



Legislation Text

File #: 2021-0291, **Version:** 1

To: Board of Supervisors of Sonoma County
Department or Agency Name(s): Department of Health Services
Staff Name and Phone Number: Bill Carter, 565-5157
Vote Requirement: Majority
Supervisory District(s): Countywide

Title:

Implementation of Assembly Bill 1976 Opt-Out

Recommended Action:

Adopt a resolution opting out of the Assisted Outpatient Demonstration Project of 2002, as amended by AB 1976, ("Laura's Law") and confirming that the County will monitor program outcomes and community needs and consider opting in to "Laura's Law" in the future if the need is confirmed and resources are available.

Executive Summary:

In 2002, AB 1421 established Laura's Law, enabling counties to provide court ordered Assisted Outpatient Treatment (AOT) for individuals with severe mental illness who do not engage in treatment and have frequent hospitalizations and contact with law enforcement. Counties who wished to participate in the AOT program had to "opt-in" by resolution of the Board of Supervisors. In 2020, AB 1976 amended Laura's Law so that the court-ordered AOT program is mandatory unless the County opts-out by resolution of the Board of Supervisors. While the deadline for opting-out is July 1, 2021, counties must notify the California Department of Health Care Services ("DHCS") of their decision by May 1, 2021.

The Sonoma County Department of Health Services recommends that the Board opt out at this time. The Department will monitor program development and outcomes, as well as community needs and, if appropriate, reconsider at a future date. Three conditions drive this decision:

1. Sonoma County has a set of effective programs that serve a broad population of individuals with severe mental illness, including those who would qualify for AOT.
2. AB 1421 and AB 1976 provide no funding for AOT, and require that existing services not be reduced to establish an AOT program.
3. Sonoma County can determine it will opt in, and establish an AOT program, at any time.

Discussion:

The Lanterman-Petris-Short (LPS) Act of 1967 provides for involuntary commitment of individuals with serious mental illness, for varying lengths of time, for the purpose of treatment and evaluation, provided certain requirements are met. Additionally, the LPS Act provides for conservatorship of the mentally ill, resulting in yearly involuntary commitment for the purposes of treatment, if an individual is found to be gravely disabled, as defined by the law.

As an alternative to LPS conservatorship, current law also provides for court-ordered outpatient treatment through a program known as Assisted Outpatient Treatment (AOT), commonly referred to as "Laura's Law." In

2002, the California Legislature passed Assembly Bill 1421 (Thomson) in memory of Laura Wilcox, a young woman who was killed by an individual with mental health issues who refused treatment. Laura's Law gives counties the option of implementing involuntary AOT programs for individuals who have difficulty maintaining their mental health stability and have frequent hospitalizations and contact with law enforcement related to untreated or undertreated mental illness.

As defined by California Welfare and Institutions Code sections 5345-5349.5, Laura's Law creates an AOT program that provides court-ordered treatment for persons with severe mental illness who meet the following criteria:

1. Must be 18 years of age or older;
2. Is suffering from a mental illness;
3. Is unlikely to survive safely in the community without supervision;
4. Has a history of lack of compliance with treatment;
5. Has a substantially deteriorating condition; and
6. Participation in AOT would be the least restrictive placement.

And one of the following conditions:

1. The person, within the last 36 months, has required two or more psychiatric hospitalizations or incarcerations due to their mental illness; or
2. The person's mental illness has resulted in one or more attempts or threats of serious and violent behavior toward himself/herself or another within the last 48 months.

The adoption of AOT/Laura's Law under AB 1421 was optional for each county. Counties had to opt-in, either by way of resolution of the board of supervisors or during the county budget process. At minimum, a county that agrees to implement AOT/Laura's Law must establish community based, mobile, highly trained mental health teams that use high staff-to-client ratios of no more than ten clients per team member. The program must include family outreach support, supportive housing/housing assistance, and vocational rehab. Laura's Law does not allow involuntary administration of psychotropic medication. There are no consequences for refusing the court-ordered treatment, other than a possible conservatorship under the LPS Act if the criteria are met.

The involuntary outpatient commitment begins with the County Counsel's filing of a petition in the Superior Court after an investigation conducted by the Behavioral Health Director. The law lists individuals who can make a referral to the Behavioral Health Director, triggering a mandatory investigation. The list includes certain family members, peace officers, outpatient treatment providers, hospital directors, and any person who resides with the subject of the referral. After the initial petition, every 60 days, the Behavioral Health Director program must file an affidavit with the court affirming continued AOT treatment and submit multiple data reports annually to the California Department of Health Care Services (DHCS). The law also requires that existing services "must not" be reduced by implementation of an AOT program under Laura's Law.

Adopting Laura's Law will result in increased county expenses across the Department of Health Services, the Courts, County Counsel, and Public Defender offices. No funds were allocated for the implementation of these services; therefore additional funding sources are required.

Outcomes

Research on AOT programs is mixed. Several studies cite reductions in arrests, incarceration and hospitalization, along with commensurate cost savings. However, that research does not include the strongest

research methodologies, and some suggest that AOT is only as effective as intensive voluntary services.

Opposition to Laura's Law

In the last three years, the Department of Health Services (DHS) has not held public hearings to collect local input regarding the prospects of implementing AOT in Sonoma County. Across the state, consumer advocacy groups largely object to Laura's Law. Creating another coercive and involuntary process is contrary to their advocacy for self-determination and respect for human rights. Some Courts object to the apparent redundancy of AOT to existing programs, such as mental health court, substance use disorder court and jail diversion efforts, as well as increased costs the Courts will incur. Hospitals and behavioral health systems have objected because the 72 hour holds required under AOT may not meet Medi-Cal Medical Necessity, increasing the amount of unreimbursed hospital care.

Additional Controversies

Laura's Law allows the court to order involuntary outpatient services; however, it does not allow involuntary medication. Failure to comply with an order of AOT alone may not be grounds for involuntary civil commitment or the finding that the person is in contempt of court. Since no civil or criminal penalties are incurred for refusing to participate, the law's power relies upon the "black robe" effect, in which involvement in the court process coerces an individual, who has mental illness, to submit to a judge's order. Therefore, should an individual fail to participate in court-ordered AOT, the only consequence is that he or she may be held for a 72-hour involuntary stay in a hospital pursuant to Welfare and Institutions Code section 5150 and possibly placed on an LPS conservatorship; however, if the person does not meet 5150 criteria at any point during the 72-hour initial hold, and does not agree to voluntarily stay in the hospital, they will be released.

AB 1976

AB 1976, passed in August 2020, goes into effect July 1, 2021. This bill requires counties to implement an Assisted Outpatient Treatment (AOT) program under Laura's Law, or opt out. If a county declines to establish an AOT program, it must submit a Board of Supervisors resolution which outlines the reasons for opting out, and any facts or circumstances relied on in making that decision. These documents must be submitted to DHCS no later than 60 days prior to the statewide implementation date of July 1, 2021. If a county does not submit a resolution opting out to DHCS by May 1, 2021, the county will be automatically opted in and required to establish the program and submit outcomes annually. In addition, AB 1976 expands the list of persons who can refer to the Behavioral Health Director triggering a mandatory investigation to include a judge of a superior court before whom the person referred for AOT petition appears regardless of the type of judicial proceeding.

AOT is not a funded program and counties are not allowed to reduce current services in order to fund Laura's Law.

RECOMMENDATIONS

In consultation with the Sonoma County Safety Net Committee (comprised of representatives from Health Services, Human Services, Probation, District Attorney, Public Defender, Community Development Commission, Superior Court, Sheriff, County Counsel, and Child Support Services), DHS recommends that the Sonoma County Board of Supervisors opt out of AOT/Laura's Law, at this time.

AOT programs target a small, narrow population, yet are resource intensive. Standard community-based programs, such as intensive case management, full service partnership and assertive community treatment

(ACT), along with specialty court programs (i.e., Mental Health Court, Drug Court, etc.) serve a broader population that includes the AOT/Laura's Law population and are very effective. Given this, DHS recommends continuing its efforts to build out and improve these programs as fully as possible, and then assess the need for an AOT program.

DHS is in the process of developing its intensive case management, full service partnership, and forensic programs, including jail diversion. These are effective programs serving a broad population that will include those who would be served by AOT/Laura's Law programs, reducing the need for involuntary services. DHS is directing its resources toward increasing the capacity of these programs, and improving their performance with the implementation of evidence-based practices. Implementing AOT at this time would divert resources from these efforts.

DHS estimates that its budget would increase by approximately \$1,500,000 to institute an AOT/Laura's Law program. This includes fully funding existing forensic outpatient services and building a team to serve the additional AOT caseload. The Courts, Sheriff's Department, County Counsel, and Public Defender's Office would have to complete an analysis to determine AOT/Laura's Law program costs to their departments as well.

DHS recommends that Sonoma County focus upon expanding and refining existing intensive forensic outpatient programs, and monitor their impact on the community's need for an AOT/Laura's Law program. At any time that the Sonoma County Board of Supervisors determines that the need, community support, and available resources call for the adoption of an AOT/Laura's Law program, it can reverse its resolution and opt-in.

Prior Board Actions:

N/A

FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	FY 21-22 Projected	FY 22-23 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures	0	0	0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources	0	0	0

Narrative Explanation of Fiscal Impacts:

There are no fiscal impacts associated with opting out of AB 1976.

Staffing Impacts:

Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment 1 - Resolution

Related Items “On File” with the Clerk of the Board:

None