

34TH ALASKA STATE LEGISLATURE

Session

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Committee

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REPRESENTATIVE ANDREW GRAY

Excerpts from relevant court rulings for HB 36 (34-LS0358\N)

Article 1, Section 7 of the Alaska Constitution reads “No person shall be deprived of life, liberty or property, without due process of law”

Hooper Bay v Lawton
February 13, 2015
Alaska Superior Court Ruling

- “Nothing in the Legislative history suggests that AS 47.10.087 was meant to apply to acute care hospitals.”
- “Although the initial placement of foster children...does not violate the U. S. Constitution, their continued stay without judicial oversight may violate the due process clause of the U. S. Constitution.”
- “Once admitted it is unknown how long a foster child may remain...there is no apparent cap on the length of a foster child’s commitment...”
- “children have a “substantial liberty interest” in not being confined unnecessarily”
- “It is concerning that foster children may be placed at North Star indefinitely without any judicial hearing taking place”
- “After commitment, a judicial hearing is necessary”
- “Due process in this instance requires post-commitment judicial review. Post commitment review will balance the children’s private interests with the State interest”
- “Continuing treatment of foster children without a judicial hearing raises the question of a violation of the fundamental right to due process”

Excerpts from relevant court rulings for HB 36 (34-LS0358\N) continued

Kwinkagak v. State

February 9, 2024

Alaska Supreme Court Ruling

- OCS is subject only to an injunction that requires an “AS 47.10.087-type hearing” to be held within 30 days after it admits a child to acute care.
- “Due process also required the court to hold a hearing as soon as reasonable possible to determine whether the hospitalization was justified”
- Hooper concluded that “the constitution required some judicial oversight of OCS’s decision to admit a child to an acute psychiatric hospital”
- Brennan Jr in Parham v. J.R. maintains “that due process entitles child who objects to hospitalization to a “reasonable prompt” post-admission judicial hearing”
- “Although the legislature did limit OCS’s authority to place a child in a secure residential psychiatric treatment facility, the statute contains no similar limitation on OCS’s ability to admit a child to a psychiatric hospital for acute care”
- “Whether the statutory “gap” is due to intention or oversight, we have no authority to rewrite statutes. The legislature is the branch of government with the authority to fill gaps in a statutory scheme”
- US Supreme Court “a child, in common with adults, has a substantial liberty interest in not being confined unnecessarily for medical treatment”
- Unlike civil commitment cases, which involve only the petitioner and the respondent, CINA cases often involve many parties: the child, OCS, one or two parents, a GAL, and sometimes a tribe. Holding a meaningful hearing within the time required for civil commitment statutes will be challenging”
- “We observe that the superior court set the 30-day deadline as an outer limit for holding a hearing”