop internal procedures for
32 facilitating the filing of petitions for capacity hearings and
33 other activities required pursuant to this chapter.

34 (d) In the case of an emergency, as defined in
35 subdivision (m) of Section 5008, a person detained
36 pursuant to Section 5150, 5250, ~~5260~~, or 5270.15 may be
37 treated with antipsychotic medication over his or her
38 objection prior to a capacity hearing, but only with
39 antipsychotic medication that is required to treat the
40 emergency condition, which shall be provided in the



1 manner least restrictive to the personal liberty of the
2 patient. It is not necessary for harm to take place or
3 become unavoidable prior to intervention.

4 (e) If any person is certified for intensive medical
5 treatment pursuant to this section, the agency or facility
6 providing the treatment shall acquire his or her
7 medication history.

8 *SEC. 16. Section 5334 of the Welfare and Institutions*
9 *Code is amended to read:*

10 5334. (a) Capacity hearings required by Section 5332
11 shall be heard within 24 hours of the filing of the petition
12 whenever possible. However, if any party needs
13 additional time to prepare for the hearing, the hearing
14 shall be postponed for 24 hours. In case of hardship,
15 hearings may also be postponed for an additional 24 hours,
16 pursuant to local policy developed by the county mental
17 health director and the presiding judge of the superior
18 court regarding the scheduling of hearings. The policy
19 developed pursuant to this subdivision shall specify
20 procedures for the prompt filing and processing of
21 petitions to ensure that the deadlines set forth in this
22 section are met, and shall take into consideration the
23 availability of advocates and the treatment needs of the
24 patient. In no event shall hearings be held beyond 72
25 hours of the filing of the petition. The person who is the
26 subject of the petition and his or her advocate or counsel
27 shall receive a copy of the petition at the time it is filed.

28 (b) Capacity hearings shall be held in an appropriate
29 location at the facility where the person is receiving
30 treatment, and shall be held in a manner compatible with,
31 and the least disruptive of, the treatment being provided
32 to the person.

33 (c) Capacity hearings shall be conducted by a ~~superior~~
34 ~~court judge, a court-appointed commissioner or referee,~~
35 ~~or a court-appointed hearing officer. All commissioners,~~
36 ~~referees, and hearing officers shall be appointed by the~~
37 ~~superior court from a list of attorneys unanimously~~
38 ~~approved by a panel composed of the local mental health~~
39 ~~director, the county public defender, and the county~~
40 ~~counsel or district attorney designated by the county~~



1 ~~board of supervisors. No employee of the county mental~~
2 ~~health program or of any facility designated by the county~~
3 ~~and approved by the department as a facility for 72-hour~~
4 ~~treatment and evaluation may serve as a hearing officer~~
5 ~~those individuals authorized to conduct certification~~
6 ~~review hearings pursuant to Section 5256.1. All hearing~~
7 ~~officers shall receive training in the issues specific to~~
8 ~~capacity hearings.~~

9 (d) The person who is the subject of the capacity
10 hearing shall be given oral notification of the
11 determination at the conclusion of the capacity hearing.
12 As soon thereafter as is practicable, the person, his or her
13 counsel or advocate, and the director of the facility where
14 the person is receiving treatment shall be provided with
15 written notification of the capacity determination, which
16 shall include a statement of the evidence relied upon and
17 the reasons for the determination. A copy of the
18 determination shall be submitted to the superior court.

19 (e) (1) The person who is the subject of the capacity
20 hearing may appeal the determination to the superior
21 court or the court of appeal.

22 (2) The person who has filed the original petition for
23 a capacity hearing may request the district attorney or
24 county counsel in the county in which the person is
25 receiving treatment to appeal the determination to the
26 superior court or the court of appeal, on behalf of the
27 state.

28 (3) Nothing shall prohibit treatment from being
29 initiated pending appeal of a determination of incapacity
30 pursuant to this section.

31 (4) Nothing in this section shall be construed to
32 preclude the right of a person to bring a writ of habeas
33 corpus pursuant to Section 5275, subject to the provisions
34 of this chapter.

35 (f) All appeals to the superior court pursuant to this
36 section shall be subject to de novo review.

37 *SEC. 17. Section 5336 of the Welfare and Institutions*
38 *Code is amended to read:*

39 5336. Any determination of a person's incapacity to
40 refuse treatment with antipsychotic medication made



1 pursuant to Section 5256.6 *or* 5334 shall remain in effect
2 only for the duration of the detention period described in
3 Section 5150 or 5250, or both, or until capacity has been
4 restored according to standards developed pursuant to
5 subdivision (c) of Section 5332, or by court
6 determination, whichever is sooner.

7 *SEC. 18.* Section 5350 of the Welfare and Institutions
8 Code is amended to read:

9 5350. A conservator of the person, of the estate, or of
10 the person and the estate may be appointed for any
11 person who is gravely disabled as a result of mental
12 disorder or impairment by chronic alcoholism.

13 The procedure for establishing, administering, and
14 terminating a conservatorship under this chapter shall be
15 the same as that provided in Division 4 (commencing
16 with Section 1400) of the Probate Code, except as follows:

17 (a) A conservator may be appointed for a gravely
18 disabled minor.

19 (b) (1) Appointment of a conservator under this part,
20 including the appointment of a conservator for a person
21 who is gravely disabled, as defined in subparagraph (A)
22 of paragraph (1) of subdivision (h) of Section 5008, shall
23 be subject to the list of priorities in Section 1812 of the
24 Probate Code unless the officer providing
25 conservatorship investigation recommends otherwise to
26 the superior court.

27 (2) In appointing a conservator, as defined in
28 subparagraph (B) of paragraph (1) of subdivision (h) of
29 Section 5008, the court shall consider the purposes of
30 protection of the public and the ~~treatment~~ *treatment* of
31 the conservatee.

32 (c) No conservatorship of the estate pursuant to this
33 chapter shall be established if a conservatorship or
34 guardianship of the estate exists under the Probate Code.
35 When a gravely disabled person already has a guardian or
36 conservator of the person appointed under the Probate
37 Code, the proceedings under this chapter shall not
38 terminate the prior proceedings but shall be concurrent
39 with and superior thereto. The superior court may
40 appoint the existing guardian or conservator of the



1 person or another person as conservator of the person
2 under this chapter.

3 (d) The person for whom conservatorship is sought
4 shall have the right to demand a court or jury trial on the
5 issue whether he or she is gravely disabled. The issue shall
6 be proved by clear and convincing evidence. Demand for
7 court or jury trial shall be made within five days following
8 the hearing on the conservatorship petition. If the
9 proposed conservatee demands a court or jury trial
10 before the date of the hearing as provided for in Section
11 5365, the demand shall constitute a waiver of the hearing.

12 Court or jury trial shall commence within 10 days of the
13 date of the demand, except that the court shall continue
14 the trial date for a period not to exceed 15 days upon the
15 request of counsel for the proposed conservatee.

16 This right shall also apply in subsequent proceedings to
17 reestablish conservatorship.

18 (e) (1) Notwithstanding subparagraph (A) of
19 paragraph (1) of subdivision (h) of Section 5008, a person
20 is not “gravely disabled” if that person can survive safely
21 without involuntary detention with the help of
22 responsible family, friends, or others who are both willing
23 and able to help provide for the person’s basic personal
24 needs for food, clothing, or shelter *and who are willing*
25 *and able to assist the person in meeting his or her other*
26 *medical and psychiatric needs.*

27 (2) However, unless they specifically indicate in
28 writing their willingness and ability to help, family,
29 friends, or others shall not be considered willing or able
30 to provide this help.

31 (3) The purpose of this subdivision is to avoid the
32 necessity for, and the harmful effects of, requiring family,
33 friends, and others to publicly state, and requiring the
34 court to publicly find, that no one is willing or able to assist
35 the mentally disordered person in providing for the
36 person’s basic needs for food, clothing, or shelter.

37 (4) This subdivision does not apply to a person who is
38 gravely disabled, as defined in subparagraph (B) of
39 paragraph (1) of subdivision (h) of Section 5008.



1 (f) Conservatorship investigation shall be conducted
2 pursuant to this part and shall not be subject to Section
3 1826 or Chapter 2 (commencing with Section 1850) of
4 Part 3 of Division 4 of the Probate Code.

5 (g) Notice of proceedings under this chapter shall be
6 given to a guardian or conservator of the person or estate
7 of the proposed conservatee appointed under the
8 Probate Code.

9 (h) As otherwise provided in this chapter.

10 ~~SEC. 23.~~

11 *SEC. 19.* The sum of three hundred fifty million
12 dollars (\$350,000,000) is *hereby* appropriated from the
13 General Fund to the Controller for allocation for the
14 purposes of this act. *Fund to the State Department of*
15 *Mental Health, in augmentation of Item 4440-101-0001 of*
16 *the Budget Act of 2000, for allocation to those counties*
17 *that implement a community assisted outpatient*
18 *program pursuant to this act. Up to 25 percent of each*
19 *qualifying county's share may be used for short-term*
20 *outpatient services if it is deemed appropriate by the*
21 *county department of mental health to ensure the*
22 *availability of the appropriate level of mental health*
23 *treatment services.*

