

# HAFFNER LAW GROUP

January 29, 2014

## VIA EMAIL ONLY

Ventura County Supervisors,  
Steve Bennett, District 1  
Linda Parks, District 2  
Kathy Long, District 3  
Peter C. Foy, District 4  
John C. Zaragoza, District 5

Dear Ventura County Board of Supervisors:

As the governing body charged with approving policy, including policy that involves the delivery of health services to our citizens, I urge you to implement Assisted Outpatient Treatment (AOT) as permitted by Laura's Law (AB 1421) for those with severe mental illness. The question is not whether AOT works; the question is whether you have the will to implement this proven program.

Consistent with your duty to set policy in the area of mental health services is a responsibility to understand the needs of our most mentally ill. Anosognosia is a brain disorder that results in unawareness or denial of a functional neurological deficit (Segen's Medical Dictionary). Anosognosia afflicts a significant portion of those with severe mental illness, and is responsible for their inability to know they are ill. Voluntary programs alone are not the answer for these individuals. AOT is necessary. Title II of the Americans With Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services provided by state and local governments. The Supreme Court ruling in Olmstead v. L.C. (98-536) 527 U.S. 581 (1999) 138 F.3d 893, clarified the Title II mandate when it ruled that the severely mentally ill have a right to receive medically necessary, community-based outpatient treatment on an equal footing.

The County's current delivery of medical services discriminates against our most seriously ill because it does not provide the "**medically necessary**" treatment required for this subpopulation. Until you commit to providing the appropriate services for this population, this discrimination will persist and will result in further unnecessary involuntary forced treatment in higher, more restrictive levels of care (hospital, jails, and prisons), at higher costs. This county has failed to meet its obligation to serve our most vulnerable and psychiatrically disabled population in order to prevent re-hospitalization, incarcerations, homelessness, suicide and violence, and to protect the general public as well. The failure to provide critical services exposes the county to public safety, financial and legal liabilities.

## AOT WORKS

On January 28, 2015, The Ventura County Laura's Law workgroup heard a presentation from the Honorable Judge Thomas Anderson, Superior Court of Nevada County, California, one of the counties that has implemented Laura's Law (AOT). Judge Anderson stated that with Laura's Law, Nevada County has experienced an 80% reduction in incarceration rates, a 70% reduction in homelessness, and an 80% reduction in psychiatric bed days. And Laura's Law was a fiscally advantageous decision for Nevada County – they are receiving \$1.81 back for every dollar they have spent to implement Laura's Law. Implementing Laura's Law is a financially prudent action all counties should take.

Additionally, according to Judge Anderson, over half of those who are referred to an AOT program accept services voluntarily. At the initial intervention stage, this allows our most ill to avoid hospitalization, continued decompensation and brain damage, and arrest - without a court order. According to Judge Anderson, "that alone justifies having AOT on the books." AOT catches people before they are arrested or 5150'd. Understanding the special needs and unique circumstances of this high-risk, high-need subpopulation is critical to your decision regarding Laura's Law. You have an opportunity to dramatically increase beneficial health outcomes for these people at a lower cost than you are currently spending to process these individuals in the hospital and jail systems. Why have more counties not adopted Laura's Law? Part of the problem, according to Anderson, is that people do not like change. Mental health directors who are not willing to change and adapt can be a barrier to Laura's Law.

Although Nevada County and Ventura County are different in population and demographic, the same percentages apply to large v. small counties. According to Anderson, he believes the only major difference between Nevada and Ventura counties insofar as Laura's Law implementation is concerned is the size of the bureaucracy. Let's not let bureaucracy prevent us from allocating our resources to dramatically change the lives of our most mentally ill and their families right now.

Multiple studies, apart from Nevada County, show that patients in an AOT program have a dramatic decrease in re-hospitalization, incarceration, and victimization. Additionally, AOT has been shown to reduce violent behavior among people with serious mental illness. (J.W. Swanson, "Involuntary Out-Patient Commitment and Reduction of Violent Behavior in Person with Severe Mental Illness," British Journal of Psychiatry 176, no. 4 (2000): 324-331; Kendra's Law; C. O'Keefe, D.P.Potenza, and K. T. Mueser, "Treatment Outcomes for Severely Mentally Ill Patients on Conditional Discharge to Community-Based Treatment," Journal of Nervous and Mental Disease 185, no. 6 (1997): 409-411.) Studies on AOT, throughout the country, have shown AOT to be very effective in ensuring medication compliance, reduction in psychiatric hospital admissions, a decrease in victimization of the seriously mentally ill, a reduction in incarcerations and homelessness, as well as a reduction in violence of the mentally ill. And the best part about AOT, according to Judge Anderson, is the success of the voluntary compliance piece. Over half referred to AOT accept services voluntarily.

A 2000 Duke University study demonstrates that people with psychotic disorders who received court-ordered treatment for 180 days had significantly better outcomes than those who were given either intensive treatment alone, or a court order alone. That is why Laura's Law incorporates these findings by providing for a 180 day period of intensive treatment under the supervision of the court.

With proper treatment through AOT, many with severe mental illness can lead functional and productive lives. Laura's Law is the most successful program for the seriously mentally ill because it employs **data-driven and evidence-based** treatments that are known to work. These treatments are **medically necessary** to treat our most severely mentally ill. We have an obligation to care for those who are unable to care for themselves.

## **LAURA'S LAW CAN FIX PART OF A BROKEN SYSTEM**

*"There are unjust laws as there are unjust men."* – Ghandi

California law protects mentally ill persons' "right" to deteriorate significantly, but it does not protect patients' right to receive the treatment they need to lead functional and productive lives. California's Lanterman-Petris-Short Act (LPS) requires that we wait to treat a person with severe mental illness until after they deteriorate so significantly that they are either a danger to themselves, to others, or they are unable to care for themselves. Serious mental illness is a medical condition. In our society, people suffering other medical conditions receive stabilizing treatment even if they are too ill to consent to that treatment, but California's mental health system requires that a seriously disabled individual with mental illness significantly deteriorate, so that they are in an imminently dangerous position, prior to receiving society's help. And once society finally decides to treat the mentally ill, through involuntary hospitalization, the patients are stabilized and discharged without the much needed support to ensure that they continue their medication and treatment regimen. We can change this with Laura's Law.

Laura's Law is part of changing a broken system that discriminates against the high-risk, high-need mentally ill. In what other area of health care do we insist that a patient wait until they are gravely disabled before we will treat them? The medical community knows that severe decompensation results in brain damage. Do we wait until an infection turns gangrenous before we treat? The LPS law discriminates against our most ill and our most vulnerable with inhumane consequences.

The way in which we treat those with severe mental illness, by the laws that require severe mental deterioration, and the lack of evidence based and medically necessary treatments, contributes not only to a waste of resources, but also significantly contributes to a worsening of one's psychiatric symptoms, making it is so much more difficult for them to become healthy enough to function in life in the long run.

Prompt treatment and equal protection for individuals with severe mental illness requires the medically necessary treatment protocols in AOT, Laura's Law.

## **VENTURA COUNTY NEEDS LAURA'S LAW**

Of the approximately twenty mental health programs Ventura County has implemented with Proposition 63 funds, only a small percentage provide evidence-based treatment for those with severe mental illness. Ventura County does not offer AOT to those with severe mental illness. Priority of resources and services should be given to help those with the most severe mental illnesses, those that are addressed through Laura's Law. Many of Ventura County's engagement and outreach programs are funded through Proposition 63, but the most high-need and high-risk still have not been given the medically necessary services they desperately need. Is the county being good stewards of the money entrusted by will of the California voters by funding programs that do nothing to assist the most severely mentally ill? The current use of public funds discriminates against those with severe mental illness.

It is Ventura County's moral and legal responsibility to provide equal access to programs that can help all who are mentally ill, both high-functioning and low-functioning. Our high-functioning mentally ill do well in voluntary programs alone. The mentally ill population to which Laura's Law applies do not avail themselves of voluntary programs because they do not believe they are ill. Our most severely mentally ill are not receiving the medically necessary treatment they need and should be afforded according to the law. Laura's Law can help those who need it most.

## **ARGUMENTS AGAINST LAURA'S LAW ARE INVALID**

All of the arguments against Laura's Law are easily refuted. These arguments lack credibility and a factual understanding of the symptoms and treatment of severe mental illness. The County is not doing "whatever it takes" to deliver necessary services to the community.

### **A. "It's Too Expensive"**

Those who argue against Laura's Law falsely assert that it is too costly to implement. AOT has been proven to save money everywhere it has been implemented. Judge Anderson stated that Nevada County receives \$1.81 back for every dollar they have spent to implement Laura's Law. Implementation of Laura's Law will result in resource savings in our court system as well. Most of the people referred to AOT are already in the court system either through LPS conservatorship proceedings or criminal proceedings, both of which are far more costly and time-consuming than an AOT proceeding. With LPS and criminal proceedings, numerous court appearances are necessary and the offer of a jury trial is required. If we can process these individuals through an AOT order rather than other more costly proceedings, we not only save money and resources, we can meaningfully assist those with severe illness.

Currently, we spend so much money and use so many of our resources treating the mentally ill through law enforcement, the jail and prison systems, and involuntary hospitalizations. All the while, very few of our severely mentally ill are getting better. Our most ill are not afforded the same opportunities for wellness as others who suffer from less severe mental illness. There can be no fiscal or health-related justification to continue to pay staggering sums and incur countless hours of staff resources to support a mental health system that does not result in improved health for those who rely on the county for services. Our treatment of our most severely mentally ill is ineffective and dysfunctional, it does not lead to beneficial health outcomes, and it is exceedingly costly to taxpayers.

Services need to be re-directed to help the most seriously mentally ill before they get back into this cycle. The human, financial, and societal costs that our states and counties pay for the failure to adequately care for those with serious mental illness is indefensible. Rather than recognize the need to pay now or pay later, we try to ignore the problem and then spend exorbitant sums trying to address illness severity that could have been prevented with foresight.

Societal costs, as well, are much higher when we fail to properly treat those with severe mental illness. There is a cost to communities when the severely mentally ill are not given adequate treatment, supports, resources, help, or respect. Those with mental illness who are homeless occupy public parks, public libraries, or are detained in hospital emergency rooms waiting for beds in a psychiatric facility.

The current system also criminalizes mental illness. Roughly 2 million people with mental illness go to jail every year, according to a 2013 study in *Psychiatric Services in Advance*. About 15% of all state prisoners and 24% of jail inmates are psychotic, according to the Bureau of Justice Statistics. Our resources would be better spent proactively treating mental illness with AOT, rather than perpetuating the dysfunctional system.

AOT programs like Laura's Law and New York's Kendra's Law, are cost-effective ways to dramatically improve the lives of people with mental illness, says Mary Giliberti, executive director of the National Alliance on Mental Illness. Yet fewer than 2% of adults with serious mental illness receive these services, according to the Substance Abuse and Mental Health Services Administration. We can change this in our country. We have successful working models to consult and we have a stellar team of case managers and mental health professionals in this country. Re-allocate these resources to serve our most high- risk and high- need individuals.

#### B. “Civil Liberties are Infringed”

Another argument posited against Laura's Law is that it violates the civil liberties of the mentally ill.

Laura's Law is a part of assisting our most ill and vulnerable to finally realize their civil rights. It is a violation of their civil rights NOT to offer medically necessary treatments like AOT. Approximately half of those who suffer from severe mental illness do not believe they are ill. They do not possess the capacity to understand that their refusal of treatment is the opposite of what they need to regain understanding.

Those who staunchly advocate for the civil rights of the severely mentally ill are not advocating for the patient, they are advocating for the disease. The “civil liberties” position is the most illusory of arguments. There is nothing “civil” about allowing a mentally ill person to remain lost in disease, psychotic on the street, homeless or incarcerated. And there is nothing “right” about allowing someone who is too mentally incapacitated to make a decision regarding treatment to fall headlong into a severe psychotic deterioration before taking action.

Laura’s Law is one way that we can right some of the catastrophic wrongs that continue to be committed against our most severely mentally ill as a result of the misguided laws and policies that keep them in a revolving haze of incapacitation. Those who argue for the civil liberties of the most ill among us, actually deprive mentally ill people of the opportunity to receive appropriate medical treatment, instead subjecting them to a life in and out of hospitals, jails, or homeless. Helping them out of their psychosis is the only way to allow them true and meaningful exercise of their civil liberties.

Again, over half of the people referred to an AOT program, end up accepting services voluntarily. For those that do not, we already have numerous court-ordered treatment proceedings. Court ordered treatment is a common practice in all courts.

If we are truly concerned with a mentally ill person’s civil rights, than we should be working to eliminate the current involuntary treatment of the severely mentally ill --the involuntary inpatient system – jails, prisons, and temporary psychiatric hospital stays, and the outpatient system – police and law enforcement, and replace it with a one where they have a chance at a functional life. Instead, we wait until they have lost all of their rights. What about their right to mental health? What about their right to future opportunity?

Not only does their illness rob them of clear thinking and understanding to know that they need help, but our system adds an additional block to any hope of a long term life of productivity by placing them in a system where they have no rights, and diminished hope of meaningful recovery. For those that suffer from serious mental illness – being thrown in jail, in a hospital setting, or handcuffed in the back of a police car, further deteriorates their mental state making recovery that much more long and painful. No other patient group suffering with disease gets treated this way – it is unconscionable.

We should be assisting these human beings in gaining back a productive life. We can start to do that through Laura’s Law.

## **VENTURA COUNTY SHOULD IMPLEMENT LAURA'S LAW**

At the close of Judge Anderson's presentation in front of the Ventura County Laura's Law workgroup, he stated many of the reasons counties should adopt Laura's Law. "It [Laura's Law] has been proven to save money everywhere it has been implemented. It helps people, it prevents further [brain] damage, it helps families."

We need to focus our resources to help the people that are least able to care for themselves. What does it say about a society that does not care for those that are least able to care for themselves? We have a moral and ethical obligation to care for the most ill and most vulnerable among us. For those with serious impairment of mental functioning and an inability to understand that they need treatment, the humane approach requires that we help relieve the symptoms of mental illness. This is simply the right thing to do.

We should not pass up this opportunity – it is our moral obligation. I urge you to implement Laura's Law.

Sincerely,

*Mary Haffner*

Mary Haffner, Esq.

cc via email only

Congresswoman Julia Brownley, 26<sup>th</sup> District of California

California State Senator Hannah-Beth Jackson, District 19

California Assemblymember Das Williams, District 37

Meloney Roy, Ventura County Health Care Agency Chief Deputy Director

NAMI, Ventura County

Los Angeles Times

Ventura County Star, Kathleen Wilson

Ventura County Reporter

Ventura Breeze