

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired physicians to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired physicians including those ordered by the board;

(f) Providing post-treatment monitoring and support of rehabilitative impaired physicians; ~~((and))~~

(g) Performing such other activities as agreed upon by the board and the committee; and

(h) Providing prevention and education services.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to ~~((fifteen))~~ twenty-five dollars on each license renewal or issuance of a new license to be collected by the department of licensing from every physician and surgeon licensed under chapter 18.71 RCW in addition to other license fees and the medical discipline assessment fee established under RCW 18.72.380. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired physician program.

NEW SECTION. Sec. 3. The sum of two hundred and seventy thousand dollars, or as much thereof as may be necessary, is appropriated from the health professions account to the department of licensing for the biennium ending June 30, 1991 to carry out the purposes of this act.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 10, 1989.

Passed the House April 6, 1989.

Approved by the Governor April 20, 1989.

Filed in Office of Secretary of State April 20, 1989.

CHAPTER 120

[Substitute Senate Bill No. 5362]

ANTIPSYCHOTIC MEDICATIONS—ADMINISTRATION

AN ACT Relating to administration of antipsychotic medications; amending RCW 71.05.010, 71.05.020, 71.05.120, 71.05.130, 71.05.200, 71.05.210, 71.05.250, and 71.05.370; adding a new section to chapter 71.34 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 6, chapter 142, Laws of 1973 1st ex. sess. and RCW 71.05.010 are each amended to read as follows:

The provisions of this chapter are intended by the legislature:

(1) To end inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;

(2) To provide prompt evaluation and short term treatment of persons with serious mental disorders;

(3) To safeguard individual rights;

(4) To provide continuity of care for persons with serious mental disorders;

(5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;

(6) To encourage, whenever appropriate, that services be provided within the community;

(7) To protect the public safety.

Sec. 2. Section 7, chapter 142, Laws of 1973 1st ex. sess. as amended by section 5, chapter 215, Laws of 1979 ex. sess. and RCW 71.05.020 are each amended to read as follows:

For the purposes of this chapter:

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

(2) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

(3) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self, (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others;

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

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

(6) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

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

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

(9) "Department" means the department of social and health services of the state of Washington;

(10) "Secretary" means the secretary of the department of social and health services, or his designee;

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

(12) "Professional person" shall mean a mental health professional, as above defined, and shall also mean a physician, registered nurse, and such others as may be defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

(13) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association;

(14) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

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

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and short term inpatient care to persons suffering from a mental disorder, and which is certified as such by the department of social and health services: PROVIDED, That a physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility: PROVIDED FURTHER, That a facility which is part of, or operated by, the department of social and health services or any federal agency will not

require certification: AND PROVIDED FURTHER, That no correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Antipsychotic medications," also referred to as "neuroleptics," means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders and currently includes phenothiazines, thioxanthenes, butyrophenone, dihydroindolone, and dibenzoxazine.

Sec. 3. Section 17, chapter 142, Laws of 1973 1st ex. sess. as last amended by section 301, chapter 212, Laws of 1987 and RCW 71.05.120 are each amended to read as follows:

(1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, release, administer antipsychotic medications on an emergency basis, or detain a person for evaluation and treatment: **PROVIDED**, That such duties were performed in good faith and without gross negligence.

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

Sec. 4. Section 18, chapter 142, Laws of 1973 1st ex. sess. as amended by section 8, chapter 215, Laws of 1979 ex. sess. and RCW 71.05.130 are each amended to read as follows:

In any judicial proceeding for involuntary commitment or detention, or administration of antipsychotic medication, or in any proceeding challenging such commitment or detention, or administration of antipsychotic medication, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention or administration of antipsychotic medication and shall defend all challenges to such commitment or detention or administration of antipsychotic medication: **PROVIDED**, That after January 1, 1980, the attorney general shall represent and provide legal services and advice to state

hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention and administration of antipsychotic medication.

Sec. 5. Section 25, chapter 142, Laws of 1973 1st ex. sess. as amended by section 13, chapter 145, Laws of 1974 ex. sess. and RCW 71.05.200 are each amended to read as follows:

(1) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both ~~((he))~~ the person and, if possible, a responsible member of his or her immediate family, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where ~~((he))~~ the person is detained that unless ~~((he))~~ the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) That a judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain ~~((him))~~ the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that ~~((he))~~ the person is a mentally ill person whose mental disorder presents a likelihood of serious harm to others or himself or herself or that ~~((he))~~ the person is gravely disabled;

(b) That ~~((he))~~ the person has a right to communicate immediately with an attorney; ~~((he))~~ has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and ~~((he))~~ has the right to be told the name and address of the attorney the mental health professional has designated pursuant to this chapter;

(c) That ~~((he))~~ the person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) That ~~((he))~~ the person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) That ~~((he))~~ the person has the right to refuse medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(2) When proceedings are initiated under RCW 71.05.150 (2), (3), or (4)(b), no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith

commence service of a copy of the petition for initial detention on said designated attorney.

(3) The judicial hearing described in subsection (1) of this section is hereby authorized, and shall be held according to the provisions of subsection (1) of this section and rules promulgated by the supreme court.

Sec. 6. Section 26, chapter 142, Laws of 1973 1st ex. sess. as last amended by section 2, chapter 439, Laws of 1987 and RCW 71.05.210 are each amended to read as follows:

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

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

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

Sec. 7. Section 30, chapter 142, Laws of 1973 1st ex. sess. as last amended by section 6, chapter 439, Laws of 1987 and RCW 71.05.250 are each amended to read as follows:

At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

- (1) To present evidence on his or her behalf;
- (2) To cross-examine witnesses who testify against him or her;
- (3) To be proceeded against by the rules of evidence;
- (4) To remain silent;
- (5) To view and copy all petitions and reports in the court file.

The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contains opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination.

Sec. 8. Section 42, chapter 142, Laws of 1973 1st ex. sess. as amended by section 26, chapter 145, Laws of 1974 ex. sess. and RCW 71.05.370 are each amended to read as follows:

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

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

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

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

(4) To have visitors at reasonable times;

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

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

(7) Not to consent to the performance of shock treatment, the administration of antipsychotic medications, or surgery, except emergency life-saving surgery, ((upon him;)) and not to have shock treatment, antipsychotic medications, or nonemergency surgery in such circumstance unless ordered by a court of competent jurisdiction pursuant to ((a judicial hearing in which the person is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, or physician designated by such person or his counsel to testify on behalf of such person)) the following standards and procedures:

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

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

(c) The person shall be present at any hearing on a request to administer shock treatment or antipsychotic medications filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for shock treatment is sought.

(d) An order for the administration of antipsychotic medications entered following a hearing conducted pursuant to this section shall be effective for the period of the current involuntary treatment order, any succeeding order entered pursuant to RCW 71.05.320(1), and any interim period during which the person is awaiting trial or hearing on a new petition for involuntary treatment or involuntary medication. Upon a request timely filed, a review of any such medication order shall be conducted by the court

at the hearing on a petition filed pursuant to RCW 71.05.300. If a succeeding involuntary treatment order is entered pursuant to RCW 71.05.320(2), a person who refuses to consent to the administration of antipsychotic medications shall be entitled to an evidentiary hearing in accordance with this section.

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

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

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

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

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

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

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

NEW SECTION. Sec. 9. A new section is added to chapter 71.34 RCW to read as follows:

For the purposes of administration of antipsychotic medication and shock treatment, the provisions of this act apply to minors pursuant to chapter 71.34 RCW.

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

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