
SENATE BILL 5429

State of Washington

53rd Legislature

1993 Regular Session

By Senators Erwin, Deccio, L. Smith, Winsley, Moyer, Prentice and Roach

Read first time 01/27/93. Referred to Committee on Health & Human Services.

1 AN ACT Relating to fetal alcohol syndrome and fetal alcohol effect;
2 amending RCW 28A.170.060, 74.50.010, 74.50.055, 70.96A.140, 71A.10.020,
3 and 66.08.180; adding new sections to chapter 43.70 RCW; adding a new
4 section to chapter 70.05 RCW; adding a new section to chapter 28A.415
5 RCW; adding a new section to chapter 66.16 RCW; creating a new section;
6 and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that fetal alcohol
9 syndrome and fetal alcohol effect are among the leading causes of
10 mental deficiencies in the children of our state. The legislature
11 recognizes that public and private efforts must be increased to
12 heighten the public's awareness of the problems associated with fetal
13 alcohol syndrome and fetal alcohol effect.

14 The legislature further finds that community educational programs
15 and treatment programs, targeted at high-risk women, will have the
16 greatest impact in reducing the incidence of fetal alcohol birth
17 defects. The legislature also finds that there is a great necessity
18 for: Local screening programs which can identify children who have
19 fetal alcohol syndrome or fetal alcohol effect; state and local

1 coordination of educational, prevention, treatment, and social service
2 programs; and transitional and adult services for persons with fetal
3 alcohol syndrome or fetal alcohol effect.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.70 RCW
5 to read as follows:

6 The department of health, the department of social and health
7 services, and the office of the superintendent of public instruction
8 shall execute an interagency agreement to ensure the coordination of
9 identification, evaluation, and service delivery programs for children
10 who have fetal alcohol syndrome or fetal alcohol effect, and for women
11 who are at high risk of having children with fetal alcohol syndrome or
12 fetal alcohol effect.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.70 RCW
14 to read as follows:

15 The department shall create a screening and assessment program for
16 children who may be affected by fetal alcohol syndrome or fetal alcohol
17 effect. The department shall contract with local public health
18 physicians or practitioners to provide the screening and assessment
19 services. The department shall provide the physicians and
20 practitioners with identification training for fetal alcohol syndrome
21 and fetal alcohol effect. The training shall be offered through the
22 University of Washington and paid for by the department.

23 The screening and assessment services shall be offered at least
24 once a week in at least six, but not more than twelve, locations
25 throughout the state. The services shall also include written or
26 visual educational materials for the children and their parents, and
27 referrals to relevant public and private educational, prevention,
28 treatment, and social service programs.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.05 RCW
30 to read as follows:

31 Each county shall create a fetal alcohol syndrome and fetal alcohol
32 effect task force. Each task force shall include representatives of
33 the local health department, the largest school district in the county,
34 the department of social and health services community services office,
35 and community advocates. The task forces shall assist the state and

1 local agencies in the coordination of fetal alcohol syndrome and fetal
2 alcohol effect prevention, treatment, and educational services.

3 **Sec. 5.** RCW 28A.170.060 and 1989 c 271 s 113 are each amended to
4 read as follows:

5 The superintendent of public instruction, through the state
6 clearinghouse for education information, shall collect and disseminate
7 to all school districts and other interested parties information about:
8 (1) Effective substance abuse programs; (2) the alcohol consumption
9 risks for pregnant women including, but not limited to, fetal alcohol
10 syndrome and fetal alcohol effect; and (3) the penalties for (a)
11 manufacturing, selling, delivering, or possessing controlled substances
12 on or within one thousand feet of a school or school bus route stop
13 under RCW 69.50.435 ((and)), (b) distributing a controlled substance to
14 a person under the age of eighteen under RCW 69.50.406, and (c)
15 alcohol-related driving offenses.

16 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.415
17 RCW to read as follows:

18 The superintendent of public instruction, educational service
19 districts, and local school districts are encouraged to devise programs
20 of in-service training for public school certificated and classified
21 personnel who come into contact with students in grades kindergarten
22 through twelve for the purpose of providing instruction on how to
23 effectively teach children who have fetal alcohol syndrome or fetal
24 alcohol effect. The programs shall include information to assist in
25 the understanding of the children's behavioral strengths and
26 deficiencies, different learning styles, and the differences in their
27 judgment skills.

28 **Sec. 7.** RCW 74.50.010 and 1988 c 163 s 1 are each amended to read
29 as follows:

30 The legislature finds:

31 (1) There is a need for reevaluation of state policies and programs
32 regarding indigent alcoholics and drug addicts;

33 (2) The practice of providing a cash grant may be causing rapid
34 caseload growth and attracting transients to the state;

35 (3) Many chronic public inebriates have been recycled through
36 county detoxification centers repeatedly without apparent improvement;

1 (4) The assumption that all individuals will recover through
2 treatment has not been substantiated;

3 (5) The state must modify its policies and programs for alcoholics
4 and drug addicts and redirect its resources in the interests of these
5 individuals, the community, and the taxpayers; ((and))

6 (6) Treatment resources should be focused on persons willing to
7 commit to rehabilitation and on women at high risk of giving birth to
8 children with fetal alcohol syndrome or fetal alcohol effect; and

9 (7) It is the intent of the legislature that, to the extent
10 possible, shelter services be developed under this chapter that do not
11 result in the displacement of existing emergency shelter beds. To the
12 extent that shelter operators do not object, it is the intent of the
13 legislature that any vacant shelter beds contracted for under this
14 chapter be made available to provide emergency temporary shelter to
15 homeless individuals.

16 **Sec. 8.** RCW 74.50.055 and 1989 1st ex.s. c 18 s 4 are each amended
17 to read as follows:

18 (1) A person shall not be eligible for treatment services under
19 this chapter unless he or she:

20 (a) Meets the financial eligibility requirements contained in RCW
21 74.04.005; and

22 (b) Is incapacitated from gainful employment, which incapacity will
23 likely continue for a minimum of sixty days.

24 (2) First priority for receipt of treatment services shall be given
25 to pregnant women, women who have given birth to a child with fetal
26 alcohol syndrome or fetal alcohol effect, and parents of young
27 children.

28 (3) In order to rationally allocate treatment services, the
29 department may establish by rule caseload ceilings and additional
30 eligibility criteria, including the setting of priorities among classes
31 of persons for the receipt of treatment services. Any such rules shall
32 be consistent with any conditions or limitations contained in any
33 appropriations for treatment services.

34 **Sec. 9.** RCW 70.96A.140 and 1991 c 364 s 10 are each amended to
35 read as follows:

36 (1) When a designated chemical dependency specialist receives
37 information alleging that a person is incapacitated as a result of

1 alcoholism, or in the case of a minor incapacitated by alcoholism
2 and/or other drug addiction, the ~~((designated chemical dependency))~~
3 specialist~~((, after))~~ shall conduct an investigation and evaluation of
4 the specific facts alleged and ~~((of))~~ determine the reliability and
5 credibility of the information~~((,))~~. After the investigation the
6 specialist may file a petition for commitment of such person with the
7 superior court or district court. If the designated chemical
8 dependency specialist finds that the initial needs of such person would
9 be better served by placement within the mental health system, the
10 person shall be referred to an evaluation and treatment facility as
11 defined in RCW 71.05.020 or 71.34.020. If placement in an alcohol
12 treatment program is available and deemed appropriate, the petition
13 shall allege that:

14 (a) The person is an alcoholic who is incapacitated by alcohol, or
15 in the case of a minor incapacitated by alcoholism and/or other drug
16 addiction~~((, or that))~~;

17 (b) The person has twice before in the preceding twelve months been
18 admitted for detoxification or treatment for alcoholism pursuant to RCW
19 70.96A.110, or in the case of a minor, detoxification or treatment for
20 alcohol or drug addiction, and is in need of a more sustained treatment
21 program~~((, or that))~~;

22 (c) The person is a woman who is an alcoholic, who is of child
23 bearing age, has given birth to a child within the last three years who
24 has been diagnosed with fetal alcohol syndrome or fetal alcohol effect,
25 and is in need of a sustained treatment program; or

26 (d) The person is an alcoholic, or in the case of a minor, an
27 alcoholic or other drug addict, who has threatened, attempted, or
28 inflicted physical harm on another and is likely to inflict physical
29 harm on another unless committed. A refusal to undergo treatment, by
30 itself, does not constitute evidence of lack of judgment as to the need
31 for treatment. The petition shall be accompanied by a certificate of
32 a licensed physician who has examined the person within five days
33 before submission of the petition, unless the person whose commitment
34 is sought has refused to submit to a medical examination, in which case
35 the fact of refusal shall be alleged in the petition. The certificate
36 shall set forth the licensed physician's findings in support of the
37 allegations of the petition. A physician employed by the petitioning
38 program or the department is eligible to be the certifying physician.

1 (2) Upon filing the petition, the court shall fix a date for a
2 hearing no less than two and no more than seven days after the date the
3 petition was filed unless the person petitioned against is presently
4 being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or
5 71.34.050, (~~as now or hereafter amended,~~) in which case the hearing
6 shall be held within seventy-two hours of the filing of the petition:
7 PROVIDED, HOWEVER, That the above specified seventy-two hours shall be
8 computed by excluding Saturdays, Sundays, and holidays: PROVIDED
9 FURTHER, That, the court may, upon motion of the person whose
10 commitment is sought, or upon motion of petitioner with written
11 permission of the person whose commitment is sought, or his or her
12 counsel and, upon good cause shown, extend the date for the hearing.
13 A copy of the petition and of the notice of the hearing, including the
14 date fixed by the court, shall be served by the designated chemical
15 dependency specialist on the person whose commitment is sought, his or
16 her next of kin, a parent or his or her legal guardian if he or she is
17 a minor, and any other person the court believes advisable. A copy of
18 the petition and certificate shall be delivered to each person
19 notified.

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

33 The record maker shall not be required to testify in order to
34 introduce medical, nursing, or psychological records of detained
35 persons so long as the requirements of RCW 5.45.020 are met, except
36 that portions of the record that contain opinions as to whether the
37 detained person is an alcoholic, or in the case of a minor
38 incapacitated by alcoholism and/or other drug addiction, must be
39 deleted from the records unless the person offering the opinions is

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

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

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

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

1 kin, the original petitioner under subsection (1) of this section if
2 different from the petitioner for recommitment, one of his or her
3 parents or his or her legal guardian if he or she is a minor, and his
4 or her attorney and any other person the court believes advisable. At
5 the hearing the court shall proceed as provided in subsection (3) of
6 this section.

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

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

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

21 (b) In case of an alcoholic committed on the grounds of the need of
22 treatment and incapacity or, in the case of a minor, incapacitated by
23 alcoholism and/or other drug addiction, that the incapacity no longer
24 exists.

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

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

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

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

1 or her counsel and his or her guardian or conservator, if any, but may
2 not be waived unless all such persons agree to the waiver. Upon
3 waiver, the person may be returned for involuntary treatment or
4 continued on conditional release on the same or modified conditions.

5 **Sec. 10.** RCW 71A.10.020 and 1988 c 176 s 102 are each amended to
6 read as follows:

7 As used in this title, the following terms have the meanings
8 indicated unless the context clearly requires otherwise.

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

11 (2) "Developmental disability" means a disability attributable to
12 mental retardation, cerebral palsy, epilepsy, autism, fetal alcohol
13 syndrome, fetal alcohol effect, or another neurological or other
14 condition of an individual found by the secretary to be closely related
15 to mental retardation or to require treatment similar to that required
16 for individuals with mental retardation, which disability originates
17 before the individual attains age eighteen, which has continued or can
18 be expected to continue indefinitely, and which constitutes a
19 substantial handicap to the individual. By January 1, 1989, the
20 department shall promulgate rules which define neurological or other
21 conditions in a way that is not limited to intelligence quotient scores
22 as the sole (~~determinate~~[determinant]) determinant of these
23 conditions, and notify the legislature of this action.

24 (3) "Eligible person" means a person who has been found by the
25 secretary under RCW 71A.16.040 to be eligible for services.

26 (4) "Habilitative services" means those services provided by
27 program personnel to assist persons in acquiring and maintaining life
28 skills and to raise their levels of physical, mental, social, and
29 vocational functioning. Habilitative services include education,
30 training for employment, and therapy.

31 (5) "Legal representative" means a parent of a person who is under
32 eighteen years of age, a person's legal guardian, a person's limited
33 guardian when the subject matter is within the scope of the limited
34 guardianship, a person's attorney at law, a person's attorney in fact,
35 or any other person who is authorized by law to act for another person.

36 (6) "Notice" or "notification" of an action of the secretary means
37 notice in compliance with RCW 71A.10.060.

1 (7) "Residential habilitation center" means a state-operated
2 facility for persons with developmental disabilities governed by
3 chapter 71A.20 RCW.

4 (8) "Secretary" means the secretary of social and health services
5 or the secretary's designee.

6 (9) "Service" or "services" means services provided by state or
7 local government to carry out this title.

8 NEW SECTION. **Sec. 11.** A new section is added to chapter 66.16 RCW
9 to read as follows:

10 The liquor control board shall ensure that each state liquor store
11 prominently displays information regarding the hazards and possible
12 adverse effects of alcohol consumption. The information shall
13 specifically address the alcohol consumption risks for pregnant women
14 including, but not limited to, education materials on fetal alcohol
15 syndrome and fetal alcohol effect.

16 **Sec. 12.** RCW 66.08.180 and 1987 c 458 s 10 are each amended to
17 read as follows:

18 Moneys in the liquor revolving fund shall be distributed by the
19 board at least once every three months in accordance with RCW
20 66.08.190, 66.08.200 and 66.08.210: PROVIDED, That the board shall
21 reserve from distribution such amount not exceeding five hundred
22 thousand dollars as may be necessary for the proper administration of
23 this title: AND PROVIDED FURTHER, That all license fees, penalties and
24 forfeitures derived under this act from class H licenses or class H
25 licensees shall every three months be disbursed by the board as
26 follows:

27 (1) 5.95 percent to the University of Washington and 3.97 percent
28 to Washington State University for alcoholism and drug abuse research
29 and for the dissemination of such research;

30 (2) 1.75 percent, but in no event less than one hundred fifty
31 thousand dollars per biennium, to the University of Washington to
32 conduct the state toxicological laboratory pursuant to RCW
33 (~~68.08.107~~) 68.50.107;

34 (3) 88.33 percent to the general fund to be used by the department
35 of social and health services solely to carry out the purposes of (~~RCW~~
36 ~~70.96.085, as now or hereafter amended~~) chapter 70.96A RCW;

1 (4) The first fifty-five dollars per license fee provided in RCW
2 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand
3 dollars annually shall be disbursed every three months by the board to
4 the general fund to be used for juvenile alcohol and drug prevention
5 programs for kindergarten through third grade to be administered by the
6 superintendent of public instruction;

7 (5) Twenty percent of the remaining total amount derived from
8 license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.340,
9 66.24.350, 66.24.360, and 66.24.370, shall be transferred to the
10 general fund to be used by the department of social and health services
11 solely to carry out the purposes of ((RCW 70.96.085)) chapter 70.96A
12 RCW; and

13 (6) One-fourth cent per liter of the tax imposed by RCW 66.24.210
14 shall every three months be disbursed by the board to Washington State
15 University solely for wine and wine grape research, extension programs
16 related to wine and wine grape research, and resident instruction in
17 both wine grape production and the processing aspects of the wine
18 industry in accordance with RCW 28B.30.068. The director of financial
19 management shall prescribe suitable accounting procedures to ensure
20 that the funds transferred to the general fund to be used by the
21 department of social and health services and appropriated are
22 separately accounted for.

23 NEW SECTION. **Sec. 13.** This act shall take effect January 1, 1994.

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