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WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 5. COMMUNITY MENTAL HEALTH SERVICES [5000 - 5987] (*Division 5 repealed and added by Stats. 1967, Ch. 1667.*)

PART 1. THE LANTERMAN-PETRIS-SHORT ACT [5000 - 5550] (*Heading of Part 1 amended by Stats. 1968, Ch. 1374.*)

CHAPTER 2. Involuntary Treatment [5150 - 5349.1] (*Chapter 2 added by Stats. 1967, Ch. 1667.*)

ARTICLE 6. Postcertification Procedures for Imminently Dangerous Persons [5300 - 5309] (*Article 6 added by Stats. 1967, Ch. 1667.*)

5300. (a) At the expiration of the 14-day period of intensive treatment, a person may be confined for further treatment pursuant to the provisions of this article for an additional period, not to exceed 180 days if one of the following exists:

- (1) The person has attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation and treatment, and who, as a result of a mental health disorder, presents a demonstrated danger of inflicting substantial physical harm upon others.
- (2) The person had attempted, or inflicted physical harm upon the person of another, that act having resulted in the person being taken into custody and who presents, as a result of a mental health disorder, a demonstrated danger of inflicting substantial physical harm upon others.
- (3) The person had made a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in the person being taken into custody, and the person presents, as a result of a mental health disorder, a demonstrated danger of inflicting substantial physical harm upon others.

(b) A commitment to a licensed health facility under this article places an affirmative obligation on the facility to provide treatment for the underlying causes of the person's mental health disorder.

(c) Amenability to treatment is not required for a finding that a person is a person as described in paragraph (1), (2), or (3) of subdivision (a). Treatment programs need only be made available to these persons. Treatment does not mean that the treatment must be successful or potentially successful, and it does not mean that the person must recognize the person's problem and willingly participate in the treatment program.

(Amended by Stats. 2019, Ch. 9, Sec. 22. (AB 46) Effective January 1, 2020.)

5300.5. For purposes of this article:

(a) "Custody" shall be construed to mean involuntary detainment under the provisions of this part uninterrupted by any period of unconditioned release from a licensed health facility providing involuntary care and treatment.

(b) Conviction of a crime is not necessary for commitment under this article.

(c) Demonstrated danger may be based on assessment of present mental condition, which is based upon a consideration of past behavior of the person within six years prior to the time the person attempted, inflicted, or threatened physical harm upon another, and other relevant evidence.

(Amended by Stats. 1983, Ch. 754, Sec. 2.5.)

5301. (a) At any time during the 14-day intensive treatment period the professional person in charge of the licensed health facility, or his or her designee, may ask the public officer required by Section 5114 to present evidence at proceedings under this article to petition the superior court in the county in which the licensed health facility providing treatment is located for an order requiring the person to undergo an additional period of treatment on the grounds set forth in Section 5300. This petition shall summarize the facts

that support the contention that the person falls within the standard set forth in Section 5300. The petition shall be supported by affidavits describing in detail the behavior that indicates that the person falls within the standard set forth in Section 5300.

(b) Copies of the petition for postcertification treatment and the affidavits in support thereof shall be served upon the person named in the petition on the same day as they are filed with the clerk of the superior court.

(c) The petition shall be in the following form:

Petition for Postcertification Treatment of a Dangerous Person

I, _____, (the professional person in charge of the _____ intensive treatment facility) (the designee of _____ the professional person in charge of the _____, treatment facility) in which _____ has been under treatment pursuant to the certification by _____ and _____, hereby petition the court for an order requiring _____ to undergo an additional period of treatment, not to exceed 180 days, pursuant to the provisions of Article 6 (commencing with Section 5300) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. This petition is based upon my allegation that (a) _____ has attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation, and that, by reason of mental health disorder, presents a demonstrated danger of inflicting substantial physical harm upon others, or that (b) _____ had attempted or inflicted physical harm upon the person of another, that act having resulted in his or her being taken into custody, and that he or she presents, as a result of mental health disorder, a demonstrated danger of inflicting substantial physical harm upon others, or that (c) _____ had made a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in his or her being taken into custody, and that he or she presents, as a result of mental health disorder, a demonstrated danger of inflicting substantial physical harm upon others.

My allegation is based upon the following facts:

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This allegation is supported by the accompanying affidavits signed by _____.

Signed

(d) The courts may receive the affidavits in evidence and may allow the affidavits to be read to the jury and the contents thereof considered in rendering a verdict, unless counsel for the person named in the petition subpoenas the treating professional person. If the treating professional person is subpoenaed to testify, the public officer, pursuant to Section 5114, shall be entitled to a continuance of the hearing or trial.

(Amended by Stats. 2014, Ch. 144, Sec. 90. (AB 1847) Effective January 1, 2015.)

5302. At the time of filing of a petition for postcertification treatment the court shall advise the person named in the petition of his right to be represented by an attorney and of his right to demand a jury trial. The court shall assist him 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 own attorney. The attorney shall advise the person of his rights in relation to the proceeding and shall represent him before the court.

(Amended by Stats. 1970, Ch. 1627.)

5303. 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.

Until a final decision on the merits by the trial court the person named in the petition shall continue to be treated in the intensive treatment facility until released by order of the superior court having jurisdiction over the action, or unless the petition for postcertification treatment is withdrawn. If no decision has been made within 30 days after the filing of the petition, not including extensions of time requested by the person's attorney, the person shall be released.

(Amended by Stats. 1968, Ch. 1374.)

5303.1. For the purposes of any hearing or jury trial held pursuant to this article, the judge of the court in which such hearing or trial is held may appoint a psychiatrist or psychologist with forensic skills. Such psychiatrist or psychologist shall personally examine the person named in the petition. Such a forensic psychiatrist or psychologist shall testify at the hearing or jury trial concerning the

mental condition of the person named in the petition and the threat of substantial physical harm to other beings such person presents, and neither the professional person or his designee who petitioned for the additional period of treatment nor of the physicians providing intensive treatment shall be required, unless the person named in the petition chooses to subpoena such persons, to be present at the hearing or jury trial.

If a psychiatrist or psychologist with forensic skills is not appointed pursuant to this section the person named in the petition may, upon advice of counsel, waive the presence at the hearing or at the jury trial of the professional person or his designee who petitioned for the additional period of treatment and the physicians providing intensive treatment. In the event of such waiver, such professional person, his designee, or other physicians shall not be required to be present at the hearing if it is stipulated that the certification, supporting affidavit and records of such physicians concerning the mental condition of the person named in the petition will be received in evidence.

(Amended by Stats. 1975, Ch. 960.)

5304. (a) The court shall remand a person named in the petition for postcertification treatment to the custody of the State Department of State Hospitals or to a licensed health facility designated by the county of residence of that person for a further period of intensive treatment, not to exceed 180 days from the date of court judgment, if the court or jury finds that the person named in the petition for postcertification treatment has done any of the following:

- (1) Attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation and treatment, and who, as a result of mental health disorder, presents a demonstrated danger of inflicting substantial physical harm upon others.
- (2) Attempted or inflicted physical harm upon the person of another, that act having resulted in his or her being taken into custody, and who, as a result of mental health disorder, presents a demonstrated danger of inflicting substantial physical harm upon others.
- (3) Expressed a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in his or her being taken into custody, and who presents, as a result of mental health disorder, a demonstrated danger of inflicting substantial physical harm upon others.

(b) The person shall be released from involuntary treatment at the expiration of 180 days unless the public officer, pursuant to Section 5114, files a new petition for postcertification treatment on the grounds that he or she has attempted, inflicted, or made a serious threat of substantial physical harm upon another during his or her period of postcertification treatment, and he or she is a person who by reason of mental health disorder, presents a demonstrated danger of inflicting substantial physical harm upon others. The new petition for postcertification treatment shall be filed in the superior court in which the original petition for postcertification was filed.

(c) The county from which the person was remanded shall bear any transportation costs incurred pursuant to this section.

(Amended by Stats. 2014, Ch. 144, Sec. 91. (AB 1847) Effective January 1, 2015.)

5305. (a) Any person committed pursuant to Section 5300 may be placed on outpatient status if all of the following conditions are satisfied:

- (1) In the evaluation of the superintendent or professional person in charge of the licensed health facility, the person named in the petition will no longer be a danger to the health and safety of others while on outpatient status and will benefit from outpatient status.
- (2) The county behavioral health director advises the court that the person named in the petition will benefit from outpatient status and identifies an appropriate program of supervision and treatment.

(b) After actual notice to the public officer, pursuant to Section 5114, and to counsel of the person named in the petition, to the court and to the county behavioral health director, the plan for outpatient treatment shall become effective within five judicial days unless a court hearing on that action is requested by any of the aforementioned parties, in which case the release on outpatient status shall not take effect until approved by the court after a hearing. This hearing shall be held within five judicial days of the actual notice required by this subdivision.

(c) The county behavioral health director shall be the outpatient supervisor of persons placed on outpatient status under this section. The county behavioral health director may delegate outpatient supervision responsibility to a designee.

(d) The outpatient treatment supervisor shall, when the person is placed on outpatient status at least three months, submit at 90-day intervals to the court, the public officer, pursuant to Section 5114, and counsel of the person named in the petition and to the supervisor or professional person in charge of the licensed health facility, when appropriate, a report setting forth the status and

progress of the person named in the petition. Notwithstanding the length of the outpatient status, a final report shall be submitted by the outpatient treatment supervisor at the conclusion of the 180-day commitment setting forth the status and progress of the person.

(Amended by Stats. 2015, Ch. 455, Sec. 22. (SB 804) Effective January 1, 2016.)

5306. (a) Notwithstanding Section 5113, if the provisions of Section 5309 have been met, the superintendent, the professional person in charge of the hospital providing 90-day involuntary treatment, the medical director of the facility or his or her designee described in subdivision (a) of Section 5309, and the psychiatrist directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released before the end of a 90-day period pursuant to this article.

(b) The superintendent, the professional person in charge of the hospital providing 90-day involuntary treatment, the medical director of the facility or his or her designee described in subdivision (a) of Section 5309, and the psychiatrist directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released at the end of a 90-day period pursuant to this article.

(Amended by Stats. 1985, Ch. 1288, Sec. 11. Effective September 30, 1985.)

5306.5. (a) If at any time during the outpatient period, the outpatient treatment supervisor is of the opinion that the person receiving treatment requires extended inpatient treatment or refuses to accept further outpatient treatment and supervision, the county behavioral health director shall notify the superior court in either the county that approved outpatient status or in the county where outpatient treatment is being provided of that opinion by means of a written request for revocation of outpatient status. The county behavioral health director shall furnish a copy of this request to the counsel of the person named in the request for revocation and to the public officer, pursuant to Section 5114, in both counties if the request is made in the county of treatment, rather than the county of commitment.

(b) Within 15 judicial days, the court where the request was filed shall hold a hearing and shall either approve or disapprove the request for revocation of outpatient status. If the court approves the request for revocation, the court shall order that the person be confined in a state hospital or other treatment facility approved by the county behavioral health director. The court shall transmit a copy of its order to the county behavioral health director or a designee and to the Director of State Hospitals. When the county of treatment and the county of commitment differ and revocation occurs in the county of treatment, the court shall enter the name of the committing county and its case number on the order of revocation and shall send a copy of the order to the committing court and the public officer, pursuant to Section 5114, and counsel of the person named in the request for revocation in the county of commitment.

(Amended by Stats. 2015, Ch. 455, Sec. 23. (SB 804) Effective January 1, 2016.)

5307. If at any time during the outpatient period the public officer, pursuant to Section 5114, is of the opinion that the person is a danger to the health and safety of others while on outpatient status, the public officer, pursuant to Section 5114, may petition the court for a hearing to determine whether the person shall be continued on outpatient status. Upon receipt of the petition, the court shall calendar the case for further proceedings within 15 judicial days and the clerk shall notify the person, the county behavioral health director, and the attorney of record for the person of the hearing date. Upon failure of the person to appear as noticed, if a proper affidavit of service and advisement has been filed with the court, the court may issue a body attachment for that person. If, after a hearing in court the judge determines that the person is a danger to the health and safety of others, the court shall order that the person be confined in a state hospital or other treatment facility that has been approved by the county behavioral health director.

(Amended by Stats. 2015, Ch. 455, Sec. 24. (SB 804) Effective January 1, 2016.)

5308. Upon the filing of a request for revocation of outpatient status under Section 5306.5 or 5307 and pending the court's decision on revocation, the person subject to revocation may be confined in a state hospital or other treatment facility by the county behavioral health director when it is the opinion of that director that the person will now be a danger to self or to another while on outpatient status and that to delay hospitalization until the revocation hearing would pose a demonstrated danger of harm to the person or to another. Upon the request of the county behavioral health director or a designee, a peace officer shall take, or cause to be taken, the person into custody and transport the person to a treatment facility for hospitalization under this section. The county behavioral health director shall notify the court in writing of the admission of the person to inpatient status and of the factual basis for the opinion that immediate return to inpatient treatment was necessary. The court shall supply a copy of these documents to the public officer, pursuant to Section 5114, and counsel of the person subject to revocation.

A person hospitalized under this section shall have the right to judicial review of the detention in the manner prescribed in Article 5 (commencing with Section 5275) of Chapter 2 and to an explanation of rights in the manner prescribed in Section 5252.1.

Nothing in this section shall prevent hospitalization pursuant to the provisions of Section 5150, 5250, 5350, or 5353.

A person whose confinement in a treatment facility under Section 5306.5 or 5307 is approved by the court shall not be released again to outpatient status unless court approval is obtained under Section 5305.

(Amended by Stats. 2015, Ch. 455, Sec. 25. (SB 804) Effective January 1, 2016.)

5309. (a) Nothing in this article shall prohibit the superintendent or professional person in charge of the hospital in which the person is being involuntarily treated from releasing him or her from treatment prior to the expiration of the commitment period when, the psychiatrist directly responsible for the person's treatment believes, as a result of his or her personal observations, that the person being involuntarily treated no longer constitutes a demonstrated danger of substantial physical harm to others. If any other professional person who is authorized to release the person, believes the person should be released prior to the expiration of the commitment period, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released prior to the expiration of the commitment period only if the psychiatrist making the final decision believes, as a result of his or her personal observations, that the person being involuntarily treated no longer constitutes a demonstrated danger of substantial physical harm to others.

(b) After actual notice to the public officer, pursuant to Section 5114, and to counsel of the person named in the petition, to the court, and to the county mental health director, the plan for unconditional release shall become effective within five judicial days unless a court hearing on that action is requested by any of the aforementioned parties, in which case the unconditional release shall not take effect until approved by the court after a hearing. This hearing shall be held within five judicial days of the actual notice required by this subdivision.

(Amended by Stats. 1985, Ch. 1288, Sec. 12. Effective September 30, 1985.)