

**Mental Health at a Glance:
Lanterman-Petris-Short Act—Involuntary Treatment¹**
(last revised 8/21/2016)

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¹ This article was drafted by CCAP staff and panel attorney Conness Thompson. CCAP wishes to thank Ms. Thompson for her extensive research on this foundation overview article. As always, counsel is encouraged to conduct their own independent research for current and applicable cases and/or statutory updates in an ever-changing body of law.

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Overview

In California, the involuntary commitment of those needing psychiatric treatment is governed by the Lanterman-Petris-Short Act² (often abbreviated LPS), found at Welfare and Institutions Code sections 5000 et seq. The LPS “is designed to provide prompt, short-term, community-based intensive treatment, without stigma or loss of liberty, to individuals with mental disorders who are dangerous to themselves or to others, or who are gravely disabled [citation].” (*Conservatorship of Chambers* (1977) 71 Cal.App.3d 277, 282.)

The LPS was originally enacted in 1967 (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1008) and became operative on July 1, 1969 (*Thorn v. Superior Court* (1970) 1 Cal.3d 666, 668). One of the goals motivating the original enactment of the LPS was “ending the inappropriate and indefinite commitment of the mentally ill . . .” (*Conservatorship of Susan T.*, *supra*, 8 Cal.4th 1005, 1009; see Welf. & Inst. Code, § 5001, subd. (a).) Thus, a key component of the LPS is the limiting of a person’s involuntary commitment to successive periods of increasingly longer duration. (See Welf. & Inst. Code, §§ 5150, 5250, 5260, 5270.15, 5300.) Since its original enactment, the LPS has been reenacted and amended a number of times. (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 953.) The chapters presently in effect are:

- Chapter 1 - General Provisions;
- Chapter 2 - Involuntary Treatment;
- Chapter 3 - Conservatorship of Gravely Disabled Persons;
- Chapter 4 - Administration;
- Chapter 6.2 - Mental Health Advocacy.

This article focuses on selected statutes within the following Chapter 2 articles:

- Article 1—Detention of Mentally Disordered Persons for Evaluation and Treatment;
- Article 2—Court-Ordered Evaluation for Mentally Disordered Persons;
- Article 4—Certification for Intensive Treatment;
- Article 4.5—Additional Intensive Treatment of Suicidal Persons;
- Article 4.7—Additional Intensive Treatment;
- Article 5—Judicial Review;
- Article 6—Postcertification Procedures for Imminently Dangerous Persons;
- Article 7—Legal and Civil Rights of Persons Involuntarily Detained.

Statutes

The statutes covering involuntary treatment (Chapter 2 of the LPS) provide for the imposition of increasingly longer periods of commitment: An initial hospitalization of up to 72 hours (Welf. & Inst. Code, §§ 5150, 5151, 5152, 5200, 5206, 5213), an additional 14-day period for intensive treatment following the initial 72-hour hospitalization (Welf. & Inst. Code, §§ 5250, 5251,

² The LPS is named for its co-authors Assemblyman Frank Lanterman and Senators Nicholas C. Petris and Alan Short. (Henderson, *We're Only Trying to Help: The Burden and Standard of Proof in Short-Term Civil Commitment* (1979), 31 Stan. L. Rev. 425, 429, fn. 20.)

5252), an additional 30 days of hospitalization following the 14-day period if the person remains gravely disabled and requires further intensive treatment (Welf. & Inst. Code, §§ 5270.15, 5270.35), an additional 14-day period after the initial 72-hour period and/or the additional 14-day period for intensive treatment if the person is suicidal (Welf. & Inst. Code, § 5260), an additional 180-day period for additional treatment upon completion of the 14-day period of intensive treatment if the person threatens, attempts, or inflicts substantial physical harm (Welf. & Inst. Code, § 5300).

The LPS involuntary commitment statutes also set out who may detain a person (Welf. & Inst. Code, §§ 5150, 5200), who may release a person (Welf. & Inst. Code, §§ 5152, 5257, 5270.35), notice (Welf. & Inst. Code, §§ 5208, 5253), hearings (Welf. & Inst. Code, §§ 5254, 5256, 5275, 5303), other rights of the detained person (Welf. & Inst. Code, § 5255, 5302, 5325), liability for the person's actions upon release (Welf. & Inst. Code, § 5154), and outpatient status (Welf. & Inst. Code, § 5305).

Welf. & Inst. Code, § 5150 - Initiation of the Initial 72-hour Hold

Upon probable cause, Welfare and Institutions Code section 5150 authorizes peace officers, professionals in charge of a county-designated evaluation and treatment facility, members of the attending staff of that facility, designated members of a mobile crisis team, or professionals designated by the court to take or cause to be taken into custody a person who “as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled” for a period of up to 72 hours for “assessment, evaluation, and crisis intervention.” (Welf. & Inst. Code, § 5150, subd. (a).) Hospitalizing a person pursuant to Welfare and Institutions Code section 5150 is often referred to as a “5150” or a “5150 hold.” (See, e.g., *Hernandez v. Paicius* (2003) 109 Cal.App.4th 452, 463 [“And you read he also had a 5150 hold on him with the County Mental Health Facility?”].)

Probable cause sufficient to initiate a 5150 hold requires “a state of facts . . . known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled.” (*People v. Triplett* (1983) 144 Cal.App.3d 283, 287–288.) Further, the person initiating the 5150 hold “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion.” (*Id.* at p. 288.) Probable cause includes “past conduct, character, and reputation of the detainee.” (*Ibid.*) (See Welf. & Inst. Code, § 5150.05.)

At the time a person is placed on a 5150 hold, the party initiating the 5150 must provide the person with the following information in a way that is understandable to the person (either orally or in writing): “My name is _____. I am a _____ (peace officer/mental health professional) with _____ (name of agency). You are not under criminal arrest, but I am taking you for an examination by mental health professionals at _____ (name of facility). You will be told your rights by the mental health staff.” (Welf. & Inst. Code, § 5150, subd. (g)(1).)

Further, if the person is at his or her home at the time he or she is placed on a 5150 hold, the party initiating the 5150 must tell the person: “You may bring a few personal items with you,

which I will have to approve. Please inform me if you need assistance turning off any appliance or water. You may make a phone call and leave a note to tell your friends or family where you have been taken.” (Welf. & Inst. Code, § 5150, subd. (g)(2).)

Welf. & Inst. Code, § 5151 - Calculating the Initial 72-hour Hold

Before a person detained on a 5150 hold may be involuntarily admitted to the treatment and evaluation facility, “the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention.” (Welf. & Inst. Code, § 5151.) If the involuntary detention is found appropriate, “Saturdays, Sundays, and holidays may be excluded from the [calculating of the initial 72-hour 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.” (Welf. & Inst. Code, § 5151.)

Welf. & Inst. Code, § 5152 - Evaluation, Treatment, and Release

Upon being admitted to a hospital on a 5150 hold, two events must occur: (1) the admitted person must receive an evaluation as soon as possible after admittance, and (2) he or she shall receive the required treatment and care for the duration of the 5150 hold. (Welf. & Inst. Code, § 5152, subd. (a).)

A person placed on a 5150 hold may be released prior to the expiration of the 72-hour period. (Welf. & Inst. Code, § 5152, subd. (a).) However, prior to that occurring, “the psychiatrist directly responsible for the person’s treatment [must believe], as a result of the psychiatrist’s personal observations, that the person no longer requires evaluation or treatment.” (Welf. & Inst. Code, § 5152, subd. (a).) Where there is a “collaborative treatment relationship” between the psychiatrist and a psychologist, and these two professionals disagree as to early release, the hold will stay in place unless the medical director of the facility determines otherwise. (Welf. & Inst. Code, § 5152, subd. (a).)

Upon expiration of the 72-hour period, a person placed on a 5150 hold “shall be released, referred for further care and treatment on a voluntary basis, or certified for intensive treatment, or a conservator or temporary conservator shall be appointed pursuant to this part as require. . .” (Welf. & Inst. Code, § 5152, subd. (b).)

Welf. & Inst. Code, § 5154 - Exemption from Liability Due to Early Release

If a person who has been involuntarily detained for treatment is released prior to the end of the initial 72-hour period, and if that release was conducted consistent with the requirements of Welfare and Institution Code section 5152, there shall be no civil or criminal liability assigned to the professional person (or his or her designee) in charge of the facility, the medical director (or his or her designee), the psychiatrist directly responsible for the person’s treatment, the psychologist, or the peace officer responsible for the detainment for any action taken by the released person. (Welf. & Inst. Code, § 5154, subs. (a) & (c).)

Welf. & Inst. Code, § 5200 - Court-ordered Mental Health Evaluation

In addition to being placed on a 72-hour 5150 hold by a designated party (see Welf. & Inst. Code, § 5150), a “person alleged, as a result of mental disorder, to be a danger to others, or to himself [or herself], or to be gravely disabled” may be ordered by the superior court to seek a mental health evaluation where that person has refused to do so voluntarily. (Welf. & Inst. Code, § 5200.)

Welf. & Inst. Code, § 5206 - Initial Hold Following Court Order

Where a person is court-ordered pursuant to Welfare and Institutions Code section 5200 to seek a mental health evaluation, and he or she refuses or fails to do so, “a peace officer, counselor in mental health, or a court-appointed official shall take the person into custody and place him in a facility designated by the county as a facility for treatment and evaluation.” (Welf. & Inst. Code, § 5206.) “The person shall be evaluated as promptly as possible, and shall in no event be detained longer than 72 hours under the court order, excluding Saturdays, Sundays, and holidays if treatment and evaluation services are not available on those days.” (Welf. & Inst. Code, § 5206.)

Welf. & Inst. Code, § 5208 - Notice of Court-ordered Evaluation

“As promptly as possible, a copy of the petition and the order for evaluation shall be personally served on the person to be evaluated and the professional person in charge of the facility for treatment and evaluation named in the order, or his designee.” (Welf. & Inst. Code, § 5208.)

Welf. & Inst. Code, § 5213 - Calculating Court-ordered Initial 72-hour Hold

In calculating the court-ordered initial 72-hour period allowable, “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.” (Welf. & Inst. Code, § 5213.)

Welf. & Inst. Code, § 5250 - 14-Day Certification for Intensive Treatment

Following an initial 72-hour hold, whether court-ordered (Welf. & Inst. Code, § 5200) or a 5150 hold (Welf. & Inst. Code, § 5150), the person detained may be held for an additional 14 days for intensive treatment only if all of the following apply:

1. The professional staff of the designated facility has found that the person meets the criteria of being dangerous to others, self, and/or gravely disabled due to a mental disorder (Welf. & Inst. Code, § 5250, subd. (a));
2. The facility providing the intensive treatment is designated by the county to provide such treatment and agrees to admit the person (Welf. & Inst. Code, § 5250, subd. (b));
3. The person has been advised of the need for treatment, but has been unwilling or unable to

accept such treatment voluntarily (Welf. & Inst. Code, § 5250, subd. (c)).

Welf. & Inst. Code, § 5251 - Notice of Certification - Signatories

“For a person to be certified [for an additional 14 days of intensive treatment] under this article, a notice of certification shall be signed by two people. The first person shall be the professional person, or his or her designee, in charge of the agency or facility providing evaluation services. A designee of the professional person in charge of the agency or facility shall be a physician or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.

“The second person shall be a physician or psychologist who participated in the evaluation. The physician shall be, if possible, a board certified psychiatrist. The psychologist shall be licensed and have at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.

If the professional person in charge, or his or her designee, is the physician who performed the medical evaluation or a psychologist, the second person to sign may be another physician or “psychologist unless one is not available, in which case a licensed clinical social worker or a registered nurse who participated in the evaluation shall sign the notice of certification.”

(Welf. & Inst. Code, § 5251.)

Welf. & Inst. Code, § 5252 - Notice of Certification - Form

A notice of certification, in substantially the form provided by Welfare and Institutions Code section 5252 (reproduced below) is required for all persons certified for intensive treatment 14-day treatment under Welfare and Institutions Code section 5250:

The authorized agency providing evaluation services in the County of _____ has evaluated the condition of:

Name _____

Address _____

Age _____

Sex _____

Marital status _____

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

(1) A danger to others.

(2) A danger to himself or herself.

(3) Gravely disabled as defined in paragraph (1) of subdivision (h) or subdivision (l) of Section 5008 of the Welfare and Institutions Code.

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:

(certifying persons to fill in blanks) _____

[Strike out all inapplicable classifications.]

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 _____, 19__, in the intensive treatment facility herein named _____.
(Month)

(Date)

Signed _____

Signed _____

Countersigned _____
(Representing facility)

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.

Signed _____

(Welf. & Inst. Code, § 5252.)

Welf. & Inst. Code, § 5253 - Copy of Certification Notice

“A copy of the certification notice [(Welf. & Inst. Code, § 5252)] shall be personally delivered to the person certified, the person’s attorney, or the attorney or advocate designated in [Welfare and Institutions Code] section 5252. The person certified shall also be asked to designate any person who is to be sent a copy of the certification notice. If the person certified is incapable of making this designation at the time of certification, he or she shall be asked to designate a person as soon as he or she is capable.” (Welf. & Inst. Code, § 5253.)

Welf. & Inst. Code, § 5254 - Certification Review Hearing

“Once [a] person is committed for an additional 14-day period [(Welf. & Inst. Code, § 5250)], he or she has the right to have a judicial determination of whether there is probable cause to detain the person for intensive treatment. [(Welf. & Inst. Code,] § 5254.) The person being certified also has the right to counsel and the right to bring a writ of habeas corpus. [(Welf. & Inst. Code,] §§ 5254, 5254.1.)” (*Bragg v. Valdez* (2003) 111 Cal.App.4th 421, 430.)

Welf. & Inst. Code, § 5255 - Assistance with the Commitment Process

“As soon after the certification as practicable, an attorney or patient advocate shall meet with the person certified to discuss the commitment process and to assist the person in preparing for the certification review hearing or to answer questions or otherwise assist the person as is appropriate.” (Welf. & Inst. Code, § 5255.)

Welf. & Inst. Code, § 5256 - Timing of Certification Review Hearing

When a person is certified for intensive treatment, the certification review hearing shall be within four days of that date, unless judicial review has been requested or postponed by request of the person or his or her attorney or advocate. (Welf. & Inst. Code, § 5256.)

Welf. & Inst. Code, § 5257 - Terminating an Involuntary Commitment

If, during the 14-day certification period (Welf. & Inst. Code, § 5250), it is determined that a person so detained is no longer a danger to others, a danger to himself or herself, or gravely disabled, his or her involuntary detention shall be terminated and the person shall be released. (Welf. & Inst. Code, § 5257, subd. (a).) Where there is a “collaborative treatment relationship” between a psychiatrist and a psychologist, and these two professionals disagree as to early

release, the detention will stay in place unless the medical director determines otherwise. (Welf. & Inst. Code, § 5257, subd. (a).)

Welf. & Inst. Code, § 5260 - Additional Treatment of Suicidal Persons

At the end of the 14-day treatment period or the 72-hour evaluation period, the detained person may be detained for up to an additional 14 days if (1) he or she, as a result of a mental disorder, either threatened or attempted to commit suicide during the detention, or was detained originally for that reason; (2) he or she 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 so designated by the county, and agrees to admit the person; (4) the person has been advised of, but has not accepted, voluntary treatment. (Welf. & Inst. Code, § 5260.)

Welf. & Inst. Code, § 5270.15 - Certification for Additional Intensive Treatment

After completing a Welfare and Institutions Code section 5250 14-day period of intensive treatment, a person may be certified for an additional period of up to 30 days of intensive treatment where it has been found that the person remains gravely disabled and he or she is unwilling or unable to voluntarily engage in treatment. (Welf. & Inst. Code, § 5270.15.)

Welf. & Inst. Code, § 5270.35 - Termination of Additional Intensive Treatment

The additional 30-day intensive treatment period shall terminate if the person no longer meets the criteria for the certification, or is prepared to voluntarily accept treatment. (Welf. & Inst. Code, § 5270.35, subd. (a).) Where there is a “collaborative treatment relationship” between a psychiatrist and a psychologist, and these two professionals disagree as to early release, the person may not be released unless the medical director determines otherwise. (Welf. & Inst. Code, § 5270.35, subd. (a).) If there has been no early release, at the end of the 30-day period, the person shall be released, unless he or she voluntarily agrees to additional treatment, or is the subject of a petition for either conservatorship or postcertification treatment of a dangerous person. (Welf. & Inst. Code, § 5270.35, subd. (b).)

Welf. & Inst. Code, § 5275 - Request for Release

“Every person certified for intensive treatment has a right to judicial review by a petition for habeas corpus in the superior court.” (*St. Joseph Hospital v. Kuyper* (1983) 146 Cal.App.3d 1086, 1088; see Welf. & Inst. Code, § 5275.) Intentional violation of this right is a misdemeanor. (Welf. & Inst. Code, § 5275.)

Welf. & Inst. Code, § 5300 - Additional 180-Day Treatment for Dangerous Persons

At the end of the 14-day intensive treatment period (Welf. & Inst. Code, § 5250), a person may be held for up to 180 days of additional treatment if the person’s mental disorder has resulted in the infliction, attempt, or threat of danger of substantial physical harm to others. (Welf. & Inst. Code, § 5300.)

Welf. & Inst. Code, § 5302 - Right to an Attorney and a Jury Trial

“At the time of filing of a petition for postcertification treatment the court shall advise the person named in the petition of his [or her] right to be represented by an attorney and of his [or her] right to demand a jury trial. The court shall assist him [or her] in finding an attorney, or, if need be, appoint an attorney if the person is unable to obtain counsel. The court shall appoint the public defender or other attorney to represent the person named in the petition if the person is financially unable to provide his [or her] own attorney.” (Welf. & Inst. Code, § 5302.)

“Because an involuntary civil commitment constitutes a deprivation of liberty and places a stigma upon the conservatee’s reputation, due process under the California Constitution requires that a finding of grave disability in an LPS jury trial must be unanimous and based upon proof beyond a reasonable doubt.” (*Sorenson v. Superior Court* (2013) 219 Cal.App.4th 409, 424.)

“[A] trial court must obtain a waiver of the right to jury trial from the person who is subject to an LPS commitment.” (*Conservatorship of Heather W.* (2016) 245 Cal.App.4th 378, 383.) The waiver must be personal unless the court finds substantial evidence that the person lacks the capacity to make a knowing and voluntary waiver. (*Conservatorship of Kevin A.* (2015) 240 Cal.App.4th 1241 [The waiver of jury trial by counsel on the conservatee’s behalf was invalid where the record established that the conservatee did not desire to waive his right, and the trial court made no specific finding that the conservatee lacked the capacity to make the decision for himself].)

California’s “open-court” statute (Code Civ. Proc., § 124) does not apply to LPS proceedings. (*Sorenson v. Superior Court, supra*, 219 Cal.App.4th 409, 437–438.) “[T]here is no constitutional right of public access to LPS proceedings, including trials.” (*Id.* at p. 436.)

Welf. & Inst. Code, § 5303 - Postcertification Proceedings and Due Process

“The court shall conduct the proceedings on the petition for postcertification treatment within four judicial days of the filing of the petition and in accordance with constitutional guarantees of due process of law and the procedures required under Section 13 of Article 1 of the Constitution of the State of California. [¶] If at the time of the hearing the person named in the petition requests a jury trial, such trial shall commence within 10 judicial days of the filing of the petition for postcertification treatment unless the person’s attorney requests a continuance, which may be for a maximum of 10 additional judicial days. The decision of the jury must be unanimous in order to support the finding of facts required by Section 5304.” (Welf. & Inst. Code, § 5303.)

Welfare and Institutions Code section 5303 uses the terms “hearing” and “trial” to discuss the “proceedings” covered by that code section. “There is no functional distinction between the two proceedings; the terms ‘hearing’ and ‘trial’ in section 5303 both mean a trial.” (*Sorenson v. Superior Court* (2013) 219 Cal.App.4th 409, 443.) The postcertification hearing, heard by the trial court, is a bench trial; alternatively, the person subject to the commitment may request a jury trial. (*Ibid.*)

Welf. & Inst. Code, § 5305 - Outpatient Status

A person committed under Welfare and Institutions Code section 5300 (providing for up to 180 days of additional treatment if the person is deemed dangerous) may be placed on outpatient status if all the enumerated conditions are met. (Welf. & Inst. Code, § 5305.)

Welf. & Inst. Code, § 5325 - List of Rights

Procedures must be in place to ensure the rights of a person who is involuntarily detained under the LPS for either evaluation or treatment are meaningfully protected. (*Thorn v. Superior Court* (1970) 1 Cal.3d 666, 675.) Those rights include: the right to wear his or her own clothes, the right to keep and use personal possessions, the right to have access to individual storage space, the right to have daily visitors, the right to make and receive confidential telephone calls, the right to ready-access of letter-writing materials, and the right to refuse various types of treatment. (Welf. & Inst. Code, § 5325.)

Jury Instructions

Jury instructions for matters related to the Lanterman-Petris-Short Act are found within the Judicial Council of California Civil Jury Instructions (CACI). The Westlaw or Lexis Nexis annotations to the CACI jury instructions are a good starting point for case law, secondary sources, and other authority that may prove helpful in crafting an argument on appeal.

CACI 4001

“Mental Disorder” Explained

The term “mental disorder” is limited to those disorders described in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. This book is sometimes referred to as “the DSM [current edition, e.g., “IV”].”

CACI 4002

“Gravely Disabled” Explained

The term “gravely disabled” means that a person is presently unable to provide for his or her basic needs for food, clothing, or shelter because of [a mental disorder/impairment by chronic alcoholism]. [The term “gravely disabled” does not include mentally retarded persons by reason of being mentally retarded alone.]

[[Insert one or more of the following:] [Psychosis/bizarre or eccentric behavior/delusions/hallucinations/[insert other]] [is/are] not enough, by [itself/themselves], to find that [name of respondent] is gravely disabled. [He/She] must be unable to provide for the basic needs of food, clothing, or shelter because of [a mental disorder/impairment by chronic alcoholism].]

[If you find [name of respondent] will not take [his/her] prescribed medication without supervision and that a mental disorder makes [him/her] unable to provide for [his/her] basic needs for food, clothing or shelter without such medication, then you may conclude [name of respondent] is presently gravely disabled.]

[In determining whether [name of respondent] is presently gravely disabled, you may consider evidence that [he/she] did not take prescribed medication in the past. You may also consider evidence of [his/her] lack of insight into [his/her] mental condition.]

In considering whether [name of respondent] is presently gravely disabled, you may not consider the likelihood of future deterioration or relapse of a condition.

CACI 4005

Obligation to Prove - Reasonable Doubt

[Name of respondent] is presumed not to be gravely disabled. [Name of petitioner] has the burden of proving beyond a reasonable doubt that [name of respondent] is gravely disabled. The fact that a petition has been filed claiming [name of respondent] is gravely disabled is not evidence that this claim is true.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that [name of respondent] is gravely disabled as a result of [a mental disorder/impairment by chronic alcoholism]. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether [name of respondent] is gravely disabled, you must impartially compare and consider all the evidence that was received throughout the entire trial.

Unless the evidence proves that [name of respondent] is gravely disabled because of [a mental disorder/impairment by chronic alcoholism] beyond a reasonable doubt, you must find that [he/she] is not gravely disabled.

Although a conservatorship is a civil proceeding, the burden of proof is the same as in criminal trials.

(Note: But see *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1409: “[W]e cannot conclude that the federal and state Constitutions require a presumption-of-innocence-like instruction outside the context of a criminal case. Particularly, we conclude that, based on the civil and nonpunitive nature of involuntary commitment proceedings, a mentally ill or disordered person would not be deprived of a fair trial without such an instruction.”)

CACI 4006

Sufficiency of Indirect Circumstantial Evidence

You may not decide that [name of respondent] is gravely disabled based substantially on indirect evidence unless this evidence:

1. Is consistent with the conclusion that [name of respondent] is gravely disabled due to [a mental disorder/impairment by chronic alcoholism]; and
2. Cannot be explained by any other reasonable conclusion.

If the indirect evidence suggests two reasonable interpretations, one of which suggests the existence of a grave disability and the other its nonexistence, then you must accept the interpretation that suggests [name of respondent] is not gravely disabled.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable one.

If you base your verdict on indirect evidence, [name of petitioner] must prove beyond a reasonable doubt each fact essential to your conclusion that [name of respondent] is gravely disabled.

CACI 4007

Third Party Assistance

A person is not “gravely disabled” if [he/she] can survive safely with the help of third party assistance. Third party assistance is the aid of family, friends, or others who are responsible, willing, and able to help provide for the person's basic needs for food, clothing, or shelter.

You must not consider offers by family, friends, or others unless they [have testified to/stated specifically in writing] their willingness and ability to help provide [name of respondent] with food, clothing, or shelter. Well-intended offers of assistance are not sufficient unless they will ensure the person can survive safely.

[Assistance provided by a correctional facility does not constitute third party assistance.]

CACI 4009

Physical Restraint

The fact that respondent has been brought before the court in physical restraints is not evidence of grave disability. You must not speculate on the reasons for such restraints.

CACI 4010

Limiting Instruction - Expert Testimony

You have heard testimony by an expert witness regarding reports and statements from hospital staff and other persons who have come into contact with [name of respondent]. This testimony was admitted for the limited purpose of establishing the basis for the opinion expressed by the testifying expert. You may consider those reports and statements to help you examine the basis of the expert's opinion. You may not use the reports and statements as independent proof of respondent's mental condition or [his/her] ability to provide for food, clothing, or shelter.

CACI 4011

History of Disorder Relevant to the Determination of Grave Disability

You must consider information about the history of [name of respondent]'s alleged mental disorder if you believe this information has a direct bearing on whether [he/she] is presently gravely disabled as a result of a mental disorder. Such information may include testimony from persons who have provided, or are providing, mental health or related support services to [name of respondent], [his/her] medical records, including psychiatric records, or testimony from family members, [name of respondent], or any other person designated by [name of respondent].

You must not consider any evidence that you believe is irrelevant because it occurred either too long ago or under circumstances that are not similar to those involved in this case.

CACI 4012

Concluding Instruction

To find that [name of respondent] is gravely disabled, all twelve jurors must agree on the verdict. To find that [name of respondent] is not gravely disabled, only nine jurors must agree on the verdict. As soon as you have agreed on a verdict, the presiding juror must date and sign the form and notify the [clerk/bailiff].

Issue Spotting on Appeal³

Procedural

1. No Issue Briefs (no *Wende/Anders* Review)

In *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, the California Supreme Court held that on appeal from an LPS conservatorship finding, independent *Wende/Anders* court review was not required. (*Id.* at p. 537, 539.) However, the court did not hold that such independent court review was prohibited. (*Ibid.*) The court instructed that if appointed counsel in a conservatorship proceeding has found no arguable issues, counsel should file a brief informing the court he or she found no arguable issues to raise on appeal, and setting forth the applicable

³ Note on Mootness: There is a high chance of issues becoming moot in LPS cases while awaiting disposition during the lengthy appellate process. Thus, in certain cases (e.g., an appeal from an extension of commitment), counsel should consider filing a motion for calendar preference to expedite the appeal. A sample motion can be found on CCAP's website in the motion samples book at <http://www.capcentral.org/resources/motion.asp>.

facts and law. (*Id.* at p. 544.) For further explanation and a sample brief, see “Procedures and Expectations for a *Ben. C. Brief*” on CCAP’s website at: http://capcentral.org/civil/mental_health/index.asp

Jury Instructions

1. Physical Restraints

A person subject to a petition for additional treatment (Welf. & Inst. Code, § 5300) beyond the 14-day intensive treatment period (Welf. & Inst. Code, § 5250) has the right to a jury trial (Welf. & Inst. Code, § 5302). Although LPS trials are civil in nature, they do share common elements with criminal trials including the prohibition against physical restraints in the presence of the jury. (*Conservatorship of Warrack* (1992) 11 Cal.App.4th 641, 646, 647.) “[A] party subject to the LPS may not be shackled unless the trial court follows the procedures outlined in *People v. Duran* [(1976)] 16 Cal.3d 282, 288–290.” (*Id.* at p. 647.) Specifically, the trial court must state on the record, outside the presence of the jury, the nonconforming behavior that supports its decision to physically restrain the defendant. (*People v. Duran, supra*, 16 Cal.3d 282, 291.) “In those instances when visible restraints must be imposed the court shall instruct the jury *sua sponte* that such restraints should have no bearing on the determination of the defendant’s guilt. However, when the restraints are concealed from the jury’s view, this instruction should not be given unless requested by defendant since it might invite initial attention to the restraints and thus create prejudice which would otherwise be avoided.” (*Id.* at pp. 291–292.)

Standard of Review

“The imposition of physical restraints in the absence of a record showing of violence or a threat of violence or other nonconforming conduct will be deemed to constitute an abuse of discretion.” (*People v. Duran* (1976) 16 Cal.3d 282, 291.)

Standard of Prejudice

The failure to *sua sponte* instruct on the use of physical restraints must be prejudicial to require reversal. (*Conservatorship of Warrack, supra*, 11 Cal.App.4th 641, 648.) To be prejudicial, it must be “reasonably probable that a different result would have occurred if the instruction had been given.” (*Id.* at p. 649.) Absent this, “[t]he failure to give the instruction [is] harmless error.” (*Ibid.*)

Note: There is a lot of case law, much of it unpublished, stating that a failure to instruct *sua sponte* is reviewed for prejudice under *People v. Watson* (1956) 46 Cal.2d 818. However, where an argument can be made that the error rendered the trial fundamentally unfair and thus deprived the defendant of due process under the Fifth and Fourteenth Amendments to the United States Constitution, prejudice should be argued under the *Chapman v. California* (1967) 386 U.S. 18 standard for a constitutional violation.

Pending/Recent Supreme Court Cases

When reviewing an appellate record for issues, always check the recent and pending issues in both the California and United States Supreme Courts. CCAP maintains a directory of such cases at: http://www.capcentral.org/high_court/index.asp. In addition, an attorney should perform his or her own research. The California Supreme Court maintains a list of pending issues at: <http://www.courts.ca.gov/13648.htm>. For information on cases pending in the United States Supreme Court, that website directs viewers to the American Bar Association's webpage for its publication "Preview," subtitled "Comprehensive Coverage of the U.S. Supreme Court." The link is: http://www.americanbar.org/publications/preview_home/alphabetical.html. Although this site is organized by case, not issue, there is a wealth of information if one drills down, including questions presented, merit briefs, and amicus briefs. Each case also includes a "source" link, which directs the viewer to the U.S. Supreme Court's docket for that case.

California Supreme Court

No pending or recently decided LPS involuntary treatment cases. (As of March 29, 2016.)

United States Supreme Court

No pending or recently decided LPS involuntary treatment cases. (As of March 29, 2016.)