

AMENDED IN ASSEMBLY JUNE 17, 2021

AMENDED IN SENATE APRIL 8, 2021

AMENDED IN SENATE MARCH 25, 2021

AMENDED IN SENATE MARCH 11, 2021

SENATE BILL

No. 507

**Introduced by Senators Eggman and Stern
(Coauthors: Senators ~~Melendez Glazer, Melendez, and Rubio~~)**

February 17, 2021

An act to amend Section 5346 ~~of of~~, and to add Section 5346.5 to, the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 507, as amended, Eggman. Mental health services: assisted outpatient treatment.

The Assisted Outpatient Treatment Demonstration Project Act of 2002, known as Laura's Law, *commencing January 1, 2022, requires each county to offer specified mental health programs, unless a county or group of counties opts out by a resolution passed by the governing body, as specified. Existing law authorizes participating counties to pay for the services provided from moneys distributed to the counties from various continuously appropriated funds, including the Mental Health Services Fund, when included in a county plan, as specified. Existing law authorizes a court in a participating county to order a person who is suffering from mental illness and is the subject of a petition to obtain assisted outpatient treatment if the court makes various findings including, among others, there has been a clinical determination that the person is unlikely to survive safely in the community without supervision, the person's condition is substantially deteriorating, and,*

in view of the person’s treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or to others. Existing law requires the petition to be accompanied by an affidavit of a licensed mental health treatment provider. *Existing law authorizes the petition to be filed by the county behavioral health director, or the director’s designee, in the superior court in the county in which the person who is the subject of the petition is present or reasonably believed to be present, in accordance with prescribed procedures.*

This bill would, among other things, instead require that the above-described findings include either that the person is unlikely to survive safely in the community without supervision and that the person’s condition is substantially deteriorating, or that assisted outpatient treatment is needed to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to the person or to others. This bill would allow the subject of the petition or the examining mental health professional to appear before the court for testimony by videoconferencing, as specified.

The bill would additionally authorize the filing of a petition to obtain assisted outpatient treatment under the existing petition procedures, for an eligible conservatee, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5346 of the Welfare and Institutions
2 Code, as added by Section 2 of Chapter 140 of the Statutes of
3 2020, is amended to read:
4 5346. (a) In any county or group of counties where services
5 are available as provided in Section 5348, a court may order a
6 person who is the subject of a petition filed pursuant to this section
7 to obtain assisted outpatient treatment if the court finds, by clear
8 and convincing evidence, that the facts stated in the verified
9 petition filed in accordance with this section are true and establish
10 that all of the requisite criteria set forth in this section are met,
11 including, but not limited to, each of the following:
12 (1) The person is 18 years of age or older.

1 (2) The person is suffering from a mental illness as defined in
2 paragraphs (2) and (3) of subdivision (b) of Section 5600.3.

3 (3) At least one of the following is true:

4 (A) There has been a clinical determination that the person is
5 unlikely to survive safely in the community without supervision
6 and the person's condition is substantially deteriorating.

7 (B) In view of the person's treatment history and current
8 behavior, the person is in need of assisted outpatient treatment in
9 order to prevent a relapse or deterioration that would be likely to
10 result in grave disability or serious harm to the person or to others,
11 as defined in Section 5150.

12 (4) The person has a history of lack of compliance with
13 treatment for the person's mental illness, in that at least one of the
14 following is true:

15 (A) The person's mental illness has, at least twice within the
16 last 36 months, been a substantial factor in necessitating
17 hospitalization, or receipt of services in a forensic or other mental
18 health unit of a state correctional facility or local correctional
19 facility, not including any period during which the person was
20 hospitalized or incarcerated immediately preceding the filing of
21 the petition.

22 (B) The person's mental illness has resulted in one or more acts
23 of serious and violent behavior toward themselves or another, or
24 threats, or attempts to cause serious physical harm to themselves
25 or another within the last 48 months, not including any period in
26 which the person was hospitalized or incarcerated immediately
27 preceding the filing of the petition.

28 (5) The person has been offered an opportunity to participate
29 in a treatment plan by the director of the local mental health
30 department, or the director's designee, provided the treatment plan
31 includes all of the services described in Section 5348, and the
32 person continues to fail to engage in treatment.

33 (6) Participation in the assisted outpatient treatment program
34 would be the least restrictive placement necessary to ensure the
35 person's recovery and stability.

36 (7) It is likely that the person will benefit from assisted
37 outpatient treatment.

38 (b) (1) A petition for an order authorizing assisted outpatient
39 treatment may be filed by the county behavioral health director,
40 or the director's designee, in the superior court in the county in

1 which the person who is the subject of the petition is present or
2 reasonably believed to be present.

3 (2) A request may be made only by any of the following persons
4 to the county mental health department for the filing of a petition
5 to obtain an order authorizing assisted outpatient treatment:

6 (A) A person 18 years of age or older with whom the person
7 who is the subject of the petition resides.

8 (B) A person who is the parent, spouse, or sibling or child 18
9 years of age or older of the person who is the subject of the petition.

10 (C) The director of a public or private agency, treatment facility,
11 charitable organization, or licensed residential care facility
12 providing mental health services to the person who is the subject
13 of the petition in whose institution the subject of the petition
14 resides.

15 (D) The director of a hospital in which the person who is the
16 subject of the petition is hospitalized.

17 (E) A licensed mental health treatment provider who is either
18 supervising the treatment of, or treating for a mental illness, the
19 person who is the subject of the petition.

20 (F) A peace officer, parole officer, or probation officer assigned
21 to supervise the person who is the subject of the petition.

22 (G) A judge of a superior court before whom the person who
23 is the subject of the petition appears.

24 (3) Upon receiving a request pursuant to paragraph (2), the
25 county behavioral health director shall conduct an investigation
26 into the appropriateness of filing of the petition. The director shall
27 file the petition only if the director determines that there is a
28 reasonable likelihood that all the necessary elements to sustain the
29 petition can be proven in a court of law by clear and convincing
30 evidence.

31 (4) The petition shall state all of the following:

32 (A) Each of the criteria for assisted outpatient treatment as set
33 forth in subdivision (a).

34 (B) Facts that support the petitioner's belief that the person who
35 is the subject of the petition meets each criterion, provided that
36 the hearing on the petition shall be limited to the stated facts in
37 the verified petition, and the petition contains all the grounds on
38 which the petition is based, in order to ensure adequate notice to
39 the person who is the subject of the petition and that person's
40 counsel.

1 (C) That the person who is the subject of the petition is present,
2 or is reasonably believed to be present, within the county where
3 the petition is filed.

4 (D) That the person who is the subject of the petition has the
5 right to be represented by counsel in all stages of the proceeding
6 under the petition, in accordance with subdivision (c).

7 (5) (A) The petition shall be accompanied by an affidavit of a
8 licensed mental health treatment provider designated by the local
9 mental health director who shall state, if applicable, either of the
10 following:

11 (i) That the licensed mental health treatment provider has
12 personally examined the person who is the subject of the petition
13 no more than 10 days prior to the submission of the petition, the
14 facts and reasons why the person who is the subject of the petition
15 meets the criteria in subdivision (a), that the licensed mental health
16 treatment provider recommends assisted outpatient treatment for
17 the person who is the subject of the petition, and that the licensed
18 mental health treatment provider is willing and able to testify at
19 the hearing on the petition.

20 (ii) That, no more than 10 days prior to the filing of the petition,
21 the licensed mental health treatment provider, or the provider's
22 designee, has made appropriate attempts to elicit the cooperation
23 of the person who is the subject of the petition, but has not been
24 successful in persuading that person to submit to an examination,
25 that the licensed mental health treatment provider has reason to
26 believe that the person who is the subject of the petition meets the
27 criteria for assisted outpatient treatment, and that the licensed
28 mental health treatment provider is willing and able to examine
29 the person who is the subject of the petition and testify at the
30 hearing on the petition.

31 (B) An examining mental health professional in their affidavit
32 to the court shall address the issue of whether the defendant has
33 capacity to give informed consent regarding psychotropic
34 medication.

35 (c) The person who is the subject of the petition shall have the
36 right to be represented by counsel at all stages of a proceeding
37 commenced under this section. If the person so elects, the court
38 shall immediately appoint the public defender or other attorney to
39 assist the person in all stages of the proceedings. The person shall
40 pay the cost of the legal services if able to do so.

1 (d) (1) Upon receipt by the court of a petition submitted
2 pursuant to subdivision (b), the court shall fix the date for a hearing
3 at a time not later than five days from the date the petition is
4 received by the court, excluding Saturdays, Sundays, and holidays.
5 The petitioner shall promptly cause service of a copy of the
6 petition, together with written notice of the hearing date, to be
7 made personally on the person who is the subject of the petition,
8 and shall send a copy of the petition and notice to the county office
9 of patient rights, and to the current health care provider appointed
10 for the person who is the subject of the petition, if the provider is
11 known to the petitioner. Continuances shall be permitted only for
12 good cause shown. In granting continuances, the court shall
13 consider the need for further examination by a physician or the
14 potential need to provide expeditiously assisted outpatient
15 treatment. Upon the hearing date, or upon any other date or dates
16 to which the proceeding may be continued, the court shall hear
17 testimony. If it is deemed advisable by the court, and if the person
18 who is the subject of the petition is available and has received
19 notice pursuant to this section, the court may examine in or out of
20 court the person who is the subject of the petition who is alleged
21 to be in need of assisted outpatient treatment. If the person who is
22 the subject of the petition does not appear at the hearing, and
23 appropriate attempts to elicit the attendance of the person have
24 failed, the court may conduct the hearing in the person's absence.
25 If the hearing is conducted without the person present, the court
26 shall set forth the factual basis for conducting the hearing without
27 the person's presence. The person who is the subject of the petition
28 shall maintain the right to appear before the court in person, but
29 may appear by videoconferencing means if they choose to do so.

30 (2) The court shall not order assisted outpatient treatment unless
31 an examining licensed mental health treatment provider, who has
32 personally examined, and has reviewed the available treatment
33 history of, the person who is the subject of the petition within the
34 time period commencing 10 days before the filing of the petition,
35 testifies at the hearing. An examining mental health professional
36 may appear before the court by videoconferencing means.

37 (3) If the person who is the subject of the petition has refused
38 to be examined by a licensed mental health treatment provider,
39 the court may request that the person consent to an examination
40 by a licensed mental health treatment provider appointed by the

1 court. If the person who is the subject of the petition does not
2 consent and the court finds reasonable cause to believe that the
3 allegations in the petition are true, the court may order any person
4 designated under Section 5150 to take into custody the person who
5 is the subject of the petition and transport the person, or cause the
6 person to be transported, to a hospital for examination by a licensed
7 mental health treatment provider as soon as is practicable.
8 Detention of the person who is the subject of the petition under
9 the order may not exceed 72 hours. If the examination is performed
10 by another licensed mental health treatment provider, the
11 examining licensed mental health treatment provider may consult
12 with the licensed mental health treatment provider whose
13 affirmation or affidavit accompanied the petition regarding the
14 issues of whether the allegations in the petition are true and whether
15 the person meets the criteria for assisted outpatient treatment.

16 (4) The person who is the subject of the petition shall have all
17 of the following rights:

18 (A) To adequate notice of the hearings to the person who is the
19 subject of the petition, as well as to parties designated by the person
20 who is the subject of the petition.

21 (B) To receive a copy of the court-ordered evaluation.

22 (C) To counsel. If the person has not retained counsel, the court
23 shall appoint a public defender.

24 (D) To be informed of the right to judicial review by habeas
25 corpus.

26 (E) To be present at the hearing unless the person waives the
27 right to be present.

28 (F) To present evidence.

29 (G) To call witnesses on the person's behalf.

30 (H) To cross-examine witnesses.

31 (I) To appeal decisions, and to be informed of the right to appeal.

32 (5) (A) If after hearing all relevant evidence, the court finds
33 that the person who is the subject of the petition does not meet the
34 criteria for assisted outpatient treatment, the court shall dismiss
35 the petition.

36 (B) If after hearing all relevant evidence, the court finds that
37 the person who is the subject of the petition meets the criteria for
38 assisted outpatient treatment, and there is no appropriate and
39 feasible less restrictive alternative, the court may order the person
40 who is the subject of the petition to receive assisted outpatient

1 treatment for an initial period not to exceed six months. In
2 fashioning the order, the court shall specify that the proposed
3 treatment is the least restrictive treatment appropriate and feasible
4 for the person who is the subject of the petition. The order shall
5 state the categories of assisted outpatient treatment, as set forth in
6 Section 5348, that the person who is the subject of the petition is
7 to receive, and the court may not order treatment that has not been
8 recommended by the examining licensed mental health treatment
9 provider and included in the written treatment plan for assisted
10 outpatient treatment as required by subdivision (e). If the person
11 has executed an advance health care directive pursuant to Chapter
12 2 (commencing with Section 4650) of Part 1 of Division 4.7 of
13 the Probate Code, any directions included in the advance health
14 care directive shall be considered in formulating the written
15 treatment plan.

16 (6) If the person who is the subject of a petition for an order for
17 assisted outpatient treatment pursuant to subparagraph (B) of
18 paragraph (5) refuses to participate in the assisted outpatient
19 treatment program, the court may order the person to meet with
20 the assisted outpatient treatment team designated by the director
21 of the assisted outpatient treatment program. The treatment team
22 shall attempt to gain the person's cooperation with treatment
23 ordered by the court. The person may be subject to a 72-hour hold
24 pursuant to subdivision (f) only after the treatment team has
25 attempted to gain the person's cooperation with treatment ordered
26 by the court, and has been unable to do so.

27 (e) Assisted outpatient treatment shall not be ordered unless the
28 licensed mental health treatment provider recommending assisted
29 outpatient treatment to the court has submitted to the court a written
30 treatment plan that includes services as set forth in Section 5348,
31 and the court finds, in consultation with the county behavioral
32 health director, or the director's designee, all of the following:

33 (1) That the services are available from the county, or a provider
34 approved by the county, for the duration of the court order.

35 (2) That the services have been offered to the person by the
36 local director of mental health, or the director's designee, and the
37 person has been given an opportunity to participate on a voluntary
38 basis, and the person has failed to engage in, or has refused,
39 treatment.

1 (3) That all of the elements of the petition required by this article
2 have been met.

3 (4) That the treatment plan will be delivered to the county
4 behavioral health director, or to the director's appropriate designee.

5 (f) If, in the clinical judgment of a licensed mental health
6 treatment provider, the person who is the subject of the petition
7 has failed or has refused to comply with the treatment ordered by
8 the court, and, in the clinical judgment of the licensed mental health
9 treatment provider, efforts were made to solicit compliance, and,
10 in the clinical judgment of the licensed mental health treatment
11 provider, the person may be in need of involuntary admission to
12 a hospital for evaluation, the provider may request that persons
13 designated under Section 5150 take into custody the person who
14 is the subject of the petition and transport the person, or cause the
15 person to be transported, to a hospital, to be held up to 72 hours
16 for examination by a licensed mental health treatment provider to
17 determine if the person is in need of treatment pursuant to Section
18 5150. Any continued involuntary retention in a hospital beyond
19 the initial 72-hour period shall be pursuant to Section 5150. If at
20 any time during the 72-hour period the person is determined not
21 to meet the criteria of Section 5150, and does not agree to stay in
22 the hospital as a voluntary patient, the person shall be released and
23 any subsequent involuntary detention in a hospital shall be pursuant
24 to Section 5150. Failure to comply with an order of assisted
25 outpatient treatment alone may not be grounds for involuntary
26 civil commitment or a finding that the person who is the subject
27 of the petition is in contempt of court.

28 (g) If the director of the assisted outpatient treatment program
29 determines that the condition of the patient requires further assisted
30 outpatient treatment, the director shall apply to the court, prior to
31 the expiration of the period of the initial assisted outpatient
32 treatment order, for an order authorizing continued assisted
33 outpatient treatment for a period not to exceed 180 days from the
34 date of the order. The procedures for obtaining an order pursuant
35 to this subdivision shall be in accordance with subdivisions (a) to
36 (f), inclusive. The period for further involuntary outpatient
37 treatment authorized by a subsequent order under this subdivision
38 may not exceed 180 days from the date of the order.

39 (h) At intervals of not less than 60 days during an assisted
40 outpatient treatment order, the director of the outpatient treatment

1 program shall file an affidavit with the court that ordered the
 2 outpatient treatment affirming that the person who is the subject
 3 of the order continues to meet the criteria for assisted outpatient
 4 treatment. At these times, the person who is the subject of the order
 5 shall have the right to a hearing on whether or not the person still
 6 meets the criteria for assisted outpatient treatment if they disagree
 7 with the director’s affidavit. The burden of proof shall be on the
 8 director.

9 (i) During each 60-day period specified in subdivision (h), if
 10 the person who is the subject of the order believes that they are
 11 being wrongfully retained in the assisted outpatient treatment
 12 program against their wishes, the person may file a petition for a
 13 writ of habeas corpus, thus requiring the director of the assisted
 14 outpatient treatment program to prove that the person who is the
 15 subject of the order continues to meet the criteria for assisted
 16 outpatient treatment.

17 (j) A person ordered to undergo assisted outpatient treatment
 18 pursuant to this article, who was not present at the hearing at which
 19 the order was issued, may immediately petition the court for a writ
 20 of habeas corpus. Treatment under the order for assisted outpatient
 21 treatment may not commence until the resolution of that petition.

22 (k) This section shall become operative on July 1, 2021.

23 *SEC. 2. Section 5346.5 is added to the Welfare and Institutions*
 24 *Code, to read:*

25 *5346.5. (a) In a county or group of counties where services*
 26 *are available, as provided in Section 5348, and in accordance*
 27 *with the requirements of Section 5346, a court may order an*
 28 *eligible conservatee who is the subject of a petition filed pursuant*
 29 *to this section to obtain assisted outpatient treatment if the court*
 30 *finds, by clear and convincing evidence, that the facts stated in*
 31 *the verified petition filed in accordance with this section are true*
 32 *and establish the criteria set forth in this section.*

33 *(b) An “eligible conservatee” is a person who is a conservatee*
 34 *under this part who is the subject of a pending petition to terminate*
 35 *a conservatorship and, if the petition is granted, would benefit*
 36 *from assisted outpatient treatment to reduce the risk of*
 37 *deteriorating mental health while living independently.*