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HOUSE BILL 3018

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Green, Hinkle, Cody, Roberts, and Morrell

Read first time 01/21/08. Referred to Committee on Health Care & Wellness.

1            AN ACT Relating to psychiatric advanced registered nurse  
2 practitioners; amending RCW 71.05.215 and 71.05.217; and reenacting and  
3 amending RCW 71.05.020.

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

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

7            The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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

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

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

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

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

6 (6) "Crisis stabilization unit" means a short-term facility or a  
7 portion of a facility licensed by the department of health and  
8 certified by the department of social and health services under RCW  
9 71.24.035, such as an evaluation and treatment facility or a hospital,  
10 which has been designed to assess, diagnose, and treat individuals  
11 experiencing an acute crisis without the use of long-term  
12 hospitalization;

13 (7) "Custody" means involuntary detention under the provisions of  
14 this chapter or chapter 10.77 RCW, uninterrupted by any period of  
15 unconditional release from commitment from a facility providing  
16 involuntary care and treatment;

17 (8) "Department" means the department of social and health  
18 services;

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

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

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

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

31 (13) "Developmental disabilities professional" means a person who  
32 has specialized training and three years of experience in directly  
33 treating or working with persons with developmental disabilities and is  
34 a psychiatrist, psychologist, psychiatric advanced registered nurse  
35 practitioner, or social worker, and such other developmental  
36 disabilities professionals as may be defined by rules adopted by the  
37 secretary;

1 (14) "Developmental disability" means that condition defined in RCW  
2 71A.10.020(3);

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

6 (16) "Evaluation and treatment facility" means any facility which  
7 can provide directly, or by direct arrangement with other public or  
8 private agencies, emergency evaluation and treatment, outpatient care,  
9 and timely and appropriate inpatient care to persons suffering from a  
10 mental disorder, and which is certified as such by the department. A  
11 physically separate and separately operated portion of a state hospital  
12 may be designated as an evaluation and treatment facility. A facility  
13 which is part of, or operated by, the department or any federal agency  
14 will not require certification. No correctional institution or  
15 facility, or jail, shall be an evaluation and treatment facility within  
16 the meaning of this chapter;

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

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

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

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

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

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

6 (b) The conditions and strategies necessary to achieve the purposes  
7 of habilitation;

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

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

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

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

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

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

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

22 (a) A substantial risk that: (i) Physical harm will be inflicted  
23 by a person upon his or her own person, as evidenced by threats or  
24 attempts to commit suicide or inflict physical harm on oneself; (ii)  
25 physical harm will be inflicted by a person upon another, as evidenced  
26 by behavior which has caused such harm or which places another person  
27 or persons in reasonable fear of sustaining such harm; or (iii)  
28 physical harm will be inflicted by a person upon the property of  
29 others, as evidenced by behavior which has caused substantial loss or  
30 damage to the property of others; or

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

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

36 (25) "Mental health professional" means a psychiatrist,  
37 psychologist, psychiatric nurse, or social worker, and such other

1 mental health professionals as may be defined by rules adopted by the  
2 secretary pursuant to the provisions of this chapter;

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

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

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

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

22 (30) "Psychiatrist" means a person having a license as a physician  
23 and surgeon in this state who has in addition completed three years of  
24 graduate training in psychiatry in a program approved by the American  
25 medical association or the American osteopathic association and is  
26 certified or eligible to be certified by the American board of  
27 psychiatry and neurology;

28 ((+30+)) (31) "Psychologist" means a person who has been licensed  
29 as a psychologist pursuant to chapter 18.83 RCW;

30 ((+31+)) (32) "Public agency" means any evaluation and treatment  
31 facility or institution, or hospital which is conducted for, or  
32 includes a department or ward conducted for, the care and treatment of  
33 persons with mental illness, if the agency is operated directly by,  
34 federal, state, county, or municipal government, or a combination of  
35 such governments;

36 ((+32+)) (33) "Registration records" include all the records of the  
37 department, regional support networks, treatment facilities, and other

1 persons providing services to the department, county departments, or  
2 facilities which identify persons who are receiving or who at any time  
3 have received services for mental illness;

4 ~~((+33+))~~ (34) "Release" means legal termination of the commitment  
5 under the provisions of this chapter;

6 ~~((+34+))~~ (35) "Resource management services" has the meaning given  
7 in chapter 71.24 RCW;

8 ~~((+35+))~~ (36) "Secretary" means the secretary of the department of  
9 social and health services, or his or her designee;

10 ~~((+36+))~~ (37) "Social worker" means a person with a master's or  
11 further advanced degree from an accredited school of social work or a  
12 degree deemed equivalent under rules adopted by the secretary;

13 ~~((+37+))~~ (38) "Treatment records" include registration and all  
14 other records concerning persons who are receiving or who at any time  
15 have received services for mental illness, which are maintained by the  
16 department, by regional support networks and their staffs, and by  
17 treatment facilities. Treatment records include mental health  
18 information contained in a medical bill including but not limited to  
19 mental health drugs, a mental health diagnosis, provider name, and  
20 dates of service stemming from a medical service. Treatment records do  
21 not include notes or records maintained for personal use by a person  
22 providing treatment services for the department, regional support  
23 networks, or a treatment facility if the notes or records are not  
24 available to others;

25 ~~((+38+))~~ (39) "Violent act" means behavior that resulted in  
26 homicide, attempted suicide, nonfatal injuries, or substantial damage  
27 to property.

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

30 (1) A person found to be gravely disabled or presents a likelihood  
31 of serious harm as a result of a mental disorder has a right to refuse  
32 antipsychotic medication unless it is determined that the failure to  
33 medicate may result in a likelihood of serious harm or substantial  
34 deterioration or substantially prolong the length of involuntary  
35 commitment and there is no less intrusive course of treatment than  
36 medication in the best interest of that person.

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

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

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

10 (c) For continued treatment beyond thirty days through the hearing  
11 on any petition filed under RCW ((71.05.370(7))) 71.05.217, the right  
12 to periodic review of the decision to medicate by the medical director  
13 or designee.

14 (d) Administration of antipsychotic medication in an emergency and  
15 review of this decision within twenty-four hours. An emergency exists  
16 if the person presents an imminent likelihood of serious harm, and  
17 medically acceptable alternatives to administration of antipsychotic  
18 medications are not available or are unlikely to be successful; and in  
19 the opinion of the physician or psychiatric advanced registered nurse  
20 practitioner, the person's condition constitutes an emergency requiring  
21 the treatment be instituted prior to obtaining a second medical  
22 opinion.

23 (e) Documentation in the medical record of the ((physician's))  
24 attempt by the physician or psychiatric advanced registered nurse  
25 practitioner to obtain informed consent and the reasons why  
26 antipsychotic medication is being administered over the person's  
27 objection or lack of consent.

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

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

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

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

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

8 (4) To have visitors at reasonable times;

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

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

14 (7) Not to consent to the administration of antipsychotic  
15 medications beyond the hearing conducted pursuant to RCW  
16 71.05.320(~~(+2)~~) (3) or the performance of electroconvulsant therapy or  
17 surgery, except emergency life-saving surgery, unless ordered by a  
18 court of competent jurisdiction pursuant to the following standards and  
19 procedures:

20 (a) The administration of antipsychotic medication or  
21 electroconvulsant therapy shall not be ordered unless the petitioning  
22 party proves by clear, cogent, and convincing evidence that there  
23 exists a compelling state interest that justifies overriding the  
24 patient's lack of consent to the administration of antipsychotic  
25 medications or electroconvulsant therapy, that the proposed treatment  
26 is necessary and effective, and that medically acceptable alternative  
27 forms of treatment are not available, have not been successful, or are  
28 not likely to be effective.

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

37 (c) The person shall be present at any hearing on a request to  
38 administer antipsychotic medication or electroconvulsant therapy filed



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

14 (d) An order for the administration of antipsychotic medications  
15 entered following a hearing conducted pursuant to this section shall be  
16 effective for the period of the current involuntary treatment order,  
17 and any interim period during which the person is awaiting trial or  
18 hearing on a new petition for involuntary treatment or involuntary  
19 medication.

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

23 (f) Antipsychotic medication may be administered to a nonconsenting  
24 person detained or committed pursuant to this chapter without a court  
25 order pursuant to RCW 71.05.215(2) or under the following  
26 circumstances:

- 27 (i) A person presents an imminent likelihood of serious harm;  
28 (ii) Medically acceptable alternatives to administration of  
29 antipsychotic medications are not available, have not been successful,  
30 or are not likely to be effective; and  
31 (iii) In the opinion of the physician or psychiatric advanced  
32 registered nurse practitioner with responsibility for treatment of the  
33 person, or his or her designee, the person's condition constitutes an  
34 emergency requiring the treatment be instituted before a judicial  
35 hearing as authorized pursuant to this section can be held.

36 If antipsychotic medications are administered over a person's lack  
37 of consent pursuant to this subsection, a petition for an order  
38 authorizing the administration of antipsychotic medications shall be

1 filed on the next judicial day. The hearing shall be held within two  
2 judicial days. If deemed necessary by the physician or psychiatric  
3 advanced registered nurse practitioner with responsibility for the  
4 treatment of the person, administration of antipsychotic medications  
5 may continue until the hearing is held;

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

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

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