

BASIC LPS LAW

Why do Mental Health Patients Have So Many Rights?

(Hint: it has to do with liberty and self-determination)

To facility staff, family members and the media, it can seem that the legal protections in LPS may provide obstacles to obtaining the clinical treatment they feel their loved ones require. They are specifically there to comply with the legislative intent of the law. And, yet, it may seem as if the laws work to interfere with the professionals' ability to adequately treat patients. Yes, there are occasions when the law does clash with the treatment staff meeting the clinical needs of a patient, and *it may even result in a patient failing to get the treatment that would benefit him/her*. But as a society **we value individual liberty** to such an extent that we are willing to risk that some very ill individuals might be set free in order to best assure that individuals will not be inappropriately locked up. Even when it comes to punishing people who commit crimes, we would rather risk a guilty person go free than risk locking up the innocent without enough evidence or due process. So throughout all laws that deal with taking away freedom, there are very careful procedures to prevent involuntary detention from being so easy that a person is unjustly locked up against their will.

You may ask, "Why should treatment staff and doctors have to follow all of these rules?"

- Why can't we just force a person to take antipsychotic medication when the professionals know they are sick and need it?
- Why do we have to have hearings to keep people in the hospital if the treatment team knows they would be better off staying?
- Why does the court release some clients due to procedural issues when it is obvious they are in bad shape?
- Why do they have to jump through so many legal hoops to provide the care when **they know what is in the best interest** of their client?"

Our society (the United States) grew from a great love of freedom. So much of our law is based on a commitment to protect freedom. People put their lives on the line to defend it. You and I consider ourselves **entitled** to personal liberty. And we sometimes forget that entitlement when we want to protect people from themselves. *Who has the right to decide when a person living with mental illness deserves to lose that precious freedom we value for ourselves? **The legislature does.***

W&I Code, Section 5325.1. *Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations.*

Mental health law safeguards **all citizens** of the United States (including you and me) against unreasonable loss of liberty. LPS spells due process, those procedures which must be followed when we provide treatment to a person against his will, whether locking a person in the hospital for treatment or forcing patients to take medication involuntarily. These rules help to assure that treatment professionals cannot take away a person's liberty except under very extreme circumstances (essentially when necessary to preserve life). The specific laws for detaining people are based on the legislative intent of LPS). The rules also make sure we don't take someone's freedom without explaining the reason to that person and explaining how they can get back their freedom. The laws also require a show of proof that there is a legal reason for taking a person's freedom.

W&I Code, §5001- The legislative intent of the 1967 Lanterman-Petris-Short Act is:

- **To end the inappropriate, indefinite, and involuntary commitment** of mentally disordered persons, developmentally disabled persons and persons impaired by chronic alcoholism, and to eliminate legal disabilities;
- To provide **prompt evaluation and treatment** of persons with serious mental disorders or impaired by chronic alcoholism
- To guarantee and **protect public safety**;
- To **safeguard individual rights** through judicial review;
- To provide individualized treatment, supervision, and placement services by a **conservatorship program for gravely disabled persons**;
- To encourage the **full use of all existing agencies**, professional personnel and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures;
- To **protect mentally disordered persons** and developmentally disabled persons from criminal acts.
- To provide **consistent standards for protection of the personal rights** of persons receiving services under this part and under Part 1.5 (commencing with Section 5585).
- (i) To provide **services in the least restrictive setting** appropriate to the needs of each person receiving services under this part and under Part 1.5 (commencing with Section 5585).

The basic concept for involuntary treatment is:

MENTAL ILLNESS → DANGEROUSNESS = INVOLUNTARY HOLD

You can't take a person's freedom just because it seems clear that they would benefit from treatment and are refusing it.

You can only detain someone if that person's illness is creating a dangerous situation, to preserve life.

There must be evidence that the illness causes the person to be:

1. dangerous to his/herself
2. dangerous to another person or people
3. unable to take care of his/her basic survival needs (Grave Disability)

The law requires that the evidence must be documented and kept in the record.

The law requires that the person who is losing their freedom be told why and what their legal rights are, including how they can get their freedom back.

The law provides that if the facility holding the person beyond the 72-hour evaluation period, treatment professionals be able to prove in court that there is evidence to support a legal rationale for keeping the person against his/her will.

That is basic due process for keeping a person on a mental health hold.