

SB 6739 - H COMM AMD

By Committee on Health Care & Wellness

ADOPTED 03/04/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 71.05.020 and 2007 c 375 s 6 and 2007 c 191 s 2 are
4 each reenacted and amended to read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Admission" or "admit" means a decision by a physician or
8 psychiatric advanced registered nurse practitioner that a person should
9 be examined or treated as a patient in a hospital;

10 (2) "Antipsychotic medications" means that class of drugs primarily
11 used to treat serious manifestations of mental illness associated with
12 thought disorders, which includes, but is not limited to atypical
13 antipsychotic medications;

14 (3) "Attending staff" means any person on the staff of a public or
15 private agency having responsibility for the care and treatment of a
16 patient;

17 (4) "Commitment" means the determination by a court that a person
18 should be detained for a period of either evaluation or treatment, or
19 both, in an inpatient or a less restrictive setting;

20 (5) "Conditional release" means a revocable modification of a
21 commitment, which may be revoked upon violation of any of its terms;

22 (6) "Crisis stabilization unit" means a short-term facility or a
23 portion of a facility licensed by the department of health and
24 certified by the department of social and health services under RCW
25 71.24.035, such as an evaluation and treatment facility or a hospital,
26 which has been designed to assess, diagnose, and treat individuals
27 experiencing an acute crisis without the use of long-term
28 hospitalization;

29 (7) "Custody" means involuntary detention under the provisions of

1 this chapter or chapter 10.77 RCW, uninterrupted by any period of
2 unconditional release from commitment from a facility providing
3 involuntary care and treatment;

4 (8) "Department" means the department of social and health
5 services;

6 (9) "Designated chemical dependency specialist" means a person
7 designated by the county alcoholism and other drug addiction program
8 coordinator designated under RCW 70.96A.310 to perform the commitment
9 duties described in chapters 70.96A and 70.96B RCW;

10 (10) "Designated crisis responder" means a mental health
11 professional appointed by the county or the regional support network to
12 perform the duties specified in this chapter;

13 (11) "Designated mental health professional" means a mental health
14 professional designated by the county or other authority authorized in
15 rule to perform the duties specified in this chapter;

16 (12) "Detention" or "detain" means the lawful confinement of a
17 person, under the provisions of this chapter;

18 (13) "Developmental disabilities professional" means a person who
19 has specialized training and three years of experience in directly
20 treating or working with persons with developmental disabilities and is
21 a psychiatrist, psychologist, psychiatric advanced registered nurse
22 practitioner, or social worker, and such other developmental
23 disabilities professionals as may be defined by rules adopted by the
24 secretary;

25 (14) "Developmental disability" means that condition defined in RCW
26 71A.10.020(3);

27 (15) "Discharge" means the termination of hospital medical
28 authority. The commitment may remain in place, be terminated, or be
29 amended by court order;

30 (16) "Evaluation and treatment facility" means any facility which
31 can provide directly, or by direct arrangement with other public or
32 private agencies, emergency evaluation and treatment, outpatient care,
33 and timely and appropriate inpatient care to persons suffering from a
34 mental disorder, and which is certified as such by the department. A
35 physically separate and separately operated portion of a state hospital
36 may be designated as an evaluation and treatment facility. A facility
37 which is part of, or operated by, the department or any federal agency

1 will not require certification. No correctional institution or
2 facility, or jail, shall be an evaluation and treatment facility within
3 the meaning of this chapter;

4 (17) "Gravely disabled" means a condition in which a person, as a
5 result of a mental disorder: (a) Is in danger of serious physical harm
6 resulting from a failure to provide for his or her essential human
7 needs of health or safety; or (b) manifests severe deterioration in
8 routine functioning evidenced by repeated and escalating loss of
9 cognitive or volitional control over his or her actions and is not
10 receiving such care as is essential for his or her health or safety;

11 (18) "Habilitative services" means those services provided by
12 program personnel to assist persons in acquiring and maintaining life
13 skills and in raising their levels of physical, mental, social, and
14 vocational functioning. Habilitative services include education,
15 training for employment, and therapy. The habilitative process shall
16 be undertaken with recognition of the risk to the public safety
17 presented by the person being assisted as manifested by prior charged
18 criminal conduct;

19 (19) "History of one or more violent acts" refers to the period of
20 time ten years prior to the filing of a petition under this chapter,
21 excluding any time spent, but not any violent acts committed, in a
22 mental health facility or in confinement as a result of a criminal
23 conviction;

24 (20) "Imminent" means the state or condition of being likely to
25 occur at any moment or near at hand, rather than distant or remote;

26 (21) "Individualized service plan" means a plan prepared by a
27 developmental disabilities professional with other professionals as a
28 team, for a person with developmental disabilities, which shall state:

29 (a) The nature of the person's specific problems, prior charged
30 criminal behavior, and habilitation needs;

31 (b) The conditions and strategies necessary to achieve the purposes
32 of habilitation;

33 (c) The intermediate and long-range goals of the habilitation
34 program, with a projected timetable for the attainment;

35 (d) The rationale for using this plan of habilitation to achieve
36 those intermediate and long-range goals;

37 (e) The staff responsible for carrying out the plan;

1 (f) Where relevant in light of past criminal behavior and due
2 consideration for public safety, the criteria for proposed movement to
3 less-restrictive settings, criteria for proposed eventual discharge or
4 release, and a projected possible date for discharge or release; and

5 (g) The type of residence immediately anticipated for the person
6 and possible future types of residences;

7 (22) "Judicial commitment" means a commitment by a court pursuant
8 to the provisions of this chapter;

9 (23) "Likelihood of serious harm" means:

10 (a) A substantial risk that: (i) Physical harm will be inflicted
11 by a person upon his or her own person, as evidenced by threats or
12 attempts to commit suicide or inflict physical harm on oneself; (ii)
13 physical harm will be inflicted by a person upon another, as evidenced
14 by behavior which has caused such harm or which places another person
15 or persons in reasonable fear of sustaining such harm; or (iii)
16 physical harm will be inflicted by a person upon the property of
17 others, as evidenced by behavior which has caused substantial loss or
18 damage to the property of others; or

19 (b) The person has threatened the physical safety of another and
20 has a history of one or more violent acts;

21 (24) "Mental disorder" means any organic, mental, or emotional
22 impairment which has substantial adverse effects on a person's
23 cognitive or volitional functions;

24 (25) "Mental health professional" means a psychiatrist,
25 psychologist, psychiatric nurse, or social worker, and such other
26 mental health professionals as may be defined by rules adopted by the
27 secretary pursuant to the provisions of this chapter;

28 (26) "Peace officer" means a law enforcement official of a public
29 agency or governmental unit, and includes persons specifically given
30 peace officer powers by any state law, local ordinance, or judicial
31 order of appointment;

32 (27) "Private agency" means any person, partnership, corporation,
33 or association that is not a public agency, whether or not financed in
34 whole or in part by public funds, which constitutes an evaluation and
35 treatment facility or private institution, or hospital, which is
36 conducted for, or includes a department or ward conducted for, the care
37 and treatment of persons who are mentally ill;

1 (28) "Professional person" means a mental health professional and
2 shall also mean a physician, psychiatric advanced registered nurse
3 practitioner, registered nurse, and such others as may be defined by
4 rules adopted by the secretary pursuant to the provisions of this
5 chapter;

6 (29) "Psychiatric advanced registered nurse practitioner" means a
7 person who is licensed as an advanced registered nurse practitioner
8 pursuant to chapter 18.79 RCW; and who is board certified in advanced
9 practice psychiatric and mental health nursing.

10 (30) "Psychiatrist" means a person having a license as a physician
11 and surgeon in this state who has in addition completed three years of
12 graduate training in psychiatry in a program approved by the American
13 medical association or the American osteopathic association and is
14 certified or eligible to be certified by the American board of
15 psychiatry and neurology;

16 (~~(30)~~) (31) "Psychologist" means a person who has been licensed
17 as a psychologist pursuant to chapter 18.83 RCW;

18 (~~(31)~~) (32) "Public agency" means any evaluation and treatment
19 facility or institution, or hospital which is conducted for, or
20 includes a department or ward conducted for, the care and treatment of
21 persons with mental illness, if the agency is operated directly by,
22 federal, state, county, or municipal government, or a combination of
23 such governments;

24 (~~(32)~~) (33) "Registration records" include all the records of the
25 department, regional support networks, treatment facilities, and other
26 persons providing services to the department, county departments, or
27 facilities which identify persons who are receiving or who at any time
28 have received services for mental illness;

29 (~~(33)~~) (34) "Release" means legal termination of the commitment
30 under the provisions of this chapter;

31 (~~(34)~~) (35) "Resource management services" has the meaning given
32 in chapter 71.24 RCW;

33 (~~(35)~~) (36) "Secretary" means the secretary of the department of
34 social and health services, or his or her designee;

35 (~~(36)~~) (37) "Social worker" means a person with a master's or
36 further advanced degree from an accredited school of social work or a
37 degree deemed equivalent under rules adopted by the secretary;

1 (~~(37)~~) (38) "Treatment records" include registration and all
2 other records concerning persons who are receiving or who at any time
3 have received services for mental illness, which are maintained by the
4 department, by regional support networks and their staffs, and by
5 treatment facilities. Treatment records include mental health
6 information contained in a medical bill including but not limited to
7 mental health drugs, a mental health diagnosis, provider name, and
8 dates of service stemming from a medical service. Treatment records do
9 not include notes or records maintained for personal use by a person
10 providing treatment services for the department, regional support
11 networks, or a treatment facility if the notes or records are not
12 available to others;

13 (~~(38)~~) (39) "Violent act" means behavior that resulted in
14 homicide, attempted suicide, nonfatal injuries, or substantial damage
15 to property.

16 **Sec. 2.** RCW 71.05.215 and 1997 c 112 s 16 are each amended to read
17 as follows:

18 (1) A person found to be gravely disabled or presents a likelihood
19 of serious harm as a result of a mental disorder has a right to refuse
20 antipsychotic medication unless it is determined that the failure to
21 medicate may result in a likelihood of serious harm or substantial
22 deterioration or substantially prolong the length of involuntary
23 commitment and there is no less intrusive course of treatment than
24 medication in the best interest of that person.

25 (2) The department shall adopt rules to carry out the purposes of
26 this chapter. These rules shall include:

27 (a) An attempt to obtain the informed consent of the person prior
28 to administration of antipsychotic medication.

29 (b) For short-term treatment up to thirty days, the right to refuse
30 antipsychotic medications unless there is an additional concurring
31 medical opinion approving medication by a psychiatrist, psychiatric
32 advanced registered nurse practitioner, or physician in consultation
33 with a mental health professional with prescriptive authority.

34 (c) For continued treatment beyond thirty days through the hearing
35 on any petition filed under RCW (~~(71.05.370(7))~~) 71.05.217, the right
36 to periodic review of the decision to medicate by the medical director
37 or designee.

1 (d) Administration of antipsychotic medication in an emergency and
2 review of this decision within twenty-four hours. An emergency exists
3 if the person presents an imminent likelihood of serious harm, and
4 medically acceptable alternatives to administration of antipsychotic
5 medications are not available or are unlikely to be successful; and in
6 the opinion of the physician or psychiatric advanced registered nurse
7 practitioner, the person's condition constitutes an emergency requiring
8 the treatment be instituted prior to obtaining a second medical
9 opinion.

10 (e) Documentation in the medical record of the (~~physician's~~)
11 attempt by the physician or psychiatric advanced registered nurse
12 practitioner to obtain informed consent and the reasons why
13 antipsychotic medication is being administered over the person's
14 objection or lack of consent.

15 **Sec. 3.** RCW 71.05.217 and 1997 c 112 s 31 are each amended to read
16 as follows:

17 Insofar as danger to the individual or others is not created, each
18 person involuntarily detained, treated in a less restrictive
19 alternative course of treatment, or committed for treatment and
20 evaluation pursuant to this chapter shall have, in addition to other
21 rights not specifically withheld by law, the following rights, a list
22 of which shall be prominently posted in all facilities, institutions,
23 and hospitals providing such services:

24 (1) To wear his or her own clothes and to keep and use his or her
25 own personal possessions, except when deprivation of same is essential
26 to protect the safety of the resident or other persons;

27 (2) To keep and be allowed to spend a reasonable sum of his or her
28 own money for canteen expenses and small purchases;

29 (3) To have access to individual storage space for his or her
30 private use;

31 (4) To have visitors at reasonable times;

32 (5) To have reasonable access to a telephone, both to make and
33 receive confidential calls;

34 (6) To have ready access to letter writing materials, including
35 stamps, and to send and receive uncensored correspondence through the
36 mails;

1 (7) Not to consent to the administration of antipsychotic
2 medications beyond the hearing conducted pursuant to RCW
3 71.05.320(~~(+2)~~) (3) or the performance of electroconvulsant therapy or
4 surgery, except emergency life-saving surgery, unless ordered by a
5 court of competent jurisdiction pursuant to the following standards and
6 procedures:

7 (a) The administration of antipsychotic medication or
8 electroconvulsant therapy shall not be ordered unless the petitioning
9 party proves by clear, cogent, and convincing evidence that there
10 exists a compelling state interest that justifies overriding the
11 patient's lack of consent to the administration of antipsychotic
12 medications or electroconvulsant therapy, that the proposed treatment
13 is necessary and effective, and that medically acceptable alternative
14 forms of treatment are not available, have not been successful, or are
15 not likely to be effective.

16 (b) The court shall make specific findings of fact concerning: (i)
17 The existence of one or more compelling state interests; (ii) the
18 necessity and effectiveness of the treatment; and (iii) the person's
19 desires regarding the proposed treatment. If the patient is unable to
20 make a rational and informed decision about consenting to or refusing
21 the proposed treatment, the court shall make a substituted judgment for
22 the patient as if he or she were competent to make such a
23 determination.

24 (c) The person shall be present at any hearing on a request to
25 administer antipsychotic medication or electroconvulsant therapy filed
26 pursuant to this subsection. The person has the right: (i) To be
27 represented by an attorney; (ii) to present evidence; (iii) to cross-
28 examine witnesses; (iv) to have the rules of evidence enforced; (v) to
29 remain silent; (vi) to view and copy all petitions and reports in the
30 court file; and (vii) to be given reasonable notice and an opportunity
31 to prepare for the hearing. The court may appoint a psychiatrist,
32 psychiatric advanced registered nurse practitioner, psychologist within
33 their scope of practice, or physician to examine and testify on behalf
34 of such person. The court shall appoint a psychiatrist, psychiatric
35 advanced registered nurse practitioner, psychologist within their scope
36 of practice, or physician designated by such person or the person's
37 counsel to testify on behalf of the person in cases where an order for
38 electroconvulsant therapy is sought.

1 (d) An order for the administration of antipsychotic medications
2 entered following a hearing conducted pursuant to this section shall be
3 effective for the period of the current involuntary treatment order,
4 and any interim period during which the person is awaiting trial or
5 hearing on a new petition for involuntary treatment or involuntary
6 medication.

7 (e) Any person detained pursuant to RCW 71.05.320(~~(+2)~~) (3), who
8 subsequently refuses antipsychotic medication, shall be entitled to the
9 procedures set forth in (~~RCW 71.05.217(7)~~) this subsection.

10 (f) Antipsychotic medication may be administered to a nonconsenting
11 person detained or committed pursuant to this chapter without a court
12 order pursuant to RCW 71.05.215(2) or under the following
13 circumstances:

14 (i) A person presents an imminent likelihood of serious harm;

15 (ii) Medically acceptable alternatives to administration of
16 antipsychotic medications are not available, have not been successful,
17 or are not likely to be effective; and

18 (iii) In the opinion of the physician or psychiatric advanced
19 registered nurse practitioner with responsibility for treatment of the
20 person, or his or her designee, the person's condition constitutes an
21 emergency requiring the treatment be instituted before a judicial
22 hearing as authorized pursuant to this section can be held.

23 If antipsychotic medications are administered over a person's lack
24 of consent pursuant to this subsection, a petition for an order
25 authorizing the administration of antipsychotic medications shall be
26 filed on the next judicial day. The hearing shall be held within two
27 judicial days. If deemed necessary by the physician or psychiatric
28 advanced registered nurse practitioner with responsibility for the
29 treatment of the person, administration of antipsychotic medications
30 may continue until the hearing is held;

31 (8) To dispose of property and sign contracts unless such person
32 has been adjudicated an incompetent in a court proceeding directed to
33 that particular issue;

34 (9) Not to have psychosurgery performed on him or her under any
35 circumstances."

36 Correct the title.

EFFECT: Changes a reference to "advanced nurse practitioners" to

"psychiatric advanced registered nurse practitioners" to be consistent with terminology in the rest of the bill.

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