



*California's Protection & Advocacy System
Toll-Free (800) 776-5746*

Refusing Medication under Incompetent to Stand Trial Commitment

December 2012, Pub #5518.01

What is the AB 366 Law?

The new law changes certain procedures regarding the way people under an Incompetent to Stand Trial commitment (IST or P.C. 1370) can be forced to take antipsychotic medication.

This change took effect on July 1, 2012. This fact sheet is a brief overview of the new procedures. After reading this informational sheet, if you have further questions, you can call any of Disability Rights California's regional offices for advice.

Who Decides if I Can Agree to Take Antipsychotic Medication or Refuse the Medication?

With the new law, the court must decide at the same time if you have the right to agree to or refuse antipsychotic medication and if you are incompetent to stand trial. Before the new law, the court had the option of making this decision at the time it decided if you are incompetent to stand trial.

How Does the Court Decide if I Have the Right to Agree to or Refuse Antipsychotic Medication?

The new law did not change how a court determines whether you have the right to agree to or refuse antipsychotic medication. As a reminder, at your competency to stand trial hearing, if the court found any of the following to

be true, the court can order that you can be forced to take antipsychotic medication:

- 1. You lack the capacity (legal ability) to make decisions about antipsychotic medication, your mental disorder requires medical treatment with antipsychotic medication and if the medications are not given, it is probable that your physical or mental health will be seriously harmed.**
- 2. You are a danger to others.**
- 3. You are charged with a serious crime and taking antipsychotic medication will restore your ability to stand trial. The court can only make you take antipsychotic medication in order to restore your ability to stand trial if you do not meet the conditions listed under (1) or (2). If the court decided you can be given antipsychotic medication under this section, the court must believe:**
 - A. It is in your best interest to take the anti-psychotic medication;
 - B. The medication is likely to make you competent to stand trial; and
 - C. The medication is unlikely to have side effects that would:
 - i. Interfere with your ability to understand the criminal proceedings against you;
 - ii. Prevent you from assisting your lawyer in defending you; and
 - iii. Less intrusive treatments are not likely to have the same result.

So What Does All This Mean for Me?

The bottom line is that if the court found any of the above to be true, you don't have the right to refuse antipsychotic medication and the court issues an order letting the state hospital give you antipsychotic medication.

If the court decided you have the right to agree or refuse psychotic medication, then you have the right to agree to or refuse antipsychotic medication **UNLESS** an emergency situation happens.

I Got Upset on My Unit and Staff Held Me Down and Gave Me a Shot of Antipsychotic Medication. How Can They Do that When the Court Decided I Have the Right to Refuse Antipsychotic Medication?

In an emergency situation, if staff believes you are a danger to yourself, others, or a danger to the facility, you may be forcefully medicated against your will even if the court said you have a right to refuse antipsychotic medication. Medication can be given only so long as the emergency situation exists.

If there is no emergency, can the hospital force me to take antipsychotic medication?

Yes. If your doctor decides that taking antipsychotic medication is medically necessary and appropriate, you may be forced to take antipsychotic medication for up to 72 hours pending a medication review hearing.

What is a Medication Review Hearing?

It is a legal hearing that will decide if the hospital can continue to give you antipsychotic medication for an additional 18 days.

At the Medication Review Hearing, you have the following rights:

To be represented by either an attorney or a patient rights advocate.

- 1. To meet with the attorney or patient rights advocate no later than a day before the hearing.**
- 2. The right to timely access to your records.**
- 3. To be at the hearing unless you choose not to go.**

- 4. The right to present evidence.**
- 5. The right to question individuals who support giving you involuntary antipsychotic medication.**
- 6. The right to make reasonable requests to have witnesses on your behalf at the hearing.**
- 7. That the medication review hearing be conducted in an impartial and informal manner.**

At the medication review hearing, an administrative law judge (ALJ) after hearing the hospital's case and then your case, will make the decision if the hospital can continue to medicate you against your will.

If the ALJ decides that the criteria has been met to continue to give you antipsychotic medication against your will, the hospital can continue to give you antipsychotic medication for up to an additional 18 days. The total time you can be forcefully medicated is the initial 72 hours plus the 18 days, making it a total of 21 days. A court must hear your case before the 21 days are up.

If the ALJ finds that the criteria have not been met, your doctor must stop giving you the antipsychotic medication until a court rules on the doctor's petition.

Why Do I Have to Go to Court?

When the doctor first gave the order to give you antipsychotic medication, they certified that you needed the medication based on the same reasons the court looked at when you were found incompetent to stand trial. (See page two, #1, 2, and 3.)

Your doctor sent the certification and a petition to the court. In the petition, your doctor asks the court to decide if you can be given long-term involuntary medication. The court will look at the three criteria to see if you now meet any of the reasons on page two.

When the court receives the doctor's certification and petition for involuntary medication, the court can hold a hearing as soon as three court days after the medication review hearing but no later than the end of the 21 days.

I Went to Court and Lost the Hearing. Is the Court Order Ever Reviewed?

Yes. If the court ordered that you be given involuntary medication, the order shall be reviewed at the required six-month report that the hospital gives the court on your progress toward becoming competent.

The court, after reviewing the hospital's report, shall decide if there are still grounds to continue to force you to take antipsychotic medication. The court will decide one of the following:

- 1. If the original reason(s) for giving you antipsychotic medication still exists, the court can rule that you must continue to take the antipsychotic medication(s).**
- 2. If the original grounds for giving you antipsychotic medication no longer exist, the order to force you to take antipsychotic medication will be vacated. Vacated means the hospital must stop giving you antipsychotic medication. If the order is vacated, you can decide whether you want to voluntarily take the medication or not.**

In the future, should another emergency occur, this whole process may start again with the hospital being able to forcefully medicate you with antipsychotic medication.

- 3. If the original reason(s) for involuntary medication no longer exists and the hospital's report contains another reason to give you anti-psychotic medication, the court shall set a hearing about the other reason. This hearing shall be within 21 court days and the court will decide whether the court's original order will be vacated or if a new order for involuntary antipsychotic medication will be issued.**

Do I Have the Right to File a Writ of Habeas Corpus to Stop the Hospital From Medicating Me?

Yes. You may challenge the order to involuntarily give you antipsychotic medication by filing a writ of habeas corpus with the court.

Other Forensic Commitments

AB 366 only applies to people who are under an Incompetent to Stand Trial (PC 1370) commitment. If you are at a state hospital under a different forensic commitment such as Not Guilty by Reason of Insanity (NGI or PC 1026), Mentally Disordered Offender (MDO or PC 2972) or Sexually Violent Predator (SVP or PC 6600), you are not covered by this new law/procedure.

If you are at a state hospital under an Incompetent to Stand Trial (PC 1370) commitment and you have questions about how this new law might affect you, you may call Disability Rights California's toll-free legal intake number at (800) 776-5746.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.