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Proposition 63 proceeds may be used to fund services to individuals eligible for Laura's Law

Mental Illness Policy Org ("MIPO") is a non-profit think-tank founded to provide unbiased information on serious mental illness to the media and policymakers. DJ Jaffe is Executive Director. Mary Ann Bernard is a former Assistant Attorney General in Minnesota whose clients included the state psychiatric hospitals. She does *pro bono* work for Mental Illness Policy Org. in order to improve the quality of care for individuals with serious mental illness. She lives in California as does her seriously mentally ill son.

On behalf of our California constituency, we examined Laura's Law, California Welfare and Institutions Code Section 5345 *et seq.*, The Adult and Older Adult System of Care Act, (hereinafter "Adult System of Care,") California Welfare and Institutions Code Section 5800, *et. seq.*, The Lanterman-Petris-Short Act, W.I.C. Section 5000 *et seq.*, ("LPS"), California Voter Proposition 63, (Mental Health Services Act or "MHSA"), various court decisions, other parts of the Welfare and Institutions Code, regulations issued by the California Department of Mental Health ("DMH"), Assisted Outpatient Treatment ("AOT") in other states, plus actual results from Laura's Law implementation in Nevada and Los Angeles counties in order to determine whether Proposition 63 proceeds may be used to provide care to individuals receiving treatment under Laura's Law.

The results of our analysis are presented in Part I of the attached report. We also examined claims raised by Disability Rights California ("DRC"). Our analysis of their concerns is in Part II. Appendix A shows the results achieved through Laura's Law implementation in Nevada and Los Angeles counties. Appendix B shows the results achieved through Assisted Outpatient Treatment implementation in New York (Kendra's Law), which served as the model for Laura's Law.

Our analysis shows counties may use both Proposition 63 proceeds and Adult Systems of Care services to provide treatment for those who meet the criteria of Laura's Law. Being placed under court order as required by Laura's Law does not suddenly make those eligible for Proposition 63 funding or Adult System of Care services ineligible.

Our conclusion is identical to that of the Treatment Advocacy Center, Nevada County, Los Angeles County, the California Department of Mental Health, and others.

Our research on assisted outpatient treatment in Nevada and Los Angeles counties and in the rest of the country show assisted outpatient treatment improves care for people with serious mental illness, lowers mental health care costs, and keeps clients, law enforcement, and the public safer. **With this in mind, we would encourage California counties to follow the lead of Los Angeles County and Nevada County and implement Laura's Law using MHSA proceeds.**

Please feel free to contact us if you have any questions, comments or need more information. Thank you.

I. Proposition 63 proceeds and Adult System of Care services may both be used to provide treatment for those who meet the eligibility criteria of Laura's Law.

Our analysis shows that Laura's Law (W.I.C. Section 5345 *et seq.*) provides a mechanism so those who are too ill to volunteer for treatment due to the severity of their illness can access California's services including the Adult System of Care.¹ There are two main components to Laura's Law. The first is the judicial process that leads a person being ordered into treatment (W.I.C. Sections 5346-5347) and the second is the provisioning and funding of the actual mental health treatments. (W.I.C. Sections 5348-5349)²

The judicial process is new and involves the county counsel, public defender, judges and court staff. Judicial costs are relatively small and are primarily funded by the court system, and not mental health funds.³ If the subject of a petition is able, they are required to pay the cost of their own counsel further limiting costs.⁴ Therefore this analysis addresses the provisioning of services only.

There is no language in MHSA that prohibits the use of any funds for Laura's Law.

"There is no language in Proposition 63, itself, that...prohibits...the use of any funds for involuntary services." (Disability Rights California ("DRC"), "Memo to Interested Persons", 5/3/2005).

There is no language in Laura's Law or Systems of Care provisions that prohibit the use of MHSA funds for Laura's Law.

Laura's Law, and the Adult System of Care provisions were passed prior to Proposition 63. Therefore these acts do not include any proscription on funding services with Proposition 63 proceeds.

The specific findings and declarations, purpose and intent of voters when they voted for Proposition 63 was to fund services to individuals who meet Laura's Law criteria.

In construing a voter initiative, courts discern voter intent by looking to the enactment as a whole, with particular emphasis on its findings and statement of purposes. *Westly v. Board of Administration* (2003) 105 Cal.App.4th 1095, 130 Cal.Rptr.2d 149 (3d Cir.). "Absent ambiguity, [courts] presume that the voters intend the meaning apparent on the face of an initiative measure." *Leshner Communications, Inc. v City of Walnut Creek* (1990) 52 Cal.3d 531, 543. If the language of the initiative is clear, there is no need to resort to other sources to discern voter intent. *People v. Rizo* (2000) 22 Cal.4th

¹ "Some high-risk patients do not respond well to traditional community-based mental health services. For various reasons, even when treatment is made available, high-risk patients do not avail themselves of these services. In general, these ambulatory care data from the department's client data system do not support the assumption that individuals were entering the involuntary treatment system because they were not able to access outpatient services." (Laura's Law, Findings and Declarations, Section 1(b)(2) *et seq.*)

"Impaired awareness of illness (anosognosia) is a major problem because it is the single largest reason why individuals with schizophrenia and bipolar disorder do not take their medications. It is caused by damage to specific parts of the brain, especially the right hemisphere. It affects approximately 50 percent of individuals with schizophrenia and 40 percent of individuals with bipolar disorder. When taking medications, awareness of illness improves in some patients." Torrey, Fuller; Amador, X and others at <http://mentallillnesspolicy.org/medical/anosognosia-studies.html>.

Not all individuals with serious mental illness and anosognosia refuse treatment, but when anosognosia is present, it often leads to failure to engage in treatment. "Individuals with schizophrenia and poor insight have more problems remaining in a course of treatment regardless of whether it is pharmacologic or a psychosocial treatment they had expressed a desire to participate in. These data, like that of Young *et. al.*, and Kasapis and colleagues, suggest that it is a mental defect that leads to lack of adherence with both pharmacologic and psychosocial treatments." (*Lysaker PH; Bell MD; Milstein R; Bryson G & Beam Goulet J. Insight and Psychiatry, Vol. 57, November 1994.*)

The requirement to go in front of a judge (a/k/a "Black Robe effect") is enough to get many of these individuals to comply with treatment. (See Busch, Alisa B. MD: "Changes in Guideline-Recommended Medication Possession After Implementing Kendra's Law in New York" Psychiatric Services October 2010; Swartz, MS, Swanson, JW, Steadman, HJ, Robbins, PC and Monahan J. "New York State Assisted Outpatient Treatment Program Evaluation" Duke University School of Medicine, Durham, NC, June, 2009.)

² California Welfare and Institutions Code Section 5345 names the program.

³ According to Nevada County, "County counsel cost is minimal. There are likely few new or additional costs, because the Department would need County Counsel involvement and representation related to W.I.C. Section 5350 LPS Court and Dependency Court, if not being dealt with in AOT Court. They are funded by Behavioral Health Realignment, Medi-Cal, and MHSA. Public Defender cost varies, but there would likely be few new or additional costs, because these same individuals would need representation in Criminal Court, W.I.C. Section 5350 LPS Court, Mental Health Court, or Adult Drug Court, if not being dealt with in AOT Court. They are funded by County General Funds. Judge and Court Staff costs vary but there would likely be few new or additional costs, because these same individuals would be in Criminal Court, Section 5350 LPS Court, Mental Health Court, Dependency Court, or Adult Drug Court, if not being dealt with in AOT Court. They are funded by Superior Court State funds." (Michael Heggarty, Nevada County Behavioral Health, Carol Stanchfield, Turning Point Providence Center, Honorable Judge Thomas Anderson, Nevada County Superior Court. "Assisted Outpatient Treatment in California: Funding Strategies" February 7, 2012) Also see California Attorney General Opinion No. 05-1007 (February 23, 2006)

⁴ "The person who is the subject of the petition shall have the right to be represented by counsel at all stages of a proceeding commenced under this section. ... The person shall pay the cost of the legal services if he or she is able." (Section 5346(c)).

This direction from the courts is important, because the “Findings and Declarations” , “Purpose and Intent” plus statutory language of Proposition 63 demonstrate voters intended it to provide services to seriously mentally ill people who meet the eligibility criteria of Laura’s Law.⁵ There is no statutory language or intent that suggests voters wanted Laura’s Law eligible individuals excluded or that otherwise eligible individuals had to be excluded once they are placed under court orders.

Voters wanted Proposition 63 proceeds used to reduce disability⁶. Laura’s Law was intended to⁷ and does reduce disability.⁸ Voters wanted Proposition 63 proceeds used to reduce mental illness costs.⁹ Providing services to individuals enrolled in Laura’s Law reduces mental illness costs.¹⁰ Voters wanted Proposition 63 proceeds used to reduce homelessness.¹¹ Providing services to individuals enrolled in Laura’s Law reduces homelessness.¹² Voters wanted Proposition 63 proceeds used to prevent symptoms from worsening.¹³ Providing services to individuals enrolled in Laura’s Law prevents symptoms from worsening.¹⁴ Voters wanted Proposition 63 used to reduce the use of conservatorships.¹⁵ Providing services to individuals enrolled in Laura’s Law reduces the use of conservatorships.¹⁶ Voters wanted Proposition 63 proceeds used to reduce the “adverse impact” of untreated serious mental illness.¹⁷ Providing services to individuals enrolled in Laura’s Law reduces the adverse impact of untreated serious mental illness.¹⁸ Voters wanted Proposition 63

⁵ Our analysis of legislative intent is supported by an independent one by the Treatment Advocacy Center in Arlington, VA. They found “Mental Health Services Act funds may be used to provide services under W.I.C. Sections 5345-5349.5 (AB 1421) .(T)he legislative intent of the Mental Health Services Act support this analysis.” (Kristina Ragosta, Memo to Interested Parties, Feb. 9, 2012, accessed at http://treatmentadvocacycenter.org/storage/documents/BOS_-_MHSA_MEMORANDUM_-_Feb_2012.pdf).

⁶ “Untreated mental illness is the leading cause of disability and suicide and imposes high costs on state and local government”. (MHSA Section 2(c) Findings).

⁷ “When patients with these disorders were on outpatient commitment for an extended period of 180 days or more, and also received intensive mental health services, they had 72 percent fewer readmissions to the hospital and 28 fewer hospital days than the non-outpatient commitment group (Laura’s Law Section 1(b)(6) Findings and Declarations).

⁸ In Nevada County individuals under court orders who were provided mental health services had higher employment rates, better treatment engagement, higher milestones of recovery. The number of Psychiatric Hospital Days decreased 46.7 percent and the number of emergency interventions decreased 44 percent (Michael Heggarty, Behavioral Health Director, Nevada County. “The Nevada County Experience,” Nov. 15, 2011).

⁹ “Untreated mental illness is the leading cause of disability and suicide and imposes high costs on state and local government”....”State and county governments are forced to pay billions of dollars each year in emergency medical care, long-term nursing home care, unemployment, housing, and law enforcement, including juvenile justice, jail and prison costs”. (MHSA Section 2 (c) findings).

¹⁰ Laura’s Law cut taxpayer costs 40 percent in Los Angeles (Michael D. Antonovich, Los Angeles County Fifth District Supervisor, Los Angeles Daily News, December 12, 2011). In Nevada County, Laura’s Law implementation saved \$1.81-\$2.52 for ever dollar spent and “receiving services under Laura’s Law caused a reduction in *actual* hospital costs of \$213,300 and a reduction in *actual* incarceration costs of \$75,600 (Michael Heggarty, Behavioral Health Director, Nevada County. “The Nevada County Experience,” Nov. 15, 2011).

¹¹ “Today thousands of suffering people remain on our streets because they are afflicted with untreated severe mental illness. We can and should offer these people the care they need to lead more productive lives”. (MHSA Section 2(d) Findings).

¹² In Nevada County after providing services to individuals under court orders, the number of days homeless decreased 61.9 percent (Michael Heggarty, Behavioral Health Director, Nevada County. “The Nevada County Experience,” Nov. 15, 2011). When New York implemented Kendra’s Law program similar to Laura’s Law, 74 percent fewer participants experienced homelessness. (New York State Office of Mental Health “Kendra’s Law: Final Report on the Status of Assisted Outpatient Treatment”, March 2005).

¹³ “Many people left untreated or with insufficient care see their mental illness worsen” (MHSA section 2 (c) findings).

¹⁴ Laura’s Law reduced hospitalization 86 percent in Los Angeles (County of Los Angeles. “Outpatient Treatment Program Outcomes Report” April 1, 2010 – December 31, 2010”). In Nevada County Laura’s Law reduced number of psychiatric hospital days 46.7 percent and delivered “higher Milestones of Recovery scores.” (“The Nevada County Experience,” Nevada County Behavioral Health Director Michael Heggarty, Nov. 15, 2011).

¹⁵ “No parent should have to give up custody of a child and no adult or senior should have to become disabled or homeless to get mental health services as too often happens now”. (MHSA Section 2(b)).

¹⁶ In order for the court to establish a conservatorship, the court must find beyond a reasonable doubt, that the mentally ill person is gravely disabled. (Section 5350). Providing services to individuals under court orders reduces the likelihood of an individual becoming gravely disabled and meeting the criteria of needing conservatorship. Laura’s Law prevents someone from becoming gravely disabled by allowing courts to order treatment when “in view of the person’s treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others, as defined in Section 5150”. (Section 5346(a)(8)).

¹⁷ A purpose and intent of Proposition 63 is “To reduce the long-term adverse impact on individuals, families and state and local budgets resulting from untreated serious mental illness.” (Section 3(b)).

¹⁸ Laura’s Law findings show it is and was intended to be targeted exclusively to those who have experienced “adverse impact” and “untreated serious mental illness.” “58,439 individuals accounted for 106,314 admissions under 72-hour holds” (Laura’s Law Findings and Declarations, Section 1(b)(1)). “When patients with these disorders were on outpatient commitment for an extended period of 180 days or more, and also received intensive mental health services, they had 72 percent fewer readmissions to the hospital and 28 fewer hospital days than the nonoutpatient commitment group.” Section 1(b)(6). The fact that individuals who meet the eligibility criteria of Laura’s Law were untreated was noted in the findings that “Some high-risk patients do not respond well to traditional community-based mental health services. For various reasons, even when treatment is made available, high-risk patients do not avail themselves of these services.”(Section 1(b)(2))”In general, these ambulatory care data from the department’s client data system do not support the assumption that individuals were entering the involuntary treatment system because they were not able to access outpatient services.” (Section 1(b)(3)).

Specific provisions of Laura’s Law require the individual to have **untreated serious mental illness**. “The person is suffering from a mental

funds spent efficiently to accomplish its objectives.¹⁹ Providing services to individuals enrolled in Laura's Law accomplishes the objectives of Proposition 63 efficiently.²⁰ Voters passed Proposition 63 "To define serious mental illness among children, adults and seniors as a condition deserving priority attention."²¹ Providing services to individuals enrolled in Laura's Law provides services to a group with "serious mental illness...deserving priority attention."²²

From the above, it is clear that the purpose and intent of voters was to allow counties to use Proposition 63 proceeds to provide services for those who would meet the criteria of Laura's Law. Further, voters specified that the Mental Health Services Act "shall be broadly construed to accomplish its purposes."²³ No broad construction can suggest it was meant to exclude the seriously mentally ill individuals who meet the criteria of Laura's Law from receiving help.

While the preceding was critical to our concluding that voters intended Proposition 63 proceeds to be used for among others, Laura's Law eligible individuals, we also found support for using MHSA funding for Laura's Law eligible individuals throughout MHSA.

The Findings and Declarations show individuals who are Laura's Law eligible are a subset of those voters intended Proposition 63 proceeds to serve.

When voting for Proposition 63, voters found and declared, "In any year, between 5 percent and 7 percent of adults have a serious mental illness as do a similar percentage of children — between 5 percent and 9 percent. Therefore, more than two million children, adults and seniors in California are affected by a potentially disabling mental illness every year."²⁴ Laura's Law found and declared "58,439 individuals accounted for 106,314 admissions under 72-hour holds."²⁵ The two million identified by voters in passing Proposition 63 includes the 58,439 individuals previously identified in Laura's Law. Laura's Law also found and declared, "The effect of sustained outpatient commitment, according to the Duke study, was particularly strong for people with schizophrenia and other psychotic disorders."²⁶ Individuals with "schizophrenia and other

illness as defined in paragraphs (2) and (3) of subdivision (b) of Section 5600.3." (Section 5346(a)(2)). The person has a history of lack of compliance with treatment (Section 5346(a)(4) and "The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health department, or his or her designee, provided the treatment plan includes all of the services described in Section 5348, and the person continues to fail to engage in treatment. (Section 5346(a)(5)).

To be Laura's Law eligible an individual must have already experienced **adverse impact**. "The person has a history of lack of compliance with treatment for his or her mental illness, in that at least one of the following is true: (A) The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition. (B) The person's mental illness has resulted in one or more acts of serious and violent behavior toward himself or herself or another, or threats, or attempts to cause serious physical harm to himself or herself or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition. (Section 5346(a)(4).

To be eligible for Laura's Law, the person must also be likely to experience **'adverse impact' in the future**. "There has been a clinical determination that the person is unlikely to survive safely in the community without supervision." (Section 5346(a)(3) and "The person's condition is substantially deteriorating." (Section 5346(a)(6) and "In view of the person's treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others" (Section 5346(a)(8).

Laura's Law reduces "adverse impact" resulting from "untreated serious mental illness". Nevada County California implemented Laura's Law by giving individuals under court order access to MHSA funded services already existing in the community and found the number of Psychiatric Hospital Days decreased 46.7 percent; number of Incarceration Days decreased 65.1 percent; number of Homeless Days decreased 61.9 percent; number of Emergency Interventions decreased 44.1 percent. (Michael Heggarty, Nevada County Behavioral Health Director "The Nevada County Experience," Nov. 15, 2011) Los Angeles initiated a Laura's Law program. They found Laura's Law reduced incarceration 78 percent; Laura's Law reduced hospitalization 86 percent; Laura's Law had a long-term effect in that it reduced hospitalization 77 percent even after discharge from Laura's Law (Marvin Southard, Director of County of Los Angeles, Department of Mental Health "Outpatient Treatment Program Outcomes Report April 1, 2010 – December 31, 2010" February 24, 2011).

¹⁹ A purpose and intent of Proposition 63 is "To ensure that all funds are expended in the most cost effective manner and services are provided in accordance with recommended best practices subject to local and state oversight to ensure accountability to taxpayers and to the public." (Section 3(d))

²⁰ In Los Angeles County, implementation of Laura's Law cut taxpayer costs 40 percent. (Michael D. Antonovich, Los Angeles County Fifth District Supervisor, Los Angeles Daily News, December 12, 2011). In Nevada County, the savings from reduced incarceration, hospitalization, were estimated to be \$1.81-\$2.52 for every dollar spent. (Michael Heggarty, Nevada County Behavioral Health Director "The Nevada County Experience," Nov. 15, 2011).

²¹ MHSA Section 3(a).

²² Laura's Law requires that "The person is suffering from a mental illness as defined in paragraphs (2) and (3) of subdivision (b) of Section 5600.3." (Section 5346(a)(2)). Laura's Law specifically identifies suffering from schizophrenia, one of the most serious mental illness, as a population to be assisted. (Section 1(b)(1)(C)). Laura's Law specifically identifies "people with psychotic disorders", which is indicative of the most serious mental illness as a population to be assisted. Section 1(b)(1)(5).

²³ MHSA Section 18.

²⁴ MHSA Findings Section 1(a). We note that the 5%-9% figure for individuals with 'serious mental illness' is concordant with information published by National Alliance on Mental Illness, Mental Health America, and the National Institute of Mental Health all of whom estimate the prevalence of "serious mental illness" within the same range as MHSA.

²⁵ Laura's Law Findings. Section 1(b)(1).

²⁶ Laura's Law Findings Section 1(b)(6).

psychotic disorders” are also a subset of the “two million”.

Since individuals who meet the eligibility criteria of Laura’s Law are a subset of those individuals voters identified in Proposition 63, voters intended Proposition 63 to fund services for them.

Counties may use Proposition 63 funded Systems of Care services to help individuals who are enrolled in Laura’s Law.

Proposition 63 funds services provided by Adult and Older Adult Systems of Care.²⁷ Legislative Language shows individuals who meet the eligibility criteria of Laura’s Law are a subset of those allowed to receive Adult and Older Adult Systems of Care services.

The Adult and Older Adult funding provisions of MHSA state, “Services *shall* be available to adults and seniors with severe illnesses who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3 of the Welfare and Institutions Code”²⁸ Individuals who meet the eligibility criteria of Laura’s Law are a subset of that group, as they meet both the 5600.3(b) and also the 5600.3(c) criteria.

Individuals eligible for Laura’s Law meet the 5600.3(b) criteria because they are “suffering from a mental illness as defined in paragraphs (2) and (3) of subdivision (b) of Section 5600.3.”²⁹

The 5600.3(c) criteria is “Adults or older adults who require *or are at risk* of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention because of a mental disorder with symptoms of psychosis, suicidality, or violence. Individuals in Laura’s Law meet that criteria because they are *at risk*. For them, “[t]here has been a clinical determination that the person is unlikely to survive safely in the community without supervision”³⁰ and “[t]he person’s condition is substantially deteriorating”³¹ and “[i]n view of the person’s treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others.”³²

Because individuals under court orders are a subset of those Proposition 63 funded Adult programs *shall* serve, Proposition 63 proceeds must be used to fund services to individuals under Laura’s Law.

Individuals eligible for Laura’s Law are among those entitled to access Adult System of Care services.

Proposition 63 funds the Adult and Older Adult Systems of Care, which largely describes the “well of services” California offers to individuals in outpatient settings regardless of the individuals treatment status.³³ Adult System of Care provides voluntary and involuntary patients access to that well of services.³⁴ The Systems of Care recognize that counties have obligations to provide the services to eligible individuals.³⁵

Adult and Older Adult Systems of Care are designed to prevent the use of more restrictive settings.³⁶ Making those services available to individuals who meet the eligibility criteria of Laura’s Law prevents the use of more restrictive

²⁷ “Subject to the availability of funds from the Mental Health Services Fund, the State Department of Mental Health shall distribute funds for the provision of services under Sections 5801, 5802 and 5806 to county mental health programs. Services shall be available to adults and seniors with severe illnesses who meet the eligibility criteria in subdivisions (b) and (c) of Section 5600.3 of the Welfare and Institutions Code.” (Section 5813.5).

²⁸ Section 5813.5 (Emphasis added).

²⁹ Section 5346.2.

³⁰ Section 5346(a)(3).

³¹ Section 5346(a)(6).

³² Section 5346(a)(8).

³³ For example, in addition to voluntary clients, Adult System of Care services are often provided to individuals under court orders such as mentally ill court wards and dependents, individuals on probation, parolees, parents from dependency court, individuals in mental health court, conservatees, alternative sentencing eligible recipients, and mentally ill offenders.

³⁴ “The underlying philosophy for these systems of care includes the following: “The client should be fully informed and volunteer for all treatment provided, *unless danger to self or others or grave disability requires temporary involuntary treatment.*” (emphasis added). (Section 5801(b)(5)).

³⁵ State and county government agencies each have responsibilities and fiscal liabilities for seriously mentally disordered adults and seniors. (Section 5801(b)(11)).

³⁶ Adult System of Care legislation found “For the majority of seriously mentally disordered adults and older adults, treatment is best provided in the client’s natural setting in the community. Treatment case management, and community support services should be *designed to prevent inappropriate removal from the natural environment to more restrictive and costly placements.* (Section 5801(b)(9). emphasis added).

settings.³⁷ Adult System of Care is intended to get people into treatment.³⁸ Making those services available to individuals who meet the eligibility criteria of Laura's Law helps them get into treatment.³⁹

Laura's Law intentionally uses language virtually identical to Adult System of Care when describing the case management services individuals are entitled to.⁴⁰ The only difference is that to compensate for more difficult symptomology and history Laura's Law goes on to specify higher staff to client ratios.⁴¹ Except for the staffing ratio of these case management services, "The remaining services that a county is required to set up in order to implement [Laura's Law] are virtually identical to the AB 34/2034 [Adult and Older Adult Systems of Care] array of services". (Daniel Brzovic, Associate Managing Attorney, Protection and Advocacy, Memo to Interested Persons, May 3, 2005).

The use of identical language in Laura's Law and Adult System of Care suggests that lawmakers wanted Laura's Law eligible individuals given access to the services already available in Adult Systems of Care. The Adult System of Care "well of services" are the exact services needed by individuals who meet the eligibility criteria of Laura's Law. Adult System of Care services are intended to serve individuals who are not receiving treatment;⁴² get people into treatment;⁴³ reduce criminalization and improve health;⁴⁴ provide outreach services to people under involuntary treatment;⁴⁵ help those

³⁷ Laura's Law requires a finding that participation in AOT is the least restrictive option. "Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure the person's recovery and stability. (Section 5346(a)(7). Proposition 63 funds are intended to be used to reduce the use of 'more restrictive' placements." Laura's Law reduces the use of 'more restrictive' placements.

³⁸ It was the intent of Adult System of Care to "Provide funds for counties to establish outreach programs and to provide mental health services and related medications, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and other nonmedical programs necessary to stabilize homeless mentally ill persons or mentally ill persons at risk of being homeless, get them off the street, and into treatment and recovery, (Section 5802(d)(4)) County plans require that "The local director of mental health shall consult with the sheriff, the police chief, the probation officer, the mental health board, contract agencies, and family, client, ethnic, and citizen constituency groups as determined by the director." (Section 5806(a)(1)).

³⁹ "Some high-risk patients do not respond well to traditional community-based mental health services. For various reasons, even when treatment is made available, high-risk patients do not avail themselves of these services". (Section 1(b)(2)) "In general, these ambulatory care data from the department's client data system do not support the assumption that individuals were entering the involuntary treatment system because they were not able to access outpatient services". (Section 1(b)(3)) Laura's Law gets people into treatment. (See Appendix A for results from Nevada and Los Angeles counties).

⁴⁰ Compare Section 5806 (b) and Section 5348 (a)(3). The language is identical "client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and follow through of services, and necessary advocacy to ensure that the client receives those services that are agreed to in the personal services plan. A client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, consult with the family and other significant persons as appropriate."

⁴¹ Section 5848(a)(1).

⁴² "Recipients of outreach services may include families, the public, primary care physicians, and others who are likely to come into contact with individuals who may be suffering from an *untreated* severe mental illness who would be likely to become homeless if the illness continued to be *untreated* for a substantial period of time. (Section 5806(a)(2)).

⁴³ It was the intent of Adult System of Care to "Provide funds for counties to establish outreach programs and to provide mental health services and related medications, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and other nonmedical programs necessary to stabilize homeless mentally ill persons or mentally ill persons at risk of being homeless, get them off the street, and *into treatment* and recovery. (Section 5802(d)(4)).

⁴⁴ There are numerous references to Systems of Care reducing criminalization:

It was the intent of Adult System of Care "To promote system of care accountability for performance outcomes which enable adults with severe mental illness to reduce symptoms which impair their ability to live independently, work, maintain community supports, care for their children, stay in good health, not abuse drugs or alcohol, and *not commit crimes*.(Section 5802(d)(2)). County plans require that "The local director of mental health *shall consult with the sheriff, the police chief, the probation officer,* the mental health board, contract agencies, and family, client, ethnic, and citizen constituency groups as determined by the director." (Section 5806(a)(1)).

"(T)he department shall establish programs that offer individual counties sufficient funds to comprehensively serve severely mentally ill adults who are homeless, recently released from a county jail or the state prison, *or others who are untreated, unstable, and at significant risk of incarceration or homelessness unless treatment is provided to them* and who are severely mentally ill adults. (Section 5814(b)).

The department is required to "evaluate, at a minimum, the effectiveness of the strategies in providing successful outreach and reducing homelessness, *involvement with local law enforcement,* and other measures identified by the department." (Section 5814(b)) and "*The number of persons with contacts with local law enforcement and the extent to which local and state incarceration has been reduced or avoided*" (Section 5814(b)(4)) and "The number of persons contacted in outreach efforts who appear to be severely mentally ill, as described in Section 5600.3, *who have refused treatment after completion of all applicable outreach measures*". (Section 5814(b)(6)) and "The amount of hospitalization that has been reduced or avoided". (Section 5814(b)(7)).

Counties become entitled to funds if "if a county or eligible city demonstrates that it can provide comprehensive services, as set forth in this part, to a substantial number of adults who are severely mentally ill, as defined in Section 5600.3, and *are homeless or recently released from the county jail or who are untreated, unstable, and at significant risk of incarceration or homelessness unless treatment is provided.*" Section 5814.5(a)(2).

Counties are eligible for funding " that have, or can develop, integrated forensic programs with similar characteristics for parolees and those recently released from county jail who meet the target population requirements of Section 5600.3 and are at risk of incarceration unless the services are provided. Section 5814.5(b)(1).

⁴⁵ Outreach to adults may include adults voluntarily *or involuntarily hospitalized* as a result of a severe mental illness. (Section 5806(a)(2)).

who receive treatment from various government agencies;⁴⁶ and provision case management services.⁴⁷

These are the identical services required by individuals who meet the eligibility criteria of Laura's Law.

Counties may use Prevention and Early Intervention (PEI) proceeds to provide treatment to individuals in Laura's Law

Our analysis found that other than perhaps the Adult System of Care services provisions, the Prevention and Early Intervention (PEI) sections of Proposition 63 are most closely aligned with and properly used for Laura's Law.⁴⁸ PEI funding is intended to go to programs that "emphasize strategies to reduce the...negative outcomes that may result from untreated mental illness".⁴⁹ That is a good description of Laura's Law.

Individuals who need Laura's Law are a subset of those PEI funds are intended to help. "The [PEI] program *shall* include the following components ...Access and linkage to medically necessary care provided by county mental health programs ... for adults and seniors with severe mental illness, as defined in Section 5600.3.⁵⁰ Laura's Law provides "access and linkage to medically necessary care provided by county mental health programs" for individuals who are a subset of that group, specifically, "suffering from a mental illness as defined in paragraphs (2) and (3) of subdivision (b) of Section 5600.3"⁵¹

Further, PEI funding is intended to "prevent mental illnesses from becoming severe and disabling".⁵² Laura's Law prevents mental illness from becoming severe and disabling.⁵³ PEI funding is intended to help the underserved.⁵⁴ Individuals eligible for Laura's Law are an underserved population.⁵⁵ PEI funds are intended to fund outreach.⁵⁶ Laura's Law provides outreach.⁵⁷ PEI Programs are intended to reduce stigma.⁵⁸ Providing services to people under court orders reduces stigma.⁵⁹ PEI funding is intended to reduce suicide.⁶⁰ Laura's Law reduces suicide.⁶¹ PEI funding is intended to reduce

⁴⁶ "A comprehensive and coordinated system of care includes community-based treatment, outreach services and other early intervention strategies, case management, and interagency system components required by adults and older adults with severe and persistent mental illness." (Section 5802(a)(1)).

"Mentally ill adults and older adults receive service from many different state and county agencies, particularly criminal justice, employment, housing, public welfare, health, and mental health. In a system of care these agencies collaborate in order to deliver integrated and cost-effective programs." (Section 5802(a)(2)).

⁴⁷ Under Adult System of Care "A client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and follow through of services, and necessary advocacy to ensure that the client receives those services that are agreed to in the personal services plan. A client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, consult with the family and other significant persons as appropriate." (Section 5806(b))

⁴⁸ Currently, PEI money is being used for purposes arguably contrary to the Mental Health Services Act, which designated PEI funds to "prevent mental illness from becoming severe and disabling" (5840(a)). This diversion is partially due to regulatory failures that could and should be fixed. DJ Jaffe "Myriad problems with Mental Health Services Act funding", Capitol Weekly, January 30, 2012. Legislative Fix Needed To Stop Waste of Millions Earmarked For Severe Mental Illness," <http://www.californiaprogressreport.com/site/print/9704> (December 29, 2011), D.J. Jaffe, Mary Ann Bernard, "In California's system of care for the mentally ill, leadership is lacking" Capitol Weekly, August 25, 2011.

⁴⁹ Section 5840.

⁵⁰ Section 5840(b)(2).

⁵¹ Section 5346.2.

⁵² Section 5840(a).

⁵³ Providing services to individuals who are under court orders "prevent(s) mental illness from becoming severe and disabling". "The effect of sustained outpatient commitment, according to the Duke study, was particularly strong for people with schizophrenia and other psychotic disorders. When patients with these disorders were on outpatient commitment for an extended period of 180 days or more, and also received intensive mental health services, they had 72 percent fewer readmissions to the hospital and 28 fewer hospital days than the nonoutpatient commitment group". (Laura's Law Section 1(b)(6) findings). Statistics on reduced hospitalization, reduced incarceration, reduced homelessness, and higher "Milestones of Recovery Scores" achieved by implementing Laura's Law in Nevada and Los Angeles counties are in Appendix A.

⁵⁴ Prevention and Early Intervention programs "shall emphasize improving timely access to services for underserved populations." (Section 5840(a)).

⁵⁵ Individuals eligible for Laura's Law are underserved. "Thirty-seven and two-tenths percent, or 19,118, had no record of outpatient service use in the previous 12 months." (Laura's Law Section 1(b)(1)(D)).

⁵⁶ Section 5840(b)(1).

⁵⁷ The Proposition 63 Protection and Early Interventions program shall include the following components: *Outreach to families*, employers, primary care health care providers, and others to recognize the early signs of potentially severe and disabling mental illnesses. (Section 5840 (b)(1)). Laura's Law provides that outreach. County plans should include "Plans for services, including *outreach to families whose severely mentally ill adult is living with them*...Recipients of outreach services may include families, the public, primary care physicians, and others who are likely to come into contact with individuals who may be suffering from an *untreated severe mental illness* who would be likely to become homeless if the illness continued to be untreated for a substantial period of time." (Section 5348(a)(2)(B)).

⁵⁸ Prevention and Early Intervention "program(s) shall include the following components: Reduction in stigma associated with either being diagnosed with a mental illness or seeking mental health services. Reduction in discrimination against people with mental illness. (Section 5840(b)(3 and 4)).

⁵⁹ AOT reduces stigma. "Researchers also noted that people who underwent mandatory treatment reported higher social functioning and slightly less

incarcerations.⁶² Laura's Law reduces incarceration.⁶³ PEI funding is intended to reduce school failure or dropout.⁶⁴ Laura's Law may reduce school failure or dropout.⁶⁵ PEI funding is intended to reduce unemployment.⁶⁶ Laura's Law reduces unemployment.⁶⁷ PEI funding is intended to reduce prolonged suffering.⁶⁸ Laura's Law reduces prolonged suffering.⁶⁹ PEI funding is intended to reduce homelessness.⁷⁰ Laura's Law reduces homelessness.⁷¹ PEI funding is intended to prevent removal of children from their homes.⁷² Laura's Law likely prevents removal of children from their homes.⁷³

MHSA PEI programs "shall include mental health services similar to those provided under other programs effective in preventing mental illnesses from becoming severe, and shall also include components similar to programs that have been successful in reducing the duration of untreated severe mental illnesses and assisting people in quickly regaining productive lives".⁷⁴ Laura's Law meets this criteria of being "effective in preventing mental illnesses from becoming severe" and is "successful in reducing the duration of untreated severe mental illnesses and assisting people in quickly regaining productive lives".⁷⁵

PEI funds may be and should be used for programs to assist those who are subject to a Laura's Law court order.

Counties may use Innovative Programs proceeds to fund services to Laura's Law eligible individuals.

Proposition 63 allocates counties funds for innovative programs.⁷⁶ The innovative programs shall have the following purposes: (1) To increase access to underserved groups. (2) To increase the quality of services, including better outcomes. (3) To promote interagency collaboration. (4) To increase access to services.⁷⁷ Laura's Law meets the

stigma" (February 2010 Columbia University. Phelan, Sinkewicz, Castille and Link. Effectiveness and Outcomes of Assisted Outpatient Treatment in New York State Psychiatric Services, Vol. 61. No 2).

Reducing violence by individuals with mental illness leads to a reduction in stigma. (Torrey, Stigma and Violence: Isn't it time to connect the dots? Schizophrenia Bulletin. June 7, 2011) "Why is stigma so strong despite better public understanding of mental illness? The answer appears to be fear of violence: people with mental illness, especially those with psychosis, are perceived to be more violent than in the past". (*Mental Health: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, Center for Mental Health Services, National Institute of Mental Health, 1999).

Laura's Law is designed to reduce violence. "In view of the person's treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others, as defined in Section 5150." (Section 5346(a)(8)) AOT reduces violence (Appendix A).

⁶⁰ Section 5840(d)(1).

⁶¹ As no study has been done on Laura's Law impact on suicide rates, research on suicide is from New York's Kendra's Law which has been more extensively studied and which Laura's Law was modeled on. Assisted Outpatient Treatment reduces suicide attempts 55 percent (N.Y. State Office of Mental Health "Kendra's Law: Final Report on the Status of Assisted Outpatient Treatment. March 2005).

⁶² Section 5840(d)(2).

⁶³ In Nevada County, Laura's Law reduced the Number of Incarceration Days decreased 65.1 percent from 1824 days vs. 637 days post-treatment. In Los Angeles County Laura's Law reduced incarceration 78 percent from 388 days during the six months prior to enrollment in AOT to 85 days during the six months after. (Los Angeles County data: Marvin Southard, Director of County of Los Angeles, Department of Mental Health "Outpatient Treatment Program Outcomes Report April 1, 2010 – December 31, 2010" sent to Cliff Allenby, Acting Director California Department of Mental Health February 24, 2011. Nevada County data: Behavioral Health Director Michael Heggarty "The Nevada County Experience," Nov. 15, 2011. These also represent the source data for reducing the following negative consequences).

⁶⁴ Section 5840(d)(3).

⁶⁵ We are unaware of specific studies on this.

⁶⁶ Section 5840(d)(4).

⁶⁷ Nevada County found 'higher employment rates' (They did not quantify).

⁶⁸ Section 5840(d)(5).

⁶⁹ In Los Angeles Laura's Law reduced hospitalization from 345 days to 49 (86% reduction) percent comparing six months prior to AOT and during AOT. Only one person was hospitalized. Researchers then looked at the question of, "Does the beneficial effect of Laura's Law end after enrollment in Laura's Law ends?" They found Laura's Law reduced hospitalization 77 percent even after discharge from Laura's Law. Since discharge from Laura's Law participants had 81 days of hospitalization, or a reduction of 77 percent in days of hospitalization. In Nevada County, under Laura's Law, the number of Psychiatric Hospital Days decreased 46.7 percent from 1404 days vs. 748 days post-treatment.

⁷⁰ Section 5840(d)(6).

⁷¹ In Nevada County, Number of Homeless Days decreased 61.9 percent from 4224 days vs. 1898 days post-treatment.

⁷² Section 5840(d)(7).

⁷³ By providing care for parents before they become gravely disabled or dangerous it avoids inpatient commitment and incarceration both of which could lead to removal of children from the home.

⁷⁴ Section 5840(c).

⁷⁵ See Appendix A.

⁷⁶ "Five percent of the total funding for each county mental health program for Part 3 (commencing with Section 5800), Part 3.6 (commencing with Section 5840), and Part 4 (commencing with Section 5850) of this division, shall be utilized for innovative programs pursuant to an approved plan required by Section 5830 and such funds may be distributed by the department only after such programs have been approved by the Mental Health Services Oversight Committee." (Section 5892(a)(6)).

⁷⁷ Section 5830(a).

qualifications of an innovative program eligible for Proposition 63 funding because it increases access to underserved groups,⁷⁸ increased the quality of services including better outcomes,⁷⁹ promotes interagency collaboration,⁸⁰ and increases access to services.⁸¹

Third parties have already declared Laura's Law to be an Innovative Program. The National Association of Counties found, "The Nevada County Assisted Outpatient Treatment (AOT) Program offered a unique solution that bridged the gap for people that are dangerous and in need of treatment, but do not meet criteria for emergency involuntary hospitalization."⁸² The Nevada County implementation was also recognized as a "unique solution" by the California State Association of Counties.⁸³

MHSA funding allocated to Capital Facilities may be used for Laura's Law related purposes

MHSA allocates money for Capital Facilities that includes specific provisions allowing the use of the funds for individuals like Laura's Law eligible individuals. Among the Capital Facilities provisions are that "All plans for Proposed *facilities with restrictive settings* shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting."⁸⁴ In other words, there was a specific recognition that in some cases capital expenditures may be for those who are under court ordered treatment.

Using Proposition 63 funds to provide Adult System of Care services to individuals who are Laura's Law eligible is required to prevent prohibited and fiscally irresponsible 'duplication of services'.

The Adult System of Care largely describes the "well of services" California offers to clients in outpatient settings. In addition to serving voluntary clients, these services are provided to court-ordered recipients including court wards and dependents, individuals on probation, parolees, parents from dependency court, individuals in mental health court, conservatees, mentally ill offenders and services like Centralized Assessment Teams, which "provide evaluations for involuntary hospitalizations."⁸⁵ Using both Proposition 63 and Adult System of Care services for these individuals avoids the need to set up 'duplicate' systems: one system that serves involuntary outpatients and another system that serves all

⁷⁸ In enacting Laura's Law the legislature found "Thirty-seven and two-tenths percent, or 19,118, had no record of outpatient service use in the previous 12 months." (Laura's Law Findings Section 1(b)(1)(D)).

⁷⁹ Nevada County gave individuals under court order access to services and found number of Psychiatric Hospital Days decreased 46.7 percent; number of Incarceration Days decreased 65.1 percent, number of Homeless Days decreased 61.9 percent; number of Emergency Interventions decreased 44.1 percent, and higher Milestones of Recovery scores. (Michael Heggarty, Nevada County Behavioral Health Director "The Nevada County Experience," Nov. 15, 2011) Los Angeles provided services to people under court orders and found it reduced incarceration 78 percent; reduced hospitalization 86 percent; and reduced hospitalization 77 percent even after discharge from Laura's Law (County of Los Angeles. "Outpatient Treatment Program Outcomes Report" April 1, 2010 – December 31, 2010").

⁸⁰ "Our experience in implementing Laura's Law turned out to be easier than anticipated. With the cooperation and support of our County's Board of Supervisors, Behavioral Health Department, Deputy Counsel, Public Defender, and the Court, we have created a proactive team and a seamless and efficient process" (Thomas M. Anderson, Presiding Judge of the Superior Court California, County of Nevada, Letter to Bill Campbell, Chair of Orange County Board of Supervisors, September 28, 1911.)⁸⁰ New York State's Kendra's Law which served as the model for California's Laura's Law also demonstrated this "interagency collaboration". "As AOT processes have matured, professionals from the two systems have improved their working relationships, resulting in greater efficiencies, and ultimately, the conservation of judicial, clinical, and administrative resources. There is now an organized process to prioritize and monitor individuals with the greatest need; AOT ensures greater access to services for individuals whom providers have previously been reluctant to serve; Increased collaboration between inpatient and community-based mental health providers". (New York State Office of Mental Health "Kendra's Law: Final Report on the Status of Assisted Outpatient Treatment" March 2005).

⁸¹ As neither Nevada nor Los Angeles County reported on this narrowly, research from New York State's 9.60 (Kendra's Law) is quoted. Laura's Law was modeled on Kendra's Law and it is the most researched AOT law and the most recently researched. "In tandem with New York's AOT program, enhanced services increased among involuntary recipients, whereas no corresponding increase was initially seen for voluntary recipients. In the long run, however, overall service capacity was increased, and the focus on enhanced services for AOT participants appears to have led to greater access to enhanced services for both voluntary and involuntary recipients." (Robbing Peter to Pay Paul: Did New York State's Outpatient Commitment Program Crowd Out Voluntary Service Recipients? Jeffrey Swanson, et al. Psychiatric Services, October 2010.) "After 12 months or more on AOT, service engagement increased such that AOT recipients were judged to be more engaged than voluntary patients. This suggests that after 12 months or more, when combined with intensive services, AOT increases service engagement compared to voluntary treatment alone." (D Swartz, MS, Swanson, JW, Steadman, HJ, Robbins, PC and Monahan J. New York State Assisted Outpatient Treatment Program Evaluation. Duke University School of Medicine, Durham, NC, June, 2009) "AOT has been instrumental in increasing accountability at all system levels regarding delivery of services to high need individuals. Community awareness of AOT has resulted in increased outreach to individuals who had previously presented engagement challenges to mental health service providers". (New York State Office of Mental Health "Kendra's Law: Final Report on the Status of Assisted Outpatient Treatment" March 2005).

⁸² National Association of Counties, Achievement Award, 2011. Accessed at <http://www.naco.org/programs/recognition/Pages/2011AchievementAwards.aspx>, February 20, 2012.

⁸³ California State Association of Counties, Challenge Awards, 2010. Accessed at <http://www.csac.counties.org/default.asp?id=2978>, February 20, 2012.

⁸⁴ Section 5847(b)(5).

⁸⁵ See County of Orange, Health Care Agency Behavioral Health Services, *Programs Funded by the Mental Health Services Act* (April 28, 2010) and others.

others.

Laura's Law is incorporated within Lanterman-Petris-Short Act (Section 5000 *et. seq.*) which requires the use of these existing services when possible. "The provisions of this part shall be construed to promote the legislative intent as follows ... (t)o encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives and to *prevent duplication of services and unnecessary expenditures.*"⁸⁶

In order to ensure the use of existing services, Laura's Law uses language virtually identical to Adult System of Care when describing case management services⁸⁷ and non-case management services⁸⁸ individuals are entitled to. The Adult System of Care well of services already includes services needed by Laura's Law participants such as outreach to involuntary patients,⁸⁹ treatment for those "who have refused treatment,"⁹⁰ services that facilitate interagency cooperation,⁹¹ prevent the use of more restrictive settings,⁹² reduce criminalization,⁹³ help the "untreated, unstable",⁹⁴ prevent homelessness,⁹⁵ and prevent hospitalizations.⁹⁶

Only by continuing to use these Adult System of Care services to provide services to those who meet Laura's Law criteria can taxpayers avoid the creation of "duplication of services and unnecessary expenditures".

Put another way, it was never the intent of voters to *increase* expenditures by preventing Proposition 63 funded Adult System of Care services from reaching Laura's Law eligible individuals.

Nevada County and Los Angeles both use Proposition 63 funds to deliver services provided for in Adult System of Care to individuals enrolled in Laura's Law.

"Nevada County began utilizing Laura's Law in 2008. Laura's Law has provided life-saving services to individuals suffering from mental illness and kept many from the trauma and brain damage associated with involuntary commitments to mental health facilities under W & I Code, Section 5150, and the jail commits and tragedies associated with untreated mental health crisis. (Thomas M. Anderson, Presiding Judge of the Superior Court California, County of Nevada, Letter to Bill Campbell, Chair of Orange County Board of Supervisors, September 28, 1911).⁹⁷

Los Angeles County implemented their program in April 2010.⁹⁸

"The Department of Mental Health (DMH) currently has implemented the Assisted Outpatient Treatment (AOT) Program which is funded with Mental Health Services Act funds (Proposition 63)."⁹⁹

Since Nevada County and Los Angeles County use Proposition 63 funded Adult System of Care services for individuals enrolled in assisted outpatient treatment it is likely other counties may too.

⁸⁶ 5001(f).

⁸⁷ Compare Sections 5806(b) and Section 5348(a)(3). They use identical language. The "client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all appropriate community services, monitoring of the quality and follow through of services, and necessary advocacy to ensure that the client receives those services that are agreed to in the personal services plan. A client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, consult with the family and other significant persons as appropriate." The language does in Laura's Law goes on to require higher staff to patient ratios to reflect the higher needs of Laura's Law enrollees.

⁸⁸ "The remaining services that a county is required to set up in order to implement [Laura's Law] are virtually identical to the [Adult and Older Adult System of Care] array of services" (Daniel Brzovic, Associate Managing Attorney, DRC, Memo to Interested Persons, May 3, 2005).

⁸⁹ Section 5806(a)(2).

⁹⁰ Section 5814(b)(6).

⁹¹ Sections 5802(a)(1) and 5802(a)(2).

⁹² Section 5801(b)(9).

⁹³ Section 5802(d)(2).

⁹⁴ Sections 5814(b) and 5806(a)(1).

⁹⁵ Sections 5806(a)(2) and 5802(d)(4).

⁹⁶ Section 5814(b)(7).

⁹⁷ Available at <http://lauras-law.org/states/california/judgeandersonletter.pdf>.

⁹⁸ Marvin Southard, Director of County of Los Angeles, Department of Mental Health "Outpatient Treatment Program Outcomes Report April 1, 2010 – December 31, 2010", February 24, 2011. "

⁹⁹ Fujjoka, William, CEO, County of Los Angeles, Memo to Supervisors, March 20, 2012.

The California Department of Mental Health approved the use of Proposition 63 funds to provide services to individuals in Laura's Law.

The California Department of Mental Health examined all the relevant legislation, solicited feedback from stakeholders, and issued regulations pertaining to MHSA that state "No person shall be denied access based solely on his/her voluntary/involuntary legal status".¹⁰⁰ DMH's interpretation of its own regulation is, of course, entitled to deference. This regulation, was further confirmed when they approved the Laura's Law program in Nevada County:

"It is my pleasure to inform you and all the members of the Nevada County Mental Health stakeholders group that your CSS plan has been approved. The Department would like to assure you that those individuals eligible for Mental Health Services Act (MHSA) programs, such as the approved Assertive Community Treatment Team may have voluntary or involuntary legal status. (Stephen Mayberg, Director, California Department of Mental Health to Michael Heggarty, Director, Nevada County Behavioral Health Services, May 22, 2007).

In explaining the rationale for allowing counties to use MHSA funding for Laura's Law eligible individuals, Steve Mayberg, then Director of the State Department of Mental Health stated,

"A county can use MHSA funding for services for people who are in a mental health court or in a 1421 program...There is a continuum of services, including both voluntary and involuntary and we must recognize this is necessary...Therefore, MHSA will fund Full Service Partnership programs that are primarily voluntary in nature. But someone who is a conservatee, an AB 1421[Laura's Law] program member, a referral from juvenile or criminal justice, etc. should not be denied access to those services."¹⁰¹

The fact that the California Department of Mental Health determined that Proposition 63 funding can be used for individuals under court orders, and approved their use in Nevada and Los Angeles counties suggests other counties may also use Proposition 63 proceeds for individuals under court orders.

The authors of Proposition 63 stated that MHSA proceeds may be used for Laura's Law eligible individuals.

The primary authors of Proposition 63 were Senator Darrell Steinberg (Sponsor) and Rusty Selix. Both have written that Proposition 63 funds were intended to serve people under Laura's Law.

As reported in the San Francisco Chronicle:

"The author of Proposition 63, Sen. Darrell Steinberg, D-Sacramento, said there is nothing in the measure passed by California voters in November 2004 that prohibits its use on Laura's Law cases. I'm very clear that it can be," said Steinberg, who was just tapped by Senate Democrats to succeed Don Perata as president pro tem. "The services are available to everyone who meets the definition of serious mental illness."¹⁰²

As stated by Rusty Selix, in 2005, in his capacity as co-author of Proposition 63:

"Once someone is enrolled in a [Adult System of Care] program there is funding for their services and this could also include court assisted outpatient orders- if the individual is in a county which has elected to implement this program and such funding is part of that county's plan for implementation and meets all of the requirements for [Laura's Law]."¹⁰³

Since the authors of Proposition 63--close to the time it was being considered and implemented--stated that it was their intent to use Proposition 63 funds to provide services to Laura's Law eligible individuals, they wrote Proposition 63 so it can provide services to individuals enrolled in Laura's Law.

¹⁰⁰ CCR Section 3400(b). The regulations also state, "Programs and/or services provided with MHSA funds shall...(b)e designed for voluntary participation" As is shown in Part II of this paper, the programs and services that provide services to individuals under Laura's Law are "designed for voluntary participation", i.e., they are the same programs that serve non-AOT clients, have a majority of non-AOT clients, and there are no locks, guards, medication over objection, etc. They are indistinguishable from the services and programs that serve non-AOT clients. For more detail, see Part II.

¹⁰¹ Department of Mental Health General Stakeholders Meeting Combined Meeting Summary June 1, 5, 2005.

¹⁰² "Care, not Excuses", San Francisco Chronicle, February 21, 2008. Page B6. Available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/20/ED69V4QJR.DTL>.

¹⁰³ Rusty Selix, Executive Director, California Council of Community Mental Health Agencies and co-author of Proposition 63, "From Fail-First to Help-First: Proposition 63 Transforms California's Mental Health System", February 3, 2005.

Providing Proposition 63 funded services to individuals who are Laura's Law eligible is what enables them receive services in the "least restrictive" and "most integrated" setting.

In general, the combination of Proposition 63 funding, the new Laura's Law court procedures, and the use of existing services is what enables Laura's Law eligible individuals to stay in the 'least restrictive' and 'most integrated' setting. Making individuals who are Laura's Law eligible, ineligible for MHSA funded services forces them into more restrictive less integrated settings such as inpatient commitment and incarceration.¹⁰⁴

Proposition 63 is intended to keep individuals in less restrictive and more integrated settings.¹⁰⁵ Adult System of Care is intended to keep individuals in "the least restrictive" and "most integrated" setting.¹⁰⁶ Laura's Law is intended to keep individuals in "the least restrictive" and "most integrated" setting.¹⁰⁷ Outpatient treatment services are designed to help individuals "Live in the most independent, least restrictive housing feasible in the local community."¹⁰⁸ All three are required to work together to accomplish the objective.

Experience with Laura's Law implementation shows individuals who meet its eligibility criteria actually can be provided services in the "least restrictive" and "most integrated setting." In Nevada County, the services provided to individuals under court orders are provided by the same providers who serve clients not under court orders. Individuals are co-mingled with non-AOT clients. Individuals have choices during the entire time they are enrolled in AOT including to take or not to take medications that may be prescribed, to participate in groups or not, to see a therapist or CADAC counselor or not, and to discuss what they are willing to do as part of the process. There are no security guards in the facility, no use of restraints, no seclusion, no locks and no forced medication. They are not handcuffed in the courtroom and taken to jail for a "violation of the treatment plan" as is the process in Mental Health Court when expectations are not met. There is no violation of the treatment plan in AOT due to the nature of "no-fail services". AOT services are not dependent on the progress or adherence with treatment expectations, but rather by individual needs and pace set by the individual in partnership with the team. Whether individuals show up or not is their choice. They can get up and walk out at any time. The client is not in any way compelled by providers to do anything. Most of the individuals in the programs are voluntary patients.¹⁰⁹

Commingling individuals under court orders with those not under court orders has proven successful at "prevent(ing) inappropriate removal from the natural environment to more restrictive and costly placements". Nevada County gave individuals under court order access to services and found number of Psychiatric Hospital Days decreased 46.7 percent; number of Incarceration Days decreased 65.1 percent.¹¹⁰ As Thomas M. Anderson, Presiding Judge of the Nevada County Superior Court wrote:¹¹¹

"Nevada County began utilizing Laura's Law in 2008. Laura's Law has provided life-saving services to individuals suffering from mental illness and *kept many from the trauma and brain damage associated with involuntary commitments* to mental health facilities under W & I Code, Section 5150, *and the jail commits and tragedies associated with untreated mental health crisis.*"

Los Angeles provided services to people under court orders and found it reduced incarceration 78 percent; reduced

¹⁰⁴ Many people left untreated or with insufficient care see their mental illness worsen.... Adults lose their ability to work and be independent; many become homeless and are subject to frequent hospitalizations or jail. (MHSA Findings 2(c)).

¹⁰⁵ From Mental Health Services Act Findings "Adults lose their ability to work and be independent; many become homeless and are subject to frequent hospitalizations or jail." (Section 2(c) Findings and Declarations). "Early diagnosis and adequate treatment provided in an *integrated service system* is very effective" (Section 2(f) Findings and Declarations.) Proposition 63 is also intended to reduce the use of more restrictive guardianships. "No parent should have to give up custody of a child and no adult or senior should have to become disabled or homeless to get mental health services as too often happens now. (Section 2(b)). Note that individuals under guardianship may lose rights that individuals under assisted outpatient treatment orders retain including right to operate a motor vehicle, right to enter into contracts (ex. marriage) and others.

¹⁰⁶ From Adult and Older Adult Systems of Care Act: "For the majority of seriously mentally disordered adults and older adults, treatment is best provided in the client's natural setting in the community. Treatment case management, and community support services should be *designed to prevent inappropriate removal from the natural environment to more restrictive and costly placements*". (Section 5801(b)(9)). Treatment is "in the most appropriate, least restrictive level of care are necessary to achieve the desired performance outcomes. (Section 5802(a)(4).

¹⁰⁷ A Laura's Law petition may only be granted when "Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure the person's recovery and stability Section 5346(a)(7).

¹⁰⁸ Section 5348(a)(4).

¹⁰⁹ Heggarty, M, "Assisted Outpatient Treatment: The Nevada County Experience" January 6, 2012 supplemented by Carol Stanchfield, MS, LMFT, Director, Turning Point Providence Center which supplies services to individuals under court orders in Nevada County.

¹¹⁰ Available at <http://lauras-law.org/states/california/judgeandersonletter.pdf> .

¹¹¹ Letter to Bill Campbell, Chair of Orange County Board of Supervisors, September 28, 1911.

hospitalization 86 percent; and reduced hospitalization 77 percent even after discharge from Laura's Law.¹¹²

Conclusion: Reading all the "Findings and Declarations", the "Purpose and Intent", statutory language, and regulations concerning Laura's Law, the Adult System of Care Act and Proposition 63, it must be concluded that counties may use Proposition 63 proceeds to provide services to individuals under Laura's Law. The court order does not make otherwise eligible individuals, suddenly ineligible.

¹¹² County of Los Angeles. "Outpatient Treatment Program Outcomes Report" April 1, 2010 – December 31, 2010.

II. Analysis of issues raised by Disability Rights California.

"Prop. 63 will expand the funding for mental health services so that people won't have to reach a crisis in order to get services."

California Assemblymember Darrell Steinberg, Author Proposition 63 October 11, 2004¹¹³

Since May 2005, Disability Rights California ("DRC"), formerly Protection and Advocacy Inc. has sent letters to various "interested parties." These letters concede, "There is no language in Proposition 63, itself, that either prohibits or authorizes the use of any funds for involuntary services." Nonetheless, these letters go on to argue that "Proposition 63 funds cannot be used to fund [Laura's Law]." We have examined their arguments in detail. DRC is correct that there is no language in Proposition 63 that prohibits the use of any funds for involuntary services. They are incorrect in stating Proposition 63 funds can't be used to provide services to individuals who meet the eligibility requirements of Laura's Law and are therefore under court orders to accept treatment. Being under a court order does not make otherwise eligible individuals ineligible.

Our conclusion is the same as that of the California Department of Mental Health:

"No person shall be denied access based solely on his/her voluntary or involuntary legal status."¹¹⁴

Our conclusion is the same as that of Steve Mayberg, former State Director of Mental Health:

"A county can use MHSA funding for services for people who are in a mental health court or in a 1421 [Laura's Law] program...There is a continuum of services, including both voluntary and involuntary and we must recognize this is necessary...Therefore, MHSA will fund Full Service Partnership programs that are primarily voluntary in nature. But someone who is a conservatee, an AB 1421 [Laura's Law] program member, a referral from juvenile or criminal justice, etc. should not be denied access to those services."¹¹⁵

Our conclusion is the same as the bill's author and sponsor:

"The author of Proposition 63, Sen. Darrell Steinberg, D-Sacramento, said there is nothing in the measure passed by California voters in November 2004 that prohibits its use on Laura's Law cases. I'm very clear that it can be," said Steinberg, who was just tapped by Senate Democrats to succeed Don Perata as president pro tem. "The services are available to everyone who meets the definition of serious mental illness."¹¹⁶

Our conclusion is the same as the bill's co-author, Rusty Selix who once wrote:

"Once someone is enrolled in an AB 2034 [Adult System of Care] program there is funding for their services and this could also include court assisted outpatient orders- if the individual is in a county which has elected to implement this program and such funding is part of that county's plan for implementation and meets all of the requirements for AB 1421 [Laura's Law]."¹¹⁷

Our conclusion is the same as the Treatment Advocacy Center:

"Mental Health Services Act funds may be used to provide services under §§5345-5349.5 (AB 1421) ...(T)he legislative intent of the Mental Health Services Act support this analysis."¹¹⁸

Our conclusion is the same as Nevada County and the same as Los Angeles County, both of which used Proposition 63

¹¹³ Assemblyman Steinberg said this when explaining why the California Sheriff's Association endorsed Prop 63, October 11, 2004. accessed at http://campaignformentalhealth.typepad.com/darrell/2004/10/prop_63_endorse.html.

¹¹⁴ CCR 3400(b)(1)(A)(2).

¹¹⁵ Department of Mental Health General Stakeholders Meeting Combined Meeting Summary June 1, 2005.

¹¹⁶ "Care, not Excuses", San Francisco Chronicle, February 21, 2008. Page B6. Available at <http://www.sfgate.com/cgi-bin/article.cgi?f=c/a/2008/02/20/ED69V4QJR.DTL>.

¹¹⁷ Rusty Selix, Executive Director, California Council of Community Mental Health Agencies and co-author of Proposition 63, "From Fail-First to Help-First: Proposition 63 Transforms California's Mental Health System", February 3, 2005.

¹¹⁸ The Treatment Advocacy is a national non-profit dedicated to eliminating barriers to treatment for people with serious mental illness. Their analysis can be accessed at http://treatmentadvocacycenter.org/storage/documents/BOS_-_MHSA_MEMORANDUM_-_Feb_2012.pdf.

funds to implement Laura's Law. If DRC truly believed that using Proposition 63 funds for individuals enrolled in Laura's Law is prohibited, they would have brought action against Nevada and Los Angeles counties. They have not.

A. Adult System of Care services have always been available for individuals under court orders.

DRC argues that "Since its enactment, Adult and Older Adult Mental Health System of Care Act has provided that services should be provided on a voluntary basis. None of the amendments to the Act made by AB34, 2034, or Proposition 63 have changed this".¹¹⁹ This is inaccurate. Adult System of Care has a long history of providing services needed by individuals under court orders to accept treatment including court wards and dependents, individuals on probation, parolees, parents from dependency court, individuals in mental health court, conservatees, and mentally ill offenders. It also funds Centralized Assessment Teams, which "provide evaluations for involuntary hospitalizations."¹²⁰

B. Adult System of Care allows services to be provided to individuals under assisted outpatient treatment orders.

Many of DRC's arguments claiming that MHSA does not allow funding of Laura's Law are based on the false premise that Adult System of Care is limited to voluntary patients. DRC stated, "It is important to note that there is nothing in the Adult Systems of Care act that authorizes any type of involuntary treatment."¹²¹ This statement is incorrect.

As DRC itself has acknowledged, "Under the AB 34/2034 [Adult and Older Adult Systems of Care] program, as it existed before the enactment of Proposition 63, and as it exists after the enactment of Proposition 63, services should be provided on a voluntary basis unless *danger to self or others or grave disability requires temporary involuntary treatment*".¹²² The full legislative language is "The client *should* be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment."¹²³

Laura's Law is for those likely to meet the 'grave disability' and 'danger to self or others' criteria. To qualify to receive services under Laura's Law individuals must be "in need of assisted outpatient treatment in order to prevent a relapse or deterioration *that would be likely to result in grave disability or serious harm* to himself or herself, or to others, as defined in Section 5150."¹²⁴

Laura's Law also meets the criteria of being 'temporary'. "(T)he court may order the person who is the subject of the petition to receive assisted outpatient treatment for an initial *period not to exceed six months*."¹²⁵

DRC concedes that Proposition 63 services may serve anyone on a voluntary basis. DRC concedes the funds can be used for anyone when "danger to self or others or grave disability requires temporary involuntary treatment." But DRC apparently believes Proposition 63 cannot serve those who are in between: those not yet danger to self or others or gravely disabled, but *likely to become* gravely disabled or danger to self or others without services. That is not logical.

DRC would require us to believe that the purpose and intent of MHSA was to *require* individuals who are now "likely" to become gravely disabled or dangerous because they refuse services to *first* become gravely disabled or dangerous in order to receive services. That argument requires the most tortured and cruel interpretation of the voters' intent and bill's provisions. The purpose of the voters was not to *require* people to become gravely disabled or dangerous, it was to *prevent* it. This is shown by the findings, intent, declarations and provisions of Proposition 63.

Further, the Mental Health Services Act "shall be broadly construed to accomplish its purposes" (Section 18). Broad construction requires using Proposition 63 proceeds for services for people who are likely to become gravely disabled or dangerous without those services. No broad construction allows that voters intended Proposition 63 funded services to be cut off or not provided to seriously mentally ill persons once they are likely to become gravely disabled or dangerous

¹¹⁹ Daniel Brzovic, Assistant Managing Attorney Protection and Advocacy, Inc. Letter to "Interested persons" May 3, 2005.

¹²⁰ See County of Orange, Health Care Agency Behavioral Health Services, *Programs Funded by the Mental Health Services Act* (April 28, 2010); see also 5150 and others.

¹²¹ Daniel Brzovic, Assistant Managing Attorney Protection and Advocacy, Inc. Letter to "Interested persons" May 3, 2005.

¹²² Daniel Brzovic, Assistant Managing Attorney Protection and Advocacy, Inc. Letter to "Interested persons" May 3, 2005.

¹²³ Section 5801(b)(5). Note that the operative word is 'should' not 'must'. This is important because in order to construe a statute as imposing a mandatory duty, the mandatory nature of the duty must be phrased in explicit and forceful language." *Quackenbush v. Superior Court (Lyons)* (1997) 57 Cal.App.4th 660, 67 Cal.Rptr.2d 300. The word 'shall' is ordinarily 'used in laws, regulations, or directives to express what is mandatory.' 'May,' on the other hand, is usually permissive." (*Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 133.)

¹²⁴ Section 5346(a)(8).

¹²⁵ Section 5345 (d)(5)(B).

without those services merely because they were placed under Laura's Law. Doing "whatever it takes" -- i.e., "finding the methods and means to engage a client, determine their needs, and create collaborative services and support to meet those needs"¹²⁶--may require providing services to individuals who are in assisted outpatient treatment. To accept DRC's argument requires us to believe that voters intended to fund services to everyone who qualifies except those under assisted outpatient treatment orders; and that the purpose and intent of MHSA and Adult System of Care was to send the most seriously ill to the end of the line for services, rather than front. The voters' intent, as stated in their first "Purpose and Intent" provision, was precisely the opposite: "To define serious mental illness among children, adults and seniors as a condition deserving priority attention, including prevention and early intervention services and medical and supportive care."¹²⁷

C. Laura's Law does not require voluntary or involuntary programs to be cut to fund it.

Laura's Law was passed in 2001 and was limited to those counties in which "the county board of supervisors, by resolution, authorizes its application and makes a finding that no voluntary mental health program serving adults, and no children's mental health program, may be reduced as a result of the implementation."¹²⁸ Today, there is no need to cut voluntary or involuntary programs because Laura's Law can be funded with Proposition 63 funds. Proposition 63 funds are *incremental* funds.¹²⁹ Using *incremental* funds does not result in any program being reduced.

Nonetheless, DRC claims, "Any attempt to divert (sic) Proposition 63 funds to AB 1421 [Laura's Law] programs would represent a reduction in a voluntary mental health program in violation of this statute."¹³⁰ It does not. Again: MHSA funds are incremental.

Moreover, Laura's Law was passed before Proposition 63. DRC attempts to limit the use of MHSA funds to "voluntary" programs by reading W.I.C. Section 5349--which requires supervisors to make a finding that voluntary programs are not being reduced--into Proposition 63. This is backwards. A later statute always supercedes an earlier one to the extent of any inconsistency. Initiatives in particular generally reflect a strong disapproval of existing law--otherwise, why would voters go to the trouble of writing their own?

Finally, the proscription in Laura's Law is against cutting a voluntary "program", it is not against allowing individuals under court orders access to services within existing programs. As will be seen below, both Nevada County and Los Angeles County serve individuals under assisted outpatient treatment orders by allowing them into programs that also serve voluntary recipients. No programs were or needed to be cut.

D. Services for Laura's Law eligible individuals are received within existing programs that are "voluntary in nature" and "designed for voluntary participation".

The Department of Mental Health issued regulations pertaining to MHSA that state "Programs and/or services provided with MHSA funds shall...(b)e designed for voluntary participation" before going on to state "No person shall be denied access based solely on his/her voluntary or involuntary legal status."¹³¹ This has confused some people including DRC.

DRC argues that court ordered treatment can never be voluntary.¹³² DRC misunderstands the provisions of Laura's Law. There are two main components to Laura's Law:

1. The judicial process that leads a person being ordered into treatment (Sections 5346-5347) and
2. The provisioning and funding of the actual mental health treatments. (Sections 5348-5349).¹³³

¹²⁶ Department of Mental Health Full Service Partnership Implementation Tool Kit (California Institute for Mental Health - CiMH).

¹²⁷ The provisioning of Adult System of Care services to individuals in assisted outpatient treatment who are likely to become gravely disabled is fully consistent with Section 5358(b) concerning conservatees. "A conservator shall also have the right, if specified in the court order, to require his or her conservatee to receive treatment related specifically to remedying or preventing the recurrence of the conservatee's being gravely disabled, or to require his or her conservatee to receive routine medical treatment unrelated to remedying or preventing the recurrence of the conservatee's being gravely disabled."

¹²⁸ MHSA Section 3(a).

¹²⁹ "For each taxable year beginning on or after January 1, 2005, in addition to any other taxes imposed by this part, an additional tax shall be imposed at the rate of 1% on that portion of a taxpayer's taxable income in excess of one million dollars (\$1,000,000)." (17043).

¹³⁰ Daniel Brzovic, Assistant Managing Attorney Protection and Advocacy, Inc. Letter to "Interested persons" May 3, 2005.

¹³¹ Cal. Admin. Code tit. 9, § 3400(b).

¹³² Daniel Brzovic, DRC Associate Managing Attorney, Memo to "Interested Persons" December 2, 2010.

¹³³ Section 5345 names the program.

With Laura's Law, it is only the order to accept the services that originates with the court. Contrast that with 5150 procedures where in addition to a court order, the provisioning of treatment takes place in locked inpatient ("involuntary") facilities. For example, in Nevada County, the provisioning of services is voluntary and takes place within existing programs that are "designed for voluntary participation". The services originate with voluntary providers. Individuals are co-mingled with non-AOT clients and there are many more non-AOT clients than AOT clients. Individuals have choices during the entire time they are enrolled in AOT including to take or not to take medications that may be prescribed, to participate in groups or not, to see a therapist or CADAC counselor or not, and to discuss what they are willing to do as part of the process. There are no security guards in the facility, no use of restraints, no seclusion, no locks and no forced medication. They are not handcuffed in the courtroom and taken to jail for a "violation of the treatment plan" as is the process in Mental Health Court when expectations are not met. There is no violation of the treatment plan in AOT due to the nature of "no-fail services". AOT services are "not dependent on the progress or adherence with treatment expectations, but rather by individual needs and pace set by the individual in partnership with the team".¹³⁴ Whether individuals show up or not is their choice. They can get up and walk out at any time. The client is not in any way compelled by providers to do anything. Most of the individuals in the programs are voluntary patients. Safeguards are written into the implementation plan, and due process is protected by the court.¹³⁵

The services received by individuals who are in Laura's Law are in every way "designed for voluntary participation". They are indistinguishable from the services and programs that exclusively serve non-AOT clients. They are the same.

E. Implementing Laura's Law does not require making "fully funded voluntary services" available to everyone else in the county first.

Laura's Law states "A county that provides assisted outpatient treatment services pursuant to this article also shall offer the same services on a voluntary basis."¹³⁶ DRC argues this provision "means that the county cannot turn voluntary applicants away from its AB 34/2034 [Adult and Older Adult Systems of Care] program, claiming lack of funds or lack of resources, at the same time that it provides those same services on an involuntary basis under AB 1421 [Laura's Law]." They are mistaken.

DRC fails to recognize that the requirement to "offer the same services on a voluntary basis" is an obligation within Laura's Law and therefore is an obligation the *individual* being considered for assisted outpatient treatment, not the entire county.¹³⁷ Laura's Law was not designed to help the entire county. It was designed to help a small group of the most seriously ill who meet narrowly defined criteria.¹³⁸ As DRC admitted in a later letter, "A county that moves to implement AB 1421 [Laura's Law] must show that it has adequate resources to provide housing and the full array of community support services for *individuals* with psychiatric disabilities who want and need such services. (emphasis added)¹³⁹ Nothing in the relevant legislation supercedes county mental health directors ability and responsibility to make services available based on 'medical necessity', 'as resources are available' and to use the standard and important resource allocation techniques that directors of all departments, not just mental health use.

The DRC interpretation suggests that the purpose of Proposition 63 was to ensure those most severely disabled (Laura's Law eligible individuals) are given the *least* priority, rather than the *highest* priority. Proposition 63, Adult Systems of Care and Laura's Law all *require* the prioritization of the most seriously ill, not the reverse prioritization.¹⁴⁰

¹³⁴ Department of Mental Health Full Service Partnership Implementation Tool Kit (California Institute for Mental Health - CiMH).

¹³⁵ Heggarty, M, "Assisted Outpatient Treatment: The Nevada County Experience" January 6, 2012 supplemented by Carol Stanchfield, MS, LMFT, Director, Turning Point Providence Center which supplies services to individuals under court orders in Nevada County.

¹³⁶ Section 5348(b).

¹³⁷ For an *individual* to be eligible to receive services under a Laura's Law court order there must be a finding that "*The person* has been offered an opportunity to participate in a treatment plan by the director of the local mental health department, or his or her designee, provided the treatment plan includes all of the services described in Section 5348, and *the person* continues to fail to engage in treatment. (Section 5346(a)(5)). In order to ensure that failure of *the person* to engage, was not because of lack of access to services language was inserted. "A county that provides assisted outpatient treatment services pursuant to this article also shall offer the same services on a voluntary basis." Section 5348(b). This was also anticipated in the findings which state, "In general, these ambulatory care data from the department's client data system do not support the assumption *that individuals* were entering the involuntary treatment system because they were not able to access outpatient services". (Laura's Law Section 1(b)(3)).

¹³⁸ Laura's Law Section 1(b)1 Findings and Section 5346(a).

¹³⁹ Sean Rashkis, DRC Attorney, Letter to Sacramento County Mental Health Board, Feb. 1, 2012.

¹⁴⁰ "Seriously mentally disordered adults and older adults usually have multiple disorders and disabling conditions and should have the highest priority among adults for mental health services." (Section 5801(b)(3)). Clearly individuals who meet the criteria of Laura's Law are among 'the most disabled' and Systems of Care requires their prioritization.

F. Accepting DRC's arguments would be fiscally irresponsible

To accept DRC's argument that neither Proposition 63, nor Adult System of Care services may be used to help individuals who qualify under Laura's Law would require 'duplicate' systems to be set up: one system that serves individuals under court orders and another system that serves all others. That is an incorrect interpretation and directly contrary to the purpose of Proposition 63 which was to spend taxpayers dollars efficiently.

Setting up a duplicate system is also contrary to the intent of Adult System of Care, which was to create services that deliver "...the highest benefit to the client...at the lowest possible cost."¹⁴¹ Setting up a duplicate system is also specifically prohibited. Laura's Law is incorporated with LPS. LPS requires the use of existing services when possible.¹⁴²

Since the services required by those in Laura's Law are already available in Adult System of Care, and individuals in Laura's Law are Adult System of Care eligible, no new community planning is needed to allow Laura's Law eligible individuals access to these programs. Sound fiscal policy and the legislative language require that a second duplicative system not be set up to provide services.

G. DRC misapprehends the purposes and results of Laura's Law.

While not directly related to the narrow question of whether Proposition 63 proceeds can be used for individuals under court orders, we note that on multiple occasions, DRC has indicated a lack of understanding about Laura's Law and serious mental illness. While they oppose Laura's Law implementation, we are not aware of them proposing any viable solution as to what to do with those who refuse services, other than offer them services and then defend their right to refuse. This approach has failed at improving care for people with mental illness, keeping patients, public or law enforcement safer.¹⁴³ It has led to an increase in costs and an increase in the stigma that is caused when persons with mental illness needlessly deteriorate and become violent.¹⁴⁴ Withholding treatment from those too ill to recognize their need for it has led to multiple incidents of violence in California by untreated individuals with serious mental illness;¹⁴⁵ California law enforcement officers being overwhelmed by people with untreated serious mental illness;¹⁴⁶ 3.8 times as many Californians being incarcerated for mental illness than hospitalized;¹⁴⁷ and is about to lead to the release of thousands of mentally ill to the community as a result of *Brown v. Plata*.¹⁴⁸ Laura's Law has been proven to help ameliorate all these problems.¹⁴⁹

Catherine Blakemore, Executive Director of DRC, wrote an op-ed that posits because voluntary services work on voluntary patients Laura's Law is not needed.¹⁵⁰ In doing so she failed to recognize they serve two different populations.

¹⁴¹ Section 5801(a).

¹⁴² "The provisions of this part shall be construed to promote the legislative intent as follows ... [t]o encourage the full use of all existing agencies, professional personnel and public funds to accomplish these objectives and to prevent duplication of services and unnecessary expenditures." 5001(f).

¹⁴³ "Some high-risk patients do not respond well to traditional community-based mental health services. For various reasons, even when treatment is made available, high-risk patients do not avail themselves of these services. In general, these ambulatory care data from the department's client data system do not support the assumption that individuals were entering the involuntary treatment system because they were notable to access outpatient services. (Lauras' Law Findings Section 1(b)(2) *et. seq.*).

¹⁴⁴ We note with concern that Disability Rights California received a \$2.9 million grant of MHSA funds for the ostensible purpose of conducting "anti-stigma" activities. (CalMHSA Standard Services Agreement dated 8/25/11). In light of DRC's opposition to Laura's Law, which reduces stigma by reducing violence, we question whether they should have been awarded such a contract. Minimally, there is an appearance problem for DRC which is exacerbated by the present controversy surrounding alleged waste and abuse of MHSA funds distributed by MHSAC. (See <http://lauras-law.org/states/california/capitalweeklyopededs.html>). At minimum--if for no other reason than appearances--DRC should either give up the contract or their opposition to MHSA funding for Laura's Law.

¹⁴⁵ One study in Contra Costa, California found that in spite of the fact only 1% of the population has schizophrenia, 10% of those who committed homicides were diagnosed with schizophrenia, and almost all were untreated at the time of the crime. Wilcox DE: "The relationship of mental illness to homicide". *Am J Forensic Psychiatry* 1985; 6:3-15. For a list of several hundred incidents involving untreated serious mental illness in California, visit Treatment Advocacy Center Preventable Tragedies database and enter "California" in dropdown menu at <http://www.treatmentadvocacycenter.org/problem/preventable-tragedies-database>

¹⁴⁶ Biasotti, M. "Management of the Severely Mentally Ill and Its Effects on Homeland Security" U.S. Naval Postgraduate School's Center for Homeland Defense and Security (Monterrey, CA). An excerpt of the California section is here <http://lauras-law.org/states/california/biasotticastats.html>

¹⁴⁷ <http://mentalillnesspolicy.org/NGRI/jails-vs-hospitals.html>.

¹⁴⁸ Bernard, M. "How California Can Safely Release 33,000 Prisoners" National Review Online, June 2, 2011. Jaffe, DJ, "How California Can Comply With Supreme Court Order to Release 33,000 Prisoners" Huffington Post, June 2, 2011.

¹⁴⁹ See Appendix A and B.

¹⁵⁰ "Another View: Expand voluntary mental health services now", Sacramento Bee, January, 1, 2012.

Voluntary programs serve those who accept services, Laura's Law is only for those who refuse them.¹⁵¹ DRC failed to recognize that individuals who are so psychotic they believe they are Jesus, or so delusional they believe the FBI planted a transmitter in their head will rarely volunteer for services, no matter how many such services exist.¹⁵²

More recently Daniel Brzovic, associate managing attorney of Disability Rights California responded¹⁵³ to an op-ed in the San Francisco Chronicle that vigorously endorsed Laura's Law extension.¹⁵⁴ In addition to misinterpreting relevant provisions of Proposition 63, Mr. Brzovic wrote Laura's Law is costly, but Nevada County found Laura's Law saved \$1/81-\$2.52 for every dollar invested while Los Angeles County found it reduced costs 40%. Mr. Brzovic wrote Laura's Law is ineffective, but Nevada County found Laura's Law reduced hospitalization 46%; reduced incarceration 65%; reduced homelessness 61%; and reduced emergency contacts 44%.¹⁵⁵ Los Angeles County found Laura's Law reduced hospitalization 86%, and incarceration 78%. Mr. Brzovic wrote that mental health clients oppose Assisted Outpatient Treatment, but an independent study found 81% of those *who actually experienced AOT* said it helped them get well and stay well.¹⁵⁶

Conclusion

Reading all the "Findings and Declarations", the "Purpose and Intent," statutory language, and regulations, concerning Laura's Law, The Adult System of Care Acts, and Proposition 63; and taking into account all the arguments we are aware of, it must be concluded that counties may use Proposition 63 proceeds to provide services to individuals enrolled in Laura's Law. The court order does not make otherwise eligible individuals, suddenly ineligible.

¹⁵¹ "Some high-risk patients do not respond well to traditional community-based mental health services. For various reasons, even when treatment is made available, high-risk patients do not avail themselves of these services". (Section 1(b)(2)) "In general, these ambulatory care data from the department's client data system do not support the assumption that individuals were entering the involuntary treatment system because they were not able to access outpatient services". (Laura's Law Section 1(b)(3)). Laura's Law gets people into treatment. (See Appendix A for results from Nevada and Los Angeles counties).

¹⁵² Anosognosia is impaired awareness or unawareness of an illness. It affects approximately 50 percent of individuals with schizophrenia and 40 percent of individuals with bipolar disorder. Anosognosia is the major source of non-compliance among people with serious mental illness. Amador, X.F., et. al. (1994). Awareness of illness in schizophrenia and schizoaffective and mood disorders. *Archives of General Psychiatry*, 51, 826-36 and Fennig, S., et. al. (1996). Insight in first-admission psychotic patients. *Schizophrenia Research*, 22, 257-63. Fennig, S., et. al. (1996). Insight in first-admission psychotic patients. *Schizophrenia Research*, 22, 257-63.

¹⁵³ San Francisco Chronicle, March 25, 2012.

¹⁵⁴ San Francisco Chronicle, March 11, 2012. We also note that NARPA organized a 3/20/12 letter to legislators concerning Laura's Law reauthorization that contained numerous errors. Most of their claims are addressed in "Myths about Laura's Law" available at <http://mentalillnesspolicy.org/states/california/lauraslawmyths.pdf>.

¹⁵⁵ See Appendix A for results of Laura's Law implementation in Nevada County and Los Angeles County.

¹⁵⁶ March 2005 N.Y. State Office of Mental Health "Kendra's Law: Final Report on the Status of Assisted Outpatient Treatment." Four articles on consumer support for AOT is available here <http://mentalillnesspolicy.org/aot/consumers-like-aot.html>. Also see "Consumer Perceptions" and "Consumer Outcomes" Section of Appendix B.

Appendix A: Reduction in harmful events and costs when Laura's Law implemented in two California counties¹

Reductions in Harmful Events in Nevada County

Key Indicator	Pre-AOT	Post-AOT	Improvement
Hospitalization	1404 days	748 days	46.7%
Incarceration	1824 days	637 days	65.1%
Homelessness	4224 days	1898 days	61.9%
Emergency Contacts	220 contacts	123 contacts	44.1%

Reduction in Harmful Events in Los Angeles County

Key Indicator	Percentage Decrease
Incarceration	Reduced 78%
Hospitalization	Reduced 86%
Hospitalization after AOT ended	Reduced 77%
Milestones of Recovery Scores	Increased

Reduction in Costs in Nevada County

Key Indicator	Pre-AOT	Post-AOT	Improvement
Hospitalization	\$346,950	\$133,650	\$213,300
Incarceration	\$78,150	\$2,550	75,600

Nevada County gave individuals under court order access to services and found Laura's Law implementation saved \$1.81-\$2.52 for every dollar spent.

Reduction in Costs in Los Angeles County

Laura's Law cut taxpayer costs 40 percent in Los Angeles.

¹ Source for Nevada County Data: Michael Heggarty, Behavioral Health Director, Nevada County. "The Nevada County Experience," Nov. 15, 2011. Source for Los Angeles County Data: County of Los Angeles. "Outpatient Treatment Program Outcomes Report" April 1, 2010 – December 31, 2010. Cost data from: Michael D. Antonovich, Los Angeles County Fifth District Supervisor, Los Angeles Daily News, December 12, 2011.

**Appendix B: Research from the five studies conducted over ten years on
NYS Assisted Outpatient Treatment (Kendra’s Law) which served as the model for Laura’s Law.**

Study	Findings
<p>February 2010 Columbia University. Phelan, Sinkewicz, Castille and Link. Effectiveness and Outcomes of Assisted Outpatient Treatment in New York State Psychiatric Services, Vol. 61. No 2</p>	<p>Kendra's Law has lowered risk of violent behaviors, reduced thoughts about suicide and enhanced capacity to function despite problems with mental illness. <i>Patients given mandatory outpatient treatment - who were more violent to begin with - were nevertheless four times less likely than members of the control group to perpetrate serious violence after undergoing treatment.</i> Patients who underwent mandatory treatment reported higher social functioning and <i>slightly less stigma</i>, rebutting claims that mandatory outpatient care is a threat to self-esteem.</p>
<p>June 2009 D Swartz, MS, Swanson, JW, Steadman, HJ, Robbins, PC and Monahan J. New York State Assisted Outpatient Treatment Program Evaluation. Duke University School of Medicine, Durham, NC, June, 2009</p>	<p>We find that New York State’s AOT Program improves a range of important outcomes for its recipients, apparently <i>without feared negative consequences</i> to recipients.</p> <ul style="list-style-type: none"> • Racial neutrality: We find no evidence that the AOT Program is disproportionately selecting African Americans for court orders, nor is there evidence of a disproportionate effect on other minority populations. Our interviews with key stakeholders across the state corroborate these findings. • Court orders add value: The increased services available under AOT clearly improve recipient outcomes, however, the AOT court order, itself, and its monitoring do appear to offer <i>additional benefits</i> in improving outcomes. • Improves likelihood that providers will serve seriously mentally ill: It is also important to recognize that the AOT order exerts a critical effect on service providers stimulating their efforts to prioritize care for AOT recipients. • Improves service engagement: After 12 months or more on AOT, service engagement increased such that AOT recipients were judged to be more engaged than voluntary patients. This suggests that after 12 months or more, when combined with intensive services, AOT increases service engagement compared to voluntary treatment alone. • Consumers Approve: Despite being under a court order to participate in treatment, current AOT recipients feel neither more positive nor more negative about their treatment experiences than comparable individuals who are not under AOT.
<p>March 2005 N.Y. State Office of Mental Health “Kendra’s Law: Final Report on the Status of Assisted Outpatient Treatment. “</p>	<p><u>Danger/Violence</u></p> <ul style="list-style-type: none"> • 55 percent fewer recipients engaged in suicide attempts or physical harm to self • 47 percent fewer physically harmed others • 46 percent fewer damaged or destroyed property. • 43 percent fewer threatened physical harm to others. • Overall, the average decrease in harmful behaviors was 44 percent. <p><u>Consumer Outcomes</u></p> <ul style="list-style-type: none"> • 74 percent fewer participants experienced homelessness • 77 percent fewer experienced psychiatric hospitalization • On average, AOT recipients' length of hospitalization was reduced 56 percent from pre-AOT levels. • 83 percent fewer experienced arrest • 87 percent fewer experienced incarceration. • 49 percent fewer abused alcohol • 48 percent fewer abused drugs • Individuals in Kendra's Law were also more likely to regularly participate in services and take prescribed medication. • The number of individuals exhibiting good adherence to medication increased by 51 percent. • The number of individuals exhibiting good service engagement increased by 103 percent. <p><u>Consumer Perceptions</u></p> <ul style="list-style-type: none"> • 75 percent reported that AOT helped them gain control over their lives

	<ul style="list-style-type: none"> • 81 percent said AOT helped them get and stay well • 90 percent said AOT made them more likely to keep appointments and take medication. • 87 percent of participants interviewed said they were confident in their case manager's ability to help them • 88 percent said they and their case manager agreed on what is important for them to work on. <p><u>Effect on mental illness system</u></p> <ul style="list-style-type: none"> • Improved Access to Services. AOT has been instrumental in increasing accountability at all system levels regarding delivery of services to high need individuals. Community awareness of AOT has resulted in increased outreach to individuals who had previously presented engagement challenges to mental health service providers. • Improved Treatment Plan Development, Discharge Planning, and Coordination of Service Planning. Processes and structures developed for AOT have resulted in improvements to treatment plans that more appropriately match the needs of individuals who have had difficulties using mental health services in the past. • Improved Collaboration between Mental Health and Court Systems. As AOT processes have matured, professionals from the two systems have improved their working relationships, resulting in greater efficiencies, and ultimately, the conservation of judicial, clinical, and administrative resources. <ul style="list-style-type: none"> ○ There is now an organized process to prioritize and monitor individuals with the greatest need; ○ AOT ensures greater access to services for individuals whom providers have previously been reluctant to serve; ○ Increased collaboration between inpatient and community-based mental health providers.
<p>1999 NYC Dept. of Mental Health, Mental Retardation and Alcoholism Services. H. Telson, R. Glickstein, M. Trujillo, Report of the Bellevue Hospital Center Outpatient Commitment Pilot</p>	<ul style="list-style-type: none"> • Outpatient commitment orders often assist patients in complying with outpatient treatment. • Outpatient commitment orders are clinically helpful in addressing a number of manifestations of serious and persistent mental illness. • Approximately 20 percent of patients do, upon initial screening, express hesitation and opposition regarding the prospect of a court order. After discharge with a court order, the majority of patients express no reservations or complaints about the orders. • Providers of both transitional and permanent housing generally report that outpatient commitment help clients abide by the rules of the residence. More importantly, they often indicate that the court order helps clients to take medication and accept psychiatric services. • Housing providers state that they value the leverage provided by the order and the access to the hospital it offers.
<p>1998 Policy Research Associates, Inc. Research study of the New York City involuntary outpatient commitment pilot program.</p>	<ul style="list-style-type: none"> • Individuals who received court ordered treatment in addition to enhanced community services spent 57 percent less time in psychiatric hospitals than individuals who received only enhanced services. • Individuals who had both court ordered treatment and enhanced services spent only six weeks in the hospital, compared to 14 weeks for those who did not receive court orders.

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