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SENATE BILL 5672

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State of Washington

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By Senators Niemi, McDonald, West, L. Smith and Sutherland; by request of Office of Financial Management and Dept. of Social & Health Services.

Read first time February 14, 1991. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to antipsychotic medicine; amending RCW 71.05.120,  
2 71.05.130, 71.05.210, and 71.05.370; and adding a new section to  
3 chapter 71.05 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 71.05 RCW  
6 to read as follows:

7 (1) A person found to be gravely disabled or dangerous as a result  
8 of a mental disorder has a right to refuse antipsychotic medication  
9 unless it is determined that the failure to medicate may result in a  
10 likelihood of serious harm or substantial deterioration or  
11 substantially prolong the length of involuntary commitment and there is  
12 no less intrusive course of treatment than medication in the best  
13 interest of that person.

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

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

3 (b) For short-term treatment, the right to refuse antipsychotic  
4 medications unless there is an additional concurring medical opinion  
5 approving medication.

6 (c) For continued treatment, the right to periodic review of the  
7 decision to medicate by the medical director or designee.

8 (d) Administration of antipsychotic medication in an emergency and  
9 review of this decision within twenty-four hours. An emergency exists  
10 if the person presents an imminent likelihood of serious harm to self  
11 or others, and medically acceptable alternatives to administration of  
12 antipsychotic medications are not available or are unlikely to be  
13 successful; and in the opinion of the physician, the person's condition  
14 constitutes an emergency requiring the treatment be instituted prior to  
15 obtaining a second medical opinion.

16 (e) Documentation in the medical record of the physician's attempt  
17 to obtain informed consent and the reasons why antipsychotic medication  
18 is being administered over the person's objection or lack of consent.  
19 If appropriate, documentation shall include the basis for a substituted  
20 judgment to medicate.

21 **Sec. 2.** RCW 71.05.120 and 1989 c 120 s 3 are each amended to read  
22 as follows:

23 (1) No officer of a public or private agency, nor the  
24 superintendent, professional person in charge, his or her professional  
25 designee, or attending staff of any such agency, nor any public  
26 official performing functions necessary to the administration of this  
27 chapter, nor peace officer responsible for detaining a person pursuant  
28 to this chapter, nor any county designated mental health professional,  
29 nor the state, a unit of local government, or an evaluation and

1 treatment facility shall be civilly or criminally liable for performing  
2 duties pursuant to this chapter with regard to the decision of whether  
3 to admit, release, administer antipsychotic medications (~~on an~~  
4 ~~emergency basis~~)), or detain a person for evaluation and treatment:  
5 PROVIDED, That such duties were performed in good faith and without  
6 gross negligence.

7 (2) This section does not relieve a person from giving the required  
8 notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn  
9 or to take reasonable precautions to provide protection from violent  
10 behavior where the patient has communicated an actual threat of  
11 physical violence against a reasonably identifiable victim or victims.  
12 The duty to warn or to take reasonable precautions to provide  
13 protection from violent behavior is discharged if reasonable efforts  
14 are made to communicate the threat to the victim or victims and to law  
15 enforcement personnel.

16 **Sec. 3.** RCW 71.05.130 and 1989 c 120 s 4 are each amended to read  
17 as follows:

18 In any judicial proceeding for involuntary commitment or detention,  
19 (~~or administration of antipsychotic medication~~) or in any proceeding  
20 challenging such commitment or detention, (~~or administration of~~  
21 ~~antipsychotic medication~~) the prosecuting attorney for the county in  
22 which the proceeding was initiated shall represent the individuals or  
23 agencies petitioning for commitment or detention (~~or administration of~~  
24 ~~antipsychotic medication~~) and shall defend all challenges to such  
25 commitment or detention (~~or administration of antipsychotic~~  
26 ~~medication~~): PROVIDED, That after January 1, 1980, the attorney  
27 general shall represent and provide legal services and advice to state  
28 hospitals or institutions with regard to all provisions of and  
29 proceedings under this chapter except in proceedings initiated by such

1 hospitals and institutions seeking fourteen day detention ((and  
2 administration of antipsychotic medication)).

3       **Sec. 4.** RCW 71.05.210 and 1989 c 120 s 6 are each amended to read  
4 as follows:

5       Each person involuntarily admitted to an evaluation and treatment  
6 facility shall, within twenty-four hours of his or her admission, be  
7 examined and evaluated by a licensed physician who may be assisted by  
8 a ((physician's)) physician assistant according to chapter 18.71A RCW  
9 or a nurse practitioner according to chapter 18.88 RCW and a mental  
10 health professional as defined in this chapter, and shall receive such  
11 treatment and care as his or her condition requires including treatment  
12 on an outpatient basis for the period that he or she is detained,  
13 except that, beginning twenty-four hours prior to a court proceeding,  
14 the individual may refuse all but emergency life-saving treatment, and  
15 the individual shall be informed at an appropriate time of his or her  
16 right to such refusal of treatment. Such person shall be detained up  
17 to seventy-two hours, if, in the opinion of the professional person in  
18 charge of the facility, or his or her professional designee, the person  
19 presents a likelihood of serious harm to himself or herself or others,  
20 or is gravely disabled. A person who has been detained for seventy-two  
21 hours shall no later than the end of such period be released, unless  
22 referred for further care on a voluntary basis, or detained pursuant to  
23 court order for further treatment as provided in this chapter.

24       If, after examination and evaluation, the licensed physician and  
25 mental health professional determine that the initial needs of the  
26 person would be better served by placement in an alcohol treatment  
27 facility, then the person shall be referred to an approved treatment  
28 ((facility)) program defined under RCW 70.96A.020.

1       An evaluation and treatment center admitting any person pursuant to  
2 this chapter whose physical condition reveals the need for  
3 hospitalization shall assure that such person is transferred to an  
4 appropriate hospital for treatment. Notice of such fact shall be given  
5 to the court, the designated attorney, and the designated county mental  
6 health professional and the court shall order such continuance in  
7 proceedings under this chapter as may be necessary, but in no event may  
8 this continuance be more than fourteen days.

9       **Sec. 5.** RCW 71.05.370 and 1989 c 120 s 8 are each amended to read  
10 as follows:

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

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

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

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

25       (4) To have visitors at reasonable times;

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

1 (6) To have ready access to letter writing materials, including  
2 stamps, and to send and receive uncensored correspondence through the  
3 mails;

4 (7) Not to consent to the performance of (~~shock treatment, the~~  
5 ~~administration of antipsychotic medications,~~) electroconvulsant  
6 therapy or surgery, except emergency life-saving surgery, and not to  
7 have (~~shock treatment, antipsychotic medications,~~) electroconvulsant  
8 therapy or nonemergency surgery in such circumstance unless ordered by  
9 a court of competent jurisdiction pursuant to the following standards  
10 and procedures:

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

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

28 (c) The person shall be present at any hearing on a request to  
29 administer (~~shock treatment or antipsychotic medications~~)  
30 electroconvulsant therapy filed pursuant to this subsection. The

1 person has the right: (i) To be represented by an attorney; (ii) to  
2 present evidence; (iii) to cross-examine witnesses; (iv) to have the  
3 rules of evidence enforced; (v) to remain silent; (vi) to view and copy  
4 all petitions and reports in the court file; and (vii) to be given  
5 reasonable notice and an opportunity to prepare for the hearing. The  
6 court may appoint a psychiatrist, psychologist within their scope of  
7 practice, or physician to examine and testify on behalf of such person.  
8 The court shall appoint a psychiatrist, psychologist within their scope  
9 of practice, or physician designated by such person or the person's  
10 counsel to testify on behalf of the person in cases where an order for  
11 ~~((shock treatment))~~ electroconvulsant therapy is sought.

12 ~~((d) An order for the administration of antipsychotic medications~~  
13 ~~entered following a hearing conducted pursuant to this section shall be~~  
14 ~~effective for the period of the current involuntary treatment order,~~  
15 ~~any succeeding order entered pursuant to RCW 71.05.320(1), and any~~  
16 ~~interim period during which the person is awaiting trial or hearing on~~  
17 ~~a new petition for involuntary treatment or involuntary medication.~~  
18 ~~Upon a request timely filed, a review of any such medication order~~  
19 ~~shall be conducted by the court at the hearing on a petition filed~~  
20 ~~pursuant to RCW 71.05.300. If a succeeding involuntary treatment order~~  
21 ~~is entered pursuant to RCW 71.05.320(2), a person who refuses to~~  
22 ~~consent to the administration of antipsychotic medications shall be~~  
23 ~~entitled to an evidentiary hearing in accordance with this section.~~

24 ~~(e) Antipsychotic medication may be administered to a nonconsenting~~  
25 ~~person detained or committed pursuant to this chapter without a court~~  
26 ~~order under the following circumstances:~~

27 ~~(i) A person presents an imminent likelihood of serious harm to~~  
28 ~~self or others;~~

1       ~~(ii) Medically acceptable alternatives to administration of~~  
2 ~~antipsychotic medications are not available, have not been successful,~~  
3 ~~or are not likely to be effective; and~~

4       ~~(iii) In the opinion of the physician with responsibility for~~  
5 ~~treatment of the person, or his or her designee, the person's condition~~  
6 ~~constitutes an emergency requiring the treatment be instituted before~~  
7 ~~a judicial hearing as authorized pursuant to this section can be held.~~

8       ~~If antipsychotic medications are administered over a person's lack~~  
9 ~~of consent pursuant to this subsection, a petition for an order~~  
10 ~~authorizing the administration of antipsychotic medications shall be~~  
11 ~~filed on the next judicial day. The hearing shall be held within two~~  
12 ~~judicial days. If deemed necessary by the physician with~~  
13 ~~responsibility for the treatment of the person, administration of~~  
14 ~~antipsychotic medications may continue until the hearing is held;))~~

15       (8) Not to consent to the administration of antipsychotic  
16 medication except as provided in this chapter;

17       (9) To dispose of property and sign contracts unless such person  
18 has been adjudicated an incompetent in a court proceeding directed to  
19 that particular issue;

20       ~~((+9))~~ (10) Not to have psychosurgery performed on him or her  
21 under any circumstances.

22       NEW SECTION. **Sec. 6.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.