

LPS Holds and Conservatorships

Hon. Maria Stratton

Superior Court of Los Angeles County

February 6, 2018

Early 19th Century

- No hospitals
- No treatment options
- Mentally ill housed with family or in jails

1841 - 1966

- Dorothea Dix (1802-1887) began a movement to improve treatment of the mentally ill
- Established 1st hospital dedicated to the treatment of mental illness (1841)
- Separated mentally ill from criminal inmates



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Community Based Treatment

- President Johnson's "Great Society"
- New treatments and medications for treatment of mental illness
- Passage of "Federal Community Mental Health Centers Act" in 1966



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LPS Act

- Based upon the promise of federal funding California passes LPS which provides for community based treatment.
- LPS also sets standards for protection of basic rights of those who do not voluntarily accept treatment



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LPS Act

- It is a balancing act.
- It compels treatment of those who are gravely disabled because of a mental disorder.
- Within a due process framework.



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Implementation of LPS

- Signed into law by Governor Reagan in 1968 and implemented in 1969
- Eliminated over 31,000 beds for the mentally ill
- Federal funding did not materialize
- State and Counties bear the financial burden
- Many of the mentally ill (without family support) are homeless or incarcerated)



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Mental Illness/Disorder Resulting in Grave Disability

- Lanterman-Petris-Short (LPS) Act
 - W&I Code §§ 5000-5599
 - Civil LPS conservatorship



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What is a Mental Disorder

- LPS does not define mental disorder
- Court relies on the Diagnostic & Statistical Manual (DSM) of the American Psychiatric Association



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What is a Mental Disorder

- DSM-V classifies mental and physical disorders & behavior
- Most common: schizophrenia, bi-polar disorder, depression, schizoaffective disorder
- Query: dementia



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Gravely Disabled Adults W&I Code § 5008(h)

- Unable to Provide Food, Clothing *or* Shelter
- Unable/Unwilling to Accept Voluntary Treatment
- ***Caveat: Not*** Gravely Disabled if Can Survive With *Willing and Capable* Third Party Help—Writing required.



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Gravely Disabled Adults W&I Code § 5008(h)

- May be presently Gravely Disabled if:
 - Lacks Insight About Medical Condition
 - Does Not Believe in Illness or Need for Medication
 - Will Not Take Meds if Released [Historical Course, *see* W&I § 5008.2]
 - Cannot Provide For Self w/o Medications
 - Has Unrealistic Self-Care Plans



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The Beginning

- LPS conservatorships begin with a petition filed by the Public Guardian/Conservator
- Most won't file unless the conservatee has been on LPS involuntary holds



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The Beginning

- Holds are typically generated by 911 calls to the police
- Disposition: Hospital or Jail?



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LPS Involuntary Hospitalization

1. Gravely Disabled and/or
2. Dangerous to Self and/or
3. Dangerous to Others
 - ***As a Result*** of mental disorder or chronic alcoholism.



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New Standard

- Former law: a hold required probable cause that the patient is an *imminent* danger to self or others or is gravely disabled.
- Now: Danger to self or others does not have to be *imminent*



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Progression of LPS Holds

Very Graduated

Civil Rights Issue

STEP-by-STEP Approach
Culminating in Compelled
Treatment and Denial of Basic
Rights



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LPS Holding Periods

- 72-Hour Hold (W&I Code § 5150)
Gravely Disabled, Dangerous to Self,
Dangerous to Others
- 14-Day Day Hold (W&I Code § 5250)
Gravely Disabled, Dangerous to Self,
Dangerous to Other
- 2nd 14-Day Day Hold (W&I Code § 5260)
Dangerous to Self Only



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LPS 72-Hour Hold (W&I Code § 5150)

- For Gravely Disabled; Danger to Self; Danger to Others
- Placed by authorized personnel (police, hospital) in writing based on “historical course of illness”
- Intensive treatment/no court review



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LPS 14-Day Hold—W&I § 5250

- For Gravely Disabled; Danger to Self; Danger to Others
- Site-based probable cause hearing by judicial officer within 4 days of hold unless bypassed or postponed by patient’s attorney or advocate
- Intensive treatment
- De novo habeas corpus writ review



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LPS Second 14-Day Hold W&I Code § 5260

- Danger to Self ***ONLY***
- Placed by hospital
- Site-based probable cause hearing by hearing officer designated by court
- “Historical Course” consideration
- Habeas review (preponderance std)



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LPS 30-Day Hold W&I §§ 5270.10, et seq.

- 1988 compromise between 14 day and 1 year commitments.
- Needs County Board of Supervisors' resolution.
- Significantly reduces need for trials and number of “permanent” conservatorships.
- Not widely implemented.



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Habeas Corpus Right W&I §§ 5275-5278

- Certification for intensive treatment (14-day hold).
- Additional intensive treatment (30-day hold, if County adopts).
- Temporary conservatorship.

Writs of Habeas Corpus W&I Code §§ 5275-5278

- Statutory patient advocate:
 - Assists detainee.
 - Completes and delivers petition to person in charge of intensive treatment facility.
 - Notifies court immediately.

Writs of Habeas Corpus W&I Code §§ 5275-5278

- Public Defender (or other attorney) appointed to assist the patient
- Notice provided to all interested parties by mental health facility (unless patient requests confidentiality).



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Writs of Habeas Corpus W&I Code §§ 5275-5278

- Hearing must be held within **two** judicial days after petition is filed
- Burden of Proof: ***Preponderance of the Evidence.***
- Burden is on Respondent (County Counsel or District Attorney).



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Writs of Habeas Corpus W&I Code §§ 5275-5278

- Findings: To deny writ petition, court must determine that petitioner, as a result of a mental disorder (or chronic alcoholism), is *gravely disabled or a danger to self or others*.
- Procedure: People (Respondent) open and close.
 - Psychiatrist/psychologist vs. patient.



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Riese Capacity Hearings W&I §§ 5008, 5325.2, 5332-5337

- Anti-psychotic drugs can be given only
 - a) with consent;
 - b) in an emergency; OR
 - c) with a judicial determination that person lacks capacity to consent
- *Riese v. St. Mary's Hospital & Medical Center*
(1987) 209 Cal.App.3d 1303



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Temporary LPS Conservatorships W&I §§ 5350, 5352.3, 5365

- For gravely disabled only.
- Lasts for 30 days to allow for LPS investigation and filing of petition.
- May be extended up to 3 more days.
- Court shall appoint counsel for proposed conservatee within 5 days after filing of petition.



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Temporary Conservatorships W&I §§ 5350, 5352.1

- Burden of proof is preponderance of evidence.
- Burden of proof is on Public Guardian
- Powers are the same as for 1-year conservatorship.
- Reviewable by habeas corpus.



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LPS 1-Year Conservatorships W&I Code §§ 5352.1, 5365

- Petition filed by Public Guardian only, not private persons.
- Public Guardian may serve as Conservator.
- Private individual may also serve as Conservator.



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LPS 1-Year Conservatorship

- Public Guardian must investigate all available alternatives
- Conservatorship can be established only if there are no lesser restrictive alternatives



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LPS 1-Year Conservatorships Initial Hearing

- Proposed conservatee is entitled to initial hearing within 30 days of date of petition.
- Initial hearing is advisement of rights.
- Court and counsel must receive Public Guardian investigator's report.
- Court establishes conservatorship.



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LPS 1-Year Conservatorships Initial Hearing

- Patient may demand jury trial within 5 days after initial hearing.
- Hearing is waived if demand for jury trial is made prior thereto.
- Trial starts within 10 days of demand (or 15 days upon patient's request).



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Conservatorship Trials

- Jury Trial [W&I § 5350d]
 - Note: timing of jury demand and trial is directory, not mandatory
 - Unanimous verdict
 - Issues to be tried to jury: whether a conservatorship is needed; whether voting rights should be taken away



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Conservatorship Trials

- Jury Trial [W&I § 5350d]
 - Patient has right to counsel, to confront/cross-examine witnesses, to subpoena witnesses
 - Six peremptory challenges
 - ***Standard: Beyond a reasonable doubt***



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Common Evidentiary Issues

- Historical course and family information evidence (W&I §5008.2)
- Proof of third party's help (W&I § § 5250(d)(1) and 5350(e)(1))
- Admissibility of Public Guardian investigation report (W&I §5354)
- Expert testimony (treating vs. forensic)



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Historical Course/Family Info W&I §5008.2

- Extraordinary exception to hearsay rule.
- Is information relevant to course of mental disorder?
- "Shall be considered" if it has "direct bearing"
- Exclude remote or dissimilar circumstances
- Lay witness opinion admissible regarding inability to provide



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Admissibility of PG Report W&I §5354

- Probably admissible at initial 5350 court hearing [*Conservatorship of Manton* (1985) 39 Cal.3d 645]
- But what if initial hearing is contested?
- Always inadmissible at contested court or jury trial.



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Proof of 3rd Party's Help W&I §§ 5250(d)(1), 5350(e)(1)

- A "writing" is required.
 - Can patient survive safely?
 - Responsible party
 - Willingness to help
 - Ability to help
- Dispositive in many cases.



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LPS 1-Year Conservatorships

- Conservatorship automatically terminates by operation of law after one year
- Court only (not jury) decides who is appropriate conservator



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LPS 1-Year Conservatorships

- Court determines which powers to give to conservator AND which disabilities to impose on conservatee with 1 exception
- Now: jury determines whether voting rights are taken away



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LPS 1-Year Conservatorships

- Powers of conservator include:
- Power to consent to medical and/or psychiatric treatment/meds
- Power to determine place of residence, including locked facility



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LPS 1-Year Conservatorships

- Disabilities on conservatee include:
- No right to contract/vote
- No right to withhold consent to medical or psychiatric treatment
- No right to possess firearms



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LPS 1-Year Conservatorships

- Court must expressly find: possession of firearm/ deadly weapon would present danger to conservatee or others
- Conservatorship of Walker (1989) 206 C.A.3d 1572



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LPS 1-Year Conservatorships

- Court must expressly find: that conservatee cannot express a desire to participate in the voting process
- Court reports finding to local Reg of Voters and Sec of State



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LPS 1-Year Conservatorships

- Right to rehearing at any time (2d rehearing must be 6 months after 1st).
- Right to placement hearing at any time in least restrictive setting.



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LPS Automatic Termination

- LPS Conservatorships terminate by operation of law after one year.
- Probate Court clerk sends notice of upcoming termination 60 days before termination.
- Watch for private LPS conservators.



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LPS 1-Year Renewals W&I Code § 5350

- Gravely Disabled
- Same procedural protections available.
- Often submitted on reports with conservatee's appearance waived.



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LPS 1-Year Renewals W&I Code § 5350

- Need report by 2 physicians or psychologists.
- Do not need court investigator's report.



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LPS Recurring Issues

- Records, files and transcripts are confidential unless conservatee gives express waiver
 - Sorenson v. Superior Court (2013)
219 219 C.A.4th 409



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LPS Recurring Issues

- Court must find, by competent evidence, medical necessity for invasive medical treatment (i.e., doctor declaration insufficient)
 - Scott v. Superior Court (2012) 204 Cal.App.4th 326.



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LPS Recurring Issues

- Counsel may waive conservatee's presence as long as record indicates that counsel has conservatee's consent.
- Conservatorship of John L. (2010) 48 Cal.4th 131.



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LPS Recurring Issues

- Court cannot impose disabilities on conservatee ex parte, even with notice to conservatee who fails to object.
- K.G. v. Meredith (2012) 204 Cal.App.4th 164



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LPS Recurring Issues

- Conservatees have no *Faretta* rights, but do have the right to a *Marsden* hearing.
- Conservatorship of David L. (2008) 164 Cal.App.4th 701



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LPS Recurring Issues

- Court, not conservator, determines least restrictive placement.
 - Conservatorship of Amanda B. (2007) 149 Cal.App.4th 342.



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LPS Recurring Issues

- Court cannot order Public Guardian to file LPS petition.
 - People v. Karriker (2007) 149 Cal.App.4th 763.



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LPS Recurring Issues

- But see: County of Los Angeles v. Superior Court (2013) 222 Cal.App.4th 434 (Kennebrew)
- Where PG abused its discretion in declining to file, court can order PG to file Murphy petition



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Conservatorship Comparison 1

- LPS
 - Mental disorder required
 - To treat mental disorder
 - Involuntary placement
- Probate
 - No such requirement
 - To assist and maintain
 - No such power



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Conservatorship Comparison 2

- LPS
 - Automatic termination in one-year
 - Can medicate
- Probate
 - Indefinite duration
 - Need special power to medicate



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Conservatorship Comparison 3

- LPS
 - Filed only by designated agencies
 - Minors can be conserved
 - Proof: Beyond a Reasonable Doubt
- Probate
 - Any interested person may petition
 - No minors allowed
 - Proof: Clear and Convincing Evidence



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