
SENATE BILL 6749

State of Washington

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By Senators Long, Hargrove, Haugen, Stevens, Winsley, McAuliffe and Patterson

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1 AN ACT Relating to chemical dependency; and amending RCW
2 70.96A.020, 70.96A.050, 70.96A.120, and 70.96A.140.

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

4 **Sec. 1.** RCW 70.96A.020 and 1998 c 296 s 22 are each amended to
5 read as follows:

6 For the purposes of this chapter the following words and phrases
7 shall have the following meanings unless the context clearly requires
8 otherwise:

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

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

16 (3) "Approved treatment program" means a discrete program of
17 chemical dependency treatment provided by a treatment program certified
18 by the department of social and health services as meeting standards
19 adopted under this chapter.

1 (4) "Chemical dependency" means:
2 (a) Alcoholism ~~((or))~~; (b) drug addiction ~~((or))~~; or (c) dependence
3 on alcohol and one or more other psychoactive chemicals, as the context
4 requires.

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

9 (6) "Department" means the department of social and health
10 services.

11 (7) "Designated chemical dependency specialist" or "specialist"
12 means a person designated by the county alcoholism and other drug
13 addiction program coordinator designated under RCW 70.96A.310 to
14 perform the commitment duties described in RCW 70.96A.140 and qualified
15 to do so by meeting standards adopted by the department.

16 (8) "Director" means the person administering the chemical
17 dependency program within the department.

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

20 (10) "Drug addiction" means a disease characterized by a dependency
21 on psychoactive chemicals, loss of control over the amount and
22 circumstances of use, symptoms of tolerance, physiological or
23 psychological withdrawal, or both, if use is reduced or discontinued,
24 and impairment of health or disruption of social or economic
25 functioning.

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

28 (12) "Gravely disabled by alcohol or other ~~((drugs))~~ psychoactive
29 chemicals" or "gravely disabled" means that a person, as a result of
30 the use of alcohol or other ~~((drugs))~~ psychoactive chemicals: (a) Is
31 in danger of serious physical harm resulting from a failure to provide
32 for his or her essential human needs of health or safety; or (b)
33 manifests severe deterioration in routine functioning evidenced by a
34 repeated and escalating loss of cognition or volitional control over
35 his or her actions and is not receiving care as essential for his or
36 her health or safety.

37 (13) "History of one or more violent acts" refers to the period of
38 time ten years prior to the filing of a petition under this chapter,
39 excluding any time spent, but not any violent acts committed, in a

1 mental health facility, or a long-term alcoholism or drug treatment
2 facility, or in confinement.

3 (14) "Incapacitated by alcohol or other psychoactive chemicals"
4 means that a person, as a result of the use of alcohol or other
5 psychoactive chemicals, (~~has his or her judgment so impaired that he~~
6 ~~or she is incapable of realizing and making a rational decision with~~
7 ~~respect to his or her need for treatment and~~) is gravely disabled or
8 presents a likelihood of serious harm to himself or herself, to any
9 other person, or to property.

10 (~~(14)~~) (15) "Incompetent person" means a person who has been
11 adjudged incompetent by the superior court.

12 (~~(15)~~) (16) "Intoxicated person" means a person whose mental or
13 physical functioning is substantially impaired as a result of the use
14 of alcohol or other psychoactive chemicals.

15 (~~(16)~~) (17) "Licensed physician" means a person licensed to
16 practice medicine or osteopathic medicine and surgery in the state of
17 Washington.

18 (~~(17)~~) (18) "Likelihood of serious harm" means (~~either~~):

19 (a) A substantial risk that: (i) Physical harm will be inflicted
20 by an individual upon his or her own person, as evidenced by threats or
21 attempts to commit suicide or inflict physical harm on one's self;
22 (~~(b) a substantial risk that~~) (ii) physical harm will be inflicted by
23 an individual upon another, as evidenced by behavior that has caused
24 the harm or that places another person or persons in reasonable fear of
25 sustaining the harm; or (~~(c) a substantial risk that~~) (iii) physical
26 harm will be inflicted by an individual upon the property of others, as
27 evidenced by behavior that has caused substantial loss or damage to the
28 property of others; or

29 (b) The individual has threatened the physical safety of another
30 and has a history of one or more violent acts.

31 (~~(18)~~) (19) "Medical necessity" for inpatient care of a minor
32 means a requested certified inpatient service that is reasonably
33 calculated to: (a) Diagnose, arrest, or alleviate a chemical
34 dependency; or (b) prevent the worsening of chemical dependency
35 conditions that endanger life or cause suffering and pain, or result in
36 illness or infirmity or threaten to cause or aggravate a handicap, or
37 cause physical deformity or malfunction, and there is no adequate less
38 restrictive alternative available.

1 (~~(19)~~) (20) "Minor" means a person less than eighteen years of
2 age.

3 (~~(20)~~) (21) "Parent" means the parent or parents who have the
4 legal right to custody of the child. Parent includes custodian or
5 guardian.

6 (~~(21)~~) (22) "Peace officer" means a law enforcement official of
7 a public agency or governmental unit, and includes persons specifically
8 given peace officer powers by any state law, local ordinance, or
9 judicial order of appointment.

10 (~~(22)~~) (23) "Person" means an individual, including a minor.

11 (~~(23)~~) (24) "Professional person in charge" or "professional
12 person" means a physician or chemical dependency counselor as defined
13 in rule by the department, who is empowered by a certified treatment
14 program with authority to make assessment, admission, continuing care,
15 and discharge decisions on behalf of the certified program.

16 (~~(24)~~) (25) "Secretary" means the secretary of the department of
17 social and health services.

18 (~~(25)~~) (26) "Treatment" means the broad range of emergency,
19 detoxification, residential, and outpatient services and care,
20 including diagnostic evaluation, chemical dependency education and
21 counseling, medical, psychiatric, psychological, and social service
22 care, vocational rehabilitation and career counseling, which may be
23 extended to alcoholics and other drug addicts and their families,
24 persons incapacitated by alcohol or other psychoactive chemicals, and
25 intoxicated persons.

26 (~~(26)~~) (27) "Treatment program" means an organization,
27 institution, or corporation, public or private, engaged in the care,
28 treatment, or rehabilitation of alcoholics or other drug addicts.

29 (28) "Violent act" means behavior that resulted in homicide,
30 attempted suicide, nonfatal injuries, or substantial damage to
31 property.

32 **Sec. 2.** RCW 70.96A.050 and 1989 c 270 s 6 are each amended to read
33 as follows:

34 The department shall:

35 (1) Develop, encourage, and foster state-wide, regional, and local
36 plans and programs for the prevention of alcoholism and other drug
37 addiction, treatment of alcoholics and other drug addicts and their
38 families, persons incapacitated by alcohol or other psychoactive

1 chemicals, and intoxicated persons in cooperation with public and
2 private agencies, organizations, and individuals and provide technical
3 assistance and consultation services for these purposes;

4 (2) Coordinate the efforts and enlist the assistance of all public
5 and private agencies, organizations, and individuals interested in
6 prevention of alcoholism and drug addiction, and treatment of
7 alcoholics and other drug addicts and their families, persons
8 incapacitated by alcohol or other psychoactive chemicals, and
9 intoxicated persons;

10 (3) Cooperate with public and private agencies in establishing and
11 conducting programs to provide treatment for alcoholics and other drug
12 addicts and their families, persons incapacitated by alcohol or other
13 psychoactive chemicals, and intoxicated persons who are clients of the
14 correctional system;

15 (4) Cooperate with the superintendent of public instruction, state
16 board of education, schools, police departments, courts, and other
17 public and private agencies, organizations and individuals in
18 establishing programs for the prevention of alcoholism and other drug
19 addiction, treatment of alcoholics or other drug addicts and their
20 families, persons incapacitated by alcohol ((and)) or other
21 psychoactive chemicals, and intoxicated persons, and preparing
22 curriculum materials thereon for use at all levels of school education;

23 (5) Prepare, publish, evaluate, and disseminate educational
24 material dealing with the nature and effects of alcohol and other
25 psychoactive chemicals and the consequences of their use;

26 (6) Develop and implement, as an integral part of treatment
27 programs, an educational program for use in the treatment of alcoholics
28 or other drug addicts, persons incapacitated by alcohol ((and)) or
29 other psychoactive chemicals, and intoxicated persons, which program
30 shall include the dissemination of information concerning the nature
31 and effects of alcohol and other psychoactive chemicals, the
32 consequences of their use, the principles of recovery, and HIV and
33 AIDS;

34 (7) Organize and foster training programs for persons engaged in
35 treatment of alcoholics or other drug addicts, persons incapacitated by
36 alcohol ((and)) or other psychoactive chemicals, and intoxicated
37 persons;

38 (8) Sponsor and encourage research into the causes and nature of
39 alcoholism and other drug addiction, treatment of alcoholics and other

1 drug addicts, persons incapacitated by alcohol (~~and~~) or other
2 psychoactive chemicals, and intoxicated persons, and serve as a
3 clearing house for information relating to alcoholism or other drug
4 addiction;

5 (9) Specify uniform methods for keeping statistical information by
6 public and private agencies, organizations, and individuals, and
7 collect and make available relevant statistical information, including
8 number of persons treated, frequency of admission and readmission, and
9 frequency and duration of treatment;

10 (10) Advise the governor in the preparation of a comprehensive plan
11 for treatment of alcoholics and other drug addicts, persons
12 incapacitated by alcohol or other psychoactive chemicals, and
13 intoxicated persons for inclusion in the state's comprehensive health
14 plan;

15 (11) Review all state health, welfare, and treatment plans to be
16 submitted for federal funding under federal legislation, and advise the
17 governor on provisions to be included relating to alcoholism and other
18 drug addiction, persons incapacitated by alcohol or other psychoactive
19 chemicals, and intoxicated persons;

20 (12) Assist in the development of, and cooperate with, programs for
21 alcohol and other psychoactive chemical education and treatment for
22 employees of state and local governments and businesses and industries
23 in the state;

24 (13) Use the support and assistance of interested persons in the
25 community to encourage alcoholics and other drug addicts voluntarily to
26 undergo treatment;

27 (14) Cooperate with public and private agencies in establishing and
28 conducting programs designed to deal with the problem of persons
29 operating motor vehicles while intoxicated;

30 (15) Encourage general hospitals and other appropriate health
31 facilities to admit without discrimination alcoholics and other drug
32 addicts, persons incapacitated by alcohol or other psychoactive
33 chemicals, and intoxicated persons and to provide them with adequate
34 and appropriate treatment;

35 (16) Encourage all health and disability insurance programs to
36 include alcoholism and other drug addiction as a covered illness; and

37 (17) Organize and sponsor a state-wide program to help court
38 personnel, including judges, better understand the disease of

1 alcoholism and other drug addiction and the uses of chemical dependency
2 treatment programs.

3 **Sec. 3.** RCW 70.96A.120 and 1991 c 290 s 6 are each amended to read
4 as follows:

5 (1) An intoxicated person may come voluntarily to an approved
6 treatment program for treatment. A person who appears to be
7 intoxicated in a public place and to be in need of help, if he or she
8 consents to the proffered help, may be assisted to his or her home, an
9 approved treatment program, or other health facility.

10 (2) (~~Except for a person who may be apprehended for possible~~
11 ~~violation of laws not relating to alcoholism, drug addiction, or~~
12 ~~intoxication and except for a person who may be apprehended for~~
13 ~~possible violation of laws relating to driving or being in physical~~
14 ~~control of a vehicle while under the influence of intoxicating liquor~~
15 ~~or any drug and except for a person who may wish to avail himself or~~
16 ~~herself of the provisions of RCW 46.20.308, a person who appears to be~~
17 ~~incapacitated or gravely disabled by alcohol or other drugs and who is~~
18 ~~in a public place or who has threatened, attempted, or inflicted~~
19 ~~physical harm on himself, herself, or another, shall be taken into~~
20 ~~protective custody by a peace officer or staff designated by the county~~
21 ~~and as soon as practicable, but in no event beyond eight hours brought~~
22 ~~to an approved treatment program for treatment. If no approved~~
23 ~~treatment program is readily available he or she shall be taken to an~~
24 ~~emergency medical service customarily used for incapacitated persons.~~
25 ~~The peace officer or staff designated by the county, in detaining the~~
26 ~~person and in taking him or her to an approved treatment program, is~~
27 ~~taking him or her into protective custody and shall make every~~
28 ~~reasonable effort to protect his or her health and safety. In taking~~
29 ~~the person into protective custody, the detaining peace officer or~~
30 ~~staff designated by the county may take reasonable steps including~~
31 ~~reasonable force if necessary to protect himself or herself or effect~~
32 ~~the custody. A taking into protective custody under this section is~~
33 ~~not an arrest. No entry or other record shall be made to indicate that~~
34 ~~the person has been arrested or charged with a crime.)) (a) A peace
35 officer or staff designated by the county shall take into protective
36 custody a person who appears to be incapacitated or gravely disabled by
37 alcohol or other psychoactive chemicals and who:~~

38 (i) Is in a public place; or

1 (ii) Has threatened, attempted, or inflicted physical harm on
2 himself, herself, or another; or

3 (iii) Is not in a public place, if directed by the designated
4 chemical dependency specialist pursuant to (b) of this subsection.

5 (b) A designated chemical dependency specialist may take into
6 protective custody, or may cause a peace officer or staff designated by
7 the county to take into protective custody, a person who is at imminent
8 risk of harm and appears to be incapacitated or gravely disabled by
9 alcohol or other psychoactive chemicals and who is not in a public
10 place.

11 (c) This subsection does not apply to a person who:

12 (i) May be apprehended for possible violation of laws not relating
13 to chemical dependency or intoxication;

14 (ii) May be apprehended for possible violation of laws relating to
15 driving or being in physical control of a vehicle while under the
16 influence of intoxicating liquor or any psychoactive chemical; or

17 (iii) May wish to avail himself or herself of the provisions of RCW
18 46.20.308.

19 (d) A person taken into protective custody must be taken to an
20 approved treatment program as soon as practicable, but in any event,
21 within eight hours. If no approved treatment program is available the
22 person shall be taken to an emergency medical service customarily used
23 for incapacitated persons.

24 (e) In taking a person into protective custody, the detaining peace
25 officer or staff designated by the county shall make every reasonable
26 effort to protect the person's health and safety and may take
27 reasonable steps, including reasonable force, if necessary, to protect
28 himself or herself or to effect the custody.

29 (f) Taking a person into protective custody under this subsection
30 is not an arrest. No entry or other record shall be made to indicate
31 that the person has been arrested or charged with a crime.

32 (3) A person who comes voluntarily or is brought to an approved
33 treatment program shall be examined by a qualified person. He or she
34 may then be admitted as a patient or referred to another health
35 facility, which provides emergency medical treatment, where it appears
36 that such treatment may be necessary. The referring approved treatment
37 program shall arrange for his or her transportation.

38 (4) A person who is found to be incapacitated or gravely disabled
39 by alcohol or other drugs at the time of his or her admission or to

1 have become incapacitated or gravely disabled at any time after his or
2 her admission, may not be detained at the program for more than
3 seventy-two hours after admission as a patient, unless a petition is
4 filed under RCW 70.96A.140, as now or hereafter amended: PROVIDED,
5 That the treatment personnel at an approved treatment program are
6 authorized to use such reasonable physical restraint as may be
7 necessary to retain an incapacitated or gravely disabled person for up
8 to seventy-two hours from the time of admission. The seventy-two hour
9 periods specified in this section shall be computed by excluding
10 Saturdays, Sundays, and holidays. A person may consent to remain in
11 the program as long as the physician in charge believes appropriate.

12 (5) A person who: (a) Is not admitted to an approved treatment
13 program, (b) is not referred to another health facility, and (c) has no
14 funds, may be taken to his or her home(~~(, if any)~~). If he or she has
15 no home, the approved treatment program shall provide him or her with
16 information and assistance to access available community shelter
17 resources.

18 (6) If a patient is admitted to an approved treatment program, his
19 or her family or next of kin shall be notified as promptly as possible
20 by the treatment program. If an adult patient who is not incapacitated
21 requests that there be no notification, his or her request shall be
22 respected.

23 (7) The peace officer, staff designated by the county, or treatment
24 facility personnel, who act in compliance with this chapter and are
25 performing in the course of their official duty are not criminally or
26 civilly liable therefor.

27 (8) If the person in charge of the approved treatment program
28 determines that appropriate treatment is available, the patient shall
29 be encouraged to agree to further diagnosis and appropriate voluntary
30 treatment.

31 **Sec. 4.** RCW 70.96A.140 and 1995 c 312 s 49 are each amended to
32 read as follows:

33 (1) When a designated chemical dependency specialist receives
34 information alleging that a person (~~(is incapacitated)~~) presents a
35 likelihood of serious harm or is gravely disabled as a result of
36 chemical dependency, the designated chemical dependency specialist,
37 after investigation and evaluation of the specific facts alleged and of
38 the reliability and credibility of the information, may file a petition

1 for commitment of such person with the superior court (~~(or)~~), district
2 court, or in another court permitted by court rule.

3 If a petition for commitment is not filed in the case of a minor,
4 the parent, guardian, or custodian who has custody of the minor may
5 seek review of that decision made by the designated chemical dependency
6 specialist in superior or district court. The parent, guardian, or
7 custodian shall file notice with the court and provide a copy of the
8 designated chemical dependency specialist's report.

9 If the designated chemical dependency specialist finds that the
10 initial needs of such person would be better served by placement within
11 the mental health system, the person shall be referred to either a
12 county designated mental health professional or an evaluation and
13 treatment facility as defined in RCW 71.05.020 or 71.34.020. If
14 placement in a chemical dependency program is available and deemed
15 appropriate, the petition shall allege that: The person is chemically
16 dependent and (~~is incapacitated~~) presents a likelihood of serious
17 harm or is gravely disabled by alcohol or drug addiction, or that the
18 person has twice before in the preceding twelve months been admitted
19 for detoxification, sobering services, or chemical dependency treatment
20 pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of a more
21 sustained treatment program, or that the person is chemically dependent
22 and has threatened, attempted, or inflicted physical harm on another
23 and is likely to inflict physical harm on another unless committed. A
24 refusal to undergo treatment, by itself, does not constitute evidence
25 of lack of judgment as to the need for treatment. The petition shall
26 be accompanied by a certificate of a licensed physician who has
27 examined the person within five days before submission of the petition,
28 unless the person whose commitment is sought has refused to submit to
29 a medical examination, in which case the fact of refusal shall be
30 alleged in the petition. The certificate shall set forth the licensed
31 physician's findings in support of the allegations of the petition. A
32 physician employed by the petitioning program or the department is
33 eligible to be the certifying physician.

34 (2) Upon filing the petition, the court shall fix a date for a
35 hearing no less than two and no more than seven days after the date the
36 petition was filed unless the person petitioned against is presently
37 being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or
38 71.34.050, in which case the hearing shall be held within seventy-two
39 hours of the filing of the petition: PROVIDED, HOWEVER, That the above

1 specified seventy-two hours shall be computed by excluding Saturdays,
2 Sundays, and holidays: PROVIDED FURTHER, That, the court may, upon
3 motion of the person whose commitment is sought, or upon motion of
4 petitioner with written permission of the person whose commitment is
5 sought, or his or her counsel and, upon good cause shown, extend the
6 date for the hearing. A copy of the petition and of the notice of the
7 hearing, including the date fixed by the court, shall be served by the
8 designated chemical dependency specialist on the person whose
9 commitment is sought, his or her next of kin, a parent or his or her
10 legal guardian if he or she is a minor, and any other person the court
11 believes advisable. A copy of the petition and certificate shall be
12 delivered to each person notified.

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

26 The record maker shall not be required to testify in order to
27 introduce medical, nursing, or psychological records of detained
28 persons so long as the requirements of RCW 5.45.020 are met, except
29 that portions of the record that contain opinions as to whether the
30 detained person is chemically dependent shall be deleted from the
31 records unless the person offering the opinions is available for cross-
32 examination. The person shall be present unless the court believes
33 that his or her presence is likely to be injurious to him or her; in
34 this event the court may deem it appropriate to appoint a guardian ad
35 litem to represent him or her throughout the proceeding. If deemed
36 advisable, the court may examine the person out of courtroom. If the
37 person has refused to be examined by a licensed physician, he or she
38 shall be given an opportunity to be examined by a court appointed
39 licensed physician. If he or she refuses and there is sufficient

1 evidence to believe that the allegations of the petition are true, or
2 if the court believes that more medical evidence is necessary, the
3 court may make a temporary order committing him or her to the
4 department for a period of not more than five days for purposes of a
5 diagnostic examination.

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

13 (5) A person committed under this section shall remain in the
14 program for treatment for a period of sixty days unless sooner
15 discharged. At the end of the sixty-day period, he or she shall be
16 discharged automatically unless the program, before expiration of the
17 period, files a petition for his or her recommitment upon the grounds
18 set forth in subsection (1) of this section for a further period of
19 ninety days unless sooner discharged.

20 If a petition for recommitment is not filed in the case of a minor,
21 the parent, guardian, or custodian who has custody of the minor may
22 seek review of that decision made by the designated chemical dependency
23 specialist in superior or district court. The parent, guardian, or
24 custodian shall file notice with the court and provide a copy of the
25 treatment progress report.

26 If a person has been committed because he or she is chemically
27 dependent and likely to inflict physical harm on another, the program
28 shall apply for recommitment if after examination it is determined that
29 the likelihood still exists.

30 (6) Upon the filing of a petition for recommitment under subsection
31 (5) of this section, the court shall fix a date for hearing no less
32 than two and no more than seven days after the date the petition was
33 filed: PROVIDED, That, the court may, upon motion of the person whose
34 commitment is sought and upon good cause shown, extend the date for the
35 hearing. A copy of the petition and of the notice of hearing,
36 including the date fixed by the court, shall be served by the treatment
37 program on the person whose commitment is sought, his or her next of
38 kin, the original petitioner under subsection (1) of this section if
39 different from the petitioner for recommitment, one of his or her

1 parents or his or her legal guardian if he or she is a minor, and his
2 or her attorney and any other person the court believes advisable. At
3 the hearing the court shall proceed as provided in subsection (3) of
4 this section.

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

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

13 (a) In case of a chemically dependent person committed on the
14 grounds of likelihood of infliction of physical harm upon himself,
15 herself, or another, the likelihood no longer exists; or further
16 treatment will not be likely to bring about significant improvement in
17 the person's condition, or treatment is no longer adequate or
18 appropriate.

19 (b) In case of a chemically dependent person committed on the
20 grounds of the need of treatment and incapacity, that the incapacity no
21 longer exists.

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

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

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

3 (12) When in the opinion of the professional person in charge of
4 the program providing involuntary treatment under this chapter, the
5 committed patient can be appropriately served by less restrictive
6 treatment before expiration of the period of commitment, then the less
7 restrictive care may be required as a condition for early release for
8 a period which, when added to the initial treatment period, does not
9 exceed the period of commitment. If the program designated to provide
10 the less restrictive treatment is other than the program providing the
11 initial involuntary treatment, the program so designated must agree in
12 writing to assume such responsibility. A copy of the conditions for
13 early release shall be given to the patient, the designated chemical
14 dependency specialist of original commitment, and the court of original
15 commitment. The program designated to provide less restrictive care
16 may modify the conditions for continued release when the modifications
17 are in the best interests of the patient. If the program providing
18 less restrictive care and the designated chemical dependency specialist
19 determine that a conditionally released patient is failing to adhere to
20 the terms and conditions of his or her release, or that substantial
21 deterioration in the patient's functioning has occurred, then the
22 designated chemical dependency specialist shall notify the court of
23 original commitment and request a hearing to be held no less than two
24 and no more than seven days after the date of the request to determine
25 whether or not the person should be returned to more restrictive care.
26 The designated chemical dependency specialist shall file a petition
27 with the court stating the facts substantiating the need for the
28 hearing along with the treatment recommendations. The patient shall
29 have the same rights with respect to notice, hearing, and counsel as
30 for the original involuntary treatment proceedings. The issues to be
31 determined at the hearing are whether the conditionally released
32 patient did or did not adhere to the terms and conditions of his or her
33 release to less restrictive care or that substantial deterioration of
34 the patient's functioning has occurred and whether the conditions of
35 release should be modified or the person should be returned to a more
36 restrictive program. The hearing may be waived by the patient and his
37 or her counsel and his or her guardian or conservator, if any, but may
38 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. 5.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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