
SENATE BILL 6807

State of Washington

61st Legislature

2010 Regular Session

By Senators Fraser, Oemig, Kline, and Regala

Read first time 01/29/10. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to protecting the rights of individuals with mental
2 disorders; amending RCW 43.190.030, 71.05.360, and 71.34.355; and
3 repealing RCW 71.24.350.

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

5 **Sec. 1.** RCW 43.190.030 and 1997 c 194 s 1 are each amended to read
6 as follows:

7 There is created the office of the state long-term care ombudsman.
8 The department of (~~community, trade, and economic development~~)
9 commerce shall contract with a private nonprofit organization to
10 provide long-term care ombudsman services as specified under, and
11 consistent with, the federal older Americans act as amended, federal
12 mandates, the goals of the state, and the needs of its citizens. The
13 office of the state long-term care ombudsman shall also provide
14 ombudsman services for all persons receiving services from regional
15 support networks and all licensed service providers under chapter 71.24
16 RCW. The department of (~~community, trade, and economic development~~)
17 commerce shall ensure that all program and staff support necessary to
18 enable the ombudsman to effectively protect the interests of residents,
19 patients, and clients of all long-term care facilities is provided by

1 the nonprofit organization that contracts to provide long-term care
2 ombudsman services. The department of (~~community, trade, and economic~~
3 ~~development~~) commerce shall adopt rules to carry out this chapter and
4 the long-term care ombudsman provisions of the federal older Americans
5 act, as amended, and applicable federal regulations. The long-term
6 care ombudsman program shall have the following powers and duties:

7 (1) To provide services for coordinating the activities of long-
8 term care ombudsmen throughout the state;

9 (2) Carry out such other activities as the department of
10 (~~community, trade, and economic development~~) commerce deems
11 appropriate;

12 (3) Establish procedures consistent with RCW 43.190.110 for
13 appropriate access by long-term care ombudsmen to long-term care
14 facilities, evaluation and treatment facilities, and patients' records,
15 including procedures to protect the confidentiality of the records and
16 ensure that the identity of any complainant or resident will not be
17 disclosed without the written consent of the complainant or resident,
18 or upon court order;

19 (4) Establish a statewide uniform reporting system to collect and
20 analyze data relating to complaints and conditions in long-term care
21 facilities for the purpose of identifying and resolving significant
22 problems, with provision for submission of such data to the department
23 of social and health services and to the federal department of health
24 and human services, or its successor agency, on a regular basis; and

25 (5) Establish procedures to assure that any files maintained by
26 ombudsman programs shall be disclosed only at the discretion of the
27 ombudsman having authority over the disposition of such files, except
28 that the identity of any complainant or resident of a long-term care
29 facility shall not be disclosed by such ombudsman unless:

30 (a) Such complainant or resident, or the complainant's or
31 resident's legal representative, consents in writing to such
32 disclosure; or

33 (b) Such disclosure is required by court order.

34 **Sec. 2.** RCW 71.05.360 and 2009 c 217 s 5 are each amended to read
35 as follows:

36 (1)(a) Every person involuntarily detained or committed under the
37 provisions of this chapter shall be entitled to all the rights set

1 forth in this chapter, (~~which~~) including the right to be present at
2 all involuntary commitment hearings. These rights shall be prominently
3 posted in the facility, and shall retain all rights not denied him or
4 her under this chapter except as chapter 9.41 RCW may limit the right
5 of a person to purchase or possess a firearm or to qualify for a
6 concealed pistol license.

7 (b) No person shall be presumed incompetent as a consequence of
8 receiving an evaluation or voluntary or involuntary treatment for a
9 mental disorder, under this chapter or any prior laws of this state
10 dealing with mental illness. Competency shall not be determined or
11 withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

12 (c) Any person who leaves a public or private agency following
13 evaluation or treatment for mental disorder shall be given a written
14 statement setting forth the substance of this section.

15 (2) Each person involuntarily detained or committed pursuant to
16 this chapter shall have the right to adequate care and individualized
17 treatment.

18 (3) The provisions of this chapter shall not be construed to deny
19 to any person treatment by spiritual means through prayer in accordance
20 with the tenets and practices of a church or religious denomination.

21 (4) Persons receiving evaluation or treatment under this chapter
22 shall be given a reasonable choice of an available physician,
23 psychiatric advanced registered nurse practitioner, a naturopathic
24 physician, or other professional person qualified to provide such
25 services.

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

35 (a) A judicial hearing in a superior court, either by a judge or
36 court commissioner thereof, shall be held not more than seventy-two
37 hours after the initial detention to determine whether there is
38 probable cause to detain the person after the seventy-two hours have

1 expired for up to an additional fourteen days without further automatic
2 hearing for the reason that the person is a person whose mental
3 disorder presents a likelihood of serious harm or that the person is
4 gravely disabled;

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

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

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

15 (e) The person has the right to refuse psychiatric medications,
16 including antipsychotic medication beginning twenty-four hours prior to
17 the probable cause hearing; and

18 (f) The person has the right to attend all hearings.

19 (6) When proceedings are initiated under RCW 71.05.153, no later
20 than twelve hours after such person is admitted to the evaluation and
21 treatment facility the personnel of the evaluation and treatment
22 facility or the designated mental health professional shall serve on
23 such person a copy of the petition for initial detention and the name,
24 business address, and phone number of the designated attorney and shall
25 forthwith commence service of a copy of the petition for initial
26 detention on the designated attorney.

27 (7) The judicial hearing described in subsection (5) of this
28 section is hereby authorized, and shall be held according to the
29 provisions of subsection (5) of this section and rules promulgated by
30 the supreme court.

31 (8) At the probable cause hearing the detained person shall have
32 the following rights in addition to the rights previously specified:

33 (a) To present evidence on his or her behalf;

34 (b) To cross-examine witnesses who testify against him or her;

35 (c) To be proceeded against by the rules of evidence;

36 (d) To remain silent;

37 (e) To view and copy all petitions and reports in the court file;

38 and

1 (f) To attend the hearing.

2 (9) Privileges between patients and physicians, psychologists, or
3 psychiatric advanced registered nurse practitioners are deemed waived
4 in proceedings under this chapter relating to the administration of
5 antipsychotic medications. As to other proceedings under this chapter,
6 the privileges shall be waived when a court of competent jurisdiction
7 in its discretion determines that such waiver is necessary to protect
8 either the detained person or the public.

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

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

21 (10) Insofar as danger to the person or others is not created, each
22 person involuntarily detained, treated in a less restrictive
23 alternative course of treatment, or committed for treatment and
24 evaluation pursuant to this chapter shall have, in addition to other
25 rights not specifically withheld by law, the following rights:

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

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

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

33 (d) To have visitors at reasonable times;

34 (e) To have reasonable access to a telephone, both to make and
35 receive confidential calls, consistent with an effective treatment
36 program;

37 (f) To have ready access to letter writing materials, including

1 stamps, and to send and receive uncensored correspondence through the
2 mails;

3 (g) To discuss treatment or discharge plans and decisions with
4 professional persons;

5 (h) Not to consent to the administration of antipsychotic
6 medications and not to thereafter be administered antipsychotic
7 medications unless ordered by a court under RCW 71.05.217 or pursuant
8 to an administrative hearing under RCW 71.05.215;

9 (i) Not to consent to the performance of electroconvulsant therapy
10 or surgery, except emergency life-saving surgery, unless ordered by a
11 court under RCW 71.05.217;

12 (j) Not to have psychosurgery performed on him or her under any
13 circumstances;

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

17 (l) To complain about rights violations or conditions and request
18 the assistance of a mental health ombudsman or representative of
19 Washington protection and advocacy. The facility may not prohibit or
20 interfere with a resident's decision to consult with an advocate of his
21 or her choice.

22 (11) Every person involuntarily detained shall immediately be
23 informed of his or her right to a hearing to review the legality of his
24 or her detention and of his or her right to counsel, by the
25 professional person in charge of the facility providing evaluation and
26 treatment, or his or her designee, and, when appropriate, by the court.
27 If the person so elects, the court shall immediately appoint an
28 attorney to assist him or her.

29 (12) A person challenging his or her detention or his or her
30 attorney shall have the right to designate and have the court appoint
31 a reasonably available independent physician, psychiatric advanced
32 registered nurse practitioner, or licensed mental health professional
33 to examine the person detained, the results of which examination may be
34 used in the proceeding. The person shall, if he or she is financially
35 able, bear the cost of such expert examination, otherwise such expert
36 examination shall be at public expense.

37 (13) Nothing contained in this chapter shall prohibit the patient
38 from petitioning by writ of habeas corpus for release.

1 (14) Nothing in this chapter shall prohibit a person committed on
2 or prior to January 1, 1974, from exercising a right available to him
3 or her at or prior to January 1, 1974, for obtaining release from
4 confinement.

5 (15) Nothing in this section permits any person to knowingly
6 violate a no-contact order or a condition of an active judgment and
7 sentence or an active condition of supervision by the department of
8 corrections.

9 **Sec. 3.** RCW 71.34.355 and 2009 c 217 s 15 are each amended to read
10 as follows:

11 Absent a risk to self or others, minors treated under this chapter
12 have the following rights, which shall be prominently posted in the
13 evaluation and treatment facility:

14 (1) To wear their own clothes and to keep and use personal
15 possessions;

16 (2) To keep and be allowed to spend a reasonable sum of their own
17 money for canteen expenses and small purchases;

18 (3) To have individual storage space for private use;

19 (4) To have visitors at reasonable times;

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

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

25 (7) To discuss treatment plans and decisions with mental health
26 professionals;

27 (8) To have the right to adequate care and individualized
28 treatment;

29 (9) Not to consent to the performance of electro-convulsive
30 treatment or surgery, except emergency life-saving surgery, upon him or
31 her, and not to have electro-convulsive treatment or nonemergency
32 surgery in such circumstance unless ordered by a court pursuant to a
33 judicial hearing in which the minor is present and represented by
34 counsel, and the court shall appoint a psychiatrist, psychologist,
35 psychiatric advanced registered nurse practitioner, or physician
36 designated by the minor or the minor's counsel to testify on behalf of

1 the minor. The minor's parent may exercise this right on the minor's
2 behalf, and must be informed of any impending treatment;

3 (10) Not to have psychosurgery performed on him or her under any
4 circumstances;

5 (11) To communicate immediately with a parent or legal guardian
6 whenever a minor is detained for evaluation and treatment pursuant to
7 this chapter. Parents or legal guardians may be present at all
8 hearings;

9 (12) To complain about rights violations or conditions and request
10 the assistance of a mental health ombudsman or representative of
11 Washington protection and advocacy. The facility may not prohibit or
12 interfere with a resident's decision to consult with an advocate of his
13 or her choice.

14 NEW SECTION. Sec. 4. RCW 71.24.350 (Mental health ombudsman
15 office) and 2005 c 504 s 803 are each repealed.

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