

## Understanding the Lanterman-Petris-Short (LPS) Act

*Pub. #5608.01*

### Chapter 1: Involuntary Treatment Holds

California law allows police officers and certain mental health professionals to take you into custody if they believe that, because of your mental illness, you are likely to cause or suffer specific kinds of harm. This is often referred to as a “5150 hold,” named after the regulation that authorizes it. Welf. & Inst. Code (WIC) § 5150.

Under this law, if you meet certain criteria, you can be held for up to 72-hours. This is not a criminal arrest. During that period, mental health professionals will examine you to determine whether you can be safely released, whether voluntary services would be appropriate, or whether you need additional treatment. WIC §§ 5151-5152. If a professional determines you need additional treatment, and if they also believe that you are either unwilling or unable to accept voluntary treatment, then they may file another hold for up to an additional 14 days. WIC § 5250.

#### Criteria for a Hold

A police officer or mental health professional cannot hold you just for having a mental illness. You can only be detained if an officer believes that your mental illness will likely cause some kind of harm. WIC § 5150.05. The officer or person treating you may take your mental health history into account, but you cannot be held based solely on your history. To be subject to a psychiatric hold, you must meet at least one of the following criteria, as a result of a mental health disorder:

#### **Danger to Self**

Most often, someone who is considered a danger to themselves has threatened or attempted self-harm or suicide.

#### **Danger to Others**

Threats or actual attempts to harm others are the most common way to meet this criterion.

#### **Grave Disability**

Being “gravely disabled” means that someone is no longer able to provide for their own food, clothing, or shelter because of a mental health disorder. WIC § 5008(h). A person may be considered gravely disabled if, for instance, they are no longer eating enough to survive, or they have become unable to maintain housing.

### **Additional Information on Grave Disability**

Someone incapable of caring for herself, but who can survive safely with the help of a willing third party, would likely not be “gravely disabled.” § 5350(3). *See also Conservatorship of Early*, 35 Cal. 3d 244, 253, 673 P.2d 209 (1983) (citations omitted) “...imposition of a conservatorship should be made only in situations where it is truly necessary. To accomplish this purpose evidence of the availability of third party assistance must be considered;” and *O'Connor v. Donaldson*, 422 U.S. 563, 575, 95 S. Ct. 2486, 2493–94, 45 L. Ed. 2d 396 (1975) “...while the State may arguably confine a person to save him from harm, incarceration is rarely if ever a necessary condition for raising the living standards of those capable of surviving safely in freedom, on their own or with the help of family or friends.”

Being homeless, by itself, would likely not meet the “gravely disabled” criteria. However, someone who cannot or will not try to find food or shelter as a direct result of a mental illness would more likely be considered gravely disabled. *See Conservatorship of Chambers*, 71 Cal. App. 3d 277, 284, 139 Cal. Rptr. 357 (Ct. App. 1977) (“...the term [gravely disabled] is sufficiently precise to exclude unusual or nonconformist lifestyles. It connotes an inability or refusal on the part of the proposed conservatee to care for basic personal needs of food, clothing and shelter.”)

Also, though past acts may be considered, someone is not gravely disabled unless they are a present danger to themselves because of their inability to provide self-care. *See Conservatorship of Benevuto*, 180 Cal.App.3d 1030 (1986). The likelihood of future harm may also not be enough to meet commitment criteria. *Id* at 1034 n.2. (“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.”)

*Note:* A similar law allows the police (or designated others) to take you into custody if they think you meet the above criteria due to chronic alcoholism. WIC § 5170.

### **72-Hour “5150” Holds**

At the beginning of a hold, you should be taken to a psychiatric hospital or other mental health facility where medical professionals can evaluate you. While in the hospital, staff will determine whether to request a longer hold for treatment, or whether you can be safely released.

The hospital does not need to hold you for the full 72 hours. WIC § 5152. The hospital should release you sooner if they believe that you no longer require evaluation or treatment.

By the end of the 72 hours, one of several things will happen:

- You will have been released, or;
- You will have signed in as a voluntary patient, or;
- You will be put on a 14-day involuntary hold (called “certification for intensive treatment”), or;
- You will be referred for a conservatorship. See ”Chapter 2: LPS Conservatorships.”

## Your rights during a 72-Hour Hold

An involuntary hold is not a criminal arrest. You maintain certain rights as you are being taken into custody and detained.

- **Property:** The person taking you into custody must take reasonable precautions to safeguard your property. They must allow you to gather some personal things to bring with you. WIC § 5210.
- **Phone call:** The person taking you into custody should notify you that you may make a phone call to let someone know where you have been taken. WIC § 5150(g)(1).
- **Notice and evaluation:** You must be given a written copy of the petition explaining why you are being held for evaluation. WIC § 5208. This petition must contain the name and address of the petitioner; your name and other identifying information such as address, sex, and occupation; the facts that are being used as the basis for the petition; the names of anyone believed to be responsible for your care; and any other information the court may require. WIC § 5204. While you are being detained, the hospital must evaluate you. The person evaluating you will take into account your medical, psychological, educational, social, financial, and legal situation. WIC §§ 5008.
- **Antipsychotic medications:** You have the right to accept or refuse antipsychotic medications. You can only be given these medications after the doctor has given you written and verbal information about the effects and side effects and you have given your informed consent. However, you may still be given medications involuntarily in specific emergencies. You may also be given medications involuntarily if, after a hearing, a judge determines that you lack the ability to make a decision about taking the medication. WIC § 5332.

## The Certification Review Hearing and 14-Day “5250” Hold

If the treating facility wants to hold you for longer than 72 hours, you have the right to a Certification Review Hearing. At this time, you are entitled to written notice that you are being held. This notice must include the specific reasons for which you are being held. WIC § 5251. You are also entitled to assistance from a patients’ rights advocate. This is someone who will help you understand your rights and advocate for your interests. WIC § 5325(h). This hearing must be held within four days of being

certified for a 14-day hold, unless you or your advocate request a postponement. WIC § § 5250, 5254. You do not need to request this hearing, as it is automatically scheduled for you.

At the hearing, a neutral party will review whether there is enough evidence (called “probable cause”) to continue to hold you against your will. This hearing is for your benefit, and the hospital has the burden of justifying holding you. You are not required to prove why you should not be held, but you are allowed to present evidence to show why the hospital should not hold you for any longer. If the party conducting the hearing determines there is not enough evidence that you need to be held, the hospital must release you. WIC § 5256.

### Rights During a Certification Review Hearing

You are granted certain rights and protections during a Certification Review Hearing.<sup>1</sup> These include:

- The right to be assisted by an attorney or other advocate;
- The right to present evidence on your own behalf;
- The right to question people presenting evidence in support of your certification;
- The right to make reasonable requests to have people at the treatment facility attend the hearing;
- If you are given medication within 24 hours of your hearing, the person conducting the hearing will be informed of the fact that you have taken medication and of its probable effects on you.

Your hearing will likely be less formal than most court hearings. This is to encourage people to speak openly about the certification. Facility staff should notify family members and other people you request of the time and place of the hearing. Staff should also notify you that you have the right to request that they not share this information with any family or others whom you do not want to attend the hearing.

If you do not want to receive treatment, you should be open about it. Though in some cases a person might resist treatment because of a mental disorder, expressing your objection to treatment is not itself evidence of a disorder or a need for commitment. In other words, your desire not to receive treatment, without other evidence, is not enough to prove that you need treatment.

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<sup>1</sup> If you wish to see the actual statutes that lay out these rights, they can all be found under WIC § 5256.4. “Return to Main Document”

## **The Right to Request a ‘Habeas Corpus’ Hearing**

A habeas corpus hearing allows you to challenge your hold by claiming that you are being held illegally. This hearing is not automatic. You must make a specific request for one by notifying a member of the treatment staff at the hospital or the patients’ rights advocate. If you request a hearing, you are entitled to be represented by court-appointed or private legal counsel. But be aware that **a habeas corpus hearing may result in delay or other consequences**. Be sure to consult with a lawyer or patients’ rights advocate on possible outcomes before requesting a hearing. WIC §§ 5254.1, 5275-5276.

## **Outcomes from a 14-Day Hold**

There are several possible outcomes at the end of a 14-day hold:

- You may be released before 14 days. You may be released by staff, or at a certification review hearing, or at a habeas corpus hearing (this is a hearing where you ask a judge to review the legality of your hold. For instance, a judge may decide to release you if your rights were violated during the process leading to a hold), or;
- You will have signed in as a voluntary patient, or;
- If the person treating you determines that you need more treatment, you may be placed on another hold.

If the person treating you determines that you need to be held longer for treatment, the length of the hold depends on why you are being held. Under each type of hold you will have due process rights.

**If you are still considered dangerous to yourself**, you may be recertified for another 14-day hold. WIC § 5260.

**If you are still considered dangerous to others**, the court may put a 180-day post-certification hold on you. This hold is renewable. WIC § 5301.

**If you are still considered gravely disabled**, there are several possible outcomes:

- You may be placed on a 30-day hold for additional intensive treatment, if used in your county. WIC § 5270 et seq. Or;
- You may be placed under Temporary Conservatorship and then a full one-year Conservatorship, which is renewable. WIC §§ 5352.1, 5361. In this case, a conservator may be granted the power to make certain decisions for you, including where you live and how your money is spent. WIC §§ 5350, 5352. Or;
- In some circumstances, after being placed on a 30-day hold, conservatorship papers may be filed. In this case, the Temporary Conservatorship runs concurrently with (at the same time as) the 30-day hold. Not all counties will put the 30-day hold into effect. Check with your

county patients' rights advocate to find out if your county does. WIC § 5256. You should also read "Chapter 2: LPS Conservatorships."

### **Tips to Help Avoid a Longer Hold**

Being detained for treatment can be a difficult experience. Though you do not have complete control over the outcome, the following actions may help show that you do not need additional treatment:

#### **If you are held for being a danger to yourself:**

Try not to do anything to harm yourself, and do not make any threats to harm yourself. The person evaluating you will usually be checking to see that you have stopped any harmful behavior, **AND** that if you are released, you will not try to harm yourself again. It may be helpful to let staff know if you have a doctor that you can see when released, or medication available to you to treat symptoms that led to any harmful behavior.

#### **If you are held for being a danger to others:**

Being detained can be upsetting and stressful, but try not to be short-tempered or belligerent with other patients or staff. Do not provoke arguments, and do not let yourself be provoked. Do not push, grab, or hit anyone. Try not to touch anyone unless asked to by staff.

#### **If you are held for being gravely disabled:**

The person evaluating you will be looking for whether you are able to care for your own basic needs. While you are in the hospital, use this time to take care of yourself. Eat the meals that are provided. Try to get some sleep. If you came in without clothes or your clothes were taken from you, wear the clothing the hospital gives you. Use the bathroom and showers to clean yourself and take care of your basic hygiene needs.

Let staff know if you have access to your own food, clothing, and shelter. If these things aren't available, you can try to let staff know that you at least know how to get food, clothing, and shelter, or that you know how to get help with these things. You do not have to prove that you can do this all on your own. If you have someone who can help you with your basic needs, ask them to explain to the facility or court, in writing if possible, their relationship to you and how they can help.

#### **General Tips to Consider**

If you know someone who can help you with treatment or your basic needs, or who can explain why you do not need to be hospitalized, it may be helpful to contact them. This could be a friend, family member, doctor, or anyone else who can help. If you have someone who has been helping you, or who is available and willing to help, they should submit a letter to the court stating so. **A court will not consider someone's ability to help unless they state it in writing.** § 5250(d)(2). However, the hospital may be willing to speak with someone on the phone. This information is also important for your

patients' rights advocate or lawyer to have. If you have a hearing on whether you need to be held longer than 72 hours, this person or the information they provide may help the hearing officer or judge in making their decision.

While at the hospital, you will likely be with other people also being treated or held because of a mental illness. Respect their privacy and their personal space, especially near the nurses' station, seclusion rooms, the telephone, TV, and while they are eating.

The hospital may provide activities while you are there. Though you will likely not be required to participate, doing so may show staff that you can safely interact with people. These activities may also be helpful for your own sake, by reducing stress or taking your mind off of your detention.

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