AMENDED IN ASSEMBLY MAY 10, 2000

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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, Jackson, Kuehl, Lempert, Mazzoni, Soto, and Washington)

January 27, 2000

An act to amend Section 2600 of the Penal Code, to amend Sections 5008, 5250, 5256.5, 5256.6, 5257, 5300, 5301, 5304, 5332, 5334, 5336, and 5350 of, to add Section 4013 to, and to add Article 4.8 (commencing with Section 5280) to Chapter 2 of Part 1 of Division 5 of, the 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.

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.

The bill would require the department to provide training and technical assistance to counties, mental health providers

contracting with the counties, and other individuals, including, but not limited to, mental health professionals, law enforcement officials, and certification hearing officers involved in making treatment and involuntary commitment decisions.

The bill would also require the department to require counties to submit certain information to the department, and would require the department to report to the Legislature on or before April 1, 2002, on the effectiveness of the bill and recommendations relative to how involuntary treatment is being implemented. By requiring counties to provide certain information to the department, this bill would result in a state-mandated local program.

This bill would appropriate $350,000,000 to the State Department of Mental Health for allocation to participating counties.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

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

Vote: $^{2}/_{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

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

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

Nothing in this section shall be construed to permit the involuntary administration of psychotropic medication

unless the process specified in the permanent injunction, dated October 31, 1986, in the matter of Keyhea v. Rushen, 178 Cal.App.3d 526, has been followed. In addition, the process shall utilize the definition of ''gravely disabled'' in subdivision (h) of Section 5008 of the Welfare and Institutions Code, and who are routinely provided with food, clothing, and shelter by the penal institution. The judicial hearing for the authorization for the involuntary administration of psychotropic medication provided for in Part III of the injunction shall be conducted by an administrative law judge. The hearing may, at the direction of the director, be conducted at the facility where the inmate is located.

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

SEC. 1.5. Section 4013 is added to the Welfare and Institutions Code, to read:

4013. (a) The department shall provide training and technical assistance to counties, mental health providers contracting with the counties, and other individuals, including, but not limited to, mental health professionals, law enforcement officials, and certification hearing officers involved in making treatment and involuntary commitment decisions.

(b) The training required by subdivision (a) shall include all of the following:

(1) Information relative to legal requirements for detaining a person for involuntary inpatient treatment or community-assisted outpatient care, including criteria to be considered with respect to determining if a person is considered to be gravely disabled.

(2) Methods for ensuring that decisions made regarding involuntary treatment as provided for in Sections 5150 and 5250 direct patients toward the most effective treatment.

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 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 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 treatment and evaluation.

(d) ‘‘Referral’’ is referral of persons by each agency or facility providing intensive treatment or evaluation 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 which prevent initial recourse to hospital treatment or aftercare services which support adjustment to community living following hospital treatment. These services may be provided through county welfare departments, State Department of Mental Health, Short-Doyle programs or other local agencies.

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. 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 mental 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) *(i)* A condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter, or presents, as a result of mental disorder, an acute risk of physical or psychiatric harm to the person in the absence of treatment.

(ii) For purposes of clause (i), 'psychiatric harm' means an exacerbation or escalation of symptoms or behaviors during the 30 days prior to detention that render it more likely than not that the person will be unable to provide for his or her basic needs or become dangerous to self or others.

(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 defendant 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 mental 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 mentally retarded persons by reason of being mentally retarded 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.

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

5250. If a person is detained for 72 hours under the provisions of Article 1 (commencing with Section 5150), or under court order for evaluation pursuant to Article 2 (commencing with Section 5200) or Article 3 (commencing with Section 5225) 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, under the following conditions:

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

(b) The facility providing intensive treatment is designated by the county to provide intensive treatment, and agrees to admit the person. No facility shall be designated to provide intensive treatment unless it complies with the certification review hearing required by this article. The procedures shall be described in the county Short-Doyle plan.

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

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

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

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

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

5256.5. If at the conclusion of the certification review hearing the person conducting the hearing finds that there is not probable cause to believe that the person certified should be involuntarily detained, then the

person certified may no longer be involuntarily detained. Nothing in this section shall prohibit the person from remaining at the facility on a voluntary basis or the facility from providing the person with appropriate referral information concerning mental health services.

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

5256.6. (a) If at the conclusion of the certification review hearing the person conducting the hearing determines that there is probable cause to believe that the person certified should be involuntarily detained, that person may be detained for involuntary care, protection, and treatment related to the mental disorder or impairment by chronic alcoholism for which he or she is involuntarily detained.

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

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

(d) If the person conducting the certification hearing determines that the patient does not lack capacity to refuse treatment by psychotropic medications, judicial review of the decision may be initiated by the director or the director's designee pursuant to subdivision (b) of Section 5333 and paragraph (2) of subdivision (e) of

Section 5334. The superior court shall conduct the hearing de novo, as provided in subdivision (f) of Section 5334.

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

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

5257. During the period of intensive treatment pursuant to Section 5250 or 5270.15, only if the psychiatrist directly responsible for the person's treatment believes, as a result of his or her personal observations, that the person certified no longer is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person's involuntary detention shall end and the person shall be released. If any other professional person who is authorized to release the person believes the person should be released during the designated period of intensive treatment, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released during the period of intensive treatment only if the psychiatrist making the final decision believes, as a result of his or her personal observations, that the person certified no longer is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled. Nothing in this section shall prohibit either the person remaining at the facility on a voluntary basis or the facility from providing the person with appropriate referral information concerning mental health services.

A person who has been certified for a period of intensive treatment pursuant to Section 5250 shall be released at the end of 14 days unless the patient either:

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

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

(c) Is certified for an additional 14 days of intensive treatment pursuant to Article 4.5 (commencing with Section 5260).

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

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

(f) Is the subject of a Petition for Postcertification of a Dangerous Person filed pursuant to Article 6 (commencing with Section 5300).

SEC. 7. Article 4.8 (commencing with Section 5280) is added to Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code, to read:

Article 4.8. Community Assisted Outpatient Treatment Programs

5280. Persons committed pursuant to Sections 5150, 5250, 5260, and 5270.15 shall be placed in community assisted outpatient treatment programs for 180 days if all of the following conditions exist:

(a) A hearing officer finds that he or she requires continuing treatment and care under supervised conditions to maintain and improve recovery and the person is sufficiently stable to benefit from community treatment in an appropriate unlocked setting.

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

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

(d) A community treatment plan is prepared by the multidisciplinary outpatient treatment team.

5280.1. A community assisted outpatient treatment program shall include all of the following:

(a) (1) A multidisciplinary team of providers consisting of a combination of physicians, psychologists, and other licensed mental health providers, nurses, social workers, substance abuse specialists, vocational rehabilitation counselors, peer counselors, and an assisted outpatient care expediter. This team shall, in consultation with the client and any family members involved in the client's day-to-day care, develop and implement an individualized community assisted outpatient treatment program to ensure the client receives all necessary support and care to maximize the effectiveness of treatment and reduce the risk of noncompliance and subsequent custodial retention pursuant to Section 5150.

(2) For purposes of this article, ''assisted outpatient care expediter'' means one who will coordinate all services provided to the client pursuant to this section.

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

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

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

(3) Help in managing symptoms of mental illness.

(4) Provision and supervision of prescribed medication.

(5) Supportive therapy including dual diagnosis.

(6) Periodic blood or urine testing to verify compliance, if the treatment team has reason to believe that the patient is not complying with the treatment plan, and the tests are mandated by court order.

(7) Individual or group therapy, or both.

(8) Day or partial day programs.

(9) Family support and outreach.

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

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

(B) Obtaining available insurance coverage.

(C) Accessing housing and residential vouchers.

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

(E) Accessing treatment for coexisting substance abuse.

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

(G) Dealing with legal issues.

5281. In the event the patient does not or cannot abide by the terms of the agreed upon community treatment plan, including medication compliance, and the person poses an acute risk of physical or psychiatric deterioration, the person may, by court order, be returned to inpatient treatment for the remaining days of the underlying involuntary treatment certification.

5282. Persons diagnosed with severe and persistent mental illness may receive treatment in community assisted outpatient treatment programs for 180 days if all of the following requirements are met:

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

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

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

SEC. 8. Section 5300 of the Welfare and Institutions Code is amended to read:

5300. (a) At the expiration of the 14-day period of intensive treatment, a person may be confined for further treatment pursuant to the provisions of this article for an additional period, not to exceed one year if it is proved beyond a reasonable doubt that one of the following exists:

(1) The person has attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation and treatment, and who, as a result of mental disorder or mental defect,

presents a demonstrated danger of inflicting substantial physical harm upon others.

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

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

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

(c) Amenability to treatment is not required for a finding that any person is a person as described in paragraph (1), (2), or (3) of subdivision (a). Treatment programs need only be made available to these persons. Treatment does not mean that the treatment be successful or potentially successful, and it does not mean that the person must recognize his or her problem and willingly participate in the treatment program.

SEC. 9. Section 5301 of the Welfare and Institutions Code is amended to read:

5301. At any time during the 14-day intensive treatment period the professional person in charge of the licensed health facility, or his or her designee, may ask the public officer required by Section 5114 to present evidence at proceedings under this article to petition the superior court in the county in which the licensed health facility providing treatment is located for an order requiring the person to undergo an additional period of treatment on the grounds set forth in Section 5300. The petition shall summarize the facts that support the contention that the person falls within the standard set

forth in Section 5300. The petition shall be supported by affidavits describing in detail the behavior that indicates that the person falls within the standard set forth in Section 5300.

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

The petition shall be in the following form:

Petition for Postcertification Treatment of a Dangerous Person

I, _____, (the professional person in charge of the _____ intensive treatment facility) (the designee of _____ the professional person in charge of the _____, treatment facility) in which _____ has been under treatment pursuant to the certification by _____ and _____, hereby petition the court for an order requiring _____ to undergo an additional period of treatment, not to exceed one year, pursuant to the provisions of Article 6 (commencing with Section 5300) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. The petition is based upon my allegation that (a) _____ has attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation, and that, by reason of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others, or that (b) _____ had attempted or inflicted physical harm upon the person of another, that act having resulted in his or her being taken into custody, and that he or she presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others, or that (c) _____ had made a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in his or her being taken into custody, and

that he or she presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm upon others.

My allegation is based upon the following facts:

_____

_____

_____

_____

_____

_____

_____

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

Signed _____

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

SEC. 10. Section 5304 of the Welfare and Institutions Code is amended to read:

5304. (a) The court shall remand a person named in the petition for postcertification treatment to the custody of the State Department of Mental Health or to a licensed health facility designated by the county of residence of that person for a further period of intensive treatment not to exceed one year from the date of court judgment, if the court or jury, beyond a reasonable doubt, finds that the person named in the petition for postcertification treatment has done any of the following:

(1) Attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation and treatment, and who, as a result of mental disorder or mental defect, presents a

demonstrated danger of inflicting substantial physical harm upon others.

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

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

(b) The person shall be released from involuntary treatment at the expiration of one year unless the public officer, pursuant to Section 5114, files a new petition for postcertification treatment on the grounds that he or she has attempted, inflicted, or made a serious threat of substantial physical harm upon another during his or her period of postcertification treatment, and he or she is a person who by reason of mental disorder or mental defect, presents a demonstrated danger of inflicting substantial physical harm upon others. The new petition for postcertification treatment shall be filed in the superior court in which the original petition for postcertification was filed.

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

SEC. 11. Section 5332 of the Welfare and Institutions Code is amended to read:

5332. (a) Antipsychotic medication, as defined in subdivision (*l*) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to

persons pursuant to subdivision (c) of Section 5152 and subdivision (b) of Section 5213.

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

(c) For those patients who have not already been determined to lack the capacity to refuse treatment with psychotropic medications pursuant to Section 5256.6, each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter. At the time a facility providing intensive medical treatment under this section notifies the court of the certifications for additional treatment, the facility shall also notify the court that the patient is refusing psychotropic medication and whether the patient has requested a finding regarding his or her capacity to refuse the psychotropic medication.

(d) In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, or 5270.15 may be treated with antipsychotic medication over his or her objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention.

(e) If any person is certified for intensive medical treatment pursuant to this section, the agency or facility

providing the treatment shall acquire his or her medication history.

SEC. 12. Section 5334 of the Welfare and Institutions Code is amended to read:

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

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

(c) Capacity hearings shall be conducted by those individuals authorized to conduct certification review hearings pursuant to Section 5256.1. All hearing officers shall receive training in the issues specific to capacity hearings.

(d) The person who is the subject of the capacity hearing shall be given oral notification of the determination at the conclusion of the capacity hearing. As soon thereafter as is practicable, the person, his or her counsel or advocate, and the director of the facility where the person is receiving treatment shall be provided with written notification of the capacity determination, which shall include a statement of the evidence relied upon and

the reasons for the determination. A copy of the determination shall be submitted to the superior court.

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

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

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

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

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

SEC. 13. Section 5336 of the Welfare and Institutions Code is amended to read:

5336. Any determination of a person's incapacity to refuse treatment with antipsychotic medication made pursuant to Section 5256.6 or 5334 shall remain in effect only for the duration of the detention period described in Section 5150 or 5250, or both, or until capacity has been restored according to standards developed pursuant to subdivision (c) of Section 5332, or by court determination, whichever is sooner.

SEC. 14. Section 5350 of the Welfare and Institutions Code is amended to read:

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

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

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

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

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

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

(d) The person for whom conservatorship is sought shall have the right to demand a court or jury trial on the issue whether he or she is gravely disabled. The issue shall be proved beyond a reasonable doubt. Demand for court or jury trial shall be made within five days following the hearing on the conservatorship petition. If the proposed conservatee demands a court or jury trial before the date of the hearing as provided for in Section 5365, the demand shall constitute a waiver of the hearing.

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

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

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

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

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

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

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

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

(h) As otherwise provided in this chapter.

SEC. 15. (a) The State Department of Mental Health shall require counties to submit data and progress reports to the department, including, but not limited to, the numbers of persons being assigned to involuntary inpatient and outpatient treatment, the length of time for which persons are detained and treated involuntarily for inpatient and outpatient treatment, changes in mental

health treatment utilization patterns, and the effectiveness of community assisted outpatient treatment programs.

(b) On or before April 1, 2002, the department shall report to the Legislature, based on the information it collects from counties, on the effectiveness of this act.

(c) This report shall include recommendations to the Legislature relative to how the involuntary treatment is being implemented, whether further involuntary treatment policy changes are recommended, and whether inpatient and community-assisted outpatient mental health services are effective and warrant additional funding.

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

SEC. 17. Notwithstanding Section 17610 of the Government Code, 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. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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