
5 | 50 Patient Management

Facts, Fiction and FAQs

Background and Laws Behind 5150 Holds

The Lanterman-Petris-Short Act: Involuntary Evaluation and Patient Rights

- In California, the main law governing mental health evaluation and treatment is the Lanterman-Petris-Short (LPS) Act
- This law, enacted in 1967, sets forth the procedures that law enforcement and health care providers must follow prior to involuntarily detaining a person for mental health evaluation and treatment
- LPS also sets forth the rights of mental health patients, whether voluntarily or involuntarily admitted, and contains procedural requirements that must be followed prior to providing specified types of treatment to mental health patients

Myths and Assumptions

- Adequate number of psychiatric clinics for 72 hour evaluation and treatment would be built to meet the need for occasional serious crises (and would admit all age groups, all levels of behavior, and any pay source)
- Emergency clinics would be distributed liberally around the state such that the time frame for transport and hold under 5150 to the evaluation and treatment under 5151 would be inconsequential
- No one who is a danger to self would have time to have acted yet, so there would be no physical or medical issues to deal with prior to a timely transfer to a mental health facility

Myths (cont.)

- Psych patients are in good health and do not also need any medical care
- Psych patients do not use drugs or alcohol (or heaven forbid, require insulin injections)
- Patients would, once evaluated and treatment initiated, be so happy to have their symptoms alleviated that they will forever be compliant with treatment

Admission and Treatment of Involuntary Patients

The LPS Act establishes procedural requirements under which persons dangerous to themselves or others or gravely disabled as a result of a mental health disorder, inebriation, or the use of narcotics or restricted dangerous drugs may be involuntarily detained for specific periods for evaluation and treatment, which include:

- An initial 72-hour hold for evaluation and treatment
- An additional 14-day intensive treatment period
- There are additional periods of treatment allowed by law

Admission and Treatment of Involuntary Patients

Further confinement depending on the person's condition include:

- A second 14-day intensive treatment period for persons who are imminently suicidal
- An additional 180-day confinement for persons who present a demonstrated danger of substantial physical harm to others
- Confinement pursuant to a conservatorship for persons who are gravely disabled

Facility Designation

- Involuntary treatment and evaluation must take place only in a facility that is designated for such purposes by the county and approved by Department of Health Care Services (DHCS),
- These facilities are called designated facilities
- Most hospitals are **NOT** designated facilities under the LPS statutes

Interplay between 5150 and 5151

- 5150 – authorizes “hold and transport” to a designated facility or for crisis stabilization
- Hospital emergency departments are, by and large, NOT designated facilities
- 5151 – authorizes “assess and admit” for evaluation and treatment for up to 72 hours
- Medical clearance happens in the time between 5150 and 5151

Conditions for Detention

Welfare and Institutions Code Section 5150 states that when a person, as a result of mental health disorder, is a danger to self or others or is gravely disabled, any of the following persons may, upon probable cause, take the person into custody, and place the person in a designated facility:

- A peace officer
- A professional person in charge of a designated facility
- A member of the attending staff of a designated facility who is authorized to admit a patient involuntarily
- Any other professional person designated by the county

Services Provided

Each patient admitted to a facility for a 72-hour treatment and evaluation period must receive:

- an evaluation as a soon as possible after admission
- the treatment and care emergency condition requires for the full period that he or she is held

LAW PRESUMES THIS TAKES PLACE IN A DESIGNATED FACILITY!!

Period of Detention

- If a designated facility admits a patient, it may detain him or her for evaluation and treatment for a period not to exceed 72 hours, including Saturdays, Sundays and holidays
- If evaluation and treatment services are not available on Saturdays, Sundays and holidays, and if DHCS certifies that evaluation and treatment services cannot reasonably be made available on those days, they are not counted in the 72 hours

Period of Detention

- The 72 hours is counted from the time the person is admitted to the facility responsible for the evaluation and treatment
- The time of admission runs from the time the person is first detained in the facility and is not dependent upon completion of admissions procedures or paperwork
- The time is not extended by a preadmission evaluation period at the facility
- The 72 hours does not include time spent transporting the patient to the treatment and evaluation facility by peace officers or other persons designated to take a person into custody under Welfare and Institutions Code Section 5150

Termination of Detention

A patient who has been detained for evaluation and treatment must be released at the end of the 72-hour period unless any of the following applies:

- The patient is referred for further care and treatment on a voluntary basis
- The patient has been certified for intensive treatment (5250 proceedings)
- A conservator or temporary conservator has been appointed for the patient under Welfare and Institutions Code Section 5350, et seq.

Gaps in Law Exist

- When does the clock start running on the 72 hours? At 5150? At 5151?
- What happens to the hold if the patient is admitted for an underlying medical condition?
- What happens if a bed cannot be located and transfer made within the 72-hour period?
- Can you write serial holds?
- What if the patient tries to, or actually does, elope during the hold? Can you detain/restrain them to prevent elopement?

Special Requirements for Minors

As with adults, the state has the power to detain a minor involuntarily if it appears that the minor, as a result of a mental health disorder, is a danger to self or others or gravely disabled. A minor may be committed involuntarily for 72 hours where:

- There is probable cause to believe that the minor, as a result of mental disorder, is a danger to self or others, or gravely disabled
- Authorization for involuntary treatment by a parent, guardian or other legal representative is not available

Special Requirements for Minors (cont.)

- The minor may be taken into custody, upon probable cause, by a peace officer, member of the attending staff of a designated facility or other professional person designated by the county. This person must make a written application to the facility for detention of the minor stating the circumstances under which the minor's condition was called to the attention of the police officer or other person, and stating that the requirements in paragraphs 1 and 2 above are met
- The facility must make every effort to notify the minor's parent or legal guardian as soon as possible

Special Requirements for Minors (cont.)

- Placement is at a facility designated by the county and approved by DHCS as a facility for 72-hour evaluation and treatment. Each county is required to assure that minors under the age of 16 years are not held with adults receiving psychiatric treatment under the provisions of LPS, unless the health facility has specific separate housing arrangements, treatment staff and treatment programs designed to serve children or adolescents.

Special Requirements for Minors (cont.)

- The director of Dept. Social Services (DSS) may provide waivers to counties if this policy creates undue hardship due to the inadequate or unavailable alternative resources.
- However, no minor may be admitted for psychiatric treatment into the same treatment ward as an adult who is in the custody of a jailer for a violent crime, is a known registered sex offender, or has a known history of, or exhibits inappropriate sexual or other violent behavior which would present a threat to the physical safety of minors.

Special Requirements for a Minor (cont.)

- A detained minor must receive a clinical evaluation conducted by a professional qualified in the diagnosis and treatment of minors. The evaluation must consist of multidisciplinary professional analyses of the minor's medical, psychological, developmental, education, social, financial, and legal conditions as may appear to constitute a problem. This evaluation must include a psychosocial evaluation of the family or living environment, or both. Every effort must be made to involve the minor's parent or legal guardian in the clinical evaluation

Special Requirements for a Minor (cont.)

- If, in the opinion of the professional who conducts the evaluation, the minor will require additional treatment, a treatment plan must be prepared that identifies the least restrictive placement alternative in which the minor can receive the necessary treatment. The family, guardian or caretaker and the minor must be consulted and informed of the basic recommendation for further treatment and placement. Every effort must be made to obtain the consent of the minor's parent or guardian prior to treatment and placement, but inability to obtain this consent does not preclude involuntary treatment, provided this treatment complies with the provisions of LPS
- The minor must be given an aftercare plan upon discharge

Continued Treatment of an Involuntary Patient - 5250

If a person is detained as mentally disordered or as impaired by inebriation or use of narcotics or restricted dangerous drugs for 72 hours or by reason of a court-ordered evaluation, the person may be certified for not more than 14 days of involuntary intensive treatment under the following conditions:

- The professional staff of the agency or facility that provides evaluation services has analyzed the person's condition and found the person is, as a result of a mental health disorder or impairment by chronic alcoholism, a danger to self or others or gravely disabled
- The person has been advised of, but has not accepted, voluntary treatment
- The facility is equipped and staffed to provide intensive treatment, is designated by the county to provide intensive treatment, and agrees to admit the person

Review of Commitment for 14 Additional Days of Intensive Treatment

- Each patient who is certified for 14 days of involuntary treatment because he or she is a danger to self or others or gravely disabled has the right to a certification review hearing, unless he or she has requested judicial review by a writ of habeas corpus
- A patient who requests a writ of habeas corpus review does not have the right to a certification review hearing unless he or she withdraws the request for judicial review before it occurs
- In such cases, the patient is entitled to a certification review hearing within four days of the withdrawal of the request for writ of habeas corpus review

The W&I 1799.111 “hold”

Health and Safety Code Section 1799.111 provides that specified general acute care hospitals, acute psychiatric hospitals, licensed professional staff of these hospitals, and physicians providing emergency medical services in any department of these hospitals is not civilly or criminally liable for detaining a patient, if all of the following conditions exist during the detention:

- The patient cannot be safely released from the hospital because, in the opinion of the treating physician (or a clinical psychologist with medical staff privileges, clinical privileges, or professional responsibilities provided in Health and Safety Code Section 1316.5) the patient, as a result of mental health disorder, presents a danger to himself or herself, or others, or is gravely disabled. Gravely disabled is defined, for the purpose of this law, as the inability to provide for basic personal needs for food, clothing or shelter.

Detention of Patient in a Non-designated Facility (1799.111)

- The hospital staff, treating physician, or appropriate mental health professional has made, and documented, repeated unsuccessful efforts to find appropriate mental health treatment for the patient
- Telephone calls or other contacts required by this paragraph must commence as soon as the treating physician has determined when the patient will be medically stable to transfer
- In no case may the contacts required by this paragraph begin after the patient becomes medically stable to transfer
- If the hospital starts making the contacts after the patient is medically stable for transfer, the hospital may lose the legal immunity conferred by this law

Detention of Patient in a Non-designated Facility (1799.111)

- The patient is not detained beyond 24 hours
- There is probable cause for the detention
- If the patient is detained beyond eight hours, but less than 24 hours, both of the following additional conditions must be met:
 - A) A discharge or transfer for appropriate evaluation or treatment has been delayed because of the need for continuous and ongoing care, observation, or treatment that the hospital is providing.
 - B) In the opinion of the treating physician, or a clinical psychologist with medical staff privileges or professional responsibilities provided for in Section 1316.5, the patient, as a result of a mental health disorder, is still a danger to himself or herself or others, or is gravely disabled.

Detention of Patient in a Non-designated Facility (1799.111)

- Refer to California Hospital Association Form 12-12 for the requirements of the W&I 1799.111 hold

EMTALA Requirements for Patients Presenting with Psychiatric Conditions

- The Medical Screening Examination for a Psychiatrist
Emergency Patient
- If a patient presents to the ED of an acute hospital seeking or in need of examination of a psychiatric condition, whether as a voluntary or involuntary patient, the hospital must record the patient's visit in the central log, open a medical record and provide a medical screening examination within the capability of the hospital to determine whether the patient has an emergency medical condition

Documentation

- The medical record for an emergency patient with a presenting complaint, signs or symptoms of a psychiatric condition should include documentation of the screening of medical and psychiatric conditions by the ED physician or other qualified professional on staff at the hospital
- The CMS Investigative Procedures for EMTALA Surveyors instruct surveyors that for individuals with psychiatric symptoms, the medical record should indicate an assessment for suicide or homicide attempt or risk, orientation, and assaultive behavior that indicates a danger to self or others
- Some hospitals have developed a separate form for charting the results of a psychiatric screening examination

Psychiatric EMC and 5150 Detention

While there are some similarities between a psychiatric EMC under EMTALA and detention under Section 5150, the nature of these determinations is not the same:

- A psychiatric EMC is based on a clinical judgment by an ED physician or other qualified professional as to the nature and severity of a person's medical and/or psychiatric conditions
- A 5150 hold is based on probable cause by a peace officer or designated professional to detain a person for psychiatric evaluation and treatment. The determination of probable cause, especially by a peace officer, does not, and is not intended to include the elements of a medical screening examination or the professional judgment of an ED physician

Psychiatric EMC and 5150 Detention

- As a result, there is no bright line standard that all patients on a 5150 hold must be considered to have a psychiatric emergency medical condition
- Some individuals may present to the ED on a 5150 hold written by a peace officer and may, upon medical screening and/or subsequent evaluation and monitoring, be determined by an emergency physician not to have a psychiatric emergency medical condition within the meaning of EMTALA or California law

Psychiatric EMC and 5150 Detention

- Conversely, there is no bright line standard that a person determined to have a psychiatric emergency medical condition meets the probable cause to apply a 5150 hold, especially if the individual is voluntarily seeking treatment for his or her psychiatric condition. Each psychiatric emergency patient must be evaluated based on his/her individual signs and symptoms, without regard to whether a 5150 hold is in place or should be in place

Patients' Rights – Consent

Refusal of Care

- W & I Code § 5331 – No person may be presumed to be incompetent because he or she has been evaluated or treated for a mental disorder or chronic alcoholism, regardless of whether such evaluation or treatment was voluntarily received
- Reality is that if a patient agrees to care, assumption is that they have mental capacity and the inquiry ends there
- If they refuse treatment, cannot assume they are mentally incompetent

Patients' Rights – Consent

- Behavioral Restraints – can be used in emergency situations only to protect “life and limb”
- Includes “chemical restraint” unless voluntary medications that are part of treatment
- Strict rules for use of seclusion and restraints
- Always follow hospital policy for use of restraints in ALL situations

Questions?

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