A Guide to California's AB 1424

Law became effective Jan. 1, 2002

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On October 4, 2001 Assembly Bill 1424 (Thomson-Yolo D) was signed by the Governor and chaptered into law. The law became effective Jan. 1, 2002. AB 1424 modifies the LPS Act (Lanterman, Petris, Short Act), which governs involuntary treatment for people with mental illness in California.

Quoting the legislative intent of the bill,

"The Legislature finds and declares all of the following: Many families of persons with serious mental illness find the Lanterman-Petris-Short Act system difficult to access and not supportive of family information regarding history and symptoms. Persons with mental illness are best served in a system of care that supports and acknowledges the role of the family, including parents, children, spouses, significant others, and consumer-identified natural resource system. It is the intent of the Legislature that the Lanternman-Petris-Short Act system procedures be clarified to ensure that families are a part of the system response, subject to the rules of evidence and court procedures."

Discussion

Mental illness does not exist in a vacuum of time. The severity of an individual's symptoms wax and wane, sometimes hour by hour or day by day. It is not uncommon for a person with mental illness to "present well" -- with minimally displayed psychiatric symptoms and seemingly rational plans for self care -- when in the presence of an evaluator or law enforcement officer who is considering a "5150", i.e., an involuntary hold for treatment and evaluation involuntarily. Or, the person may have had a few days of medication in the hospital prior to a court hearing and been coached as to how to present "well" prior to a court hearing. Yet, upon release, the person historically has gone off medication, remained unable to care for his or her own psychiatric medical needs and drifted into homelessness or repeated hospitalizations. This is especially true of the individual who is paranoid and cautious in disclosing information to strangers.

While nothing in the LPS Act previously precluded a law enforcement officer, hearing officer or judge from considering the past history of an individual's illness, common interpretation was that they could only consider the person's presentation "at that moment in time", i.e., was the person "imminently" dangerous or gravely disabled? Without reasonable consideration of psychiatric history, a person may be inappropriately and prematurely released without treatment and attaining sufficient stabilization.

While some county mental health departments, law enforcement agencies and court systems may previously have considered psychiatric history to greater or lesser extents, AB 1424 mandates that the historical course SHALL be considered at all steps of the process. Formerly, consideration of psychiatric history was generally considered an option -- a "may" in the process. What counties and courts did previously is of little importance. What is important is what they shall do now and in the future.

Acknowledging that medical history is critical in making effective treatment and legal decisions concerning mental illness will assist law enforcement and judicial officers make better informed determinations as to whether court-ordered treatment is necessary.

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FREQUENTLY ASKED QUESTIONS

Does the consideration of historical course of a person's illness have any bearing on the initial (5150) detention of the person?

AB 1424 requires that any person who is authorized to take a person into custody for involuntary treatment consider available relevant information about the historical course of the person's mental disorder if the information has a reasonable bearing on the determination as to whether the person is a danger to others, or a danger to self, or is gravely disabled as a result of the mental illness. Therefore, this provision would apply to law enforcement officers as well as professionals so authorized by local mental health directors.

What information should be considered by the law enforcement officer or person designated to effect a 5150 hold in determining historical course?

The historical course shall include, but is not limited to, evidence presented by persons who have provided, or are providing, mental health or related support services to the patient and/or information presented by one or more members of the family of the person or the person subject to detention.

Is there any penalty for providing false information to the court or detaining officer?

The law requires that if probable cause for detention is based on a statement other than that of someone authorized to take the person into custody for a 72-hour hold, or a member of the attending staff, or a professional person, the person making the statement shall be liable in a civil action for intentionally giving a false statement. Thus families may not give false information knowingly without being potentially liable to the patient in a civil action.

Who else must consider historical course of a person's illness?

The "shall" of the new law requires that hearing officers, judges and juries who consider whether the person is to be certified for additional periods of involuntary treatment beyond the initial 72 hours must also consider historical course. The hearing officer, court or jury shall exclude from consideration evidence that it determines to be irrelevant because of remoteness of time or dissimilarity of circumstances, however. The court retains the discretion in what it defines as evidentiary and having a direct bearing on the current case.

When shall the court consider historical course of the person's illness?

The historical course of a person's mental disorder shall be considered when it has a direct bearing on the determination of whether the person is a danger to others of self, or is gravely disabled, as a result of a mental disorder.

For the purpose of court hearings, what should be considered in determining historical course?

The court should consider:

(1) evidence presented by persons who have provided or are providing mental health or related support services to the patients,
(2) the patient's medical records as presented to the court, including psychiatric records,
(3) evidence voluntarily presented by family members,
(4) the patient.

The patient may also designate an additional person to provide information.

Who is obligated to present evidence provided by the family to the court?

Facilities providing treatment shall make every reasonable effort to make information provided by the patient's family available to the court. (While not required under the law, it is recommended that families present such evidence in writing to the facility so it doesn't get lost or forgotten.)

Must anyone consider the medication history of the person as part of the historical course?

The law requires that the agency or facility providing the treatment acquire the patient's medication history, if possible. (While not a requirement of the law, it is highly recommended that the family or patient also provide the facility with a copy of all available treatment and medication records as well as a written summary of past treatment and results in the event the facility is unable to obtain any and all records.)

OTHER PROVISIONS OF AB 1424

Insurance payment

AB 1424 prohibits any health care service plan, private or public insurer (including Medi-Cal) or disability insurer from utilizing the voluntary or involuntary status of a psychiatric inpatient admission for the purpose of determining eligibility for claim reimbursement. This is important to preclude insurance plans from refusing to pay for any hospitalization solely on the basis of the person's legal status.

CAVEATS ON THE USEFULNESS OF AB 1424

AB 1424 is a new tool to make sure that medical and psychiatric history shall be considered in the legal process. But it is not a panacea.

Why? Although the law says that history that is relevant must be considered, this consideration is not the same as a court actually accepting the information as evidence. The law states that

information that is irrelevant due to the remoteness in time or dissimilarity of circumstance must be excluded. The court retains the discretion as to what it will or will not accept as evidence.

Also, the bill is not intended as a solution to an age-old dilemma for families of people with mental illness. Frequently families have information that directly bears on whether a loved one fits the criteria for treatment, but fear divulging it will threaten their relationship with their relative. Should they divulge and hope the information brings about needed treatment? Or, do they keep quiet in fear of the consequences to their relationship with their loved one?

While the law states that nothing contained within it shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family, there remains the problem of how to present evidence to the court that the family has divulged to the treatment provider in confidence but still wants considered by the court.

Family members who desire anonymity yet want to have the information presented to the court, could instruct the treatment professional to keep the information confidential from the patient until the actual court hearing. The professional could then attempt to present the information as evidence to the historical course of the person's illness. Some courts, however, under some circumstances, may require that the family member appear in court, possibly confronting the patient, to confirm information given to the treatment provider. Others may not allow the information given second-hand via the treatment provider as evidence. The discretion is with the court.

SUMMARY

AB 1424 is a new tool that ensures medical and psychiatric history will be considered in the legal process. But it is not a panacea.

The LPS Act remains badly out of date.

We now know that schizophrenia and manic-depressive illness, the most common forms of severe mental illness, are diseases of the brain - just as are Parkinson's and Alzheimer's. We now know that approximately 50% of individuals with these diseases have impaired insight into their own illness. They do not realize they are sick and, therefore, often do not accept treatment voluntarily.

Because of this scientific knowledge, we now know that some of the underlying tenets of the LPS Act are incorrect.

To subject Californians with severe mental illness to laws not based on scientific fact is preposterous. Passage of AB 1424 is but the first step needed to right this wrong.

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BILL TEXT

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PASSED THE SENATE SEPTEMBER 4, 2001
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AMENDED IN ASSEMBLY MARCH 29, 2001

INTRODUCED BY Assembly Member Thomson
(Coauthors: Assembly Members Aroner and Koretz)
(Coauthor: Senator Kuehl)

FEBRUARY 23, 2001

An act to add Section 1374.51 to the Health and Safety Code, to add Section 10144.6 to the Insurance Code, and to amend Sections 5008.2, 5328, and 5332 of, and to add Sections 5012, 5150.05, and 14021.8 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1424, Thomson. Mental health: involuntary treatment.

Existing law, the Lanterman-Petris-Short Act, provides that when applying the definition of mental disorder for specified purposes, the historical course of the person's mental disorder, as determined by available relevant information about the course of the person's mental disorder, shall be considered when it has a direct bearing on the determination of whether the person is a danger to others or to himself or herself or is gravely disabled as a result of a mental disorder. Existing law authorizes the hearing officer, court, or jury to exclude from consideration evidence it deems to be irrelevant because of remoteness of time or dissimilarity of circumstances.

This bill would instead require the hearing officer, court, or jury to exclude from consideration evidence it deems to be irrelevant because of remoteness of time or dissimilarity of circumstances, and would broaden the types of information that are required to be included within the historical course of a person's mental disorder to include the patient's medical records and psychiatric records. It would also require that relevant information, including information provided by the patient's family or the patient about the historical course of a patient's mental disorder, be considered when determining whether probable cause exists to involuntarily detain a person for 72-hour treatment and evaluation.

This bill would provide that the fact that a person has been taken into custody under the Lanterman-Petris-Short Act may not be used in the determination of that person's eligibility for payment or

reimbursement for mental health or other health care services for which he or she has applied or received under the Medi-Cal program, any health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975, or any insurer providing health coverage doing business in the state.

Existing law authorizes the administration of antipsychotic medication by an agency or facility providing treatment to any person subject to detention, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to specified provisions.

This bill would require the agency or facility providing treatment to any person to acquire the person's medication history, if possible, if the person is subject to detention for 72 hours on the basis he or she is a danger to himself or herself or others or is gravely disabled, or to extended periods of detention pursuant to professional evaluations of the person that he or she remains a danger to himself or herself or others or is gravely disabled or has suicidal tendencies.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Services, under which qualified low-income persons are provided with health services.

This bill would prohibit a health care service plan, disability insurer, or, under the Medi-Cal program, the State Department of Health Services, from utilizing any information regarding whether a person's psychiatric inpatient admission was made on a voluntary or involuntary basis for the purpose of determining eligibility for claim reimbursement. Since a willful violation of the provisions applicable to health care service plans is a crime, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 5328 of the Welfare and Institutions Code proposed by AB 213, to be operative only if AB 213 and this bill are both chaptered and become effective on or before January 1, 2002, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Many families of persons with serious mental illness find the Lanterman-Petris-Short Act system difficult to access and not supportive of family information regarding history and symptoms.

(b) Persons with mental illness are best served in a system of care that supports and acknowledges the role of the family, including parents, children, spouses, significant others, and consumer-identified natural resource systems.

SEC. 2. It is the intent of the Legislature that the Lanterman-Petris-Short Act system procedures be clarified to ensure that families are a part of the system response, subject to the rules

of evidence and court procedures.

SEC. 3. Section 1374.51 is added to the Health and Safety Code, to read:

1374.51. No plan may utilize any information regarding whether an enrollee's psychiatric inpatient admission was made on a voluntary or involuntary basis for the purpose of determining eligibility for claim reimbursement.

SEC. 4. Section 10144.6 is added to the Insurance Code, to read:

10144.6. No disability insurer may utilize any information regarding whether a beneficiary's psychiatric inpatient admission was made on a voluntary or involuntary basis for the purpose of determining eligibility for claim reimbursement.

SEC. 5. Section 5008.2 of the Welfare and Institutions Code is amended to read:

5008.2. (a) When applying the definition of mental disorder for the purposes of Articles 2 (commencing with Section 5200), 4 (commencing with Section 5250), and 5 (commencing with Section 5275) of Chapter 2 and Chapter 3 (commencing with Section 5350), the historical course of the person's mental disorder, as determined by available relevant information about the course of the person's mental disorder, shall be considered when it has a direct bearing on the determination of whether the person is a danger to others, or to himself or herself, or is gravely disabled, as a result of a mental disorder. The historical course shall include, but is not limited to, evidence presented by persons who have provided, or are providing, mental health or related support services to the patient, the patient's medical records as presented to the court, including psychiatric records, or evidence voluntarily presented by family members, the patient, or any other person designated by the patient. Facilities shall make every reasonable effort to make information provided by the patient's family available to the court. The hearing officer, court, or jury shall exclude from consideration evidence it determines to be irrelevant because of remoteness of time or dissimilarity of circumstances.

(b) This section shall not be applied to limit the application of Section 5328 or to limit existing rights of a patient to respond to evidence presented to the court.

SEC. 6. Section 5012 is added to the Welfare and Institutions Code, to read:

5012. The fact that a person has been taken into custody under this part may not be used in the determination of that person's eligibility for payment or reimbursement for mental health or other health care services for which he or she has applied or received under the Medi-Cal program, any health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), or any insurer providing health coverage doing business in the state.

SEC. 7. Section 5150.05 is added to the Welfare and Institutions Code, to read:

5150.05. (a) When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to Section 5150, any person who is authorized to take that person, or cause that person to be taken, into custody pursuant to that section shall consider available relevant information about the historical course of the person's mental disorder if the authorized person determines that the information has a reasonable bearing on

the determination as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.

(b) For purposes of this section, "information about the historical course of the person's mental disorder" includes evidence presented by the person who has provided or is providing mental health or related support services to the person subject to a determination described in subdivision (a), evidence presented by one or more members of the family of that person, and evidence presented by the person subject to a determination described in subdivision (a) or anyone designated by that person.

(c) If the probable cause in subdivision (a) is based on the statement of a person other than the one authorized to take the person into custody pursuant to Section 5150, a member of the attending staff, or a professional person, the person making the statement shall be liable in a civil action for intentionally giving any statement that he or she knows to be false.

(d) This section shall not be applied to limit the application of Section 5328.

SEC. 8. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, or social worker with a master's degree in social work, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given

to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

_____

Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall

only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(l) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Sections 4070 and 5624.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

(s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.

(t) (1) To the designated officer of an emergency response

employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, "designated officer" and "emergency response employee" have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

SEC. 8.5. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000),

Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, social worker with a master's degree in social work, or licensed marriage and family therapist, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

_____

Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of such persons

who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(l) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given

knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Sections 4070 and 5624.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

(s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.

(t) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, "designated officer" and "emergency response employee" have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject

to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

SEC. 9. Section 5332 of the Welfare and Institutions Code is amended to read:

5332. (a) Antipsychotic medication, as defined in subdivision (1) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to subdivision (c) of Section 5152 and subdivision (b) of Section 5213.

(b) If any person subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, and for whom antipsychotic medication has been prescribed, orally refuses or gives other indication of refusal of treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, in a hearing held for that purpose.

(c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.

(d) When any person is subject to detention pursuant to Section 5150, 5250, 5260, or 5270.15, the agency or facility providing the treatment shall acquire the person's medication history, if possible.

(e) In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, or 5270.15 may be treated with antipsychotic medication over his or her objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention.

SEC. 10. Section 14021.8 is added to the Welfare and Institutions Code, to read:

14021.8. The department may not utilize any information regarding whether a beneficiary's psychiatric inpatient admission was made on a voluntary or involuntary basis for the purpose of determining eligibility for Medi-Cal claim reimbursement.

SEC. 11. Section 8.5 of this bill incorporates amendments to Section 5328 of the Welfare and Institutions Code proposed by both this bill and AB 213. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 5328 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 213, in which case Section 8 of this bill shall not become operative.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.