

# SENATE BILL REPORT

## SB 5842

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As of March 5, 2019

**Title:** An act relating to the accessibility of electroconvulsant therapy.

**Brief Description:** Concerning the accessibility of electroconvulsant therapy.

**Sponsors:** Senators Carlyle, Cleveland and Dhingra.

**Brief History:**

**Committee Activity:** Behavioral Health Subcommittee to Health & Long Term Care:

**Brief Summary of Bill**

- Allows a person to provide informed consent for electroconvulsive therapy (ECT) on behalf of a patient who is not competent with a concurring medical opinion under certain circumstances.
- Allows administration of ECT to persons receiving short-term involuntary mental health treatment without the patient's consent when a second concurring medical opinion approves the treatment and failure to provide ECT may result in a likelihood of serious harm, substantial deterioration, or substantially prolong the length of involuntary commitment.
- Provides liability protection for administration of ECT in good faith and without gross negligence.

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**SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE**

**Staff:** Kevin Black (786-7747)

**Background:** Mental Disorders and the Application of Antipsychotic Medication and Electroconvulsant Therapy. A mental disorder is defined in state law as any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive functioning. A number of evidence-based treatments are employed to abate the distress and impairment caused by mental disorders, including talk therapy, antipsychotic medication, and ECT. The Mayo Clinic describes ECT as a procedure done under general anesthesia in which small electric currents are passed through the brain intentionally triggering a brief seizure, that

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appear to cause changes in brain chemistry and can quickly reverse symptoms of certain mental health conditions. ECT is a short-term therapy typically applied over a three to four week period. Administration of ECT is less common than therapy by antipsychotic medication, and is indicated mostly for relatively uncommon conditions such as catatonia, neuroleptic malignant syndrome, status epilepticus, treatment-resistant depression, severe depression, and severe mania. Some studies have found that in appropriate circumstances, ECT treatment is more effective than treatment by antipsychotic medication, with more tolerable side effects and a low risk profile.

Consent to Treatment for a Person Who is Incompetent. For patients who have not been committed for involuntary mental health treatment, there are circumstances under which a person with a close relationship to the patient may substitute their consent for a patient who is incompetent to make a medical decision. The persons who may give this substituted consent include the following in the order of priority:

- an appointed guardian for the person, if any;
- an individual who has been given durable power of attorney that encompasses the authority to make health decisions for the person;
- the patient's spouse or registered domestic partner;
- children of the person who are at least eighteen years of age;
- parents of the person; and
- adult brothers and sisters of the person.

The person giving substitute consent must determine in good faith that the patient would consent to the proposed health care if competent, or if this cannot be determined that the care is in the patient's best interests. A patient may be incompetent for these purposes based on mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, or because they are under the age of eighteen.

Involuntary Mental Health Treatment. Involuntary mental health treatment is provided under the Involuntary Treatment Act (ITA) to persons who have been determined by a designated mental health professional or a court to have a mental disorder which causes them to present a likelihood of serious harm or to be gravely disabled. These conditions prevail when a lack of mental health treatment is creating a risk of harm, whether by an act of self-harm, a failure to attend to essential needs of health and safety, or harm to others or the property of others. Involuntary treatment must be provided in the least restrictive setting available, which for some patients is a locked psychiatric facility but can also mean outpatient treatment. Involuntary treatment may be short-term, for periods of 72 hours or 14 days, or long-term, for renewable periods of 90 or 180 days.

Use of Involuntary Medication and Involuntary Electroconvulsive Therapy for Involuntary Patients. State law allows involuntary administration of antipsychotic medication to an involuntary patient under two procedures, one applicable to short-term patients and one to long-term patients. Involuntary medication may be administered to a short-term involuntary patient if:

- an attempt has been made to obtain the informed consent of the person;
- there is an additional concurring medical opinion approving medication from a psychiatrist, psychiatric advanced registered nurse practitioner, physician, or

- physician assistant consulting with a psychiatrist or mental health professional with prescriptive authority;
- the failure to medicate may result in a likelihood of serious harm, substantial deterioration, or substantially prolong the length of involuntary commitment; and
- there is no less intrusive course of treatment than medication in the best interest of the patient.

The involuntary medication procedure for long-term involuntary patients requires filing a petition for a court hearing and presenting proof by clear, cogent, and convincing evidence that:

- a compelling state interest exists that justifies overriding the patient's lack of consent to medication;
- the proposed treatment is necessary and effective;
- medically acceptable alternate forms of treatment are not available, have not been successful, or are not likely to be effective.

The person has the right to be present at the court hearing and to be represented by an attorney with due process protections. A court order for involuntary administration of ECT may be sought using the same procedure as the involuntary medication procedure for long-term involuntary patients.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill:** A person authorized to provide informed consent for a person who is not competent may provide informed consent for ECT on behalf of a patient who is experiencing catatonia, neuroleptic malignant syndrome, or status epilepticus, and who is not detained for involuntary treatment. The person must first determine in good faith that the patient, if competent would consent to the proposed treatment or that the treatment is in their best interests, and a concurring medical opinion must be provided by a health care provider who may administer ECT within their scope of practice. ECT may be administered without the concurring medical opinion in an emergency, provided that the second opinion must be obtained within 24 hours after the first ECT administration. An emergency exists if the person's condition is likely to result in permanent brain injury without emergency treatment.

Administration of ECT may be provided to short-term involuntary patients without the patient's consent by the same procedure that applies to the involuntary administration of antipsychotic medication to short-term involuntary patients, requiring:

- an attempt to obtain the informed consent of the person;
- an additional concurring medical opinion approving ECT from a psychiatrist, psychiatric advanced registered nurse practitioner, physician, or physician assistant consulting with a psychiatrist or other mental health professional with prescriptive authority.
- failure to provide ECT may result in a likelihood of serious harm, substantial deterioration, or substantially prolong the length of involuntary commitment; and
- there is no less intrusive course of treatment than ECT in the best interest of the patient.

Administration of ECT in good faith and without gross negligence is added to a list of functions subject to liability protection if performed by an involuntary treatment provider. References to ECT are added alongside references to involuntary antipsychotic medication throughout the ITA. This procedure is available for the involuntary treatment of minors and adults.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.