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Op-Ed: Mentally ill people in desperate need of treatment often don’t get it because of an antiquated law

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A homeless person sleeps beneath a blanket on a bus bench in downtown Los Angeles. (Francine Orr / Los Angeles Times)

You can’t spend time on the streets of any large city in California and not ask this question: Why do so many of our most vulnerable, severely mentally ill Californians not get the care they so urgently need?

We hoped this critically important public policy question, and others, would be answered when we asked California’s state auditor last year to closely examine the laws governing involuntary treatment of those with a serious mental illness.

The main law in California dealing with this issue is the Lanterman-Petris-Short Act, which was enacted in 1967. Its laudable goal was to try to right the horrific injustices of prior decades, when those

perceived to have serious mental illness were too often locked up for long periods of time in appallingly abusive environments.

The act created three specific criteria for when a court can order an individual to be confined to a mental health facility without his or her consent: when people are a danger to themselves, a danger to others or “gravely disabled.”

Voluntary treatment and care is always the better approach where possible. But that can be tricky, especially since one symptom many people with severe mental illness experience is an inability to recognize that they are ill.

Involuntary treatment should only be used as an engagement tool of last resort, when people are at great risk and cannot or will not accept care. But even with that in mind, the 1967 law seems too restrictive, which is why we asked for the audit.

The just-published audit report is at once revealing and incomplete. It found what all Californians already know anecdotally: that individuals with serious mental illnesses rarely receive adequate ongoing care. But most of the audit focused narrowly on just one segment of California’s mentally ill population, those who were involuntarily committed and then released without adequate aftercare.

Ultimately, the audit repeated what similar reports have urged for decades. It called for supportive community-based services for people with serious mental illness who have been released from short-term involuntary commitment, so-called 5150 holds. It called for immediate, real-time sharing of private health information about people with serious mental illness among all providers trying to help them. And it called for better reporting and outcome measurements for our fragmented mental health care spending.

These are all important calls for action, but the audit must not be the last word on LPS reform. By choosing to narrowly focus on people who had been committed and released, it avoided the much more difficult and controversial question of whether the act should be strengthened by broadening its reach.

Specifically, the audit did not address the plight of the tens of thousands of mentally ill Californians who never get care — voluntary or involuntary — in the first place. What about the thousands of mentally ill inmates in prisons, the exploding populations pitching tents on our streets, and the countless neglected whose serious mental illness worsens with each passing day? Are we turning our backs on people who cannot care for themselves and using the stringent “gravely disabled” criteria as a rationalization?

The audit concluded that the standard for mandatory treatment in the current law does not need to be strengthened to address these issues. But in our view the law failed to adequately address them because they weren’t so urgent half a century ago when it was passed.

We need to strengthen the definition of "grave disability." And we also need to ensure access to effective treatment, housing and services for thousands of human beings languishing on our streets.

Most people will accept care and housing when it is offered. But we can't forsake those who don't because of the severity of their untreated mental illness. That's what is happening today because the law has not been interpreted in a commonsense manner.

Any person who has been homeless due to profound mental illness for years and will not accept shelter when offered is, by any commonsense definition, gravely disabled. Yet the protection intended by this standard, which is to care for people unable to care for themselves, is clearly not working. If it were, we wouldn't have thousands of homeless people living on the streets, where their lives are shortened by an average of 25 years.

How could the state modernize the LPS statute without violating the civil and human rights of people already suffering immense pain and indignity? We can start by defining "grave disability" in a more honest and detailed way to make sure it covers those who most need the care.

To that end, consistent with judicial opinions, the Legislature should replace the term "grave disability" in the law with a term more faithful to the original intent of the LPS Act, changing the criteria for who can be involuntarily treated to include all those "unable to live safely in the community." Such a standard would allow mental health workers to address the needs of severely ill people who live on the streets despite being unable to adequately care for themselves.

The Legislature should also address shortcomings in the act pertaining to conservatorships. LPS conservators are currently not allowed to manage physical health conditions for instance. They should be. The law should also be changed to allow testimony in conservatorship court hearings — via video or teleconferencing when necessary — not only from treating doctors but also from knowledgeable family members, friends or acquaintances.

Most importantly, the Legislature should ensure the availability of dedicated resources for housing and treatment to facilitate the recovery of anyone who has been placed under a conservatorship.

We believe the audit to be the beginning, not the end, of our collective battle to make mental health the public health priority it must be.

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https://www.latimes.com/opinion/story/2020-08-20/op-ed-mentally-ill-people-often-dont-get-treatment-because-of-antiquated-law