

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

February 15, 2012

1:33 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Dennis Egan
Senator Johnny Ellis
Senator Kevin Meyer
Senator Fred Dyson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 134

"An Act relating to child support awards; and repealing Rule 90.3, Alaska Rules of Civil Procedure."

- MOVED CSSB 134(HSS) OUT OF COMMITTEE

SENATE BILL NO. 55

"An Act relating to mental health patient rights, notifications, and grievance procedures."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 134

SHORT TITLE: CHILD SUPPORT AWARDS

SPONSOR(s): SENATOR(s) KOOKESH

01/17/12	(S)	PREFILE RELEASED 1/6/12
01/17/12	(S)	READ THE FIRST TIME - REFERRALS
01/17/12	(S)	HSS, JUD
02/06/12	(S)	HSS AT 1:30 PM BELTZ 105 (TSBldg)
02/06/12	(S)	Heard & Held
02/06/12	(S)	MINUTE(HSS)
02/15/12	(S)	HSS AT 1:30 PM BUTROVICH 205

BILL: SB 55

SHORT TITLE: MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES

SPONSOR(s): SENATOR(s) DAVIS

01/19/11 (S) READ THE FIRST TIME - REFERRALS
01/19/11 (S) HSS, FIN
02/15/12 (S) HSS AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

KIMBERLY CLARK, Staff
Senator Albert Kookesh
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained changes to SB 134 on behalf of the sponsor.

JOHN MALLONEE, Director
Child Support Services Division
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions related to SB 134.

THOMAS OBERMEYER, Staff
Senator Bettye Davis
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 55 on behalf of the sponsor.

JEAN MISCHEL, Legislative Counsel
Division of Legal and Research Services
Legal Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Explained the changes in version T of SB 55.

KATE BURKHART, Executive Director
Alaska Mental Health Board
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding SB 55.

JIM GOTTSTEIN
Law Project on Psychiatric Rights
Anchorage, Alaska

POSITION STATEMENT: Commented on SB 55.

FAITH MEYER, Mental Health Advocate
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 55.

DORRANCE COLLINS, Mental Health Advocate
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 55.

ACTION NARRATIVE

[1:33:15 PM](#)

CHAIR BETTYE DAVIS called the Senate Health and Social Services Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators, Meyer, Egan, Dyson, and Chair Davis. Senator Ellis arrived during the course of the meeting.

SB 134-CHILD SUPPORT AWARDS

[1:34:02 PM](#)

CHAIR DAVIS announced that the first order of business would be SB 134.

SENATOR EGAN moved to adopt the proposed CS for SB 134, labeled 27-LS0671\B, as the working document before the committee.

CHAIR DAVIS objected for discussion purposes.

KIMBERLY CLARK, staff, Senator Albert Kookesh, explained the changes to version B on behalf of the sponsor. She said the first change is on page 1, line 2; the words "and providing for an effective date" were added.

The second change is on page 15, line 4; the following words were added: "for the purpose of establishing a monthly support obligation for monthly health care expenses, a tribunal shall apply a reviewable presumption that the cost of health insurance is reasonable under this section if the cost of purchasing health insurance does not exceed five percent of the responsible parent's net income."

The third change is on page 16, line 2; the following words were removed: "if a party has made a reasonable demand for documentation under the subsection, a tribunal may modify a child support arrears retroactively."

The fourth change is on page 16, line 29; the words "and AS 25.28.050(b)" were removed.

CHAIR DAVIS asked if anything was added in that section.

MS. CLARK said no.

She continued to explain that another change is on page 18, line 1; the section was changed to AS 25.28.095, which is the review of the guidelines. The following words were added: "The child support services agency established in AS 25.27.010 shall notify the legislative committees with jurisdiction over matters involving child support awards of the need for a compliance review of the guidelines established in this chapter every four years as provided in federal law. The compliance review must include a determination of whether the application of the guidelines consistently results in a determination of appropriate child support awards in the state."

On page 18, line 8, the section number was corrected. On page 19, lines 22-23, Section 6 was added as follows: "The uncodified law of the State of Alaska is amended by adding a new section to read: TRANSITION; CHILD SUPPORT SERVICES AGENCY. The child support services agency established in AS 25.27.010 may proceed to adopt regulations necessary to implement the changes made by AS 25.28, enacted by sec. 1 of this Act, but the regulations may not take effect before the effective date of Section 1 of this act."

Section 7 was added on line 28. It states that, "Section 6 of this Act takes effect immediately under AS 01.10.070(c)."

Section 8 was added on line 29. It states, "Except as provided in Section 7 of this Act, this Act takes effect July 1, 2013."

JOHN MALLONEE, Director, Child Support Services Division, Department of Revenue (DOR), noted the changes addressed concerns from the last meeting.

CHAIR DAVIS said she would provide a copy of the document for Mr. Mallonee.

[1:40:35 PM](#)

SENATOR MEYER asked if there was a Department of Health and Social Services (DHSS) fiscal note.

MR. MALLONEE replied that there was a fiscal note from Department of Revenue for about \$6.7 million.

CHAIR DAVIS stated that it was her intention to move the bill. She asked where it would be heard next.

MS. CLARK said it would be heard next in the Senate Judiciary Standing Committee.

[1:42:08 PM](#)

CHAIR DAVIS understood that all concerns were included in the new CS. She noted the bill has two more committee hearings.

SENATOR EGAN moved to report the CS for SB 134, version B, from committee with individual recommendations and the attached fiscal notes.

CHAIR DAVIS announced that without objection, CSSB 134(STA) was reported from committee.

SB 55-MENTAL HEALTH PATIENT RIGHTS & GRIEVANCES

[1:45:19 PM](#)

CHAIR DAVIS announced that the next bill before the committee would be SB 55, an Act relating to a mental health patient's rights, notifications, and grievance procedures.

SENATOR EGAN moved to adopt the proposed CS for SB 55, labeled 27-LS0082\T, as the working document before the committee.

CHAIR DAVIS objected for discussion purposes.

THOMAS OBERMEYER, staff, Senator Bettye Davis, introduced SB 55 on behalf of the sponsor. He read from the following sponsor statement:

SB 55 amends the one-paragraph mental health grievance procedure provided under AS 47.30.847. This bill governs due process and grievance procedures in all state and private mental health hospitals, clinics, and units which receive public funds. Prompted by the 8,000-10,000 admissions to mental health facilities and units in Alaska each year where there are relatively few formal grievances filed, this bill requires adequate notice, forms, advocate assistance, rapid written administrative response, right to appeal, and telephonic access to a state monitored call center to lodge a complaint immediately.

Mental health patients are among the most vulnerable in Alaska. Among the thousands of individuals civilly committed or brought into locked hospital psychiatric units for forced evaluations each year, some are in

handcuffs, shackles or strapped to a gurney, involuntarily medicated without consent of family or legal representative, or court ordered to receive or continue psychiatric treatment in public, private, or non-profit psychiatric clinics. There are hundreds of patient assaults and staff injuries each year. There are also thousands of children who are voluntarily committed each year usually in private facilities. Although sometimes treated with psychotropic drugs, children are considered better protected by the state, family members, legal representatives, and attorney advocates.

Current statutes and regulations do little to protect psychiatric patients civilly committed 30 to 60 days, individuals detained for forced evaluation up to 7 days, or individuals detained in a jail or in a psychiatric emergency room or private unit while waiting for space in a psychiatric hospital. State and federal courts have consistently ruled that individuals who have not committed a crime and are locked up for psychiatric evaluation and treatment should not be treated like criminals and their rights are to remain intact to the greatest extent possible. Ironically, prisoners in Alaska's correctional system are afforded a much more comprehensive grievance procedure with due process rights and protections under the law than mental health patients.

Upon admission to a mental health facility patients often experience an immediate loss of liberty and freedom, arbitrary exercise of authority, and may be institutionally traumatized in the process. Because of the exceptional circumstances under which mental health patients are admitted and treated, due process requires special safeguards in transparent, readily available grievance procedures and more state oversight. This bill will reduce unnecessary patient trauma, assaults, unintentional injury or death, and attendant liability and litigation experienced in other states before statutory reform.

New grievance procedures under SB 5 require detailed complaint forms, three levels of administrative review requiring written answers by within 5 days by supervisory and executive staff at levels one and two, including response to urgent grievances within 24

hours. A level three final administrative appeal to the commissioner must be answered within 14 days after filing or by default is denied. A commissioner's final decision may be appealed to Superior Court within 30 days. A grievance may be filed at any time, but there is a statutory limitation of one year after being discharged from the facility or unit. All grievances filed shall become part of the patient's permanent record. Mental health facilities and units must file periodic reports of the number and type of grievances and resolutions, including litigation. The bill allows for a personal representative to act in the interest of the patient in the grievance process, as well as providing a patient advocate appointed in the mental health facility or unit.

Although it is counterintuitive that more verbal and written complaints are not reported to the state or documented each year, including an estimated 250 at the Alaska Psychiatric Institute which may treat an estimated 1200 to 1500 patients per year, many facilities in this rapidly growing area of mental health are privately held and not presently compelled to report to the state Division of Behavioral Health. Private hospitals presently may only report mental health complaints to the Joint Commission for the Accreditation of Hospital Organizations (JCAHO), not the state. Furthermore, JCAHO reportedly may only review grievance procedures in participating hospitals every 2-3 years. Also, many grievances in the past have been handled verbally without creating a patient record and in-patient stays are often very short from a couple of days up to a week or two. Passage of SB 55 will improve mental health treatment, grievance reporting, and state oversight.

MR. OBERMEYER related that Wilda Laughlin from the Department of Health and Social Services (DHSS) and Kate Burkhart from the Mental Health Board have concerns.

CHAIR DAVIS requested a summary of all changed in version T.

[1:53:32 PM](#)

JEAN MISCHEL, Legislative Counsel, Division of Legal and Research Services, Legal Affairs Agency, explained the changes in version T of SB 55. She related that page 2, line 22, to page

3, line 5, contains several additional patient rights for people undergoing evaluation or treatment in a mental health facility. She noted the patient grievance procedure has been modified in Version T to exclude the hearing officer and the administrative hearing office. On page 5, changes were made regarding the grievance process. Page 6 clarifies the urgent level of review. On page 8, the definition of the facility was changed.

[2:00:48 PM](#)

KATE BURKHART, Executive Director, Alaska Mental Health Board, said she was speaking on behalf of the board and she had provided written comments in members' packets. She said today she would discuss the scope of the bill, how the bill fits into the accepted administrative law tenants, and the issue of emergency grievance.

MS. BURKHART thanked the sponsor and noted that SB 55 has come a long way in meeting the sponsor's intent to improve access to a grievance procedure for vulnerable Alaskans. She addressed the scope of the bill. She said she hopes that the improved definition of "facility" limits the scope of SB 55 to "designated evaluation and treatment facilities," or hospitals with mental health units to which a person is committed involuntarily under Title 47. However, there are references in the CS that could apply SB 55 to community behavioral health centers and providers of voluntary mental health services. She related the differences between voluntary and involuntary treatment services. She suggested clearly defining the treatment setting in the bill and limiting it to hospital settings.

MS. BURKHART opined if SB 55 were to apply to community behavioral health providers, it would create a conflict related to patient grievances. Anyone who receives Medicaid dollars is required to comply with federal grievance regulations. The Division of Behavior Health also has a layer of requirements. A grievance process can be included in the bill as long as all layers are taken into consideration.

MS. BURKHART noted that the definition of "grievance" in the bill no longer conflicts with federal regulations.

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MS. BURKHART addressed how SB 55 fits in with administrative procedures. Other than the Alaska Psychiatric Institute, the providers of involuntary mental health services are private, non-profit hospitals. They are not administrative agencies and receipt of state funds does not convert them into administrative

agencies. She explained that level three reviews, which require the commissioner to make a determination, do not work because, under administrative law, hospitals do not have to submit to the commissioner's determination.

MS. BURKHART voiced concern about the shifting of the burden of proof in the CS. As written now, the hospital has the burden of proof to prove something did not happen. Usually, the patient has to prove that something happened. Vulnerable patients are not always able to do so and the bill provides for patient advocates. She opined that shifting the burden of proof creates an environment where the mental health provider has to prove that something did not happen, which is not fair to the provider. She suggested the patient have representation.

MS. BURKHART addressed emergency grievances that were included in the CS due to concern that the department was not tracking violent offenses against patients. All incidents are reported to the department and tracked. She emphasized that crimes against disabled people are often marginalized. She stressed that crimes are not grievances and should be reported to law enforcement.

[2:10:28 PM](#)

SENATOR DYSON asked if Chair Davis would address those concerns.

CHAIR DAVIS said she would look at them, but not address them today.

SENATOR DYSON asked if the bill would pass from committee today.

CHAIR DAVIS stated her intention to not move the bill today.

SENATOR DYSON reserved his questions for the new version of the bill.

SENATOR DYSON asked what size small community-based institutions are.

MS. BURKHART explained that it depends on the community.

SENATOR DYSON noted he has seen an abuse of overmedicated patients.

[2:13:15 PM](#)

MS. BURKHART agreed that there were people who believed in medication as the answer; however, some people do not believe in

medication. She said she believed that the answer lies somewhere in between.

SENATOR DYSON asked if Ms. Burkhart thought there was a problem with overmedication and if there were remedies.

MS. BURKHART suggested in a community setting the remedy is to work with a treatment team. In a hospital setting, the remedy is through the court system. She said she did not believe overmedication was pervasive.

SENATOR DYSON asked if anything needs to be changed in statute to assist overmedicated patients.

MS. BURKHART suggested increasing the number of patient advocates. She opined that in a hospital, a grievance procedure with a patient advocate is the way to go.

SENATOR DYSON said he thought he heard "no."

[2:16:07 PM](#)

JIM GOTTSTEIN, Law Project on Psychiatric Rights, commented on SB 55. He related his experience with court appeals being detrimental to patients due to high costs if the person loses. He suggested on page 5, line 23, adding "if such an appeal is filed, no attorney fee award against the grievant may be ordered by the court." He stressed it was important to beef up the grievance procedures and put them in regulation. He said there are not adequate remedies for overmedication and suggested the system needs to have non-medication alternatives.

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FAITH MEYER, Mental Health Advocate, testified in support of SB 55. She agreed that grievance procedures should be improved because they are inadequate. She related that no patient in 2005-2006 was allowed to file a grievance. She concluded that current statute was poorly written and does not include due process or an appeal process.

[2:24:32 PM](#)

DORRANCE COLLINS, Mental Health Advocate, testified in support of SB 55. He discussed the lack of grievance procedure rules to protect patient rights. He recalled the history of API's restrictions of patient's rights. He made suggestions for wording changes in the bill.

CHAIR DAVIS asked if Mr. Collins was working off of version T.

MR. COLLINS said he was. He noted that he has provided written testimony.

CHAIR DAVIS noted that the committee would continue to work on SB 55.

SENATOR DYSON thanked the sponsor.

[2:30:02 PM](#)

There being no further business to come before the committee, Chair Davis adjourned the Senate Standing Health and Social Services Committee at 2:30 p.m.