



DATE: October 9, 2023

Behavioral Health Information Notice No: 23-055
Supersedes BHIN [23-051](#)

TO: California Alliance of Child and Family Services
California Association for Alcohol/Drug Educators
California Association of Alcohol & Drug Program Executives, Inc.
California Association of DUI Treatment Programs
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professionals
California Council of Community Behavioral Health Agencies
California Hospital Association
California Opioid Maintenance Providers
California State Association of Counties
Coalition of Alcohol and Drug Associations
County Behavioral Health Directors
County Behavioral Health Directors Association of California
County Drug & Alcohol Administrators
California Association of Highway Patrolmen
California Association of Public Hospitals
California Children's Hospital Association
California Peace Officers' Association
California State Sheriff's Association
California Statewide Law Enforcement Association
Disability Rights California
Hospital Association of Southern California
Northern California Peace Officer Association
Private Essential Access Community Hospitals
State Park Peace Officers Association of California

SUBJECT: Initiation of 72-hour detentions under Welfare and Institutions (W&I) Code section 5150; expansion of certification review hearings; rights of a detained person; summary of Assembly Bill (AB) 2275.

PURPOSE: To provide notice of amendments made to the Lanterman-Petris-Short (LPS) Act pursuant to AB 2275, including changes to processes for involuntary detentions and certification hearings.

REFERENCE: [AB 2275](#) (Wood, Chapter 960, Statutes of 2022)
W&I Code sections [5150](#), [5151](#), [5256](#), [5275](#), [5350](#), [5354](#), and [5585.20](#)



BACKGROUND

The legislative intent of the LPS Act is, in part, to provide services in the least restrictive setting appropriate to the needs of each person receiving LPS Act services.¹ The LPS Act requires that a person detained for a period of up to 72 hours pursuant to section 5150 of the W&I Code be assessed and evaluated on an ongoing basis, and provided an assessment to determine whether the person can be properly served without being detained.² Persons detained for 72 hours and who have received an evaluation may be certified for up to 14 days of intensive treatment under certain circumstances.³ These persons are entitled to a certification review hearing.⁴ Section 5350 of the W&I Code establishes the right of a person subject to a petition for conservatorship to demand a court trial. The court trial must commence within in 10-days of the date of the demand unless a 15-day extension is requested by the proposed conservatee's counsel.

SUMMARY OF STATUTORY CHANGES

AB 2275 made the following substantive changes in the law⁵:

W&I Code section 5150

W&I Code section 5150, subdivision (a) allows specified individuals to, upon probable cause, take, or cause to be taken, a person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by DHCS. Prior to AB 2275, the statute did not clearly specify when the 72-hour period would begin. AB 2275 added language stating that the 72-hour period begins at the time the person is first detained. Additionally, W&I Code section 5150 now includes subdivision (k), which requires a facility to which a person who is involuntarily detained has been transported to notify the county's patients' rights advocate if the person has not been released within 72 hours of being detained.

W&I Code section 5151

W&I Code section 5151, subdivision (a) states that if a facility designated by the county

¹ W&I. Code, § 5001, subd. (i).

² *Id.*, §§ 5150, subds. (a), (c); 5151, subd. (b).

³ *Id.*, § 5250.

⁴ *Id.*, §§ 5254, 5256.

⁵ Note, AB 2275 made other non-substantive changes to State law, including in W&I Code section 5585.20. Section 5585.20 states that the Children's Civil Commitment and Mental Health Treatment Act of 1988 applies "only to the initial 72 hours of mental health evaluation and treatment provided to a minor," and that "[e]valuation and treatment of a minor beyond the initial 72 hours shall be pursuant to" the LPS Act.

for evaluation and treatment admits a person, it may detain the person for evaluation and treatment for a period not to exceed 72 hours. AB 2275 clarifies that the 72-hour period begins at the time that the person was first detained.⁶

W&I Code section 5256

Throughout the LPS Act, detained persons are entitled to certain types of review, including certification review hearings and judicial review. W&I Code section 5256 entitles a person certified for intensive treatment to a certification review hearing.⁷ Prior to AB 2275, certification review hearings could be postponed for a period of 48 hours, or in counties with a population of 100,000 or less, until the next regularly scheduled hearing date. AB 2275's amendments remove the option to postpone for 48 hours, or in counties with a population of 100,000 or less, until the next regularly scheduled hearing date.

AB 2275 additionally requires a certification review hearing be held for persons who have not been certified for intensive treatment pursuant to W&I Code section 5250 but remain detained pursuant to W&I Code section 5150. Specifically, a certification review hearing shall be held within seven (7) days of the date the person was initially detained unless judicial review has been requested. For these hearings, AB 2275's amendments also require the following:

- The person detained shall be informed of their rights with respect to the hearing process, including the right to assistance to prepare for the hearing, and their right to a judicial review by habeas corpus.
- The professional person in charge of the facility designated by the county for evaluation and treatment, or an individual designated by the county if the person is not in a designated facility, shall inform the detained person of their rights with respect to the hearing, such as the right to the assistance of another person, including the county patients' rights advocate, to prepare for the hearing, shall answer questions and address concerns regarding involuntary detention, and shall inform them of their rights pursuant to Section 5254.1.
- An attorney or county patient's right advocate shall meet with the person to

⁶ See also *id.*, § 5151, subd. (a) ["Saturdays, Sundays, and holidays may be excluded from the period if the State Department of Health Care Services certifies for each facility that evaluation and treatment services cannot reasonably be made available on those days."]

⁷ The certification review hearing is utilized to "determine whether or not probable cause exists to detain [a] person for intensive treatment related to [a] mental disorder or impairment by chronic alcoholism." (W&I Code, § 5254.) If at the conclusion of the certification review hearing, it is determined that "there is not probable cause to believe that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person certified may no longer be involuntarily detained." (*Id.*, § 5256.5; see also § 5256.6 [addressing when there is probable cause].)

discuss the commitment process, and to assist the person in the preparation of the certification hearing, or to answer questions or otherwise provide assistance, as appropriate.

- The certification review hearing shall be conducted in accordance with W&I Code sections 5256.1, 5256.2, 5256.3, 5256.4, 5256.5, 5256.6 and 5256.7, and that the detained person shall be considered certified.

W&I Code section 5275

W&I Code section 5275 now provides that every person detained under the LPS Act shall have a right to a hearing by writ of habeas corpus for their release after they or any person acting on their behalf has made a request for release to either (a) the person delivering the copy of the notice of certification to the person certified at the time of the delivery, or (b) to any member of the treatment staff of the facility providing intensive treatment, at any time during treatment.

W&I Code section 5350

Existing law establishes the right of a person who is subject to conservatorship proceedings pursuant to W&I Code section 5350 to demand a court or jury trial within 5 days following a hearing on a conservatorship petition.⁸ The law requires the court or jury trial to commence within 10 days of the date of demand, except when the court continues the trial date for a period not to exceed 15 days upon the request of counsel for the proposed conservatee.⁹ AB 2275's amendments state that failure to commence the trial within that period of time is grounds for dismissal of the conservatorship proceedings.

W&I Code section 5354

W&I Code section 5354, subdivision (a) requires the officer providing a conservatorship investigation to pursue all available alternatives to conservatorship and only recommend conservatorship when no suitable alternatives are available. AB 2275's amendments provide that the officer must set forth all available alternatives, including all less restrictive alternatives, for any person subject to a conservatorship investigation, regardless of whether the officer recommends for or against conservatorship.

As a result of AB 2275's amendments to W&I Code section 5150, the Department has updated its form DHCS 1801, Application for up to 72-Hour Assessment, Evaluation, and Crisis Intervention Placement for Evaluation and Treatment.

⁸ *Id.*, § 5350, subd. (d)(1).

⁹ *Id.*, § 5350, subd. (d)(2).

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This updated form is available online at the following link:

<https://www.dhcs.ca.gov/formsandpubs/forms/Forms/DHCS-1801.pdf>.

DHCS recommends that providers review the amended W&I Code sections to ensure compliance¹⁰ and note important changes in the law. The chaptered legislation is available on the California Legislative Information [website](#).

If you have questions regarding this Behavioral Health Information Notice, please contact the Mental Health Licensing Section at MHLC@dhcs.ca.gov or (916) 323-1864.

Sincerely,

Original signed by

Janelle Ito-Orille, Chief
Licensing and Certification Division

¹⁰ Note that counties shall comply with the terms of the County Performance Contract, including requirements to provide services to persons receiving involuntary treatment as required by Part 1 (commencing with Section 5000) and Part 1.5 (commencing with Section 5585). (See W&I. Code, § 5651, subds. (a), (b)(2).)