



The Sonoma County Grand Jury

MENTAL HEALTH SERVICES DIVISION

RELEASE PROCEDURES

July 1, 2004

Summary

The 2003-2004 Sonoma County grand jury reviewed the release procedures for adult patients of the Mental Health Services Division (MHS) of the Sonoma County Department of Health Services. Individuals brought into or seeking treatment at MHS facilities can be detained up to 72 hours, at which time they are entitled to a Certification Review Hearing to determine if further involuntary detention is to be allowed. The jury found that legally prescribed release procedures were followed in the case investigated. Because of a person's *habeas corpus* right (a person's right to be released from unlawful detention), some individuals are released that may have benefited from further detention and medical care, preventing self destructive or socially harmful activities.

Outpatient mental health programs for mandatory oversight of borderline detention or release cases have been authorized by *State Law AB 1421* (Laura's Law¹). Laura's Law, enacted in California in 2003, allows for counties to provide sustained, court-mandated out-patient care to qualifying persons suffering from mental illness. The program would operate in counties that choose to provide the required services. The jury recommends that Mental Health Services review the potential for adopting mandatory assisted out-patient treatment as prescribed in Laura's Law.

Reason for Investigation

The grand jury received a complaint that an individual had been released from a MHS facility against its medical advice as a result of a Certification Review Hearing, and subsequently deteriorated mentally. The individual eventually violated the law and was incarcerated in a state mental health facility for four months before rehabilitation was completed. The complainant alleged that the certification review process concentrated too much power in the hands of too few people, and that input from family members and others with knowledge of the case was not allowed at the hearings.

Background

The Certification Review Hearing is a process governed by the *Welfare and Institutions Code*, Section 5256 to determine release or detention based on the following specified criteria:

- Whether the individual is a danger to others
- Whether the individual is a danger to self
- Whether the individual is so gravely disabled as to be unable to care for self

Sonoma County Grand Jury

Mental Health Services Division – Release Procedures (continued)

Certification review hearings can be requested by detained individuals seeking release under California law, as written in the *Welfare and Institutions Code*, Sections 5000 FF. These codes specify that certain criteria (as described above) must be met in order to involuntarily detain an individual, and override the *habeas corpus* rights of individuals seeking to be released.

The hearings are conducted by certification review officers, who are recommended by MHS and approved by a panel including representatives of the county Public Defender's Office, County Counsel or the District Attorney's Office. At the hearing, the detainee must be accompanied either by legal counsel or an advocate provided by the county. A representative of the MHS treatment team will also be present. *The decision to detain or release is made solely by the certification review officer.*

Investigative Procedures

The grand jury interviewed the following persons:

- The complainant
- Section Manager, Adult Mental Health Services
- Deputy County Counsel

The grand jury reviewed the following documents:

- Chronological history of the case as provided by the complainant
- Certification Review Hearing summaries relating to the case
- *California Welfare and Institution Code*, Sections (5150, 5250, 5256, 5350)
- "A Guide to Laura's Law: California's New Law for Assisted Outpatient Treatment"¹

Findings

- F1. The *Lanterman-Petris-Short Act* (LPS) protects adult individuals from unwarranted involuntary confinement and tends to favor freedom rather than detention. As a result, if the specific involuntary detention criteria in LPS are not met, an individual may be released even against the advice of MHS social workers and clinical physicians.
- F2. Under LPS, adult detainees have the right to exclude family members from the Certification Review Hearings even though a family member may have petitioned to be there. Family members have no legal standing in the hearings and therefore no right to appeal.
- F3. Detainees have the right to judicial appeal of the Certification Review Hearing decision.
- F4. There was no evidence that the Certification Review Hearing procedures were not followed in the case investigated.
- F5. Outpatient mental health programs for mandatory oversight of borderline treatment or release cases have been authorized by *State Law AB 1421* (Laura's Law). This law also allows participation of relatives in the hearing process. Additional costs would be incurred to implement Laura's Law, but advocates maintain that long-term benefits to patients and to society would far outweigh implementation costs.
- F6. Sonoma County has not implemented a program under Laura's Law even though it has been implemented elsewhere in California and in a similar fashion under a similar law elsewhere in the nation.

Sonoma County Grand Jury

Mental Health Services Division – Release Procedures (continued)

Conclusion

The established Certification Review Hearing procedures attempt to balance individual rights to freedom against the desires of mental health professionals, social workers and family members who desire to detain them for further treatment and/or social/self protection. In this balance, it is inevitable that the procedures will allow some individuals to secure their freedom and continue unhealthy behavior, so long as they do not meet a detention criterion or otherwise violate the law. The case reviewed illustrates the risks inherent in any process that involves judgment, but the process followed current Sonoma County law.

Recommendations

- R1. The Department of Health Services (HS) and MHS should review and report on the benefits and concerns regarding the adoption and implementation of Laura's Law in Sonoma County. This report and its conclusions should be sent to the Board of Supervisors.

- R2. This report and its conclusions on Laura's Law should be sent to the 2004-2005 grand jury.

Required Responses to Findings

Director, Department of Health Services – F5
Director, Mental Health Services Division – F5

Required Responses to Recommendations

Board of Supervisors – R1
Director, Department of Health Services – R1
Director, Mental Health Services Division – R1, R2

Reference List

¹ "A Guide to Laura's Law: California's New Law for Assisted Outpatient Treatment", Second Edition, 2003. Prepared by The California Treatment Advocacy Coalition and The Treatment Advocacy Center. Retrieved May 1, 2004, from <http://www.psychlaws.org/StateActivity/California/Guide-Lauras-Law-AB1421.htm>