



California's Protection & Advocacy System  
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## Summary of Grave Disability Criteria

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### **Statutory Criteria**

As a basis for involuntary commitment, the Lanterman-Petris-Short (LPS) Act defines "grave disability" as:

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

Welfare & Institutions Code section 5008(h)(l)(A),(2).

### **Constitutional Interpretations**

In Conservatorship of Chambers (1977) 71 Cal.App.3d 277, the California Court of Appeals, First Appellate District, held that the definition of "grave disability" was not unconstitutionally vague or overbroad. The court held that the standard is "sufficiently precise to exclude unusual or nonconformist lifestyles," id., at 284, and that "it requires a causal link between a specifically defined and diagnosed mental disorder and an inability to care of one's basic personal needs. . . ." Id., at 285 (emphasis added).

In the landmark case of Doe v. Gallinot (C.D. Cal. 1979) 486 F. Supp. 983, aff'd (9th Cir. 1981) 657 F.2d 1017, the court held that "standards for commitment to mental institutions are constitutional only if they require a finding of dangerousness to others or to self." 486 F.Supp. at 991 (citations omitted). The court added that "[t]he threat of harm to oneself may be through neglect or inability to care for oneself." Id., quoting from Doremus v. Farrell (D.Neb. 1975) 407 F.Supp. 509, 515.

The Gallinot court determined that California's present grave disability standard was not unconstitutionally vague in that:

It implicitly requires a finding of harm to self: an inability to provide for one's basic physical needs. It further limits the standard to an inability arising from mental disorder rather than from other factors. 486 F.Supp. at 991 (emphasis added). The court cautioned, however, that the standard could be easily misapplied:

Even well-intentioned person might find that certain standards of food, clothing, and shelter are "basic," even though failure to meet them does not harm or endanger a person sufficiently to justify confinement. The standard does not expressly require a finding of dangerousness or harm. . . . Furthermore, the determination whether one's inability to care for oneself is rooted in mental disorder rather than other factors can be very difficult to make. For these reasons, there is a significant risk of erroneous application of the standard and due process requires a hearing to review probable cause for detention beyond the 72-hour emergency period.

Id. Thus, to support a finding of grave disability under Chambers and Gallinot, there must be a casual link between the person's mental disability and his/her inability to provide for food, clothing and shelter AND the failure to meet these needs must result in physical danger or harm to the person.

### **Present Finding of Grave Disability Required**

The courts have consistently held that a finding of grave disability must be based on the person's present condition. See Conservatorship of Benevuto (1986) 180 Cal.App.3d 1030; Conservatorship of Murphy (1982) 134 Cal.App. 3d 15. In Benevuto, the court held that it was error to make a finding of grave disability on the basis of testimony by witnesses that, due to a propensity not to take antipsychotic medication, the conservatee would probably become gravely disabled if the conservatorship were terminated. The court noted:

If LPS conservatorship may be reestablished because of a perceived likelihood of future relapse, many conservatees who would not

relapse will be deprived of liberty based on probabilistic pessimism. This cost is unwarranted in view of the statutory procedures available to rapidly invoke LPS conservatorship if required.

Benevuto, 180 Cal.App.3d at 1034 n.2.

### **Evidence of Third Party Assistance Must Be Considered**

It is well-established that a person is not gravely disabled within the meaning of the LPS Act if he or she is capable of safely surviving in freedom with the help of willing and responsible family members, friends or third parties. See Conservatorship of Early (1983) 35 Cal.3d 244; Conservatorship of Neal (1987) 190 Cal.App.3d 685; Conservatorship of Wilson (1982) 137 Cal.App.3d 132; Conservatorship of Davis (1981) 124 Cal.App.3d 313. In Early, the California Supreme Court made clear that the trier of fact on the issue of grave disability must consider the availability of third party assistance in making its determination, but only if credible evidence of such assistance is adduced from any source at the trial of the issue.

### **Grave Disability Defined Narrowly**

In Conservatorship of Smith (1986) 187 Cal.App.3d 903, the California Court of Appeals, First Appellate District, stressed that a finding of grave disability must be supported by an "objective finding that the person, due to mental disorder, is incapacitated or rendered unable to carry out the transactions necessary for survival or otherwise provide for her basic needs of food, clothing, or shelter." *Id.*, at 909. The Smith court went on to state that "bizarre or eccentric behavior, even if it interferes with a person's normal intercourse with society, does not rise to a level warranting a conservatorship except where such behavior renders the individual helpless to fend for herself or destroys her ability to meet those basic needs for survival. Only then does the interest of the state override her individual liberty interests." *Id.*

In sum, in order to support a finding of "grave disability," the person must

(1) presently (2) be unable to provide for food, clothing and shelter (3) due to a mental disorder (4) to the extent that the failure to do so results in physical danger or harm to the person. In making this determination, the trier of fact must consider the availability of third party assistance to the person if credible evidence of such assistance is produced at the hearing.

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