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ENGROSSED SUBSTITUTE HOUSE BILL 1158

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State of Washington

52nd Legislature

1991 Regular Session

By House Committee on Human Services (originally sponsored by Representatives Brekke, Winsley, Leonard, Rayburn, Inslee, Rasmussen, O'Brien, Fuhrman, Hargrove, Riley, R. Johnson, Franklin, Scott, Haugen, Edmondson, Phillips, Bowman, G. Fisher, Sprenkle and Orr). Read first time March 6, 1991.

1 AN ACT Relating to minors incapacitated by alcohol and other drugs;  
2 amending RCW 70.96A.020, 70.96A.095, 70.96A.140, 71.05.210, and  
3 71.34.060; adding a new section to chapter 43.20 RCW; and creating new  
4 sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the use of  
7 alcohol and illicit drugs continues to be a primarycrippler of our  
8 youth. This translates into incredible costs to individuals, families,  
9 and society in terms of traffic fatalities, suicides, criminal activity  
10 including homicides, sexual promiscuity, familial incorrigibility, and  
11 conduct disorders, and educational fallout. Among children of all  
12 socioeconomic groups lower expectations for the future, low motivation  
13 and self-esteem, alienation, and depression are associated with alcohol  
14 and drug abuse.

1 Studies reveal that deaths from alcohol and other drug-related  
2 injuries rise sharply through adolescence, peaking in the early  
3 twenties. But second peak occurs in later life, when it accounts for  
4 three times as many deaths from chronic diseases. A young victim's  
5 life expectancy is likely to be reduced by an average of twenty-six  
6 years.

7 Yet the cost of treating alcohol and drug addicts can be recouped  
8 in the first three years of abstinence in health care savings alone.  
9 Public money spent on treatment saves not only the life of the chemical  
10 abuser, it makes us safer as individuals, and in the long-run costs  
11 less.

12 The legislature further finds that many children who abuse alcohol  
13 and other drugs may not require involuntary treatment, but still are  
14 not adequately served. These children remain at risk for future  
15 chemical dependency, and may become mentally ill or a juvenile offender  
16 or need out-of-home placement. Children placed at risk because of  
17 chemical abuse may be better served by the creation of a comprehensive  
18 integrated system for children in crisis.

19 The legislature declares that an emphasis on the treatment of youth  
20 will pay the largest dividend in terms of preventable costs to  
21 individuals themselves, their families, and to society. The provision  
22 of augmented involuntary alcohol treatment services to youths, as well  
23 as involuntary treatment for youths addicted by other drugs, is in the  
24 interest of the public health and safety.

25 **Sec. 2.** RCW 70.96A.020 and 1990 c 151 s 2 are each amended to read  
26 as follows:

27 For the purposes of this chapter the following words and phrases  
28 shall have the following meanings unless the context clearly requires  
29 otherwise:

- 1 (1) "Alcoholic" means a person who suffers from the disease of  
2 alcoholism.
- 3 (2) "Alcoholism" means a disease, characterized by a dependency on  
4 alcoholic beverages, loss of control over the amount and circumstances  
5 of use, symptoms of tolerance, physiological or psychological  
6 withdrawal, or both, if use is reduced or discontinued, and impairment  
7 of health or disruption of social or economic functioning.
- 8 (3) "Approved treatment program" means a discrete program of  
9 chemical dependency treatment provided by a treatment program certified  
10 by the department of social and health services as meeting standards  
11 adopted under this chapter.
- 12 (4) "Chemical dependency" means alcoholism or drug addiction, or  
13 dependence on alcohol and one or more other psychoactive chemicals, as  
14 the context requires.
- 15 (5) "Chemical dependency program" means expenditures and activities  
16 of the department designed and conducted to prevent or treat alcoholism  
17 and other drug addiction, including reasonable administration and  
18 overhead.
- 19 (6) "Department" means the department of social and health  
20 services.
- 21 (7) "Designated chemical dependency specialist" means a person  
22 designated by the county alcoholism and other drug addiction program  
23 coordinator designated under RCW 70.96A.310 to perform the commitment  
24 duties described in RCW 70.96A.140 and qualified to do so by meeting  
25 standards adopted by the department.
- 26 (8) "Director" means the person administering the chemical  
27 dependency program within the department.
- 28 (9) "Drug addict" means a person who suffers from the disease of  
29 drug addiction.

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

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

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

17 (13) "Incapacitated by alcohol or other psychoactive chemicals"  
18 means that a person, as a result of the use of alcohol or other  
19 psychoactive chemicals, has his or her judgment so impaired that he or  
20 she is incapable of realizing and making a rational decision with  
21 respect to his or her need for treatment and constitutes a danger to  
22 himself or herself, to any other person, or to property.

23 (14) "Incompetent person" means a person who has been adjudged  
24 incompetent by the superior court.

25 (15) "Intoxicated person" means a person whose mental or physical  
26 functioning is substantially impaired as a result of the use of alcohol  
27 or other psychoactive chemicals.

28 (16) "Licensed physician" means a person licensed to practice  
29 medicine or osteopathy in the state of Washington.

30 (17) "Minor" means a person less than eighteen years of age.

1        (18) "Peace officer" means a law enforcement official of a public  
2 agency or governmental unit, and includes persons specifically given  
3 peace officer powers by any state law, local ordinance, or judicial  
4 order of appointment.

5        (~~(18)~~) (19) "Person" means an individual, including a minor.

6        (20) "Secretary" means the secretary of the department of social  
7 and health services.

8        (~~(19)~~) (21) "Treatment" means the broad range of emergency,  
9 detoxification, residential, and outpatient services and care,  
10 including diagnostic evaluation, chemical dependency education and  
11 counseling, medical, psychiatric, psychological, and social service  
12 care, vocational rehabilitation and career counseling, which may be  
13 extended to alcoholics and other drug addicts and their families,  
14 persons incapacitated by alcohol or other psychoactive chemicals, and  
15 intoxicated persons.

16        (~~(20)~~) (22) "Treatment program" means an organization,  
17 institution, or corporation, public or private, engaged in the care,  
18 treatment, or rehabilitation of alcoholics or other drug addicts.

19        **Sec. 3.** RCW 70.96A.095 and 1989 c 270 s 24 are each amended to  
20 read as follows:

21        Any person fourteen years of age or older may give consent for  
22 himself or herself to the furnishing of counseling, care, treatment, or  
23 rehabilitation by a treatment program or by any person. Consent of the  
24 parent, parents, or legal guardian of a person less than eighteen years  
25 of age is not necessary to authorize the care, except that the person  
26 shall not become a resident of the treatment program without such  
27 permission except as provided in RCW 70.96A.120 or 70.96A.140. The  
28 parent, parents, or legal guardian of a person less than eighteen years  
29 of age are not liable for payment of care for such persons pursuant to

1 this chapter, unless they have joined in the consent to the counseling,  
2 care, treatment, or rehabilitation.

3 **Sec. 4.** RCW 70.96A.140 and 1990 c 151 s 3 are each amended to read  
4 as follows:

5 (1) When a designated chemical dependency specialist((~~7~~)) receives  
6 information alleging that a person is incapacitated as a result of  
7 alcoholism, or in the case of a minor incapacitated by alcoholism  
8 and/or other drug addiction, the designated chemical dependency  
9 specialist, after investigation and evaluation of the specific facts  
10 alleged and of the reliability and credibility of the information, may  
11 file a petition for commitment of such person with the superior court  
12 or district court. If the designated chemical dependency  
13 specialist((~~7~~)) finds that the initial needs of such person would be  
14 better served by placement within the mental health system, the person  
15 shall be referred to an evaluation and treatment facility as defined in  
16 RCW 71.05.020 or 71.34.020. If placement in an alcohol treatment  
17 program is available and deemed appropriate, the petition shall allege  
18 that: The person is an alcoholic who is incapacitated by alcohol, or  
19 in the case of a minor incapacitated by alcoholism and/or other drug  
20 addiction, or that the person has twice before in the preceding twelve  
21 months been admitted for detoxification or treatment for alcoholism  
22 pursuant to RCW 70.96A.110, or in the case of a minor, detoxification  
23 or treatment for alcohol or drug addiction, and is in need of a more  
24 sustained treatment program, or that the person is an alcoholic, or in  
25 the case of a minor, an alcoholic or other drug addict, who has  
26 threatened, attempted, or inflicted physical harm on another and is  
27 likely to inflict physical harm on another unless committed. A refusal  
28 to undergo treatment, by itself, does not constitute evidence of lack  
29 of judgment as to the need for treatment. The petition shall be

1 accompanied by a certificate of a licensed physician who has examined  
2 the person within five days before submission of the petition, unless  
3 the person whose commitment is sought has refused to submit to a  
4 medical examination, in which case the fact of refusal shall be alleged  
5 in the petition. The certificate shall set forth the licensed  
6 physician's findings in support of the allegations of the petition. A  
7 physician employed by the petitioning program or the department is  
8 eligible to be the certifying physician.

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

28 (3) At the hearing the court shall hear all relevant testimony,  
29 including, if possible, the testimony, which may be telephonic, of at  
30 least one licensed physician who has examined the person whose

1 commitment is sought. Communications otherwise deemed privileged under  
2 the laws of this state are deemed to be waived in proceedings under  
3 this chapter when a court of competent jurisdiction in its discretion  
4 determines that the waiver is necessary to protect either the detained  
5 person or the public. The waiver of a privilege under this section is  
6 limited to records or testimony relevant to evaluation of the detained  
7 person for purposes of a proceeding under this chapter. Upon motion by  
8 the detained person, or on its own motion, the court shall examine a  
9 record or testimony sought by a petitioner to determine whether it is  
10 within the scope of the waiver.

11 The record maker shall not be required to testify in order to  
12 introduce medical, nursing, or psychological records of detained  
13 persons so long as the requirements of RCW 5.45.020 are met, except  
14 that portions of the record that contain opinions as to whether the  
15 detained person is an alcoholic, or in the case of a minor  
16 incapacitated by alcoholism and/or other drug addiction, must be  
17 deleted from the records unless the person offering the opinions is  
18 available for cross-examination. The person shall be present unless  
19 the court believes that his or her presence is likely to be injurious  
20 to him or her; in this event the court may deem it appropriate to  
21 appoint a guardian ad litem to represent him or her throughout the  
22 proceeding. If deemed advisable, the court may examine the person out  
23 of courtroom. If the person has refused to be examined by a licensed  
24 physician, he or she shall be given an opportunity to be examined by a  
25 court appointed licensed physician. If he or she refuses and there is  
26 sufficient evidence to believe that the allegations of the petition are  
27 true, or if the court believes that more medical evidence is necessary,  
28 the court may make a temporary order committing him or her to the  
29 department for a period of not more than five days for purposes of a  
30 diagnostic examination.

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

8 (5) A person committed under this section shall remain in the  
9 program for treatment for a period of sixty days unless sooner  
10 discharged. At the end of the sixty-day period, he or she shall be  
11 discharged automatically unless the program, before expiration of the  
12 period, files a petition for his or her recommitment upon the grounds  
13 set forth in subsection (1) of this section for a further period of  
14 ninety days unless sooner discharged. If a person has been committed  
15 because he or she is an alcoholic, or, in the case of a minor, an  
16 alcoholic or other drug addict, likely to inflict physical harm on  
17 another, the program shall apply for recommitment if after examination  
18 it is determined that the likelihood still exists.

19 (6) Upon the filing of a petition for recommitment under subsection  
20 (5) of this section, the court shall fix a date for hearing no less  
21 than two and no more than seven days after the date the petition was  
22 filed: PROVIDED, That, the court may, upon motion of the person whose  
23 commitment is sought and upon good cause shown, extend the date for the  
24 hearing. A copy of the petition and of the notice of hearing,  
25 including the date fixed by the court, shall be served by the treatment  
26 program on the person whose commitment is sought, his or her next of  
27 kin, the original petitioner under subsection (1) of this section if  
28 different from the petitioner for recommitment, one of his or her  
29 parents or his or her legal guardian if he or she is a minor, and his  
30 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 an alcoholic committed on the grounds of likelihood  
12 of infliction of physical harm upon himself, herself, or another, or,  
13 in the case of a minor, an alcoholic or other drug addict, the  
14 likelihood no longer exists; or further treatment will not be likely to  
15 bring about significant improvement in the person's condition, or  
16 treatment is no longer adequate or appropriate.

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

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

1 at public expense. The person whose commitment or recommitment is  
2 sought shall be informed of his or her right to be examined by a  
3 licensed physician of his or her choice. If the person is unable to  
4 obtain a licensed physician and requests examination by a physician,  
5 the court shall employ a licensed physician.

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

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

11 (12) When in the opinion of the professional person in charge of  
12 the program providing involuntary treatment under this chapter, the  
13 committed patient can be appropriately served by less restrictive  
14 treatment before expiration of the period of commitment, then the less  
15 restrictive care may be required as a condition for early release for  
16 a period which, when added to the initial treatment period, does not  
17 exceed the period of commitment. If the program designated to provide  
18 the less restrictive treatment is other than the program providing the  
19 initial involuntary treatment, the program so designated must agree in  
20 writing to assume such responsibility. A copy of the conditions for  
21 early release shall be given to the patient, the designated chemical  
22 dependency specialist of original commitment, and the court of original  
23 commitment. The program designated to provide less restrictive care  
24 may modify the conditions for continued release when the modifications  
25 are in the best interests of the patient. If the program providing  
26 less restrictive care and the designated chemical dependency specialist  
27 determine that a conditionally released patient is failing to adhere to  
28 the terms and conditions of his or her release, or that substantial  
29 deterioration in the patient's functioning has occurred, then the  
30 designated chemical dependency specialist shall notify the court of

1 original commitment and request a hearing to be held no less than two  
2 and no more than seven days after the date of the request to determine  
3 whether or not the person should be returned to more restrictive care.  
4 The designated chemical dependency specialist shall file a petition  
5 with the court stating the facts substantiating the need for the  
6 hearing along with the treatment recommendations. The patient shall  
7 have the same rights with respect to notice, hearing, and counsel as  
8 for the original involuntary treatment proceedings. The issues to be  
9 determined at the hearing are whether the conditionally released  
10 patient did or did not adhere to the terms and conditions of his or her  
11 release to less restrictive care or that substantial deterioration of  
12 the patient's functioning has occurred and whether the conditions of  
13 release should be modified or the person should be returned to a more  
14 restrictive program. The hearing may be waived by the patient and his  
15 or her counsel and his or her guardian or conservator, if any, but may  
16 not be waived unless all such persons agree to the waiver. Upon  
17 waiver, the person may be returned for involuntary treatment or  
18 continued on conditional release on the same or modified conditions.

19 **Sec. 5.** RCW 71.05.210 and 1989 c 120 s 6 are each amended to read  
20 as follows:

21 Each person involuntarily admitted to an evaluation and treatment  
22 facility shall, within twenty-four hours of his or her admission, be  
23 examined and evaluated by a licensed physician who may be assisted by  
24 a physician(~~s~~) assistant according to chapter 18.71A RCW or a nurse  
25 practitioner according to chapter 18.88 RCW and a mental health  
26 professional as defined in this chapter, and shall receive such  
27 treatment and care as his or her condition requires including treatment  
28 on an outpatient basis for the period that he or she is detained,  
29 except that, beginning twenty-four hours prior to a court proceeding,

1 the individual may refuse all but emergency life-saving treatment, and  
2 the individual shall be informed at an appropriate time of his or her  
3 right to such refusal of treatment. Such person shall be detained up  
4 to seventy-two hours, if, in the opinion of the professional person in  
5 charge of the facility, or his or her professional designee, the person  
6 presents a likelihood of serious harm to himself or herself or others,  
7 or is gravely disabled. A person who has been detained for seventy-two  
8 hours shall no later than the end of such period be released, unless  
9 referred for further care on a voluntary basis, or detained pursuant to  
10 court order for further treatment as provided in this chapter.

11 If, after examination and evaluation, the licensed physician and  
12 mental health professional determine that the initial needs of the  
13 person would be better served by placement in ~~((an alcohol))~~ a chemical  
14 dependency treatment facility, then the person shall be referred to an  
15 approved treatment ~~((facility))~~ program defined under RCW 70.96A.020.

16 An evaluation and treatment center admitting any person pursuant to  
17 this chapter whose physical condition reveals the need for  
18 hospitalization shall assure that such person is transferred to an  
19 appropriate hospital for treatment. Notice of such fact shall be given  
20 to the court, the designated attorney, and the designated county mental  
21 health professional and the court shall order such continuance in  
22 proceedings under this chapter as may be necessary, but in no event may  
23 this continuance be more than fourteen days.

24 **Sec. 6.** RCW 71.34.060 and 1985 c 354 s 6 are each amended to read  
25 as follows:

26 (1) Each minor approved by the facility for inpatient admission  
27 shall be examined and evaluated by a children's mental health  
28 specialist as to the child's mental condition and by a physician as to  
29 the child's physical condition within twenty-four hours of admission.

1 Reasonable measures shall be taken to ensure medical treatment is  
2 provided for any condition requiring immediate medical attention.

3 (2) If, after examination and evaluation, the children's mental  
4 health specialist and the physician determine that the initial needs of  
5 the minor would be better served by placement in a chemical dependency  
6 treatment facility, then the minor shall be referred to an approved  
7 treatment program defined under RCW 70.96A.020.

8 (3) The admitting facility shall take reasonable steps to notify  
9 immediately the minor's parent of the admission.

10 ~~((3))~~ (4) During the initial seventy-two hour treatment period,  
11 the minor has a right to associate or receive communications from  
12 parents or others unless the professional person in charge determines  
13 that such communication would be seriously detrimental to the minor's  
14 condition or treatment and so indicates in the minor's clinical record,  
15 and notifies the minor's parents of this determination. In no event  
16 may the minor be denied the opportunity to consult an attorney.

17 ~~((4))~~ (5) If the evaluation and treatment facility admits the  
18 minor, it may detain the minor for evaluation and treatment for a  
19 period not to exceed seventy-two hours from the time of provisional  
20 acceptance. The computation of such seventy-two hour period shall  
21 exclude Saturdays, Sundays, and holidays. This initial treatment  
22 period shall not exceed seventy-two hours except when an application  
23 for voluntary inpatient treatment is received or a petition for  
24 fourteen-day commitment is filed.

25 ~~((5))~~ (6) Within twelve hours of the admission, the facility  
26 shall advise the minor of his or her rights as set forth in this  
27 chapter.

28 NEW SECTION. Sec. 7. The purpose of this act is solely to  
29 provide authority for the involuntary commitment of minors addicted by

1 drugs within available funds and current programs and facilities.  
2 Nothing in this act shall be construed to require the addition of new  
3 facilities nor affect the department's authority for the uses of  
4 existing programs and facilities authorized by law. Nothing herein  
5 shall prevent a parent or guardian from requesting the involuntary  
6 commitment of a minor through a county designated chemical dependency  
7 specialist on an ability to pay basis.

8 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.20 RCW  
9 to read as follows:

10 The state board of health is authorized to adopt rules to control  
11 the retail sale of tobacco products so as to limit the purchase and use  
12 of tobacco products by minors.