
SUBSTITUTE HOUSE BILL 2726

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Human Services (originally sponsored by Representatives Brekke, Paris and Rasmussen)

Read first time 02/07/92.

1 AN ACT Relating to persons incapacitated by alcohol and other
2 drugs; amending RCW 70.96A.140; and creating a new section.

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

4 **Sec. 1.** RCW 70.96A.140 and 1991 c 364 s 10 are each amended to
5 read as follows:

6 (1) When a designated chemical dependency specialist receives
7 information alleging that a person is incapacitated as a result of
8 (~~alcoholism, or in the case of a minor incapacitated by alcoholism~~
9 ~~and/or other drug addiction~~)) chemical dependency, the designated
10 chemical dependency specialist, after investigation and evaluation of
11 the specific facts alleged and of the reliability and credibility of
12 the information, may file a petition for commitment of such person with
13 the superior court or district court. If the designated chemical
14 dependency specialist finds that the initial needs of such person would

1 be better served by placement within the mental health system, the
2 person shall be referred to an evaluation and treatment facility as
3 defined in RCW 71.05.020 or 71.34.020. If placement in (~~an alcohol~~
4 ~~treatment program~~) a chemical dependency program is available and
5 deemed appropriate, the petition shall allege that: The person is (~~an~~
6 ~~alcoholic who~~) chemically dependent and is incapacitated by
7 alcohol(~~(,)~~) or (~~in the case of a minor incapacitated by alcoholism~~
8 ~~and/or other~~) drug addiction, or that the person has twice before in
9 the preceding twelve months been admitted for detoxification or
10 chemical dependency treatment (~~(for alcoholism)~~) pursuant to RCW
11 70.96A.110, (~~or in the case of a minor, detoxification or treatment~~
12 ~~for alcohol or drug addiction,~~) and is in need of a more sustained
13 treatment program, or that the person is (~~an alcoholic, or in the case~~
14 ~~of a minor, an alcoholic or other drug addict, who~~) chemically
15 dependent and has threatened, attempted, or inflicted physical harm on
16 another and is likely to inflict physical harm on another unless
17 committed. A refusal to undergo treatment, by itself, does not
18 constitute evidence of lack of judgment as to the need for treatment.
19 The petition shall be accompanied by a certificate of a licensed
20 physician who has examined the person within five days before
21 submission of the petition, unless the person whose commitment is
22 sought has refused to submit to a medical examination, in which case
23 the fact of refusal shall be alleged in the petition. The certificate
24 shall set forth the licensed physician's findings in support of the
25 allegations of the petition. A physician employed by the petitioning
26 program or the department is eligible to be the certifying physician.

27 (2) Upon filing the petition, the court shall fix a date for a
28 hearing no less than two and no more than seven days after the date the
29 petition was filed unless the person petitioned against is presently
30 being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or

1 71.34.050, as now or hereafter amended, in which case the hearing shall
2 be held within seventy-two hours of the filing of the petition:
3 PROVIDED, HOWEVER, That the above specified seventy-two hours shall be
4 computed by excluding Saturdays, Sundays, and holidays: PROVIDED
5 FURTHER, That, the court may, upon motion of the person whose
6 commitment is sought, or upon motion of petitioner with written
7 permission of the person whose commitment is sought, or his or her
8 counsel and, upon good cause shown, extend the date for the hearing.
9 A copy of the petition and of the notice of the hearing, including the
10 date fixed by the court, shall be served by the designated chemical
11 dependency specialist on the person whose commitment is sought, his or
12 her next of kin, a parent or his or her legal guardian if he or she is
13 a minor, and any other person the court believes advisable. A copy of
14 the petition and certificate shall be delivered to each person
15 notified.

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

29 The record maker shall not be required to testify in order to
30 introduce medical, nursing, or psychological records of detained

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

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

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

1 set forth in subsection (1) of this section for a further period of
2 ninety days unless sooner discharged. If a person has been committed
3 because he or she is (~~an alcoholic, or, in the case of a minor, an~~
4 ~~alcoholic or other drug addict,~~) chemically dependent and likely to
5 inflict physical harm on another, the program shall apply for
6 recommitment if after examination it is determined that the likelihood
7 still exists.

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

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

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

1 (a) In case of (~~an alcoholic~~) a chemically dependent person
2 committed on the grounds of likelihood of infliction of physical harm
3 upon himself, herself, or another, (~~or, in the case of a minor, an~~
4 ~~alcoholic or other drug addict,~~) the likelihood no longer exists; or
5 further treatment will not be likely to bring about significant
6 improvement in the person's condition, or treatment is no longer
7 adequate or appropriate.

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

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

27 (10) A person committed under this chapter may at any time seek to
28 be discharged from commitment by writ of habeas corpus in a court of
29 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

1 determined at the hearing are whether the conditionally released
2 patient did or did not adhere to the terms and conditions of his or her
3 release to less restrictive care or that substantial deterioration of
4 the patient's functioning has occurred and whether the conditions of
5 release should be modified or the person should be returned to a more
6 restrictive program. The hearing may be waived by the patient and his
7 or her counsel and his or her guardian or conservator, if any, but may
8 not be waived unless all such persons agree to the waiver. Upon
9 waiver, the person may be returned for involuntary treatment or
10 continued on conditional release on the same or modified conditions.

11 NEW SECTION. **Sec. 2.** The purpose of this act is solely to
12 provide authority for the involuntary commitment of persons suffering
13 from chemical dependency within available funds and current programs
14 and facilities. Nothing in this act shall be construed to require the
15 addition of new facilities nor affect the department of social and
16 health services' authority for the uses of existing programs and
17 facilities authorized by law.