

2 SB 5051 - S AMD 009

3 By Senator Long and Hargrove

4 ADOPTED 03/07/01

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 70.96A.020 and 1998 c 296 s 22 are each amended to
8 read as follows:

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

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

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

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

23 (4) "Chemical dependency" means:

24 (a) Alcoholism ~~((ϵ))~~; (b) drug addiction ~~((τ))~~; or (c) dependence
25 on alcohol and one or more other psychoactive chemicals, as the context
26 requires.

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

31 (6) "Department" means the department of social and health
32 services.

33 (7) "Designated chemical dependency specialist" or "specialist"
34 means a person designated by the county alcoholism and other drug
35 addiction program coordinator designated under RCW 70.96A.310 to

1 perform the commitment duties described in RCW 70.96A.140 and qualified
2 to do so by meeting standards adopted by the department.

3 (8) "Director" means the person administering the chemical
4 dependency program within the department.

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

7 (10) "Drug addiction" means a disease characterized by a dependency
8 on psychoactive chemicals, loss of control over the amount and
9 circumstances of use, symptoms of tolerance, physiological or
10 psychological withdrawal, or both, if use is reduced or discontinued,
11 and impairment of health or disruption of social or economic
12 functioning.

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

15 (12) "Gravely disabled by alcohol or other (~~drugs~~) psychoactive
16 chemicals" or "gravely disabled" means that a person, as a result of
17 the use of alcohol or other (~~drugs~~) psychoactive chemicals: (a) Is
18 in danger of serious physical harm resulting from a failure to provide
19 for his or her essential human needs of health or safety; or (b)
20 manifests severe deterioration in routine functioning evidenced by a
21 repeated and escalating loss of cognition or volitional control over
22 his or her actions and is not receiving care as essential for his or
23 her health or safety.

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

29 (14) "Incapacitated by alcohol or other psychoactive chemicals"
30 means that a person, as a result of the use of alcohol or other
31 psychoactive chemicals, (~~has his or her judgment so impaired that he~~
32 ~~or she is incapable of realizing and making a rational decision with~~
33 ~~respect to his or her need for treatment and~~) is gravely disabled or
34 presents a likelihood of serious harm to himself or herself, to any
35 other person, or to property.

36 (~~(14)~~) (15) "Incompetent person" means a person who has been
37 adjudged incompetent by the superior court.

1 ~~((15))~~ (16) "Intoxicated person" means a person whose mental or
2 physical functioning is substantially impaired as a result of the use
3 of alcohol or other psychoactive chemicals.

4 ~~((16))~~ (17) "Licensed physician" means a person licensed to
5 practice medicine or osteopathic medicine and surgery in the state of
6 Washington.

7 ~~((17))~~ (18) "Likelihood of serious harm" means ~~((either))~~:

8 (a) A substantial risk that: (i) Physical harm will be inflicted
9 by an individual upon his or her own person, as evidenced by threats or
10 attempts to commit suicide or inflict physical harm on one's self;
11 ~~((b) a substantial risk that)~~ (ii) physical harm will be inflicted by
12 an individual upon another, as evidenced by behavior that has caused
13 the harm or that places another person or persons in reasonable fear of
14 sustaining the harm; or ~~((c) a substantial risk that)~~ (iii) physical
15 harm will be inflicted by an individual upon the property of others, as
16 evidenced by behavior that has caused substantial loss or damage to the
17 property of others; or

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

20 ~~((18))~~ (19) "Medical necessity" for inpatient care of a minor
21 means a requested certified inpatient service that is reasonably
22 calculated to: (a) Diagnose, arrest, or alleviate a chemical
23 dependency; or (b) prevent the worsening of chemical dependency
24 conditions that endanger life or cause suffering and pain, or result in
25 illness or infirmity or threaten to cause or aggravate a handicap, or
26 cause physical deformity or malfunction, and there is no adequate less
27 restrictive alternative available.

28 ~~((19))~~ (20) "Minor" means a person less than eighteen years of
29 age.

30 ~~((20))~~ (21) "Parent" means the parent or parents who have the
31 legal right to custody of the child. Parent includes custodian or
32 guardian.

33 ~~((21))~~ (22) "Peace officer" means a law enforcement official of
34 a public agency or governmental unit, and includes persons specifically
35 given peace officer powers by any state law, local ordinance, or
36 judicial order of appointment.

37 ~~((22))~~ (23) "Person" means an individual, including a minor.

38 ~~((23))~~ (24) "Professional person in charge" or "professional
39 person" means a physician or chemical dependency counselor as defined

1 in rule by the department, who is empowered by a certified treatment
2 program with authority to make assessment, admission, continuing care,
3 and discharge decisions on behalf of the certified program.

4 ~~((24))~~ (25) "Secretary" means the secretary of the department of
5 social and health services.

6 ~~((25))~~ (26) "Treatment" means the broad range of emergency,
7 detoxification, residential, and outpatient services and care,
8 including diagnostic evaluation, chemical dependency education and
9 counseling, medical, psychiatric, psychological, and social service
10 care, vocational rehabilitation and career counseling, which may be
11 extended to alcoholics and other drug addicts and their families,
12 persons incapacitated by alcohol or other psychoactive chemicals, and
13 intoxicated persons.

14 ~~((26))~~ (27) "Treatment program" means an organization,
15 institution, or corporation, public or private, engaged in the care,
16 treatment, or rehabilitation of alcoholics or other drug addicts.

17 (28) "Violent act" means behavior that resulted in homicide,
18 attempted suicide, nonfatal injuries, or substantial damage to
19 property.

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

22 The department shall:

23 (1) Develop, encourage, and foster statewide, regional, and local
24 plans and programs for the prevention of alcoholism and other drug
25 addiction, treatment of alcoholics and other drug addicts and their
26 families, persons incapacitated by alcohol or other psychoactive
27 chemicals, and intoxicated persons in cooperation with public and
28 private agencies, organizations, and individuals and provide technical
29 assistance and consultation services for these purposes;

30 (2) Coordinate the efforts and enlist the assistance of all public
31 and private agencies, organizations, and individuals interested in
32 prevention of alcoholism and drug addiction, and treatment of
33 alcoholics and other drug addicts and their families, persons
34 incapacitated by alcohol or other psychoactive chemicals, and
35 intoxicated persons;

36 (3) Cooperate with public and private agencies in establishing and
37 conducting programs to provide treatment for alcoholics and other drug
38 addicts and their families, persons incapacitated by alcohol or other

1 psychoactive chemicals, and intoxicated persons who are clients of the
2 correctional system;

3 (4) Cooperate with the superintendent of public instruction, state
4 board of education, schools, police departments, courts, and other
5 public and private agencies, organizations and individuals in
6 establishing programs for the prevention of alcoholism and other drug
7 addiction, treatment of alcoholics or other drug addicts and their
8 families, persons incapacitated by alcohol (~~and~~) or other
9 psychoactive chemicals, and intoxicated persons, and preparing
10 curriculum materials thereon for use at all levels of school education;

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

14 (6) Develop and implement, as an integral part of treatment
15 programs, an educational program for use in the treatment of alcoholics
16 or other drug addicts, persons incapacitated by alcohol (~~and~~) or
17 other psychoactive chemicals, and intoxicated persons, which program
18 shall include the dissemination of information concerning the nature
19 and effects of alcohol and other psychoactive chemicals, the
20 consequences of their use, the principles of recovery, and HIV and
21 AIDS;

22 (7) Organize and foster training programs for persons engaged in
23 treatment of alcoholics or other drug addicts, persons incapacitated by
24 alcohol (~~and~~) or other psychoactive chemicals, and intoxicated
25 persons;

26 (8) Sponsor and encourage research into the causes and nature of
27 alcoholism and other drug addiction, treatment of alcoholics and other
28 drug addicts, persons incapacitated by alcohol (~~and~~) or other
29 psychoactive chemicals, and intoxicated persons, and serve as a
30 clearing house for information relating to alcoholism or other drug
31 addiction;

32 (9) Specify uniform methods for keeping statistical information by
33 public and private agencies, organizations, and individuals, and
34 collect and make available relevant statistical information, including
35 number of persons treated, frequency of admission and readmission, and
36 frequency and duration of treatment;

37 (10) Advise the governor in the preparation of a comprehensive plan
38 for treatment of alcoholics and other drug addicts, persons
39 incapacitated by alcohol or other psychoactive chemicals, and

1 intoxicated persons for inclusion in the state's comprehensive health
2 plan;

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

8 (12) Assist in the development of, and cooperate with, programs for
9 alcohol and other psychoactive chemical education and treatment for
10 employees of state and local governments and businesses and industries
11 in the state;

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

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

18 (15) Encourage general hospitals and other appropriate health
19 facilities to admit without discrimination alcoholics and other drug
20 addicts, persons incapacitated by alcohol or other psychoactive
21 chemicals, and intoxicated persons and to provide them with adequate
22 and appropriate treatment;

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

25 (17) Organize and sponsor a statewide program to help court
26 personnel, including judges, better understand the disease of
27 alcoholism and other drug addiction and the uses of chemical dependency
28 treatment programs.

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

31 (1) When a designated chemical dependency specialist receives
32 information alleging that a person (~~is incapacitated~~) presents a
33 likelihood of serious harm or is gravely disabled as a result of
34 chemical dependency, the designated chemical dependency specialist,
35 after investigation and evaluation of the specific facts alleged and of
36 the reliability and credibility of the information, may file a petition
37 for commitment of such person with the superior court (~~or~~), district
38 court, or in another court permitted by court rule.

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

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

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

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

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

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

1 court may make a temporary order committing him or her to the
2 department for a period of not more than five days for purposes of a
3 diagnostic examination.

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

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

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

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

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

1 the hearing the court shall proceed as provided in subsection (3) of
2 this section.

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

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

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

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

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

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

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

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

