
ENGROSSED SENATE BILL 5051

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

Read first time 01/09/2001. Referred to Committee on Human Services &
Corrections.

1 AN ACT Relating to chemical dependency; amending RCW 70.96A.020,
2 70.96A.050, and 70.96A.140; and adding a new section to chapter 70.96A
3 RCW.

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

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

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

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

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

17 (3) "Approved treatment program" means a discrete program of
18 chemical dependency treatment provided by a treatment program certified

1 by the department of social and health services as meeting standards
2 adopted under this chapter.

3 (4) "Chemical dependency" means:

4 (a) Alcoholism ~~((or))~~; (b) drug addiction ~~((or))~~; or (c) dependence
5 on alcohol and one or more other psychoactive chemicals, as the context
6 requires.

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

11 (6) "Department" means the department of social and health
12 services.

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

18 (8) "Director" means the person administering the chemical
19 dependency program within the department.

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

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

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

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

1 (13) "History of one or more violent acts" refers to the period of
2 time ten years prior to the filing of a petition under this chapter,
3 excluding any time spent, but not any violent acts committed, in a
4 mental health facility, or a long-term alcoholism or drug treatment
5 facility, or in confinement.

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

13 (~~(14)~~) (15) "Incompetent person" means a person who has been
14 adjudged incompetent by the superior court.

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

18 (~~(16)~~) (17) "Licensed physician" means a person licensed to
19 practice medicine or osteopathic medicine and surgery in the state of
20 Washington.

21 (~~(17)~~) (18) "Likelihood of serious harm" means (~~(either)~~):

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

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

34 (~~(18)~~) (19) "Medical necessity" for inpatient care of a minor
35 means a requested certified inpatient service that is reasonably
36 calculated to: (a) Diagnose, arrest, or alleviate a chemical
37 dependency; or (b) prevent the worsening of chemical dependency
38 conditions that endanger life or cause suffering and pain, or result in
39 illness or infirmity or threaten to cause or aggravate a handicap, or

1 cause physical deformity or malfunction, and there is no adequate less
2 restrictive alternative available.

3 ~~((+19+))~~ (20) "Minor" means a person less than eighteen years of
4 age.

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

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

12 ~~((+22+))~~ (23) "Person" means an individual, including a minor.

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

18 ~~((+24+))~~ (25) "Secretary" means the secretary of the department of
19 social and health services.

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

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

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

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

36 The department shall:

37 (1) Develop, encourage, and foster statewide, regional, and local
38 plans and programs for the prevention of alcoholism and other drug

1 addiction, treatment of alcoholics and other drug addicts and their
2 families, persons incapacitated by alcohol or other psychoactive
3 chemicals, and intoxicated persons in cooperation with public and
4 private agencies, organizations, and individuals and provide technical
5 assistance and consultation services for these purposes;

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

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

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

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

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

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

1 (8) Sponsor and encourage research into the causes and nature of
2 alcoholism and other drug addiction, treatment of alcoholics and other
3 drug addicts, persons incapacitated by alcohol ((and)) or other
4 psychoactive chemicals, and intoxicated persons, and serve as a
5 clearing house for information relating to alcoholism or other drug
6 addiction;

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

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

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

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

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

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

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

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

1 (17) Organize and sponsor a statewide program to help court
2 personnel, including judges, better understand the disease of
3 alcoholism and other drug addiction and the uses of chemical dependency
4 treatment programs.

5 **Sec. 3.** RCW 70.96A.140 and 1995 c 312 s 49 are each amended to
6 read as follows:

7 (1) When a designated chemical dependency specialist receives
8 information alleging that a person (~~(is incapacitated)~~) presents a
9 likelihood of serious harm or is gravely disabled as a result of
10 chemical dependency, the designated chemical dependency specialist,
11 after investigation and evaluation of the specific facts alleged and of
12 the reliability and credibility of the information, may file a petition
13 for commitment of such person with the superior court (~~(or)~~), district
14 court, or in another court permitted by court rule.

15 If a petition for commitment is not filed in the case of a minor,
16 the parent, guardian, or custodian who has custody of the minor may
17 seek review of that decision made by the designated chemical dependency
18 specialist in superior or district court. The parent, guardian, or
19 custodian shall file notice with the court and provide a copy of the
20 designated chemical dependency specialist's report.

21 If the designated chemical dependency specialist finds that the
22 initial needs of such person would be better served by placement within
23 the mental health system, the person shall be referred to either a
24 county designated mental health professional or an evaluation and
25 treatment facility as defined in RCW 71.05.020 or 71.34.020. If
26 placement in a chemical dependency program is available and deemed
27 appropriate, the petition shall allege that: The person is chemically
28 dependent and (~~(is incapacitated)~~) presents a likelihood of serious
29 harm or is gravely disabled by alcohol or drug addiction, or that the
30 person has twice before in the preceding twelve months been admitted
31 for detoxification, sobering services, or chemical dependency treatment
32 pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of a more
33 sustained treatment program, or that the person is chemically dependent
34 and has threatened, attempted, or inflicted physical harm on another
35 and is likely to inflict physical harm on another unless committed. A
36 refusal to undergo treatment, by itself, does not constitute evidence
37 of lack of judgment as to the need for treatment. The petition shall
38 be accompanied by a certificate of a licensed physician who has

1 examined the person within five days before submission of the petition,
2 unless the person whose commitment is sought has refused to submit to
3 a medical examination, in which case the fact of refusal shall be
4 alleged in the petition. The certificate shall set forth the licensed
5 physician's findings in support of the allegations of the petition. A
6 physician employed by the petitioning program or the department is
7 eligible to be the certifying physician.

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

26 (3) At the hearing the court shall hear all relevant testimony,
27 including, if possible, the testimony, which may be telephonic, of at
28 least one licensed physician who has examined the person whose
29 commitment is sought. Communications otherwise deemed privileged under
30 the laws of this state are deemed to be waived in proceedings under
31 this chapter when a court of competent jurisdiction in its discretion
32 determines that the waiver is necessary to protect either the detained
33 person or the public. The waiver of a privilege under this section is
34 limited to records or testimony relevant to evaluation of the detained
35 person for purposes of a proceeding under this chapter. Upon motion by
36 the detained person, or on its own motion, the court shall examine a
37 record or testimony sought by a petitioner to determine whether it is
38 within the scope of the waiver.

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

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

27 (5) A person committed under this section shall remain in the
28 program for treatment for a period of sixty days unless sooner
29 discharged. At the end of the sixty-day period, he or she shall be
30 discharged automatically unless the program, before expiration of the
31 period, files a petition for his or her recommitment upon the grounds
32 set forth in subsection (1) of this section for a further period of
33 ninety days unless sooner discharged.

34 If a petition for recommitment is not filed in the case of a minor,
35 the parent, guardian, or custodian who has custody of the minor may
36 seek review of that decision made by the designated chemical dependency
37 specialist in superior or district court. The parent, guardian, or
38 custodian shall file notice with the court and provide a copy of the
39 treatment progress report.

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

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

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

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

27 (a) In case of a chemically dependent person committed on the
28 grounds of likelihood of infliction of physical harm upon himself,
29 herself, or another, the likelihood no longer exists; or further
30 treatment will not be likely to bring about significant improvement in
31 the person's condition, or treatment is no longer adequate or
32 appropriate.

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

36 (9) The court shall inform the person whose commitment or
37 recommitment is sought of his or her right to contest the application,
38 be represented by counsel at every stage of any proceedings relating to
39 his or her commitment and recommitment, and have counsel appointed by

1 the court or provided by the court, if he or she wants the assistance
2 of counsel and is unable to obtain counsel. If the court believes that
3 the person needs the assistance of counsel, the court shall require, by
4 appointment if necessary, counsel for him or her regardless of his or
5 her wishes. The person shall, if he or she is financially able, bear
6 the costs of such legal service; otherwise such legal service shall be
7 at public expense. The person whose commitment or recommitment is
8 sought shall be informed of his or her right to be examined by a
9 licensed physician of his or her choice. If the person is unable to
10 obtain a licensed physician and requests examination by a physician,
11 the court shall employ a licensed physician.

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

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

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

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

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.96A RCW
17 to read as follows:

18 The county alcoholism and other drug addiction program coordinator
19 may designate the county designated mental health professional to
20 perform the detention and commitment duties described in RCW 70.96A.120
21 and 70.96A.140.

22 NEW SECTION. **Sec. 5.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

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