ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE
March 22, 2022
3:09 p.m.

MEMBERS PRESENT

Representative Liz Snyder, Co-Chair
Representative Tiffany Zulkosky, Co-Chair
Representative Ivy Spohnholz
Representative Zack Fields
Representative Ken McCarty
Representative Mike Prax
Representative Christopher Kurka

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 172
"An Act relating to admission to and detention at a subacute mental health facility; establishing a definition for 'subacute mental health facility'; establishing a definition for 'crisis residential center'; relating to the definitions for 'crisis stabilization center'; relating to the administration of psychotropic medication in a crisis situation; relating to licensed facilities; and providing for an effective date."

- MOVED CSHB 172(HSS) OUT OF COMMITTEE

HOUSE BILL NO. 292
"An Act relating to home and community-based services; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 172
SHORT TITLE: MENTAL HEALTH FACILITIES & MEDS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/12/21	(H)	READ THE FIRST TIME - REFERRALS
04/12/21	(H)	JUD, HSS, FIN
05/14/21	(H)	JUD AT 1:00 PM GRUENBERG 120

05/14/21	(H)	Heard & Held
05/14/21	(H)	MINUTE(JUD)
05/15/21	(H)	JUD AT 1:00 PM GRUENBERG 120
05/15/21	(H)	-- MEETING CANCELED --
02/14/22	(H)	JUD AT 1:00 PM GRUENBERG 120
02/14/22	(H)	-- MEETING CANCELED --
02/16/22	(H)	JUD AT 1:30 PM GRUENBERG 120
02/16/22	(H)	Heard & Held
02/16/22	(H)	MINUTE(JUD)
02/21/22	(H)	JUD AT 1:00 PM GRUENBERG 120
02/21/22	(H)	Heard & Held
02/21/22	(H)	MINUTE(JUD)
02/23/22	(H)	JUD AT 1:30 PM GRUENBERG 120
02/23/22	(H)	Heard & Held
02/23/22	(H)	MINUTE(JUD)
02/25/22	(H)	JUD AT 1:30 PM GRUENBERG 120
02/25/22	(H)	Moved CSHB 172(JUD) Out of Committee
02/25/22	(H)	MINUTE(JUD)
02/28/22	(H)	JUD RPT CS(JUD) NEW TITLE 3DP 1DNP 1NR 1AM
02/28/22	(H)	DP: DRUMMOND, SNYDER, CLAMAN
02/28/22	(H)	DNP: EASTMAN
02/28/22	(H)	NR: KREISS-TOMKINS
02/28/22	(H)	AM: VANCE
03/08/22	(H)	HSS AT 3:00 PM DAVIS 106
03/08/22	(H)	Heard & Held
03/08/22	(H)	MINUTE(HSS)
03/15/22	(H)	HSS AT 3:00 PM DAVIS 106
03/15/22	(H)	Heard & Held
03/15/22	(H)	MINUTE(HSS)
03/17/22	(H)	HSS AT 3:00 PM DAVIS 106
03/17/22	(H)	Heard & Held
03/17/22	(H)	MINUTE(HSS)
03/22/22	(H)	HSS AT 3:00 PM DAVIS 106

WITNESS REGISTER

HEATHER CARPENTER, Healthcare Policy Advisor
Office of the Commissioner
Department of Health and Social Services
Juneau, Alaska
POSITION STATEMENT: Presented the proposed amendments to CSHB 172(JUD) and answered questions on behalf of the sponsor, House Rules by request of the governor.

NANCY MEADE, General Counsel
Office of the Administrative Director

Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: Answered question on the proposed amendments to CSHB 172(JUD).

STEVEN BOOKMAN, Senior Assistant Attorney General
Human Services Section
Civil Division - Anchorage
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Answered question on the proposed amendments to CSHB 172(JUD).

GENNIFER MOREAU-JOHNSON, Director
Division of Behavioral Health
Department of Health and Social Services
Juneau, Alaska
POSITION STATEMENT: Answered question on the proposed amendments to CSHB 172(JUD).

STEVE WILLIAMS, Chief Executive Officer
Alaska Mental Health Trust Authority
Department of Revenue
Anchorage, Alaska
POSITION STATEMENT: Answered question on the proposed amendments to CSHB 172(JUD).

ACTION NARRATIVE

3:09:14 PM

CO-CHAIR LIZ SNYDER called the House Health and Social Services Standing Committee meeting to order at 3:09 p.m. Representatives Prax, Spohnholz, Zulkosky, and Snyder were present at the call to order. Representatives McCarty, Fields, and Kurka arrived as the meeting was in progress.

The committee took a brief at-ease at 3:10 a.m.

HB 172-MENTAL HEALTH FACILITIES & MEDS

3:10:55 PM

CO-CHAIR SNYDER announced that the only order of business would be HOUSE BILL NO. 172, "An Act relating to admission to and detention at a subacute mental health facility; establishing a definition for 'subacute mental health facility'; establishing a

definition for 'crisis residential center'; relating to the definitions for 'crisis stabilization center'; relating to the administration of psychotropic medication in a crisis situation; relating to licensed facilities; and providing for an effective date." [Before the committee was CSHB 172(JUD).]

3:13:44 PM

CO-CHAIR ZULKOSKY moved to adopt Amendment 1 to CSHB 172(JUD), labeled 32-GH1730\O.1, Dunmire, 3/18/22, which read as follows:

Page 11, following line 10:
Insert a new bill section to read:
"*** Sec. 21.** AS 47.30.915(9) is amended to read:
(9) "gravely disabled" means a condition in which a person as a result of mental illness
(A) is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken; or
(B) **is so incapacitated that the person is incapable of surviving safely in freedom** [WILL, IF NOT TREATED, SUFFER OR CONTINUE TO SUFFER SEVERE AND ABNORMAL MENTAL, EMOTIONAL, OR PHYSICAL DISTRESS, AND THIS DISTRESS IS ASSOCIATED WITH SIGNIFICANT IMPAIRMENT OF JUDGMENT, REASON, OR BEHAVIOR CAUSING A SUBSTANTIAL DETERIORATION OF THE PERSON'S PREVIOUS ABILITY TO FUNCTION INDEPENDENTLY];"

Renumber the following bill sections accordingly.

Page 13, line 1, following "date":
Insert "of secs. 1 - 28"

Page 13, lines 27 - 28:
Delete "sec. 23"
Insert "sec. 24"

Page 13, line 29:
Delete "sec. 23"
Insert "sec. 24"

Page 14, line 7:
Delete "Section 28"
Insert "Section 29"

3:13:46 PM

CO-CHAIR SNYDER objected for the purpose of discussion.

3:14:01 PM

HEATHER CARPENTER, Health Policy Advisor, Office of the Commissioner, Department of Health and Social Services (DHSS), explained that the department and the committee received a series of suggested amendments from James Gottstein. She stated that Amendment 1 would update the definition of "gravely disabled". This definition change is in response to a statute declared unconstitutional by the Alaska Supreme Court.

3:14:34 PM

REPRESENTATIVE MCCARTY voiced the opinion that the use of the word "freedom" on line 11, as numbered in the amendment, is vague and leads to interpretation. He stated this usage would be "existential" and questioned how the court had responded.

3:15:53 PM

NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System (ACS), responded that Mr. Gottstein recommended the amendment in reference to a 2007 decision by the Alaska Supreme Court. The court had taken the decision from the U.S. Supreme Court, which saw the former definition capturing too many people in civil commitment proceedings. She explained that because civil commitments are an infringement on an individual's liberties, there would have to be strong grounds to take the individual involuntarily. She said that the Alaska Supreme Court case quoted the U.S. Supreme Court. In summary, it relayed that given the importance of the liberty right involved, people may not be involuntarily committed if they are dangerous to no one and can live safely in freedom. She stated that the Alaska Supreme Court relied upon this language, and this is the source of Mr. Gottstein and DHSS's acknowledgment of a more appropriate definition.

REPRESENTATIVE MCCARTY argued that if the word "freedom" has no parameters, this would lead to major interpretation issues and could result in Title 47 rights being violated. He stated that the U.S. Supreme Court has not done away with involuntary holds, so using the word "freedom" would be too vague.

3:18:11 PM

REPRESENTATIVE PRAX concurred with Representative McCarty.

MS. MEADE clarified, because of the 2007 decision, this has been the practice, and this standard has become familiar. She expressed the understanding that this amendment is being suggested now as a cleanup on something which was decided many years ago.

3:19:25 PM

MS. MEADE, in response to Representative Spohnholz, stated that the language "safely in freedom" is exactly what the Supreme Court said. In response to a follow-up question, she answered that freedom in this case would be freedom from a Title 47 hold.

3:20:41 PM

CO-CHAIR SNYDER removed her objection to the motion to adopt Amendment 1.

REPRESENTATIVE MCCARTY objected.

A roll call was taken. Representatives Snyder, Zulkosky, Fields, Spohnholz, Prax, and Kurka voted in favor of Amendment 1 to CSHB 172(JUD). Representative McCarty voted against it. Therefore, Amendment 1 to CSHB 172(JUD) was adopted by a vote of 6-1.

3:21:20 PM

CO-CHAIR ZULKOSKY moved to adopt Amendment 2 to CSHB 172(JUD), labeled 32-GH1730\O.2, Dunmire, 3/18/22, which read as follows:

> Page 11, following line 1:
> Insert new bill sections to read:
> "*** Sec. 19.** AS 47.30.839(b) is amended to read:
> (b) An evaluation facility or designated treatment facility may seek court approval for administration of psychotropic medication to a patient by filing a petition with the court, requesting a hearing on the capacity of the person to give informed consent **and on the proposed use of psychotropic medication. The petition shall provide specific information regarding the factors listed in AS 47.30.837(d)(2)(A) - (E)**.
> *** Sec. 20.** AS 47.30.839(g) is amended to read:

(g) If the court determines **by clear and convincing evidence** that the patient is not competent to provide informed consent and [, BY CLEAR AND CONVINCING EVIDENCE,] was not competent to provide informed consent at the time of previously expressed wishes documented under (d)(2) of this section, **that the proposed use of medication is in the best interests of the patient considering at a minimum the factors listed in AS 47.30.837(d)(2)(A) - (E), and that there is no feasible less intrusive alternative,** the court shall approve the facility's proposed use of psychotropic medication. The court's approval under this subsection applies to the patient's initial period of commitment if the decision is made during that time period. If the decision is made during a period for which the initial commitment has been extended, the court's approval under this subsection applies to the period for which commitment is extended."

Renumber the following bill sections accordingly.

Page 13, line 1, following "date":
Insert "of secs. 1 - 29"

Page 13, lines 27 - 28:
Delete "sec. 23"
Insert "sec. 25"

Page 13, line 29:
Delete "sec. 23"
Insert "sec. 25"

Page 14, line 7:
Delete "Section 28"
Insert "Section 30"

REPRESENTATIVE SNYDER objected for the purpose of discussion.

3:21:34 PM

MS. CARPENTER stated that Amendment 2 was suggested by Mr. Gottstein and would address the statute for the court ordered administration of medication. This would also be a cleanup from the previous lawsuit. She continued that the language is a little different from Mr. Gottstein's draft, but he has approved the edits. She said, per this amendment, the court would

determine that clear and convincing evidence exists [before medication could be administered]. She deferred to Steven Bookman for any further questions.

3:22:17 PM

STEVEN BOOKMAN, Senior Assistant Attorney General, Human Services Section, Civil Division - Anchorage, Department of Law (DOL), in response to Representative McCarty, stated that a patient who poses a risk of harm to others but is competent enough to refuse medication becomes a difficult issue. He continued that the individual would have to be committed without administering noncrisis medication. In response to a follow-up question, he stated that he had referenced "noncrisis" medication, as this could be used for the health and safety [of all involved], while [crisis] medication would be used for restraint when an individual is actively hurting staff in a violent situation.

3:24:35 PM

CO-CHAIR SNYDER removed her objection. There being no further objection, Amendment 2 to CSHB 172(JUD) was adopted.

3:24:47 PM

CO-CHAIR ZULKOSKY moved to adopt Amendment 3 to CSHB 172(JUD), labeled 32-GH1730\O.3, Dunmire, 3/18/22, which read as follows:

> Page 4, line 30, following the second occurrence of "that":
> Insert "the respondent is suffering an acute behavioral health crisis and, as a result, is likely to cause harm to self or others or is gravely disabled,"
>
> Page 4, line 31, following "center":
> Insert ","
>
> Page 13, line 1, following "date":
> Insert "of secs. 1 - 27"

CO-CHAIR SNYDER objected for the purpose of discussion.

3:24:54 PM

MS. CARPENTER stated that Amendment 3 is another of Mr. Gottstein's amendments in response to ACS. She stated the amendment would clarify that when an individual in a crisis stabilization center suffers an acute behavioral health crisis, as defined, he/she could be held at a higher level of care.

3:25:40 PM

CO-CHAIR SNYDER removed her objection. There being no further objection, Amendment 3 to CSHB 172(JUD) was adopted.

3:25:49 PM

CO-CHAIR ZULKOSKY moved to adopt Amendment 4 to CSHB 172(JUD), labeled 32-GH1730\O.4, Dunmire, 3/18/22, which read as follows:

Page 5, line 25, following "crisis":
Insert "and, as a result, is likely to cause harm to self or others or is gravely disabled,"

Page 13, line 1, following "date":
Insert "of secs. 1 - 27"

CO-CHAIR SNYDER objected for the purpose of discussion.

MS. CARPENTER stated that Amendment 4 is similar to Amendment 3. She said that it clarifies the definition in the proposed legislation that an individual [in a behavioral health crisis] "has to be likely to cause harm to self or others or is gravely disabled."

3:26:20 PM

CO-CHAIR SNYDER removed her objection. There being no further objection, Amendment 4 to CSHB 172(JUD) was adopted.

3:26:32 PM

CO-CHAIR ZULKOSKY moved to adopt Amendment 5 to CSHB 172(JUD), labeled 32-GH1730\O.5, Dunmire, 3/19/22, which read as follows:

Page 13, line 10, following "could":
Insert "improve patient outcomes and"

REPRESENTATIVE SNYDER objected for the purpose of discussion.

MS. CARPENTER stated that Amendment 5 is the last of Mr. Gottstein's suggested amendments. She stated that it would add a small, but important provision in Section 26, making reports more thorough. The provision would require DHSS and the Alaska Mental Health Trust Authority (AMHTA) to look at items which could improve patient outcomes.

3:27:08 PM

CO-CHAIR SNYDER removed her objection. There being no further objection, Amendment 5 to CSHB 172(JUD) was adopted.

3:27:24 PM

CO-CHAIR ZULKOSKY moved to adopt Amendment 6 to CSHB 172(JUD), labeled 32-GH1730\O.6, Dunmire, 3/19/22, which read as follows:

Page 5, line 3:
Delete "AS 47.30.700"
Insert "this section"

Page 5, line 9:
Delete "under AS 47.30.700 - 47.30.707"

Page 5, line 22, following "obtained":
Insert "under AS 47.30.707"

Page 5, line 23:
Delete "AS 47.30.700"
Insert "this section"

Page 5, line 29, following "an":
Insert "ex parte"

Page 13, line 1, following "date":
Insert "of secs. 1 - 27"

CO-CHAIR SNYDER objected for the purpose of discussion.

MS. CARPENTER stated that Amendment 5 would implement small changes requested by ACS to ensure clarity and ease for implementation of the proposed statutes.

3:28:16 PM

CO-CHAIR SNYDER removed her objection. There being no further objection, Amendment 6 to CSHB 172(JUD) was adopted.

3:28:26 PM

The committee took an at-ease from 3:28 p.m. to 3:29 p.m.

3:29:05 PM

CO-CHAIR ZULKOSKY explained that in order to keep "like content with like content," she would skip to an amendment ending in "O.17" and would call it "Amendment 17."

CO-CHAIR ZULKOSKY moved to adopt Amendment 17 to CSHB 172(JUD), labeled 32-GH1730\O.17, Dunmire, 3/21/22, which read as follows:

> Page 5, line 6, following "application":
> Insert "and appoint an attorney to represent the respondent"
>
> Page 5, line 27, following "application":
> Insert "and appoint an attorney to represent the respondent"

CO-CHAIR SNYDER objected for the purpose of discussion.

MS. CARPENTER stated that Amendment 17 was initiated by the Disability Law Center of Alaska and pairs well with the amendments requested by ACS. If the court's amendments are adopted, she said this amendment should be added to clarify that an attorney would be appointed immediately to represent the respondent. She offered that this is DHSS's intent and the intent of the work done in the House Judiciary Standing Committee.

3:30:14 PM

REPRESENTATIVE MCCARTY requested an explanation on the flow of events which would involve an attorney.

MS. CARPENTER stated that the entire involuntary commitment process would have a great deal of attorney involvement, as this reflects the right to have representation. She stated that the amendment would make a small change for the ease of ACS in terms of how an individual would be held. She stated that an attorney would be appointed and involved whenever the individual enters the system through a crisis center. She expressed the

importance of having attorney representation as soon as the process starts.

REPRESENTATIVE MCCARTY, with a follow up, questioned if currently an attorney is called when an individual is in a Title 47, 24-hour hold. He expressed the belief that this has never been protocol. [The question was deferred to Mr. Bookman.]

3:32:19 PM

MR. BOOKMAN responded that under the current system, an attorney is appointed when the ex parte order is issued to begin the 24-hour evaluation process. He continued that the attorney may not choose to take legal action, or the client may not want to talk to the attorney, but attorneys are appointed at this time.

REPRESENTATIVE MCCARTY commented that he had been referring to before the ex parte order was issued. He expressed the understanding that attorneys would not be involved in a Title 47, 24-hour review at this point.

MR. BOOKMAN responded in the affirmative. He stated that during a 24-hour hold the attorney would not be appointed by the actions of a physician or peace officer. He stated that the attorney is appointed when the court grants the ex parte petition.

REPRESENTATIVE MCCARTY questioned whether the amendment would initiate attorney involvement before the evaluation, as this is not the current protocol. He stated that now there is a 24-hour buffer before the 72-hour ex parte order is put into place.

MR. BOOKMAN expressed the belief that the intent of the amendment would be to replicate the current process, as much as possible. He stated that an attorney would be appointed when there is a 72-hour evaluation period. He added that this is also the current process. He explained that some of the crisis residential centers would be acting as 72-hour evaluation facilities, and this would be a restriction of liberty. At this point, the court would issue the order for an attorney to be appointed.

3:35:06 PM

CO-CHAIR SNYDER removed her objection. There being no further objection, Amendment 17 to HB CSHB 172(JUD) was adopted.

3:35:14 PM

CO-CHAIR ZULKOSKY moved to adopt Amendment 7 to CSHB 172(JUD), labeled 32-GH1730\O.7, Dunmire, 3/19/22, which read as follows:

Page 5, line 6, following "application":
Insert ", and the respondent may remain at the crisis stabilization center until admission to a crisis residential center"

Page 13, line 1, following "date":
Insert "of secs. 1 - 27"

CO-CHAIR SNYDER objected for the purpose of discussion.

MS. CARPENTER stated that Amendment 7 was requested by DHSS to address the possible time delay a patient may have while waiting to be moved from the crisis stabilization to the residential center. The amendment would allow the individual to be held at a crisis stabilization center without a time limit.

3:35:58 PM

The committee took a brief at-ease at 3:35 p.m.

3:36:03 PM

REPRESENTATIVE MCCARTY questioned the situation when the stabilization center is 100 percent full and more individuals arrive who need stabilizing.

MS. CARPENTER responded that this is a good question. She stated that currently DHSS has a coordinator who tracks the daily Title 47 filings, and this person would be aware when a patient needs to be moved. She stated that the flow would be a coordinated effort to determine if a center is at maximum capacity and when someone needs to be diverted for a higher level of care. She remarked that DHSS would work with ACS and DOL to do this in the normal course of business.

3:37:38 PM

CO-CHAIR SNYDER removed her objection. There being no further objection, Amendment 7 to CSHB 172(JUD) was adopted.

3:37:44 PM

CO-CHAIR ZULKOSKY moved to adopt Amendment 8 to CSHB 172(JUD), labeled 32-GH1730\O.8, Dunmire, 3/19/22, which read as follows:

Page 12, line 26, following "days":
Insert "for an involuntary admission"

Page 13, line 1, following "date":
Insert "of secs. 1 - 27"

CO-CHAIR SNYDER objected for the purpose of discussion.

MS. CARPENTER stated that Amendment 8 was requested by DHSS and addresses the definition of a crisis residential center. This definition has been cross-referenced with the involuntary commitment statute. She said this clarification would be needed so DHSS has the flexibility to work with the Section 1115 Medicaid waiver ("1115 waiver") which would allow an individual to stay longer than seven days at the residential center. She stated that this would address only voluntary admissions, as involuntary admissions would be a "hard seven days." She added that the clarification in the definition would allow the 1115 waiver providers to operate as intended.

3:39:01 PM

The committee took a brief at-ease at 3:39 p.m.

3:39:56 PM

REPRESENTATIVE PRAX expressed the opinion that the language "involuntary admission" is a contradiction in terms. He said that "involuntary detention" would better describe the situation.

MS. CARPENTER stated that the department, in its work with the Division of Behavioral Health and DOL, agreed upon this term as accurate. She deferred to Gennifer Moreau-Johnson.

3:40:51 PM

GENNIFER MOREAU-JOHNSON, Director, Division of Behavioral Health, Department of Health and Social Services, explained that it was determined the word "detention" carried stigma and should be avoided. She explained that the department has tried to avoid the "criminalization" of people who are in a mental health crisis; therefore, "admission" rather than "detention" was used.

REPRESENTATIVE PRAX responded that it is a small detail, and he supports Amendment 8 as long as the courts and the attorneys understand the usage.

MS. CARPENTER stated that this section contains licensing statutes which belong to the department. The department would be licensing these facilities, so there would be an understanding. She added that protections are in place in the rest of the legislation, and the seven-day involuntary hold at a crisis residential center would be "a hard stop."

3:42:24 PM

CO-CHAIR SNYDER removed her objection. There being no further objection, Amendment 8 to CSHB 172(JUD) was adopted.

3:42:29 PM

CO-CHAIR ZULKOSKY moved to adopt Amendment 9 to CSHB 172(JUD), labeled 32-GH1730\O.9, Dunmire, 3/19/22, which read as follows:

> Page 2, line 13, following the first occurrence of "officer":
> Insert "**and the arresting officer's employing agency**"
>
> Page 2, line 31, following "officer":
> Insert "**and the arresting officer's employing agency**"
>
> Page 3, line 20, following "officer's":
> Insert "**and the peace officer's employing agency's**"
>
> Page 3, line 21:
> Delete "is"
> Insert "**and the peace officer's employing agency are** [IS]"

CO-CHAIR SNYDER objected for the purpose of discussion.

MS. CARPENTER explained that DHSS and AMHTA brought Amendment 9 forward from conversations with the Alaska Network on Domestic Violence and Sexual Assault. She stated that this is a small but important amendment to the alternative to arrest statutes. The amendment would require a good-faith effort by the arresting

officers and their employing agencies to provide contact information [to the provider]. She explained that when an individual [taken to a crisis center as an alternative to arrest] is going to be released, it would ensure that notifications go out [to the victim]. If the officer who did the alternative to arrest was off duty, the employing agency would also receive notification, improving the likelihood that the victim be notified.

3:43:33 PM

REPRESENTATIVE PRAX stated that taken on its own, the amendment could convey that the arresting officer cannot be trusted. He stated that the explanation provided clarity, but he suggested that "and" should be changed to "or" in the amendment.

MS. CARPENTER explained that the department chose "and" because both the original arresting peace officer and officer's employing agency should be contacted as a dual notification. The provider would call the member of the police department and, for example, the dispatch at the officer's employing agency. She stated that this may be seen as repetitive, but it would be crucial for the victims.

CO-CHAIR SNYDER stated that this would add continuity.

3:45:03 PM

REPRESENTATIVE MCCARTY voiced appreciation for Amendment 9, as traumatized individuals need extra support.

3:45:49 PM

REPRESENTATIVE KURKA, questioning continuity, stated that if the officer is not on duty, he/she would not receive the communication. He questioned the timing and whether the agency would be contacted by the [provider] after the officer's status is determined.

MS. CARPENTER responded that DHSS would work with the Department of Public Safety (DPS) on this question. She stated that there would be work "standing up" the statutes and their operation. She reminded the committee that currently there are no crisis stabilization and residential centers to be utilized for this alternative to arrest statute. She stated that DHSS, DPS, and DOL would be working together on the flow.

3:47:20 PM

REPRESENTATIVE SPOHNHOLZ expressed the opinion that expecting a mental health professional to track down an officer's schedule would be unrealistic. She expressed concern that the onus would be on the mental health professional, and there should be continuity. She stated that after a reasonable effort had been made to inform the arresting officer, the mental health professional would contact the employing agency; this would function as appropriate communication with law enforcement for the purpose of victim advocacy.

MS. CARPENTER maintained that the wording in the amendment would not change. The mental health professional would have to inform both the peace officer and the agency, as this serves as a tracking mechanism. She stated that there is concern how the alternative arrest might be utilized, and if the employing agency is contacted, there would be better tracking and statistics. This would be important in the long run for reporting on the system's viability.

3:49:42 PM

CO-CHAIR SNYDER removed her objection to the motion to adopt Amendment 9 to CSHB 172(JUD).

3:49:47 PM

REPRESENTATIVE MCCARTY objected for a comment. He shared that he has witnessed this process in action and "it is very impressive." He then removed his objection. There being no further objection, Amendment 9 to CSHB 172(JUD) was adopted.

3:50:36 PM

REPRESENTATIVE KURKA moved to adopt Amendment 10 to CSHB 172(JUD), labeled 32-GH1730\O.10, Dunmire, 3/19/22, which read as follows:

Page 8, line 9, following "AS 47.30.838":
Insert ", and only if the crisis stabilization center or crisis residential center
(1) either
(A) ascertains the date the respondent last underwent a physical examination; or

(B) cannot ascertain the date the respondent last underwent a physical examination and performs a physical examination;

(2) administers the psychotropic medication only as a last resort; and

(3) conducts an examination based on a checklist developed by the department to exclude commonly known issues that may contribute to conditions and symptoms that mimic psychiatric disorders"

CO-CHAIR SNYDER objected for the purpose of discussion.

REPRESENTATIVE KURKA explained that Amendment 10 was recommended by the Citizens Commission on Human Rights. He stated that the amendment would add protections on the use of psychotropic medication. He expressed concern that there could be abuse in the administration of these drugs. He speculated that, when a patient in crisis is brought in, there would be no knowledge of the patient's medication or physical examination history; this amendment would require an examination to take place.

CO-CHAIR SNYDER questioned the frequency the crisis medications would be utilized in the crisis stabilization and residential centers.

MS. CARPENTER responded that the department reached out to [Recovery Innovations International] in Arizona, as these would be the same sort of facilities. She stated that for the 500 to 550 admissions per month to those facilities, fewer than 40 events per month required the intervention of crisis medication. She estimated about 8 percent of those served received a last-resort intervention. She stated that the crisis medication statute stipulates administering these drugs only after everything else has been tried. Responding to a follow-up question, she voiced the belief that in relation to Alaska, this comparison would be reasonable, as these are not the highest levels of facilities.

3:54:05 PM

REPRESENTATIVE SPOHNHOLZ questioned the practicality of the amendment. She voiced understanding of the intent, as some untreated physical health conditions could create psychiatric crises. For example, she said an advanced urinary tract infection could create psychosis. Considering the

circumstances, she speculated this type of examination would be difficult prior to administering medication.

MS. CARPENTER offered appreciation for the intention of the amendment but referenced several concerns. She reminded the committee that when a patient first comes to a crisis stabilization or residential center, he/she would have a physical examine within three hours. She explained that in a crisis situation there would be the possibility of immediate danger to the patient or provider, and there may not be time or patient cooperation for an examination. Crisis medication is already being administered as a last resort, per the statute, and attending physicians have been trained in the use and side effects of these drugs. She added that physicians also regularly consult pharmacists. She argued that DHSS has concerns the amendment could cause further harm and injury to the patient and providers. In response to a follow-up question, she explained that without the amendment there would be the requirement for an examination within three hours of admission to a crisis stabilization or residential center.

3:56:59 PM

REPRESENTATIVE MCCARTY questioned whether the examination would be observational or more detailed. He gave examples of a blood panel or urinalysis. He stated that if the patient's history could be referenced, it could be determined that the patient had not been taking his/her [prescription] medication.

MS. CARPENTER responded that lab work would be available, but on a voluntary basis. Blood work cannot be forced on an involuntary patient. She continued that if an individual required a crisis medication, but he/she calmed down and became willing, then blood work could move forward. She warned that there are legal protections.

REPRESENTATIVE MCCARTY questioned the difference between a medical emergency where an unconscious individual has procedures done without consent in a psychiatric emergency situation.

MS. CARPENTER explained that federal law covers a physical injury in a medical emergency, but other rights cover the individual when an ex parte has been filed for an involuntary commitment. She said these facilities have to operate under the involuntary commitment statutes. She deferred to Mr. Bookman.

MR. BOOKMAN explained that the key would be the unconscious person versus the conscious person who refuses consent. For example, if there was an unconscious person at a crisis residential center, and the medical provider believed there was an emergency that required the use of a blood draw, this would be the same as a medical emergency. But if the respondent is awake and refusing a blood draw, and there is not a life sustaining emergency, the patient would control the blood draw.

4:01:05 PM

REPRESENTATIVE MCCARTY, with a follow up, referenced the Diagnostic and Statistical Manual of Mental Disorders. He stated that this manual describes how the mind-body relationship affects mental health. He stated that by a physical examination [it could be determined if a bodily disfunction] is affecting mental processing. He expressed the opinion that if this cannot be done, [the legislation] would be a waste of time. He stated there should be an attempt to understand what is physically affecting mental processing. He argued that someone who is conscious on an involuntary hold, but not functioning effectively, could not be stabilized by the center. In this scenario it seems like effective energy is being wasted. He reiterated that people in crisis would be in a hold situation, but [health care professionals] would not be able to diagnose the real problem.

MR. BOOKMAN responded that this is a fair point. Sharing his experience at Alaska Psychiatric Institute (API), he said some individuals brought in for the 72-hour evaluation do not cooperate with a blood test, urine screen, and, in some cases, wound evaluation. He stated that it can be difficult to help someone. Experiences in other states have shown a calmer environment can lead a person to open up and engage in a way the person would not in an emergency room or hospital. He stated that in regard to the medication, this would only be given when someone is being hurt in the moment, or about to. Whatever the reason the person is having a crisis, the medication would address the manifestation, but not the underlying condition. He deferred to Steve Williams on the issue of the mind-body connection.

4:04:34 PM

STEVE WILLIAMS, Chief Executive Officer, Alaska Mental Health Trust Authority, Department of Revenue (DOR), stated that he appreciated the vein of the conversation. He explained that Mr.

Bookman was correct - in a crisis situation the safety of the individual and provider should be addressed. Once things settle, there could be further examination to ascertain what has been driving the crisis and how to respond to that.

CO-CHAIR SNYDER maintained her objection.

4:05:23 PM

REPRESENTATIVE KURKA, providing final commentary, voiced the opinion that a physical examination should be done before a person is injected with a psychotropic drug; a physical examination may not be easy, but it is common sense.

4:06:06 PM

A roll call vote was taken. Representatives Kurka voted in favor of Amendment 10 to CSHB 172(JUD). Representatives Snyder, Zulkosky, Fields, Spohnholz, Prax, and McCarty voted against it. Therefore, Amendment 10 failed to be adopted by a vote of 1-6.

4:07:01 PM

REPRESENTATIVE KURKA moved to adopt Amendment 11 to CSHB 172(JUD), labeled 32-GH1730\O.11, Dunmire, 3/21/22, which read as follows:

> Page 3, following line 24:
> Insert a new bill section to read:
> "*** Sec. 11.** AS 18.85.100 is amended by adding a new subsection to read:
> (h) For a person for whom counsel is appointed under AS 47.30.708(h), the attorney services and facilities and the court costs shall be provided at public expense."
>
> Renumber the following bill sections accordingly.
>
> Page 5, line 31:
> Delete "if needed"
>
> Page 7, following line 20:
> Insert a new subsection to read:
> "(h) A respondent is entitled to be represented by an attorney at a hearing under (d) of this section to the same extent as a person retaining an attorney and to be provided with the necessary services and

facilities of this representation, including investigation. If a respondent is unable to secure representation, the court shall appoint an attorney employed by the Public Defender Agency before the hearing to represent the respondent at public expense. Representation in connection with the hearing may include preparation before the hearing is held as well as representation at the hearing. Representation of the respondent shall continue after the hearing is held under (d) of this section if the court holds additional hearings under (f) of this section."

Page 13, lines 27 - 28:
Delete "sec. 23"
Insert "sec. 24"

Page 13, line 29:
Delete "sec. 23"
Insert "sec. 24"

Page 14, line 7:
Delete "Section 28"
Insert "Section 29"

CO-CHAIR SNYDER objected for the purpose of discussion.

REPRESENTATIVE KURKA stated that Amendment 11 would guarantee the patient would have the right to an attorney immediately. The amendment would also guarantee that the cost for the court appointed attorney would be covered, as in the criminal process.

4:07:59 PM

MS. MEADE expressed the understanding that the intent of the amendment would be to ensure a public defender is appointed to an individual whose liberties are potentially going to be curtailed. Concerning the first part of Amendment 11, she expressed the belief that this already exists under Title 47. When the ex parte is ordered, a public defender is appointed. She stated this would be "ultra-clarified" by Amendments [6] and 17, which would assure the court appoints an attorney before any other decisions are made concerning the individual. She stated Amendment 11 would add a provision to the authorizing statute so the public defender could only act when told to do so by the legislature. She voiced concern that this would create confusion, as the amendment would make these proceedings appear different from all the other public defender representations.

She explained the very definition of appointing counsel means at public expense. If a person has his/her own attorney, the court does not appoint that attorney. She expressed concern that this process is already fully understood, and restating the process in the amendment would be confusing, as people might think other proceedings would not be at public expense.

MS. MEADE, concerning the second part of Amendment 11, stated there is a similar concern. The amendment would add a section to the crisis residential center statute addressing attorney appointments. She reminded the committee that the proposed legislation already provides for an attorney, so this would be duplicating and confusing. She explained that the legislature does not amend every statute when somebody is entitled to a public defender, rather this is provided in the public defender statute.

4:11:30 PM

REPRESENTATIVE KURKA stated that Amendment [6] would only apply to the 72-hour hold. He stated that the patient would not be given an attorney "out of the gate." He expressed the belief that Amendment 11 would do this.

CO-CHAIR SNYDER clarified that the discussion concerns Amendments 6 and 17, not Amendments 2 and 17.

4:12:39 PM

MS. MEADE, agreeing with the earlier testimony, stated that the individual could not have an attorney immediately. She explained if the individual is to be held in a crisis stabilization center longer, the proposed legislation would provide for an attorney within 24 hours. A petition would be filed, and if the court grants the petition to hold the individual, there would be a hearing. The hearing would be set, and the counsel would be simultaneously appointed. This is required because of Title 47. She voiced uncertainty as to how counsel could be appointed any earlier.

4:14:34 PM

The committee took an at-ease from 4:14 p.m. to 4:18 p.m.

4:18:42 PM

REPRESENTATIVE KURKA [withdrew Amendment 11.]

REPRESENTATIVE KURKA moved to adopt Amendment 12 to CSHB 172(JUD), labeled 32-GH1730\O.12, Dunmire, 3/19/22, which read as follows:

Page 3, following line 9:
Insert a new bill section to read:
"*** Sec. 9.** AS 12.25.031 is amended by adding a new subsection to read:
(j) An individual being transported to a crisis stabilization center, crisis residential center, or evaluation facility by a peace officer, or an individual involuntarily committed to a crisis stabilization center, crisis residential center, or evaluation facility under (b) of this section, possesses all rights the individual would possess if under arrest."

Renumber the following bill sections accordingly.

Page 13, lines 27 - 28:
Delete "sec. 23"
Insert "sec. 24"

Page 13, line 29:
Delete "sec. 23"
Insert "sec. 24"

Page 14, line 7:
Delete "Section 28"
Insert "Section 29"

CO-CHAIR SNYDER objected for the purpose of discussion.

REPRESENTATIVE KURKA stated that Amendment 12 would ensure an individual in the [mental health crisis] system would maintain the same rights as an individual under [criminal] arrest.

MS. CARPENTER voiced concern, as this amendment would affect the alternative to arrest statutes. She stated that DHSS spoke with DPS and Mr. Bookman, as well as an attorney with the Criminal Division. She expressed the belief that this would cause confusion. Once an individual is in a crisis stabilization or residential center and held in an ex parte, this individual's rights would be covered under the civil commitment statutes. She argued that the amendment mixes criminal and civil law, adding confusion to public safety.

4:20:28 PM

REPRESENTATIVE SPOHNHOLZ questioned Ms. Meade's opinion of the amendment, and she inquired whether it would require Miranda rights be read to individuals held at the crisis centers.

4:20:55 PM

MS. MEADE, after considering the question, responded with the realization that the amendment would give the individual all the rights an arrested person would have, and this would include the reading of Miranda rights.

REPRESENTATIVE SPOHNHOLZ, referencing trauma-informed language and the destigmatization of mental illness, questioned Ms. Moreau-Johnson as to whether the reading of Miranda rights to psychiatric patients would "seem trauma-informed and ... patient centered."

4:22:03 PM

MS. MOREAU-JOHNSON responded that this is a big question. She stated that she would like to follow up at a later date. She expressed the opinion that her inclination would be the reading of Miranda rights would probably supersede concern with any aspect of stigma.

REPRESENTATIVE SPOHNHOLZ voiced the opinion that having Miranda rights read to a person who is in the middle of a psychiatric crisis could make the crisis much worse. She stressed that the idea of creating these centers would be to create a more trauma-informed experience and not to treat [behavioral health patients] as if they are criminals. She reasoned that this could unintentionally amplify an already stressful situation. She expressed concern about Amendment 12.

4:23:56 PM

MS. MEADE, in response to Representative McCarty, stated that there is a lengthy and well-established body of law about what police can do in terms of physical interventions. She voiced the opinion that whether the police pick up somebody for arrest or transport, they are guided by the same principles which restrict the use of violence and superfluous restraint. Patient rights are already in Title 47. These rights were written by the legislature in order to curtail a person's liberty as little

as possible, but also with protections for patients and others in light of the behavioral health crisis. She argued that Amendment 12 would not add to the body of law, but it may add confusion about a person's rights.

4:28:53 PM

CO-CHAIR SNYDER maintained her objection to the motion to adopt Amendment 12 to HB 172.

4:30:00 PM

REPRESENTATIVE KURKA voiced the understanding that Miranda rights could potentially have a negative effect on an individual [in a behavioral crisis]. But he reasoned Miranda rights exist because individuals need to be informed of their rights. He expressed the understanding that limited protections already exist in statute, but if individuals are involuntarily detained and their liberty is suspended, the same guaranteed rights with criminal prosecution should apply here. He argued that there is no reason an individual having a mental crisis should have lesser rights. He maintained that he strongly supports Amendment 12, unless it can be proven that the amendment would be entirely duplicative.

4:31:26 PM

REPRESENTATIVE PRAX queried what might happen if, when an individual is detained and transported to a stabilization center, the person confesses to criminal activity.

MS. MEADE responded that she did not know the answer.

4:32:10 PM

MR. BOOKMAN concurred with Ms. Meade. He said this is a difficult question, and he would not want to guess.

4:32:34 PM

A roll call vote was taken. Representatives Kurka voted in favor of Amendment 12 to CSHB 172(JUD). Representatives Snyder, Zulkosky, Fields, Spohnholz, Prax, and McCarty voted against it. Therefore, Amendment 12 failed to be adopted by a vote of 1-6.

4:33:10 PM

REPRESENTATIVE KURKA moved to adopt Amendment 13 to CSHB 172(JUD), labeled 32-GH1730\O.13, Dunmire, 3/19/22, which read as follows:

Page 10, line 31:
Delete "during **not** [NO] more than three crisis periods"
Insert "[DURING NO MORE THAN THREE CRISIS PERIODS]"

CO-CHAIR SNYDER objected for the purpose of discussion.

REPRESENTATIVE KURKA stated that Amendment 13 would eliminate the possibility of medication being administered without the patient's consent or a court order.

4:34:11 PM

The committee took a brief at-ease at 4:34 p.m.

4:34:34 PM

MS. CARPENTER, in response to Representative McCarty, explained that in current statute, before a court order is needed, a patient can be given medication for up to three crisis periods. This amendment would remove the ability to administer crisis period medications. She added that the amendment would take away this tool for newly established centers, as well as all other facilities, including hospitals. She continued that crisis medication is considered to be a last resort tool. If the ability to use this is removed, facilities would have to wait for a court order, and the individual in acute crisis, who is harming himself or herself or a provider, would have to be physically restrained.

MR. BOOKMAN responded to a follow-up question concerning the timeframe for a court order. He explained it would be difficult to have a hearing take place within 24 hours. A petition would have to be written, filed, and sent to the public defender, and a judge would need to be found. He stated that the lead up to the hearing would be the delay.

4:38:21 PM

MS. CARPENTER, in response to series of questions from Representative Prax, affirmed that the only alternative to medication [for an individual in acute crisis] would be physical

restraint. She voiced the understanding that [part of the intent] of the legislation would be to protect people providing the services. She explained that patient trauma [from physical restraint] could cause a setback for any recovery. She maintained that providers have said that the ability to prescribe crisis medications is crucial in psychiatric care. Responding to the question of whether patients would prefer drugs to restraint, she expressed the belief that medications are preferable. She continued that crisis medications would be used for an immediate crisis, not as a long-term [solution].

4:40:42 PM

CO-CHAIR ZULKOSKY shared her experience of collaborating with medical professionals in Alaska. She described these professionals as compassionate, thoughtful, and meaningful in their work. She argued that tools which help these professionals make good decisions should not be taken away. She reminded the committee that all physicians take the Hippocratic Oath to do no harm. She stated that she would not support Amendment 13.

4:41:31 PM

REPRESENTATIVE KURKA, regarding [the three crisis periods for which patients can be given medication], offered a hypothetical situation in which a patient is brought in for a fourth crisis episode, and he questioned whether this patient would be subject to physical restraint. He concluded that, in this scenario, medication could not be administered without a judicial decision.

MS. CARPENTER, in response, stated that this would not be correct. She explained that each time a patient has a crisis situation, this would be considered a fresh admission, and the clock would start over for the 72-hour evaluation. In response to a follow-up question, explained that a crisis period refers to an episode of care. She stated that a crisis period is seen as a 24-hour period.

REPRESENTATIVE KURKA expressed the understanding that three separate "druggings" could happen within a 24-hour period.

MS. CARPENTER responded, "I would not describe it the way you're describing it as forced drugging." She stated that the three crisis periods would be before a court order is issued. She deferred to Mr. Bookman.

MR. BOOKMAN explained that a crisis period is a 24-hour period. He continued that the number of times medication could be administered within the 24-hour period would be a clinical decision, depending on the situation and type of medication. He confirmed that Ms. Carpenter was correct; the ability to administer medication at this point would have to be reviewed, and during a fourth crisis period physical restraint would be likely. He stated that during the second or third crisis period [within 24 hours] the provider would apply to the court in advance for additional crisis medication to avoid the inhuman practice of physical restraint.

4:45:03 PM

REPRESENTATIVE MCCARTY expressed the belief that there have been incongruent responses. He requested clarity on the actual crisis period when judges are not available within 24 hours.

MR. BOOKMAN explained that the practice now is providers at hospitals are authorized to give medication for three crisis periods without court approval. They have this authority immediately on patient admission. If there is an additional crisis, providers must ask the court for additional authority.

4:47:07 PM

MS. CARPENTER, responding to Representative Kurka, confirmed every time a patient is brought in, it is considered to be a new crisis period. She stated that the clock would start over for a patient on a Title 47 involuntary commitment hold for the 72-hour evaluation. She reiterated that an individual would be treated as a brand-new patient each time.

4:48:10 PM

REPRESENTATIVE KURKA voiced the belief that this seems incongruent with Mr. Bookman's response. He expressed concern that someone would get an injection without consent. He stated that judicial oversight would be prudent considering the adverse effects of psychotropic drugs.

4:48:52 PM

A roll call vote was taken. Representatives Kurka, Prax, and McCarty voted in favor of Amendment 13 to CSHB 172(JUD). Representatives Snyder, Zulkosky, Fields, and Spohnholz voted

against it. Therefore, Amendment 13 failed to be adopted by a vote of 3-4.

4:49:50 PM

The committee took an at-ease from 4:49 p.m. to 4:52 p.m.

4:52:19 PM

REPRESENTATIVE KURKA moved to adopt Amendment 14 to CSHB 172(JUD), labeled 32-GH1730\O.14, Dunmire, 3/19/22, which read as follows:

> Page 6, line 5, following "holidays":
> Insert ", except that if the exclusion of Saturdays, Sundays, and legal holidays from the computation of the 72-hour period would result in the respondent being held for longer than 72 hours, the 72-hour period ends at 5:00 p.m. on the next day that is not a Saturday, Sunday, or legal holiday"
>
> Page 10, line 7, following "facility":
> Insert "**, except that if the exclusion of Saturdays, Sundays, and legal holidays from the computation of a 72-hour evaluation period or 48-hour detention period would result in the respondent being held for longer than 72 hours or 48 hours, as applicable, the period ends at 5:00 p.m. on the next day that is not a Saturday, Sunday, or legal holiday**"

CO-CHAIR SNYDER objected for the purpose of discussion.

REPRESENTATIVE KURKA explained that Amendment 14 addresses the potential problem concerning the exemption of Saturdays, Sundays, and holidays from a 72-hour hold time. The problem would be if an individual is held on a Thursday and Friday with the release set for Saturday, then there is a holiday, the individual could potentially be held until Tuesday. He explained that 72 hours could turn into 6 days. He stated the amendment would not eliminate the exemption for weekends or holidays, but it would tighten up the timeframe to avoid an excessive period an individual could be held without his/her consent.

4:53:21 PM

MS. CARPENTER explained that the department did look at this and there are some concerns. She stated the first concern is the current timeframe statute has not included weekends or holidays since 1984, and this has been the normal operation. There is also the concern this amendment could create a bulk of hearings on Mondays, or the day after a holiday. The court system would need to be prepared to handle many hearings at once. She voiced the concern that public defenders would need to have sufficient preparation time in order to effectively represent the respondent. She pointed out staffing differences between weekends and weekdays at facilities. She concluded that a 72-hour evaluation would be needed to determine whether an individual should be committed further.

4:54:32 PM

CO-CHAIR SNYDER questioned Representative Kurka to provide an example.

REPRESENTATIVE KURKA first noted that the question came up during a House Judiciary Standing Committee meeting, when a [representative of the court system] had testified that weekends were not the issue; it was a question of obtaining a professional for the evaluations. In response to Co-Chair Snyder, to exemplify how the amendment would work, he said if an individual had been picked up on a Friday to be released on a Sunday, he/she would be there until the next business day. But if Monday happened to be a holiday, the hearing would be on a Tuesday. He said, "What this amendment avoids is that you don't count the time somebody spends at all on a weekend ... if somebody is picked up on a Friday, we skip the weekend, and we would skip a holiday on Monday, and we would count then Tuesday and Wednesday for the evaluation period."

4:56:27 PM

REPRESENTATIVE SPOHNHOLZ expressed confusion about how the amendment would change the scenario; if the court said that there is not a problem for legal proceedings to take place over the weekend, it does not seem to change anything.

4:57:25 PM

MS. MEADE explained that the court always has magistrate judges on duty around the clock to handle various emergencies, including the ex parte hearing and a mental commitment. She stated that the amendment would extend the ex parte hearing for

detentions at a crisis center, and this would have more of an impact on DHSS. She explained that, per the amendment, if an individual had been arrested Thursday night, and the process had not come together on Friday, then the crisis center would release the individual on Monday at 5 p.m. She explained that the burden would be on the department because, more often than not, the court would be able to have the 72-hour hearing shortly after getting the petition from the department. She stated that the department would have the potential difficulty of getting the request to court in time.

REPRESENTATIVE SPOHNHOLZ, with a follow-up request, asked the department for a description of the barriers created by the amendment. She also requested a description of how the amendment would be implemented.

MS. CARPENTER deferred to Mr. Bookman.

MR. BOOKMAN explained that there are two factors with court approval. The first factor is the court's approval of the original ex parte petition, and this happens quickly, around the clock. The second factor, under the current system, is the hearing on an extended commitment. This extended commitment could be up to 30 days. This hearing will take place after the 72-hour evaluation. He offered that these hearings are not easily done; for example, right now, they are held in Anchorage in block hearings in the afternoon on Monday, Wednesday, and Thursday. He stated that the court frequently runs out of time, schedules are pushed back, and finding a judicial officer for these other time slots can be very difficult. He expressed the belief that with delayed schedules there would be difficulties for the public defender to call witnesses, interview people, or speak with clients. He indicated that he understood about the concern on the 72-hour timeframe over the weekends, but he expressed the belief that there would be a positive benefit to patients having enough time to be evaluated. He stated that Amendment 14 would impose "significant logistical burdens," not only on the department but for health care providers.

5:01:57 PM

REPRESENTATIVE MCCARTY clarified that the 72-hour hold is an actual timeframe. He said, "So when the 72 hours is up, that person can walk unless an ex parte is placed on them to extend that period of time." He suggested if the assessment is not attained in time, a 96-hour hold would be needed.

MR. BOOKMAN responded in the affirmative, stating that it can be difficult to fully evaluate someone during the 72-hour period; therefore, no 30-day commitment petition would be filed, or, if one is filed, it would not be granted. He stated that providers at API have expressed the desire for more time to evaluate patients. He stated that after 72 hours, the individual on involuntary hold has to leave API, or there has to be a hearing. He continued that there have been times when a public defender requested the hearing be postponed a day. He expressed the assumption that with more preparation time, the petition for a 30-day commitment likely would be denied. He said, "There's a lot going on and not a lot of time to prepare for these." Concerning time, he stated that petitions frequently continue to the next day, and there have been times he was in court until 7 p.m. doing these hearings. He summed up that ACS and DOL are very aware of due process rights.

5:04:55 PM

REPRESENTATIVE FIELDS stated that he would not be supporting Amendment 14.

5:05:04 PM

A roll call vote was taken. Representatives Prax and Kurka voted in favor of Amendment 14 to CSHB 172(JUD). Representatives Snyder, Zulkosky, Fields, Spohnholz, and McCarty voted against it. Therefore, Amendment 14 failed to be adopted by a vote of 2-5.

5:05:48 PM

REPRESENTATIVE KURKA moved to adopt Amendment 15 to CSHB 172(JUD), labeled 32-GH1730\O.15, Dunmire, 3/19/22, which read as follows:

Page 11, line 2:
Delete "a new section"
Insert "new sections"

Page 11, following line 4:
Insert a new section to read:
"**Sec. 47.30.913. Health outcome metrics.** (a) Crisis residential centers, crisis stabilization centers, and subacute mental health facilities shall assess the severity of an individual's mental illness each day and keep a record of the assessment. The

assessment shall use an objective scale relating to an individual's ability to function in society and the impact that the individual's mental health has on the individual's daily life.

(b) A crisis residential center, crisis stabilization center, and subacute mental health facility shall submit a quarterly report to the department relating to aggregate assessment data gathered under (a) of this section without disclosing information that would identify an individual.

(c) The department shall prepare an annual report compiling the quarterly aggregate assessment data reports received under (b) of this section. Not later than February 15 of each year, the department shall submit the report to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available."

CO-CHAIR SNYDER objected for the purpose of discussion.

REPRESENTATIVE KURKA explained that Amendment 15 addresses accountability. He stated that it would require DHSS to give a report on the assessments of the facilities and track the improvements, as it is important to know the results of this new process.

5:06:34 PM

MS. CARPENTER voiced appreciation for the motives but expressed the belief that Section 26 in the legislation proposes a better way to share publicly these metrics and data. She pointed to language in the amendment which referenced using an "an objective scale" in the assessments. She said, "We don't really understand what that means - an objective scale." She added there are concerns that [the report proposed by the amendment] would not be data driven. She explained that DHSS has to report on a regional or statewide basis because a small data sample could identify individuals easily; to protect individuals, information from regions with small numbers should not be shared publicly. In addition, the department is tracking health outcomes through the 1115 waiver, which is a requirement by the federal government.

5:07:50 PM

CO-CHAIR SNYDER expressed appreciation for Representative Kurka's amendment in the House Judiciary Standing Committee and

the department's effort to find middle ground. She said the information the amendment addresses could be explored through Section 26. She expressed hesitancy to add another burden of reporting while implementing "this very significant bill." She stated that she would not be supporting Amendment 15.

5:08:45 PM

REPRESENTATIVE KURKA, addressing Section 26 of the proposed legislation, questioned whether it would give the legislature reports on the status of patient improvement.

MS. CARPENTER responded in the affirmative. She stated that reports of harm, grievances, appeals, restraint, and resolutions would all be tracked. She stated that earlier the committee adopted [Amendment 5] which looked at improving patient outcomes. She expressed the belief that the department would be able to provide an action plan to the legislature on making the data available to the public in an easy way.

5:10:00 PM

REPRESENTATIVE MCCARTY moved to adopt Conceptual Amendment 1 to Amendment 15 [which would insert the language "industry standard and reliable" after "objective" on line 10 of the amendment, which read, "assessment shall use an objective scale relating to an individual's ability to function in"].

REPRESENTATIVE FIELDS objected.

CO-CHAIR SNYDER requested that Representative McCarthy speak to the conceptual amendment.

REPRESENTATIVE MCCARTY, concerning objective scale, explained Conceptual Amendment 1 would insert "industry standard and reliable" before "objective scale".

REPRESENTATIVE FIELDS removed his objection.

5:11:16 PM

REPRESENTATIVE PRAX objected for the purpose of discussion.

REPRESENTATIVE MCCARTY explained that in the [mental health] industry there are psychometric assessments to determine the state of the individual. He continued that an industry standard, or established reliable standard, has been validated

by its use "tens of thousands of times." He voiced the idea that using this standard would make the process more objective.

REPRESENTATIVE PRAX removed his objection.

5:12:10 PM

CO-CHAIR SNYDER announced that there being no further objection, Conceptual Amendment 1 to Amendment 15 was adopted.

5:12:22 PM

CO-CHAIR SNYDER questioned whether the conceptual amendment addressed the department's concerns with Amendment 15.

MS. CARPENTER maintained the belief that the process outlined in Section 26 would involve providers, patient advocates, and other public stakeholders in the process. She stated that Amendment 15, as amended, would add another reporting requirement to providers.

CO-CHAIR SNYDER remarked that adding another report seemed out of order.

5:13:19 PM

REPRESENTATIVE SPOHNHOLZ voiced the interpretation that Amendment 15, as amended, would provide transparency around patient outcomes, which could be helpful. She reasoned if the number of providers is expanded, per the proposed legislation, it could be useful to have an annual report on performance. She cited that the state has had challenges with other organizations accessing patient outcomes. She stated that she supports Amendment 15, as amended.

5:14:23 PM

REPRESENTATIVE FIELDS requested additional clarity on the difference between this amendment and Section 26.

MS. CARPENTER responded that there are a couple of differences. The amendment, as amended, would require immediate reporting. Providers would report on a quarterly basis, and the department would have to prepare an annual report for the legislature by February 15. She stated, in terms of Section 26, there would be a year to come up with the ground rules and a structure for how data would be collected, reported, and where it should be

reported. She stated that the amendment would add the requirement for providers to report immediately on a quarterly basis and the legislature to report annually.

5:15:20 PM

REPRESENTATIVE FIELDS, in a follow up, requested the interpretation of the phrase "shall access the severity of an individual mental illness everyday". He questioned whether a psychiatrist would examine an individual's mental condition every day.

MS. CARPENTER explained that this would be subjective from facility to facility. She expressed hope that there would be overall goals, or standards, used. But the process, as written, would be very subjective. She voiced concern about how the data would be aggregated and put forward to the legislature. She explained that the department uses a contractor for the 1115 waiver for reporting data outcomes. In response to a follow-up question, she stated that DHSS does not know what an objective scale would be.

REPRESENTATIVE SPOHNHOLZ voiced the understanding that an objective scale is defined, rather than based on the perspective of the individual person doing the analysis. She stated this is why the conceptual amendment specifies "an industry standard". She stated that the difference in the conceptual amendment versus Section 26 is the report in Section 26 would be focused on the grievance and appeals process. She said this was designed in consultation with patient advocates concerned about grievance procedures in the state. She stated this would be a one-time report to make recommendations on the appeals process for patients with concerns about operations in facilities. She continued that in Amendment 15, as amended, the providers would give the information to the department on a quarterly basis, and the department would report to the legislature annually. She added this would allow some visibility into the effectiveness of the massive new system. She conceded that there are valid questions about implementation and the industry standard, but the department is well qualified to answer these questions.

5:19:04 PM

CO-CHAIR ZULKOSKY voiced her appreciation for transparency related to the outcomes of the crisis centers. She expressed concern over the unfunded mandate put on health care providers to provide quarterly data. She stated that in addition to

handling individuals in crisis, updating required accreditations for facilities, and completing other types of reporting, a quarterly report would be added. She expressed the opinion that this would undermine the programs and the health professionals' ability to focus on their work. She continued that not only would the reporting requirement be an additional burden, but it would provide non-defined information, as the scope of the amendment is unclear to the department. She expressed concern that the providers, who are doing crisis stabilization work, had not been consulted. She expressed the opinion that adding a quarterly report would be meaningful, but she expressed the preference that it be done through DHSS, so the legislature would not be micromanaging the department. She concluded that there have been no expert opinions on an objective scale, and she would not support Amendment 15, as amended.

5:21:41 PM

REPRESENTATIVE FIELDS voiced his concern that it would be "subjective information masquerading as objective information," which becomes a problem when the aggregated information is presented as valid. He expressed the opinion that one of two things would happen: facilities would be required to access the severity as a "check-the-box exercise," which would be a "meaningless paperwork exercise," or there would be a cost, which is unknown and may not be billable. He said, "I don't know that there is an objective scale. We have no evidence that there is, and if so, what is it?" He pointed out the size of the report the amendment would require: a daily, per person, report aggregated into a quarterly report, aggregated into an annual report. He said this "strikes me as a massive exercise by DHSS and the providers." Based on the structure, he expressed confidence that the information in the report would be misleading. He strongly opposed Amendment 15, as amended. He suggested that if better reporting is needed, this should be worked out with DHSS.

5:22:51 PM

REPRESENTATIVE KURKA asked, "What are we trying to accomplish with the bill?" He stated that people are being "locked up" because they are a danger to themselves or to the public, with state resources paying for the treatment. He expressed the belief that it is only reasonable to have an assessment of what is working and what is not working. He stated that he is new to the issue but expressed the understanding that the state has not done a good job with the entire process, and there is concern

for how facilities would define a daily assessment. He argued that this tracking is already being done daily; if this is so, he expressed a greater concern with how patients are treated.

5:24:16 PM

REPRESENTATIVE PRAX stated that he concurs with Co-Chair Zulkosky and Representatives Fields. He offered the opinion that management relies too much on reports and data and not enough by "being in the room ... walking around and taking a look at what is happening."

5:24:45 PM

REPRESENTATIVE MCCARTY explained that Amendment 15, as amended, assesses an individual's progress. For example, he said an objective scale would be like the Minnesota Multiphasic Personality Test, the Becks Depression [Inventory] or the Hamilton Anxiety [Rating Scale]. He stated that institutions make money on these reliable objective scales. He referenced that when organizations in Alaska discuss continuity of psychometric assessments in substance abuse, they follow the standard for the American Society for Addiction Medicine. He argued that nationally accredited organizations in the state have to follow these standards, otherwise assessments would not transfer. He discussed the Alcohol Safety Action Plan which looks at recidivism but also determines the effectiveness of organizations [addressing the problem]. He shared that in the past, he had done assessments by hand. He voiced the belief that because of technology, these assessments would be less of a burden. He added that records would follow the patient as he/she moves from a stabilization center to a residential center. He stated that as the patient moves through treatment centers, each center would be objectively evaluated. He pointed out that individual assessments on patients would be done several times, so progression could be tracked. He insisted that technology gives capability without imposition, adding if the state does not have the technology, this would need to be updated.

5:28:10 PM

CO-CHAIR SNYDER voiced agreement with Representative Spohnholz' point on transparency for data and tracking. She stated that sometimes it is difficult to obtain data which would help inform decisions in the legislature. She questioned whether other states have the technology available to make daily, quarterly,

and annual reports seamless. She suggested that the maker of the amendment and DHSS work together to produce an amendment which is consistent with the spirit of Amendment 15, as amended, but would deliver the quality of data which would be useful. She stated that this could be done with resources currently available to DHSS. She offered that she would not support Amendment 15, as amended, but would follow up with Representative Kurka and DHSS.

5:29:45 PM

REPRESENTATIVE SPOHNHOLZ, because of the complexity of discussion, offered her support to Co-Chair Snyder's willingness to work with Representative Kurka and DHSS on an alternative amendment. She voiced the opinion that appropriate metrics need to be identified. She stated that she would not support Amendment 15, as amended, but could support an amendment in the future that addresses transparency.

5:30:52 PM

REPRESENTATIVE KURKA withdrew Amendment 15, as amended.

5:31:14 PM

REPRESENTATIVE KURKA moved to adopt Amendment 16 to CSHB 172(JUD), labeled 32-GH1730\O.16, Dunmire, 3/18/22, which read as follows:

Page 4, line 24:
Delete "(b)"
Insert "(c)"

Page 4, line 28, following "center.":
Insert "The examination must include evaluation of whether the respondent is suffering from
(1) medication-induced psychosis caused by the respondent's use of a prescribed medication or other drug or psychoactive substance;
(2) psychosis caused by drug withdrawal; or
(3) a psychiatric or psychological condition unrelated to a respondent's use of or withdrawal from a medication or other drug.
(b) After the examination described in (a) of this section, the mental health professional shall consult with a physician trained to distinguish symptoms caused by medication or other drugs from

symptoms caused by a psychiatric or psychological condition unrelated to a respondent's use of or withdrawal from medication or other drugs, to determine whether the respondent is suffering from a condition described in (a) of this section. If a respondent is suffering from a condition described in (a)(1) or (2) of this section, a mental health professional may not apply for an ex parte order under AS 47.30.700 authorizing detention at the crisis residential center."

Reletter the following subsection accordingly.

Page 4, line 29:
Delete "If"
Insert "Except as provided in (b) of this section, if"

Page 5, line 12, following "facility.":
Insert "The examination must include evaluation of whether the respondent is suffering from

(1) medication-induced psychosis caused by the respondent's use of a prescribed medication or other drug or psychoactive substance;

(2) psychosis caused by drug withdrawal; or

(3) a psychiatric or psychological condition unrelated to a respondent's use of or withdrawal from a medication or other drug.

(b) After the emergency examination described in (a) of this section, the mental health professional shall consult with a physician trained to distinguish symptoms caused by medication or other drugs from symptoms caused by a psychiatric or psychological condition unrelated to a respondent's use of or withdrawal from medication or other drugs, to determine whether the respondent is suffering from a condition described in (a) of this section. If a respondent is suffering from a condition described in (a)(1) or (2) of this section, a mental health professional may not admit the respondent to the crisis residential center or apply for an ex parte order under AS 47.30.700 authorizing admission to the crisis residential center."

Reletter the following subsections accordingly.

Page 5, line 13:

Delete "The"
Insert "Except as provided in (b) of this section, the"

Page 5, line 21:
Delete "If"
Insert "Except as provided in (b) of this section, if"

Page 5, line 29:
Delete "(c)"
Insert "(d)"

Page 7, line 1:
Delete "(d)"
Insert "(e)"

Page 7, line 6:
Delete "(d)"
Insert "(e)"

Page 8, line 22, following "facility.":
Insert "**The examination must include evaluation of whether the respondent is suffering from**

(1) medication-induced psychosis caused by the respondent's use of a prescribed medication or other drug or psychoactive substance;

(2) psychosis caused by drug withdrawal; or

(3) a psychiatric or psychological condition unrelated to a respondent's use of or withdrawal from a medication or other drug."

Page 8, line 27:
Delete "If"
Insert "**Except as provided in (c) of this section, if** [IF]"

Page 9, following line 7:
Insert a new subsection to read:

"(c) After the emergency examination described in (a) of this section, the mental health professional shall consult with a physician trained to distinguish symptoms caused by medication or other drugs from symptoms caused by a psychiatric or psychological condition unrelated to a respondent's use of or withdrawal from medication or other drugs, to determine whether the respondent is suffering from a

condition described in (a) of this section. If a respondent is suffering from a condition described in (a)(1) or (2) of this section, a mental health professional may not admit the respondent to a crisis residential center, hospitalize the respondent, or arrange for hospitalization on an emergency basis."

Reletter the following subsections accordingly.

CO-CHAIR SNYDER objected for the purpose of discussion.

REPRESENTATIVE KURKA stated that Amendment 16 would address quality by assessing professionals' qualifications to make examinations and understand the effects of the drugs. He added that this would ensure medical personnel observes the totality of patients and how the drugs may affect them.

5:32:13 PM

MS. CARPENTER voiced the understanding that the amendment would remove the option for the crisis centers to serve an individual with a substance abuse disorder who is experiencing a psychiatric crisis. She reiterated that a psychiatric crisis would be defined as an individual being in immediate danger to himself or herself or others or considered gravely disabled. She stated that this means these patients could not be served in these lower-level facilities. She continued that the amendment would not allow the current hospitalization track, including API. She suggested that this amendment could lead to more arrests, because the only other option would be to take these individuals to a correctional facility in order to keep them safe. She offered that DHSS cannot support Amendment 16 because, by increasing the likelihood of individuals waiting in a correctional facility, it would go against the settlement with the Disability Law Center.

5:33:25 PM

MS. CARPENTER, in response to Representative Kurka, explained that the reason the amendment would nullify the entire legislation is because an examination would be required before allowing individuals to go to any of these facilities. She described that the amendment is written in multiple sections. The first part of the amendment would not allow a crisis stabilization center to apply for an ex parte. If somebody falls into this category, the second section would not allow a crisis residential center to hold him/her. She added that the

same language in the current hospitalization statutes would be removed. She stated that the court system and DHSS read this the same way, and it limits all of the options to use crisis facilities. She stated that the intended use for these facilities would be individuals with a substance abuse disorder experiencing a psychiatric crisis; not allowing this would go against the intention of these facilities.

5:35:45 PM

REPRESENTATIVE MCCARTY agreed with Ms. Carpenter's comments. He said that if Amendment 16 were to pass, it would take away the ability to recognize the state of these individuals and whether they have psychosis because of prescribed medication. He insisted that the reason for the crisis stabilization center is for individuals with psychosis resulting from prescribed medication or from drug withdrawal. He deduced, if the amendment passes, a good number of people who need to be stabilized would be eliminated. He stated that it is counter to the whole purpose of the bill.

5:37:26 PM

REPRESENTATIVE KURKA withdrew Amendment 16.

5:37:52 PM

CO-CHAIR SNYDER entertained a motion on CSHB 172(JUD), as amended.

5:38:16 PM

REPRESENTATIVE ZULKOSKY moved to report CSHB 172(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

5:38:31 PM

REPRESENTATIVE PRAX objected, voicing his belief that it would be nice to "digest" the conversation. He requested that the committee put the legislation aside.

CO-CHAIR SNYDER expressed appreciation of the sentiment but said she does not share it.

5:39:03 PM

REPRESENTATIVE KURKA voiced partial agreement. He stated that it is a "heavy bill" and would do a lot of things. He described that a new infrastructure would be built. He stated individuals' rights have been addressed, but parental rights of minors in these facilities have not yet been addressed. He offered the opinion that the proposed legislation needs more work.

5:39:40 PM

CO-CHAIR SNYDER reminded that this is not the only day the committee has "hashed out" important considerations. She stated that there had been hard work and collaborations with the House Judiciary Standing Committee and DHSS. Amendments have been worked through during five hearings in the House Judiciary Standing Committee, and this is the House Health and Social Services Standing Committee's fourth hearing, "walking through 17 amendments today." She stated that from this perspective, she is keen to take the vote.

5:40:33 PM

REPRESENTATIVE FIELDS concurred.

5:40:37 PM

A roll call vote was taken. Representatives Snyder, Zulkosky, Fields, Spohnholz, and McCarty voted in favor of reporting CSHB 172(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes. Representatives Prax and Kurka voted against it.

5:41:22 PM

The committee took a brief at-ease at 5:41.

5:41:32 PM

CO-CHAIR SNYDER announced that by a vote of 5-2, CSHB 172(HSS) was reported out of the House Health and Social Services Standing Committee.

5:42:19 PM

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 5:42 p.m.