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HOUSE BILL 2726

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State of Washington                      52nd Legislature                      1992 Regular Session

By Representatives Brekke, Paris and Rasmussen

Read first time 01/24/92. Referred to Committee on Human Services.

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 alcoholism and drug addiction within available funds and current  
14 programs and facilities. Nothing in this act shall be construed to  
15 require the addition of new facilities nor affect the department of  
16 social and health services' authority for the uses of existing programs  
17 and facilities authorized by law.