LPS 5150
Making It Work

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Legislative Intent of LPS

• End inappropriate, indefinite, and involuntary commitment
• Provide prompt evaluation and treatment
• Guarantee and protect public safety
• Safeguard individual rights
• Encourage full use of agencies and resources
• Provide consistent standards
• Least restrictive setting
Misconceptions versus Local Interpretation

• The LPS Act is nearly 50 years old
• The law is often intentionally broad in areas to allow for maximum adherence to legislative intent when resources and geography vary wildly from county to county
• Legitimate differences of opinion as to what the law means
• Local agendas, turf wars, and the silo effect
• All of the above can give rise to urban legend

5150 Overview

• 5150: Detain and transport to an LPS facility
• 5151: Assessment to determine the appropriateness of the involuntary detention
• 5152: Admission involuntarily, pursuant to the above
Must an Individual Be Taken to the Nearest LPS Facility?

- Law suggests that any LPS facility is an acceptable destination
- Law enforcement often wants nearest facility
- Hospitals should not refuse or divert based on proximity
- Advisable to write 5150s to “any LPS facility”
- Ideally, patient preference and insurance status should be taken into account by law enforcement
Must an Original 5150 Follow the Patient?

- The word “original” does not exist anywhere in the LPS code
- Expensive couriers
- Ambulances delayed or turned back
- Understandable preference for an original, but patient care should not be delayed or prevented for lack of an original
- Solution: an original or copy is acceptable
Can You Cross County Lines with a 5150 or 5250?

- LPS is California law and should have statewide application unless otherwise stated
- Many counties do not have inpatient facilities, and have no choice but to utilize the facilities of other counties
- EMTALA obligations may apply
- Less clear as to how to handle 5270 (30-day holds), as each county must authorize implementation
Must Law Enforcement Consider Voluntary Versus Involuntary Transport Under 5150?

- Law speaks to preference for voluntary treatment in the clinical context
- Law Enforcement is not clinically trained
- The facility “shall require an application in writing”
- Concerns about Law Enforcement providing voluntary transport versus avoiding paperwork
LPS Facilities Should Not Accept a Patient if the 5150 is Absent or Deficient

- 5150 provides immunity to the individual who is detaining and transporting, not the receiving facility
- EMTALA obligations may apply
- Decision to continue the detention or admit the patient should be documented in the medical record
- Consider creating a new 5150
When Does the 72-Hour Clock Start?

- LPS speaks to “detention” in both the context of law enforcement and treatment
- 72 hours of “evaluation and treatment”
- No incentive to detain individuals in a patrol car or emergency department
- Cleaner to start clock at admission, with respect to keeping track of maximum hold times
Must a Patient Be Placed on an Involuntary Hold for Transport?

- 5150 makes no reference to ambulance and emergency personnel
- Desert Ambulance case (later reversed) states that the legislature intentionally did not include the above
- No duty imposed on emergency personnel
- No immunities exist under LPS
Must a Patient Be Placed on an Involuntary Hold for Transport?

- Ethical and legal considerations for placing a voluntary patient on an involuntary hold
- DOJ weapons reporting may kick in
- Inter-hospital transfers not addressed anywhere in LPS
- Solutions: Authorize emergency personnel to transport under 5150 and provide immunities; provide pathway for voluntary transfer

Can an Emergency Physician Discontinue a 5150 Detention?
Can an Emergency Physician Discontinue a 5150 Detention?

• No 72-hour hold exists yet, so arguably ED staff can document and then stop the detention
• No immunity exists in LPS for the above
• Many hospital counsel/risk administration fear discontinuing a 5150 detention before the patient is assessed at an LPS facility
• Don’t shred a 5150 when you can’t find a bed

Can an Emergency Physician Discontinue a 5150 Detention?

• Not discontinuing a detention that is no longer appropriate impacts emergency departments and violates the individual’s civil rights
• Facilities sometimes use back-to-back “serial” 5150s because they cannot locate an LPS bed
• Washington Supreme Court case: psychiatric boarding is unlawful
Solutions

• Use LPS reform to clarify how to discontinue a detention and provide immunity for doing so
• Reduce impact on EDs by releasing patients who do not meet criteria
• Eliminate barriers to admission for patients who do meet criteria
• Take advantage of and foster the provision of services at lower levels of care

SB 82

• Investment in Mental Health Wellness Act of 2013
• Provides grant funds to improve access to and capacity for crisis services
• Establishes specific selection criteria for grant awards
Building Cooperative Relationships

• Bring the relevant parties to the table: facilities and treating clinicians, law enforcement, EMS, transport, county administration, consumers and families
• Establish productive community meetings that meet regularly
• Hold each other accountable
• Win the war, not the battle

Building Cooperative Relationships

• Transparency: Call out community problem areas and expect the entire community to work to solve it
• Bring solutions to the table
• Work for solutions within the system, making better use of existing resources while also advocating for system change
Weapons Reporting Requirements for Mental Health Clients

WIC CODE §8100(a)

• Applies to voluntary inpatient treatment

• A person shall not possess, control, purchase, receive, attempt to purchase or receive any firearms or deadly weapons while receiving treatment in an inpatient facility if they are a danger to self or others

• Once the person is discharged from the facility, the prohibition ends
WIC CODE §8100(b)(1)

- If Tarasoff applies, a person shall not possess, control, purchase, receive, attempt to purchase or receive any firearms or deadly weapons
- 5-year weapons ban
- Psychotherapist must report to law enforcement
- Law enforcement must report to DOJ
- Person can petition Court to have this right restored

WIC CODE §8101

- Any person who knowingly supplies, sells, gives, or allows possession or control of a deadly weapon to these persons shall be punishable by imprisonment not exceeding one year and/or a fine not exceeding $1000
- Doing the above with respect to firearms results in 2, 3, or 4 years in prison
- “Deadly weapons” means knives, daggers, swords, explosives, martial arts weapons, etc.
WIC CODE §8102

• Local law enforcement ability to remove weapons found on or around a person
• Any person detained or examined for his or her mental condition
• Is found to own or possess any firearm or deadly weapon
• Shall have said weapons confiscated by any law enforcement agency or peace officer
• Custody of weapons shall be retained by law enforcement

WIC CODE §8102 (continued)

• Law enforcement has 30 days from Patient’s release to petition the Superior Court for authority to destroy weapons
• 30 days may be extended to 60 days upon a showing of good cause for the extension
• No response by Patient leads to default judgment
• If proceedings are not initiated, law enforcement must make weapons available for return
• Only applies to weapons confiscated. Person can buy new weapons immediately. No ongoing weapons ban
• Officers sometimes fail to fill out this form and initiate process. This leads to weapons being returned
WIC CODE §8103(e)(1)

Persons on LPS conservatorship:

• No person on conservatorship shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or deadly weapon IF:
  Court finds that the above would present a danger to self or others

• Weapons ban ends when conservatorship ends

WIC CODE §8103(f)(1)

• If admitted to a facility pursuant to 5152 (5150, 5151, 5152)
• No owning, possessing, controlling, receiving, purchasing (or attempting to do any of the above)
• Criteria must be Danger to Self and/or Others
• Grave Disability does not apply
• 5-year weapons ban
• Stopovers at non-LPS facilities problematic
• No ban initiated if person brought to facility under 5150 but not admitted to facility as inpatient
WIC CODE §8103(g)(1)

• If a person is further certified under 5250 (14-day hold), 5260 (2nd 14-day hold for imminent danger to self), or 5270.15 (30-day hold)
• No owning, possessing, controlling, receiving, purchasing (or attempting to do any of the above)
• All criteria apply (grave disability now included)
• 5-year weapons ban

WIC CODE §8108

• Civil immunity granted to mental health facilities and psychotherapists for reporting under this chapter

• Tarasoff is codified in California Civil Code §43.92 (1985)

• Tarasoff is codified in WIC Code §5328(r). This is an exception to confidentiality for inpatient psychiatric treatment
Federal Law

- Federal law provides for a lifetime firearms prohibition for persons who have been “adjudicated as a mental defective”
- 27 CFR 178.32(a)(4)
- Department of Justice interprets this to apply to persons placed on a 5250, 5260, or 5270.15 and who have lost their certification review hearing
- There is some debate about this interpretation

Voluntary Firearm Removal

- Program initiated by local San Diego hospital
- Social workers engage patients and families about guns, provide education, and strongly encourage the removal of firearms
- Addresses the close correlation between households owning firearms and firearm suicide
- Welfare checks are initiated on relevant patients who refuse to have firearms removed
Current State and Federal Reporting

- California is well ahead of all other states in reporting relevant data to the Federal database
- Many states are not reporting at all, or disagree with what the phrase “adjudicated as a mental defective” means
- California DOJ reports a need for more staffing to retrieve weapons from those on the list
- Local law enforcement can work with DOJ to retrieve weapons

Moving Forward ...

- Before there can be an informed discussion on changing current law, we need to understand current law
- It is apparent that many individuals in law enforcement, treating facilities, and the mental health community are not aware of current reporting requirements
- Implementation of discussion and training opportunities at the local level are underway
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QUESTIONS?
Thank you

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