
SENATE BILL 5051

State of Washington

57th Legislature

2001 Regular Session

By Senators Long, Hargrove, Winsley, Haugen, Stevens, Patterson, McAuliffe, Fairley and Carlson

Read first time 01/09/2001. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to chemical dependency; and amending RCW
2 70.96A.020, 70.96A.050, and 70.96A.140.

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

4 **Sec. 1.** RCW 70.96A.020 and 1998 c 296 s 22 are each amended to
5 read as follows:

6 For the purposes of this chapter the following words and phrases
7 shall have the following meanings unless the context clearly requires
8 otherwise:

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

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

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

1 (4) "Chemical dependency" means:
2 (a) Alcoholism ~~((or))~~; (b) drug addiction ~~((or))~~; or (c) dependence
3 on alcohol and one or more other psychoactive chemicals, as the context
4 requires.

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

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

11 (7) "Designated chemical dependency specialist" or "specialist"
12 means a person designated by the county alcoholism and other drug
13 addiction program coordinator designated under RCW 70.96A.310 to
14 perform the commitment duties described in RCW 70.96A.140 and qualified
15 to do so by meeting standards adopted by the department.

16 (8) "Director" means the person administering the chemical
17 dependency program within the department.

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

20 (10) "Drug addiction" means a disease characterized by a dependency
21 on psychoactive chemicals, loss of control over the amount and
22 circumstances of use, symptoms of tolerance, physiological or
23 psychological withdrawal, or both, if use is reduced or discontinued,
24 and impairment of health or disruption of social or economic
25 functioning.

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

28 (12) "Gravely disabled by alcohol or other ~~((drugs))~~ psychoactive
29 chemicals" or "gravely disabled" means that a person, as a result of
30 the use of alcohol or other ~~((drugs))~~ psychoactive chemicals: (a) Is
31 in danger of serious physical harm resulting from a failure to provide
32 for his or her essential human needs of health or safety; or (b)
33 manifests severe deterioration in routine functioning evidenced by a
34 repeated and escalating loss of cognition or volitional control over
35 his or her actions and is not receiving care as essential for his or
36 her health or safety.

37 (13) "History of one or more violent acts" refers to the period of
38 time ten years prior to the filing of a petition under this chapter,
39 excluding any time spent, but not any violent acts committed, in a

1 mental health facility, or a long-term alcoholism or drug treatment
2 facility, or in confinement.

3 (14) "Incapacitated by alcohol or other psychoactive chemicals"
4 means that a person, as a result of the use of alcohol or other
5 psychoactive chemicals, (~~has his or her judgment so impaired that he~~
6 ~~or she is incapable of realizing and making a rational decision with~~
7 ~~respect to his or her need for treatment and~~) is gravely disabled or
8 presents a likelihood of serious harm to himself or herself, to any
9 other person, or to property.

10 (~~(14)~~) (15) "Incompetent person" means a person who has been
11 adjudged incompetent by the superior court.

12 (~~(15)~~) (16) "Intoxicated person" means a person whose mental or
13 physical functioning is substantially impaired as a result of the use
14 of alcohol or other psychoactive chemicals.

15 (~~(16)~~) (17) "Licensed physician" means a person licensed to
16 practice medicine or osteopathic medicine and surgery in the state of
17 Washington.

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

19 (a) A substantial risk that: (i) Physical harm will be inflicted
20 by an individual upon his or her own person, as evidenced by threats or
21 attempts to commit suicide or inflict physical harm on one's self;
22 (~~(b) a substantial risk that~~) (ii) physical harm will be inflicted by
23 an individual upon another, as evidenced by behavior that has caused
24 the harm or that places another person or persons in reasonable fear of
25 sustaining the harm; or (~~(c) a substantial risk that~~) (iii) physical
26 harm will be inflicted by an individual upon the property of others, as
27 evidenced by behavior that has caused substantial loss or damage to the
28 property of others; or

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

31 (~~(18)~~) (19) "Medical necessity" for inpatient care of a minor
32 means a requested certified inpatient service that is reasonably
33 calculated to: (a) Diagnose, arrest, or alleviate a chemical
34 dependency; or (b) prevent the worsening of chemical dependency
35 conditions that endanger life or cause suffering and pain, or result in
36 illness or infirmity or threaten to cause or aggravate a handicap, or
37 cause physical deformity or malfunction, and there is no adequate less
38 restrictive alternative available.

1 (~~(19)~~) (20) "Minor" means a person less than eighteen years of
2 age.

3 (~~(20)~~) (21) "Parent" means the parent or parents who have the
4 legal right to custody of the child. Parent includes custodian or
5 guardian.

6 (~~(21)~~) (22) "Peace officer" means a law enforcement official of
7 a public agency or governmental unit, and includes persons specifically
8 given peace officer powers by any state law, local ordinance, or
9 judicial order of appointment.

10 (~~(22)~~) (23) "Person" means an individual, including a minor.

11 (~~(23)~~) (24) "Professional person in charge" or "professional
12 person" means a physician or chemical dependency counselor as defined
13 in rule by the department, who is empowered by a certified treatment
14 program with authority to make assessment, admission, continuing care,
15 and discharge decisions on behalf of the certified program.

16 (~~(24)~~) (25) "Secretary" means the secretary of the department of
17 social and health services.

18 (~~(25)~~) (26) "Treatment" means the broad range of emergency,
19 detoxification, residential, and outpatient services and care,
20 including diagnostic evaluation, chemical dependency education and
21 counseling, medical, psychiatric, psychological, and social service
22 care, vocational rehabilitation and career counseling, which may be
23 extended to alcoholics and other drug addicts and their families,
24 persons incapacitated by alcohol or other psychoactive chemicals, and
25 intoxicated persons.

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

29 (28) "Violent act" means behavior that resulted in homicide,
30 attempted suicide, nonfatal injuries, or substantial damage to
31 property.

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

34 The department shall:

35 (1) Develop, encourage, and foster statewide, regional, and local
36 plans and programs for the prevention of alcoholism and other drug
37 addiction, treatment of alcoholics and other drug addicts and their
38 families, persons incapacitated by alcohol or other psychoactive

1 chemicals, and intoxicated persons in cooperation with public and
2 private agencies, organizations, and individuals and provide technical
3 assistance and consultation services for these purposes;

4 (2) Coordinate the efforts and enlist the assistance of all public
5 and private agencies, organizations, and individuals interested in
6 prevention of alcoholism and drug addiction, and treatment of
7 alcoholics and other drug addicts and their families, persons
8 incapacitated by alcohol or other psychoactive chemicals, and
9 intoxicated persons;

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

15 (4) Cooperate with the superintendent of public instruction, state
16 board of education, schools, police departments, courts, and other
17 public and private agencies, organizations and individuals in
18 establishing programs for the prevention of alcoholism and other drug
19 addiction, treatment of alcoholics or other drug addicts and their
20 families, persons incapacitated by alcohol ((and)) or other
21 psychoactive chemicals, and intoxicated persons, and preparing
22 curriculum materials thereon for use at all levels of school education;

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

26 (6) Develop and implement, as an integral part of treatment
27 programs, an educational program for use in the treatment of alcoholics
28 or other drug addicts, persons incapacitated by alcohol ((and)) or
29 other psychoactive chemicals, and intoxicated persons, which program
30 shall include the dissemination of information concerning the nature
31 and effects of alcohol and other psychoactive chemicals, the
32 consequences of their use, the principles of recovery, and HIV and
33 AIDS;

34 (7) Organize and foster training programs for persons engaged in
35 treatment of alcoholics or other drug addicts, persons incapacitated by
36 alcohol ((and)) or other psychoactive chemicals, and intoxicated
37 persons;

38 (8) Sponsor and encourage research into the causes and nature of
39 alcoholism and other drug addiction, treatment of alcoholics and other

1 drug addicts, persons incapacitated by alcohol (~~and~~) or other
2 psychoactive chemicals, and intoxicated persons, and serve as a
3 clearing house for information relating to alcoholism or other drug
4 addiction;

5 (9) Specify uniform methods for keeping statistical information by
6 public and private agencies, organizations, and individuals, and
7 collect and make available relevant statistical information, including
8 number of persons treated, frequency of admission and readmission, and
9 frequency and duration of treatment;

10 (10) Advise the governor in the preparation of a comprehensive plan
11 for treatment of alcoholics and other drug addicts, persons
12 incapacitated by alcohol or other psychoactive chemicals, and
13 intoxicated persons for inclusion in the state's comprehensive health
14 plan;

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

20 (12) Assist in the development of, and cooperate with, programs for
21 alcohol and other psychoactive chemical education and treatment for
22 employees of state and local governments and businesses and industries
23 in the state;

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

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

30 (15) Encourage general hospitals and other appropriate health
31 facilities to admit without discrimination alcoholics and other drug
32 addicts, persons incapacitated by alcohol or other psychoactive
33 chemicals, and intoxicated persons and to provide them with adequate
34 and appropriate treatment;

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

37 (17) Organize and sponsor a statewide program to help court
38 personnel, including judges, better understand the disease of

1 alcoholism and other drug addiction and the uses of chemical dependency
2 treatment programs.

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

5 (1) When a designated chemical dependency specialist receives
6 information alleging that a person (~~(is incapacitated)~~) presents a
7 likelihood of serious harm or is gravely disabled as a result of
8 chemical dependency, the designated chemical dependency specialist,
9 after investigation and evaluation of the specific facts alleged and of
10 the reliability and credibility of the information, may file a petition
11 for commitment of such person with the superior court (~~(or)~~), district
12 court, or in another court permitted by court rule.

13 If a petition for commitment is not filed in the case of a minor,
14 the parent, guardian, or custodian who has custody of the minor may
15 seek review of that decision made by the designated chemical dependency
16 specialist in superior or district court. The parent, guardian, or
17 custodian shall file notice with the court and provide a copy of the
18 designated chemical dependency specialist's report.

19 If the designated chemical dependency specialist finds that the
20 initial needs of such person would be better served by placement within
21 the mental health system, the person shall be referred to either a
22 county designated mental health professional or an evaluation and
23 treatment facility as defined in RCW 71.05.020 or 71.34.020. If
24 placement in a chemical dependency program is available and deemed
25 appropriate, the petition shall allege that: The person is chemically
26 dependent and (~~(is incapacitated)~~) presents a likelihood of serious
27 harm or is gravely disabled by alcohol or drug addiction, or that the
28 person has twice before in the preceding twelve months been admitted
29 for detoxification, sobering services, or chemical dependency treatment
30 pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of a more
31 sustained treatment program, or that the person is chemically dependent
32 and has threatened, attempted, or inflicted physical harm on another
33 and is likely to inflict physical harm on another unless committed. A
34 refusal to undergo treatment, by itself, does not constitute evidence
35 of lack of judgment as to the need for treatment. The petition shall
36 be accompanied by a certificate of a licensed physician who has
37 examined the person within five days before submission of the petition,
38 unless the person whose commitment is sought has refused to submit to

1 a medical examination, in which case the fact of refusal shall be
2 alleged in the petition. The certificate shall set forth the licensed
3 physician's findings in support of the allegations of the petition. A
4 physician employed by the petitioning program or the department is
5 eligible to be the certifying physician.

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

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

37 The record maker shall not be required to testify in order to
38 introduce medical, nursing, or psychological records of detained
39 persons so long as the requirements of RCW 5.45.020 are met, except

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

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

24 (5) A person committed under this section shall remain in the
25 program for treatment for a period of sixty days unless sooner
26 discharged. At the end of the sixty-day period, he or she shall be
27 discharged automatically unless the program, before expiration of the
28 period, files a petition for his or her recommitment upon the grounds
29 set forth in subsection (1) of this section for a further period of
30 ninety days unless sooner discharged.

31 If a petition for recommitment is not filed in the case of a minor,
32 the parent, guardian, or custodian who has custody of the minor may
33 seek review of that decision made by the designated chemical dependency
34 specialist in superior or district court. The parent, guardian, or
35 custodian shall file notice with the court and provide a copy of the
36 treatment progress report.

37 If a person has been committed because he or she is chemically
38 dependent and likely to inflict physical harm on another, the program

1 shall apply for recommitment if after examination it is determined that
2 the likelihood still exists.

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

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

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

25 (a) In case of a chemically dependent person committed on the
26 grounds of likelihood of infliction of physical harm upon himself,
27 herself, or another, the likelihood no longer exists; or further
28 treatment will not be likely to bring about significant improvement in
29 the person's condition, or treatment is no longer adequate or
30 appropriate.

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

34 (9) The court shall inform the person whose commitment or
35 recommitment is sought of his or her right to contest the application,
36 be represented by counsel at every stage of any proceedings relating to
37 his or her commitment and recommitment, and have counsel appointed by
38 the court or provided by the court, if he or she wants the assistance
39 of counsel and is unable to obtain counsel. If the court believes that

1 the person needs the assistance of counsel, the court shall require, by
2 appointment if necessary, counsel for him or her regardless of his or
3 her wishes. The person shall, if he or she is financially able, bear
4 the costs of such legal service; otherwise such legal service shall be
5 at public expense. The person whose commitment or recommitment is
6 sought shall be informed of his or her right to be examined by a
7 licensed physician of his or her choice. If the person is unable to
8 obtain a licensed physician and requests examination by a physician,
9 the court shall employ a licensed physician.

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

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

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

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

14 NEW SECTION. **Sec. 4.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

--- END ---