

HOUSE BILL NO. 493

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE IVAN

Introduced: 2/9/96

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to involuntary commitment for alcoholism or drug abuse."

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

3 * **Section 1.** AS 47.37.190(a) is amended to read:

4 (a) After a hearing initiated by petition of a spouse or guardian, a relative, the
5 certifying physician, or the administrator in charge of an approved public treatment
6 facility, a person may be committed to the custody of a private or public facility by
7 the superior court. The petition must allege that the person is an alcoholic **or drug**
8 **abuser** who **demonstrates increased tolerance to alcohol or drugs, who suffers**
9 **from symptoms of withdrawal when alcohol or drugs are not available, and whose**
10 **habitual lack of** [HABITUALLY LACKS] self-control **is causing significant hazard**
11 **to the person's health despite the adverse consequences of continued use** [IN
12 USING ALCOHOLIC BEVERAGES AND THAT THE PERSON (1) HAS
13 THREATENED, ATTEMPTED TO INFLICT, OR INFLICTED PHYSICAL HARM
14 ON ANOTHER AND THAT UNLESS COMMITTED IS LIKELY TO INFLICT
15 PHYSICAL HARM ON ANOTHER; OR (2) IS INCAPACITATED BY ALCOHOL].

1 A refusal to undergo treatment does not constitute evidence of lack of judgment as to
2 the need for treatment. The petition must be accompanied by a certificate of a
3 licensed physician who has examined the person within two days before submission
4 of the petition, unless the person whose commitment is sought has refused to submit
5 to a medical examination, in which case the fact of refusal must be alleged in the
6 petition. The certificate must set out the physician's findings in support of the
7 allegations of the petition.

8 * **Sec. 2.** AS 47.37.190(b) is amended to read:

9 (b) After the petition is filed, the court shall fix a date for a hearing no later
10 than 10 days after the date the petition was filed. A copy of the petition and of the
11 notice of the hearing, including the date fixed by the court, shall be served on (1) the
12 petitioner; (2) the person whose commitment is sought; (3) the next of kin of the
13 person whose commitment is sought; (4) the administrator in charge of the approved
14 public or private treatment facility in which the committed person has been committed
15 for emergency care; and (5) any other person the court considers appropriate. A copy
16 of the petition and certificate shall be delivered to each person notified.

17 * **Sec. 3.** AS 47.37.190(c) is repealed and reenacted to read:

18 (c) A person who is the subject of a petition filed under this section does not
19 have the right to a jury, except as provided under AS 47.37.200(e).

20 * **Sec. 4.** AS 47.37.200(a) is amended to read:

21 (a) At the hearing required under AS 47.37.190(b), the court [OR THE JURY,
22 IF REQUESTED UNDER AS 47.37.190(c),] shall hear all relevant testimony,
23 including, if possible, the testimony of at least one licensed physician who has
24 examined the person whose commitment is sought. The person whose commitment
25 is sought shall be present unless the court believes that being present is likely to be
26 injurious to the person, in which case the court shall appoint a guardian ad litem to
27 represent the person throughout the proceeding. The court may examine the person
28 in open court, or, if advisable, examine the person out of court. If the person has
29 refused to be examined by a licensed physician, the person shall be given an
30 opportunity to request examination by a court-appointed licensed physician. If the
31 person fails to request a medical examination and there is sufficient evidence to believe

1 that the allegations of the petition are true, or, if the court believes that more medical
2 evidence is necessary, the court may issue a temporary order committing the person
3 to a private or public facility for a period of not more than five days for purposes of
4 a diagnostic examination.

5 * **Sec. 5.** AS 47.37.200(b) is amended to read:

6 (b) If after hearing all relevant evidence, including the results of any diagnostic
7 examination by the private or public facility, the court [OR THE JURY] finds that
8 grounds for involuntary commitment have been clearly established, the court shall
9 issue an order of commitment to the private or public facility. [A COURT MAY NOT
10 ORDER THE COMMITMENT OF A PERSON UNLESS IT DETERMINES THAT
11 A PRIVATE OR PUBLIC FACILITY IS ABLE TO PROVIDE ADEQUATE AND
12 APPROPRIATE TREATMENT FOR THE PERSON.]

13 * **Sec. 6.** AS 47.37.200(c) is amended to read:

14 (c) A person committed under AS 47.37.190 - 47.37.200 shall remain in the
15 custody of a private or public facility for treatment for a period of up to 30 days. At
16 the end of the 30-day period, the person shall be discharged automatically unless the
17 **director of an approved public facility or approved private facility** [DIVISION],
18 before the expiration of the period, obtains a court order for recommitment upon the
19 grounds set out in AS 47.37.190(a) for a further period of up to **180** [90] days. If **the**
20 **condition that created the need for residential treatment still exists, the petitioner**
21 [A PERSON HAS BEEN COMMITTED BECAUSE THE PERSON IS AN
22 ALCOHOLIC LIKELY TO INFLICT PHYSICAL HARM ON ANOTHER, THE
23 DIVISION] shall apply for recommitment [IF AFTER EXAMINATION IT IS
24 DETERMINED THAT THE LIKELIHOOD STILL EXISTS].

25 * **Sec. 7.** AS 47.37.200(d) is amended to read:

26 (d) A person recommitted under (c) of this section who has not been
27 discharged by the private or public facility before the end of the **180-day** [90-DAY]
28 period shall be discharged at the expiration of that period unless the **director of the**
29 **approved public facility or approved private facility** [DIVISION], before expiration
30 of the period, obtains a court order on the grounds set out in AS 47.37.190(a) for
31 recommitment for a further period not to exceed **180** [90] days. If **the need for**

1 **residential treatment still exists, the director of the approved public facility or**
2 **approved private facility** [A PERSON HAS BEEN COMMITTED BECAUSE THE
3 PERSON IS AN ALCOHOLIC LIKELY TO INFLICT PHYSICAL HARM ON
4 ANOTHER, THE DIVISION] shall apply for recommitment [IF AFTER
5 EXAMINATION IT IS DETERMINED THAT THE LIKELIHOOD STILL EXISTS].

6 No more than two recommitment orders may be permitted under (c) of this section and
7 this subsection.

8 * **Sec. 8.** AS 47.37.200(e) is amended to read:

9 (e) Upon the filing of a petition for recommitment under (c) or (d) of this
10 section, the court shall fix a date for hearing no later than 10 days after the date the
11 petition was filed. A copy of the petition and of the notice of hearing, including the
12 date fixed by the court, shall be served on (1) the petitioner; (2) the person whose
13 commitment is sought; (3) the next of kin of the person whose commitment is sought;
14 (4) the original petitioner under AS 47.37.190(a), if different from the petitioner for
15 recommitment; (5) any other person the court considers appropriate. AS 47.37.180(c)
16 applies to hearings for recommitment under this section. At the hearing the court or
17 the jury shall proceed as provided in (a) of this section. **If, not less than two days**
18 **before the date set for a recommitment hearing under (c) or (d) of this section,**
19 **the person being recommitted or the person's counsel or advisor files a written**
20 **request with the court, the court shall summon and impanel a jury of six residents**
21 **of the judicial district to hear and consider evidence concerning the condition of**
22 **the person being recommitted.**

23 * **Sec. 9.** AS 47.37.200(g) is amended to read:

24 (g) A person committed to the custody of **an approved public facility or an**
25 **approved private facility** [THE DIVISION FOR TREATMENT] shall be discharged
26 at any time before the end of the period for which the person has been committed if
27 either of the following conditions is met:

28 (1) [WHEN AN ALCOHOLIC COMMITTED ON THE GROUNDS
29 OF LIKELIHOOD OF INFLICTION OF PHYSICAL HARM ON ANOTHER IS NO
30 LONGER CONSIDERED AN ALCOHOLIC OR THE LIKELIHOOD OF THE
31 PERSON INFLICTING PHYSICAL HARM NO LONGER EXISTS; OR

1 (2) WHEN, IN THE CASE OF AN ALCOHOLIC COMMITTED ON
2 THE GROUNDS OF THE LIKELIHOOD OF INFLICTION OF PHYSICAL HARM
3 ON ANOTHER, EITHER

4 (A)] further treatment will not be likely to bring about
5 significant improvement in the person's condition; [,] or

6 (2) [(B)] treatment is no longer adequate or appropriate.

7 * **Sec. 10.** AS 47.37.200(h) is amended to read:

8 (h) The court shall inform the person whose commitment or recommitment is
9 sought of the right to contest the application, be represented by counsel at every stage
10 of the proceedings relating to commitment and recommitment, **and** to have counsel
11 appointed by the court or provided by the court [,] if the person is unable to obtain
12 counsel [, AND TO A JURY TRIAL, IF REQUESTED, AS SPECIFIED IN
13 AS 47.37.190(c)]. If the court believes that the person needs the assistance of counsel,
14 the court shall require counsel, by appointment if necessary, regardless of the person's
15 objection. The person whose commitment or recommitment is sought shall be
16 informed of the right to be examined by a licensed physician of the person's choice.
17 If the person is unable to obtain a licensed physician and requests examination by a
18 physician, the court shall employ a licensed physician for the examination.

19 * **Sec. 11.** AS 47.37.270(1) is amended to read:

20 (1) "alcoholic **or drug abuser**" means a person who **demonstrates**
21 **increased tolerance to alcohol or drugs, who suffers from withdrawal when**
22 **alcohol or drugs are not available, whose habitual lack of self-control causes**
23 **significant hazard to the person's health, and who continues to use alcohol or**
24 **drugs despite the adverse consequences** [HABITUALLY LACKS SELF-CONTROL
25 IN USING ALCOHOLIC BEVERAGES, OR USES ALCOHOLIC BEVERAGES TO
26 THE EXTENT THAT THE PERSON'S HEALTH IS SUBSTANTIALLY IMPAIRED
27 OR ENDANGERED, OR THE PERSON'S SOCIAL OR ECONOMIC FUNCTION
28 IS SUBSTANTIALLY DISRUPTED];

29 * **Sec. 12.** AS 47.37.270(10) is amended to read:

30 (10) "incapacitated by alcohol" means a person who is unconscious or
31 whose judgment is otherwise so impaired that the person is incapable of realizing and

1 making a rational decision with respect to a need for treatment [, AS EVIDENCED
2 OBJECTIVELY BY EXTREME PHYSICAL DEBILITATION, PHYSICAL HARM
3 OR THREATS OF HARM TO OTHERS OR CHRONIC INABILITY TO HOLD
4 REGULAR EMPLOYMENT];

5 * **Sec. 13.** AS 47.37.270(13) is amended to read:

6 (13) "intoxicated person" means a person whose mental or physical
7 functioning is substantially impaired as a result of the use of alcohol **or drugs**;

8 * **Sec. 14.** AS 47.37.270(14) is amended to read:

9 (14) "treatment" means the broad range of emergency, outpatient,
10 intermediate, and inpatient services and care that may be extended to alcoholics,
11 [AND] intoxicated persons, **or drug abusers**, including diagnostic evaluation, medical,
12 psychiatric, psychological, and social service care, vocational rehabilitation and career
13 counseling;