
Law  Foundation OF SILICON VALLEY


PRESENTS

A GUIDE TO UNDERSTANDING 5270S

WHAT IS THE LAW FOUNDATION OF SILICON VALLEY?



- Health
- Housing
- Children & Youth
- Medical-Legal Partnership

The background of the slide features a photograph of a grand, classical building's entrance. In the foreground, a wide set of light-colored marble steps leads up towards the building. Several large, fluted marble columns are visible, supporting the structure above. The lighting is bright, highlighting the texture and color of the stone.

LEGAL FRAMEWORK FOR 5270S

§ 5270 HOLD BACKGROUND & LEGISLATIVE INTENT

- § 5270 hold is a 30-day LPS hold for **Grave Disability only**
- History and Legislative Intent
 - Added to the LPS in 1988 at Welf. & Inst. Code, §5270.10, et. seq.
 - Only operative in Counties where the Board of Supervisors formally adopts
 - Santa Clara County Board of Supervisors adopted June 28, 2022
 - **§ 5270 holds may be written in Santa Clara County starting October 1, 2022**
- § 5270.15 provides for 30 days of involuntary, inpatient hospitalization for Clients (Adults or Minors) who remain Gravely Disabled at the end of their 5250 holds
- Intended to replace a temporary conservatorship for Clients expected to reconstitute in 30 days or less of additional, inpatient treatment

PREREQUISITES TO PLACING A § 5270.15 HOLD

- Client is currently on a § 5250 hold that is at its completion
 - Not any other LPS hold, including § 5150, § 5260 (DTS) or § 5300 (DTO)
- Client has been evaluated and the provider(s) find:
 - Client (Adult or Minor) presently meets criteria for Grave Disability
- AND
 - Based on current condition and past history
 - Client is likely to reconstitute (no longer meet Grave Disability criteria) in 30 days or less of continued inpatient treatment, obviating the need for a temporary conservatorship
- AND
 - Client has been offered continued voluntary hospitalization and is unwilling or unable to accept it

- Differs from who can sign on a 5250
- For a person to be certified, a notice of certification shall be signed by two people.
 - 1. The “**professional person in charge of the facility**” (may or may not be an MD)
 - AND
 - 2. An MD or psychologist with 5+ years experience who participated in the evaluation.
 - 3. OR, if Professional Person in Charge is an MD or psychologist with 5+ years experience *who participated in the evaluation*, then an LCSW, LMFT, LPCC or RN who also participated in the evaluation IF a second MD or psychologist is unavailable.

WHO CAN
INITIATE A §
5270.15?

§ 5270.15 CERTIFICATION PROCEDURE

- Provider(s) complete a § 5270.15 certification form (DHCS Form 1808)
 - Factual statement of probable cause that Client is presently Gravely Disabled
 - Begin/end date of hold
 - Signed by 2 authorized signatories
 - Personally served to Client with attestation of service
- Notifying Law Foundation
 - Called into LF cert line on day executed noting it is a 5270 hold versus 5250 hold
 - Hold is faxed to the LF cert fax line

**NOTICE OF CERTIFICATION FOR INTENSIVE
TREATMENT PURSUANT TO SECTION 5250 (14
DAYS INTENSIVE TREATMENT) OR 5270.15
(ADDITIONAL 30 DAYS INTENSIVE TREATMENT)
OF THE WELFARE AND INSTITUTIONS CODE**

**CONFIDENTIAL PATIENT
INFORMATION**

14 day hold
 30 day hold

The authorized agency providing 14-day intensive treatment, County of _____
has custody of:

Name _____

Address _____

Marital Status _____ Date of Birth _____ Sex _____

We, the undersigned, allege that the above-named person is, as a result of a mental disorder
or impairment by chronic alcoholism (mark all that apply):

- A danger to others A danger to himself or herself Gravely disabled as defined in
subdivision (h) of Section 5008 of
the Welfare and Institutions Code

The specific facts which form the basis for our opinion that the above-named person meets one
or more of the classifications indicated above are as follows:

The above-named person has been informed of this evaluation, and has been advised of the
need for, but has not been able or willing to accept treatment on a voluntary basis, or to accept
referral to, the following services:

We, therefore, certify the above-named person to receive intensive treatment related to the mental
disorder or impairment by chronic alcoholism beginning this ___ day of _____, 20___, in the
intensive treatment facility herein named: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

I hereby state that I delivered a copy of this notice this day to the above-named person and that
I informed him or her that unless judicial review is requested a certification review hearing will be
held within four days of the date on which the person is certified for a period of intensive treatment
and that an attorney or advocate will visit him or her to provide assistance in preparing for the
hearing or to answer questions regarding his or her commitment or to provide other assistance.
The court has been notified of this certification on this day.

Signature: _____ Date: _____

Original: Superior Court **Copies:** Person Certified – Personally delivered
Person's Attorney
Public Defender
District Attorney
Intensive Treatment Facility

GRAVE DISABILITY CRITERIA FOR ADULTS

- *“A condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.”*
- Means unable to provide or unable to utilize resources
- A Client is NOT Gravely Disabled:
 - By reason of homelessness or poverty alone. GD is an inquiry into the Client's ability or skills not his/her/their wealth
 - By reason of substance use, intellectual, or developmental disability, or other organic brain disorder alone
 - Client (Adult or Minor) has **“Third Party Assistance”**: the help of a responsible family members, friends or others who are both willing and able to provide food, clothing and shelter to the Client

GRAVE DISABILITY FOR MINORS

- A minor who, as a result of a mental disorder, is unable to use the elements of life that are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others.
- Intellectual disability, epilepsy, or other developmental disabilities, alcoholism, other drug abuse, or repeated antisocial behavior do not, by themselves, constitute a mental disorder.

HEARING RIGHT AND PROCEDURE

- HEARING RIGHTS
 - Certification review hearing within 4 days of certification
 - Writ of habeas corpus
 - Hearing options the same as 5250: hearing, waiver, chart review, voluntariness hearing
- HEARING PROCEDURES:
 - Identical to 5250 hearing:
 - Hearing officer presides over certification review hearing
 - Authorized representation of the hospital (doctor not required) presents probable cause
 - Law Foundation advocates defend on the certification review hearing
 - Public Defender / Superior Court handle requests for writs of habeas corpus

NEW HEARING RIGHTS § 5118

- Effective January 1, 2022, Welf. & Inst. Code, § 5118 was amended
- Client has the right to:
 - A public hearing
 - The presence of any family member or friend in a private hearing

MAXIMUM PERIOD OF DETENTION / TERMINATION OF A § 5270 HOLD

- MAXIMUM PERIOD OF DETENTION:
 - 5150 (72 hours), 5250 (14 days), 5270 (30 days) = maximum 47 days
 - Intervening periods of voluntariness count in the 47 day maximum
 - Liable for civil damages for knowingly and willfully holding past 30 days on 5270
- Must release at the end of 47 days unless:
 - Conservatorship
 - Section 5300 hold for Danger to Others
- TERMINATION OF HOLD
 - Treating psychiatrist finds Client no longer meets criteria – no liability for early release
 - Client becomes willing or able to accept voluntary treatment
 - Client wins a certification review hearing or writ of habeas corpus

RIESE PETITIONS ON § 5270

- RIESE PETITION CARRY-THROUGH
 - A Riese Petition granted on a 5150 can carry-through to a 5250 if hearing officer so orders
 - A Riese Petition cannot carry-through from a 5250 to 5270
 - **A new Riese Petition must be granted to involuntarily medicate on 5270 hold**
- RIESE HEARING PROCESS
 - Same petition, notice and hearing requirements as a Riese on any other hold
 - Refusal of medications is still a threshold issue.
 - Client has right to a post-decision writ of habeas corpus

MISCELLANEOUS PROVISIONS

- Providers must review whether a Client on a 5270 continues to meet criteria for Grave Disability and/or is willing to be voluntary at intervals not exceeding 10 days.
- Facilities must attempt to comply with a preference for facility in which to be detained on the 5270 expressed by the Client, Client's family, a conservator, or guardian.
- A facility may permit a Client on a 5270 to leave the facility for short periods of time.
- All statutory patients' rights laws apply:
 - Including: Seclusion, Restraint, & IM

QUESTION AND REFERRALS


Health Intake Line

(Central line for mental health consumers)

(408) 280-2420 / 1(800) 280 - MHAP

Additional Law Foundation Services

- Free legal services and advice
- Assistance with Public Benefits such as SSI, SNAP, and Calworks
- Name & Gender Change Clinic



Challenging the 5270

Tom Cummins

Deputy Public Defender



Writ of Habeas Corpus

Translated to “Show me the body”

It is "regarded as the greatest remedy known to the law whereby one unlawfully restrained of his liberty can secure his release."

How Does it Start?

- ◇ Either the patient or the patient's representative may initiate the writ process by requesting release to either:
 - ◇ the person delivering the notice of certification to patient at the time of the delivery,
 - ◇ or to any member of the treatment staff of the facility providing intensive treatment.
- ◇ They contact our office and request us to file a writ.

When?

◆ Anytime

What should you do in response?

- ◇ You shall promptly provide the person the following form:
 - ◇ (Name of the facility) _____ day of _____ 20__
 - ◇ I, _____ (member of the treatment staff, or person delivering the copy of the certification notice), have today received a request for the release of _____ (patient) from the undersigned patient on his or her own behalf or from the undersigned person on behalf of the patient
 - ◇ _____
Signature of patient
 - ◇ _____
 - ◇ Signature of person making request on behalf of patient

What happens if you don't?

- ◆ The person delivering the certification notice or the treatment staff, to whom the request for release was made shall deliver the form to the professional person in charge of the facility, notifying them of the request.
- ◆ As soon as possible, the person notified shall inform the superior court for the county in which the facility is located of the request for release.
 - ◆ -Welfare and Institutions 5275



When is the hearing?

The hearing on the petition for the writ must be held within 2 judicial days after its filing.



- Holiday
- Judicial Council Meeting (SF)
- Judicial Council Meeting (SAC)

Supreme Court Oral Argument:
*Oral argument may be conducted remotely due to COVID-19 restrictions

- San Francisco
- Sacramento
- Los Angeles



2022

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*Supreme Court oral argument will fall within the week noted. Specific dates and times are available one month in advance.

What Will the Judge be Deciding?

1. Is the patient gravely disabled as a result of a mental disorder or impairment by chronic alcoholism?
 - Cannot provide for their own
 - Food
 - Clothing
 - Shelter
2. Has the person been advised of, or accepted, voluntary treatment
3. Is the facility providing intensive treatment equipped and staffed to provide treatment, or designated by the county to provide intensive treatment





How will the Court proceeding...proceed

The Court's Decision

◆ Must be released if:

1. The person is not gravely disabled;
2. The person was not advised of voluntary treatment;
3. The person accepted voluntary treatment;
4. The facility is not staffed or equipped to provide treatment; or
5. The facility is not designated by the county to provide intensive treatment.

Office of the Public Defender

- ◆ Please call **Bernice Farfan** at the **Public Defender's** Office and let her know the patient's name and the hospital that they are located
- ◆ Bernice Farfan, Paralegal: (408) 299-7152

Conservatorship Referrals During 5270 Holds

ALLEN BRANDT

OFFICE OF THE COUNTY COUNSEL

Referral for Temporary Conservatorship

- Most cases shouldn't be referred for conservatorship following a 5270 hold.
- The Legislature's purpose for 5270 was to reduce conservatorship filings.
- “It is the intent of the Legislature to reduce the number of gravely disabled persons for whom conservatorship petitions are filed....” W&I Code § 5270.10
- 5270 requires the facility to determine that the patient will not need a conservatorship at the end of the 30-day hold. W&I Code § 5270.55

Referral for Temporary Conservatorship

- In the rare cases where circumstances change and a conservatorship referral needs to be made, the referral must be made early in the hold.
- 5270 requires that any temporary conservatorship runs “concurrently with and not consecutively to the 30-day certification period.” W&I Code § 5270.55
- The conservatorship hearing must take place by day 30 of the 5270 hold. W&I Code § 5270.55

Notice Requirements for Temporary Conservatorship

- The conservatee must receive a notice of intent to file a temporary conservatorship at least 5 calendar days before the petition is filed. Probate Code § 2250.2(c)
- The conservatee must receive notice of the hearing on the temporary conservatorship 15 calendar days before the hearing date. Probate Code §§1822–1824

Referral Must Be Made on Day 5 of the 30-day 5270 Hold

- Given these requirements the latest the referral for a temporary conservatorship can be made to the Public Guardian is **day 5** of the 30-day 5270 hold.
- The Public Guardian will not be able to process late referrals.
- The facility must also give notice to the conservatee of the temporary conservatorship at the same time.