

# AB2275: LPS Act Amendments to Expand Due Process Rights



San Bernardino County  
*Office of Patients' Rights*

# Office of Patient Rights

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***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)***

# Mission Statement

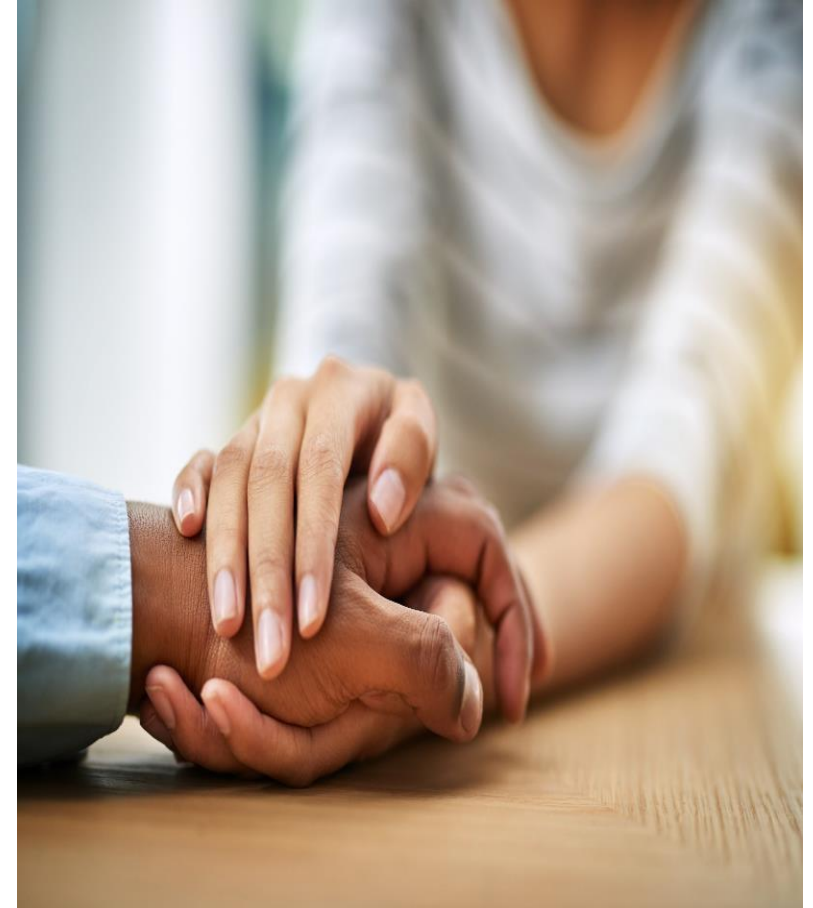
**Our mission and function for San Bernardino County Patients' Rights Advocates is to protect the legal, civil and human rights of all behavioral health consumers in our county.**

**Our goal is achieved by:**

- Supporting the patients' expressed needs
- Monitoring of our LPS Facilities and Locked Residential Facilities
- Providing Patients' Rights training to behavioral health providers
- Advocating and promoting the treatment of patients with dignity and respect
- Investigate resident Grievances pertaining to patient rights violations

# Objectives

- 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



# History of Lanterman-Petris-Short (LPS) Act

## History:

- Signed into law in 1967
- Applies to mentally disordered, developmentally disabled and mentally impaired due to chronic alcoholism
- Governs involuntary civil commitment for psychiatric treatment
- Established a state Patients' Rights Office/Advocacy System

# Intent of Lanterman-Petris-Short (LPS) Act

## The Intent of LPS is to:

- End inappropriate, indefinite, and involuntary commitment
- Provide prompt evaluation and treatment
- Safeguard individual rights through judicial review
- Encourage the full use of all existing agencies
- Provide individualized treatment, supervision, and placement services through a conservatorship program
- Protect mentally challenged persons from criminal acts
- Guarantee and protect public safety

[Welfare and Institutions Code (WIC) §5001 et seq.]

# Assembly Bill (AB) 2275 Background

## December 2021:

- A committee 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.

# AB2275 Purpose and Intent

**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.”*



## AB2275 Purpose and Intent, cont'd.

### AB2275:

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

## AB2275 - Summary of Provisions

- Specifies 72-hour period of detention begins at the time when a person is first detained
- Removed 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 facility longer than 72 hours.
- Applies AB2275 provisions equally to minors

# LPS Due Process **Hearings**

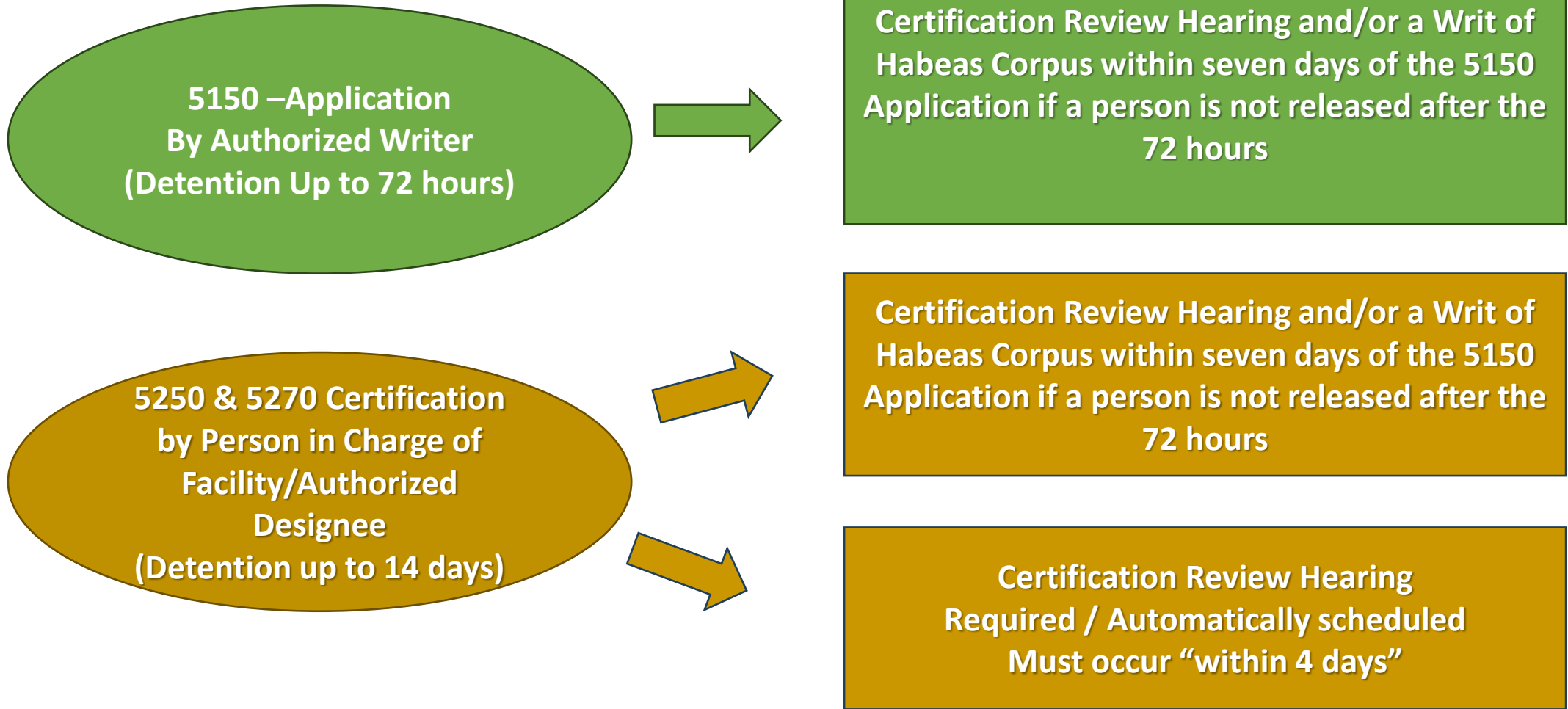
## **Certification Review Hearing**

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

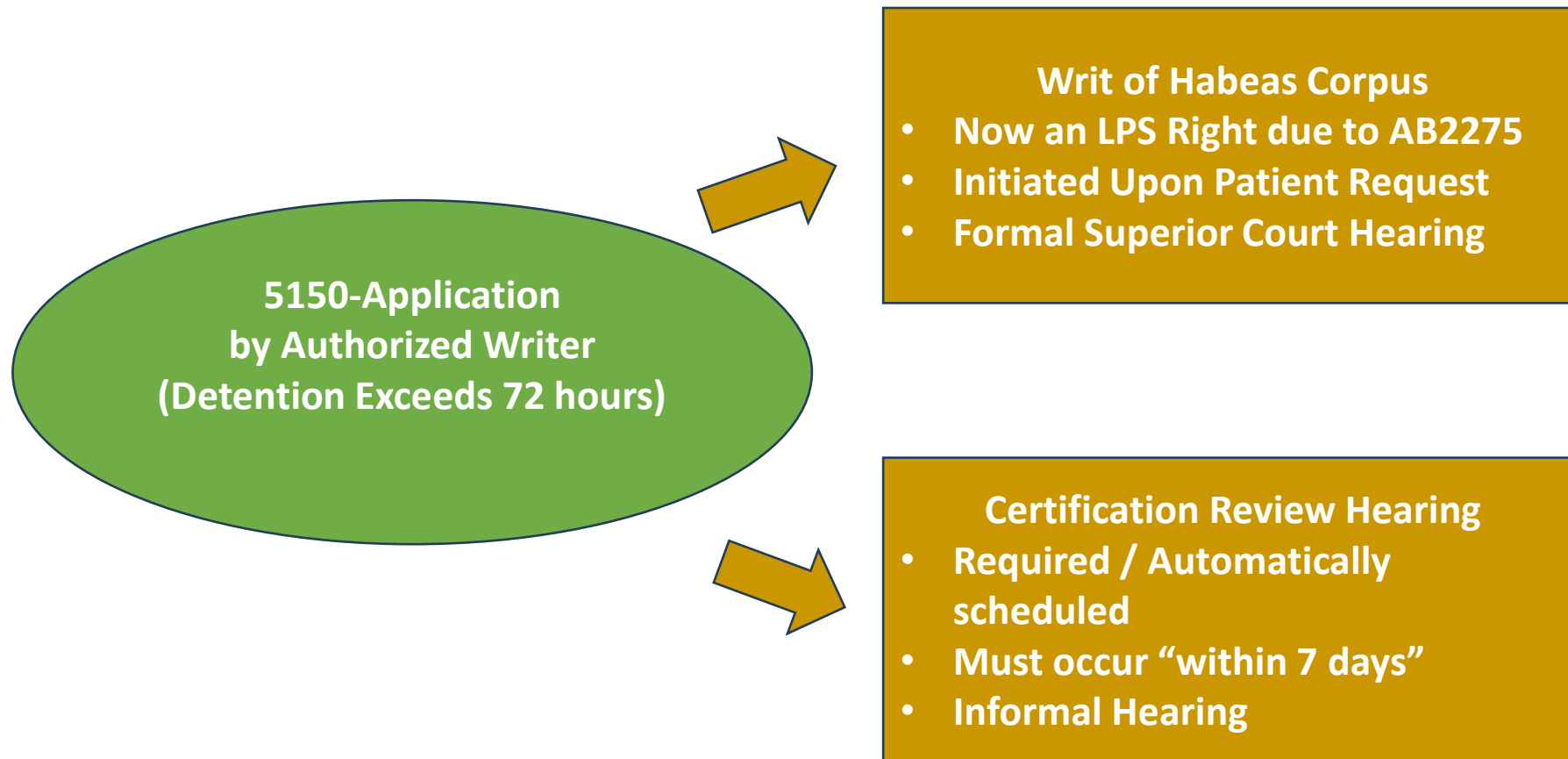
## **Judicial Review by Writ of Habeas Corpus**

- 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
- Opportunity upon every separate detention period (see WIC §§ 5150, 5200, 5250, 5260, 5270, 5300)

# Detention and Due Process Flow in LPS Facilities



# Detention and Due Process Flow in Non-LPS Facilities (AB2275)



**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)

# AB2275 Due Process Guide

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)	Danger to Self (DTS), Danger to Others(DTO), and/or Gravely Disabled (GD)	
Legal Process	Initiated by Peace Officer- or- County Certified 5150 Writer	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.

**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 a 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.

\*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’ Rights).

## AB2275 - Responsibilities of the Non-Designation Facility

- 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 released within 72-hours"
- Comply with WIC § 5256(b) - CRH for person not released within 72-hours
- Comply with CRH process outlined under WIC § 5256.1- 5256.7
- CRH to be provided within 7-days of initial WIC § 5150 detention
- Comply with WIC § 5275- Judicial Review by Writ of Habeas Corpus
  - When a patient **requests release** from detention
  - Notify the Superior Court of the request for release IMMEDIATELY
  - Complete Petition for Writ of Habeas Corpus and submit it to the Superior Court
  - A requests for release may be made to any member of the treatment staff if not released after the 72-hour detention
  - Anyone acting on behalf of the patient may also make the request for release

## AB2275 – Role of County Patients' Rights Office

- 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



# AB2275 Entities Involved

- 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 -Patients' Attorney for Writ Hearings
- County approved Hearing Officers – Presides over Certification Review Hearings
- County designated LPS hospitals

# References

For complete reference to AB2275 open the following link to the California Legislative Information website:

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2275](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2275)