

HOUSE BILL NO. 366

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE PRUITT

Introduced: 2/26/14

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to reporting an involuntary mental health commitment to the National**
2 **Instant Criminal Background Check System; and relating to relief from disabilities of a**
3 **record of involuntary commitment and an adjudication of mental illness or mental**
4 **incompetence."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 44.41 is amended by adding a new section to read:

7 **Sec. 44.41.045. Information and records concerning involuntary**
8 **commitment and adjudication of mental illness or mental incompetence.** (a) Upon
9 receiving information under AS 47.30.907, the Department of Public Safety shall
10 transmit the information to the United States Department of Justice for inclusion in the
11 National Instant Criminal Background Check System established under P.L. 103-159,
12 107 Stat. 1536 (Brady Handgun Violence Prevention Act).

13 (b) In transmitting information to the National Instant Criminal Background
14 Check System under (a) of this section, the Department of Public Safety may not

1 disclose diagnostic or treatment information regarding the person.

2 (c) The Department of Public Safety may not use or permit the use of the
3 information obtained or retained under this section for a purpose not specified in this
4 section, except that the department may use the information to determine whether a
5 person is qualified to receive and hold a permit to carry a concealed handgun under
6 AS 18.65.705.

7 (d) Information obtained or retained under this section is confidential and is
8 not a public record.

9 * **Sec. 2.** AS 47.30.845 is amended to read:

10 **Sec. 47.30.845. Confidential records.** Information and records obtained in the
11 course of a screening investigation, evaluation, examination, or treatment are
12 confidential and are not public records, except as the requirements of a hearing under
13 AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and
14 records may be copied and disclosed under regulations established by the department
15 only to

16 (1) a physician or a provider of health, mental health, or social and
17 welfare services involved in caring for, treating, or rehabilitating the patient;

18 (2) the patient or an individual to whom the patient has given written
19 consent to have information disclosed;

20 (3) a person authorized by a court order;

21 (4) a person doing research or maintaining health statistics if the
22 anonymity of the patient is assured and the facility recognizes the project as a bona
23 fide research or statistical undertaking;

24 (5) the Department of Corrections in a case in which a prisoner
25 confined to the state prison is a patient in the state hospital on authorized transfer
26 either by voluntary admission or by court order;

27 (6) a governmental or law enforcement agency when necessary to
28 secure the return of a patient who is on unauthorized absence from a facility where the
29 patient was undergoing evaluation or treatment;

30 (7) a law enforcement agency when there is substantiated concern over
31 imminent danger to the community by a presumed mentally ill person;

(8) the department in a case in which services provided under AS 47.30.660 - 47.30.915 are paid for, in whole or in part, by the department or in which a person has applied for or has received assistance from the department for those services;

(9) the Department of Public Safety as provided in AS 47.30.907; information provided under this paragraph may not include diagnostic or clinical information regarding a patient.

* **Sec. 3.** AS 47.30.850 is amended to read:

Sec. 47.30.850. Expunging or sealing records. Following the discharge of a **person** [RESPONDENT] from a treatment facility or the issuance of a court order denying a petition for commitment, the **person** [RESPONDENT] may at any time move to have all court records pertaining to the proceedings expunged on condition that the **person** [RESPONDENT] file a full release of all claims of whatever nature arising out of the proceedings and the statements and actions of persons and facilities in connection with the proceedings. Upon the filing of the motion and full release, the court shall

(1) order the court records either expunged or sealed, whichever the court considers appropriate under the circumstances; or

(2) if the motion is for relief from the disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental incompetence, grant or deny the relief under (b) of this section.

* **Sec. 4.** AS 47.30.850 is amended by adding new subsections to read:

(b) If a person who has a record of involuntary commitment or an adjudication of mental illness or mental incompetence, and who, because of the involuntary commitment or adjudication, was prohibited from possessing a firearm or ammunition under 18 U.S.C. 922(g)(4) files a motion under this section, the court

(1) shall consider

(A) the circumstances of the involuntary commitment or adjudication of mental illness or mental incompetence;

(B) the time that has elapsed since the involuntary commitment or adjudication of mental illness or mental incompetence;

(C) the person's reputation and mental health and criminal history records;

(D) any conduct by the person that would constitute a crime against a person under AS 11.41 or a violation of AS 11.61.190 - 11.61.250; and

(E) any changes in the person's condition or circumstances relevant to the relief sought; and

(2) may grant relief from the disabilities of a record of an involuntary commitment or adjudication of mental illness or mental incompetence if the court finds, by a preponderance of the evidence, that

(A) the person is unlikely to act in a manner dangerous to self or to public safety; and

(B) granting the relief is not contrary to the public interest.

(c) The court shall order a hearing conducted under (b) of this section to be held open or closed to the public at the option of the person.

(d) A decision to grant or deny relief under this section may be appealed as provided in AS 22.05.010. In reviewing the decision of the superior court, the standard of review may be de novo.

* **Sec. 5.** AS 47.30 is amended by adding a new section to read:

Sec. 47.30.907. Report to Department of Public Safety concerning involuntary commitment or relief from the disabilities of a record of involuntary commitment or an adjudication of mental illness or mental incompetence. (a) Notwithstanding AS 47.30.845, when a person is involuntarily committed under AS 47.30.660 - 47.30.915 or when relief from the disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental incompetence is granted under AS 47.30.850(b), the court and the Department of Health and Social Services shall immediately transmit the following information to the Department of Public Safety:

(1) the person's

(A) name, date of birth, and address;

(B) aliases;

1 (C) social security number;

2 (D) driver's license or state identification card number;

3 (2) the date of the order and whether the order is an involuntary
4 commitment or relief from the disabilities of a record of an involuntary commitment
5 or an adjudication of mental illness or mental incompetence;

6 (3) the statutory authority for the involuntary commitment or relief
7 from the disabilities of a record of an involuntary commitment;

8 (4) whether the person was offered an opportunity to be heard and
9 represented by counsel in the involuntary commitment proceeding or adjudication of
10 mental illness or mental incompetence; and

11 (5) any other information required by the Department of Public Safety
12 or by the United States Department of Justice for inclusion in the National Instant
13 Criminal Background Check System established under P.L. 103-159, 107 Stat. 1536
14 (Brady Handgun Violence Prevention Act).

15 (b) This section does not apply to initial involuntary commitment procedures,
16 emergency detention for evaluation, or hospitalization for examination under
17 AS 47.30.700 - 47.30.715 if the person is released under AS 47.30.720.

18 * **Sec. 6.** AS 47.30.915 is amended by adding new paragraphs to read:

19 (19) "adjudication of mental illness or mental incompetence" means a
20 court order finding that a person is

21 (A) not guilty by reason of insanity or guilty but mentally ill
22 under AS 12.47.040;

23 (B) incompetent to stand trial for a criminal offense under
24 AS 12.47.100; or

25 (C) a danger to self or others because of incapacity,
26 incompetence, mental illness, dementia, or some other cause;

27 (20) "disabilities of a record of an involuntary commitment or an
28 adjudication of mental illness or mental incompetence" means the prohibition against
29 the possession of a firearm under 18 U.S.C. 922(g)(4) that results from an involuntary
30 commitment or adjudication of mental illness or mental incompetence.