

# LAURA'S LAW:

## *Concerns, Effectiveness, and Implementation*

JORGIO CASTRO\*

As a litany of stories attest, there is an ongoing mental health crisis in America, and the current mental health care “systems” are not adequately addressing it. The latest surveys indicate that nearly 40 percent of adults with severe mental illnesses<sup>1</sup> such as schizophrenia and bipolar disorder receive no treatment, and that 60 percent of all adults with a mental

---

This paper was awarded first place in the California Supreme Court Historical Society’s 2015 CSCHS Selma Moidel Smith Law Student Writing Competition in California Legal History.

\* Member of the California Bar; J.D. 2015, UC Hastings College of the Law. I would like to thank Professors Lisa Faigman, Robert Schwartz, Jaime King, and Lois Weithorn, who have provided tremendous support, assistance, and feedback in the creation of this paper. Thanks to my parents, extended family, and friends for the support they have provided me. This paper is dedicated to those suffering from severe mental illness, the family and friends who love them and are struggling to help today, and a humane, compassionate, and real future for all.

<sup>1</sup> “Serious” or “severe” mental illnesses are principally those designated by the DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS as psychotic disorders, with schizophrenia and bipolar disorder the most common. See KENDRA’S LAW: FINAL REPORT ON THE STATUS OF ASSISTED OUTPATIENT TREATMENT, New York State Office of Mental Health, March 2005 [hereinafter “Final Report”] (84% of Kendra’s Law AOT individuals had a diagnosis of either schizophrenia or bipolar disorder).

illness receive no treatment.<sup>2</sup> Current state mental health laws and policies are roundly criticized as not being anywhere near sufficient in addressing the challenges posed by severe mental illness.<sup>3</sup> The challenges of dealing with severe mental illness continue to loom over communities.<sup>4</sup> One type of program that has been proposed to help meet this challenge is assisted outpatient treatment (AOT),<sup>5</sup> known in California as Laura's Law.<sup>6</sup>

## HOW LAURA'S LAW HELPS

Specifically, Laura's Law targets a subset of the population of people with mental illness who are falling through the cracks. There is a portion of that population who do not accept treatment voluntarily because of "anosognosia," the medical term for a lack of awareness of their illness.<sup>7</sup> As a result, they do not avail themselves of treatment services.<sup>8</sup> This makes intuitive

---

<sup>2</sup> Liz Szabo, *Cost of not caring: Nowhere to go*, USA TODAY, <http://www.usatoday.com/longform/news/nation/2014/05/12/mental-health-system-crisis/7746535/>.

<sup>3</sup> There are various ways of expanding access to treatment, including involuntary treatment. For example, several states have civil commitment standards that are broader than California's. See, e.g., Wis. Stat. § 51.20(1)(a)(2) (Wisconsin state civil commitment statute with a broad definition of "dangerous" and "grave disability" that recognizes potential for deterioration). Many of these proposals have merit. However, they are outside the scope of this paper.

<sup>4</sup> Alex Emslie & Rachael Bale, *More Than Half of Those Killed by San Francisco Police are Mentally Ill*, KQED NEWS, Sept. 30, 2014, available at <http://ww2.kqed.org/news/2014/09/30/half-of-those-killed-by-san-francisco-police-are-mentally-ill>.

<sup>5</sup> Here as in other controversial areas, proponents and opponents use different terms to describe the legal procedure in question. Opponents often will describe it as "involuntary outpatient commitment." Proponents often use the terms "assisted" or "assertive outpatient treatment," as does the California Welfare and Institutions Code. Other terms include preventive assistive community treatment, community outpatient treatment, and preventive outpatient treatment, among others. See Rachel A. Scherer, Note, *Toward A Twenty-First Century Civil Commitment Statute: A Legal, Medical, and Policy Analysis of Preventive Outpatient Treatment*, 4 IND. HEALTH L. REV. 361, 369-70 (2007). This paper will generally use assisted outpatient treatment or "AOT."

<sup>6</sup> Cal. Welf. Inst. Code § 5345.

<sup>7</sup> This is an issue contested by opponents of Laura's Law. See *infra* Part "Opponents' Arguments." This paper adopts the view of the proponents, supported by medical studies, that anosognosia is a real neurological medical condition. See *infra* Part "Proponents' Arguments."

<sup>8</sup> Sometimes individuals do not seek or continue treatment because of the undesirable side effects of medications. Reducing or eliminating undesirable side effects often

sense: if someone subjectively doesn't think they are ill, they will not seek out "unnecessary" treatment. That "lack of necessity" leaves this population unengaged with treatment options until they are brought in through the involuntary system of care. In California, as in other states, the current standards for involuntary hospitalization require the person to be a danger to self or others, or be gravely disabled.<sup>9</sup> Section 5150 of California's Welfare and Institutions code allows someone to be held up to 72 hours. However, if someone no longer meets the criteria — as may often happen when someone comes in as a danger to herself or others and has the opportunity to "calm down," or start to receive some of the effects of medication for her illness — she has to be released.<sup>10</sup> This process of admission, stabilization, discharge,

---

requires finding the right type of medication or the right dosage, as individuals respond to medications differently. This can only be done with continued engagement and supervision with a competent prescribing physician and competent treatment team, which is Laura's Law's goal. Sometimes individuals do not seek or continue treatment if they find the treatment is limited and does not meet their needs. Laura's Law provides for a "whatever it takes" model, providing appropriate services to meet the client's needs.

<sup>9</sup> Cal. Welf. Inst. Code § 5150; see also Megan Testa & Sara G. West, *Civil Commitment in the United States*, 7 PSYCHIATRY (Edgmont) 10, 30–40 (2010), at *Shift to Dangerousness Criteria as the Standard for Civil Commitment*. On October 7, 2015 California enacted AB 1194, which clarifies that "the individual making that determination [for involuntary hospitalization] shall consider available relevant information about the historical course of the person's mental disorder if the individual concludes that the information has a reasonable bearing on the determination, and that the individual shall not be limited to consideration of the danger of imminent harm." AB 1194, 2015-2016 (Cal. 2015), available at [http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB1194](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1194). Many counties had been construing § 5150 to require imminent danger, which resulted in uneven and decreased application of § 5150 in many appropriate cases. Opponents argued that the bill is "unnecessary" and "suggests that consideration of historical course alone can lead to a finding of present danger." Letter from Margaret Johnson, Advocacy Dir., Disability Rights California, to Assemblyman Rob Bonta (Apr. 6, 2015), available at <http://www.disabilityrightsca.org/legislature/Legislation/2015/Letters/AB1194EggmanOpposeApril62015.pdf>.

<sup>10</sup> See e.g., Demian Bulwa, *Killing Reveals Mental Health Care Fight*, SF CHRONICLE, Oct. 16, 2014, available at <http://www.sfgate.com/crime/article/Killing-reveals-mental-health-care-fight-3781958.php> ("What they really want to know is: Did he hit you? Did he damage something? They'll keep him as long as he's exhibiting that behavior in the hospital. If he's not, the revolving door continues." Candy Dewitt describing her son Daniel Dewitt's nine § 5150 holds.); Meredith Karasch, Note, *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, 493 (2003) [hereinafter