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SENATE BILL 5418

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State of Washington

57th Legislature

2001 Regular Session

By Senators Long, Patterson, Hargrove, Hochstatter, Stevens, Winsley and Kohl-Welles

Read first time 01/22/2001. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to providing chemical dependency treatment service  
2 upon request; amending RCW 70.96A.010, 70.96A.095, 70.96A.140,  
3 70.96A.145, 70.96A.235, 70.96A.240, 70.96A.905, 70.96A.915, 74.50.050,  
4 74.50.060, and 74.50.080; amending 1991 c 364 s 13 (uncodified);  
5 amending 1993 c 362 s 2 (uncodified); reenacting and amending RCW  
6 70.96A.430; adding a new section to chapter 70.96A RCW; and decodifying  
7 RCW 70.96.150.

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

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.96A RCW  
10 to read as follows:

11 Notwithstanding any other provision of this chapter, the department  
12 shall provide services as follows:

13 (1) For persons whose income is less than two hundred percent of  
14 the federal poverty level and for minors who request chemical  
15 dependency treatment, according to the needs indicated by the person's  
16 chemical dependency assessment. Determination of appropriate chemical  
17 dependency treatment or placement shall consider the person's chemical  
18 dependency treatment needs in light of any existing co-occurring  
19 disorders;

1 (2) Involuntary treatment;  
2 (3) To meet federal program requirements; and  
3 (4) Within available funds, to meet the other duties of the  
4 department as defined in this chapter and in chapter 74.50 RCW.

5 **Sec. 2.** RCW 70.96A.010 and 1989 c 271 s 304 are each amended to  
6 read as follows:

7 It is the policy of this state that ~~((alcoholics and intoxicated))~~  
8 chemically dependent persons may not be subjected to criminal  
9 prosecution solely because of their consumption of ~~((alcoholic~~  
10 ~~beverages))~~ alcohol or other psychoactive chemicals but rather  
11 should~~((, within available funds,))~~ be afforded a continuum of  
12 treatment, as prescribed in this chapter, in order that they may lead  
13 normal lives as productive members of society. ~~((Within available~~  
14 ~~funds, treatment should also be provided for drug addicts.))~~

15 **Sec. 3.** 1991 c 364 s 13 (uncodified) is amended to read as  
16 follows:

17 The purpose of sections 7 through 12 ~~((of this act)),~~ chapter 364,  
18 Laws of 1991 is solely to provide authority for the involuntary  
19 commitment of minors addicted by drugs within ~~((available funds and))~~  
20 current programs and facilities. Nothing in sections 7 through 12 ~~((of~~  
21 ~~this act)),~~ chapter 364, Laws of 1991 shall be construed to ~~((require~~  
22 ~~the addition of new facilities nor))~~ affect the department's authority  
23 for the uses of existing programs and facilities authorized by law.  
24 Nothing in sections 7 through 12 ~~((of this act)),~~ chapter 364, Laws of  
25 1991 shall prevent a parent or guardian from requesting the involuntary  
26 commitment of a minor through a county designated chemical dependency  
27 specialist on an ability to pay basis.

28 **Sec. 4.** 1993 c 362 s 2 (uncodified) is amended to read as follows:

29 The purpose of ~~((this act))~~ chapter 362, Laws of 1993 is solely to  
30 provide authority for the involuntary commitment of persons suffering  
31 from chemical dependency within ~~((available funds and))~~ current  
32 programs and facilities. Nothing in ~~((this act))~~ chapter 362, Laws of  
33 1993 shall be construed to ~~((require the addition of new facilities~~  
34 ~~nor))~~ affect the department of social and health services' authority  
35 for the uses of existing programs and facilities authorized by law.

1       **Sec. 5.** RCW 70.96A.095 and 1998 c 296 s 23 are each amended to  
2 read as follows:

3       Any person thirteen years of age or older may give consent for  
4 himself or herself to the furnishing of ((outpatient)) treatment by a  
5 chemical dependency treatment program certified by the department.  
6 Parental authorization is required for any treatment of a minor under  
7 the age of thirteen.

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

10       (1) When a designated chemical dependency specialist receives  
11 information alleging that a person is incapacitated as a result of  
12 chemical dependency, the designated chemical dependency specialist,  
13 after investigation and evaluation of the specific facts alleged and of  
14 the reliability and credibility of the information, may file a petition  
15 for commitment of such person with the superior court or district  
16 court.

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

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

1 the person within five days before submission of the petition, unless  
2 the person whose commitment is sought has refused to submit to a  
3 medical examination, in which case the fact of refusal shall be alleged  
4 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  
25 it determines that an approved treatment program is available and able  
26 to 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 **Sec. 7.** RCW 70.96A.145 and 1993 c 137 s 1 are each amended to read  
17 as follows:

18 The prosecuting attorney of the county in which such action is  
19 taken (~~(may, at the discretion of the prosecuting attorney,)~~) shall  
20 represent the designated chemical dependency specialist or treatment  
21 program in judicial proceedings under RCW 70.96A.140 for the  
22 involuntary commitment or recommitment of an individual, including any  
23 judicial proceeding where the individual sought to be committed or  
24 recommitted challenges the action. Within the discretion of the  
25 secretary, the department may reimburse the prosecuting attorney for  
26 costs of representation incurred under this section.

27 **Sec. 8.** RCW 70.96A.235 and 1998 c 296 s 25 are each amended to  
28 read as follows:

29 Parental consent is not required for inpatient chemical dependency  
30 treatment of a minor over the age of thirteen, (~~(unless)~~) or when the  
31 child meets the definition of a child in need of services in RCW  
32 13.32A.030(~~((4)(e))~~) (5)(c) as determined by the department: PROVIDED,  
33 That parental consent is required for any treatment of a minor under  
34 the age of thirteen.

35 This section does not apply to petitions filed under this chapter.

1       **Sec. 9.** RCW 70.96A.240 and 1998 c 296 s 26 are each amended to  
2 read as follows:

3       (1) The parent of a minor is not liable for payment of inpatient or  
4 outpatient chemical dependency treatment unless the parent has joined  
5 in the consent to the treatment.

6       (2) The ability of a parent to apply to a certified treatment  
7 program for the admission of his or her minor child does not create a  
8 right to obtain or benefit from any funds or resources of the state.  
9 However, the state ~~((may))~~ shall provide appropriate services for  
10 indigent minors ~~((to the extent that funds are available therefor))~~.

11       **Sec. 10.** RCW 70.96A.430 and 1989 c 271 s 308 are each reenacted  
12 and amended to read as follows:

13       The department shall not refuse admission for diagnosis,  
14 evaluation, guidance or treatment to any applicant because it is  
15 determined that the applicant is financially unable to contribute fully  
16 or in part to the cost of any services or facilities available under  
17 the program on ~~((alcoholism))~~ chemical dependency.

18       The department may limit admissions ~~((of such applicants or))~~,  
19 modify its programs ~~((in order to ensure that expenditures for services  
20 or programs do not exceed amounts appropriated by the legislature and  
21 are allocated by the department for such services or programs. The  
22 department may))~~, or establish admission priorities ~~((in the event that  
23 the number of eligible applicants exceeds the limits set by the  
24 department))~~ to appropriately manage its programs.

25       **Sec. 11.** RCW 70.96A.905 and 1992 c 205 s 306 are each amended to  
26 read as follows:

27       The department shall ensure that the provisions of this chapter are  
28 applied by the counties in a consistent and uniform manner. The  
29 department shall also ensure that ~~((, to the extent possible within  
30 available funds,))~~ the county-designated chemical dependency  
31 specialists are specifically trained in adolescent chemical dependency  
32 issues, the chemical dependency commitment laws, and the criteria for  
33 commitment.

34       **Sec. 12.** RCW 70.96A.915 and 1989 c 271 s 309 are each amended to  
35 read as follows:

1 The department is authorized to allocate appropriated funds in the  
2 manner that it determines best meets the purposes of this chapter.  
3 (~~Nothing in this chapter shall be construed to entitle any individual~~  
4 ~~to services authorized in this chapter, or to require the department or~~  
5 ~~its contractors to reallocate funds in order to ensure that services~~  
6 ~~are available to any eligible person upon demand.))~~)

7 **Sec. 13.** RCW 74.50.050 and 1989 1st ex.s. c 18 s 5 are each  
8 amended to read as follows:

9 (1) The department shall establish a treatment program to  
10 provide(~~(, within available funds,)~~) alcohol and drug treatment  
11 services for indigent persons eligible under this chapter. The  
12 treatment services may include but are not limited to:

13 (a) Intensive inpatient treatment services;

14 (b) Recovery house treatment;

15 (c) Outpatient treatment and counseling, including assistance in  
16 obtaining employment, and including a living allowance while undergoing  
17 outpatient treatment. The living allowance may not be used to provide  
18 shelter to clients in a dormitory setting that does not require  
19 sobriety as a condition of residence. The living allowance shall be  
20 administered on the clients' behalf by the outpatient treatment  
21 facility or other social service agency designated by the department.  
22 The department is authorized to pay the facility a fee for  
23 administering this allowance.

24 (2) (~~No individual may receive treatment services under this~~  
25 ~~section for more than six months in any two year period: PROVIDED,~~  
26 ~~That the department may approve additional treatment and/or living~~  
27 ~~allowance as an exception.~~

28 ~~(3))~~) The department may require an applicant or recipient  
29 selecting treatment to complete inpatient and recovery house treatment  
30 when, in the judgment of a designated assessment center, such treatment  
31 is necessary prior to providing the outpatient program.

32 **Sec. 14.** RCW 74.50.060 and 1989 1st ex.s. c 18 s 3 are each  
33 amended to read as follows:

34 (1) The department shall establish a shelter assistance program to  
35 provide(~~(, within available funds,)~~) shelter for persons eligible under  
36 this chapter. "Shelter," "shelter support," or "shelter assistance"  
37 means a facility under contract to the department providing room and

1 board in a supervised living arrangement, normally in a group or  
2 dormitory setting, to eligible recipients under this chapter. This may  
3 include supervised domiciliary facilities operated under the auspices  
4 of public or private agencies. No facility under contract to the  
5 department shall allow the consumption of alcoholic beverages on the  
6 premises. The department may contract with counties and cities for  
7 such shelter services. To the extent possible, the department shall  
8 not displace existing emergency shelter beds for use as shelter under  
9 this chapter. In areas of the state in which it is not feasible to  
10 develop shelters, due to low numbers of people needing shelter  
11 services, or in which sufficient numbers of shelter beds are not  
12 available, the department may provide shelter through an intensive  
13 protective payee program, unless the department grants an exception on  
14 an individual basis for less intense supervision.

15 (2) Persons continuously eligible for the general assistance--  
16 unemployable program since July 25, 1987, who transfer to the program  
17 established by this chapter, have the option to continue their present  
18 living situation, but only through a protective payee.

19 **Sec. 15.** RCW 74.50.080 and 1989 1st ex.s. c 18 s 6 are each  
20 amended to read as follows:

21 The department by rule may establish procedures for the  
22 administration of the services provided by this chapter. Any rules  
23 shall be consistent with any conditions or limitations on  
24 appropriations provided for these services. ((If funds provided for  
25 any service under this chapter have been fully expended, the department  
26 shall immediately discontinue that service.))

27 NEW SECTION. **Sec. 16.** RCW 70.96.150 is decodified.

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