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Gravely Disabled: The Vestigial Prong of 5150 Designations

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GRAVELY DISABLED: THE VESTIGIAL PRONG OF 5150 DESIGNATIONS

Diane Y. Byun

ABSTRACT

Effective July 1, 1972, California's Lanterman-Petris-Short Act ("LPS Act") set the precedent for modern mental health commitment procedures in the U.S. named after its authors, State Assemblyman Frank Lanterman and State Senators Nicholas C. Petris and Alan Short, the LPS Act sought to "end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorder"; to "provide prompt evaluation and treatment of persons with mental health disorders or impaired by chronic alcoholism"; and to "guarantee and protect public safety." Despite citing to these articles of intent, the LPS Act violates its own legislative intent through its inclusion of "gravely disabled" in its enforcement of involuntary psychiatric hold designations (also known as "5150 designations"). First, police officers are not required to make a medical diagnosis of a mental health disorder at the time of a 5150 designation; the broad scope of "gravely disabled" increases the number of persons police officers can involuntarily transport, increasing the likelihood of inappropriate and involuntary commitment of persons with mental health disorders. Second, the broad scope of "gravely disabled" produces an onslaught of 5150-designated persons (whether improperly designated or not) being sent to LPS-designated hospitals with limited resources (e.g., lack of beds and psychiatric staff); this results in patients waiting for an inordinate amount of time for a psychiatric evaluation and/or a hospital bed. Third, it is unclear whether the LPS Act sought to provide protection for the mentally ill or to provide protection from the mentally ill in its guarantee of protecting "public safety"; the inclusion of "gravely disabled" in 5150 designations indicates that the LPS Act provided the public with a duplicitous means of removing the mentally ill, impoverished, and houseless from the streets under the guise of "public safety." This Paper suggests the following to help remedy the effects of implementing the broadly defined "gravely disabled" in 5150 designations: (1) Remove "gravely disabled" from the 5150 criteria; (2) integrate the community with mental health advocacy efforts by creating outreach and education programs; and (3) implement a client-centric approach to interacting with persons with mental health disorders through restorative policing and the establishment of a restorative court.

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I. INTRODUCTION

Effective July 1, 1972, California’s Lanterman-Petris-Short Act (the “LPS Act”) set the precedent for modern mental health commitment procedures in the United States.¹ The LPS Act sought to, *inter alia*, “end the inappropriate, indefinite, and involuntary commitment of persons with mental health disorder”; “provide prompt evaluation and treatment of persons with mental health disorders or impaired by chronic alcoholism”; and “guarantee and protect public safety.”² Although the LPS Act eradicated the state’s ability to indefinitely detain the mentally ill, persons with mental health disorders are still vulnerable to involuntary civil commitment, such as 72-hour involuntary psychiatric holds.³

California legislature allows a person with a mental health disorder⁴ to be involuntarily detained for a 72-hour psychiatric hospitalization if police officers⁵ (also referred to as “police” or “officer”) and certain mental health professionals⁶

¹ CAL. WELF. & INST. CODE §§ 5000-5556 (Deering 2019). The LPS Act is named after its authors, State Assemblyman Frank Lanterman and California State Senators Nicholas C. Petris and Alan Short.

² CAL. WELF. & INST. CODE §§ 5001(a)-(c) (Deering 2019). The following articles of intent are also cited in the LPS Act: “(d) To safeguard individual rights through judicial review. (e) To provide individualized treatment, supervision, and placement services by a conservatorship program for persons who are gravely disabled. (f) 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. (g) To protect persons with mental health disorders and developmental disabilities from criminal acts. (h) 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).” CAL. WELF. & INST. CODE §§ 5001(d)-(i) (Deering 2019).

³ CAL. WELF. & INST. CODE § 5150 (Deering 2019).

⁴ This Paper uses the term “mental health disorder” to collectively refer to mental illnesses, mental health disorders, and mental disorders unless otherwise noted.

⁵ Sworn peace officers are the only group authorized to perform the duties described in §5150 independent of any action by the relevant county. Any person who meets the California Penal Code’s definitions and requirements necessary to be identified as a sworn peace officer is also authorized to act pursuant to section 5150. Welfare and Institutions Code section 5008(i) defines a peace officer as “... a duly sworn peace officer as that term is defined in Chapter 4.5 (commencing with Section 830) of the Penal Code who has completed the basic training course established by the Commission on Peace Officer Standards and Training, or any parole officer or probation officer specified in Section 830.5 of the Penal Code when acting in relation to cases for which her or she has a legally mandated responsibility.”

⁶ All physicians, including psychiatrists and emergency department physicians, attending staff, and other professional persons must be specifically designated by the relevant county before they can detain and transfer or cause another to be detained and transferred pursuant to section 5150.

believe that, due to a mental health disorder, an individual is more likely than not to cause or suffer specific types of harm.⁷ This type of custody is often referred to as a “5150 hold” named after the statute that authorizes it, section 5150 of the LPS Act.⁸ Police officers are authorized to make a 5150 designation if an individual meets at least one of the following criteria, as a result of a mental health disorder: (1) danger to self; (2) danger to others; or (3) grave disability.⁹ The focus of this Paper is the last of the criteria, to be “gravely disabled.”

California Welfare and Institutions Code section 5008(h)(1)(A) defines the term “gravely disabled” as a condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.¹⁰ In practice, a police officer could determine there is probable cause to designate a person as gravely disabled because a person seems to be mentally ill and not eating enough or unable to maintain adequate housing (i.e. if an indigent person seems mentally ill).¹¹ Notably, the mere existence of a mental health disorder does not, in itself, justify a finding of grave disability.¹²

Membership on attending staff is as defined by regulation. The phrase “attending staff as defined by regulation” is a reference to California Code of Regulations, Title 9, section 823. “Attending staff” under section 5150 of the LPS Act means any person on the staff of an evaluation facility designated by the county, as designated by the Local Mental Health Director, having responsibility for the care and treatment of the 5150 patient. CAL. CODE REGS. tit. 9, § 823 (2020).

⁷ CAL. WELF. & INST. CODE § 5150 (Deering 2019).

⁸ *Id.*

⁹ A 5150 designation is a determination on whether a situation meets the circumstances and requirements necessary for a police officer to detain and transport or cause the detention and transportation of another person to a particularly designated medical facility. *See* CAL. WELF. & INST. CODE § 5150 (Deering 2019).

¹⁰ *See* Conservatorship of Roulet, 23 Cal. 3d 219 (Cal. 1979) (finding that “grave disability” under the Lanterman-Petris-Short Act is the inability, due to a mental health disorder, to provide for one’s personal needs for food, clothing and shelter).

¹¹ Alan W. Tieger & Michael A. Kresser, *Civil Commitment in California: A Defense Perspective on the Operation of the Lanterman-Petris-Short Act*, 28 HASTINGS L.J. 1407, 1422 (1977) (“Stephen Donoviel, program director of acute psychology at Napa State Hospital in Northern California has said, ‘There is a great deal of variance on how counties interpret the meaning of grave disability (unable to provide for food, clothing, and shelter). To provide for food, clothing, and housing in some counties is taken extremely literally, to the point of saying, can he put the spoon to his mouth, while other counties have a much broader definition it seems.’ . . . As program director at Napa State Hospital, Dr. Donoviel comes into contact with mental patients from many Northern California counties and thus is in a unique position to assess county-to-county variation in interpreting the gravely disabled standard.”).

¹² CAL. WELF. & INST. CODE § 5008(h)(3) (Deering 2019) (“The term ‘gravely disabled’ does not include persons with intellectual disabilities by reason of that disability alone.”).

The LPS Act does not require substantial evidence for an officer to make a 5150 designation of “gravely disabled”.¹³ Thus, it is vital to provide detailed guidance on how to properly designate an individual as “gravely disabled” because such cases rely on the word of the official who made the “gravely disabled” designation.¹⁴ An individual must be designated gravely disabled simply by a preponderance of the evidence.¹⁵ Each case must be decided on the facts and circumstances presented to the police officer at the time of the detention, and the police officer is justified in considering the past conduct, character, and reputation of the detainee.¹⁶ In its current state, the California Welfare and Institutions Code fails to provide this essential guidance.¹⁷

In first devising the “gravely disabled” standard, the California Subcommittee on Mental Health Services pointed to “exceptional emergency cases where the person is so disabled or so uncontrolled that he is incapable of participating in planning for his own needs.”¹⁸ An example provided by the subcommittee included a young man who becomes uncommunicative, refuses to eat or leave his room and begins to soil himself.¹⁹ The final definition, however, has proven to be open to a wide range of interpretations.²⁰ With no consistent statewide policy on how to assess whether an individual is gravely disabled in the application of 5150 designations, California’s 58 counties are left to interpret a

¹³ The evidence required to authorize a 5150 designation of “gravely disabled” does not have to be gathered under a search warrant, nor is it subject to the exclusionary rule. *See* Conservatorship of Susan T., 884 P.2d 988, 997 (Cal. 1994).

¹⁴ CAL. WELF. & INST. CODE § 5150(a) (Deering 2019). *See also* Conservatorship of Johnson, 1 Cal. Rptr. 2d 46, 47 (Ct. App. 1991).

¹⁵ *In re Azzarella*, 254 Cal. Rptr. 922, 926 (Ct. App. 1989).

¹⁶ *See* *People v. Triplett*, 192 Cal. Rptr. 537 (Ct. App. 1983) (finding probable cause means “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion” that the person is mentally disordered). *See also* *Heater v. Southwood Psychiatric Ctr.*, 49 Cal. Rptr. 2d 880 (Ct. App. 1996); *People v. Delahoussaye*, 261 Cal. Rptr. 287 (Ct. App. 1989).

¹⁷ *See infra* Part I.C.3.

¹⁸ SUBCOMM. ON MENTAL HEALTH SERV., CAL. LEGIS. ASSEMB. INTERIM COMM. ON WAYS AND MEANS, 1963-65 Sessions, THE DILEMMA OF MENTAL COMMITMENTS IN CALIFORNIA: A BACKGROUND DOCUMENT 137 (Subcomm. Print 1965). One should look further into this report for an in-depth look into mental health commitment practices before the LPS Act; the report surveyed more than 300 hospitals caring for the mentally ill and developed data on 83% of all hospitalized psychiatric patients in California.

¹⁹ *Id.*

²⁰ CAL. WELF. & INST. CODE § 5008(h)(3) (Deering 2019).

hodgepodge system.²¹ Specific examples on what types of situations fall under “gravely disabled” are not included within the statute, forcing each county to provide its own interpretation of 5150 designations to county police.²² This dearth of practical instruction allows broad discretion on whether probable cause exists to designate an individual as gravely disabled.²³ Such subjective determinations can result in an individual being improperly designated as gravely disabled, regardless of an actual connection between the individual’s mental health disorder and inability to provide for food, clothing, or shelter.²⁴ For example, in the case of *In re Azzarella*, the court found Riverside County was not justified in its certification of petitioner as gravely disabled because there was no evidence showing petitioner’s homelessness was caused by his mental health disorder.²⁵ Petitioner had been homeless for approximately 10 years, was not malnourished, and showed no other adverse consequences from living on the streets.²⁶ While the County presented evidence of petitioner’s mental health disorder, it failed to present any evidence that, as a result of the mental health disorder, the petitioner was unable to provide for his basic personal needs for food, clothing, or shelter.²⁷

The fragmented and inconsistent application of “gravely disabled” in 5150 designations harms persons suffering from mental health disorders, the very

²¹ See *People v. Triplett*, 192 Cal. Rptr. 537 (Ct. App. 1983). See also *Heater v. Southwood Psychiatric Ctr.*, 49 Cal. Rptr. 2d 880 (Ct. App. 1996); *People v. Delahoussaye*, 261 Cal. Rptr. 287 (Ct. App. 1989). See also, e.g., L.A. CTY. DEP’T OF MENTAL HEALTH, LPS TRAINING MANUAL (2018), http://file.lacounty.gov/SDSInter/dmh/1060569_LPS_Training_Manual.pdf; RIVERSIDE CTY. DEP’T OF MENTAL HEALTH, LPS 5150 TRAINING MANUAL, (2018), [https://www.rcdmh.org/Portals/0/PDF/Inpatient/RUHS-BH%205150%20Training%20Manual%20rev%20May%202018%20\(final\)%2030APR18.pdf?ver=2018-06-11-125124-863;5150/5585](https://www.rcdmh.org/Portals/0/PDF/Inpatient/RUHS-BH%205150%20Training%20Manual%20rev%20May%202018%20(final)%2030APR18.pdf?ver=2018-06-11-125124-863;5150/5585); SAN FRANCISCO DEP’T OF PUB. HEALTH, INVOLUNTARY DETENTION MANUAL, (2016), https://www.sfdph.org/dph/files/CBHSdocs/Involuntary_Detention_Manual_April2020.pdf

²² CAL. WELF & INST. CODE § 5008(h)(3) (Deering 2019).

²³ See *Conservatorship of Roulet*, 23 Cal. 3d 219 (Cal. 1979). See also *People v. Triplett*, 192 Cal. Rptr. 537 (Ct. App. 1983); *Heater v. Southwood Psychiatric Ctr.*, 49 Cal. Rptr. 2d 880 (Ct. App. 1996); *People v. Delahoussaye*, 261 Cal. Rptr. 287 (Ct. App. 1989).

²⁴ See *infra* Part I.B.2.

²⁵ *Id.*

²⁶ *Azzarella*, 254 Cal. Rptr. at 928.

²⁷ *Id.*; see also *Conservatorship of Smith*, 232 Cal. Rptr. 277, 280 (Ct. App. 1986) (“We conclude that in order to establish that a person is “gravely disabled,” the evidence adduced must support an objective finding that the person, due to mental disorder, is incapacitated or rendered unable to carry out the transactions necessary for survival or otherwise provide for her basic needs of food, clothing, or shelter.”).

community the LPS Act sought to protect. Specifically, the inclusion of “gravely disabled” in 5150 designation criteria violates the LPS Act’s legislative intent²⁸ in three ways:

First, the LPS Act’s goal of ending inappropriate and involuntary commitment of persons with mental health disorder is violated because police officers can find probable cause make a designation of “gravely disabled” under section 5150 if an individual is mentally ill and unable to provide for his or her basic personal needs, regardless of proof of an actual causal connection.

Second, the LPS Act’s goal of prompt evaluation and treatment of persons with mental health disorders is violated because the broad definition of “gravely disabled” produces an onslaught of potential patients being sent to LPS-designated hospitals with limited resources (e.g. lack of beds and psychiatric staff). Consequently, persons designated as gravely disabled (whether improperly designated or not) wait an inordinate amount of time for a psychiatric evaluation and/or a hospital bed.

Third, the LPS Act’s goal of guaranteeing and protecting public safety is violated because the inclusion of “gravely disabled” in 5150 designations indicates that the LPS Act provided the public with a duplicitous means of removing the mentally ill, impoverished, and houseless from the streets under the guise of “public safety.” It is unclear whether the LPS Act sought to provide protection *for* the mentally ill, or to provide protection *from* the mentally ill. (emphasis added).

This Paper suggests the following to remedy the effects of implementing the broadly defined “gravely disabled” in 5150 designations: (1) remove “gravely disabled” from the 5150 criteria; (2) integrate the community with mental health advocacy efforts by creating outreach and education programs; and (3) implement a client-centric approach to interacting with persons with mental health disorders through restorative policing and the establishment of a restorative court.

This Paper will discuss the issues surrounding the inclusion of “gravely disabled” in 5150 hold criteria and will provide an amendment suggestion and community program recommendations in an effort to remedy the issues. Part I provides an overview and analysis of California Welfare and Institutions Code section 5150. Part II argues that “gravely disabled” should be removed from the 5150 designation criteria because it is (i) unnecessary due to its implicit requirement of harm to self; and (ii) a duplicitous means of removing impoverished and houseless persons from being visible in the community. Part III provides recommendations on how to protect persons with mental health disorders through (i) county-specific stigma and discrimination reduction initiatives; (ii) the creation of a volunteer task force dedicated to 5150-matters; and (iii) the implementation of restorative policing and the establishment of a restorative court.

²⁸ CAL. WELF. & INST. CODE §§ 5001(a)-(c) (Deering 2019).

II. UNDERSTANDING SECTION 5150

A. *Actions Authorized by § 5150*

Section 5150 allows law enforcement officers²⁹ and various medical professionals³⁰ to bring an individual to an LPS designated facility³¹ for assessment, evaluation, and treatment for up to 72 hours³² where there is “probable cause to believe that the person is, as a result of mental health disorder, a danger to others, or to himself or herself, or gravely disabled.”³³ An LPS designated facility is a hospital facility designated by the county to evaluate and treat involuntary psychiatric patients and approved by the State Department of Health Care Services (hereinafter “LPS facility”).³⁴ If a 5150-designated individual is taken to a non-LPS facility, the 5150 is incomplete and he or she must be discharged.³⁵ Notably, a 5150 designation only empowers police officers to detain and transport or cause the detention and transport of a person meeting 5150-specific criteria to an LPS facility to determine whether further mental health evaluation and treatment is necessary.³⁶ 5150 designation does not empower an officer to directly admit a person to an LPS

²⁹ CAL. WELF. & INST. CODE §§ 5000-5556 (Deering 2019).

³⁰ CAL. WELF. & INST. CODE §§ 5001(a)-(c) (Deering 2019).

³¹ *Jacobs v. Grossmont Hosp.*, 108 Cal. App. 4th 69, 74 (2003). *See Coburn v. Sievert*, 133 Cal. App. 4th 1483, 1493 (2005).

³² CAL. WELF. & INST. CODE § 5151 (Deering 2019) (“If the facility designated by the county for evaluation and treatment admits the person, it may detain him or her for evaluation and treatment for a period not to exceed 72 hours”).

³³ *Grossmont Hosp.*, 108 Cal. App. 4th at 74. *See Coburn*, 133 Cal. App. 4th at 1493.

³⁴ CAL. WELF. & INST. CODE § 5150(a) (Deering 2019).

³⁵ In practical terms the hold is not valid at a non-LPS facility. *See* CAL. WELF. & INST. CODE § 5150(a) (Deering 2019) (“When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer. . . may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services.”).

³⁶ In the State of California, there are only 100 hospitals designated by the counties to receive LPS-5150 patients. *See Map of 5150 Designated Hospitals in California*, CAL. HOSP. ASSOC., <https://www.calhospital.org/general-information/map-5150-designated-hospitals-california> (last visited Oct. 10, 2019).

facility for mental health treatment.³⁷

When a police officer takes a person into custody under section 5150 and presents that person to an LPS facility, he or she must provide a written application describing the circumstances that brought the detained person's condition to his or her attention and state that there is "probable cause to believe that the person is, as a result of a mental health disorder, a danger to others, or to himself or herself, or gravely disabled."³⁸ In determining whether there is probable cause, a police officer may consider "available relevant information about the historical course of the person's mental disorder"³⁹ and "shall not be limited to consideration of the danger of imminent harm."⁴⁰ Upon 5150 designation, the detained person is taken to an LPS facility where medical professionals can evaluate⁴¹ whether the individual must be admitted.⁴² The LPS Act states that a person assessed by a mental health professional and placed on a 5150 hold has the right to be offered treatment at an LPS facility within 72 hours after being taken into civil protective custody.⁴³ The 72 hours starts when the 5150 application is written.⁴⁴ The LPS facility is not

³⁷ CAL. WELF. & INST. CODE § 5150(a) (Deering 2019).

³⁸ CAL. WELF. & INST. CODE § 5150(e) (Deering 2019). The 5150 form (MH-302) is entitled "Application for Assessment, Evaluation, and Crisis Intervention or Placement for Evaluation and Treatment; Application for 72 Hour Detention for Evaluation and Treatment", <https://www.dhcs.ca.gov/services/MH/Documents/DHCS-1801-0618.pdf>. 5150 designation empowers the police to present this application and the subject of the application (detainee) to an LPS-facility where evaluation and treatment can occur. The MH-302 document is often erroneously referred to as a "72-Hour Hold." However, the act of filling out the form does not result in involuntary hospitalization; the form is a request for a designated LPS-facility to assess the subject of the 5150 and to determine if involuntary hospitalization for mental health evaluation and treatment is necessary.

³⁹ CAL. WELF. & INST. CODE § 5150.05(a) (Deering 2019).

⁴⁰ CAL. WELF. & INST. CODE § 5150(b) (Deering 2019).

⁴¹ CAL. WELF. & INST. CODE §§ 5152(a); 5008(a) (Deering 2019) ("evaluation" defined).

⁴² CAL. WELF. & INST. CODE § 5151 (Deering 2019) ("[T]he professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention.").

⁴³ CAL. WELF. & INST. CODE § 5152(a) (Deering 2019) ("Each person admitted to a facility for 72-hour treatment and evaluation under the provisions of this article shall receive an evaluation as soon as possible after he or she is admitted and shall receive whatever treatment and care his or her condition requires for the full period that he or she is held.").

⁴⁴ See CAL. WELF. & INST. CODE § 5150(e) (Deering 2019) ("If, in the judgment of the professional person in charge of the facility designated by the county for evaluation and treatment [or other authorized individuals] the person cannot be properly served without being detained, the admitting facility shall require an application in writing stating the circumstances under which the person's condition was called to the [facility's] attention . . . and stating that [the facility] has

required to hold the 5150 designated person for the full 72 hours.⁴⁵ The LPS facility should release the 5150 designated person sooner if it believes that the individual no longer requires evaluation or treatment.⁴⁶

B. *Elements of a Valid § 5150*

1. Probable Cause

Generally, the issue of probable cause is one of law unless the material facts are disputed.⁴⁷ In *People v. Triplett*, the California Court of Appeals provides the standard for sufficient probable cause in the context of a 5150 designation:

To constitute probable cause to detain a person pursuant to section 5150, a state of facts must be known to the peace officer (or other authorized person) that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled. In justifying the particular intrusion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant his or her belief or suspicion.⁴⁸

A police officer must be able to articulate specific facts that would cause a reasonable person to believe or strongly suspect that the subject of the 5150 has a mental health disorder which, at the time of determination, results in behavior indicating harm to self, to others, or grave disability.⁴⁹ Simply put, the existence of

probable cause [to detain the person].”).

⁴⁵ CAL. WELF. & INST. CODE §§ 5152(a)-(b); 5250 (Deering 2019).

⁴⁶ See *Coburn*, 133 Cal. App. 4th at 1493 (“An early release from a 72-hour commitment may occur ‘only if . . . the psychiatrist directly responsible for the person’s treatment believes, as a result of his or her personal observations, that the person no longer requires evaluation or treatment’”); See also CAL. WELF. & INST. CODE §§ 5152(a) (Deering 2019) (release procedure for mentally ill persons); 5172(a) (release procedure for inebriated persons).

⁴⁷ See *Levin v. United Air Lines, Inc.*, 70 Cal. Rptr. 3d 535 (Ct. App. 2008) (“If the facts that gave rise to the arrest are undisputed, the issue of probable cause is a question of law for the trial court.”); *Hamilton v. City of San Diego*, 266 Cal. Rptr. 215 (Ct. App. 1990) (“Where the facts are not in conflict, the issue of probable cause is a question of law.”).

⁴⁸ *People v. Triplett*, 144 Cal. App. 3d 283 (Ct. App. 1983).

⁴⁹ See *Conservatorship of Roulet*, 23 Cal. 3d 219 (Cal. 1979). *C.f.* *Begzad v. City of Hayward*, No. C03-2163 TEH, 2005 WL 350961 (N.D. Cal. Feb. 14, 2005) (Plaintiff adduced facts showing he had been calm and not agitated when he was seized under section 5150. Court could not find that the officers had probable cause where a reasonable juror could find that plaintiff did not exhibit

probable cause depends upon facts known by the officer at the time of the 5150 designation.⁵⁰ Notably, the specific information considered in the 5150 designation process is not limited to police officer's direct observation.⁵¹ Information relied upon by the officer may be information made available by others, including the person being considered for 5150 designation, caregivers, and family:⁵²

When determining if probable cause exists to take a person into custody, or cause a person to be taken into custody, pursuant to section 5150, any person who is authorized to take that person, or cause that person to be taken, into custody pursuant to that section shall consider available relevant information about the historical course of the person's mental disorder if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.⁵³

2. Mental Health Disorder

In addition to probable cause, a police officer must find the subject of the 5150 has a mental health disorder resulting in behavior that is dangerous to himself or herself, to others, and/or constitutes grave disability.⁵⁴ In its current form, section

any mental health disorder or pose a danger to himself or to others at the time the officer placed him on a mental health hold pursuant to section 5150, nor was the officer entitled to qualified immunity, as a reasonable officer would not have believed he had probable cause to detain the plaintiff.).

⁵⁰ See *LeFay v. LeFay*, 673 F. App'x 722, (9th Cir. 2016) (finding that "specific and articulable facts" supported a "rational inference" that Plaintiff was mentally disordered and a danger to herself); *Nguyen v. Lopez*, No. 11cv2594 WQH (MDD)P, 2015 U.S. Dist. LEXIS 170868 (S.D. Cal. Dec. 21, 2015) (finding that Defendants had strong suspicions, based on articulable facts and reasonable inferences, that Plaintiff was mentally disordered and posed a danger to himself and others).

⁵¹ See *Triplett*, 144 Cal. App. 3d at 288 ("obvious physical signs of a recent suicide attempt" coupled with the detainee's intoxication and "tearful" condition "would lead any person of ordinary care and prudence to believe that [the detainee] as a result of mental disorder was a danger to herself"); *Bias v. Moynihan*, 508 F.3d 1212, 1221 (9th Cir. 2007) (probable cause existed where the detainee alluded to suicide and paranoid thoughts, and later "became combative" and grabbed an officer while appearing "visibly angry" and "agitated").

⁵² See *Palter v. City of Garden Grove*, 237 F. App'x 170, 172 (9th Cir. 2007) (probable cause existed where a neighbor told an officer the detainee alluded to suicide, had a gun, and was going to his daughter's home to leave a "goodbye" note, even though the detainee told the officer he did not intend to hurt himself and did not have a gun).

⁵³ CAL. WELF. & INST. CODE § 5150.05(a) (Deering 2019).

⁵⁴ CAL. WELF. & INST. CODE § 5150 (Deering 2019).

5150 does not require police officers to make a medical diagnosis of the medical disorder at the time of 5150 designation; it is sufficient if the officer, as layperson, can articulate behavioral symptoms of mental disorder, either temporary or prolonged.⁵⁵ This is permissible because the 5150 designation is a mechanism to transport a person to the appropriate venue where clinical activities can take place (e.g. diagnosis, examination, treatment and evaluation) rather than an involuntary detention in itself.⁵⁶

The term “mental health disorder” is not defined in the Welfare and Institutions Code.⁵⁷ For purposes of section 5150, a mental health disorder “might be exhibited if a person's thought processes, as evidenced by words or actions or emotional affect, are bizarre or inappropriate for the circumstances” or can be established by statements that “articulate behavioral symptoms of mental disorder, either temporary or prolonged.”⁵⁸ Thus, in the 5150 designation process, a police officer would look for and document words, actions or emotional affect that are inappropriate, unusual or bizarre for the circumstances to support probable cause to believe the person may have a mental health disorder.⁵⁹

A police officer cannot establish a connection between condition and behavior based solely on an individual’s history of mental health disorder.⁶⁰ Similarly, dangerousness to self or others or an inability to provide food, clothing and shelter without a mental health disorder is not enough.⁶¹ The officer may, however, take one’s mental health history into account when looking at the totality

⁵⁵ *Triplett*, 144 Cal. App. 3d at 288 (“It is sufficient if the officer, as a lay person, can articulate behavioral symptoms of mental disorder, either temporary or prolonged. An all-encompassing lay definition of mental disorder is difficult if not impossible to formulate. But, generally, mental disorder might be exhibited if a person's thought processes, as evidenced by words or actions or emotional affect, are bizarre or inappropriate for the circumstances.”).

⁵⁶ *See supra* Part I.A.

⁵⁷ Mental retardation, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a “mental health disorder” under section 5150. CAL. WELF. & INST. CODE § 5585.25 (Deering 2019).

⁵⁸ *Triplett*, 144 Cal. App. 3d at 288.

⁵⁹ *Id.*

⁶⁰ *See, e.g.*, *Brown v. Burton*, 745 F. App'x 53 (9th Cir. 2018) (finding probable cause where arrestee was screaming and wailing inappropriately, refused to calm down, resisted the deputies' orders, and demonstrated paranoia by yelling that the deputies intended to kill her, and by threatening to kill deputy).

⁶¹ *See* CAL. WELF. & INST. CODE § 5150(a) (Deering 2019) (“When a person, *as a result of a mental health disorder*, is a danger to others, or to himself or herself, or gravely disabled.”)(emphasis added).

of the circumstances giving rise to the need for a 5150 designation.⁶² This distinction is significant because a person with a long-standing mental health disorder may find he or she is unable to provide for food, clothing and shelter for reasons unrelated to mental health disorder, such as eviction, the loss of a job, or a recent divorce.⁶³

According to a study released by the Public Policy Institute of California,⁶⁴ and contrary to widely held perceptions, California's two-decade growth in homelessness is driven more by falling incomes and rising housing costs than by the personal disabilities of the homeless population.⁶⁵ The Los Angeles Times Editorial Board echoes this sentiment in its June 10, 2019 editorial piece on the homeless crisis:

The official counts and companion studies of L.A.'s growing homeless population have consistently shown that most homeless people have lived in Los Angeles for at least 10 years. These are our longtime neighbors who were priced out of their apartments by rents that are rising faster than their incomes, or who were struck by some crisis that rendered them unable to keep a permanent roof over their heads. It may have been a job layoff, a divorce, a cataclysmic and costly health breakdown, an addiction.⁶⁶

Although applauded in areas like corporate innovation and employee protection, California legislature has failed to adequately address the crises of homelessness,

⁶² CAL. WELF. & INST. CODE § 5150.05(a) (Deering 2019) (“When determining if probable cause exists. . . any person who is authorized to take that person, or cause that person to be taken, into custody pursuant to that section shall consider available relevant information about the historical course of the person’s mental disorder if the authorized person determines that the information has a reasonable bearing on the determination as to whether the person is a danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.”).

⁶³ See, e.g., *infra* note 64-65.

⁶⁴ John M. Quigley, et al., *Homelessness in California*, PUB. POLICY INST. OF CAL. (2001), https://www.ppic.org/content/pubs/report/R_1001JQR.pdf (arguing that growing income inequality is a contributing factor in the growth of homelessness in California).

⁶⁵ See Deborah Reed, et al., *The Distribution of Income in California*, PUB. POLICY INST. OF CAL. (1996), https://www.ppic.org/content/pubs/report/R_796DRR.pdf (concluding that the growing gap between rich and poor—a gap caused mostly by deteriorating incomes among the poor—is forcing lower-income families to “buy down” as a result of higher housing prices and rapidly rising rent and resulting in the lowest-income renters being pushed into the streets).

⁶⁶ Editorial, *Three Things You Think You ‘Know’ About Homelessness in L.A. That Aren’t True*, L.A. TIMES (June 10, 2019); see also Paul Thornton, *Newsletter: What You ‘Know’ About Homelessness is Wrong*, L.A. TIMES (June 15, 2019), <https://www.latimes.com/opinion/readersreact/la-ol-opinion-newsletter-homeless-myths-20190615-story.html> (“The crisis in Los Angeles County — where nearly 59,000 residents are homeless — is truly the product of California’s housing crisis, where wages have failed to keep up with rents rising ever higher because of inadequate supply.”).

mental health disorders, and drug addiction.⁶⁷

C. § 5150 Criteria

To make a 5150 designation, a police officer must establish a connection between the information supporting existence of a mental health disorder and the evidence supporting the existence of danger to self, danger to others, or of a grave disability as a result of mental health disorder. The officer must establish this connection on the 5150 form by presenting information and documentation supporting the criteria selected (e.g., danger to self, danger to others, or gravely disabled).⁶⁸

1. Danger to Self

The LPS Act does not provide a definition for or examples of what constitutes a “danger to self.”⁶⁹ Accordingly, ‘intent’ is not required for an officer to find there is probable cause that an individual is a danger to himself or herself as a result of a mental health disorder.⁷⁰ Some examples of what might constitute a danger to self as a result of a mental health disorder may include, but are not limited to, statements of intent or plan for self-harm (e.g. suicidal comments or threats to slit one’s wrists) or actions that place a person in harm’s way (e.g., not eating meals).⁷¹

⁶⁷ See Michael Shellenberger, *Why California Keeps Making Homelessness Worse*, FORBES, <https://www.forbes.com/sites/michaelshellenberger/2019/09/12/why-california-keeps-making-homelessness-worse/#607dfa095a61> (Sept. 12, 2019) (“California made homelessness worse by making perfect housing the enemy of good housing, by liberalizing drug laws, and by opposing mandatory treatment for mental illness and drug addiction.”).

⁶⁸ See *Conservatorship of Roulet*, 23 Cal. 3d 219 (Cal. 1979). See also *People v. Triplett*, 192 Cal. Rptr. 537 (Ct. App. 1983); *Heater v. Southwood Psychiatric Ctr.*, 49 Cal. Rptr. 2d 880 (Ct. App. 1996); *People v. Delahoussaye*, 261 Cal. Rptr. 287 (Ct. App. 1989).

⁶⁹ CAL. WELF. & INST. CODE § 5150(a) (Deering 2019).

⁷⁰ See *supra* Part I.B.1.

⁷¹ See, e.g., *Bias v. Moynihan*, 508 F.3d 1212 (9th Cir. 2007) (holding probable cause found to place plaintiff on a 5150 hold where, *inter alia*, plaintiff wrote a letter to a judge stating that she would kill herself if the court ruled against her and when the officer asked if she was going to hurt herself, she responded that she would do “whatever” she wanted); *Julian v. Mission Cmty. Hosp.*, 218 Cal. Rptr. 3d 38 (Ct. App. 2017) (finding probable cause for a 5150 hold where plaintiff had told a close friend she was going to slit her own wrists); *LeFay v. LeFay*, 673 F. App’x 722, (9th Cir. 2016) (probable cause existed to place a 5150 hold on woman who had not eaten a meal in three days, had trouble walking and appeared malnourished and dehydrated, and was wearing dirty clothing).

2. Danger to Others

The LPS Act commits to its *modus operandi* of providing little guidance for 5150 designations by not providing a definition or examples of what constitutes a “danger to others.”⁷² Thus, a police officer is not legally required to determine ‘intent’ in order to find probable cause that a person is a danger to others as a result of a mental health disorder. Some examples of what might constitute a danger to others as a result of a mental health disorder may include, but are not limited to, attempting acts of harm to others (e.g., trying to choke someone)⁷³ or statements of intent or plan for harm to others (e.g., threatening to kill a police officer).⁷⁴

As with “danger to self” there is no requirement that the person has actually caused harm to another person (i.e., actions that are *likely* to cause harm to others can be sufficient to a police officer to determine probable cause) (emphasis added).⁷⁵ Here, again, there must be a connection between the danger to others and a mental health disorder. Notably, danger or threat towards property alone does not provide probable cause under section 5150.

3. Gravely Disabled

California Welfare and Institutions Code §5008(h)(1)(A) defines the term “gravely disabled” as a condition in which a person is unable to provide for his or her basic personal needs for food, clothing, or shelter as a result of a mental health disorder.⁷⁶ A person is not gravely disabled if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.⁷⁷ Mental health disorder in itself is insufficient in finding

⁷² See CAL. WELF. & INST. CODE § 5150(a) (Deering 2019).

⁷³ See, e.g., *Gonzalez v. Paradise Valley Hosp.*, 3 Cal. Rptr. 3d 903 (Ct. App. 2003) (plaintiff detained pursuant to section 5150 for attempting to choke his mother).

⁷⁴ See, e.g., *Brown v. Burton*, 745 F. App'x 53 (9th Cir. 2018) (finding probable cause where arrestee was screaming and wailing inappropriately, refused to calm down, resisted the deputies' orders, and demonstrated paranoia by yelling that the deputies intended to kill her, and by threatening to kill deputy).

⁷⁵ See *supra* note 72.

⁷⁶ See *Conservatorship of Roulet*, 23 Cal. 3d 219 (Cal. 1979).

⁷⁷ See *Conservatorship of Jones*, 256 Cal. Rptr. 415 (Ct. App. 1989) (finding that a person is not gravely disabled within the meaning of the LPS Act if he or she is capable of surviving safely in freedom with the help of willing and responsible family members, friends or third parties, but noting that a person may be gravely disabled if left to his or her own devices he or she may be able to function successfully in freedom with support and assistance). See also *Conservatorship of Davis*, 124 Cal. App. 3d 313, 321 (1981) (holding that a person is not gravely disabled within the

that an individual is “gravely disabled.”⁷⁸ In making a determination of grave disability, a police officer need not find that a person cannot fulfill all three basic needs (i.e. food, clothing *and* shelter) -- a person’s inability to provide for one of the three basic needs, as the result of a mental health disorder, is sufficient. (emphasis added).⁷⁹

Note that probable cause cannot be based on the sole fact that a person has refused treatment for a mental health disorder.⁸⁰ The LPS Act rightfully preserves the right of innocuous persons to refuse mental health treatment provided he or she can provide for food, clothing, or shelter, regardless of a mental health disorder diagnosis.⁸¹

III. “GRAVELY DISABLED”: REDUNDANT & DUPLICITOUS

The LPS Act does not expressly require a finding of dangerousness or harm for “gravely disabled.” The implicit requirement of harm to self in “gravely disabled” renders the third prong of 5150 designations useless and redundant by way of *Doe v. Gallinot*.⁸² Despite this seemingly apparent redundancy and duplicitous nature, “gravely disabled” is still used by police officers to involuntarily transport someone to a hospital under section 5150.⁸³

In *Doe v. Gallinot*, the court explored the definition of grave disability and cited to *Suzuki v. Quisenberry* for the applicable test: “Standards for commitment

meaning of the LPS Act “if he or she is capable of surviving safely in freedom with the help of willing and responsible family members, friends, or third parties”); Conservatorship of Neal, 190 Cal. App. 3d 685, 689 (1987) (holding that a person is not gravely disabled if they can provide for their basic needs with the willing help of a common law spouse).

⁷⁸ CAL. WELF. & INST. CODE § 5008(h)(3) (Deering 2019) (“The term ‘gravely disabled’ does not include persons with intellectual disabilities by reason of that disability alone.”).

⁷⁹ CAL. WELF. & INST. CODE § 5008(h)(1)(A) (Deering 2019) (defining gravely disabled as a “condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter”) (emphasis added).

⁸⁰ See Conservatorship of Symington, 209 Cal. App. 3d 1464, 1468 (1989) (finding “gravely disabled” and “unable to voluntarily accept treatment” are not interchangeable terms, and that “an individual who will not voluntarily accept mental health treatment is not for that reason alone gravely disabled”).

⁸¹ See Conservatorship of Walker, 242 Cal. Rptr. 289 (Ct. App. 1987) (“In short, the structure of the LPS Act preserves the right of nondangerous persons to refuse treatment as long as they can provide for their basic needs, even if they have been diagnosed as mentally ill.”).

⁸² *Doe v. Gallinot*, 486 F. Supp. 983 (C.D. Cal. 1979).

⁸³ See *supra* Part I.C.3.

are constitutional only if they require a finding of dangerousness to others or self.”⁸⁴ The *Gallinot* court determined that “gravely disabled” met the constitutional test in that “it implicitly requires a finding of harm to self: an inability to provide for one’s basic physical needs.”⁸⁵ As recognized in *Doremus v. Farrell*, “[t]he threat of harm to oneself may be through neglect or inability to care for oneself.”⁸⁶ The First District Court of Appeal agreed with the *Gallinot* court in *Conservatorship of Chambers*, holding that the definition of “gravely disabled” in the LPS Act is not unconstitutionally vague or overbroad.⁸⁷ The *Chambers* court found that the term “gravely disabled” is sufficiently precise to exclude unusual or nonconformist lifestyles, that it connotes an inability or refusal on the part of the proposed conservatee to care for basic personal needs of food, clothing and shelter, and that it also provides fair notice of the proscribed conduct to the proposed conservatee who must be presumed to be a person of common intelligence for the purpose of determining the sufficiency of the statute.

The removal of “gravely disabled” will not harm persons currently covered by the definition because those in need of assistance would qualify under section 5150 due to the implicit requirement of harm to self. For example, in *LeFay v. LeFay*, a police officer had probable cause to place plaintiff on a 5150 mental health hold where, on responding to a call, the officer observed that plaintiff had trouble walking, appeared malnourished and dehydrated, and was wearing dirty clothing, as if she had not changed in several days, and those facts, which were confirmed by statements from plaintiff and her husband, supported a rational inference that she was mentally disordered and a danger to herself.⁸⁸ Based on these facts, the police officer in *LeFay* could have determined that plaintiff was gravely disabled given her malnourished and dehydrated appearance and her dirty clothes; however, the officer determined that these factors, coupled with statements from plaintiff that “she had not eaten a meal in three days and could not recall the last time she had consumed liquid” and that “she was being treated for depression, fibromyalgia, and other body pain” pointed to probable cause that plaintiff was a danger to herself due to mental health disorder.⁸⁹ This shows that police officers can interchangeably classify an individual as a “danger to self” or “gravely disabled.” While past acts may be considered, someone is not gravely disabled unless he or she is a present

⁸⁴ *Suzuki v. Quisenberry*, 411 F. Supp. 1113, 1121-1126 (D. Haw. 1976); *see also* *O'Connor v. Donaldson*, 422 U.S. 563, 95 S. Ct. 2486, 45 L. Ed. 2d 396 (1975).

⁸⁵ *Gallinot*, 486 F. Supp. at 991.

⁸⁶ *Doremus v. Farrell*, 407 F. Supp. 509, 515 (D. Neb. 1975); *see also* *Colyar v. Third Judicial Dist.*, 469 F. Supp. 424 (D. Utah 1979).

⁸⁷ *Conservatorship of Chambers*, 139 Cal. Rptr. 357 (Ct. App. 1977).

⁸⁸ *LeFay v. LeFay*, 673 F. App'x 722 (9th Cir. 2016).

⁸⁹ *Id.* at 724.

danger to themselves because of an inability to provide self-care.⁹⁰ The likelihood of future harm may also not be enough to meet 5150 commitment criteria.⁹¹ Notably, in the current discussion on whether to expand or narrow the definition of “gravely disabled” in the name of alleged protection for the mentally ill, the three bills at the forefront (SB 640,⁹² AB 1971,⁹³ and AB 2156⁹⁴) all suggest amendments to “gravely disabled” that include forms of harm to self.

Under section 5150, Police officers can rely on subjective standards on what qualifies as “gravely disabled” without establishing a causal connection between condition and action.⁹⁵ This increases the likelihood of indigent persons being subjected to inaccurate 5150 designations and, consequently, unlawful and involuntary transportation to LPS facilities. Furthermore, with subjective determinations dictating the designation of a person as “gravely disabled”, the state of being impoverished or homeless could be used as a basis for a 5150 hold. Alan Tieger and Michael Kresser express their concerns on the application of subjectivity in “gravely disabled” designations as follows:

A second evil of imprecise commitment standards is that they promote certification based upon the subjective moral and social standards of the fact finder. . . the question of what constitutes basic personal needs is largely dependent upon the fact finder's idiosyncratic view of appropriate lifestyles. Here, too, the inarticulate standard of normality will largely dictate the resolution of the issue. Thus, the real danger presented by the "gravely disabled" standard is that it allows the commitment procedure to operate on the basis of subjective rather than objective

⁹⁰ See *Conservator of Benvenuto*, 226 Cal. Rptr. 33,35 (Ct. App. 1986) (finding that Benvenuto was not presently gravely disabled despite medical witnesses thinking Benvenuto would likely soon become so because of his propensity not to take medication).

⁹¹ *Id.* at 1034 n.2.

⁹²S. 640, 116th Cong. (2019) (Senate Bill 640 would clarify the definition of ‘gravely disabled’ to focus on an individual’s capacity to make informed decisions about his or her personal wellbeing in an effort to expand treatment opportunities for the most vulnerable and help diminish the inhumane neglect they currently suffer.).

⁹³ Assemb. B. 1971, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (Los Angeles County plans to amend “gravely disabled” to expand the current statutory definition of gravely disabled to include a physical health condition. This would allow a county to conserve a person who refuses to seek medical care despite being at risk of harm or death.).

⁹⁴ Assemb. B. 2156, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (Similar to AB 1971 above, AB 2156 would make changes to the definition of gravely disabled to include a physical health condition.).

⁹⁵ Police officers can designate an individual as “gravely disabled” without proving a connection between a mental health disorder and the inability to provide for food, clothing, or shelter.

considerations.⁹⁶

It is unclear whether the LPS Act sought to provide protection *for* the mentally ill or *from* the mentally ill in its guarantee of protecting “public safety.”⁹⁷ The inclusion of “gravely disabled” in 5150 designations indicates that the LPS Act provided the public a duplicitous means of removing the mentally ill, impoverished, and houseless from the streets under the guise of “public safety.”⁹⁸ The state of being impoverished or houseless should not be a means of determining 5150 designation, and yet the definition of “gravely disabled” targets the specific characteristics of the poor, the hungry, and the houseless.⁹⁹

IV. PROTECTION THROUGH ENGAGEMENT

To truly protect the individuals the LPS Act aims to protect, it is imperative for communities to directly engage in mental health advocacy efforts.¹⁰⁰ Social distance from the mentally ill makes it easier for people to ignore the discomfiting reality that the mindset of “not in my neighborhood” cannot co-exist with “we need to do more.” We must acknowledge that we have normalized the marginalization of the mentally ill and understand the repercussions of forced social exclusion.¹⁰¹

⁹⁶ Alan W. Tieger & Michael A. Kresser, *Civil Commitment in California: A Defense Perspective on the Operation of the Lanterman-Petris-Short Act*, 28 HASTINGS L.J. 1407, 1422-23 (1977).

⁹⁷ See Meredith Karasch, *Where Involuntary Commitment, Civil Liberties, and the Right to Mental Health Care Collide: An Overview of California's Mental Illness System*, 54 HASTINGS L.J. 493 (2003) (“Gravely disabled people often fall into an amorphous category that engenders minimal interest in the community at large. Although society is concerned about the mentally ill who are dangerous, there is more apathy for the nonviolent mentally ill. A lack of funding and services for the mental health system reflects this apathy”). See also E. FULLER TORREY, M.D., *OUT OF THE SHADOWS: CONFRONTING AMERICA'S MENTAL ILLNESS CRISIS* 1-3 (1997).

⁹⁸ See CAL. WELF. & INST. CODE § 5150(a) (Deering 2019).

⁹⁹ CAL. WELF. & INST. CODE § 5008(h)(1)(A) (Deering 2019) (“A condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.”).

¹⁰⁰ See W.H.O., *ADVOCACY FOR MENTAL HEALTH 1* (Michelle Funk et al. eds., 7th ed. 2003) (“Advocacy is an important means of raising awareness on mental health issues and ensuring that mental health is on the national agenda of governments. Advocacy can lead to improvements in policy, legislation and service development.”).

¹⁰¹ See Allen Frances, *Restoring Respect to People With Mental Illness*, PSYCHIATRIC TIMES (July 31, 2019), <https://www.psychiatristimes.com/articles/restoring-respect-people-mentally-illness/page/0/1> (“Focusing too much on the biological component of mental illness has reduced attention to the psychological, social, and environmental forces that are crucial to healing”). For more information on the relationship between social distance, social discrimination, and mental health stigma, see generally Anthony Jorm & Elizabeth Oh, *Desire for Social Distance from People with Mental Disorders*, 43 AUSTL. & N.Z. J. PSYCHIATRY, 183-200 (2009); Teresa Hall, et

California counties must make active efforts to create an environment that is less anonymous.¹⁰²

A. *Stigma & Discrimination Reduction Initiatives*

Each county should create and implement a county-specific stigma and discrimination reduction (SDR) initiative.¹⁰³ Counties can use the SDR initiative of the California Mental Health Services Authority (CalMHSA)¹⁰⁴ as a model to shape their own county-specific SDR initiatives. CalMHSA's SDR initiative includes a major social marketing campaign; creation of websites, toolkits, and other informational resources; an effort to improve media portrayals of mental health disorders; and thousands of in-person educational trainings and presentations occurring in all regions of the state.¹⁰⁵ While state-wide efforts are beneficial, tailored SDR initiatives for each county can better achieve long-lasting results given the varying needs and resources of each region. For example, San Diego

al., *Social inclusion and exclusion of people with mental illness in Timor-Leste: a qualitative investigation with multiple stakeholders*, 19 BMC PUB. HEALTH SOC. 702 (June 7, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6554932/> (stating in the study that inclusion is a human right for all people, including people with mental health disorders, and finding that it [inclusion] is an important part of recovery from mental health disorders).

¹⁰² See Allen Frances, *Restoring Respect to People With Mental Illness*, PSYCHIATRIC TIMES (July 31, 2019) (“Our mentally ill are often alone and adrift in big cities. . . In big cities, the consensus is usually an exclusionary ‘not in my neighborhood.’”).

¹⁰³ See Rebecca L. Collins, et al., *Changes in Mental Illness Stigma in California During the Statewide Stigma and Discrimination Reduction Initiative*, 5(2) RAND HEALTH Q. 10 (Nov. 30, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5158290/> (finding in the survey that, as a result of CalMHSA's SDR initiative, more Californians were willing to socialize with, live next door to, and work closely with people experiencing mental health disorders; more Californians described providing greater social support to individuals with mental health disorders; and Californians displayed meaningful increases in awareness of the stigma faced by people with mental health problems).

¹⁰⁴ In 2004, California voters approved Proposition 63, the Mental Health Services Act (MHSA), which imposes a 1% tax on individuals with a taxable income greater than \$1,000,000. Proposition 63 stipulated that 20% of MHSA funds must be allocated to administer 3 prevention and early intervention (PEI) programs: Stigma and Discrimination Reduction (SDR); Student Mental Health (SMH); and Suicide Prevention (SP). Many counties chose to pool their PEI funds towards statewide initiatives. The California Mental Health Services Authority (CalMHSA) is an organization of these member counties and has partnered with many community-based organizations to fund, implement and deliver statewide PEI projects.

¹⁰⁵ See CAL. MENTAL HEALTH SERV. AUTH., STRATEGIES FOR A SUPPORTIVE ENVIRONMENT PROGRAM, COMPONENT ONE: STIGMA AND DISCRIMINATION REDUCTION (SDR) CONSORTIUM (2012), https://calmhsa.org/wp-content/uploads/2011/11/CalMHSA-SDR-CONSORTIUM-RFSQ_FINAL.pdf.

County has a homeless population total of 8,102¹⁰⁶ (approximately 0.24% of the county's total population of 3,283,665)¹⁰⁷ and Los Angeles County has a homeless population total of 58,936¹⁰⁸ (approximately 0.58% of the county's total population of 10,105,518).¹⁰⁹ Given the large discrepancy between the two population totals – both homeless and general-- it is unlikely that San Diego County would put forth the same amount of funds towards its SDR initiative as Los Angeles. Regardless of a perfectly tailored plan, however, success in this area cannot be achieved unless the community genuinely cares. Communities who engage with one another have a sense of commonality and shared interest, fostering a sense of accountability and care for each community member.¹¹⁰

With the above in mind, counties should consider including the following suggestions in their initiatives to specifically address the issue of 5150 designations: (1) Create a volunteer 5150 task force to provide an opportunity for the community to directly engage with and become educated about persons with mental health disorders; and (2) implement a client-centric approach to training police officers on how to communicate and interact with persons suffering from mental health disorders through restorative policing.

B. *Volunteer 5150 Task Force*

Creating a volunteer 5150 task force under the umbrella of the police department or county sheriff's office will increase patrol coverage and reduce administrative workload to help free up sworn officers to focus on more serious

¹⁰⁶ SAN DIEGO REG'L TASK FORCE ON THE HOMELESS, ANNUAL REPORT ON HOMELESSNESS IN THE SAN DIEGO REGION (2019), https://www.rtfhsd.org/wp-content/uploads/2019/11/Annuallayout11_27.pdf.

¹⁰⁷ *San Diego County, California*, U.S. CENSUS BUREAU <https://data.census.gov/cedsci/profile?q=San%20Diego%20County,%20California&g=0500000US06073> (last visited Dec. 9, 2019).

¹⁰⁸ L.A. HOMELESS SERV. AUTH., 2019 GREATER L.A. HOMELESS COUNT - DATA SUMMARY (2019), <https://www.lahsa.org/documents?id=3423-2019-greater-los-angeles-homeless-count-los-angeles-county.pdf>.

¹⁰⁹ *Los Angeles County, California*, U.S. CENSUS BUREAU https://data.census.gov/cedsci/table?q=los%20angeles%20county&g=0500000US06037&hidePreview=false&table=B01003&tid=ACSDT1Y2018.B01003&vintage=2018&cid=B01003_001E&layer=county&lastDisplayedRow=17 (last visited Dec. 9, 2019).

¹¹⁰ See Albert M. Muniz, Jr. & Thomas C. O'Guinn, *Brand Community*, 27 J. CONSUMER RES. 412, 413 (2001) ("Consciousness of kind is the intrinsic connection that members feel toward one another, and the collective sense of difference from others not in the community. . . . The third marker of community is a sense of moral responsibility, which is a felt sense of duty or obligation to the community as a whole, and to its individual members. This sense of moral responsibility is what produces, in times of threat to the community, collective action").

crimes.¹¹¹ The Santa Barbara County Sheriff's Office actively works with community members through the Sheriff's Volunteer Team ("SVT") – a group of volunteer Santa Barbara County residents dedicated to community service and the mission of public safety.¹¹² SVT members have various opportunities to volunteer and serve their community members such as conducting park foot patrols, being a community resource assistant, or coordinating community outreach events.¹¹³ Like Santa Barbara's SVT members, 5150 task force volunteers will not have sworn peace officer status and may not carry a weapon at any time, but can conduct 'quality of life' patrols to assess and report whether an individual may be in need of a 5150 hold and assist with homeless welfare checks. Volunteers can also help reduce workload related to 5150 first responder calls and provide guidance to callers on what actions warrant a police officer coming to the scene to make a 5150 designation. This will improve the effectiveness of law enforcement services and provide community members an opportunity to directly engage with the mentally ill (or allegedly mentally ill) community and further humanize the cause of mental health advocacy. Volunteers for this program should go through Mental Health First Aid ("MHFA") Training, a free 8-hour certification course designed to improve the community's mental health literacy and to give participants the tools to respond to psychiatric emergencies until professional help arrives.¹¹⁴ Establishing a connection is particularly important if one is dealing with an individual living with both homelessness and mental health disorder. Through MHFA and volunteering with the 5150 task force, the community can take a step towards eliminating the unawareness that leads people to disrespect, ignore, or be fearful of persons with mental health disorders. Awareness and education can help the community determine when and how to offer support.

¹¹¹ See, e.g., *Volunteer Opportunities*, CITY OF SAN DIEGO, <https://www.sandiego.gov/police/recruiting/volunteer> (last visited Apr. 16, 2021).

¹¹² See *Volunteer Program*, SANTA BARBARA CTY. SHERIFF'S OFFICE, <https://www.sbsheriff.org/about-us/community-outreach/volunteer-program/> (last visited Apr. 16, 2021).

¹¹³ *Id.*

¹¹⁴ MHFA was developed in Australia in 2001 and piloted in the United States seven years later under the coordination of the National Council for Behavioral Health, the Maryland Department of Health and Mental Hygiene, and the Missouri Department of Mental Health. MHFA is the help offered to people developing a mental health condition or experiencing a mental health crisis until appropriate treatment and support are received or until the crisis resolves. Participants of the training learn how to assess for risk, listen to and reassure the person in crisis, and encourage professional help and other support.

C. Restorative Policing & Restorative Court

Restorative policing is a community-oriented style of policing that aims to remedy conflict in the community in a more amicable and client-centric approach.¹¹⁵ This style of policing would have police officers exercise judgment and utilize negotiation skills to resolve problems instead of resorting to strict law enforcement tactics. Implementing a restorative policing program can help bridge the gap by helping chronically homeless individuals, many of whom suffer from mental health disorder, achieve self-sufficiency. This is achieved by assisting the individual to get to where services exist; gaining the individual's consent to access detox or outpatient services; and/or driving the individual directly to a viable program site. It is recommended that counties follow the City of Santa Barbara Police Department (SBPD) Restorative Model which directly engages with those dealing with chronic homelessness by using a client-centered three-pronged focus by asking: (1) "Why are you here?"; (2) "Where would you rather be?"; and (3) "What do you need to be safe?".¹¹⁶ Chief Lori Luhnnow of the Santa Barbara Police Department emphasizes the importance of improving how sworn officers and community members interact with houseless persons who may have mental illness challenges, "While direct interaction between law enforcement and individuals who experience homelessness is a key component of this holistic approach, creating positive connections between law enforcement and businesses, residents, and visitors also increases the public safety presence for all."¹¹⁷ To ensure that restorative policing is effective, all police officers must receive regular training on properly identifying and interacting with individuals who experience mental health disorder.¹¹⁸ In addition to the restorative approach to direct engagement, counties should create personnel positions solely focused on restorative policing efforts.¹¹⁹

¹¹⁵ For more information on restorative policing, see Lori Luhnnow, *Restorative Policing: Enhancing Public Safety for All*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (Apr. 11, 2018), <https://www.usich.gov/news/restorative-policing-enhancing-public-safety-for-all/> ("Enforcement alone on various municipal code violations will not reduce homelessness, or even solve the underlying problems. A more holistic, coordinated approach between law enforcement, social service agencies, business and community leaders, and housing providers is required. This is where restorative policing comes in").

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ There are specialized MHFA classes provided for law enforcement personnel. See, e.g., *Mental Health First Aid Training*, MENTAL HEALTH AM. OF SAN DIEGO CTY., <https://mhasd.org/first-aid-programs/> (last visited on Oct. 1, 2019).

¹¹⁹ See, e.g., *Restorative Policing*, CITY OF SANTA BARBARA https://www.santabarbaraca.gov/gov/depts/police/programs/restorative_policing.asp (last visited on Oct. 1, 2019) (Santa Barbara Police Division Team consists of two full-time Restorative Police Officers, one Court Liaison/Case Manager, and one Outreach Specialist/Case Manager).

Given the medical element of section 5150, it may also be beneficial to add a licensed medical personnel who can directly address health related concerns, thus reducing the need for visits to hospital emergency rooms and minimizing the risk of patients getting lost in the twisted pipeline of mental health services.

If resources allow, counties should also aim to establish a restorative court system by coordinating a community effort between the court system, police department, healthcare system, and social service agencies.¹²⁰ Again, counties are advised to look to Santa Barbara’s model of weekly hearings at the courthouse, with a community-centered approach to addressing legal issues.¹²¹ Instead of fines and imprisonment, individuals who choose Santa Barbara’s Restorative Court are given access to wraparound services such as mental health services, legal aid, addiction rehabilitation, housing and employment assistance, and a clean criminal record.¹²² The program is focused on assisting chronically homeless individuals with a history of mental illness or substance abuse—often together—who have committed infractions and misdemeanors.¹²³ Through Santa Barbara’s Restorative Court, chronic offenders have been set up with treatment programs and permanent housing, and some were reunited with their families.¹²⁴ This specialized court system is designed to help individuals with mental health disorders or substance dependence, many of whom have the dual burden of homelessness, get off the street and/or away from prison. The goal of restorative court is to improve the individual’s quality of life by combining plea bargaining with alternative sentencings, such as mental health counseling, residential treatment programs, and housing alternatives. Unlike the involuntary transportation authorized by section 5150, participation in restorative court is completely voluntary and implemented for the sole purpose of assisting the individual through community resources and support.

¹²⁰ See, e.g., DANE CTY. CMTY. RESTORATIVE CTS., <https://crc.countyofdane.com/> (last visited Oct. 1, 2019); *Santa Barbara Restorative Ct.*, CTY. OF SANTA BARBARA, <https://www.countyofsb.org/da/SantaBarbaraRestorativeCourt.html> (last visited on Oct. 1, 2019).

¹²¹ See Jared McKiernan, *Restorative court steers homeless from prison*, NEW FRONTIER CHRON. (Mar. 30, 2016), <https://www.newfrontierchronicle.org/restorative-court-steers-homeless-from-prison/> (“Diversionary program helps low-level homeless offenders in Santa Barbara work toward self-sufficiency with help from The Salvation Army.”).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See Indy Staff, *Restorative Court Celebrates Three Years of Improving Lives*, SANTA BARBARA INDEP. (Nov. 23, 2014), <https://www.independent.com/2014/11/23/restorative-court-celebrates-three-years-improving-lives/>.

V. CONCLUSION

California set the stage for change in how mental health commitment procedures are implemented with the LPS Act. As evidenced by its inclusion of “gravely disabled” in 5150 hold criteria, however, the LPS Act is far from a comprehensive resource of solutions. If California wishes to remain the nation’s forerunner of progressive policies, it must take an *active* role in the world of mental health advocacy by (1) removing “gravely disabled” from the 5150 criteria; (2) integrating the community with mental health advocacy efforts by creating outreach and education programs; and (3) implementing a client-centric approach to interacting with persons with mental health disorders through restorative policing and the establishment of a restorative court.

As housing rates increase and mental health stigmas rise, so do the numbers of those who may qualify as “gravely disabled.” What remains stagnant is the amount of medical and financial resources available to the growing population of mentally ill Californians unable to provide for their basic personal needs of food, shelter, and clothing. Conditions for the mentally ill will not improve until community members choose to engage and address the issues affecting persons with the dual burden of mental health disorder and homelessness. We must treat our community members within the community, not institutions. We must be educated and aware. We must care.