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**Superior Court of Washington**

**County of**

**Juvenile Court**

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| **In re Interest of:**  **Jane Doe,**  **DOB** | **Response to State’s Motion to for Vaccination** |

**My Body My Choice**

When asked why she does not want to be vaccinated, Jane simply responds, “my body, my choice. The idea that somebody would force her to have an injection over her agreement is offensive to her core.

The State should be held to the same standard as Sell v. United States.

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WSBA #

**Legal Argument**

At a minimum the State should have to show a government interest in forcing Jane to be medicated, conclude the side effects of a shot to Jane will further the State’s interest, conclude the medication is *necessary* to further the State’s interest, and finally that the administration of this drug into Jane small body is medically appropriate.

At a minimum, Jane is due the same rights as a criminal defendant facing a Sell hearing and so I will lay out the arguments made by defense counsel in criminal cases. One could argue however, that since Jane has never even been accused of a crime much less convicted, the State’s interest is far less than it would be in a criminal proceeding and so the standard should be higher for the state in this case.

*A Sell Hearing*

The United States Supreme Court has held that the federal Constitution permits the Government to administer psychotropic drugs involuntarily to a mentally ill criminal defendant in limited circumstances in order to render that defendant competent to stand trial. *Sell v. United States*, 539 U.S. 166, 156 L.Ed.2d 197, 123 S.Ct. 2174 (2003), relying on *Washington v. Harper*, 494 U. S. 210, 221-222, 108 L.Ed.2d 178, 110 S.Ct.1028 (1990), and *Riggins v. Nevada, supra.* Because of the constitutional rights and the serious side effects of psychotropic medications, the *Sell* Court set up the following balancing test to provide trial courts some guidance in determining whether a defendant can be forced to take medications:

First, the court must find that important governmental interests are at stake. The State’s interest in bringing to trial an individual accused of a serious crime is important. *Sell*, 539 U.S. at 180; *Born v. Thompson*, 154 Wn.2d 749, 768-79, 117 P.3d 1098 (2005). Here, Jane faces no crime and the State has provided no “interest.”

Second, the court must conclude that involuntary medication will significantly further those state interests. It must find that administration of the drug is substantially likely to render the defendant competent to stand trial. At the same time, it must find that administration of the drugs is substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a trial defense, thereby rendering the trial unfair. *Sell*, 539 U.S. at 181. Agin, here, the State has provided no such information.

Third, the court must conclude that involuntary medication is necessary to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results. *Sell*, 539 U.S. at 181. Yet once again, the State has provided no such information.

Fourth, the court must conclude that administration of the drugs is medically appropriate, *i.e.*, in the patient’s best medical interest in light of his medical condition. The specific kinds of drugs at issue may matter here as elsewhere. Different kinds of psychotropic drugs may produce different side effects and enjoy different levels of success. *Sell*, 539 U.S. at 181-82. Once again, the State has provided no such information.

The treatment of an accused with psychotropic medicine poses serious concerns for this Court, given the severe and often fatal side effects of antipsychotic drugs. In *Harper v. State, supra*, the Washington Supreme Court recognized the severe, and often fatal, side effects of antipsychotic drugs. 110 Wn.2d at 876, n. 3. The Court noted:

[A]ntipsychotic drug therapy is a highly intrusive form of medical treatment. *See Guardianship of Roe*, 383 Mass. 415, 436 37, 421 N.E.2d 40 (1981). Antipsychotic drugs are by intention mind altering; they are meant to act upon the thought processes. . . . The benefits of antipsychotic drug treatment to acutely ill patients are well documented. *See* The Pharmacological Basis of Therapeutics 152, 172 74 (A. Gilman, L. Goodman, A. Gilman 6th ed. 1980) (Goodman & Gilman's). Also documented, however, are the adverse side effects of antipsychotic drug treatment. Less serious, reversible side effects include dystonia, a severe involuntary spasm of the upper body, throat, tongue or eyes; akathesia, the inability to remain still, restlessness and agitation; and pseudo-Parkinsonism, manifested by a mask like face, drooling, muscle rigidity, stiffness, tremors and a shuffling gait. . . . Although common, these effects can be controlled by administration of other drugs, adjustment of the dosage, or termination of the therapy. . . . Severe and potentially permanent is tardive dyskinesia, an irreversible neurological disorder characterized by involuntary, uncontrollable movements of the tongue, mouth or jaw. Fingers, arms and legs may also be affected. Tardive dyskinesia can be masked by the drug causing the condition, and can manifest itself years after treatment has occurred. . . . Therefore, we recognize a fundamental liberty interest in refusing antipsychotic drug treatment[.]

*Harper*, 110 Wn.2d at 877-78 (citations and footnote omitted). Orders based on *Sell* authorizing involuntary medication are “disfavored.” [*United States v. Rivera– Guerrero,* 426 F.3d 1130, 1137 (9th Cir.2005)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2007533486&pubNum=0000506&originatingDoc=Ie04fdd5e074011e6b86bd602cb8781fa&refType=RP&fi=co_pp_sp_506_1137&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_506_1137).

Finally, the 9th Circuit made it very clear in *United States v. Hernandez-Velasquez* that the Court is not to grant unfettered discretion to the prescribing and administering of medications, even in a *Sell* setting. Here, the defense argued that this also requires the State to provide this information to the defense prior to the hearing, so that they can properly challenge assertions from the State and their experts.

Accordingly, we hold that a *Sell* order must provide at least some limitations on the medications that may be administered and the maximum dosages and duration of treatment. At a minimum, to pass muster under Sell, the district court's order must identify: (1) the specific medication or range of medications that the treating physicians are permitted to use in their treatment of the defendant, (2) the maximum dosages that may be administered, and (3) the duration of time that involuntary treatment of the defendant may continue before the treating physicians are required to report back to the court on the defendant's mental condition and progress. We stress that while the court may not simply delegate unrestricted authority to physicians, the restrictions it does impose should be broad enough to give physicians a reasonable degree of flexibility in responding to changes in the defendant's condition. Moreover, the Government or the defendant may move to alter the court's order as the circumstances change and more becomes known about the defendant's response to the medication.

*United States v. Hernandez-Velasquez* 513 F.3d 908,916 (2007).

In a criminal prosecution, the defense often acknowledges that the State may be able to meet the first three factors of Sell but with a Noncriminal child, these points are not conceded. Further, given the lack of information provided about the currently proposed involuntary medications, the child does not believe the government has met the fourth Sell criterion. The State has offered no professional medical opinion in this case.

In the normal course, the defense is generally provided with detailed petitions surrounding the issue of forced medications, including what the proposed medications are, the dosages, the expected result, possible less invasive alternatives, and the likelihood of improvement in the Defendant’s mental state and overall competency. Is a child not worthy of these same considerations?

It is impossible to respond to the request to force medications specifically because the State and their agents are unlikely to provide the most basic petition for such an intrusion. Everything provided by the state and their evaluator states things in terms of “may,” and “possibly,” but they provide no specific information, and they state no side effects, which is mandatory when trying to force medication.

**Conclusion**

This Court should deny the State’s request to forcibly hold Jane down and force a needle into her body. When Jane likens it to an act of aggression against her body, she makes a fair point, and unless the State is able to meet the high burden under *Sell v. The United States*, and accepted into law by the Washington State Supreme court in Harper and Trueblood, this court should “just say no.”

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Attorney for Jane