ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE
March 11, 2020
2:03 p.m.

MEMBERS PRESENT

Senator David Wilson, Chair
Senator Natasha von Imhof, Vice Chair
Senator Cathy Giessel
Senator Mike Shower
Senator Tom Begich

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 238
"An Act relating to involuntary commitment procedures; relating to protective custody at a correctional facility or jail; relating to transportation of individuals held for involuntary admission for mental health treatment; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 179
"An Act relating to the licensure of nursing professionals; relating to a multistate nurse licensure compact; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 238
SHORT TITLE: INVOLUNTARY COMMITMENT;PROTECTIVE CUSTODY
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/28/20	(S)	READ THE FIRST TIME - REFERRALS
02/28/20	(S)	HSS, JUD
03/11/20	(S)	HSS AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

ALBERT WALL, Deputy Commissioner
Department of Health and Social Services (DHSS)
Anchorage, Alaska
POSITION STATEMENT: Presented an overview of SB 238.

STEVEN BOOKMAN, Assistant Attorney General
Civil Division
Human Services Section
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Answered questions during the hearing on SB 238.

ACTION NARRATIVE

2:03:42 PM
CHAIR DAVID WILSON called the Senate Health and Social Services Standing Committee meeting to order at 2:03 p.m. Present at the call to order were Senators Giessel, von Imhof, and Chair Wilson. Senators Shower and Begich arrived shortly thereafter.

SB 238-INVOLUNTARY COMMITMENT;PROTECTIVE CUSTODY

2:04:06 PM
CHAIR WILSON announced the consideration of SENATE BILL NO. 238, "An Act relating to involuntary commitment procedures; relating to protective custody at a correctional facility or jail; relating to transportation of individuals held for involuntary admission for mental health treatment; and providing for an effective date."

CHAIR WILSON stated his intention to hear an overview of the bill and take public testimony.

2:04:46 PM
ALBERT WALL, Deputy Commissioner, Department of Health and Social Services (DHSS), Anchorage, Alaska, said SB 238 addresses existing gaps in civil commitment law in four ways: 1. It will make clear that a person can be held in protective custody in a correctional facility or jail only when absolutely necessary and for the absolute minimum amount of time; 2. It will outline the responsibilities of DHSS, the Department of Corrections (DOC), and the Alaska Court System, such that when a person is placed in emergency protective custody, the individual's health and safety is protected and the person is reevaluated every 48

hours. And the person will automatically have a court review hearing within 96 hours; 3. The proposed legislation will protect Alaskans' privacy and civil rights by ensuring a person receives the full 72 hour period of evaluation before the person can be involuntarily committed for 30 days. It will also prohibit creating a record indicating that the person was arrested or charged with a crime; and 4. It more clearly defines when DHSS has custody of a person and requires the department to provide transportation for the person. It will create efficient chains of communications through the requirement that DOC must notify DHSS and DHSS must file the necessary reports with the courts.

MR. WALL said the bill is designed to reduce instances of people awaiting treatment in DOC and provide a process of systemwide accountability to protect an individual's rights. DHSS recently submitted a report to the court addressing gaps in the inpatient psychiatric system. The department committed to ongoing efforts to identify and improve gaps in the system of care, including legal gaps. SB 238 is an important part of that plan.

2:07:28 PM
MR. WALL presented the sectional analysis for SB 238:

> Section 1: Removes the reference when a person can be held in protective custody (now addressed in section 2) and adds "emergency" to state "emergency protective custody under this section may not include placement of a minor in a jail or secure facility."
>
> Section 2: Creates AS 17.30.706"Protective custody at a correctional facility or jail. The new statute only allows placement at a correctional facility if no designated treatment or evaluation facility, crisis stabilization center, or health care facility has the "capacity to safely admit the person within a reasonable amount of time." Once the person is under protective custody, they can only be held there while transport arrangements are made. The correctional facility/jail must notify the Department of Health and Social Services (DHSS) as soon as practicable if they have a person in protective custody, and then the DHSS makes arrangements for transport and admission to a designated treatment or evaluation facility. If the person remains in protective custody for more than 48 hours without a plan in place to transport within the next 12 hours, the DHSS will provide an evaluator

every 48 hours to determine if the person still meets the criteria for probable cause for the ex parte hold. The DHSS will notify the court if the person is released or if the person is being held and what the transfer plan is. The court is required to conduct a review hearing no later than 96 hours after the person is placed in protective custody. The correctional facility/jail is required to take reasonable steps to protect the person's health and safety and is permitted to take reasonable steps for protection of others. Finally, the statute prohibits making a record that the person has been arrested or charged with a crime.

Section 3 (AS 47.30.715), Section 4 (AS 47.30.725(b)), and Section 5 (AS 47.30.725(f)): Amend current law to clarify timelines for a commitment hearing and evaluation. The purpose is to ensure the evaluation facility has the full 72-hour period to evaluate the respondent before a hearing is held.

Section 6: Creates AS 47.30.727 Custody of the department to clearly delineate when DHSS has custody of a person during the civil commitment process. DHSS only has custody during the time it takes physical control in order to provide transportation, and when the person is at the state hospital.

Section 7: Amends AS 47.30.870 Transportation to clarify that before DHSS takes custody of the person, DHSS shall arrange and pay for transportation. Also, DHSS must arrange transportation when the DHSS takes custody of the person.

Section 8: Amends AS 47.30.915 to add a definition of "crisis stabilization center."

Section 9: The law applies to those taken into custody on or after the effective date of the Act, which takes effect immediately.

2:11:54 PM
SENATOR GIESSEL referred to Section 6. She asked if the Department of Corrections (DOC) is responsible when a person is in jail and waiting to be admitted to Alaska Psychiatric Institute (API), for example, but there is no bed available.

MR. WALL replied that is exactly what Section 6 intends to clarify. He deferred further comment to Mr. Bookman.

2:12:55 PM
STEVEN BOOKMAN, Assistant Attorney General, Civil Division, Human Services Section, Department of Law, Anchorage, Alaska, agreed that Section 6 intends to clarify that law. He said Section 6 also would cover someone who is at a community-referring hospital before being transported by the department to an evaluation facility.

SENATOR GIESSEL questioned the notion that the Department of Corrections would assume responsibility for the cost of housing and treatment for these individuals. She noted that this is not insignificant when someone's condition is serious enough to need services from API.

MR. BOOKMAN replied that is the idea, although there would be limits on what DOC could provide for someone. The statutes do not permit an involuntary medication order, for example, but some treatment could be given on a voluntary basis. The department seeks to limit the incarceration time at DOC facilities or jails for individuals who need treatment.

SENATOR GIESSEL responded, "I'm wondering how the Department of Corrections feels about that."

MR. BOOKMAN related his understanding that DHSS met with the Department of Corrections on this matter.

MR. WALL added that he did not envision many instances in which an individual would be incarcerated in a DOC facility while awaiting an API bed but the bill clearly defines who is responsible for individuals who are awaiting transport to a psychiatric hospital.

CHAIR WILSON related his understanding that a person in that sort of crisis who is in an emergency room would be put on a one-to-one status or 15-minute observation. He asked if someone would be given upgraded observational status while they were in a DOC facility awaiting transport to a psychiatric hospital.

MR. WALL replied each facility has its own protocols depending on whether it is a contract jail or a state facility. Observation and oversight would be worked out on a case-by-case basis, he said.

MR. BOOKMAN added that a majority of people who are in correctional facilities awaiting admittance to API or the DET [Designated Evaluation and Treatment Program] are housed at Mike Mod in the Anchorage jail. That facility is spatially set up so that all the cells are visible from a central location.

MR. WALL clarified that Mike Mod is a treatment area within DOC.

CHAIR WILSON expressed interest in having the same standard in DOC facilities and contract facilities. He wondered if DOC could address that issue and other questions the committee has. He noted that the state has not yet addressed compliance with PREA, the Prisoner Rape Elimination Act. He said he does not want to create another burden, but part of this bill is designed to respond to lawsuits related to consistency issues on a statewide basis. One concern has been housing prisoners with mental health needs without providing the same standards of care that facilities with higher-level care, such as API provide. He asked when interventions begin to ensure the safety of an individual and others.

MR. WALL replied that DHSS will work with DOC to consider various scenarios. He pointed out that this is not a new process or population, so numerous procedures are currently in place to address these situations. SB 238 merely clarifies which agency has responsibility during the timeframe individuals are awaiting transport to mental health facilities such as API.

2:19:16 PM
SENATOR BEGICH said that is his primary concern with the bill. He read an excerpt from an Anchorage Daily News article [entitled "Judge orders state to end practice of holding psychiatric patients in jails, ERs, October 22, 2019"]: "Alaska's practice of detaining people held on civil psychiatric holds in jails due to the Alaska Psychiatric Institute's inability to treat them causes 'irreparable harm' and must end, an Anchorage judge has ruled." He offered his view that this bill will not address that issue. Psychiatric patients should not be in correctional facilities. He said the article describes windowless cells outfitted with concrete slabs for sleeping. It points out that civil detainees at API are held in very different conditions than civil detainees at DOC facilities. It's a mistake to say that DOC will be responsible for these individuals because DOC is not designed to address the psychiatric population. He questioned how patients and the groups who represent them would respond to this provision.

2:21:46 PM
SENATOR VON IMHOF asked Deputy Commissioner Wall if he wanted to respond to that before she asked her question.

MR. WALL deferred to Mr. Bookman.

MR. BOOKMAN responded that protective custody is already in current law. The bill seeks to provide structure and clarification about when it should be used and for what purpose. He characterized it as a backup plan. For instance, the bill explains that protective custody in a jail or correctional facility should be used only if a treatment facility, an evaluation facility, a crisis stabilization center, or a health care facility is not available. The state should be moving toward the goal of not placing people [in protective custody] in jail cells or at least for a minimal amount of time.

He reminded members that Deputy Commissioner Wall indicated there are places in the state with no other option. This bill will require DOC to notify DHSS when someone is in protective custody, but it does not eliminate or address protective custody. Currently DHSS is notified that someone is in protective custody when the court order is issued, which could take a number of hours. This bill will speed up the notification process so DHSS can plan how to get someone out of protective custody.

MR. WALL added that there must be some mechanism of last resort in place for those who fall through the cracks. This bill will put in place a precise structure for that last resort measure, including who must notify DHSS and file reports, and it provides a timeline to limit the protective custody period.

SENATOR VON IMHOF noted that some of the gaps in the system that Deputy Commissioner Wall referenced are being addressed with the stabilization centers.

She recalled that one reason the situation arose last fall that Senator Begich mentioned was that the shortage of psychiatrists meant no one could perform the forensic assessments. She further recalled that API indicated it hired more staff so this has been addressed. She asked if this issue should be addressed via regulation rather than in statute. She related her understanding that this issue primarily relates to the larger communities of Anchorage, Fairbanks, Juneau, and the Mat-Su Valley. She said smaller communities like Haines were a separate issue.

2:27:04 PM
MR. WALL deferred the question about whether the remedy should be addressed in statute or regulation to Mr. Bookman. He said SB 238 relates to the civil commitment process, not the forensic process, which DHSS is working to resolve with two new evaluators via provider agreements. The department has substantially eliminated the backlog of evaluations on the forensic side.

He reported that last February, DHSS had just under 100 individuals awaiting API beds. Since then, the figures have typically been in the single digits, and zero at times. He said DHSS is still working to address issues, but the process is moving in the right direction.

MR. WALL said the department has made tremendous strides in the last year. The state has always needed several levels of care, but the crisis stabilization and partial hospitalization for those suffering from mental illness has not been available. Implementing the [Medicaid] 1115 waiver has helped. The second phase which includes serious mental illness will come online at the beginning of the next fiscal year.

MR. WALL said the Alaska Mental Health Trust Authority has been the main driver for the Crisis Now model. Crisis stabilization is one of the keystones of that model. He offered his view that the 1115 waiver and working with partners has been a tremendous process. He said DHSS seeks to reach the point where the safety net is never needed for those in crisis, no matter whether that person resides in Haines or Anchorage. He said he hopes this will be achieved once the stabilization center is running properly. This bill focuses on what to do for people in crisis in areas without a stabilization center who have no other place to go. It identifies the responsibilities for each department and the timeframes.

MR. BOOKMAN said placing this language in statute reflects a policy choice. Regulations are "gap filling" and implement the intent of the statute. Currently, protective custody is almost phrased in the negative. It says a person taken in custody for emergency evaluation may not be placed in jail or other correctional facility except for protective custody purposes and only while awaiting transportation to a treatment facility. He expressed concern about placing the structure provided by SB 238 in regulation because the bill primarily addresses underlying policy issues.

MR. WALL said the whole system of care has needed correction for some time. This bill will address one aspect of the process.

2:33:01 PM
SENATOR BEGICH expressed concern about inconsistency in the state's continuum of care. He said he was unsure how the continuum of care is maintained if Deputy Commissioner Wall or someone else working on the system of care leaves next week, if the waiver is changed to a block grant, or if there are changes in the way the system is funded. While DHSS acknowledges the need for these services, he does not often see them presented in agency budget documents. He emphasized that these services must be substantiated. He opined that the state must address the lack of capacity to provide care for people who are inappropriately placed in DOC but need mental health services.

He commended DHSS for maximizing capacity, enhancing services, and reducing the waiting list at API, which is the state's only institution. However, providing a continuum costs money, he said.

SENATOR BEGICH said he would be more supportive of the bill if he better understood where it fits into the continuum and the administration's commitment to fund the continuum.

MR. WALL said DHSS faces a conundrum because the system of care is massive. Presenting a comprehensive omnibus plan that identifies each piece, including who is in control, is daunting. He acknowledged that a huge piece still needs to be addressed. The department seeks to achieve what can be done with precision and care rather than building a new system by using an omnibus approach.

He acknowledged the difficulty in describing the complexity of the issue. In its presentation on the 1115 waiver, DHSS compared the different levels of care under the old system with the new one. The presentation described 23 new services of care, the process to access that care, and the funding mechanism. The chart indicates the lowest level of care and moves to the higher acuity. The department can provide a visual of where this statute would fall on that continuum.

MR. WALL argued that DHSS has addressed and continues to address the capacity issue, not only in terms of the continuum of care, but specifically for inpatient psychiatric care. In the last 14 months, Commissioner Crum added more inpatient beds to the continuum of care through partnerships with providers than what

has previously been done in years. There is an active movement to address the continuum of care and the capacity in the continuum of care at different levels. Although it is frustrating to him and others, DHSS had made more progress in the last couple of years than he has seen in the previous 10 years.

2:39:37 PM
SENATOR SHOWER asked for the general goal for beds in the Mat-Su. He recalled that it was about 37 beds.

MR. WALL replied API is an 80-bed facility with 50 available beds. DHSS's goal is to have all of them available as fast as possible. Most of the constraint relates to staffing. For the overall system of care, determining the number of needed beds includes the beds needed in regions such as Bethel, Kotzebue, or Ketchikan. DHSS is engaged with providers to solicit more facilities to be become designated evaluation and stabilization centers or designated evaluation treatment centers or DES/DET. Thus, DHSS is requesting incentivization funding for new DES and DET beds. Providing a few more beds in each region will mean that people can more quickly access care. This would eliminate the need to fly patients to one central location for care. He pointed out that in the Bering Strait region, Norton Sound Health Corporation (NSHC) has improved its system of care, including psychiatric care, by adding a wellness and training center in Nome, which will house its behavioral health services program. He said DHSS is working hard to assist hospitals interested in more DES and DET beds.

CHAIR WILSON observed that Norton Sound would love to have that empty youth facility.

MR. WALL responded that DHSS has been having some interesting discussions with the NSHC.

SENATOR SHOWER said the state has been working to include tribal entities. Some questions have arisen, including if it is wise to bring people from rural areas to a different culture in Anchorage. He said he hopes the state will partner with tribal entities. He offered that Glenallen is trying to create its own regional capacity.

MR. WALL reported that Bethel has four DES beds designated as tribal.

2:43:51 PM

CHAIR WILSON asked when the 72 hours for assessment starts and if it begins when someone is in transit.

MR. WALL deferred to Mr. Bookman.

MR. BOOKMAN answered that the 72-hour count starts when someone enters a DET or API.

CHAIR WILSON expressed concern that if transportation is not established, a person could be in involuntary commitment for weeks.

MR. BOOKMAN said the bill seeks to address this by requiring a hearing to be held no later than 96 hours after someone is in protective custody. This requirement is not currently in statute.

CHAIR WILSON asked the rationale for increasing the time from 72 to 96 hours.

MR. BOOKMAN answered that currently, the statutes gives API or a DET 72 hours to evaluate someone and file the petition. The hearing must take place within 72 hours. However, if a patient needs 72 hours of observation, the hearing must be held quickly, but the public defender agency may not have enough time to adequately prepare or it may not give the court system enough time to find a judge. Many people will achieve some measure of stabilization in 72 hours, and these patients could be discharged or accept voluntary treatment and work toward discharge. The clinical perspective is that the full 72 hours will allow for stabilization and time for the patient to engage with a provider, which may lead to a better hearing since the clinician may have a better understanding of a respondent's condition.

CHAIR WILSON described that as a good answer.

2:47:56 PM
MR. WALL said one problem with stabilization evaluations is they may push people through the system too fast. For example, someone who comes in with a psychiatric need, who is also on a substance, has a co-occurring issue. If the person is pushed through the system too fast, the substance abuse issue cannot be addressed. During the evaluation of someone in an acute state with conflicting problems, it may not be easy to identify what part of the crisis is due to the substance or is psychiatric. When the patient is given more time to stabilize, doctors can

better identify the patient's needs, including whether someone has an acute psychiatric need or if the patient needs more outpatient care. SB 238 delineates the legal timeline, but it also slows down the clinical process to ensure the patient has the best care.

SENATOR BEGICH asked if DOC is the best department to do the evaluation and provide the care.

MR. WALL replied DOC does not conduct evaluations, but the department can provide the care if it is necessary. Accessibility to care at the time of need is important and that delineates who has the responsibility for that because the person is with them at the time of need.

2:50:31 PM
SENATOR BEGICH asked how many people would have been affected by the bill over the last five years.

MR. WALL deferred to Mr. Bookman.

MR. BOOKMAN asked for clarification of the question.

SENATOR BEGICH asked how many people the bill would affect.

MR. WALL asked if he was asking how many patients on civil commitment have been in a DOC facility in the last year awaiting transport.

SENATOR BEGICH said his question included populations in a contract jail.

MR. WALL related his understanding of the question for Mr. Bookman.

MR. BOOKMAN answered that the last person picked up and taken to a correctional facility was last August. He estimated that approximately nine patients were affected since last January. He said he would follow up with the figures for the entire year.

SENATOR BEGICH pointed out that there was a lawsuit and it would have brought this practice to an end. He said he was interested in how many people this bill will affect in an average year.

CHAIR WILSON requested the figures for the past two years.

MR. BOOKMAN agreed to provide the data.

MR. WALL said one of the ways an individual can end up in this category is to be taken to a DOC facility on charges that are dropped while the individual is in the facility. Then the ex parte order is filed. SB 238 requires notification as soon as the order is filed so the process can move forward. The intention is to keep people in that status for as little time as possible.

2:54:00 PM
CHAIR WILSON opened public testimony and after first determining no one wished to testify, closed public testimony on SB 238.

SENATOR SHOWER asked if the bill will artificially constrain the time needed to evaluate someone and whether a longer time period for evaluation might be needed.

MR. WALL explained that that there are generally accepted guidelines and practices for psychiatric care. The evaluation process is prescriptive with a timeline. Evaluators are required to see patients within timeframes to re-evaluate them because a patient's condition changes over time, especially with psychiatric needs. Patients who have a substance in their system need time to detox. Clinicians and doctors follow those guidelines for observation. He deferred to Mr. Bookman to address the legal aspects.

MR. BOOKMAN said state requirements vary as to how long people can be held at a health care facility prior to a court hearing. Alaska requires 72 hours of evaluation, but some states allow five or seven days. He did not think there was anything magic about 72 or 96 hours, which is not established by the state or federal constitution. Legislators could consider a longer period of time, which could fit into legal parameters, but there are a lot of things to consider.

SENATOR GIESSEL expressed appreciation that Deputy Commissioner Wall brought this forward as a statute since the department cannot write regulations without the statutory authority to do so. More importantly, he heard the concerns and the interests of the committee. When an agency writes regulations, legislators have no say unless the legislators enter into the public comment period.

CHAIR WILSON reiterated his request for follow up information from DHSS and DOC's view of the legislation.

SENATOR BEGICH requested information about the locations where people were being held.

3:00:01 PM
CHAIR WILSON held SB 238 in committee.

3:00:44 PM
There being no further business to come before the committee, Chair Wilson adjourned the Senate Health and Social Services Standing Committee at 3:00 p.m.