



ADVOCACY ♦ RECOVERY ♦ PEER SUPPORT

Unhoused Mental Health Consumers: Issues and Rights

About Cal Voices

- Nonprofit 501(c)(3) public benefit organization
- An affiliate of Mental Health America (MHA National)
- Founded in 1946, the oldest continuously operating peer-run advocacy agency in California
- 60+ employees (and multiple open positions); 98% have personal lived experience as a consumer of behavioral health services, a family member of a consumer, or both
- 15+ programs that provide direct peer support services; state and local advocacy and public policy analysis; and education, training, and TA to individuals, agencies, and employers in California's PMHS

Cal Voices' Mission

Cal Voices is dedicated to improving the lives of residents in the diverse communities of California through advocacy, education, research, and culturally relevant peer support services. In all its programs, Cal Voices works with individuals and families with mental health challenges to promote wellness and recovery, prevention, and improved access to services and supports.

Presenter Introductions

- Clare Cortright, Esq.
- Role at Cal Voices
- Professional and personal background

Workshop Overview

- Fundamentals:
 - Lanterman-Petris-Short Act (“LPS”) Holds & Conservatorship
 - CARE Court
- Relationship to being unhoused
- Person’s rights and tips for self-advocacy and advocacy for others

California's Involuntary Mental Health Programs

- Involuntary Psychiatric Holds (§§5150, 5250, 5270.15, etc.)
- LPS Conservatorship (§5350, et. seq.)
- Assisted Outpatient Treatment ("AOT") (§5346, et. seq.)
- CARE Court (§5970, et. seq.)

The Lanterman Petris Short Act (“LPS”)

“To end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorders, and to eliminate legal disabilities.”

“To safeguard individual rights through judicial review.”

LPS Act Involuntary Psychiatric Holds

Basic Criteria:

- Danger to Self, Others, or Gravely Disabled

Holds Allow:

- Physical custody in a locked, specialized facility, "short-term"
- Pre-condition for involuntary psychiatric medications

LPS Act Involuntary Psychiatric Holds

Patients' Rights: Judicial Review & Representation:

- Certification Review Hearing (§5256, et. seq.)
- Writ of Habeas Corpus (§5275 et. Seq.)
- Riese (§5332, et. Seq.) (medication refusal)

Statutory Rights (§5325, et. seq.)

Current Definition of Grave Disability

Person's inability due to a mental health disorder or impairment by chronic alcoholism to provide for food, clothing and shelter
(§ 5008)

Lacks "third party assistance"
Unable to access resources
"Survive safely in freedom"

LPS Conservatorship Basics

- Grave Disability only (§ 5350, et. seq.)
 - Cannot be initiated by a private party
- Up to one year, renewable indefinitely
- Right to a jury trial, “beyond a reasonable doubt”
- State appoints a Conservator, usually Public Guardian’s Office

LPS Conservatorship

“The most extreme deprivation of civil liberties, aside from the death penalty.”

Under Conservatorship:

- Institutionalization – indefinite and locked;
- Forced psychotropic medication;
- Forced medical treatment;
- Loss of driver’s license;
- Loss of right to vote;
- Loss of right to enter a contract;
- Loss of control of your own money or property, etc.

Unhoused: Same Law, Different Impacts

Homelessness \neq Grave Disability
(Conservatorship of Smith)

Disparate Impacts to the Unhoused:

- Target for police: nuisance but not a crime
- Lack of entitlement to adequate State-funded welfare: housing and income
- Survive safely in freedom: community resources?

LPS Defense – Tips for Advocates

Holds: the front door to Conservatorship

- Appeal through Writs of Habeas Corpus
- Right to be a voluntary patient
 - Enforcement: Writ of Habeas Corpus (§ 5276)
- Psychiatric Advanced Directives

The CARE Act's CARE Court

What is SB1338, CARE Court?

- A new, civil court system to court-order outpatient treatment
- Effective October 1, 2023 in Glenn, Orange, Riverside, San Diego, Stanislaus, Tuolumne, and the City and County of San Francisco
- Effective December 1, 2024 rest of the State

Who is eligible for CARE Court?

MINIMUM CRITERIA (§ 5972 et. seq.):

- 1) 18 or Older
- 2) "Schizophrenia Spectrum and Other Psychotic Disorders" DSM Classification
- 3) Not clinically stabilized in ongoing voluntary treatment
- 4) Needs "services and supports" to "prevent relapse" "likely to result" in §5150
- 5) CARE plan is least restrictive alternative and person likely to benefit

The CARE Court Process

- "Petitioner" files against "Respondent" in Superior Court Petitioners: 27 different groups of people, including lay people; e.g. a roommate

AND

- Supporting statement by a behavioral health professional (never met you) OR
- Two 5250 holds in 60 days (even if you won)

Things to Notice...

- No requirement “Respondent” is unhoused
- Does not to apply to Substance Use only “dual diagnosed”
- Person who is engaged in voluntary treatment is still eligible if “Petitioner” thinks it is not effective
- Is not offered as a least restrictive alternative to Conservatorship
 - It funnels people up, not down

CARE “Respondent’s” Rights

- a) Receive notice of the hearings.
 - b) Receive a copy of the court-ordered evaluation.
 - c) Be entitled to be represented by counsel at all stages of a proceeding commenced under this chapter, regardless of the ability to pay.
 - d) Be allowed to have a supporter, as described in Section 5982.
 - e) Be present at the hearing unless the respondent waives the right to be present.
 - f) Have the right to present evidence.
 - g) Have the right to call witnesses.
 - h) Have the right to cross-examine witnesses.
 - i) Have the right to appeal decisions, and to be informed of the right to appeal.
- Supporter – and advocate for Respondent’s expressed interests...sort of

The CARE Court Process

- Court-ordered "evaluation" recommending services, supports and "stabilizing medications"
- Attempt to engage in voluntary services and "CARE Agreement"
- Hearings and Appeals (unknown process and grounds)
- Court-ordered, "CARE Plan," medications if lack capacity
- Status conferences – are you fulfilling the plan?
- Renewal

CARE Agreements and Plans

- 1) Services and Supports may be through County or Private Insurance
- 2) No entitlement to housing – housing “plan”
- 3) No entitlement to any specific service(s) – plan “may” include...
- 4) No forced administration of medications

Unhoused: Same Law, Different Impacts

Disparate Impacts on the Unhoused:

- Notice and Opportunity
- Access to Counsel
- Does not assist the unhoused person with transportation, mail, cell phones, the internet, a safe place to store belongings, a safe place in which to be sedated at night by medications, etc.
- Summary: it provides no way for an unhoused person to participate nor excuses non-participation of an unhoused person facing these barriers.

Unhoused: Same Law, Different Impacts

Proceedings held without you:

“If the respondent...does not appear at the hearing, and the court makes a finding on the record that reasonable attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing in the respondent’s absence if the court makes a finding on the record that conducting the hearing without the participation or presence of the respondent would be in the respondent’s best interest.” (§ 5977)

Unhoused: Same Law, Different Impacts

Consequences of non-participation or “non-compliance,” presumption for a Conservatorship:

“If the respondent was timely provided with all of the services and supports required by the CARE plan, the fact that the respondent failed to successfully complete their CARE plan, including reasons for that failure, shall be a fact considered by the court in a subsequent hearing under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000)), [Conservatorship] provided that the hearing occurs within six months of the termination of the CARE plan and shall create a presumption at that hearing that the respondent needs additional intervention beyond the supports and services provided by the CARE plan.” (§5979)

CARE Court – Tips for Advocates

Appeal

Be assertive: if you've got it, argue it



Questions and Discussion

Contact Us

Web

www.calvoices.org

Email

info@calvoices.org

Phone

Office: (916) 376-7736

Social Media

Facebook: [/calvoices](https://www.facebook.com/calvoices)

Twitter: [@calvoices](https://twitter.com/calvoices)