

Introduced by Senator EggmanFebruary 15, 2022

An act to amend Section 5346 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 1035, as introduced, Eggman. Mental health services: assisted outpatient treatment.

The Assisted Outpatient Treatment Demonstration Project Act of 2002, known as Laura's Law, as of July 1, 2021, requires a county or group of counties to provide mental health programs, as specified, unless a county or group of counties opts out by a resolution passed by the governing body stating the reasons for opting out and any facts or circumstances relied on in making that decision. Existing law authorizes participating counties to pay for the services provided from moneys distributed to the counties from various continuously appropriated funds, including the Mental Health Services Fund, when included in a county plan, as specified. Existing law authorizes a court to order a person who is the subject of a petition filed pursuant to specified requirements to obtain assisted outpatient treatment if the court finds, by clear and convincing evidence, that various conditions are met. Existing law requires that an order issued pursuant to those provisions state the categories of assisted outpatient treatment that the person who is the subject of the petition is to receive.

This bill would specify that court order also include medication when included in the treatment plan.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5346 of the Welfare and Institutions Code
2 is amended to read:

3 5346. (a) In any county or group of counties where services
4 are available as provided in Section 5348, a court may order a
5 person who is the subject of a petition filed pursuant to this section
6 to obtain assisted outpatient treatment if the court finds, by clear
7 and convincing evidence, that the facts stated in the verified
8 petition filed in accordance with this section are true and establish
9 that all of the requisite criteria set forth in this section are met,
10 including, but not limited to, each of the following:

11 (1) The person is 18 years of age or older.

12 (2) The person is suffering from a mental illness as defined in
13 paragraphs (2) and (3) of subdivision (b) of Section 5600.3.

14 (3) There has been a clinical determination that, in view of the
15 person's treatment history and current behavior, at least one of the
16 following is true:

17 (A) The person is unlikely to survive safely in the community
18 without supervision and the person's condition is substantially
19 deteriorating.

20 (B) The person is in need of assisted outpatient treatment in
21 order to prevent a relapse or deterioration that would be likely to
22 result in grave disability or serious harm to the person or to others,
23 as defined in Section 5150.

24 (4) The person has a history of lack of compliance with
25 treatment for the person's mental illness, in that at least one of the
26 following is true:

27 (A) The person's mental illness has, at least twice within the
28 last 36 months, been a substantial factor in necessitating
29 hospitalization, or receipt of services in a forensic or other mental
30 health unit of a state correctional facility or local correctional
31 facility, not including any period during which the person was
32 hospitalized or incarcerated immediately preceding the filing of
33 the petition.

34 (B) The person's mental illness has resulted in one or more acts
35 of serious and violent behavior toward themselves or another, or
36 threats, or attempts to cause serious physical harm to themselves
37 or another within the last 48 months, not including any period in

1 which the person was hospitalized or incarcerated immediately
2 preceding the filing of the petition.

3 (5) The person has been offered an opportunity to participate
4 in a treatment plan by the director of the local mental health
5 department, or the director's designee, provided the treatment plan
6 includes all of the services described in Section 5348, and the
7 person continues to fail to engage in treatment.

8 (6) Participation in the assisted outpatient treatment program
9 would be the least restrictive placement necessary to ensure the
10 person's recovery and stability.

11 (7) It is likely that the person will benefit from assisted
12 outpatient treatment.

13 (b) (1) A petition for an order authorizing assisted outpatient
14 treatment may be filed by the county behavioral health director,
15 or the director's designee, in the superior court in the county in
16 which the person who is the subject of the petition is present or
17 reasonably believed to be present.

18 (2) A request may be made only by any of the following persons
19 to the county mental health department for the filing of a petition
20 to obtain an order authorizing assisted outpatient treatment:

21 (A) A person 18 years of age or older with whom the person
22 who is the subject of the petition resides.

23 (B) A person who is the parent, spouse, or sibling or child 18
24 years of age or older of the person who is the subject of the petition.

25 (C) The director of a public or private agency, treatment facility,
26 charitable organization, or licensed residential care facility
27 providing mental health services to the person who is the subject
28 of the petition in whose institution the subject of the petition
29 resides.

30 (D) The director of a hospital in which the person who is the
31 subject of the petition is hospitalized.

32 (E) A licensed mental health treatment provider who is either
33 supervising the treatment of, or treating for a mental illness, the
34 person who is the subject of the petition.

35 (F) A peace officer, parole officer, or probation officer assigned
36 to supervise the person who is the subject of the petition.

37 (G) A judge of a superior court before whom the person who
38 is the subject of the petition appears.

39 (3) Upon receiving a request pursuant to paragraph (2), the
40 county behavioral health director shall conduct an investigation

1 into the appropriateness of filing of the petition. The director shall
2 file the petition only if the director determines that there is a
3 reasonable likelihood that all the necessary elements to sustain the
4 petition can be proven in a court of law by clear and convincing
5 evidence.

6 (4) The petition shall state all of the following:

7 (A) Each of the criteria for assisted outpatient treatment as set
8 forth in subdivision (a).

9 (B) Facts that support the petitioner's belief that the person who
10 is the subject of the petition meets each criterion, provided that
11 the hearing on the petition shall be limited to the stated facts in
12 the verified petition, and the petition contains all the grounds on
13 which the petition is based, in order to ensure adequate notice to
14 the person who is the subject of the petition and that person's
15 counsel.

16 (C) That the person who is the subject of the petition is present,
17 or is reasonably believed to be present, within the county where
18 the petition is filed.

19 (D) That the person who is the subject of the petition has the
20 right to be represented by counsel in all stages of the proceeding
21 under the petition, in accordance with subdivision (c).

22 (5) (A) The petition shall be accompanied by an affidavit of a
23 licensed mental health treatment provider designated by the local
24 mental health director who shall state, if applicable, either of the
25 following:

26 (i) That the licensed mental health treatment provider has
27 personally examined the person who is the subject of the petition
28 no more than 10 days prior to the submission of the petition, the
29 facts and reasons why the person who is the subject of the petition
30 meets the criteria in subdivision (a), that the licensed mental health
31 treatment provider recommends assisted outpatient treatment for
32 the person who is the subject of the petition, and that the licensed
33 mental health treatment provider is willing and able to testify at
34 the hearing on the petition.

35 (ii) That, no more than 10 days prior to the filing of the petition,
36 the licensed mental health treatment provider, or the provider's
37 designee, has made appropriate attempts to elicit the cooperation
38 of the person who is the subject of the petition, but has not been
39 successful in persuading that person to submit to an examination,
40 that the licensed mental health treatment provider has reason to

1 believe that the person who is the subject of the petition meets the
2 criteria for assisted outpatient treatment, and that the licensed
3 mental health treatment provider is willing and able to examine
4 the person who is the subject of the petition and testify at the
5 hearing on the petition.

6 (B) An examining mental health professional in their affidavit
7 to the court shall address the issue of whether the defendant has
8 capacity to give informed consent regarding psychotropic
9 medication.

10 (c) The person who is the subject of the petition shall have the
11 right to be represented by counsel at all stages of a proceeding
12 commenced under this section. If the person so elects, the court
13 shall immediately appoint the public defender or other attorney to
14 assist the person in all stages of the proceedings. The person shall
15 pay the cost of the legal services if able to do so.

16 (d) (1) Upon receipt by the court of a petition submitted
17 pursuant to subdivision (b), the court shall fix the date for a hearing
18 at a time not later than five days from the date the petition is
19 received by the court, excluding Saturdays, Sundays, and holidays.
20 The petitioner shall promptly cause service of a copy of the
21 petition, together with written notice of the hearing date, to be
22 made personally on the person who is the subject of the petition,
23 and shall send a copy of the petition and notice to the county office
24 of patient rights, and to the current health care provider appointed
25 for the person who is the subject of the petition, if the provider is
26 known to the petitioner. Continuances shall be permitted only for
27 good cause shown. In granting continuances, the court shall
28 consider the need for further examination by a physician or the
29 potential need to provide expeditiously assisted outpatient
30 treatment. Upon the hearing date, or upon any other date or dates
31 to which the proceeding may be continued, the court shall hear
32 testimony. If it is deemed advisable by the court, and if the person
33 who is the subject of the petition is available and has received
34 notice pursuant to this section, the court may examine in or out of
35 court the person who is the subject of the petition who is alleged
36 to be in need of assisted outpatient treatment. If the person who is
37 the subject of the petition does not appear at the hearing, and
38 appropriate attempts to elicit the attendance of the person have
39 failed, the court may conduct the hearing in the person's absence.
40 If the hearing is conducted without the person present, the court

1 shall set forth the factual basis for conducting the hearing without
2 the person's presence. The person who is the subject of the petition
3 shall maintain the right to appear before the court in person, but
4 may appear by videoconferencing means if they choose to do so.

5 (2) The court shall not order assisted outpatient treatment unless
6 an examining licensed mental health treatment provider, who has
7 personally examined, and has reviewed the available treatment
8 history of, the person who is the subject of the petition within the
9 time period commencing 10 days before the filing of the petition,
10 testifies at the hearing. An examining mental health professional
11 may appear before the court by videoconferencing means.

12 (3) If the person who is the subject of the petition has refused
13 to be examined by a licensed mental health treatment provider,
14 the court may request that the person consent to an examination
15 by a licensed mental health treatment provider appointed by the
16 court. If the person who is the subject of the petition does not
17 consent and the court finds reasonable cause to believe that the
18 allegations in the petition are true, the court may order any person
19 designated under Section 5150 to take into custody the person who
20 is the subject of the petition and transport the person, or cause the
21 person to be transported, to a hospital for examination by a licensed
22 mental health treatment provider as soon as is practicable.
23 Detention of the person who is the subject of the petition under
24 the order may not exceed 72 hours. If the examination is performed
25 by another licensed mental health treatment provider, the
26 examining licensed mental health treatment provider may consult
27 with the licensed mental health treatment provider whose
28 affirmation or affidavit accompanied the petition regarding the
29 issues of whether the allegations in the petition are true and whether
30 the person meets the criteria for assisted outpatient treatment.

31 (4) The person who is the subject of the petition shall have all
32 of the following rights:

33 (A) To adequate notice of the hearings to the person who is the
34 subject of the petition, as well as to parties designated by the person
35 who is the subject of the petition.

36 (B) To receive a copy of the court-ordered evaluation.

37 (C) To counsel. If the person has not retained counsel, the court
38 shall appoint a public defender.

39 (D) To be informed of the right to judicial review by habeas
40 corpus.

1 (E) To be present at the hearing unless the person waives the
2 right to be present.

3 (F) To present evidence.

4 (G) To call witnesses on the person’s behalf.

5 (H) To cross-examine witnesses.

6 (I) To appeal decisions, and to be informed of the right to appeal.

7 (5) (A) If after hearing all relevant evidence, the court finds
8 that the person who is the subject of the petition does not meet the
9 criteria for assisted outpatient treatment, the court shall dismiss
10 the petition.

11 (B) If after hearing all relevant evidence, the court finds that
12 the person who is the subject of the petition meets the criteria for
13 assisted outpatient treatment, and there is no appropriate and
14 feasible less restrictive alternative, the court may order the person
15 who is the subject of the petition to receive assisted outpatient
16 treatment for an initial period not to exceed six months. In
17 fashioning the order, the court shall specify that the proposed
18 treatment is the least restrictive treatment appropriate and feasible
19 for the person who is the subject of the petition. The order shall
20 state the categories of assisted outpatient treatment, *including*
21 *medication when included in the treatment plan*, as set forth in
22 Section 5348, that the person who is the subject of the petition is
23 to receive, and the court may not order treatment that has not been
24 recommended by the examining licensed mental health treatment
25 provider and included in the written treatment plan for assisted
26 outpatient treatment as required by subdivision (e). If the person
27 has executed an advance health care directive pursuant to Chapter
28 2 (commencing with Section 4650) of Part 1 of Division 4.7 of
29 the Probate Code, any directions included in the advance health
30 care directive shall be considered in formulating the written
31 treatment plan.

32 (6) If the person who is the subject of a petition for an order for
33 assisted outpatient treatment pursuant to subparagraph (B) of
34 paragraph (5) refuses to participate in the assisted outpatient
35 treatment program, the court may order the person to meet with
36 the assisted outpatient treatment team designated by the director
37 of the assisted outpatient treatment program. The treatment team
38 shall attempt to gain the person’s cooperation with treatment
39 ordered by the court. The person may be subject to a 72-hour hold
40 pursuant to subdivision (f) only after the treatment team has

1 attempted to gain the person’s cooperation with treatment ordered
2 by the court, and has been unable to do so.

3 (e) Assisted outpatient treatment shall not be ordered unless the
4 licensed mental health treatment provider recommending assisted
5 outpatient treatment to the court has submitted to the court a written
6 treatment plan that includes services as set forth in Section 5348,
7 and the court finds, in consultation with the county behavioral
8 health director, or the director’s designee, all of the following:

9 (1) That the services are available from the county, or a provider
10 approved by the county, for the duration of the court order.

11 (2) That the services have been offered to the person by the
12 local director of mental health, or the director’s designee, and the
13 person has been given an opportunity to participate on a voluntary
14 basis, and the person has failed to engage in, or has refused,
15 treatment.

16 (3) That all of the elements of the petition required by this article
17 have been met.

18 (4) That the treatment plan will be delivered to the county
19 behavioral health director, or to the director’s appropriate designee.

20 (f) If, in the clinical judgment of a licensed mental health
21 treatment provider, the person who is the subject of the petition
22 has failed or has refused to comply with the treatment ordered by
23 the court, and, in the clinical judgment of the licensed mental health
24 treatment provider, efforts were made to solicit compliance, and,
25 in the clinical judgment of the licensed mental health treatment
26 provider, the person may be in need of involuntary admission to
27 a hospital for evaluation, the provider may request that persons
28 designated under Section 5150 take into custody the person who
29 is the subject of the petition and transport the person, or cause the
30 person to be transported, to a hospital, to be held up to 72 hours
31 for examination by a licensed mental health treatment provider to
32 determine if the person is in need of treatment pursuant to Section
33 5150. Any continued involuntary retention in a hospital beyond
34 the initial 72-hour period shall be pursuant to Section 5150. If at
35 any time during the 72-hour period the person is determined not
36 to meet the criteria of Section 5150, and does not agree to stay in
37 the hospital as a voluntary patient, the person shall be released and
38 any subsequent involuntary detention in a hospital shall be pursuant
39 to Section 5150. Failure to comply with an order of assisted
40 outpatient treatment alone may not be grounds for involuntary

1 civil commitment or a finding that the person who is the subject
2 of the petition is in contempt of court.

3 (g) If the director of the assisted outpatient treatment program
4 determines that the condition of the patient requires further assisted
5 outpatient treatment, the director shall apply to the court, prior to
6 the expiration of the period of the initial assisted outpatient
7 treatment order, for an order authorizing continued assisted
8 outpatient treatment for a period not to exceed 180 days from the
9 date of the order. The procedures for obtaining an order pursuant
10 to this subdivision shall be in accordance with subdivisions (a) to
11 (f), inclusive. The period for further involuntary outpatient
12 treatment authorized by a subsequent order under this subdivision
13 may not exceed 180 days from the date of the order.

14 (h) At intervals of not less than 60 days during an assisted
15 outpatient treatment order, the director of the outpatient treatment
16 program shall file an affidavit with the court that ordered the
17 outpatient treatment affirming that the person who is the subject
18 of the order continues to meet the criteria for assisted outpatient
19 treatment. At these times, the person who is the subject of the order
20 shall have the right to a hearing on whether or not the person still
21 meets the criteria for assisted outpatient treatment if they disagree
22 with the director's affidavit. The burden of proof shall be on the
23 director.

24 (i) During each 60-day period specified in subdivision (h), if
25 the person who is the subject of the order believes that they are
26 being wrongfully retained in the assisted outpatient treatment
27 program against their wishes, the person may file a petition for a
28 writ of habeas corpus, thus requiring the director of the assisted
29 outpatient treatment program to prove that the person who is the
30 subject of the order continues to meet the criteria for assisted
31 outpatient treatment.

32 (j) A person ordered to undergo assisted outpatient treatment
33 pursuant to this article, who was not present at the hearing at which
34 the order was issued, may immediately petition the court for a writ
35 of habeas corpus. Treatment under the order for assisted outpatient
36 treatment may not commence until the resolution of that petition.

37 (k) This section shall become operative on July 1, 2021.

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