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SENATE BILL 5759

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State of Washington

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By Senators McAuliffe, Prentice, Skratek, Loveland, von Reichbauer, Haugen, Prince, McDonald, Drew, Owen, Moyer, Erwin, Winsley, Anderson and M. Rasmussen

Read first time 02/12/93. Referred to Committee on Health & 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  
15 be better served by placement within the mental health system, the  
16 person shall be referred to an evaluation and treatment facility as  
17 defined in RCW 71.05.020 or 71.34.020. If placement in (~~an alcohol~~  
18 ~~treatment program~~) a chemical dependency program is available and  
19 deemed appropriate, the petition shall allege that: The person is (~~an~~

1 ~~alcoholic—who))~~ chemically dependent and is incapacitated by  
2 alcohol(~~(7)~~) or (~~(in the case of a minor incapacitated by alcoholism~~  
3 ~~and/or other))~~ drug addiction, or that the person has twice before in  
4 the preceding twelve months been admitted for detoxification or  
5 chemical dependency treatment (~~(for alcoholism))~~ pursuant to RCW  
6 70.96A.110, (~~(or in the case of a minor, detoxification or treatment~~  
7 ~~for alcohol or drug addiction,7))~~ and is in need of a more sustained  
8 treatment program, or that the person is (~~(an alcoholic, or in the case~~  
9 ~~of a minor, an alcoholic or other drug addict, who))~~ chemically  
10 dependent and has threatened, attempted, or inflicted physical harm on  
11 another and is likely to inflict physical harm on another unless  
12 committed. A refusal to undergo treatment, by itself, does not  
13 constitute evidence of lack of judgment as to the need for treatment.  
14 The petition shall be accompanied by a certificate of a licensed  
15 physician who has examined the person within five days before  
16 submission of the petition, unless the person whose commitment is  
17 sought has refused to submit to a medical examination, in which case  
18 the fact of refusal shall be alleged in the petition. The certificate  
19 shall set forth the licensed physician's findings in support of the  
20 allegations of the petition. A physician employed by the petitioning  
21 program or the department is eligible to be the certifying physician.

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

1 the petition and certificate shall be delivered to each person  
2 notified.

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

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

36 (4) If after hearing all relevant evidence, including the results  
37 of any diagnostic examination, the court finds that grounds for  
38 involuntary commitment have been established by clear, cogent, and  
39 convincing proof, it shall make an order of commitment to an approved

1 treatment program. It shall not order commitment of a person unless it  
2 determines that an approved treatment program is available and able to  
3 provide adequate and appropriate treatment for him or her.

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

16 (6) Upon the filing of a petition for recommitment under subsection  
17 (5) of this section, the court shall fix a date for hearing no less  
18 than two and no more than seven days after the date the petition was  
19 filed: PROVIDED, That, the court may, upon motion of the person whose  
20 commitment is sought and upon good cause shown, extend the date for the  
21 hearing. A copy of the petition and of the notice of hearing,  
22 including the date fixed by the court, shall be served by the treatment  
23 program on the person whose commitment is sought, his or her next of  
24 kin, the original petitioner under subsection (1) of this section if  
25 different from the petitioner for recommitment, one of his or her  
26 parents or his or her legal guardian if he or she is a minor, and his  
27 or her attorney and any other person the court believes advisable. At  
28 the hearing the court shall proceed as provided in subsection (3) of  
29 this section.

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

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

38 (a) In case of (~~an alcoholic~~) a chemically dependent person  
39 committed on the grounds of likelihood of infliction of physical harm

1 upon himself, herself, or another, (~~or, in the case of a minor, an~~  
2 ~~alcoholic or other drug addict,~~) the likelihood no longer exists; or  
3 further treatment will not be likely to bring about significant  
4 improvement in the person's condition, or treatment is no longer  
5 adequate or appropriate.

6 (b) In case of (~~an alcoholic~~) a chemically dependent person  
7 committed on the grounds of the need of treatment and incapacity (~~or,~~  
8 ~~in the case of a minor, incapacitated by alcoholism and/or other drug~~  
9 ~~addiction~~)), that the incapacity no longer exists.

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

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

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

30 (12) When in the opinion of the professional person in charge of  
31 the program providing involuntary treatment under this chapter, the  
32 committed patient can be appropriately served by less restrictive  
33 treatment before expiration of the period of commitment, then the less  
34 restrictive care may be required as a condition for early release for  
35 a period which, when added to the initial treatment period, does not  
36 exceed the period of commitment. If the program designated to provide  
37 the less restrictive treatment is other than the program providing the  
38 initial involuntary treatment, the program so designated must agree in  
39 writing to assume such responsibility. A copy of the conditions for

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

29 NEW SECTION. **Sec. 2.** The purpose of this act is solely to provide  
30 authority for the involuntary commitment of persons suffering from  
31 chemical dependency within available funds and current programs and  
32 facilities. Nothing in this act shall be construed to require the  
33 addition of new facilities nor affect the department of social and  
34 health services' authority for the uses of existing programs and  
35 facilities authorized by law.

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