

1 6319.E AMH LEON H5080.1

2 **ESB 6319** - H AMD 0358 WITHDRAWN 03/11/92

3 By Representatives Leonard, Brekke, Ferguson and Mitchell

4

5 On page 6, after line 5, insert the following:

6 "Sec. 3. RCW 71A.10.080 and 1991 c 333 s 1 are each amended to
7 read as follows:

8 ~~((1))~~ The governor shall designate an agency to implement a
9 program for the protection and advocacy of the rights of persons with
10 developmental disabilities pursuant to the ~~((developmentally disabled))~~
11 developmental disabilities assistance and bill of rights act, 89 Stat.
12 486; 42 U.S.C. Secs. 6000-6083 (1975), (as amended). ~~((The designated~~
13 ~~agency shall have the authority to pursue legal, administrative, and~~
14 ~~other appropriate remedies to protect the rights of the developmentally~~
15 ~~disabled and to investigate allegations of abuse and neglect. The~~
16 ~~designated agency shall be independent of any state agency that~~
17 ~~provides treatment or services other than advocacy services to persons~~
18 ~~with developmental disabilities.~~

19 ~~(2) The agency designated under subsection (1) of this section~~
20 ~~shall implement a program for the protection and advocacy of the rights~~
21 ~~of mentally ill persons pursuant to the protection and advocacy for~~
22 ~~mentally ill individuals act of 1986, 100 Stat. 478; 42 U.S.C. Secs.~~
23 ~~10801-10851 (1986), (as amended). The designated agency shall have the~~
24 ~~authority to pursue legal, administrative, and other appropriate~~
25 ~~remedies to protect the rights of mentally ill persons and to~~
26 ~~investigate allegations of abuse or neglect of mentally ill persons.~~
27 ~~The designated agency shall be independent of any state agency that~~

1 ~~provides treatment or services other than advocacy services to mentally~~
2 ~~ill persons.~~

3 ~~(3) The governor shall designate an appropriate state official to~~
4 ~~serve as liaison between the agency designated to implement the~~
5 ~~protection and advocacy programs and the state departments and agencies~~
6 ~~that provide services to persons with developmental disabilities and~~
7 ~~mentally ill persons.)")~~

8 "NEW SECTION. Sec. 4. A new section is added to chapter 71.05 RCW
9 to read as follows:

10 The governor shall designate an agency to implement a program for
11 the protection and advocacy of the rights of mentally ill persons
12 pursuant to the protection and advocacy for mentally ill individuals
13 act of 1986, 100 Stat. 478; 42 U.S.C. Secs. 10801-10851 (1986), (as
14 amended)."

15 "NEW SECTION. Sec. 5. A new section is added to chapter 71A.10
16 RCW to read as follows:

17 The organization designated by the governor to act as the state's
18 protection and advocacy agency pursuant to the developmental
19 disabilities assistance and bill of rights act shall be independent of
20 any agency that provides treatment or services other than advocacy
21 services to persons with developmental disabilities. The designated
22 organization shall provide the director of the department of community
23 development or the director's designee, who is the state official
24 responsible for state compliance with federal funding requirements,
25 with all reports, assurances, and other documentation necessary to
26 ensure the proper administration of the state's protection and advocacy
27 system.

1 The designated organization shall have the authority to pursue
2 legal, administrative, and other appropriate remedies or approaches to
3 ensure the protection of, and the advocacy for, the rights of persons
4 with developmental disabilities or those who may be eligible for
5 services under the developmental disabilities assistance and bill of
6 rights act. The designated organization shall have the authority to
7 investigate incidents of abuse and neglect of persons with
8 developmental disabilities if the incidents are reported to the system
9 or if there is probable cause to believe the incidents occurred. In
10 protecting and advocating for the rights of developmentally disabled
11 persons and others eligible for services, the designated agency shall
12 focus on the activities listed in the developmental disabilities
13 assistance and bill of rights act, 89 Stat. 486; 42 U.S.C. Sec. 6042
14 (1975), (as amended)."

15 "NEW SECTION. **Sec. 6.** A new section is added to chapter 71.05 RCW
16 to read as follows:

17 The organization designated by the governor to act as the state's
18 protection and advocacy agency pursuant to the protection and advocacy
19 of mentally ill individuals act of 1986 shall be independent of any
20 agency that provides treatment or services other than advocacy services
21 to persons with mental illness. The designated organization shall
22 provide the director of the department of community development or the
23 director's designee, who is the state official responsible for state
24 compliance with federal funding requirements, with all reports,
25 assurances, and other documentation necessary to ensure the proper
26 administration of the state's protection and advocacy system.

27 The designated organization shall have the authority to pursue
28 administrative, legal, and other appropriate remedies to ensure the
29 protection of mentally ill individuals who are eligible under the

1 federal act. In pursuing the advocacy and protection of mentally ill
2 persons, the designated agency shall focus on activities listed in the
3 protection and advocacy for mentally ill individuals act of 1986, 100
4 Stat. 478; 42 U.S.C. Sec. 10805 (1986), (as amended)."

5 "NEW SECTION. **Sec. 7.** A new section is added to chapter 43.63A
6 RCW to read as follows:

7 The director of the department of community development or the
8 director's designee shall be the state official responsible for state
9 compliance with federal requirements imposed when the protection and
10 advocacy agency designated by the governor under RCW 71A.10.080
11 receives the state's allotment of federal funds. The director or
12 designee shall obtain from the agency all reports, assurances, and
13 other documentation necessary to ensure the proper administration of
14 the state's protection and advocacy system."

15 "NEW SECTION. **Sec. 8.** Nothing in this act shall be construed
16 to limit or expand the authority of the designated protection and
17 advocacy organization beyond that authority designated in the
18 developmental disabilities assistance and bill of rights act, 89 Stat.
19 486; 42 U.S.C. Secs. 6000-6083 (1975), (as amended), and the protection
20 and advocacy for mentally ill individuals act of 1986, 100 Stat. 478;
21 42 U.S.C. Secs. 10801-10851."

22 "NEW SECTION. **Sec. 9.** A new section is added to chapter 43.131
23 RCW to read as follows:

24 The protection and advocacy programs for persons with developmental
25 disabilities and persons who are mentally ill shall be terminated on
26 June 30, 1997, as provided in section 10 of this act."

1 "NEW SECTION. Sec. 10. A new section is added to chapter 43.131
2 RCW to read as follows:

3 The following acts or parts of acts, as now existing or hereafter
4 amended, are each repealed, effective June 30, 1998:

5 (1) RCW 71A.10.080 and 1992 c ... s 3 (section 3 of this act) &
6 1991 c 333 s 1;

7 (2) RCW 71.05.--- and 1992 c ... s 4 (section 4 of this act);

8 (3) RCW 71A.10.--- and 1992 c ... s 5 (section 5 of this act);

9 (4) RCW 71.05.--- and 1992 c ... s 6 (section 6 of this act); and

10 (5) RCW 43.63A.--- and 1992 c ... 7 (section 7 of this act)."

11 "**Sec. 11.** RCW 70.96A.140 and 1991 c 364 s 10 are each amended to
12 read as follows:

13 (1) When a designated chemical dependency specialist receives
14 information alleging that a person is incapacitated as a result of
15 (~~alcoholism, or in the case of a minor incapacitated by alcoholism~~
16 ~~and/or other drug addiction~~)) chemical dependency, the designated
17 chemical dependency specialist, after investigation and evaluation of
18 the specific facts alleged and of the reliability and credibility of
19 the information, may file a petition for commitment of such person with
20 the superior court or district court. If the designated chemical
21 dependency specialist finds that the initial needs of such person would
22 be better served by placement within the mental health system, the
23 person shall be referred to an evaluation and treatment facility as
24 defined in RCW 71.05.020 or 71.34.020. If placement in (~~an alcohol~~
25 ~~treatment program~~)) a chemical dependency program is available and
26 deemed appropriate, the petition shall allege that: The person is (~~an~~
27 ~~alcoholic who~~)) chemically dependent and is incapacitated by
28 alcohol(~~(,)~~) or (~~in the case of a minor incapacitated by alcoholism~~
29 ~~and/or other~~)) drug addiction, or that the person has twice before in

1 the preceding twelve months been admitted for detoxification or
2 chemical dependency treatment (~~((for alcoholism))~~) pursuant to RCW
3 70.96A.110, (~~((or in the case of a minor, detoxification or treatment~~
4 ~~for alcohol or drug addiction,))~~) and is in need of a more sustained
5 treatment program, or that the person is (~~((an alcoholic, or in the case~~
6 ~~of a minor, an alcoholic or other drug addict, who))~~) chemically
7 dependent and has threatened, attempted, or inflicted physical harm on
8 another and is likely to inflict physical harm on another unless
9 committed. A refusal to undergo treatment, by itself, does not
10 constitute evidence of lack of judgment as to the need for treatment.
11 The petition shall be accompanied by a certificate of a licensed
12 physician who has examined the person within five days before
13 submission of the petition, unless the person whose commitment is
14 sought has refused to submit to a medical examination, in which case
15 the fact of refusal shall be alleged in the petition. The certificate
16 shall set forth the licensed physician's findings in support of the
17 allegations of the petition. A physician employed by the petitioning
18 program or the department is eligible to be the certifying physician.

19 (2) Upon filing the petition, the court shall fix a date for a
20 hearing no less than two and no more than seven days after the date the
21 petition was filed unless the person petitioned against is presently
22 being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or
23 71.34.050, as now or hereafter amended, in which case the hearing shall
24 be held within seventy-two hours of the filing of the petition:
25 PROVIDED, HOWEVER, That the above specified seventy-two hours shall be
26 computed by excluding Saturdays, Sundays, and holidays: PROVIDED
27 FURTHER, That, the court may, upon motion of the person whose
28 commitment is sought, or upon motion of petitioner with written
29 permission of the person whose commitment is sought, or his or her
30 counsel and, upon good cause shown, extend the date for the hearing.

1 A copy of the petition and of the notice of the hearing, including the
2 date fixed by the court, shall be served by the designated chemical
3 dependency specialist on the person whose commitment is sought, his or
4 her next of kin, a parent or his or her legal guardian if he or she is
5 a minor, and any other person the court believes advisable. A copy of
6 the petition and certificate shall be delivered to each person
7 notified.

8 (3) At the hearing the court shall hear all relevant testimony,
9 including, if possible, the testimony, which may be telephonic, of at
10 least one licensed physician who has examined the person whose
11 commitment is sought. Communications otherwise deemed privileged under
12 the laws of this state are deemed to be waived in proceedings under
13 this chapter when a court of competent jurisdiction in its discretion
14 determines that the waiver is necessary to protect either the detained
15 person or the public. The waiver of a privilege under this section is
16 limited to records or testimony relevant to evaluation of the detained
17 person for purposes of a proceeding under this chapter. Upon motion by
18 the detained person, or on its own motion, the court shall examine a
19 record or testimony sought by a petitioner to determine whether it is
20 within the scope of the waiver.

21 The record maker shall not be required to testify in order to
22 introduce medical, nursing, or psychological records of detained
23 persons so long as the requirements of RCW 5.45.020 are met, except
24 that portions of the record that contain opinions as to whether the
25 detained person is ~~((an alcoholic, or in the case of a minor
26 incapacitated by alcoholism and/or other drug addiction, must))~~
27 chemically dependent shall be deleted from the records unless the
28 person offering the opinions is available for cross-examination. The
29 person shall be present unless the court believes that his or her
30 presence is likely to be injurious to him or her; in this event the

1 court may deem it appropriate to appoint a guardian ad litem to
2 represent him or her throughout the proceeding. If deemed advisable,
3 the court may examine the person out of courtroom. If the person has
4 refused to be examined by a licensed physician, he or she shall be
5 given an opportunity to be examined by a court appointed licensed
6 physician. If he or she refuses and there is sufficient evidence to
7 believe that the allegations of the petition are true, or if the court
8 believes that more medical evidence is necessary, the court may make a
9 temporary order committing him or her to the department for a period of
10 not more than five days for purposes of a diagnostic examination.

11 (4) If after hearing all relevant evidence, including the results
12 of any diagnostic examination, the court finds that grounds for
13 involuntary commitment have been established by clear, cogent, and
14 convincing proof, it shall make an order of commitment to an approved
15 treatment program. It shall not order commitment of a person unless it
16 determines that an approved treatment program is available and able to
17 provide adequate and appropriate treatment for him or her.

18 (5) A person committed under this section shall remain in the
19 program for treatment for a period of sixty days unless sooner
20 discharged. At the end of the sixty-day period, he or she shall be
21 discharged automatically unless the program, before expiration of the
22 period, files a petition for his or her recommitment upon the grounds
23 set forth in subsection (1) of this section for a further period of
24 ninety days unless sooner discharged. If a person has been committed
25 because he or she is (~~an alcoholic, or, in the case of a minor, an~~
26 ~~alcoholic or other drug addict,~~) chemically dependent and likely to
27 inflict physical harm on another, the program shall apply for
28 recommitment if after examination it is determined that the likelihood
29 still exists.

1 (6) Upon the filing of a petition for recommitment under subsection
2 (5) of this section, the court shall fix a date for hearing no less
3 than two and no more than seven days after the date the petition was
4 filed: PROVIDED, That, the court may, upon motion of the person whose
5 commitment is sought and upon good cause shown, extend the date for the
6 hearing. A copy of the petition and of the notice of hearing,
7 including the date fixed by the court, shall be served by the treatment
8 program on the person whose commitment is sought, his or her next of
9 kin, the original petitioner under subsection (1) of this section if
10 different from the petitioner for recommitment, one of his or her
11 parents or his or her legal guardian if he or she is a minor, and his
12 or her attorney and any other person the court believes advisable. At
13 the hearing the court shall proceed as provided in subsection (3) of
14 this section.

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

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

23 (a) In case of ~~((an alcoholic))~~ a chemically dependent person
24 committed on the grounds of likelihood of infliction of physical harm
25 upon himself, herself, or another, ~~((or, in the case of a minor, an
26 alcoholic or other drug addict,))~~ the likelihood no longer exists; or
27 further treatment will not be likely to bring about significant
28 improvement in the person's condition, or treatment is no longer
29 adequate or appropriate.

1 (b) In case of (~~an alcoholic~~) a chemically dependent person
2 committed on the grounds of the need of treatment and incapacity (~~or,~~
3 ~~in the case of a minor, incapacitated by alcoholism and/or other drug~~
4 ~~addiction~~)), that the incapacity no longer exists.

5 (9) The court shall inform the person whose commitment or
6 recommitment is sought of his or her right to contest the application,
7 be represented by counsel at every stage of any proceedings relating to
8 his or her commitment and recommitment, and have counsel appointed by
9 the court or provided by the court, if he or she wants the assistance
10 of counsel and is unable to obtain counsel. If the court believes that
11 the person needs the assistance of counsel, the court shall require, by
12 appointment if necessary, counsel for him or her regardless of his or
13 her wishes. The person shall, if he or she is financially able, bear
14 the costs of such legal service; otherwise such legal service shall be
15 at public expense. The person whose commitment or recommitment is
16 sought shall be informed of his or her right to be examined by a
17 licensed physician of his or her choice. If the person is unable to
18 obtain a licensed physician and requests examination by a physician,
19 the court shall employ a licensed physician.

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

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

25 (12) When in the opinion of the professional person in charge of
26 the program providing involuntary treatment under this chapter, the
27 committed patient can be appropriately served by less restrictive
28 treatment before expiration of the period of commitment, then the less
29 restrictive care may be required as a condition for early release for
30 a period which, when added to the initial treatment period, does not

1 exceed the period of commitment. If the program designated to provide
2 the less restrictive treatment is other than the program providing the
3 initial involuntary treatment, the program so designated must agree in
4 writing to assume such responsibility. A copy of the conditions for
5 early release shall be given to the patient, the designated chemical
6 dependency specialist of original commitment, and the court of original
7 commitment. The program designated to provide less restrictive care
8 may modify the conditions for continued release when the modifications
9 are in the best interests of the patient. If the program providing
10 less restrictive care and the designated chemical dependency specialist
11 determine that a conditionally released patient is failing to adhere to
12 the terms and conditions of his or her release, or that substantial
13 deterioration in the patient's functioning has occurred, then the
14 designated chemical dependency specialist shall notify the court of
15 original commitment and request a hearing to be held no less than two
16 and no more than seven days after the date of the request to determine
17 whether or not the person should be returned to more restrictive care.
18 The designated chemical dependency specialist shall file a petition
19 with the court stating the facts substantiating the need for the
20 hearing along with the treatment recommendations. The patient shall
21 have the same rights with respect to notice, hearing, and counsel as
22 for the original involuntary treatment proceedings. The issues to be
23 determined at the hearing are whether the conditionally released
24 patient did or did not adhere to the terms and conditions of his or her
25 release to less restrictive care or that substantial deterioration of
26 the patient's functioning has occurred and whether the conditions of
27 release should be modified or the person should be returned to a more
28 restrictive program. The hearing may be waived by the patient and his
29 or her counsel and his or her guardian or conservator, if any, but may
30 not be waived unless all such persons agree to the waiver. Upon

1 waiver, the person may be returned for involuntary treatment or
2 continued on conditional release on the same or modified conditions."

3 "NEW SECTION. Sec. 12. The purpose of section 11 of this act is
4 solely to provide authority for the involuntary commitment of persons
5 suffering from chemical dependency within available funds and current
6 programs and facilities. Nothing in this act shall be construed to
7 require the addition of new facilities nor affect the department of
8 social and health services' authority for the uses of existing programs
9 and facilities authorized by law."

10 Renumber the remaining section consecutively.

11 **ESB 6319** - H AMD
12 By Representative Leonard

13
14 On page 1, line 2 of the title, after "72.23.025" insert ",
15 71A.10.080, and 70.96A.140"

16 On page 1, line 2 of the title, after "72.23 RCW;" insert "adding
17 new sections to chapter 71.05 RCW; adding a new section to chapter
18 71A.10 RCW; adding a new section to chapter 43.63A RCW; adding new
19 sections to chapter 43.131 RCW; creating new sections;"