

# MENTAL HEALTH LAWS AND PATIENTS' RIGHTS IN CALIFORNIA

This slide show covers the basic laws pertaining to mental health patients' rights and mental health holds in the state of California.

It is intended for informational or educational purposes only.

The laws described in this slide show are found in the California Welfare and Institutions Code, starting in section 5000, and in Title 9 of the California Code of Regulations.

These laws are often referred to as the "LPS Act".

# LANTERMAN-PETRIS-SHORT ACT (LPS)

History and  
Intent of LPS  
Law

# **LPS ACT: The basics**

**Why LPS?**



**Patients' Rights  
And the  
Patients' Rights Advocate**



**Civil commitment  
laws and procedures**

# WHY LPS?

- To end the inappropriate, indefinite, and involuntary commitment of individuals with serious mental health disorders
  - Pre-LPS Law: Judicial commitment
    - No due process
    - Loss of civil and constitutional rights
    - High power differential = high rate of abuse
- How do we protect an individual's basic human rights, even if they are experiencing a mental health crisis?

# LPS ACT: OVERVIEW

- **The Lanterman–Petris–Short (LPS) Act- 1967**
  - **Co-authored by California State Assemblyman Frank Lanterman and California State Senators Nicholas C. Petris and Alan Short.**
    - Signed into law by Governor Ronald Reagan
    - The Act went into full effect on July 1, 1972
  - **California Welfare & Institution Code, section 5000 et seq.**
  - **Concerns the involuntary civil commitment to a mental health institution in the State of California**
  - **The act set the precedent for modern mental health commitment procedures in the United States**
- **Aimed at 9 areas of legislative intent:**

# LPS ACT: LEGISLATIVE INTENT

1. To end the inappropriate, indefinite, and involuntary commitment of mentally disordered persons, people with developmental disabilities, and persons impaired by chronic alcoholism, and to eliminate legal disabilities
2. To provide prompt evaluation and treatment of persons with serious mental disorders or impaired by chronic alcoholism
3. To guarantee and protect public safety
4. To safeguard individual rights through judicial review
5. To provide individualized treatment, supervision, and placement services by a conservatorship program for gravely disabled persons

# LPS ACT: LEGISLATIVE INTENT

6. To encourage the **full use** of all existing agencies, professional personnel and public funds to accomplish these objectives and to **prevent duplication** of services and unnecessary expenditures
7. To protect mentally disordered persons and developmentally disabled persons from **criminal acts**
8. To provide **consistent standards** for protection of the personal rights of persons receiving services
9. To provide services in the **least restrictive setting** appropriate to the needs of each person receiving services

# PATIENTS' RIGHTS

WHAT ARE PATIENTS' RIGHTS?

WHAT DO ADVOCATES DO?

WHAT CAN AN INDIVIDUAL EXPECT  
WHEN RECEIVING INPATIENT  
MENTAL HEALTH  
SERVICES?

- Undeniable rights
- Deniable rights
- Right to refuse
- Voluntary treatment
- Involuntary treatment

# LPS LAW: PATIENTS' RIGHTS

- The LPS act specifically requires that treatment, rehabilitation and recovery services be provided in the **least** restrictive manner possible
- An individual has the right to treatment services that:
  - Promote the potential of the person to function independently
  - Safeguard the personal liberty of the individual
- LPS permits involuntary hospitalization for individuals for whom such confinement with its accompanying severe deprivation of liberty, is necessary and appropriate due to mental illness
- LPS act provides due process for individuals on involuntary mental health holds
- LPS protects individuals' rights to autonomy

# WHAT IS PATIENTS' RIGHTS ADVOCACY?

## “Expressed Wish” vs. “Best Interest”

- Advocacy is the process of promoting and representing clients' rights and interests through direct assistance, monitoring, training and policy review
- Advocates ensure that the statutory and constitutional rights of recipients of mental health services are respected
- The Patients' Rights Advocate represents the “**Expressed Wish**” of the client. They act as the client's voice.

# PATIENTS' RIGHTS: FOR THE PRACTITIONER

- Advocates assist staff in ensuring that all clients are notified of their rights
- Act as consultant to mental health professionals
- Act as liaison between the advocacy program and the State Office of Patients' Rights

## W&I Sec. 5550:

(b) No person shall knowingly obstruct any county patients' rights advocate in the performance of duties

(e) Civil penalty, as determined by a court, of not less than one hundred dollars (\$100), or more than one thousand dollars (\$1,000)

## Rights for Individuals In Mental Health Facilities

Admitted Under the Lanterman-Petris-Short Act



California Department of Health Care Services

# PATIENTS' RIGHTS: FOR THE CLIENT

- Representation of client's expressed wish
  - In Certification Hearings
  - In Capacity Hearings
- Counsel clients on options and the implication of those options
- Assist the client to make informed choices
- Investigate grievances and complaints in LPS facilities, Community Care Homes, MH providers
- Educate individuals on LPS law and rights afforded to them

→ What are these rights?

## MENTAL HEALTH PATIENTS' RIGHTS



MOSAIC FOREST

Alice Washington, 2004

**Mental health patients have the same legal rights guaranteed to everyone by the Constitution and laws of the United States and California.**

### YOU HAVE THE RIGHT:

- To dignity, privacy and humane care
- To be free from harm including unnecessary or excessive physical restraint, medication, isolation, abuse and neglect
- To receive information about your treatment and to participate in planning your treatment
- To consent or refuse to consent to treatment, unless there is a legally defined emergency or a legal determination of incapacity
- To client-centered services designed to meet your individual goals, diverse needs, concerns, strengths, motivations and disabilities
- To treatment services which increase your ability to be more independent
- To prompt medical care and treatment
- To services and information in a language you can understand and that is sensitive to cultural diversity and special needs
- To keep and use your own personal possessions including toilet articles
- To have access to individual storage space for your private use
- To keep and spend a reasonable sum of your own money for small purchases
- To have reasonable access to telephones—both to make and to receive confidential calls or have such calls made for you
- To have access to letter-writing material and stamps—to mail and to receive unopened correspondence
- To wear your own clothes
- To social interaction, participation in community activities, physical exercise and recreational opportunities
- To see visitors every day
- To see and receive the services of a patient-advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services
- To religious freedom and practice
- To participate in appropriate programs of publicly supported education
- To be free from hazardous procedures
- And all other rights as provided by law or regulation

FOR MORE INFORMATION, CONTACT YOUR LOCAL COUNTY PATIENTS' RIGHTS ADVOCATE:

Advocates Please  
Place Your Address &  
Phone Number Here

IF YOU ARE UNABLE TO CONTACT YOUR LOCAL COUNTY PATIENTS' RIGHTS ADVOCATE, YOU MAY CONTACT:  
Office of Patients' Rights—(916) 575-1610  
Office of Human Rights—(916) 654-2317

# UNDENIABLE RIGHTS

- **W&I Sec. 5325.1: Persons with mental illness shall have rights including, but not limited to, the following:**
  - 1. Treatment services which promote the potential of the person to function independently; treatment should be provided in ways that are least restrictive of the personal liberty of the individual**
  - 2. Dignity, privacy, and humane care**
  - 3. To free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect; medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program**
  - 4. Medical care and treatment**
  - 5. Religious freedom and practice**
  - 6. Social interaction and participation in community activities**
  - 7. Physical exercise and recreational opportunities**
  - 8. To be free from hazardous procedures**
  - 9. To participate in appropriate programs of publicly supported education.**

# DENIABLE RIGHTS

- **W&I Sec. 5326:** The professional person in charge of the facility or state hospital or his or her designee may, **for good cause**, deny a person any of the rights under Section 5325
  - **Good cause exists when:**
    - the exercise of the specific right would be injurious to the patient OR
    - would seriously infringe on the rights of others, OR
    - institution would suffer serious damage if the right was not denied, AND
    - **there is no less restrictive way of protecting the interests of the person/others/facility.**
  - **The right to refuse psychosurgery and the right to see an advocate may never be denied**
  - **Documentation must accompany any denial of right**
  - **Common denials: right to wear one's own clothing, have visitors every day, phone calls (excessive 911 or harassing calls), etc.**

# INFORMED CONSENT TO MEDICATION AND THE RIGHT TO REFUSE

- **The right to exercise informed consent to medication**
  - **The following information shall be given orally to the patient:**
    - The nature of the mental illness
    - The likelihood of improving or not improving without the medication
    - Reasonable alternative treatments available
    - The name and type, frequency, amount, and method of dispensing the medication, and the probable length of time the medication will be taken
    - The fact that the information has or has not been given shall be indicated in the patient's chart
  
- **W&I Sec. 5325.2: Any person who is subject to detention...shall have the right to refuse treatment with antipsychotic medication**
  - **Except when:**
    - An emergency situation in which preservation of life or the prevention of serious bodily harm to the person and others and it is impractical to first gain consent
    - A Riese hearing has occurred and a judge has ruled that the individual lacks capacity to refuse antipsychotic medications

# RIESE HEARING: CAPACITY TO REFUSE

- **Riese v St. Mary's Hospital and Medical Center (1987)**
  - Judicial decision recognizing that persons detained pursuant to LPS have a right to give or refuse consent to medication prescribed for treatment with psychiatric medications
  - At the core of Riese is the recognition that mental health patients may not be presumed to be incompetent solely, because of their involuntary hospitalization
- **Capacity hearing:**
  - Petitioner is the prescriber (facility/doctor) and bears the burden of proving the refuser's incapacity to refuse medication; must show clear and convincing evidence to defend the intrusive denial of rights.
  - In the court hearing, the referee decides whether the patient:
    1. Is aware of his/her situation (e.g. diagnosis/condition)
    2. Is able to understand the benefits and risks of, and alternatives to, the medication
    3. Is able to understand and evaluate the medication information and participate in the treatment decision through a rational thought process
  - Referee is not deciding what is best treatment, only patient's ability to consent
- **Hearings must be held for each involuntary detainment period (5250, 5260, 5270, 5300)**
- **Long-acting anti-psychotic medications may not be used**

## ■ Summary

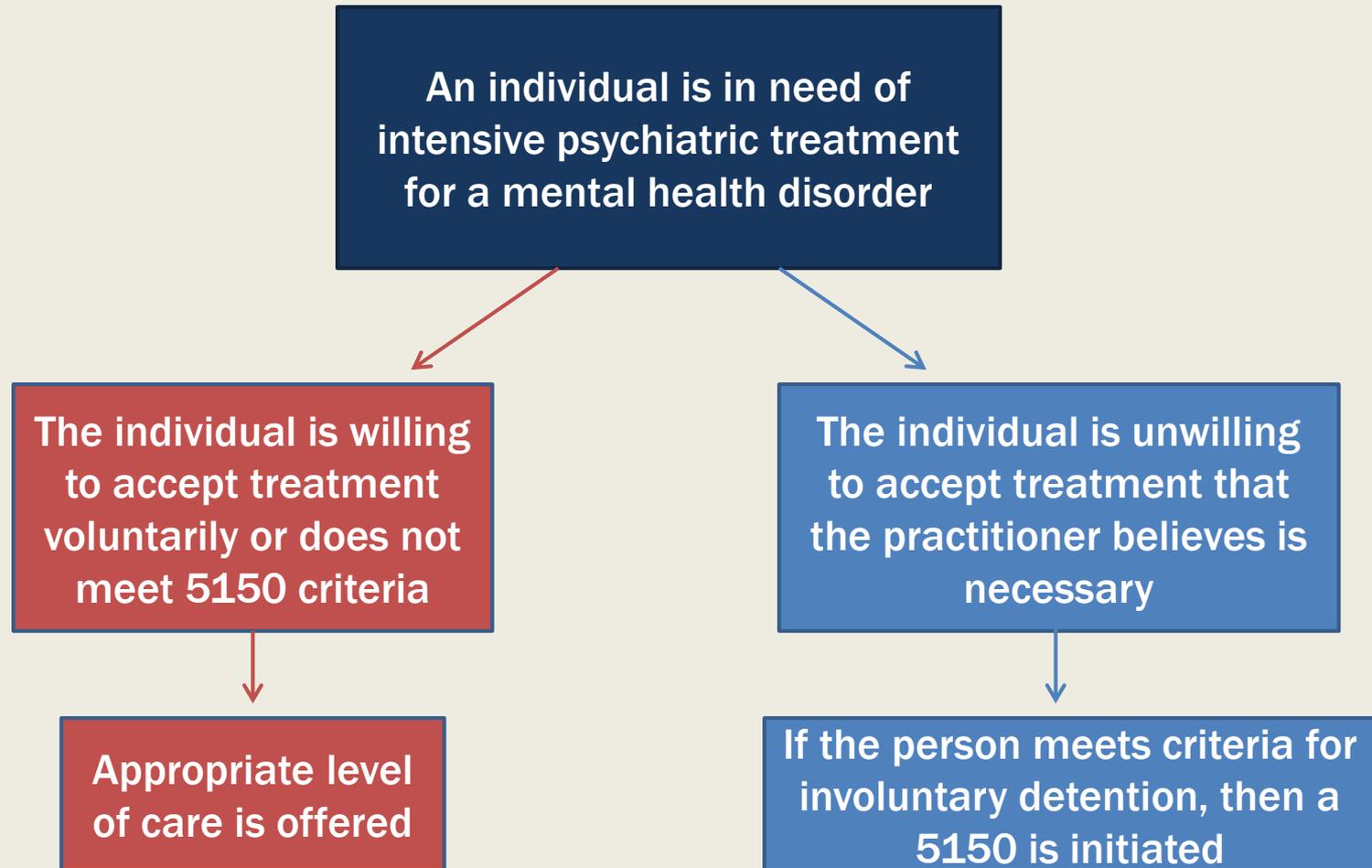
- LPS law protects individuals' rights and provides due process
- LPS law allows practitioners to provide mental health services to individuals
- Some rights cannot be denied under any circumstances such as the right to judicial review and advocacy
- Some rights may be denied with good cause or judicial proceedings
- Your county's Patients' Rights Advocate can assist you in determining the legality of denying rights

## ■ Next

- Detention under the Lanterman-Petris-Short Act
- Before we cover detaining an individual on an involuntary hold (5150), we'll look at the first requirement for any evaluation:

### **Voluntary Treatment**

# Pathways to treatment



# VOLUNTARY TREATMENT

- Legal standard: The patient is “willing and able to accept treatment on a voluntary basis”
- W&I Sec. 5150(c):
  - (c) If in the judgment of the professional person in charge of the facility providing evaluation and treatment, or his or her designee, **the person can be properly served without being detained**, he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a **voluntary basis**

# VOLUNTARY TREATMENT

- **Legal rights of voluntary patients**
  - The right to discharge themselves from a facility at any time
  - The right to refuse anti-psychotic medications
  - The right not to be placed in seclusion and/or restraint
- **The individual must be given the option of voluntary treatment throughout all the stages of the commitment process, except when a post-certification for danger to others is initiated (W&I Sec. 5260, 5300)**

# ASSISTED OUTPATIENT TREATMENT

- **Assisted Outpatient Treatment (AOT) was adopted in Placer County in 2015.**
  - **Allows involuntary, court-imposed outpatient treatment for persons who are mentally ill and meet certain clinical criteria**
  - **A request for AOT can be made to the mental health director (or their designee) by:**
    - Any adult who lives with the person
    - An adult parent, spouse, sibling or adult child of the person
    - The director of a residential institution where the person resides
    - A treating or supervising licensed mental health treatment provider
    - The person's parole or probation officer
  - **When a request is made, the county mental health director will direct an investigation take place, and will petition the court for an AOT order if there is evidence that the necessary elements for the petition exist**

# ASSISTED OUTPATIENT TREATMENT

## ■ AOT Petition Process

- If the petition is valid, a court proceeding is held to determine if the person will receive treatment under AOT
  - The person will be represented by counsel provided by the county
- If the petition is granted, the court will specify which mental health services the person will receive under AOT
- This program has **no** specific provision for involuntary medication
- If a person is not compliant with an AOT order, the treatment provider may request that the person be detained in a inpatient hospital for up to 72 hours for examination to determine if they meet the criteria for the involuntary treatment process (starting with the 5150)
  - Failure to comply with AOT alone is not sufficient ground for a 5150
  - Non-compliance with AOT may not result in a contempt of court ruling

# INVOLUNTARY TREATMENT

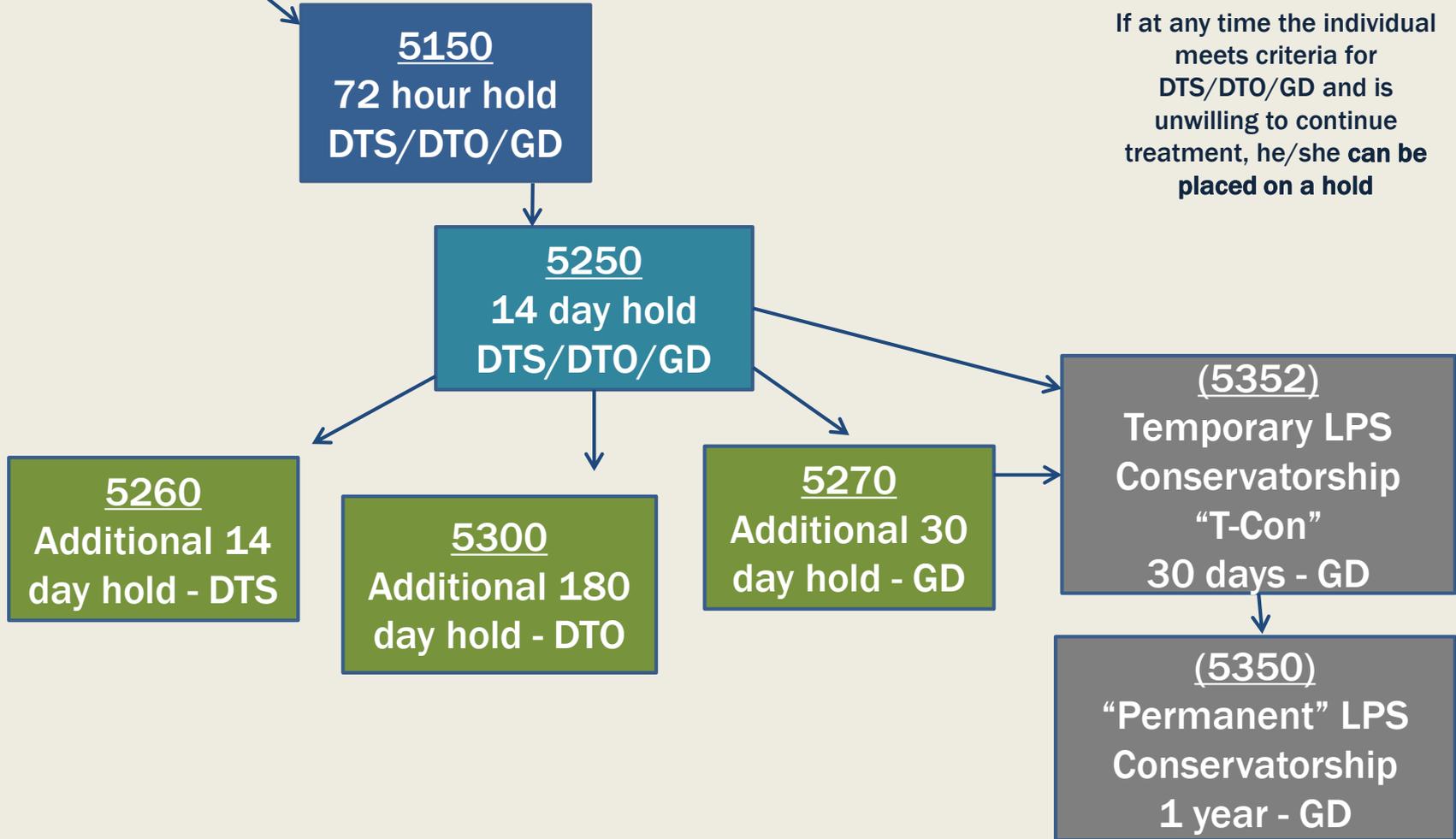
- If an individual is unwilling or unable to accept treatment on a voluntary basis, an application for involuntary detention for evaluation and treatment may be placed
- Who can write an application for involuntary detention?
  - Law enforcement
  - Persons designated by the County Mental Health Director
    - Placer County Board of Supervisors Resolution No. : 2016-097
- The ability to place a person on an involuntary hold in the community is the only situation outside of law enforcement where an individual may take away another individual's civil right to freedom and detain him/her against his/her will
  - This is a serious decision, and one that should never be made lightly

Individual unwilling/unable to accept voluntary treatment

## Civil commitment laws and procedure

Individual willing and able to accept voluntary treatment

If at any time the individual meets criteria for DTS/DTO/GD and is unwilling to continue treatment, he/she can be placed on a hold



**5150**  
**“Application for  
Involuntary Detainment  
for Mental Health Evaluation  
and Treatment”**

# Three Key Elements

1. Probable Cause



2. Mental Disorder



3. Meets Criteria

- Danger to Self
- Danger to Others
- Gravely Disabled



**All three elements must be documented and substantiated. This is a legal, rather than a clinical document.**

Legal  
Standard  
for  
Involuntary  
Detention

(The 72  
Hour Hold)

# 1. PROBABLE CAUSE

- **Definition of probable cause for LPS law:**
  - **“a state of facts must be known that would lead a person of ordinary care and prudence to believe, or entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or, herself or is gravely disabled..**
  - **...specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his belief or suspicion..**
  - **...must be decided on the facts and circumstances presented to the officer at the time of detention...”**
  - **...”shall consider available relevant information about the historical course of the person’s mental disorder...”**

## 2. MENTAL DISORDER

- Is “as a result of a mental disorder”, a danger to self, others, or gravely disabled
- There must be an **articulable connection** between the mental disorder and the criteria
  - Danger to self of others without a mental disorder does not meet the standard
  - Inability to provide food, clothing, and shelter without a mental disorder is not enough
- Under §5343 may include **controlled substances** only if any custody/evaluation/treatment/procedure is related to problem of substance use

# 3. DANGER TO SELF, OTHERS AND GRAVE DISABILITY

- **Danger to Self (DTS)**
  - Deliberate intention to injure oneself (i.e. overdose)
  - Disregard of personal safety to the point where injury is imminent (i.e. wandering around in heavy traffic)
  - The danger must be: present, immediate, substantial, physical and demonstrable
  
- **Danger to Others (DTO)**
  - Based on words or actions that indicate an intent to cause harm to a particular individual or intends to engage in dangerous acts with gross disregard for the safety of others
  
- **Grave Disability (GD)**
  - “A condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs of food, clothing or shelter”
  - For minors: “Unable to utilize the elements of life... even though they are provided to the minor by others”
  - Courts have ruled that if a person can survive safely in freedom with the help of willing and responsible third parties, then he/she is not gravely disabled
  - Refusing treatment is not evidence of GD; neither is poverty or choice of lifestyle (i.e. homelessness)

# LIABILITIES ASSOCIATED WITH A 5150 HOLD

- Anyone who knowingly or willfully is responsible for detaining a person in violation of the commitment statutes is liable in a civil code action by the detained party (W&I 5259)
- The writer of a 5150 shall not be held civilly or criminally liable for any action by a person released at or before the end of the 72-hours (W&I 5154)
- If probable cause is supported due to accounts of someone other than the designated person (for example a friend or family member), the person giving the information may be liable for giving an intentionally false statement (W&I 5150)

# 5150: Legal Procedure Requirements

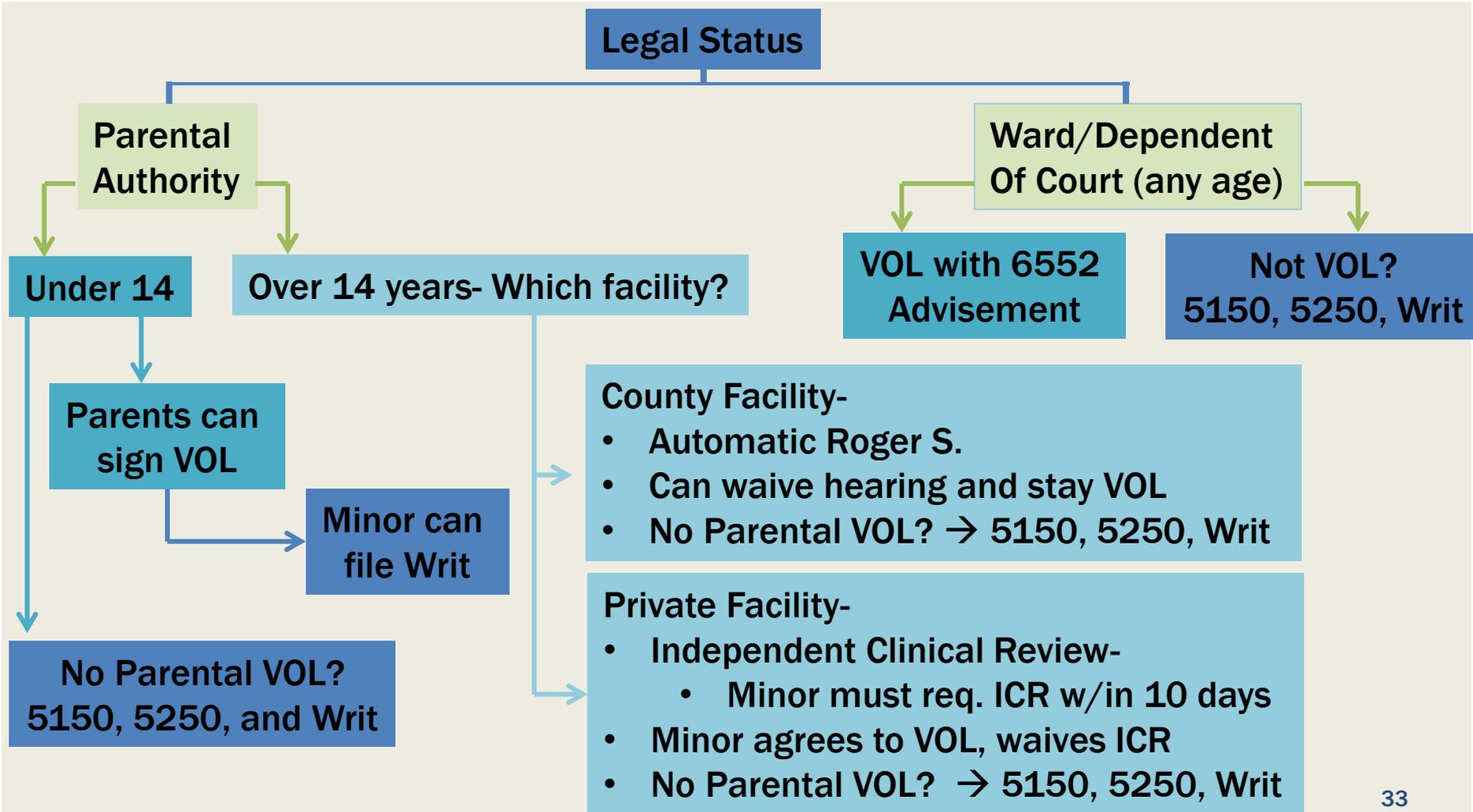
## Legal requirements when an application for 5150 has been filed:

- A facility may hold a patient on a 72 hour detention for not more than 72 consecutive hours
- An evaluation must be provided as soon as possible after admission
- The facility must make reasonable attempts to notify the patients' next of kin, unless the patient requests this information not be provided
- If the person is receiving medication as a result of their mental illness, written and oral information about the probable and possible side effects of the medication must be given as soon as possible after detention
- The person must be given the following information orally and in writing by the LPS facility:
  - The detention criteria the person is believed to meet
  - The facts upon which these allegations are based
  - The length of time the person will be held
  - Notification of the right to a hearing before a court officer if the detention lasts longer than 72 hours

# DUE PROCESS FOR MINORS: DETERMINING VOLUNTARY OR 5150

- When a minor meets criteria and authorization for voluntary treatment is not available, they may be taken into custody
  - Minors have the same legal rights as adults with the respect to involuntary holds and must also meet the same criteria
  - Minors 14 years of age or older have additional rights regarding their inpatient legal status (see next slide)
  - Grave Disability for minors
    - A minor is considered gravely disabled if, as a result of a mental disorder, he/she is “unable to use the elements of life which are essential to health, safety and development, including food, clothing, shelter, even though provided to the minor by others.”

# DUE PROCESS FOR MINORS: DETERMINING VOLUNTARY OR 5150



# TREATMENT FOLLOWING A 5150 HOLD

- A 5150 is for a maximum of 72 hours of assessment and treatment
  - By the conclusion of 72 hours, the individual must be either:
    - Released
    - Signed in Voluntary or
    - Placed on a 5250 hold
- If a person is still meeting the criteria for danger to self, danger to others, or grave disability, the facility may ask for an additional 14 days of involuntary treatment: a 5250 hold
  - The individual has the right to contest the doctor's request for additional treatment in a certification or writ of habeas corpus hearing

# SUBSEQUENT TREATMENT HOLDS

- **5250: 14 day hold for DTS, DTO or Grave disability**
  - An advisement stating the specific reasons for detention must be provided
  - Individual has the right to a certification hearing and writ of habeas corpus
  - Individual must be offered treatment voluntarily, and is unwilling or unable to accept
- **5260: 14 day hold for DTS**
  - An additional 14 days after 5250 has concluded
  - Requires a second notification
  - Individual must be offered treatment voluntarily, and is unwilling or unable to accept
- **5270: 30 day hold for Grave Disability**
  - An additional 30 days of intensive treatment after 5250 has concluded
  - Same due process rights and certification hearing as 5250
- **5300: 180 day hold for DTO**
  - Requires a court hearing; individual may ask for a jury
  - Voluntary does not need to be offered

By the end of the 5250 (14 day) hold, the patient must either be:

1. Released
2. Sign in voluntary
3. Certified on an additional hold for treatment

Individual is  
imminently  
suicidal

**5260**

14 day hold for DTS  
(may not be  
repeated)

Individual is still  
meeting criteria  
for Grave  
Disability

**5270**

30 day hold for GD

Individual is  
demonstrably  
dangerous to  
others

**5300**

180 day hold for  
DTO  
(can be repeated)

Conservatorship

# 5250: Certification for an additional 14-days of intensive treatment

- The client must continue to meet the legal criteria for DTS/DTO/GD
- The client may be certified on or before the expiration of the 72-hour hold. The client may also be certified during a period of voluntariness that occurs after the 72 hour hold
- The Notice of Certification must be signed by two people
- A copy of the certificate must be given to:
  - The patient
  - The advocate
  - A copy kept in the client's chart

State of California - Health and Human Services Agency  
Department of Mental Health

**NOTICE OF CERTIFICATION**  
MH 1760 (Rev. 08/06)

Confidential Patient Information  
See Welfare & Institutions Code  
Section 5128 and Penal Code 11142

HIPAA Privacy Rule  
45 C.F.R. § 164.508

The authorized agency providing evaluation services in the County of \_\_\_\_\_ has evaluated the condition of

Name \_\_\_\_\_

Address \_\_\_\_\_

Marital Status \_\_\_\_\_ Date of Birth \_\_\_\_\_ Sex \_\_\_\_\_

We, the undersigned, allege that the above-named person is, as a result of a mental disorder or impairment by chronic alcoholism (Mark all that apply):

A danger to others     A danger to himself or herself     Gravely disabled as defined in paragraph (1) of subdivision (b) or subdivision (1) of Section 5008 of the Welfare and Institutions Code

\*Strike out all inapplicable classifications.

The specific facts which form the basis for our opinion that the above-named person meets one or more of the classifications indicated above are as follows:

\_\_\_\_\_

\_\_\_\_\_

The above-named person has been informed of this evaluation, and has been advised of the need for, but has not been able or willing to accept treatment on a voluntary basis, or to accept referral to, the following services:

\_\_\_\_\_

\_\_\_\_\_

We, therefore, certify the above-named person to receive intensive treatment related to the mental disorder or impairment by chronic alcoholism beginning this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the intensive treatment facility herein named \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

I hereby state that I delivered a copy of this notice this day to the above-named person and that I informed him or her that unless judicial review is requested, a certification review hearing will be held within four days of the date on which the person is certified for a period of intensive treatment and that an attorney or advocate will visit him or her to provide assistance in preparing for the hearing or to answer questions regarding his or her commitment or to provide other assistance. The court has been notified of this certification on this day.

Signature \_\_\_\_\_

Copies: Person Certified-Personally delivered  
Person's Attorney/Advocate

# 5250: DUE PROCESS

- **Written notice and explanation of the 5250 14-day hold must be given to the patient and must include:**
  - A statement of the specific reasons for the decision
  - The right to assistance from an advocate/attorney
  - The right to a Certification Review Hearing within 4 days
  - The right to appear before a judge in a Writ of Habeas Corpus
- **Certification Hearing**
  - Is scheduled automatically within 4 days of a certification (5250) being placed
  - The patient has the right to contest the 5250 hold and present evidence to a hearing officer as to why they do not meet the grounds of DTS/DTO/GD
  - The burden of proof to show probable cause rests with the facility petitioning the court
  - If the client is certified for additional treatment, they may request a Writ hearing to appeal the decision made in the Certification Hearing
  - If the client is decertified, the facility must release the patient or offer voluntary admission
- **Writ of Habeas Corpus**
  - May be requested at any time during an involuntary detention, and may be requested for each period of detainment (5150, 5250, 5270, etc.)
  - Held within two judicial days of filing the request
  - A Public Defender is assigned to assist the client during the proceedings

# 5260: RECERTIFICATION ON 14-DAY HOLD FOR DANGER TO SELF

- At the expiration of the 5250 14-day certification, a person may be detained for a maximum of 14 additional days only if all of the following apply:
  1. The patient, as a result of a mental disorder, either threatened or attempted to commit suicide during the 72-hour 5150 or 14-day certification period or was detained originally for that reason
  2. The patient continues to present an imminent threat of suicide as determined by the professional staff of the designated facility
  3. The facility providing additional intensive treatment is equipped and staffed to provide treatment, and is designated by the county, and agrees to admit the person
  4. The person has been advised of, but has not accepted voluntary treatment\*
- All provisions for the initial 14-day certification must be followed (Notice of Certification, informed of rights, informed consent for medication, access to an advocate, etc.), except that a certification review hearing is not required
  - The patient may request a writ hearing if he/she chooses to contest the recertification

# 5300: 180-DAY POST-CERTIFICATION FOR DANGER TO OTHERS

- At the expiration of the 5250 14 day certification, a person may be detained for up to 180 days of additional intensive treatment if the person, because of a mental disorder, presents a demonstrated danger of substantial physical harm to others and has:
  - Attempted, inflicted, or made a serious threat of harm to another after having been taken into custody for evaluation and treatment; or
  - Been taken into custody because of having attempted or inflicted harm to another; or
  - Made a serious threat of substantial physical harm to another within seven days of being taken into custody
- A person's behavior in the past 6 years may be considered when determining his/her mental condition and demonstrated danger
- Neither conviction of a crime nor amenability to treatment is a necessary prerequisite to establishing a 180-day post certification (i.e. voluntary is not required to be offered)
- The petition for detention must be filed during the person's 5250 certification period by the County District Attorney (or County Counsel) or the person must be released
- The 5300 post-certification may be repeated if the patient continues to demonstrate danger at the conclusion of the 180 days

# TARASOFF V. REGENTS OF THE U. OF CALIFORNIA: DUTY TO PROTECT

- "When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps. Thus, it may call for him to warn the intended victim, to notify the police, or to take whatever steps are reasonably necessary under the circumstances.
- The defendants (Regents of the UC) argued that psychiatrists were unable to accurately predict violence. The Court replied that they did not require therapists to render a perfect performance, "but only to exercise that reasonable degree of skilled care ordinarily possessed by members of their profession under similar circumstances."
- Conflicting interests of patient and potential victim:
  - "The protective privilege ends where the public peril begins."
- Breach of confidentiality:
  - "Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to . . . protect the client/patient, psychologist, or others from harm."

# 5270: 30-DAY HOLD FOR GRAVE DISABILITY

- Upon completion of a 5250 14-day period of intensive treatment, the person may be certified for an additional period of not more than 30 days if both of the following conditions are present:
  - The professional staff of the facility treating the person has found that the person remains gravely disabled as a result of a mental disorder or impairment by chronic alcoholism
  - The person remains unwilling or unable to accept treatment voluntarily
- A notice of certification must be given to the patient and his/her representative
- A certification hearing must be held within 4 days time, unless the patient requests a writ hearing and waives their right to a certification review hearing
- **Concurrent Temporary Conservatorship:**
  - If temporary conservatorship is obtained, it shall run concurrently with and not consecutively to the 5270 30-day certification period
  - Permanent conservatorship (W&I Sec. 5300) may be sought during 5250 or 5270
- **The maximum involuntary detainment period for gravely disabled persons pursuant to Sec. 5150, 5250 and 5270.15 shall be limited to 47 days**
  - This includes any periods of voluntariness

By the end of the 5270 (30-day) hold for grave disability, the patient must be:

1. Released,
2. Signed in as Voluntary, OR
3. Conserved

During the 5270 30-day certification period it appears that the person is likely to require the appointment of a conservator, then the conservator referral must be made to allow sufficient time for conservatorship investigation and other related procedure.

The conservatorship hearing must be held by the 30<sup>th</sup> day of the certification period

# LPS CONSERVATORSHIP

- **“Conservatorship” is a court created arrangement that gives one person (conservator) authority to make specific kinds of decisions on behalf of another person (conservatee)**
  - **Conservator may be a public entity (Public Guardian) or private (family member, friend)**
  - **Probate conservatorship may grant authority to make property, contract, and/or healthcare decisions**
  - **Only LPS conservatorship may grant authority to also make mental health care decisions**

# LPS CONSERVATORSHIP

- **Establishment of LPS Conservatorship**
  - Initially referred by a professional person conducting a comprehensive evaluation
- **Temporary Conservatorship “T-Con”**
  - 30 days
  - GD may be resolved in this time
  - If not, Public Guardian may file for “permanent” conservatorship
- **LPS Conservatorship**
  - 1 year (it’s not permanent)
  - Expires automatically 12 months from date of creation
  - Public Guardian may petition for a renewal yearly

## ■ Summary

- LPS law allows practitioners to provide mental health services to individuals on a voluntary and involuntary basis
- Civil commitment laws and procedures establish a series of holds with corresponding judicial review processes
- Detaining a person under LPS requires documentation of specific legal requirements on the hold
- Your county's Patient Rights' Advocate can assist you in determining the LPS Act legal standards
- Placer County Patients' Rights contact information:
  - Phone: 916-787-8979 or 530-886-5419
  - Fax: 916-872-6521
  - Email: [patientsrightsadvocate@placer.ca.gov](mailto:patientsrightsadvocate@placer.ca.gov)