

SENATE BILL REPORT

ESSB 5672

AS PASSED SENATE, MARCH 18, 1991

Brief Description: Changing provisions relating to antipsychotic medication.

SPONSORS: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Niemi, McDonald, West, L. Smith and Sutherland; by request of Office of Financial Management and Dept. of Social & Health Services).

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5672 be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chairman; L. Smith, Vice Chairman; Amondson, Johnson, L. Kreidler, Niemi, and Wojahn.

Staff: Laura Farris (786-7784)

Hearing Dates: February 26, 1991; March 5, 1991

HOUSE COMMITTEE ON HEALTH CARE

BACKGROUND:

In Harper v. State, the Washington State Supreme Court ruled that mental health providers must obtain a court order before they can administer antipsychotic medications to a prison inmate against the inmate's will. The Legislature responded in 1989 by requiring a judicial hearing under Chapter 71.05 RCW for all mental health patients before antipsychotic drugs can be administered against their will. Concerns have been raised as to the cost and cumbersomeness of this judicial hearing requirement.

In 1990 the U.S. Supreme Court overturned the Washington State Supreme Court's Harper decision. The U.S. Supreme Court ruled that a full dress judicial hearing is not required before antipsychotic medications can be administered to a prisoner who refuses them.

SUMMARY:

If a person is found to be gravely disabled or presents a likelihood of serious harm as a result of a mental disorder, he or she has the right to refuse antipsychotic medication unless it is determined that the failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment, and there is no less intrusive course of treatment in the best interest of that person.

The Department of Social and Health Services is required to adopt rules to carry out the purposes of this chapter which include:

- (1) The facility shall attempt to get the informed consent before administering antipsychotic medications against a patient's will and such attempt must be documented in the patient's medical record.
- (2) Standards for emergency treatment which include a review within 24 hours.
- (3) The facility may administer antipsychotic medications against the patient's will:
 - (a) from zero to 30 days if two physicians approve such medication.
 - (b) from 30 to 107 days (the last day to hear a 180-day involuntary petition) if the medical director or his/her designee periodically reviews the treatment.
 - (c) beyond 107 days only if a Superior Court Commissioner finds by clear, cogent and convincing evidence after a full evidentiary hearing that the 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. The patient has the right to be represented by an attorney; to be present, to present evidence and to cross examine witnesses; to remain silent; to view and copy all petitions and reports in the court file; and to have an opportunity to prepare for the hearing.

The patients' list of rights is amended to reflect the changes indicated above.

Liability is removed for the person administering antipsychotic medications.

The term "shock treatment" is replaced by the term "electroconvulsant therapy."

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Short-term treatment should not be delayed by the need to get a court order to override lack of consent. If there was no judicial hearing requirement, the financial and administrative burden on mental health providers would be lessened. This would allow the community mental health programs to retain patients rather than sending them on to the state hospital for short-term treatment.

TESTIMONY AGAINST:

The right to refuse treatment is a fundamental civil right.

TESTIFIED: PRO: Jack P. Bilsborough, Lucile Stanfield, Alliance for Mentally Ill; Joanne Asaba, King County RSN; Daniel Dowd, NW Evaluation & Treatment Center; Peter Davidson, Ira Klein, Western State Hospital; Steve Duncun, WA State Psychiatric Assn.; Susan Caverly, WA State Nurses Assn.; Ben Kuhner, M.D., Kitsap Mental Health Center; CON: Kathleen Rhoads, Nancy Cox, Jesse White, Capital Clubhouse; Jerry Sheehan, ACLU

HOUSE AMENDMENT(S):

A sentence regarding when antipsychotic medication may be administered against a patient's will without a court order is clarified so that it is consistent with the other provisions of the bill. Editorial brackets are removed from the text of the bill.