



California's Protection & Advocacy System
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NEW PROCEDURES FOR INVOLUNTARY MEDICATION OF INDIVIDUALS UNDER AN INCOMPETENT TO STAND TRIAL COMMITMENT-AB 366

January 2012, Pub #5505.01

AB 366 revises statutory procedures governing the involuntary administration of antipsychotic medication to individuals under an incompetent to stand trial (IST) commitment, California Penal Code §§ 1370(a)(2), (b)(1) and (h).

These new procedures will take effect on July 1, 2012. This fact sheet is a brief overview of the new procedures. If you have questions about how the new procedures might affect you, you can call any of Disability Rights California's regional offices for advice.

Court Must Determine Right to Refuse Administration of Antipsychotic Medication at Time of IST order and Placement

AB 366 requires the committing court, at the IST order and placement hearing, to determine whether an individual under an IST commitment has a right to refuse the administration of antipsychotic medication. A court will find that an individual has the right to make decisions about antipsychotic medications unless it finds any of the following:

- 1) The individual lacks capacity to make decisions regarding antipsychotic medications, his or her mental disorder requires medical treatment with

antipsychotic medication, and if the medication is not given, it is probable that serious harm to the individual's physical or mental health will result;

2) The individual is a danger to others; or

3) The individual has been charged with a serious crime¹ and:

- involuntary medication is in the person's best medical interest, is substantially likely to render him or her competent to stand trial, and is unlikely to have side effects that interfere with the individual's ability to understand the nature or the criminal proceedings or assist counsel in the conduct of a defense in a reasonable manner; and
- less intrusive treatments are unlikely to have substantially the same results.

If the court finds that an individual under an IST commitment does not have the right to make decisions about antipsychotic medication, the court will issue an order authorizing involuntary medication. However, if the court finds that the individual does have the right to refuse the administration of antipsychotic medication, the court must order that the individual's treating physician must comply with the procedures outlined in the statute for long-term involuntary treatment with antipsychotic medication. These procedures are discussed below.

Emergency and Short-Term Involuntary Medication

As is the case under existing procedures, antipsychotic medications may be involuntarily administered to anyone under an IST commitment in the event of an emergency. Under the new procedures, if a treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate for an individual who has been found to retain the right to make decisions about antipsychotic medication, then the

¹ A court may only issue an order to involuntarily medicate in order to restore capacity if the individual has not met criteria for involuntary medication under (1) or (2) above.

individual can be involuntarily medicated for up to 72 hours pending a medication review hearing.

Medication Review Hearing

AB 366 requires that if a treating physician certifies that antipsychotic medication is medically necessary and meets the legal criteria for involuntary administration of antipsychotic medication, an individual under an IST commitment is entitled to a medication review hearing within 72 hours of the treating physician's certification. The legal criteria a treating physician must use are the same criteria the court uses. The criteria is listed as (1) or (2) on the previous page.

The treating physician is required to file a copy of the certification and petition with the court for a determination of long-term involuntary medication treatment, regardless of the decision at the medication review hearing.

The medication review hearing shall be before an administrative law judge (ALJ). Currently, medication review hearings at the State Hospitals are done by a panel of state hospital employees.

Under AB 366 an individual now has the following procedural rights during a medication review hearing:

- representation by either an attorney or a patients' rights advocate;
- to meet with the appointed attorney or patients' rights advocate no later than one day prior to the hearing;
- timely access to his or her records;
- to be present at the hearing, unless waived;
- to present evidence;
- to question individuals presenting evidence in support of involuntary administration of antipsychotic medication;

- to make reasonable requests for attendance of witnesses on that person's behalf; and
- to a hearing conducted in an impartial and informal manner.

If the ALJ finds that criteria for involuntary administration of antipsychotic medication pursuant to law are met, involuntary medication can continue for the certification period up to 18 days. The total time involuntary medication can be ordered under the certification period is 21 days, which includes the initial 72 hour period.

If the ALJ finds that criteria for involuntary administration of antipsychotic medication are not met, involuntary medication must immediately cease until a court orders the involuntary treatment.

A court that receives a petition for involuntary administrative antipsychotic medication must hold issue an order within three calendar days after the medication review hearing, and no later than prior to the expiration of the 21-day certification period.

Effect of a Court's Order for Involuntary Administration of Antipsychotic Medication

If a court orders the state hospital to involuntarily administer antipsychotic medication, the order shall be reviewed at the required six-month reports by the state hospital to the court on an individual's progress toward regaining competency.

After reviewing the report, the court shall determine whether or not there are grounds for continuing the initial order for involuntary administration of antipsychotic medication. The court can make one of three findings:

- if the original grounds for the administration of involuntary medication still exist, the initial order shall remain in effect;
- if the original grounds for medication no longer exist, and there is no other basis for involuntary administration of antipsychotic medication, the order shall be vacated; or

- if the original grounds for involuntary medication no longer exist, and the state hospital's report contains another basis for involuntary administration of antipsychotic medication, the court shall set a hearing within 21 days to determine whether the order shall be vacated or a new order issued.

Right to File a Petition for Habeas Corpus to Challenge an Order for the Administration of Psychotropic Medication

AB 366 reinforces an individual's, under an IST commitment, ability to challenge the order for administration of antipsychotic medication by filing a writ of habeas corpus with the court.

Applicability to Other Forensic Commitments

AB 366 only applies to individuals under an IST commitment. Individuals under another forensic commitment, i.e., Mentally Disordered Offender, Sexually Violent Predator, Not Guilty By Reason of Insanity, are not covered by these new procedures.

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