

HOUSE BILL 1158

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Brekke, Winsley, Leonard, Rayburn, Inslee, Rasmussen, O'Brien, Fuhrman, Hargrove, Riley, R. Johnson, Franklin, Scott, Haugen, Edmondson, Phillips, Bowman, G. Fisher, Sprenkle and Orr.

Read first time January 21, 1991. Referred to Committee on Human Services.

1 AN ACT Relating to minors incapacitated by alcohol and other drugs;
2 amending RCW 70.96A.020, 70.96A.095, 70.96A.140, 71.05.210, and
3 71.34.060; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the use of
6 alcohol and illicit drugs continues to be a primarycrippler of our
7 youth. This translates into incredible costs to individuals, families,
8 and society in terms of traffic fatalities, suicides, criminal activity
9 including homicides, sexual promiscuity, familial incorrigibility, and
10 conduct disorders, and educational fallout. Among children of all
11 socioeconomic groups lower expectations for the future, low motivation
12 and self-esteem, alienation, and depression are associated with alcohol
13 and drug abuse.

14 Studies reveal that deaths from alcohol and other drug-related
15 injuries rise sharply through adolescence, peaking in the early

1 twenties. But second peak occurs in later life, when it accounts for
2 three times as many deaths from chronic diseases. A young victim's
3 life expectancy is likely to be reduced by an average of twenty-six
4 years.

5 Yet the cost of treating alcohol and drug addicts can be recouped
6 in the first three years of abstinence in health care savings alone.
7 Public money spent on treatment saves not only the life of the chemical
8 abuser, it makes us safer as individuals, and in the long-run costs
9 less.

10 The legislature further finds that many children who abuse alcohol
11 and other drugs may not require involuntary treatment, but still are
12 not adequately served. These children remain at risk for future
13 chemical dependency, and may become mentally ill or a juvenile offender
14 or need out-of-home placement. Children placed at risk because of
15 chemical abuse may be better served by the creation of a comprehensive
16 integrated system for children in crisis.

17 The legislature declares that an emphasis on the treatment of youth
18 will pay the largest dividend in terms of preventable costs to
19 individuals themselves, their families, and to society. The provision
20 of augmented involuntary alcohol treatment services to youths, as well
21 as involuntary treatment for youths addicted by other drugs, is in the
22 interest of the public health and safety.

23 **Sec. 2.** RCW 70.96A.020 and 1990 c 151 s 2 are each amended to read
24 as follows:

25 For the purposes of this chapter the following words and phrases
26 shall have the following meanings unless the context clearly requires
27 otherwise:

28 (1) "Alcoholic" means a person who suffers from the disease of
29 alcoholism.

1 (2) "Alcoholism" means a disease, characterized by a dependency on
2 alcoholic beverages, loss of control over the amount and circumstances
3 of use, symptoms of tolerance, physiological or psychological
4 withdrawal, or both, if use is reduced or discontinued, and impairment
5 of health or disruption of social or economic functioning.

6 (3) "Approved treatment program" means a discrete program of
7 chemical dependency treatment provided by a treatment program certified
8 by the department of social and health services as meeting standards
9 adopted under this chapter.

10 (4) "Chemical dependency" means alcoholism or drug addiction, or
11 dependence on alcohol and one or more other psychoactive chemicals, as
12 the context requires.

13 (5) "Chemical dependency program" means expenditures and activities
14 of the department designed and conducted to prevent or treat alcoholism
15 and other drug addiction, including reasonable administration and
16 overhead.

17 (6) "Department" means the department of social and health
18 services.

19 (7) "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 RCW 70.96A.140 and qualified to do so by meeting
23 standards adopted by the department.

24 (8) "Director" means the person administering the chemical
25 dependency program within the department.

26 (9) "Drug addict" means a person who suffers from the disease of
27 drug addiction.

28 (10) "Drug addiction" means a disease characterized by a dependency
29 on psychoactive chemicals, loss of control over the amount and
30 circumstances of use, symptoms of tolerance, physiological or

1 psychological withdrawal, or both, if use is reduced or discontinued,
2 and impairment of health or disruption of social or economic
3 functioning.

4 (11) "Emergency service patrol" means a patrol established under
5 RCW 70.96A.170.

6 (12) "Gravely disabled by alcohol or other drugs" means that a
7 person, as a result of the use of alcohol or other drugs: (a) Is in
8 danger of serious physical harm resulting from a failure to provide for
9 his or her essential human needs of health or safety; or (b) manifests
10 severe deterioration in routine functioning evidenced by a repeated and
11 escalating loss of cognition or volitional control over his or her
12 actions and is not receiving care as essential for his or her health or
13 safety.

14 (13) "Incapacitated by alcohol or other psychoactive chemicals"
15 means that a person, as a result of the use of alcohol or other
16 psychoactive chemicals, has his or her judgment so impaired that he or
17 she is incapable of realizing and making a rational decision with
18 respect to his or her need for treatment and constitutes a danger to
19 himself or herself, to any other person, or to property.

20 (14) "Incompetent person" means a person who has been adjudged
21 incompetent by the superior court.

22 (15) "Intoxicated person" means a person whose mental or physical
23 functioning is substantially impaired as a result of the use of alcohol
24 or other psychoactive chemicals.

25 (16) "Licensed physician" means a person licensed to practice
26 medicine or osteopathy in the state of Washington.

27 (17) "Minor" means a person less than eighteen years of age.

28 (18) "Peace officer" means a law enforcement official of a public
29 agency or governmental unit, and includes persons specifically given

1 peace officer powers by any state law, local ordinance, or judicial
2 order of appointment.

3 ~~((18))~~ (19) "Person" means an individual, including a minor.

4 (20) "Secretary" means the secretary of the department of social
5 and health services.

6 ~~((19))~~ (21) "Treatment" means the broad range of emergency,
7 detoxification, residential, and outpatient services and care,
8 including diagnostic evaluation, chemical dependency education and
9 counseling, medical, psychiatric, psychological, and social service
10 care, vocational rehabilitation and career counseling, which may be
11 extended to alcoholics and other drug addicts and their families,
12 persons incapacitated by alcohol or other psychoactive chemicals, and
13 intoxicated persons.

14 ~~((20))~~ (22) "Treatment program" means an organization,
15 institution, or corporation, public or private, engaged in the care,
16 treatment, or rehabilitation of alcoholics or other drug addicts.

17 **Sec. 3.** RCW 70.96A.095 and 1989 c 270 s 24 are each amended to
18 read as follows:

19 Any person fourteen years of age or older may give consent for
20 himself or herself to the furnishing of counseling, care, treatment, or
21 rehabilitation by a treatment program or by any person. Consent of the
22 parent, parents, or legal guardian of a person less than eighteen years
23 of age is not necessary to authorize the care, except that the person
24 shall not become a resident of the treatment program without such
25 permission except as provided in RCW 70.96A.120 or 70.96A.140. The
26 parent, parents, or legal guardian of a person less than eighteen years
27 of age are not liable for payment of care for such persons pursuant to
28 this chapter, unless they have joined in the consent to the counseling,
29 care, treatment, or rehabilitation.

1 **Sec. 4.** RCW 70.96A.140 and 1990 c 151 s 3 are each amended to read
2 as follows:

3 (1) When a designated chemical dependency specialist((~~7~~)) receives
4 information alleging that a person is incapacitated as a result of
5 alcoholism, or in the case of a minor incapacitated by alcoholism
6 and/or other drug addiction, the designated chemical dependency
7 specialist, after investigation and evaluation of the specific facts
8 alleged and of the reliability and credibility of the information, may
9 file a petition for commitment of such person with the superior court
10 or district court. If the designated chemical dependency
11 specialist((~~7~~)) finds that the initial needs of such person would be
12 better served by placement within the mental health system, the person
13 shall be referred to an evaluation and treatment facility as defined in
14 RCW 71.05.020 or 71.34.020. If placement in an alcohol treatment
15 program is available and deemed appropriate, the petition shall allege
16 that: The person is an alcoholic who is incapacitated by alcohol, or
17 in the case of a minor incapacitated by alcoholism and/or other drug
18 addiction, or that the person has twice before in the preceding twelve
19 months been admitted for detoxification or treatment for alcoholism
20 pursuant to RCW 70.96A.110, or in the case of a minor, detoxification
21 or treatment for alcohol or drug addiction, and is in need of a more
22 sustained treatment program, or that the person is an alcoholic, or in
23 the case of a minor, an alcoholic or other drug addict, who has
24 threatened, attempted, or inflicted physical harm on another and is
25 likely to inflict physical harm on another unless committed. A refusal
26 to undergo treatment, by itself, does not constitute evidence of lack
27 of judgment as to the need for treatment. The petition shall be
28 accompanied by a certificate of a licensed physician who has examined
29 the person within five days before submission of the petition, unless
30 the person whose commitment is sought has refused to submit to a

1 medical examination, in which case the fact of refusal shall be alleged
2 in the petition. The certificate shall set forth the licensed
3 physician's findings in support of the allegations of the petition. A
4 physician employed by the petitioning program or the department is
5 eligible to be the certifying physician.

6 (2) Upon filing the petition, the court shall fix a date for a
7 hearing no less than two and no more than seven days after the date the
8 petition was filed unless the person petitioned against is presently
9 being detained in a program, pursuant to RCW 70.96A.120 ~~((or))~~,
10 71.05.210, or 71.34.050, as now or hereafter amended, in which case the
11 hearing shall be held within seventy-two hours of the filing of the
12 petition: PROVIDED, HOWEVER, That the above specified seventy-two
13 hours shall be computed by excluding Saturdays, Sundays, and holidays:
14 PROVIDED FURTHER, That, the court may, upon motion of the person whose
15 commitment is sought, or upon motion of petitioner with written
16 permission of the person whose commitment is sought, or his or her
17 counsel and, upon good cause shown, extend the date for the hearing.
18 A copy of the petition and of the notice of the hearing, including the
19 date fixed by the court, shall be served by the designated chemical
20 dependency specialist on the person whose commitment is sought, his or
21 her next of kin, a parent or his or her legal guardian if he or she is
22 a minor, and any other person the court believes advisable. A copy of
23 the petition and certificate shall be delivered to each person
24 notified.

25 (3) At the hearing the court shall hear all relevant testimony,
26 including, if possible, the testimony, which may be telephonic, of at
27 least one licensed physician who has examined the person whose
28 commitment is sought. Communications otherwise deemed privileged under
29 the laws of this state are deemed to be waived in proceedings under
30 this chapter when a court of competent jurisdiction in its discretion

1 determines that the waiver is necessary to protect either the detained
2 person or the public. The waiver of a privilege under this section is
3 limited to records or testimony relevant to evaluation of the detained
4 person for purposes of a proceeding under this chapter. Upon motion by
5 the detained person, or on its own motion, the court shall examine a
6 record or testimony sought by a petitioner to determine whether it is
7 within the scope of the waiver.

8 The record maker shall not be required to testify in order to
9 introduce medical, nursing, or psychological records of detained
10 persons so long as the requirements of RCW 5.45.020 are met, except
11 that portions of the record that contain opinions as to whether the
12 detained person is an alcoholic, or in the case of a minor
13 incapacitated by alcoholism and/or other drug addiction, must be
14 deleted from the records unless the person offering the opinions is
15 available for cross-examination. The person shall be present unless
16 the court believes that his or her presence is likely to be injurious
17 to him or her; in this event the court may deem it appropriate to
18 appoint a guardian ad litem to represent him or her throughout the
19 proceeding. If deemed advisable, the court may examine the person out
20 of courtroom. If the person has refused to be examined by a licensed
21 physician, he or she shall be given an opportunity to be examined by a
22 court appointed licensed physician. If he or she refuses and there is
23 sufficient evidence to believe that the allegations of the petition are
24 true, or if the court believes that more medical evidence is necessary,
25 the court may make a temporary order committing him or her to the
26 department for a period of not more than five days for purposes of a
27 diagnostic examination.

28 (4) If after hearing all relevant evidence, including the results
29 of any diagnostic examination, the court finds that grounds for
30 involuntary commitment have been established by clear, cogent, and

1 convincing proof, it shall make an order of commitment to an approved
2 treatment program. It shall not order commitment of a person unless it
3 determines that an approved treatment program is available and able to
4 provide adequate and appropriate treatment for him or her.

5 (5) A person committed under this section shall remain in the
6 program for treatment for a period of sixty days unless sooner
7 discharged. At the end of the sixty-day period, he or she shall be
8 discharged automatically unless the program, before expiration of the
9 period, files a petition for his or her recommitment upon the grounds
10 set forth in subsection (1) of this section for a further period of
11 ninety days unless sooner discharged. If a person has been committed
12 because he or she is an alcoholic, or, in the case of a minor, an
13 alcoholic or other drug addict, likely to inflict physical harm on
14 another, the program shall apply for recommitment if after examination
15 it is determined that the likelihood still exists.

16 (6) Upon the filing of a petition for recommitment under subsection
17 (5) of this section, the court shall fix a date for hearing no less
18 than two and no more than seven days after the date the petition was
19 filed: PROVIDED, That, the court may, upon motion of the person whose
20 commitment is sought and upon good cause shown, extend the date for the
21 hearing. A copy of the petition and of the notice of hearing,
22 including the date fixed by the court, shall be served by the treatment
23 program on the person whose commitment is sought, his or her next of
24 kin, the original petitioner under subsection (1) of this section if
25 different from the petitioner for recommitment, one of his or her
26 parents or his or her legal guardian if he or she is a minor, and his
27 or her attorney and any other person the court believes advisable. At
28 the hearing the court shall proceed as provided in subsection (3) of
29 this section.

1 (7) The approved treatment program shall provide for adequate and
2 appropriate treatment of a person committed to its custody. A person
3 committed under this section may be transferred from one approved
4 public treatment program to another if transfer is medically advisable.

5 (8) A person committed to the custody of a program for treatment
6 shall be discharged at any time before the end of the period for which
7 he or she has been committed and he or she shall be discharged by order
8 of the court if either of the following conditions are met:

9 (a) In case of an alcoholic committed on the grounds of likelihood
10 of infliction of physical harm upon himself, herself, or another, or,
11 in the case of a minor, an alcoholic or other drug addict, the
12 likelihood no longer exists; or further treatment will not be likely to
13 bring about significant improvement in the person's condition, or
14 treatment is no longer adequate or appropriate.

15 (b) In case of an alcoholic committed on the grounds of the need of
16 treatment and incapacity or, in the case of a minor, incapacitated by
17 alcoholism and/or other drug addiction, that the incapacity no longer
18 exists.

19 (9) The court shall inform the person whose commitment or
20 recommitment is sought of his or her right to contest the application,
21 be represented by counsel at every stage of any proceedings relating to
22 his or her commitment and recommitment, and have counsel appointed by
23 the court or provided by the court, if he or she wants the assistance
24 of counsel and is unable to obtain counsel. If the court believes that
25 the person needs the assistance of counsel, the court shall require, by
26 appointment if necessary, counsel for him or her regardless of his or
27 her wishes. The person shall, if he or she is financially able, bear
28 the costs of such legal service; otherwise such legal service shall be
29 at public expense. The person whose commitment or recommitment is
30 sought shall be informed of his or her right to be examined by a

1 licensed physician of his or her choice. If the person is unable to
2 obtain a licensed physician and requests examination by a physician,
3 the court shall employ a licensed physician.

4 (10) A person committed under this chapter may at any time seek to
5 be discharged from commitment by writ of habeas corpus in a court of
6 competent jurisdiction.

7 (11) The venue for proceedings under this section is the county in
8 which person to be committed resides or is present.

9 (12) When in the opinion of the professional person in charge of
10 the program providing involuntary treatment under this chapter, the
11 committed patient can be appropriately served by less restrictive
12 treatment before expiration of the period of commitment, then the less
13 restrictive care may be required as a condition for early release for
14 a period which, when added to the initial treatment period, does not
15 exceed the period of commitment. If the program designated to provide
16 the less restrictive treatment is other than the program providing the
17 initial involuntary treatment, the program so designated must agree in
18 writing to assume such responsibility. A copy of the conditions for
19 early release shall be given to the patient, the designated chemical
20 dependency specialist of original commitment, and the court of original
21 commitment. The program designated to provide less restrictive care
22 may modify the conditions for continued release when the modifications
23 are in the best interests of the patient. If the program providing
24 less restrictive care and the designated chemical dependency specialist
25 determine that a conditionally released patient is failing to adhere to
26 the terms and conditions of his or her release, or that substantial
27 deterioration in the patient's functioning has occurred, then the
28 designated chemical dependency specialist shall notify the court of
29 original commitment and request a hearing to be held no less than two
30 and no more than seven days after the date of the request to determine

1 whether or not the person should be returned to more restrictive care.
2 The designated chemical dependency specialist shall file a petition
3 with the court stating the facts substantiating the need for the
4 hearing along with the treatment recommendations. The patient shall
5 have the same rights with respect to notice, hearing, and counsel as
6 for the original involuntary treatment proceedings. The issues to be
7 determined at the hearing are whether the conditionally released
8 patient did or did not adhere to the terms and conditions of his or her
9 release to less restrictive care or that substantial deterioration of
10 the patient's functioning has occurred and whether the conditions of
11 release should be modified or the person should be returned to a more
12 restrictive program. The hearing may be waived by the patient and his
13 or her counsel and his or her guardian or conservator, if any, but may
14 not be waived unless all such persons agree to the waiver. Upon
15 waiver, the person may be returned for involuntary treatment or
16 continued on conditional release on the same or modified conditions.

17 **Sec. 5.** RCW 71.05.210 and 1989 c 120 s 6 are each amended to read
18 as follows:

19 Each person involuntarily admitted to an evaluation and treatment
20 facility shall, within twenty-four hours of his or her admission, be
21 examined and evaluated by a licensed physician who may be assisted by
22 a physician(~~s~~) assistant according to chapter 18.71A RCW or a nurse
23 practitioner according to chapter 18.88 RCW and a mental health
24 professional as defined in this chapter, and shall receive such
25 treatment and care as his or her condition requires including treatment
26 on an outpatient basis for the period that he or she is detained,
27 except that, beginning twenty-four hours prior to a court proceeding,
28 the individual may refuse all but emergency life-saving treatment, and
29 the individual shall be informed at an appropriate time of his or her

1 right to such refusal of treatment. Such person shall be detained up
2 to seventy-two hours, if, in the opinion of the professional person in
3 charge of the facility, or his or her professional designee, the person
4 presents a likelihood of serious harm to himself or herself or others,
5 or is gravely disabled. A person who has been detained for seventy-two
6 hours shall no later than the end of such period be released, unless
7 referred for further care on a voluntary basis, or detained pursuant to
8 court order for further treatment as provided in this chapter.

9 If, after examination and evaluation, the licensed physician and
10 mental health professional determine that the initial needs of the
11 person would be better served by placement in ~~((an alcohol))~~ a chemical
12 dependency treatment facility, then the person shall be referred to an
13 approved treatment ~~((facility))~~ program defined under RCW 70.96A.020.

14 An evaluation and treatment center admitting any person pursuant to
15 this chapter whose physical condition reveals the need for
16 hospitalization shall assure that such person is transferred to an
17 appropriate hospital for treatment. Notice of such fact shall be given
18 to the court, the designated attorney, and the designated county mental
19 health professional and the court shall order such continuance in
20 proceedings under this chapter as may be necessary, but in no event may
21 this continuance be more than fourteen days.

22 **Sec. 6.** RCW 71.34.060 and 1985 c 354 s 6 are each amended to read
23 as follows:

24 (1) Each minor approved by the facility for inpatient admission
25 shall be examined and evaluated by a children's mental health
26 specialist as to the child's mental condition and by a physician as to
27 the child's physical condition within twenty-four hours of admission.
28 Reasonable measures shall be taken to ensure medical treatment is
29 provided for any condition requiring immediate medical attention.

1 (2) If, after examination and evaluation, the children's mental
2 health specialist and the physician determine that the initial needs of
3 the minor would be better served by placement in a chemical dependency
4 treatment facility, then the minor shall be referred to an approved
5 treatment program defined under RCW 70.96A.020.

6 (3) The admitting facility shall take reasonable steps to notify
7 immediately the minor's parent of the admission.

8 (~~(3)~~) (4) During the initial seventy-two hour treatment period,
9 the minor has a right to associate or receive communications from
10 parents or others unless the professional person in charge determines
11 that such communication would be seriously detrimental to the minor's
12 condition or treatment and so indicates in the minor's clinical record,
13 and notifies the minor's parents of this determination. In no event
14 may the minor be denied the opportunity to consult an attorney.

15 (~~(4)~~) (5) If the evaluation and treatment facility admits the
16 minor, it may detain the minor for evaluation and treatment for a
17 period not to exceed seventy-two hours from the time of provisional
18 acceptance. The computation of such seventy-two hour period shall
19 exclude Saturdays, Sundays, and holidays. This initial treatment
20 period shall not exceed seventy-two hours except when an application
21 for voluntary inpatient treatment is received or a petition for
22 fourteen-day commitment is filed.

23 (~~(5)~~) (6) Within twelve hours of the admission, the facility
24 shall advise the minor of his or her rights as set forth in this
25 chapter.

26 NEW SECTION. **Sec. 7.** The house of representatives committee
27 on human services, in collaboration with the divisions of alcohol and
28 substance abuse, mental health, juvenile rehabilitation, and children
29 and family services of the department of social and health services, as

1 well as other interested parties, shall jointly conduct a study to
2 determine the need for a comprehensive emergency and diagnostic system
3 for the evaluation and treatment of all persons, including minors, in
4 crisis and a danger to themselves or others, or gravely disabled,
5 whether such condition is a result of a mental illness, chemical abuse,
6 or dependence, or other cause. The study shall include the estimate of
7 need, projected costs, short-term options, and future planning
8 requisites for establishing a comprehensive, integrated, community-
9 approved emergency response system for persons alleged to be dangerous
10 to themselves or others, or gravely disabled, as a result of a mental
11 disorder, and who appear to be incapacitated by alcohol or other
12 psychoactive chemicals. Findings and recommendations shall be
13 presented to the house of representatives committee on human services
14 by December 1, 1991, for consideration in the 1992 session of the
15 legislature.