



Department of Behavioral Health  
Patients' Rights Office

# AB2275: LPS Act Amendments to Expand Due Process Rights

Office of Patients' Rights

March 2023



## CHIEF PATIENTS' RIGHTS ADVOCATE:

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## PATIENTS' RIGHTS ADVOCATE TEAM:

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**Our mission is to protect the legal, civil and human rights of all behavioral health consumers in San Bernardino County.**

**Our mission is achieved by:**

- Supporting patients expressed needs
- Monitoring of LPS-designated facilities and locked residential facilities
- Providing Patients' Rights training to behavioral health providers
- Advocating and promoting the treatment of patients with dignity and respect

- LPS Act Intent
- AB2275
  - Background
  - Purpose and Intent
  - What Does it Require?
- Due Process Rights
- **New Responsibilities of Non-Designated Facilities**
- Role of County Patients' Rights Office
- LPS Holds and Hearings
- AB2275 – Entities Impacted
- AB2275 – Factors to Consider for Implementation
- References

## Intent of LPS Act [Welfare and Institutions Code (WIC) §5001 et seq.]:

- To end inappropriate, indefinite, and involuntary commitment
- To provide prompt evaluation and treatment
- **To safeguard individual rights through judicial review**
- To encourage the full use of all existing agencies
- To provide individualized treatment, supervision, and placement services through a conservatorship program
- To protect mentally challenged persons from criminal acts
- To guarantee and protect public safety

In December 2021, a joint hearing by the Assembly Health and Judiciary Committees gathered to examine the application of LPS Act and how it may be improved.

It was noted that there was significant inconsistencies of LPS Act implementation across the state.

## According to the authors, Jim Wood (A) , Mark Stone (A):

*“The past several years have seen an intensified focus on the LPS Act and its effectiveness in serving one of the most vulnerable populations – that of the severely mentally ill. The dramatic increase in substance use and homelessness has only exacerbated the concern that our systems of treatment and care are failing to adequately and appropriately serve our citizens most in need of mental health services. Attempts to expand the definition of “gravely disabled” or “harm to self or others” and other bills aimed at modifying or expanding the LPS Act have grown exponentially year by year. At the center of this issue is the nexus of how to provide involuntary care or treatment while **at the same ensuring that individuals’ civil liberties are not violated.**”*

- Amends WIC Sections 5150, 5151, 5256, 5275, 5350, 5354, and 5585.20
- Approved by Governor Newsom and Chaptered on September 30, 2022
- Effective January 01, 2023



- Specifies 72-hour period of detention begins at the time when a person is first detained
- Removes time constraints for postponement of the certification review hearing (CRH)
- Requires **any facility** who detains a person pursuant to WIC 5150 **to notify** the county patients' rights advocate **if a person has not been released within 72 hours of the hold**
- Requires a CRH to be held within 7 days of the date the person is initially detained when a person has not been certified for 14-day intensive treatment *and* remains detained on a 72-hour hold
  - Requires the person in charge of the county designated facility, **or an individual designated by the county if the person is not in a designated facility**, to notify the detained person of specified rights
- Extends the right to a writ of habeas corpus to every person detained under this part if held in a any facility longer than 72 hours
- Applies AB2275 provisions equally to minors

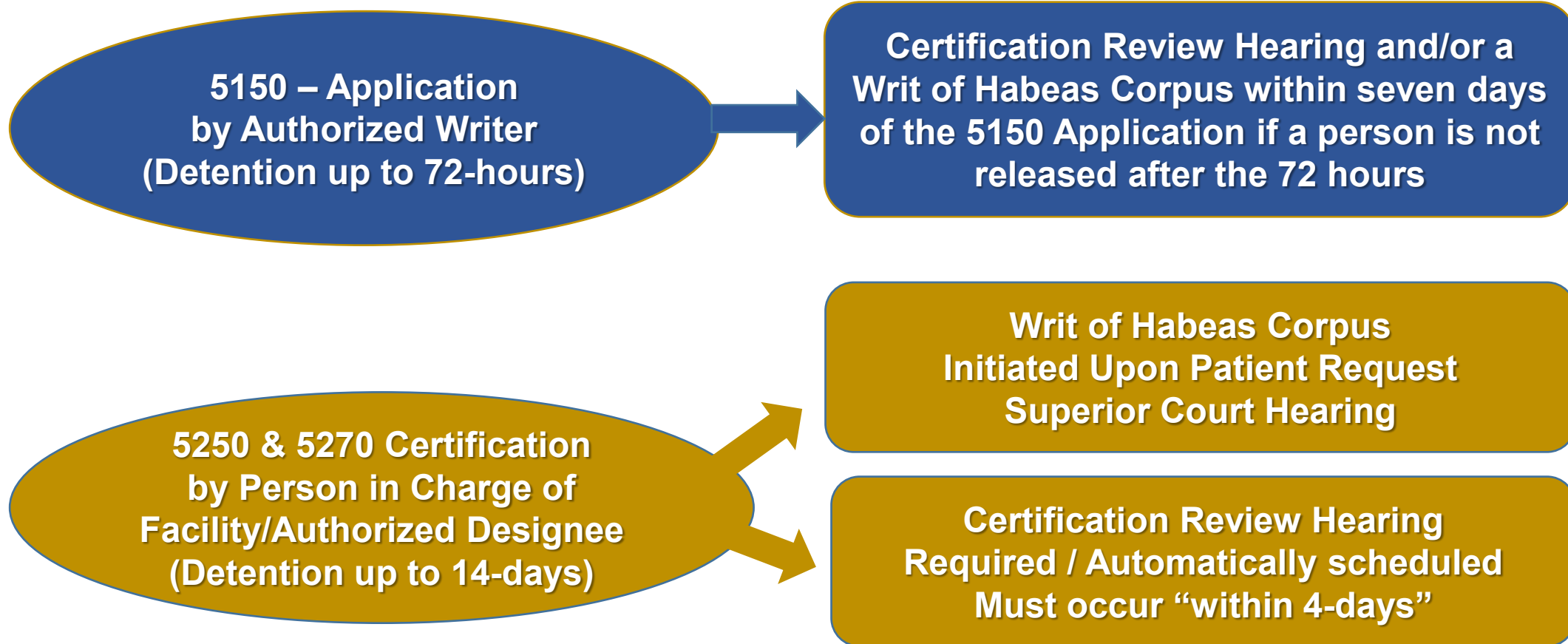
## Certification Review Hearing aka “Probable Cause Hearing”

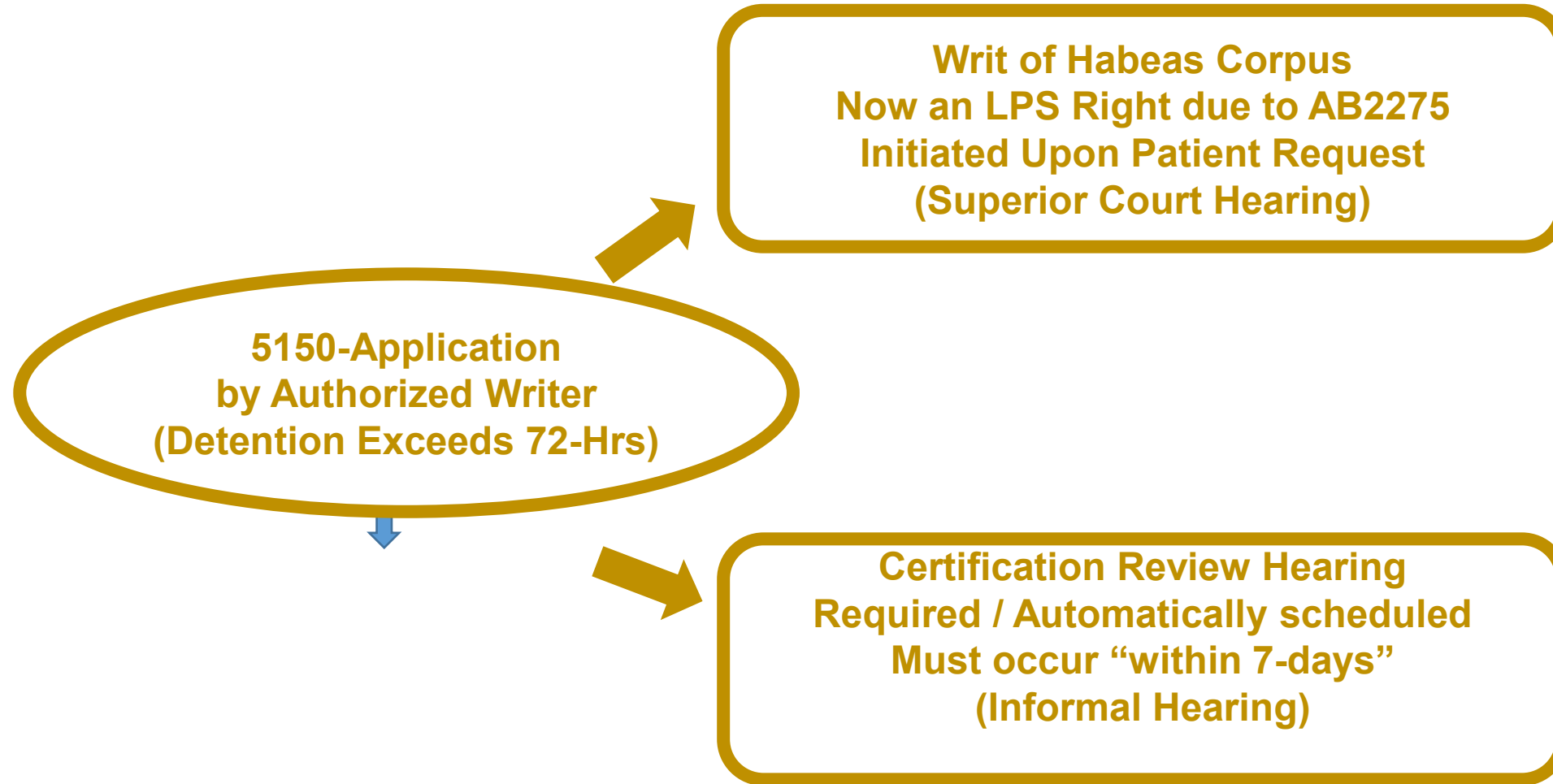
- Administrative Hearing (informal); not a Court Hearing (formal);
- Required / Automatically scheduled;
- **Must** be held within 4-days after “certification” and if not certified, within 7 days after WIC 5150 application; and
- AB2275 applies to WIC §§ 5150, 5250 & 5270 holds.

## Judicial Review by Writ of Habeas Corpus

- Formal Superior Court Hearing;
- Upon a request for release by the person, or anyone acting on behalf of the person being detained;
- Evidentiary Hearing scheduled in accordance with SB County Superior Court procedures; and
- Opportunity upon every separate detention period (see WIC §§ 5150, 5200, 5250, 5260, 5270, 5300).

# Detention and Due Process Flow in LPS Facilities





## Question:

What is the significance of the WIC 5256(b) requirement for Certification Review Hearing to be held "within 7-days"?

## Answer:

The 3 days of 5150 is added to the WIC 5256(a) requirement for a Certification Review Hearing to be held within 4-days (3+4 days= 7days)

**Guide to AB 2275 - Involuntary Detention Due Process**  
**Effective Date: January 01, 2023**  
**per California Welfare and Institution Code (WIC) 5000-5550**

Involuntary Detention & LPS Rights	5150 (Up to 72- Hours)	5150 (Beyond 72-hours)	
Criteria	Danger to Self (DTS), Danger to Others (DTO), and/or Gravely Disabled (GD)		
Legal Process	Initiated by Peace Officer -or- County Certified 5150 Writer.		
Due Process Rights	N/A	Writ of Habeas Corpus	Certification Review Hearing (CRH)
Hearing Details	N/A	<ul style="list-style-type: none"> <li>• Upon Patients' Request *</li> <li>• Superior Court Hearing</li> <li>• LPS Right **</li> </ul>	<ul style="list-style-type: none"> <li>• Required / Automatic</li> <li>• Administrative Hearing</li> <li>• Within 7-days from start of involuntary detention</li> <li>• LPS Right</li> </ul>
Order of Due Process	N/A	If Patient requests a Writ of Habeas Corpus prior to CRH, then CRH is forfeited.	After CRH occurs, patient still has the option to request a Writ of Habeas Corpus if detention continues.

\*Hospital Staff is responsible for notifying the Mental Health Court Counselors' Office upon the patients' request for a Writ of Habeas Corpus.

\*\*The patient may request a Writ of Habeas Corpus anytime if detained *beyond 72-hours* (LPS Patients' Right).

**Please Note: WIC 5003:** Nothing in this part (LPS ACT) shall be construed in a way as limiting the right of any person to make voluntary application at any time to any public or private agency or practitioner for mental health services, either by direct application in person, or by referral from any other public or private agency or practitioner.

- Adhere to the WIC 5150 established start time of the 72-hour period of detention
- Comply with WIC 5150(f) - Notify County Patients' Rights Office of persons "not release within 72-hours"
- Comply with WIC 5256(b) - CRH for person not released within 72-hours
  - ❖ CRH to be provided within 7-days of initial WIC 5150 detention
- Comply with CRH process outlined under WIC 5256.1- 5256.7
- Comply with WIC 5275 - Judicial Review (when patient requests release from detention)
  - ❖ Anyone acting on behalf of the patient may also make the request for release
  - ❖ Request may be made to any member of the treatment staff if not released after the 72-hour detention
  - ❖ Complete Petition for Writ of Habeas Corpus
  - ❖ Notify the Superior Court of the request for release IMMEDIATELY

- Receive notifications of persons “not released within 72-hours”
- Extend advocacy services to persons detained in any facility under this part
- Educate persons detained in any facility under this part on due process rights
- Represent the detained person at their Certification Review Hearing
- Notify DBH Director/designee of any compliance concerns

- San Bernardino County, Department of Behavioral Health
  - ❖ Office of Patients' Rights
- **Non-LPS designated facility** who detains persons on WIC 5150
  - ❖ May include General Acute Hospital, Emergency Department of non-designated hospital; Crisis Stabilization Unit, and Crisis Walk-In Clinic
- Superior Court of California – San Bernardino County
  - ❖ Mental Health Counselor's Office
- San Bernardino County Counsel and Hartnell Law Group (Patient Attorney) (writ hearings)
- County approved Hearing Officers (certification review hearings)
- County designated LPS hospitals



## **SB County Department of Behavioral Health (DBH):**

- Provide guidelines to LPS-designated facilities and applicable non-designated facilities
- Collaboration with County Counsel, Superior Court, Mental Health Counselor's Office, Hearing Officers, and Patients' Rights Advocates

## **SB County Patients' Rights Office:**

- Receive notifications from non-designated facilities and LPS-designated facilities as required
- Extend advocacy services to persons detained in any facility under this part
- Educate persons detained in any facility under this part on due process rights
- Represent the person detained in a non-designated facility at their CRH

## **Non-designated Health Facilities:**

- Notify County Patients' Rights Office as required
- Notification/communication with County Patients' Rights regarding CRH
- Collaboration with Superior Court, Mental Health Court Counselor's Office, etc., regarding Writ of Habeas Corpus Hearings

## **SB County Superior Court- MH Court Counselor's Office- County Counsel- Hartnell Law Group:**

- Implement WIC 5350 (d)(1)(2) regarding LPS Conservatorship Hearings
- Collaboration with non-designated health facilities regard Writ of Habeas Corpus proceedings

## Patients' Rights Office

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Behavioral Health

*Our job is to create a county in which those who reside and invest can prosper and achieve well-being.*

[www.SBCounty.gov](http://www.SBCounty.gov)

- [Bill Text - AB-2275 Mental health: involuntary commitment. \(ca.gov\)](#)