

State of California Involuntary Treatment Information

72-Hour Mental Health Involuntary Hold

Under California law, only designated professional personnel can place a person in 72-hour hold, often called a "5150." They can be police officers, members of a "mobile crisis team," or other mental health professionals authorized by their county.

One of three conditions must be present for an individual to be placed on a 72-hour hold. The designated personnel believe there is probable cause that because of a mental disorder the individual is:

- A danger to him or herself;
- A danger to others; or
- Gravely disabled (unable to provide for his or her basic personal needs for food, clothing or shelter).

The person placed in a 72-hour hold must be advised of his/her rights. The authority or facility must complete paperwork stating the circumstances under which the person's condition was called to the attention of the officer or professional; what probable cause there is to believe the person is a danger to others, a danger to him or herself, or gravely disabled (due to a mental disorder); and the facts upon which this probable cause is based. Mere conclusions without supporting facts are not sufficient.

What happens during an involuntary hold?

When a person is detained for up to 72 hours, the emergency facility or hospital is required to do an evaluation of that person, taking into account his/her medical, psychological, educational, social, financial and legal situation. The hospital does not have to hold the patient for the complete 72 hours if the professional person in charge believes that the patient no longer requires evaluation or treatment.

By the end of the 72 hours, one of the following things must happen:

- The person may be released;
- The person may sign in as a voluntary patient;
- The person may be put on a 14-day "5250" involuntary hold (a "certification for intensive treatment").

Does the person being held involuntarily have any rights?

Yes. A mental health patient being held involuntarily must be informed of the following rights in a language or manner he/she can understand:

- To keep and use his/her own personal possessions including toilet articles and clothing;
- To keep and be allowed to spend a reasonable sum of his/her own money (a conservator shall be appointed as required);
- To have access to individual storage space for private use;
- To see visitors each day;
- To have reasonable access to telephones;
- To have ready access to letter writing materials, including stamps & mail;
- To receive unopened mail;
- To refuse convulsive treatment;
- To refuse psychosurgery;
- To see a patient's rights advocate;

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- To be assisted by an attorney at the certification review hearing.

In addition, the patient has the right to be informed fully of the risks and benefits of the proposed treatment and give his/her informed consent. A patient has the right to refuse medication unless there is an emergency condition or the patient is found to lack capacity to make an informed decision after a court hearing. If, at that hearing, the patient is found to lack capacity to consent to medication, the patient may appeal the decision to the county Superior Court.

Within four days after the patient is placed on a 14-day involuntary hold, there must be a certification review hearing (a "probable-cause hearing"). The hospital must present evidence as to why the patient needs further treatment. The patient, assisted by a patients' rights advocate, can explain why he/she believes there is no need for further hospital stay. A hearing officer, court-appointed commissioner or referee will decide whether or not there is probable cause to keep the patient in the hospital against his/her will for a period not to exceed 14 days.

If the hearing officer decides there is not probable cause to hold the patient, the patient may request to remain in the hospital on a voluntary basis. If the hearing officer decides there is probable cause and the patient disagrees with the decision, he/she has the right to request a Writ of Habeas Corpus and have a hearing in the Superior Court of the county where the patient is being held.

LPS Conservatorship

For Families and Friends of Patients:

What is a Conservatorship, and how can I request one for my ill family member?

In extreme cases, when a person has a long history of serious mental illness and noncompliance, an LPS (mental health) Conservatorship may be requested by professional personnel or by family members. If your loved one is hospitalized and you believe they need longer term treatment, you can request that the psychiatrist consider requesting a Conservatorship. An LPS conservatorship makes one adult (called the conservator) responsible for a mentally ill adult (called the conservatee). These conservatorships are only for adults with grave mental illnesses, and must be requested through the courts. For more information on requesting Conservatorships, visit the Santa Clara County Superior Court's page on [LPS Conservatorships](#)

For Patients:

What is a Conservatorship, and how does it affect me?

LPS Conservatorship is a process in which the court appoints a person to make certain legal decisions for you. This person is called a conservator. Your conservator can make decisions like whether you can start or stop taking psychiatric medications, accept other medical treatment, manage your money and decide where to live. When you are on conservatorship, the court may limit your right to vote, to enter into contracts, to drive or to own a firearm. The LPS conservatorship can last for a maximum of one year at a time, and can be renewed in court at the end of the year.

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When would I be put on conservatorship?

You can be put on a conservatorship if the court believes that you are "gravely disabled" which means having a mental disorder that keeps you from being able to provide food, clothing and shelter for yourself.

How does conservatorship get started?

Conservatorship is usually set up while you are in a hospital receiving psychiatric treatment. If your doctor or person responsible for your care believes that you need to be put on conservatorship because you have a mental disorder that keeps you from being able to provide food, clothing and shelter for yourself, he or she may make a recommendation to the County agency that does conservatorship investigations. It is up to the investigator to decide whether or not to request the court to start a conservatorship. Not everybody that meets the definition of "gravely disabled" is automatically put on conservatorship. You must be given a copy of the petition if one is filed, and told the time of the conservatorship hearing in court.

Here are some things you can do to not be put on conservatorship:

It is important that you have a place to stay, and a way of getting food and clothes to stay off conservatorship. You don't have to own your own home or have your own apartment to prove you have a place to live. Even if another person, such as a friend or relative, is willing to give you a place to stay, this can help you beat the conservatorship. If you have a good doctor or therapist in the community, it may be helpful to get them to testify for you on your behalf. Discuss with your lawyer the possibility of having the court appoint an independent psychiatrist separate from the hospital to evaluate you and to give another opinion as to whether you really need conservatorship.

What are my rights to challenge being put on conservatorship?

You have the right to:

- Free legal representation

The court will appoint an attorney to represent you free of charge if you cannot afford to hire your own lawyer. You and your lawyer also have the right to "subpoena" witnesses, which means requiring people who might have something helpful to say to come to court and testify for you.

- Jury trial

Most conservatorships begin with a hearing before a judge. However, if you want your case to be decided by a jury, you have that right. The law even gives you the right to have a hearing, and if you lose, then a jury trial. This jury trial is not automatic. You must request the jury trial within five days after the hearing. Discuss this with your lawyer.

- Proof beyond reasonable doubt

This is the highest standard of proof the law has. It is the same standard of proof applied in criminal cases.

How should I prepare myself for court?

Dress as neatly as possible. Even if you disagree and feel angry about what might be said about you in court, it is important to remain calm. Be ready to explain in court how you will be able to take care of your basic needs, including having food, clothes and a place to live. If you know someone who will testify on your behalf, especially by helping you with food, clothing and a place to stay, try to make sure they will show up in court for your hearing.

If I am put on conservatorship, who may act as my conservator?

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Your conservator can be a friend or a family member. You may nominate who you would like to be your conservator, although the judge decides who to pick. If the court finds no other person or agency able to serve as your conservator, the court will appoint your county public guardian as your conservator.

What is temporary conservatorship?

If you are in the hospital, and are on a 14-day hold, at the end of the hold, you may be put on a temporary conservatorship for 30 days. To put you on temporary conservatorship, the court must believe that you are "gravely disabled," and may restrict some of your rights, like the right to refuse medications, to choose a place to live, etc. You are supposed to receive notice before the temporary conservatorship is established, but often people don't learn they are on temporary conservatorship until after they have been put on it.

How can I challenge a temporary conservatorship?

If you know ahead of time that you are being considered for a temporary conservatorship, you can try to demonstrate that you do not fit the definition of "gravely disabled." You can do this by showing that you will be able to secure food, clothing and shelter. If possible, try to demonstrate these things to your doctor and/or social worker, so that they may decide not to put you on conservatorship.

If I am put on a conservatorship, do I lose all my rights?

No. The law specifically states that if you are in the hospital under conservatorship, you have the same rights as other people to wear your own clothes, to make confidential phone calls, to receive unopened correspondence, to have visitors daily, to have individual storage space, to keep reasonable amounts of your own money for canteen expenses, and other rights. Your conservator does not have the power to restrict or limit these rights in any way. You also have the right to be involved in your treatment plan, and in placement decisions. If you feel you have been forced to live in a place that is too restrictive for your needs, or in the conservator has been given too much power over your life, you can ask for a special hearing in court to review these things.

How do I get off conservatorship?

- Rehearing:

Even if you lose your conservatorship hearing or trial, there are things you can do. First, you may apply for a "rehearing" to try to show the judge that you are no longer "gravely disabled." However, once you have had one rehearing, you may not request another one for another six months.

- Writ of habeas corpus:

The United States Constitution allows anyone who believes they are being held illegally by the government (including by a conservator) to file a "writ of habeas corpus" to challenge the confinement. There is also a special law in California that allows any state hospital patient to file a writ. Ask your lawyer or advocate for assistance.

- Challenge reestablishment:

If you have been on conservatorship for a whole year, the county must decide whether to drop the conservatorship, or as the court to "reestablish" it. If the county decides to reestablish your conservatorship, you may challenge it and ask for a trial again before a judge or a jury.

If you have any questions, contact your county Patients' Rights Advocate