

2 **SB 5051** - S AMD 009
3 By Senator Long and Hargrove
4

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

1 (8) "Director" means the person administering the chemical
2 dependency program within the department.

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

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

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

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

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

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

34 (~~(14)~~) (15) "Incompetent person" means a person who has been
35 adjudged incompetent by the superior court.

36 (~~(15)~~) (16) "Intoxicated person" means a person whose mental or
37 physical functioning is substantially impaired as a result of the use
38 of alcohol or other psychoactive chemicals.

1 (~~(16)~~) (17) "Licensed physician" means a person licensed to
2 practice medicine or osteopathic medicine and surgery in the state of
3 Washington.

4 (~~(17)~~) (18) "Likelihood of serious harm" means (~~(either)~~):

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

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

17 (~~(18)~~) (19) "Medical necessity" for inpatient care of a minor
18 means a requested certified inpatient service that is reasonably
19 calculated to: (a) Diagnose, arrest, or alleviate a chemical
20 dependency; or (b) prevent the worsening of chemical dependency
21 conditions that endanger life or cause suffering and pain, or result in
22 illness or infirmity or threaten to cause or aggravate a handicap, or
23 cause physical deformity or malfunction, and there is no adequate less
24 restrictive alternative available.

25 (~~(19)~~) (20) "Minor" means a person less than eighteen years of
26 age.

27 (~~(20)~~) (21) "Parent" means the parent or parents who have the
28 legal right to custody of the child. Parent includes custodian or
29 guardian.

30 (~~(21)~~) (22) "Peace officer" means a law enforcement official of
31 a public agency or governmental unit, and includes persons specifically
32 given peace officer powers by any state law, local ordinance, or
33 judicial order of appointment.

34 (~~(22)~~) (23) "Person" means an individual, including a minor.

35 (~~(23)~~) (24) "Professional person in charge" or "professional
36 person" means a physician or chemical dependency counselor as defined
37 in rule by the department, who is empowered by a certified treatment
38 program with authority to make assessment, admission, continuing care,
39 and discharge decisions on behalf of the certified program.

1 (~~(24)~~) (25) "Secretary" means the secretary of the department of
2 social and health services.

3 (~~(25)~~) (26) "Treatment" means the broad range of emergency,
4 detoxification, residential, and outpatient services and care,
5 including diagnostic evaluation, chemical dependency education and
6 counseling, medical, psychiatric, psychological, and social service
7 care, vocational rehabilitation and career counseling, which may be
8 extended to alcoholics and other drug addicts and their families,
9 persons incapacitated by alcohol or other psychoactive chemicals, and
10 intoxicated persons.

11 (~~(26)~~) (27) "Treatment program" means an organization,
12 institution, or corporation, public or private, engaged in the care,
13 treatment, or rehabilitation of alcoholics or other drug addicts.

14 (28) "Violent act" means behavior that resulted in homicide,
15 attempted suicide, nonfatal injuries, or substantial damage to
16 property.

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

19 The department shall:

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

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

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

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

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

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

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

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

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

35 (10) Advise the governor in the preparation of a comprehensive plan
36 for treatment of alcoholics and other drug addicts, persons
37 incapacitated by alcohol or other psychoactive chemicals, and
38 intoxicated persons for inclusion in the state's comprehensive health
39 plan;

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

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

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

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

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

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

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

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

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

37 If a petition for commitment is not filed in the case of a minor,
38 the parent, guardian, or custodian who has custody of the minor may

1 seek review of that decision made by the designated chemical dependency
2 specialist in superior or district court. The parent, guardian, or
3 custodian shall file notice with the court and provide a copy of the
4 designated chemical dependency specialist's report.

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

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

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

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

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

1 department for a period of not more than five days for purposes of a
2 diagnostic examination.

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

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

17 If a petition for recommitment 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 treatment progress report.

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

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

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

3 The county alcoholism and other drug addiction program coordinator
4 may designate the county designated mental health professional to
5 perform the detention and commitment duties described in RCW 70.96A.120
6 and 70.96A.140.

7 NEW SECTION. **Sec. 5.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected."

11 **SB 5051** - S AMD 009
12 By Senator Long and Hargrove

13

14 On page 1, line 1 of the title, after "dependency;" strike the
15 remainder of the title and insert "amending RCW 70.96A.020, 70.96A.050,
16 and 70.96A.140; and adding a new section to chapter 70.96A RCW."

--- END ---