

CS FOR HOUSE BILL NO. 493(JUD) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 4/18/96

Offered: 3/19/96

Sponsor(s): REPRESENTATIVE IVAN

SENATOR Halford

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to treatment for alcoholism or drug abuse."**

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

3 * **Section 1.** AS 47.37.170(b) is amended to read:

4 (b) A person who appears to be incapacitated by alcohol or drugs in a public
5 place shall be taken into protective custody by a peace officer or a member of the
6 emergency service patrol and immediately brought to an approved public treatment
7 facility, an approved private treatment facility, or another appropriate health facility
8 or service for emergency medical treatment. If no treatment facility or emergency
9 medical service is available, a person who appears to be incapacitated by alcohol or
10 drugs in a public place shall be taken to a state or municipal detention facility in the
11 area [,] if that appears necessary for the protection of the person's health or safety.

12 * **Sec. 2.** AS 47.37.170(d) is amended to read:

13 (d) A person who, after medical examination at an approved private
14 treatment facility, or another appropriate health facility or service for emergency
15 medical treatment, is found to be incapacitated by alcohol or drugs at the time of

1 admission or to have become incapacitated by alcohol or drugs at any time after
2 admission, may not be detained at a facility after the person is no longer incapacitated
3 by alcohol or drugs. A person may not be detained at a facility if the person remains
4 incapacitated by alcohol for more than 48 hours after admission as a patient [,
5 UNLESS THE PERSON IS COMMITTED UNDER AS 47.37.180]. A person may
6 consent to remain in the facility as long as the physician in charge considers it
7 appropriate.

8 * **Sec. 3.** AS 47.37.170(f) is amended to read:

9 (f) If a patient is admitted to an approved public treatment facility, family or
10 next of kin shall be promptly notified. If an adult patient who is not incapacitated by
11 alcohol or drugs requests that there be no notification of next of kin, the request shall
12 be granted.

13 * **Sec. 4.** AS 47.37.170(g) is amended to read:

14 (g) A person may not bring an action for damages based on the decision under
15 this section to take or not to take an intoxicated person or a person incapacitated by
16 alcohol or drugs into protective custody, unless the action is for damages caused by
17 gross negligence or intentional misconduct.

18 * **Sec. 5.** AS 47.37.170(i) is amended to read:

19 (i) A person taken to a detention facility under (a) or (b) of this section may
20 be detained only (1) until a treatment facility or emergency medical service is made
21 available, [OR] (2) until the person is no longer intoxicated or incapacitated by alcohol
22 or drugs, or (3) for a maximum period of 12 hours, whichever occurs first. A
23 detaining officer or a detention facility official may release a person who is detained
24 under (a) or (b) of this section at any time to the custody of a responsible adult. A
25 peace officer or a member of the emergency service patrol, in detaining a person under
26 (a) or (b) of this section and in taking the person to a treatment facility, an emergency
27 medical service, or a detention facility, is taking the person into protective custody and
28 the officer or patrol member shall make reasonable efforts to provide for and protect
29 the health and safety of the detainee. In taking a person into protective custody under
30 (a) and (b) of this section, a detaining officer, a member of the emergency service
31 patrol, or a detention facility official may take reasonable steps for self-protection,
32 including a full protective search of the person of a detainee. Protective custody under

1 (a) and (b) of this section does not constitute an arrest and no entry or other record
2 may be made to indicate that the person detained has been arrested or charged with a
3 crime, except that a confidential record may be made **that** [WHICH] is necessary for
4 the administrative purposes of the facility to which the person has been taken or **that**
5 [WHICH] is necessary for statistical purposes where the person's name may not be
6 disclosed.

7 * **Sec. 6.** AS 47.37.180(a) is amended to read:

8 (a) An intoxicated person who (1) has threatened, attempted to inflict, or
9 inflicted physical harm on another or is likely to inflict physical harm on another
10 unless committed, or (2) is incapacitated by alcohol **or drugs**, may be committed to an
11 approved public treatment facility for emergency treatment. A refusal to undergo
12 treatment does not constitute evidence of lack of judgment as to the need for treatment.

13 * **Sec. 7.** AS 47.37.190(a) is amended to read:

14 (a) A [AFTER A HEARING INITIATED BY PETITION OF A] spouse or
15 guardian, a relative, the certifying physician, or the administrator in charge of an
16 approved public treatment facility **may petition the court for a 30-day involuntary**
17 **commitment order** [, A PERSON MAY BE COMMITTED TO THE CUSTODY OF
18 A PRIVATE OR PUBLIC FACILITY BY THE SUPERIOR COURT]. The petition
19 must allege that the person is an alcoholic **or drug abuser** who [HABITUALLY
20 LACKS SELF-CONTROL IN USING ALCOHOLIC BEVERAGES AND THAT THE
21 PERSON] (1) has threatened, attempted to inflict, or inflicted physical harm on another
22 and that unless committed is likely to inflict physical harm on another; or (2) is
23 incapacitated by alcohol **or drugs**. A refusal to undergo treatment does not constitute
24 evidence of lack of judgment as to the need for treatment. The petition must be
25 accompanied by a certificate of a licensed physician who has examined the person within
26 two days before submission of the petition, unless the person whose commitment is
27 sought has refused to submit to a medical examination, in which case the fact of refusal
28 must be alleged in the petition. The certificate must set out the physician's findings in
29 support of the allegations of the petition.

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

31 (b) After the petition is filed, the court shall fix a date for a hearing no later than
32 10 days after the date the petition was filed. A copy of the petition and of the notice of

1 the hearing, including the date fixed by the court, shall be served on

2 (1) the petitioner;

3 (2) the person whose commitment is sought or the person's guardian,

4 if any;

5 (3) the attorney representing [NEXT OF KIN OF] the person whose
6 commitment is sought;

7 (4) the administrator in charge of the approved public or private
8 treatment facility in which the committed person has been committed for emergency
9 care; and

10 (5) any other person the court considers appropriate. [A COPY OF THE
11 PETITION AND CERTIFICATE SHALL BE DELIVERED TO EACH PERSON
12 NOTIFIED.]

13 * **Sec. 9.** AS 47.37.190(c) is repealed and reenacted to read:

14 (c) A person who is the subject of a petition filed under this section does not
15 have the right to a jury.

16 * **Sec. 10.** AS 47.37.200 is repealed and reenacted to read:

17 Sec. 47.37.200. HEARING ON PETITION FOR INVOLUNTARY
18 COMMITMENT. (a) At the hearing for a 30-day commitment required under
19 AS 47.37.190(b), the court shall hear all relevant testimony, including, if possible, the
20 testimony of at least one licensed physician who has examined the person whose
21 commitment is sought. The person whose commitment is sought shall be present unless
22 the court believes that being present is likely to be injurious to the person, in which case
23 the court may conduct the hearing telephonically. The court may examine the person in
24 open court, or, if advisable, examine the person out of court. If the person has refused
25 to be examined by a licensed physician, the person shall be given an opportunity to
26 request examination by a court-appointed licensed physician. If the person fails to
27 request a medical examination and there is sufficient evidence to believe that the
28 allegations of the petition are true, or, if the court believes that more medical evidence
29 is necessary, the court may issue a temporary order committing the person to a private
30 or public facility for a period of not more than five days for purposes of a diagnostic
31 examination.

32 (b) If after hearing all relevant evidence, including the results of any diagnostic

1 examination by the private or public facility, the court finds that grounds for involuntary
2 commitment have been clearly established, the court shall issue an order of 30-day
3 commitment to the private or public facility.

4 (c) A person committed for a 30-day period shall remain in the custody of a
5 private or public facility for treatment for a period of not more than 30 days. At the end
6 of the 30-day period, the person shall be automatically discharged unless the director of
7 the approved public facility or approved private facility, before the expiration of the
8 period, files a petition for recommitment under AS 47.37.205.

9 (d) A private or public facility shall provide adequate and appropriate treatment
10 for a person in its custody. A public facility may transfer a person in its custody from
11 one approved public treatment facility to another if the transfer is medically advisable.

12 (e) A person committed to the custody of an approved public facility or an
13 approved private facility shall be discharged at any time before the end of the period for
14 which the person has been committed if either of the following conditions is met:

15 (1) further treatment is not likely to bring about significant improvement
16 in the person's condition; or

17 (2) treatment is no longer adequate or appropriate.

18 (f) The court shall inform the person whose commitment or recommitment is
19 sought of the right to contest the petition, to be represented by counsel at every stage of
20 the proceedings relating to commitment and recommitment, to have counsel appointed
21 by the court or provided by the court, if the person is unable to obtain counsel, and of
22 the right to a jury trial if recommitment is sought under AS 47.37.205. The person
23 whose commitment or recommitment is sought shall be informed of the right to be
24 examined by a licensed physician of the person's choice. If the person is unable to
25 obtain a licensed physician and requests examination by a physician, the court shall
26 appoint a licensed physician for the examination.

27 (g) If a private treatment facility agrees with the request of a competent patient
28 or the patient's parent, adult sibling, adult child, or guardian to accept the patient for
29 treatment, the administrator of the public treatment facility shall transfer the patient to
30 the private treatment facility.

31 (h) A person committed under this chapter may at any time seek discharge from
32 commitment by writ of habeas corpus under AS 12.75.

1 * **Sec. 11.** AS 47.37 is amended by adding a new section to read:

2 Sec. 47.37.205. PROCEDURE FOR RECOMMITMENT FOLLOWING 30-
3 DAY COMMITMENT. (a) At any time during a person's 30-day commitment, the
4 director of an approved public facility or approved private facility may file with the court
5 a petition for a 180-day commitment of that person. The petition must include all
6 material required under AS 47.37.190(a) except that references to "30 days" shall be read
7 as "180 days" and must allege that the person continues to be an alcoholic or drug abuser
8 who is incapacitated by alcohol or drugs, or who continues to be at risk of serious
9 physical harm or illness.

10 (b) Upon the filing of a petition for recommitment under (a) of this section, the
11 court shall fix a date for hearing no later than 10 days after the date the petition was
12 filed. A copy of the petition and of the notice of hearing, including the date fixed by
13 the court, shall be served on

14 (1) the petitioner;

15 (2) the person whose recommitment is sought or the person's guardian,
16 if any;

17 (3) the attorney representing the person whose recommitment is sought;

18 (4) the original petitioner under AS 47.37.190(a), if different from the
19 petitioner for recommitment;

20 (5) any other person the court considers appropriate.

21 (c) If, not less than two days before the date set for a recommitment hearing
22 under (a) of this section, the person being recommitted or the person's counsel or advisor
23 files a written request with the court, the court shall summon and impanel a jury of six
24 residents of the judicial district to hear and consider evidence concerning the condition
25 of the person being recommitted.

26 (d) At the hearing regarding recommitment for a 180-day period, the court or
27 jury shall proceed as provided in AS 47.37.200(a) and (b).

28 (e) The provisions of AS 47.37.200(c) - (h) shall apply equally to periods of
29 recommitment under this section, except that references to "30 days" shall be read as
30 "180 days."

31 * **Sec. 12.** AS 47.37 is amended by adding a new section to read:

32 Sec. 47.37.207. UNAUTHORIZED ABSENCES: RETURN TO FACILITY.

1 When a person committed under AS 47.37.190 - 47.37.205 is absent from a treatment
2 facility without authorization, the administrator, or that person's designee, may contact
3 peace officers who shall take the person into custody and return the respondent to the
4 treatment facility.

5 * **Sec. 13.** AS 47.37.210(b) is amended to read:

6 (b) Notwithstanding (a) of this section, the director may make available
7 information from patients' records for purposes of research into the causes and
8 treatment of alcoholism **or drug abuse. Information** [. NO INFORMATION] may
9 **not** disclose a patient's name.

10 * **Sec. 14.** AS 47.37 is amended by adding a new section to read:

11 Sec. 47.37.235. LIMITATIONS ON LIABILITY; BAD FAITH
12 APPLICATION A FELONY. (a) Except as provided under (b) of this section, a
13 person acting in good faith upon either actual knowledge or reliable information who
14 takes a person into protective custody or detains a person under AS 47.37.170 -
15 47.37.180, or who petitions for commitment under AS 47.37.180 - 47.37.205, is not
16 subject to civil or criminal liability.

17 (b) The following persons may not be held civilly or criminally liable for
18 detaining a person under AS 47.37.170 - 47.37.270 or for releasing a person under
19 AS 47.37.170 - 47.37.270 at or before the end of the period for which the person was
20 admitted or committed for protective custody or treatment if the persons have
21 performed their duties in good faith and without gross negligence:

22 (1) an officer of an approved public or private treatment facility;

23 (2) the administrator of an approved public or private treatment facility,
24 and the staff of an approved public or private treatment facility;

25 (3) a public official performing functions necessary to the
26 administration of AS 47.37.170 - 47.37.270;

27 (4) a peace officer or other person responsible for detaining or
28 transporting a person under AS 47.37.170 - 47.37.270.

29 (c) A person who wilfully initiates an involuntary commitment petition under
30 AS 47.37.180 - 47.37.205 without having good cause to believe that the other person
31 is an alcoholic or drug abuser and is incapacitated or at risk of serious physical harm

1 or illness if not treated is guilty of a class C felony.

2 * **Sec. 15.** AS 47.37.270(1) is amended to read:

3 (1) "alcoholic or drug abuser" means a person who **demonstrates**
4 **increased tolerance to alcohol or drugs, who suffers from withdrawal when alcohol**
5 **or drugs are not available, whose habitual lack of self-control concerning the use**
6 **of alcohol or drugs causes significant hazard to the person's health, and who**
7 **continues to use alcohol or drugs despite the adverse consequences** [HABITUALLY
8 LACKS SELF-CONTROL IN USING ALCOHOLIC BEVERAGES, OR USES
9 ALCOHOLIC BEVERAGES TO THE EXTENT THAT THE PERSON'S HEALTH IS
10 SUBSTANTIALLY IMPAIRED OR ENDANGERED, OR THE PERSON'S SOCIAL
11 OR ECONOMIC FUNCTION IS SUBSTANTIALLY DISRUPTED];

12 * **Sec. 16.** AS 47.37.270(10) is amended to read:

13 (10) "incapacitated by alcohol or drugs" means a person who, **as a**
14 **result of alcohol or drugs**, is unconscious or whose judgment is otherwise so impaired
15 that the person **(A)** is incapable of realizing and making [A] rational **decisions**
16 [DECISION] with respect to **the** [A] need for treatment **and (B) is unable to take care**
17 **of the person's basic safety or personal needs, including food, clothing, shelter, or**
18 **medical care** [, AS EVIDENCED OBJECTIVELY BY EXTREME PHYSICAL
19 DEBILITATION, PHYSICAL HARM OR THREATS OF HARM TO OTHERS OR
20 CHRONIC INABILITY TO HOLD REGULAR EMPLOYMENT];

21 * **Sec. 17.** AS 47.37.270(13) is amended to read:

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

24 * **Sec. 18.** AS 47.37.270(14) is amended to read:

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

29 * **Sec. 19.** AS 47.37.270 is amended by adding a new paragraph to read:

30 (16) "drugs" means a drug that is included in the controlled substance
31 schedules set out in AS 11.71.140 - 11.71.190.

32 * **Sec. 20.** AS 47.37.170(j) is repealed.