Date of Hearing: March 27, 2012

ASSEMBLY COMMITTEE ON HEALTH
William W. Monning, Chair
AB 1569 (Allen) – As Introduced: January 31, 2012

SUBJECT: Community mental health services: assisted outpatient treatment.

SUMMARY: Extends the sunset date in current law providing counties with the option to implement court-ordered assisted outpatient treatment (AOT) programs for mentally ill persons from January 1, 2013, to January 1, 2019, and deletes an obsolete reporting requirement.

EXISTING LAW:

1) Establishes, pursuant to AB 1421 (Thomson), Chapter 1017, Statutes of 2002, the AOT Demonstration Project Act of 2002 (Act) to permit counties to provide AOT services for people with serious mental illnesses when a court finds that a person's recent history of hospitalizations or violent behavior, and noncompliance with voluntary treatment, indicates the person is likely to become dangerous *or gravely disabled* without the court-ordered outpatient treatment.

2) Sunsets the Act on January 1, 2013, and requires the Department of Mental Health (DMH) to submit a report and evaluation to the Legislature of all counties implementing an AOT program by July 31, 2011.

3) Establishes the Lanterman-Petris Short Act (LPS Act), which authorizes a person to be involuntarily detained for inpatient mental health treatment when, as a result of a mental disorder, the person is a danger to him or herself or to others, or is gravely disabled.

4) Defines "gravely disabled" to mean 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.

5) Specifies the conditions of involuntary detention as follows:
   a) Initial 72-hour hold. Initial evaluation and treatment of persons who, as a result of a mental disorder, are dangerous to themselves or others, or are gravely disabled. (5150)
   b) Additional 14-day hold. A person detained for a 72-hour hold may be certified for an additional 14 days of involuntary detention and treatment if: i) the person has been advised of the need for, but has failed to accept, voluntary treatment; and, ii) the medical staff finds that the person continues to be a danger to self or others, or is gravely disabled. (What level of medical staff? Who is empowered to make that determination?)
   c) Renewed 14-day hold if suicidal. A person detained as dangerous to self may be certified for an additional 14 days of involuntary detention and treatment, for a total of 31 days, if the person continues to be suicidal. (Who makes that determination/certification? Does it require a court order?)
   d) Additional, renewable six months hold if "dangerous to others." After the initial 72-hour and 14-day holds, an additional 180-day detention may be imposed on a person who is imminently dangerous to others, based on recent threats, or attempted or actual infliction of harm. The person may be placed on an undefined "outpatient status" if the director of the inpatient facility determines the person no longer will be a threat to others and will

benefit from outpatient status.

e) Additional 30-day to one-year conservatorship if still "gravely disabled," but not dangerous to self or others. After the initial 72-hour and 14-day holds, an individual who continues to be gravely disabled and fails to accept voluntary treatment may be placed under a 30-day conservatorship and then a renewable, one-year conservatorship.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

1) PURPOSE OF THIS BILL. The author states that scientific research demonstrates that sustained AOT services can be highly successful for individuals with the most severe and persistent mental illnesses. The author points to numerous studies of New York's AOT law, also known as Kendra's Law, that have found that, in the first five years of the program, the estimated 3,900 individuals who received treatment orders experienced a 21% increase in engagement of services, a 34% increase in adherence to prescribed medications, a 75% reduction in hospitalizations, a 14% decrease in homelessness, a 25% reduction in arrests, and, an 18% decrease in incarcerations. The author notes that, while only Nevada County has opted to implement an AOT program in California, this bill is needed to ensure that counties continue to have another tool available for providing the legal and clinical treatment structure necessary to give severely mentally ill individuals who chronically refuse voluntary treatment the support they need to achieve stability and meaningful recovery in their communities.

2) AB 1421. AB 1421 is also known as Laura's Law, in memory of Laura Wilcox, a 19-year-old college student who was killed by a severely mentally ill man who was not adhering to prescribed mental health treatment. Laura's Law provides counties with the option to implement intensive AOT programs for individuals who have difficulty maintaining their mental health stability in the community and have frequent hospitalizations and contact with law enforcement related to untreated or undertreated mental illness. AB 1421 requires a county board of supervisors to authorize implementation by resolution and to make a finding that access to voluntary mental health programs serving adults and children would not be reduced as a result of implementation.

   Under AB 1421, a person subject to AOT *must live in the county operating* the AOT program, have *a history* of not complying with needed mental health treatment, and be unlikely to survive safely in the community without supervision. A person qualifying for AOT must meet the following threshold criteria: the person's mental illness ***has twice*** been a *factor leading to psychiatric hospitalizations or incarcerations* within the prior 36 months ***or*** it has resulted in **one or more** *actual or* ***attempted*** serious acts of violence toward self or others within the prior 48 months. If these criteria are satisfied, the county mental health director or designee may file a petition with the court indicating that AOT is needed to help prevent relapse or deterioration that would likely result in grave disability or serious harm to self or others. Such a petition must establish that the person has been offered an opportunity to voluntarily participate in a treatment plan but continues not to engage in treatment and is deteriorating. (Is the County required to show HOW it has tried to engage somebody?)

   AB 1421 allows an adult living with the person, the parent, spouse, sibling, or adult child of that person, or specified mental health and law enforcement personnel, to request a petition

for an AOT order for the person. Upon receiving the request, the county mental health director or designee is required to conduct an investigation. The director or designee is permitted to file a petition only if he or she determines that it is likely that all the necessary elements described above for an AOT petition can be proven by clear and convincing evidence.

Although implementation of an AOT program is a local option, counties that choose to implement one are required to submit specified documentation to DMH prior to implementation that includes a copy of the Board of Supervisor's resolution verifying that voluntary services will not be reduced as a result of implementation; documentation of the local mental health board's review of the county's implementation plan; a detailed AOT program narrative; a proposed budget and budget narrative for AOT program expenditures; a description of methods for data collection; and, a plan for development of an AOT training and education program.

3) IMPLEMENTATION OF AB 1421. In a December 2011 report that DMH submitted to the Legislature as required by AB 2357 (Karnette), Chapter 774, Statutes of 2006, which extended the sunset date of Laura's Law from 2008 to 2013, the only fully implemented AOT program is in Nevada County where it has been operational since 2008. The program is recovery-oriented and supportive for individuals by helping them to reduce or avoid hospitalizations and contact with local law enforcement related to their mental illness and focuses on promoting consumer-driven decision making in treatment planning to the extent possible. The program provides community-based care by a multidisciplinary team of highly trained mental health professionals with a staff-to-client ratio of not more than one to 10. Services include 24/7 crisis contact and/or intervention, rehabilitation, counseling, medication adherence, and daily living skills assistance.

   For fiscal years (FY) 2008-09 and 2009-10, data show that the AOT program served a total of four court-ordered individuals over two years. However, DMH notes that recent data suggest an additional six individuals were served by Nevada County through FY 2010-11. This report only addresses those individuals in Nevada County who went to a court hearing and AOT was, in fact, court-ordered. DMH notes that 75% of referrals to Nevada County's AOT program result in a "voluntary" agreement by the individual to accept mental health treatment assistance.

   Of the four individuals served by Nevada County's program, DMH reports that each year of data shows significant reductions in the number of days of hospitalization by individuals involved in services, due primarily to intensive contact with the treatment team. The total hospitalization days for all individuals in the 12 months prior to AOT were 239, compared to 97 days during their participation in the program.

4) PARTIAL IMPLEMENTATION IN LOS ANGELES COUNTY. As a result of a settlement agreement reached after the California Network of Mental Health Clients filed a lawsuit against Los Angeles County in September 2005, the L.A. County Department of Mental Health instituted a voluntary pilot AOT program in April 2010 for up to 50 individuals with mental illness involved in the criminal justice system or transitioning from certain county psychiatric facilities who would be able to live safely in the community if they participated in the recommended AOT program. According to outcomes information that L.A. County reported to DMH for the period covering April 2010 through October 2010, 10 individuals

have been served since the program's inception. The data showed a 78% reduction in incarcerations for most of the program participants during the six months following their enrollment in AOT and a 77% reduction in hospitalization days after they were discharged from the program.

5) LPS REFORM TASK FORCE REPORT. A March 2012 report entitled "The Case for Updating California's Mental Health Treatment Law" by the LPS Reform Task Force includes several consensus recommendations to address what can be done legally and procedurally for people with mental illness who are badly in need of treatment, likely to suffer harm without treatment, and, unlikely to accept and stay in treatment. The Task Force consisted of members with first-hand experience and knowledge of the state's mental health system including judges, physicians, psychiatrists, nurses, law enforcement personnel, and representatives of the California Psychiatric Association, the California Hospital Association, and the National Alliance on Mental Illness (NAMI).

   One of the Task Force's recommendations in the report is to more fully implement Laura's Law statewide by removing the requirement for a Board of Supervisors resolution, reviewing and developing expansion strategies, and, extending or removing the current January 1, 2013, sunset date, as proposed in this bill. According to the Task Force, lack of implementation of Laura's Law deprives communities of an effective early intervention tool that can prevent costly, potentially dangerous deterioration when an individual with a history of repeat hospitalization or arrest due to threat of violence is refusing treatment. The Task Force notes that statewide implementation of Laura's Law would ensure that the small but significant number of individuals with a severe and persistent mental illness receive needed treatment before a public tragedy occurs and provide clear benefits for courts, law enforcement, emergency responders, and hospital emergency departments.

6) PROPOSITION 63. In 2004, California voters approved Proposition 63, the Mental Health Services Act (MHSA). Proposition 63 enacted a surcharge on incomes over $1 million annually, and dedicated the resulting revenue to expanding community mental health programs. The MHSA addresses a broad continuum of prevention, early intervention and service needs and the necessary infrastructure, technology, and training elements that will effectively support this system, with the purpose of promoting recovery for individuals with serious mental illness. Subsequent regulations adopted by DMH require programs and/or services provided with MHSA funds to offer mental health services and supports to individuals with severe mental illness; to be designed for voluntary participation; and, to comply with specified non-supplantation requirements. It is unclear whether or not it is permissible for a county to use MHSA funds to support an AB 1421 program.

7) SUPPORT. The sponsor of this bill, California Psychiatric Association, states that AB 1421 needs to be extended because it is a valuable early intervention alternative to revolving door hospitalization and incarceration for a small group of individuals who meet certain stringent criteria and occupies a unique niche in counties' continuum of care that supports recovery from severe and persistent mental illness. The California Treatment Advocacy Coalition notes in support that, in Nevada County, AOT saved $1.81 in hospitalization and incarceration costs for every $1.00 invested and it has had a positive fiscal impact on decreasing costs to other county systems, such as emergency departments, ambulance, law enforcement, and the courts. L.A. County supports this bill and suggests an amendment to include State implementation funds as more funding is needed to increase program capacity

and serve more county residents with severe mental illnesses who may be a risk to themselves or others. The California Association of Psychiatric Technicians adds in support that, as trained, licensed, and regulated mental health and developmental services nursing professionals, they are strongly compelled to support AOT services, which could save lives, families, and funds if AB 1421 is allowed to continue and encouraged to be implemented.

8) OPPOSITION. Disability Rights California (DRC) objects to this bill, arguing that AOT is unnecessary as there are good alternatives to ensure access to needed mental health services; AOT has not been widely implemented and does not work; and, current LPS Act law allows for involuntary mental health treatment under statutorily defined criteria. DRC contends that some counties already have in place proven voluntary treatment programs that have comparable results to AOT without the expense and coercion of court-ordered treatment, citing Orange County's Full Service Partnerships funded by MHSA that have reduced hospitalizations by 50%, incarcerations by 88%, and homelessness by 70%. Other opponents, including the California Association of Mental Health Patients' Rights Advocates and the California Network of Mental Health Clients, maintain that forced treatment is inconsistent with mental health recovery principles of self-determination and empowerment and drives people away from the mental health system altogether. The American Civil Liberties Union of California (ACLU) writes in opposition that California should increase the availability of a full array of voluntary mental health services for the mentally disabled and expand programs that have demonstrated success in saving lives and money.

9) DOUBLE-REFERRAL. This bill is double-referred. Should it pass out of this committee, it will be referred to the Assembly Judiciary Committee.

10) POLICY COMMENT. While the option to implement an AOT program is considered to be an important tool for providing care to the small minority of individuals whose mental illness is so severe that it poses a danger to the public and to themselves, it is unclear how counties can best utilize it given the state's ongoing fiscal crisis that is requiring counties to do more with less and the lack of an identified funding source in the original statute for implementation.

REGISTERED SUPPORT / OPPOSITION:

Support
California Psychiatric Association (sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO
California Association of Psychiatric Technicians
California Hospital Association
California State Sheriffs' Association
California Treatment Advocacy Coalition
County of Los Angeles
Friends Committee on Legislation of California
NAMI Orange County
Nevada County Suicide Prevention Task Force
Treatment Advocacy Center
Several individuals

Opposition

ACLU
Bazelon Center for Mental Health Law
California Association of Mental Health Patients' Rights Advocates
California Association of Social Rehabilitation Agencies
California Network of Mental Health Clients
Disability Rights California
MindFreedom International
National Association for Rights Protection and Advocacy
San Diego Disability Action Coalition
United States Psychiatric Rehabilitation Association
Voices of the Heart, Inc.
Several individuals

Analysis Prepared by: Cassie Royce / HEALTH / (916) 319-2097