

## Patient Advocacy Program

# Minors' Due Process Rights



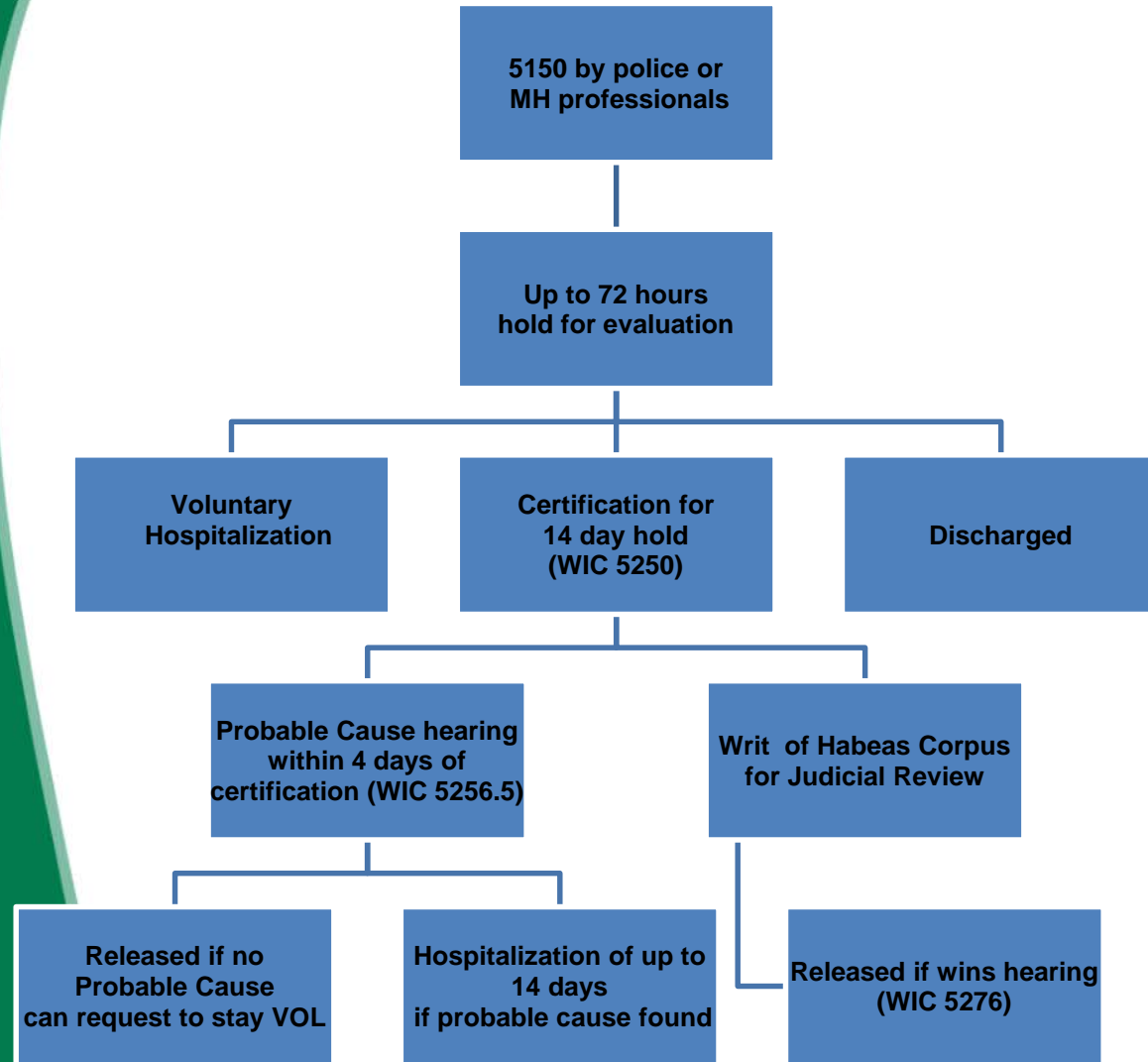


## ADVOCATING FOR MINORS' RIGHTS IN LPS FACILITIES



- **WIC 5325.1—Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and law and by the Constitution and laws of the state of California.**
- **WIC 5325— The rights listed for persons who are admitted to a facility in which psychiatric evaluation or treatment is offered “may not be waived by the person’s parent, guardian, or conservator”**

# Summary of LPS Act under 5150 and 5250



## LPS Criteria for Involuntary holds in acute psychiatric hospitals:

- Danger to Self
- Danger to Others
- Gravely Disabled adult
- Gravely Disabled minor

# Minor's Rights Due Process relevant case law:



- In re Michael E, 15 Cal.3d 183
- In re Michael D., 70 Cal.App.3d 522
- In re Roger S., 19 Cal.3d 921
- In re Antoine C. (1986) 186 Cal. App 3d 424,  
230 Cal Rptr.738

# Different Pathways to Due Process

- Legal Status ---  
Parental Authority vs Ward/Dependant
- Age ---  
Under 14 vs over 14
- Facility ---  
Private vs Public

# Legal Status— Ward/Dependant

- AGE does not matter
- For Voluntary treatment, WIC 6552 advisement by Attorney of record, Public Defender, or Advocate (depending on local rules)
- If involuntary, LPS process is same as adults (except criteria definition for Grave Disability)



# Legal Status—Parental Authority

- Any AGE, if NO Parental Voluntary is obtained, then LPS, same as adult

(except criteria definition for Grave Disability)

# Age—parental authority

- UNDER 14

Due Process with Parental VOL  
limited to WRIT

- OVER 14

Due Process depends on  
placement in private or public  
facility

# Private Facility

## Criteria for admission (parental voluntary):

- The minor is 14 years of age and over, and is under 18 years of age
- Under Parental Authority (not emancipated)
- Must have Parental Consent
- Not a ward or Dependant
- The minor's admitting diagnosis or condition is either of the following:
  - (1) A mental disorder only.
  - (2) A mental disorder and a substance abuse disorder

# Private Facility Admission Procedures

Upon admission, a facility shall do all of the following:

- Inform the minor in writing of the availability of an independent clinical review of his or her further inpatient treatment
- The notice shall be witnessed and signed by an appropriate representative of the facility
- Within one working day, notify the patients' rights advocate regarding the admission of the minor
- Provide all minors with patients' rights handbook

# Private Facilities

Minors over 14 years, when parents voluntarily admit to private acute psychiatric facility, have the right to an Independent Clinical Review (ICR)

- ICR is only initiated at the request of the minor
- Minor must REQUEST ICR within 10 days of admission, or forgoes the right
- Reviewer must be county approved psychiatrist, not a representative of the court
- When requested, Advocate must be informed no later than 1 working day
- Must be held within 5 working days of the request

# Standard for Independent Clinical Review

- Does the minor continue to have a mental disorder?
- Is further inpatient treatment reasonably likely to be beneficial to the minor's mental disorder?
- Does placement at the facility represent the least restrictive, most appropriate available setting, within the constraints of reasonably available services, resources, and financial support, in which to treat the minor?

## *Public Facilities*

- Admission procedures—Roger S. and LPS
- Advisement procedures for minors rights to due process
- Issues of Parental Authority

# Public Facilities

- Minors over 14, with Parental VOL—
- AUTOMATIC Roger S. Hearing:
  - ⚙ Minor can waive, if he/she wants voluntary treatment
  - ⚙ Roger S. must be held within 5 days of parental voluntary (may depend on local rules)



# Standard for Roger S. Hearing

- Preponderance of the evidence
- 5 Pronged criteria considered
- Attorney representation
- Hearing Procedure



# Roger S. Hearing Criteria:

- Does the child have a mental disorder?
- Is 24 hour locked placement necessary?
- Is the hospitalization likely to ameliorate the minor's condition?
- Is this the least restrictive mode of treatment?
- Is the facility in the minor's home community?