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Strasbaugh
3/5/14

CS FOR HOUSE BILL NO. 366()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE PRUITT

A BILL

FOR AN ACT ENTITLED

"An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; relating to the sealing of records of mental health proceedings; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence."

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

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

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

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

disclose diagnostic or treatment information regarding the person.

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

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

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

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

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

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

(3) a person authorized by a court order;

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

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

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

(7) a law enforcement agency when there is substantiated concern over 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. Sealing [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 **sealed** [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 order the court records [EITHER EXPUNGED OR] sealed [, WHICHEVER THE COURT CONSIDERS APPROPRIATE UNDER THE CIRCUMSTANCES].

* **Sec. 4.** AS 47.30 is amended by adding a new section to read:

Sec. 47.30.851. Relief from legal disability. (a) A person who has a record of an involuntary commitment or an adjudication of mental illness or mental incompetence in a proceeding in this state, 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) may, at any time, move to be relieved from the disabilities of a record of the involuntary commitment or the adjudication of mental illness or mental incompetence.

(b) In ruling on the motion, 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 superior court orders the involuntary commitment of a person under AS 47.30.735 - 47.30.755 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 47.30.851(b), the court and the Department of Health and Social Services shall immediately transmit the following information, if known, to the Department of Public Safety:

(1) the person's

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

(B) aliases;

(C) social security number;

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

(2) the date of the order and whether the order is

(A) an involuntary commitment; or

(B) relief from the disabilities of a record of an involuntary commitment or an adjudication of mental illness or mental incompetence;

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

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

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

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

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

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

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

(B) incompetent to stand trial for a criminal offense under AS 12.47.100 - 12.47.120; or

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

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

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commitment or adjudication of mental illness or mental incompetence.