

SENATE BILL NO. 238

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/28/20

Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to involuntary commitment procedures; relating to protective custody**
2 **at a correctional facility or jail; relating to transportation of individuals held for**
3 **involuntary admission for mental health treatment; and providing for an effective date."**

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

5 * **Section 1.** AS 47.30.705(a) is amended to read:

6 (a) A peace officer, a psychiatrist or physician who is licensed to practice in
7 this state or employed by the federal government, or a clinical psychologist licensed
8 by the state Board of Psychologist and Psychological Associate Examiners who has
9 probable cause to believe that a person is gravely disabled or is suffering from mental
10 illness and is likely to cause serious harm to self or others of such immediate nature
11 that considerations of safety do not allow initiation of involuntary commitment
12 procedures set out in AS 47.30.700, may cause the person to be taken into custody and
13 delivered to the nearest evaluation facility. **Emergency** [A PERSON TAKEN INTO
14 CUSTODY FOR EMERGENCY EVALUATION MAY NOT BE PLACED IN A

1 JAIL OR OTHER CORRECTIONAL FACILITY EXCEPT FOR PROTECTIVE
 2 CUSTODY PURPOSES AND ONLY WHILE AWAITING TRANSPORTATION
 3 TO A TREATMENT FACILITY. HOWEVER, EMERGENCY] protective custody
 4 under this section may not include placement of a minor in a jail or secure facility. The
 5 peace officer or mental health professional shall complete an application for
 6 examination of the person in custody and be interviewed by a mental health
 7 professional at the facility.

8 * **Sec. 2.** AS 47.30 is amended by adding a new section to read:

9 **Sec. 47.30.706. Protective custody at a correctional facility or jail.** (a) A
 10 person who is suffering from a mental illness and for whom the court has issued an ex
 11 parte order for detention and evaluation under AS 47.30.700 or who has been taken
 12 into custody under AS 47.30.705 shall be taken to a designated treatment facility or an
 13 evaluation facility. If neither a designated treatment facility nor an evaluation facility
 14 has the capacity to safely admit the person, a mental health professional or peace
 15 officer shall take the person to a crisis stabilization center or a health care facility, if
 16 one is available in the community. If all the facilities listed in this subsection lack the
 17 capacity to safely admit the person within a reasonable amount of time, the person
 18 may be taken to the nearest correctional facility or jail for emergency protective
 19 custody while awaiting transportation to a treatment facility or evaluation facility.

20 (b) Protective custody under this section must, to the extent practicable, be
 21 limited to the time necessary to transport the person to a clinically appropriate
 22 designated treatment facility or evaluation facility for admission.

23 (c) A correctional facility or jail shall as soon as practicable notify the
 24 department if a person is placed in protective custody under this section. Upon
 25 notification, the department shall arrange admission and transport for the person to a
 26 clinically appropriate designated treatment facility or evaluation facility.

27 (d) If a person is held in a correctional facility or jail under this section for
 28 more than 48 hours and the department does not have a plan to transport the person to
 29 a clinically appropriate designated treatment facility or evaluation facility for
 30 admission within 12 hours, the department shall provide a mental health professional
 31 to evaluate the person every 48 hours to determine whether probable cause still exists

1 under AS 47.30.700 or 47.30.705 to hold the person pending transport. A mental
2 health professional conducting the evaluation may be an employee of the department
3 or a contractor. If the mental health professional determines that the hold must
4 continue, the department shall create a plan for transfer to a clinically appropriate
5 designated treatment facility or evaluation facility. The plan must consider whether
6 delays or capacity issues will impact transfer.

7 (e) After an evaluation under (d) of this section, the department shall notify
8 the court in writing that the person

9 (1) has been released from custody because there is no longer probable
10 cause to hold the person under AS 47.30.700 or 47.30.705; or

11 (2) must remain in protective custody because there is still probable
12 cause for the hold under AS 47.30.700 or 47.30.705; the department shall include in
13 the notice the department's plan for transfer and the reason that the transfer has not yet
14 occurred.

15 (f) At any time while the person is in protective custody under this section, but
16 not later than 96 hours after placement at the correctional facility or jail, the court shall
17 conduct a review hearing to hear evidence on whether probable cause continues to
18 exist to hold the person and whether continued custody under this section is
19 appropriate.

20 (g) When a person is taken into protective custody under this section, the
21 correctional facility or jail

22 (1) shall make reasonable efforts to provide for and protect the health
23 and safety of the person with the resources available at the correctional facility or jail;
24 reasonable efforts include providing physical and mental health treatment in person or,
25 at the discretion of the correctional facility or jail, using telehealth; and

26 (2) may take reasonable steps for the protection of the person, staff,
27 and inmates at the correctional facility or jail, including, at the discretion of the
28 correctional facility or jail, a full search of the person.

29 (h) Protective custody under this section does not constitute an arrest and the
30 correctional facility or jail may not make an entry or other record that indicates that
31 the person has been arrested or charged with a crime. A confidential record may be

1 made when necessary to meet the administrative needs of the correctional facility or
 2 jail, including for statistical purposes. Information about the person, including medical
 3 and health information, shall be made available to the department, the court system,
 4 and the public defender agency upon request.

5 (i) In this section,

6 (1) "person" means an individual 18 years of age or older;

7 (2) "telehealth" has the meaning given in AS 47.05.270(e).

8 * **Sec. 3.** AS 47.30.715 is amended to read:

9 **Sec. 47.30.715. Procedure after order.** When a facility receives a proper
 10 order for evaluation, it shall accept the order and the respondent for an evaluation
 11 period not to exceed 72 hours. The facility shall promptly notify the court of the date
 12 and time of the respondent's arrival. The court shall set a date, time, and place for a
 13 30-day commitment hearing, to be held if needed within 96 [72] hours after the
 14 respondent's arrival. **The date and time set for the hearing must provide adequate**
 15 **time for the facility to fully evaluate a respondent, up to the full 72 hours allotted.**
 16 **The** [, AND THE] court shall notify the facility, the respondent, the respondent's
 17 attorney, and the prosecuting attorney of the hearing arrangements. Evaluation
 18 personnel, when used, shall similarly notify the court of the date and time when they
 19 first met with the respondent.

20 * **Sec. 4.** AS 47.30.725(b) is amended to read:

21 (b) Unless a respondent is released or voluntarily admitted for treatment
 22 within 72 hours of arrival at the facility or, if the respondent is evaluated by evaluation
 23 personnel, within 72 hours from the beginning of the respondent's meeting with
 24 evaluation personnel, the respondent is entitled to a court hearing to be set for not later
 25 than **96 hours after the respondent's arrival at the facility. A respondent who is**
 26 **not released or voluntarily admitted for treatment within 72 hours may not be**
 27 **released from a facility until the hearing. The purpose of the hearing is** [THE
 28 END OF THAT 72-HOUR PERIOD] to determine whether there is cause for
 29 detention after the 72 hours have expired for up to an additional 30 days on the
 30 grounds that the respondent is mentally ill, and as a result presents a likelihood of
 31 serious harm to the respondent or others, or is gravely disabled. The facility or

1 evaluation personnel shall give notice to the court of the releases and voluntary
2 admissions under AS 47.30.700 - 47.30.815.

3 * **Sec. 5.** AS 47.30.725(f) is amended to read:

4 (f) A respondent, if represented by counsel, may waive, orally or in writing,
5 the **96-hour** [72-HOUR] time limit on the 30-day commitment hearing and have the
6 hearing set for a date **not** [NO] more than seven calendar days after arrival at the
7 facility. The respondent's counsel shall immediately notify the court of the waiver.

8 * **Sec. 6.** AS 47.30 is amended by adding a new section to read:

9 **Sec. 47.30.727. Custody of the department.** (a) Under this chapter, the
10 department is determined to have custody of a person who is the subject of an ex parte
11 order during the following times:

12 (1) upon admission to and until discharge from the state-run designated
13 evaluation and treatment facility;

14 (2) when the department or its representative takes physical control of
15 the person to transport the person to a designated treatment facility or evaluation
16 facility; custody under this paragraph ends upon admission to the designated
17 evaluation or treatment facility, unless the person is admitted to the facility under (1)
18 of this subsection.

19 (b) In this section, "custody" means that the department is responsible for the
20 physical and mental care of a person.

21 * **Sec. 7.** AS 47.30.870 is amended to read:

22 **Sec. 47.30.870. Transportation.** When a person is to be involuntarily
23 committed to a facility, **but before the person is taken into custody by the**
24 **department,** the department shall arrange, and [IS AUTHORIZED TO] pay for, the
25 person's necessary transportation to the designated facility. **When the department**
26 **takes a person into custody, the department shall arrange for the person to be**
27 accompanied by appropriate persons and, if necessary, by a peace officer. The
28 department shall pay **for** return transportation of a person, the person's escorts, and, if
29 necessary, a peace officer, after a determination that the person is not committable, at
30 the end of a commitment period, or at the end of a voluntary stay at a treatment facility
31 following an evaluation conducted in accordance with AS 47.30.715. When advisable,

1 one or more relatives or friends shall be permitted to accompany the person. The
2 department may pay necessary travel, housing, and meal expenses incurred by one
3 relative or friend in accompanying the person if the department determines that the
4 person's best interests require that the person be accompanied by the relative or friend
5 and the relative or friend is indigent.

6 * **Sec. 8.** AS 47.30.915 is amended by adding a new paragraph to read:

7 (21) "crisis stabilization center" means a designated location operated
8 by a qualified provider and certified by the department to provide short-term, direct
9 mental health services that assist with deescalating the severity of a person's level of
10 distress or need for urgent care associated with a mental health disorder.

11 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 APPLICABILITY. (a) AS 47.30.705(a), as amended by sec. 1 of this Act, and
14 AS 47.30.870, as amended by sec. 7 of this Act, apply to a person 18 years of age or older
15 taken into custody on or after the effective date of this Act.

16 (b) AS 47.30.715, as amended by sec. 3 of this Act, and AS 47.30.725(b), as amended
17 by sec. 4 of this Act, apply to court hearing dates set on or after the effective date of this Act.

18 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).