

Laura's Law – The County Process

Nevada County, California

Laura's Law was enacted in 2002 [AB 1421, ch. 1017; operative until 1/1/13]. It enables a county board of supervisors to apply Laura's Law to mentally ill clients (age 18 and over) who are likely benefit from court-ordered "assisted outpatient treatment". The clients are non-compliant with voluntary services, are "clinically determined to be unlikely to survive safely in the community", and are "substantially deteriorating" or "relapsing" toward involuntary treatment hospitalization under Welfare and Institutions Code ("W&I") Code 5150. [All citations here are to W&I Code.] **Please note these terms and abbreviations:**

"AOT" is assisted outpatient treatment according to a Treatment Plan of services ordered by a court after hearing all relevant evidence, and finding "no appropriate and feasible less restrictive alternative".

"AOT Criteria" or "AOT Checklist" are the nine criteria listed in 5346(a) about a Client that must be supported by in court by clear and convincing evidence. To assist Counsel's preparation for court, a checklist is recommended for showing the specific factual basis for meeting each criterion.

"Client" is a mentally ill person referred to MHDept. for voluntary services and/or AOT Services.

"Counsel" is the civil law office for the county ("County Counsel") that represents the MHDept. in court.

"Declaration" is, under CCP 2015.5, equivalent to the sworn affidavit by an LMHT provider that is required under 5346(b)(5) to support a Petition filed in court under Laura's Law.

"Exam" is a psycho-social assessment conducted in field or in office on Client's current presentation, plus known history.

"Laura's Law" is W&I Code Sections 5345-5349.5 for involuntary assisted outpatient mental health services funded pursuant to the state Mental Health Services Act ("MHSA").

"LMHT Provider" is a licensed mental health treatment provider, usually an LCSW or LMFT, connected with the MHDept. as an employee or independent contractor.

"MHDirector and/or MHDept." is the director of a mental health department, and it includes his or her designee for procedures under Laura's Law. In Nevada County, the Director of the Behavioral Health Dept. usually designates the Clinical Supervisor and Behavioral Health Adult Program Manager.

"Notice of Hearing" is the 5345 notice in lieu of summons, of a court proceeding in which the Petitioner seeks an AOT order for Client. The Notice will conspicuously list the client's legal rights under Laura's Law, and specifically show names of persons that the client wants involved.

"PSC" is personal service coordinator of Client (similar to a case manager), and is usually a Behavioral Health Worker of the MHDept.

"Tx Plan" means the court-ordered assisted outpatient treatment plan, consisting of those services authorized by 5348, for up to 180 days (with possible 180 day extension). The Tx Plan covers the strategy for future interventions and intensive support and treatment.

"5150" the Code section that authorizes involuntary hospitalization for up to 72 hours at an acute care psychiatric facility for persons who are gravely disabled, or who are an imminent danger to self and/or others by reason of a mental disorder. **Under Laura's Law**, there are two authorizations for involuntary admission for evaluation in an acute psychiatric treatment facility for up to 72 hours: (1) when the client refuses the exam, the court may order a 5346(d)(3) evaluation; and (2) when the client is non-compliant with court-ordered AOT, then under 5346(f) an LMHT provider may request the evaluation.

STEP 1: AOT Program Implementation. This includes the organization, training and education to prepare the MHDept. and other entities in the community to work with an AOT Team. The AOT Team Director is responsible for investigating, coordinating with law enforcement, scheduling interventions, and making the voluntary offer of services. The AOT Team Director oversees the completing of the exam and Tx Plan, and submission of periodic Declarations (60 day cycle).

STEP 2: Referrals to AOT Team. Clients referred to the MHDept. are initially reviewed by the "Behavioral Health ACCESS Team". When the client is in the County, and referral information justifies a review under Laura's Law, the client's case is routed to the AOT Team, and the AOT Team Director is responsible thereafter.

STEP 3: Initial Intervention. The AOT Team may respond rapidly to the client's condition with an initial intervention and an offer of voluntary services, including, but not necessarily limited to, AOT services. Contact is made with any third party requesting that the client received AOT services under Laura's Law.

STEP 4: Determine Qualified Requesting Party. The MHDirector must ascertain that the requesting party is qualified to request a court petition under Laura's Law. Those qualified are a co-habitant aged 18 or older, a close relative, the director of client's residential care facility, a hospital director, a LMHT provider, peace officer, parole officer, or probation officer.

STEP 5: Investigation. The AOT Team gathers the information with which to meet the AOT Criteria. This includes treatment history, and contacting any current health provider, and law enforcement officer with knowledge of client. Client information on current whereabouts, residence, friends, and family will be useful in the Laura's Law process. A preliminary Tx Plan should be developed to ensure that the MHDept. is able to make an offer of AOT on a voluntary basis as well as a court-ordered basis.

STEP 6: Checklist completion. The AOT checklist, developed in coordination with County Counsel, will have space for writing the factual basis for the client's meeting each AOT criterion. The checklist may also support other factual findings in court. If the AOT Team cannot complete the checklist, it will have to delay further application of Laura's Law.

STEP 7: Decision to file. The MHDirector must find a "reasonable likelihood" that a petition on the client can be proven by "clear and convincing evidence". This is a court standard of proof that is between a "preponderance" and "beyond all reasonable doubt". It may be thought of as "beyond any serious doubt".

STEP 8: AOT Team plans intervention. As soon as the decision to file is communicated to the AOT Team Director, two tasks must be undertaken. First is the creation or revision of a Tx Plan so that it can be offered during the intervention. Second is the practical strategy to approach the client for consent to examination in the field or the office, and role of the PSC.

STEP 9: Notification to Law Enforcement. If there is reason to believe that the client's condition may pose a safety concern during the intervention, law enforcement should be contacted, with due regard for client confidentiality, about its availability to serve as "civil standby" or to conduct a "welfare check".

STEP 10: Intervention and attempt at examination. The AOT Team and PSC make the first official contact under Laura's Law (with law enforcement assistance as needed). They should offer the Tx Plan on a voluntary basis. Depending on the client's condition and orientation, the LMHT provider conducts the exam and later prepares a Declaration. If the exam is refused or not completed, the LMHT provider may still prepare a Declaration saying that there is "reason to believe" the AOT criteria are met. Any modification of the recommended Tx Plan should be considered as the Declaration is finalized.

STEP 11: Notification to Counsel. The AOT Team Director notifies Counsel of the need to file a Petition in court within 10 days of the exam or attempted exam [5346(b)(5)(A)]. The following should be sent promptly to Counsel: the AOT checklist, a signed recommended Tx Plan, and the signed Declaration by the LMHT provider.

STEP 12: MHDirector signs Petition. After review with Counsel, the MHDirector signs the Petition and Verification. The Petition will have 3 attachments: the Declaration, recommended Tx Plan, and the Checklist. Accompanying the Petition will be the "Notice of Hearing" and a "Proposed AOT Order".

STEP 13: Petition is filed and distributed with Notice of Hearing. When the Petition is filed, the court will set a hearing date and time (not later than 5 court days) and may issue a summons. An attorney (Public Defender) will be assigned by the court. Copies of the Petition and Notice of Hearing are delivered or sent to the Public Defender, the Patient Rights Advocate, any current health care provider appointed for the client, and any persons designated by the client [5346(d)(1)]. Those persons receiving the Petition will be in a position to contact and advise the client about hearing.

STEP 14: Service on Client of Notice of Hearing. The summons, if any, Petition and Notice of Hearing are personally served on the client as arranged by the AOT Team, using a PSC and another team member, and any available support from family and friends. Law enforcement may be alerted to provide "civil standby" protection, if warranted by the circumstances. Intensive support will ensure that the client can exercise his/her legal rights, and also make a timely appearance at the hearing

STEP 15: Preparation for Hearing. Counsel prepares a proposed settlement agreement (with Tx Plan attached) in case the client waives the right to a hearing under 5347. The LMHT provider reviews the Declaration, prepares any update on the situation, and makes any final modifications to the Tx Plan. Close communications between the AOT Team, PSC, and other involved parties is necessary in order to monitor the client and respond to any sudden deterioration.

STEP 16: The hearing with client present and exam completed. The court establishes on the record the appearances and relevant factors for opening the hearing. All relevant evidence is admissible if relevant to the grounds and facts in the Petition. Continuances are permitted only for "good cause shown", and upon consideration of the need for further exam, or for providing expeditiously AOT. [5346(d)(1)]. If the court finds AOT criteria not met, the Petition is dismissed.

Step 16a: If the 5346(a) AOT criteria are met, the court may order the recommended Tx Plan for up to 6 months, finding that it is the least restrictive alternative, that client has refused or failed to engage voluntary services, that AOT services are available, and that the Tx Plan "will be delivered" to the MHD. [5346(e)]. The court may set another hearing date about 60 days in advance in anticipation of Step 22.

STEP 17: Client not present at hearing. The court makes a factual determination on the record to support conducting the hearing without client present. [5346(d)(1)]. The LMHT provider testifies about the authenticity and contents of the Declaration and the recommended Tx Plan (referring as needed to the AOT checklist). If AOT criteria are met, the court orders the Tx Plan, and finds that it is the least restrictive alternative available. The Tx Plan implementation is stayed if the client subsequently files a writ of habeas corpus.

STEP 18: Client at hearing but exam not completed. The AOT Team provides a PSC and another team member for client support. The court makes a factual determination on the record as to why exam not completed. The court may question the client in chambers or in open court to ascertain client's present intentions. The court may appoint the LMHT provider in the client's presence and elicit client consent, and order a continuance for completion of the exam in or

out of the courthouse. If the client's condition is volatile, a law enforcement escort may be arranged. Whether or not the LMHT provider has the exam results, the hearing may continue.

Step 18a: If client refuses examination and the court finds "reasonable cause to believe" the Petition is true, the court may order an evaluation [5346(d)(3); see also 5206]. "Any person designated under 5150" is to detain and transport the client to a hospital for exam "as soon as is practicable", with detention not to exceed 72 hours. The hospital's evaluator may consult with the LMHT provider who signed the Declaration for court.

STEP 19: Client at hearing waives hearing. If the client appears at the hearing, whether the exam is completed or not, the court may establish on the record (for client to hear) the circumstances surrounding client's fail to engage in, or refusal of, voluntary treatment. The court starts the hearing. At an appropriate time, the client may confer with the Public Defender. If the client favors a Settlement Agreement ("SA"), the client may waive the right to a hearing.

Step 19a: The SA has the same legal force as an AOT order [5346(b)(5)]. The LMHT provider testifies that the client can survive safely in the community as long as the client complies with the SA. If acceptable, the court puts the waiver on the record, finds that the Agreement is the least restrictive alternative available, and appoints "the appropriate county department" (likely the MHDept.) as compliance monitor. An SA treatment plan may be modified by the court at any time upon a request by "either party" (i.e., the client or Petitioner).

STEP 20: Client non-compliant with treatment: The consequences vary depending on whether AOT is court-ordered, or the client has signed a Settlement Agreement.

Step 20a: If the client is refusing court-ordered AOT, the LMHT provider may contact Counsel about going back to court. Under 5346(d)(6), the court may order the client to meet with the AOT Team to gain the client's cooperation with treatment ordered by the court. Inability to gain cooperation subjects the client to a 72-hour hold for evaluation under 5346(f), depending on the "clinical judgment" of the LMHT provider. The provider may request a person designated under 5150 to transport the client to a hospital to be held for up to 72 hours. Alternatively, under 5206, the court may order the evaluation and transport. If the hospital does not find the 5150 criteria to be met, and the client requests release, the client must be released. Any subsequent involuntary detention in a hospital shall be pursuant to 5150.

Step 20b: If the client's non-compliance violates the Settlement Agreement, then the compliance monitor sends a Statement of Non-compliance to Counsel and to the attorney for client. It establishes a *prima facie* violation, which the client can rebut by a preponderance of the evidence [5347(b)(6)].

STEP 21: Client remains persistently non-compliant. Laura's Law is not specific about this. Importantly, the client remains subject to court-ordered AOT. Continued treatment and intervention by the PSC tend to keep the client from drifting away from services. This reduces the risk of a client's deterioration to the 5150 level, and reduces risks to the safety of the client and community. Sudden deterioration of the client may warrant a "welfare check" by law enforcement accompanied by the AOT Team. Under the W&I Code, any further civil commitment for evaluation and treatment allows medical personnel to consider requesting a LPS conservatorship (5350).

STEP 22: Declaration to court within 60 days. Under 5346(h), a Declaration shall be filed with the court on client's continuing to meet the AOT Criteria. It does not require a hearing, unless the court has set one in advance. The distribution of copies to others involved is optional but recommended.

Step 22a: If the AOT Team Director affirmatively seeks a court hearing, it can be set up through Counsel. The client also has a right to a hearing on whether the AOT criteria are still met, with the AOT Team Director bearing the burden of proof.

STEP 23: Policy and procedure for involuntary medication. Under 5348(c), involuntary medication shall not be allowed absent a separate order by the court pursuant to 5332-5336. Laura's law does not change existing law in this respect. A client's capacity to refuse antipsychotic medication must be determined at a noticed "capacity hearing" during a detention under 5150, 5250, 5260 or 5270.15.

STEP 24: Extension of court-ordered AOT. Prior to the expiration of 180 days, an extension of the AOT order may be sought for an additional 180 days. However, the application requires all of the foregoing steps related to 5346(a)-(f) to be followed [5346(g)]. After the original AOT order has lapsed, the procedure to re-initiate is the same as for an extension.

Step 24a: A Settlement Agreement is valid for up to 180 days. There is no provision for any extension. Instead, the procedure is to re-initiate.

STEP 25: Reporting to state Dept. of Mental Health. Each county shall provide certain data to the state DMH as specified in 5348(d). This data collection should be integrated into the AOT Team's management of the client's case. State DMH wants the data by March 1 of each year, and will use this data to report to the Legislature by May 1 of each year. As to all counties implementing any portion of Laura's Law, the state DMH will report to the Governor and Legislature by July 31, 2011.

AOT CHECKLIST
LAURA'S LAW – THE COUNTY PROCESS
Nevada County, California

There are important facts which must be alleged in a Petition under Laura's Law. All cites below are to the California Welfare and Institutions Code. This Checklist is a listing of these facts.

1. A qualified party [see 5346(b)(2)] is requesting AOT for a client.
2. The person is in the county, or reasonably believed to be in the county.
3. There are nine 5346(a) Criteria to be met:
 - (1) The person is 18 years of age or older.
 - (2) The person is suffering from a mental illness [see paras. (2)and(3) of 5600.3(b)]. [This excludes dementia and organic brain damage.]
 - (3) There has been a clinical determination that the person is unlikely to survive safely in the community without supervision.
 - (4) The person has a history of lack of compliance with treatment for his or her mental illness, in that at least one of the following is true:
 - (A) The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
 - (B) The person's mental illness has resulted in one or more acts of serious and violent behavior toward himself or herself or another, or threats, or attempts to cause serious physical harm to himself or herself or another within the last 48 months, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
 - (5) The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health department, or his or her designee, provided the treatment plan includes all of the services described in Section 5348, and the person continues to fail to engage in treatment.
 - (6) The person's condition is substantially deteriorating.
 - (7) Participation in the assisted outpatient treatment program would be the least restrictive placement, that is appropriate and feasible, and necessary to ensure the person's recovery and stability.
 - (8) 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 himself or herself, or to others, as defined in Section 5150.
 - (9) It is likely that the person will benefit from assisted outpatient treatment.
4. The Treatment Plan recommended for AOT involves services actually available from the Nevada County Behavioral Health Department.
5. An exam of client was completed or attempted.