

RESOLUTION 08-01-2017

DIGEST

Involuntary Treatment: Substance Abuse in Relation to Mental Illness

Amends Welfare and Institutions Code section 5150.05 to include substance abuse, as it relates to mental illness, to determine if a person is gravely disabled and should be taken into custody.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 06-06-2016, which was disapproved.

Reasons:

This resolution amends Welfare and Institutions Code section 5150.05 to include substance abuse, as it relates to mental illness, to determine if a person is gravely disabled and should be taken into custody. This resolution should be approved in principle because it would expressly allow those who are authorized to take a person into custody under Welfare and Institutions Code section 5150 to consider the person's history of substance abuse.

Addiction is common in people who suffer from a mental health disorder. It is a well-known fact that persons who suffer from a mental illness have a tendency to self-medicate with alcohol, illegal drugs or both. Experts estimate that at least 60% of people battling either a mental illness or substance abuse are battling both.

According to the National Institute of Mental Health, one in five adults suffer from a diagnosable mental health disorder. In some, the mental health condition is already present when the substance abuse begins, but the underlying mental disorder has not been diagnosed. The National Alliance on Mental Illness estimates that approximately one-third of all people experience mental illnesses and about half of the people living with a severe mental illness also experience substance abuse. The health professionals refer to this as a "dual diagnosis" and that a person should receive care for both the specific mental illness and the substance abuse. Studies have also shown that a drug addiction will worsen the mental health problem if the addiction goes untreated.

It is clear that there is a correlation between mental illness and substance abuse. The common practice already among law enforcement and mental health professionals is to consider a person's substance abuse history as it relates to their mental illness. The proposed resolution would expressly allow law enforcement to look at more information to determine whether or not a person should be arrested or placed on a 5150 hold. It would also allow those who abuse drugs, due to a mental illness, to seek treatment instead of being incarcerated.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend the Welfare and Institutions Code section 5150.05 to read as follows:

1 § 5150.05

2 (a) When determining if probable cause exists to take a person into custody, or cause a
3 person to be taken into custody, pursuant to Section 5150, any person who is authorized to take
4 that person, or cause that person to be taken, into custody pursuant to that section shall consider
5 available relevant information about the historical course of the person's mental disorder,
6 including substance abuse as it relates to mental illness, if the authorized person determines that
7 the information has a reasonable bearing on the determination as to whether the person is a
8 danger to others, or to himself or herself, or is gravely disabled as a result of the mental disorder.

9 (b) For purposes of this section, "information about the historical course of the person's
10 mental disorder" includes evidence presented by the person who has provided or is providing
11 mental health or related support services to the person subject to a determination described in
12 subdivision (a), evidence presented by one or more members of the family of that person, and
13 evidence presented by the person subject to a determination described in subdivision (a) or
14 anyone designated by that person.

(Proposed new language underlined; language to be deleted stricken)

PROPOSERS: Joseph A. Goldstein, Jonathan A. Goldstein, Charles H. Goldstein, Charles Wake, Erin Noonan, Jodi Taksar, Scott Luskin, Robin Bernstein-Lev, Brian Francis Doyle, Barry Ross

STATEMENT OF REASONS

The Problem: Under the current statutory mechanism, a person who is authorized to involuntarily take an individual into custody pursuant to the 51/50 involuntary protective procedure is not expressly authorized to take into account the individual's history of substance abuse. An individual having both a substance abuse problem and a mental health issue such as depression, bipolar disorder, or anxiety, have what is called a "co-occurring disorder" or "dual diagnosis." These co-occurring disorders are interrelated with, affect, and interact with each other. For example, when a serious mental health issue goes untreated, the substance abuse problem usually gets worse. And when alcohol and/or drug abuse increases, serious mental health issues usually increase. The statistics are eye-popping. According to the National Alliance on Mental Health Issues: (1) Approximately 1 in 5 adults in the U.S.—43.8 million, or 18.5%—experiences mental illness in a given year; (2) Approximately 1 in 5 youth aged 13–18 (21.4%) experiences a severe mental disorder at some point during their life; and (3) An estimated 26% of homeless adults staying in shelters live with serious mental illness and an estimated 46% live with severe mental illness and/or substance use disorders.

The Solution: Would add specific language to subdivision (a) of Section 5150.05 which would provide that any person who is authorized to take any person into custody for involuntary mental health treatment shall consider available relevant information about the historical course of the person's mental disorder, including substance abuse as it relates to mental illness.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR LEGISLATION

None known.

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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

TEXCOM - DISAPPROVE

The Executive Committee of the Trusts & Estates Section recommends disapproval of this resolution. It appears that the addition is unnecessary and perhaps prejudicial. DSM-5 at pp. 481-589 already describes mental illness related to substance-related and addictive disorders. If an individual has a history of mental illness related to substance abuse, that history is already included in what the decision maker can weigh. It is prejudicial in that family members could conflate use of addictive substances with substance abuse and color the opinion of decision makers. Proponents of the Resolution cite statistics about mental illness but do not provide evidence that failure to take substance abuse into account causes impaired persons who should be involuntarily confined to get around the system.

This position is only that of the TRUSTS and ESTATES SECTION of the State Bar of California. This position has not been adopted by the State Bar's Board of Trustees, and is not to be construed as representing the position of the State Bar of California.

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