

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 16, 2022

1:32 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins
Representative David Eastman
Representative Christopher Kurka

MEMBERS ABSENT

Representative Sarah Vance

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."

- HEARD & HELD

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

WITNESS REGISTER

EMMA POTTER, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the proposed committee substitute to HB 172, on behalf of the prime sponsor, House Rules Standing Committee, by request of the governor.

HEATHER CARPENTER, Senior Policy Advisor
Office of the Commissioner
Department of Health and Social Services
Anchorage, Alaska

POSITION STATEMENT: Gave a sectional analysis on the proposed committee substitute to HB 172, on behalf of the prime sponsor, House Rules Standing Committee, by request of the governor.

STEVEN BOOKMAN, Senior Assistant Attorney General
Human Services Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 172, Version W.

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:32 p.m. Representatives Kreiss-Tomkins, Drummond, Snyder, and Claman were present at the call to order. Representatives Eastman and Kurka arrived as the meeting was in progress.

HB 172-MENTAL HEALTH FACILITIES & MEDS

[1:33:12 PM](#)

CHAIR CLAMAN 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, adopted on 5/14/21 as a working document, was the proposed committee substitute (CS) 32-GH1730\I, Dunmire, 5/14/21 ("Version I").]

CHAIR CLAMAN stated that before moving to adopt the proposed committee substitute (CS) to HB 172, the committee will first hear the summary of changes and sectional analysis.

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EMMA POTTER, Staff, Representative Matt Claman, Alaska State Legislature, summarized the proposed CS for HB 172, on behalf of the prime sponsor, House Rules Standing Committee, by request of the governor. She stated that the changes in the proposed CS include efforts to protect patients' rights by shortening the length of time patients can be held without judicial review. She stated that hearings should occur within 72 hours of arrival at a crisis stabilization facility, a crisis residential facility, or for a 30-day hold. She stated that the proposed CS would also create different levels of proof for detention. She explained that the burden of proof at a crisis residential center would be "probable cause," while for involuntary commitment it would be "clear and convincing evidence." She noted that another update in the proposed CS is that a maximum stay would be increased from five days to seven days in a crisis residential facility, and this would be based on Medicaid coverage limits. She added that the parties who would receive notice of an ex-parte petition for the 72-hour hearing include the respondent, the respondent's attorney, the respondent's guardian (if applicable), the petitioner's attorney (if applicable), and the attorney general. She referenced AS 01.10.060(a) regarding the conforming changes and the definition of a peace officer.

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HEATHER CARPENTER, Senior Policy Advisor, Office of the Commissioner, Department of Health and Social Services, on behalf of the prime sponsor, House Rules Standing Committee, by request of the governor, provided the sectional analysis [included in the committee packet] for the proposed CS for HB 172, which read as follows [original punctuation provided]:

Section 1: Amends AS 12.25.031(a) to add a "crisis residential center" as another facility a peace

officer may deliver a person to as an alternative to arrest. An officer may, at their discretion, deliver a person to a crisis stabilization center, crisis residential center, or evaluation facility instead of arresting them if the officer believes that the person is suffering from an acute episode of mental illness and if the person voluntarily agrees to be taken to a crisis stabilization center or evaluation facility.

Section 2: Conforming amendment AS 12.25.031(b) to add a "crisis residential center" as another facility a peace officer may take a person into emergency custody under AS 47.30.705 as an alternative to arrest.

Section 3: Conforming amendment to AS 12.25.031(c) to include "crisis residential center" in the alternative to arrest statutes (AS 12.25.031); makes it clear that delivery of a person to a crisis stabilization center, a crisis residential center, or an evaluation facility under these provisions does not constitute an involuntary commitment under AS 47.30 or an arrest.

Section 4: Conforming amendment to AS 12.25.031(d), alternative to arrest statutes; requires a mental health professional to make reasonable efforts to inform the arresting officer before they release a person delivered to a crisis stabilization center, crisis residential center, or an evaluation facility under this provision if the officer has specifically requested notification.

Section 5: Conforming amendment to AS 12.25.031(f) to include "a crisis residential center" in the alternative to arrest statutes (AS 12.25.031)

Section 6: Conforming amendment to AS 12.25.031(g) to include "a crisis residential center" in the alternative to arrest statutes.

Section 7: Amends the alternative to arrest statutes (AS 12.25.031) to update the definition of "crisis stabilization center" to have the meaning given in AS 47.30.915, which is updated in Section 22.

Section 8: Adds a definition for "crisis residential center" to the alternative to arrest statutes in AS 12.25.031.

Section 9: Conforming amendment to AS 18.65.530(c) to add "a crisis residential center" to the Mandatory arrest for Crimes for Domestic Violence, Violation of Protective Orders, and Violation of Conditions of Release statutes (AS 18.65.530). This section of law provides that a peace officer is not required to make an arrest under AS 18.65.530(a) if the officer has authorization from a prosecuting attorney in the jurisdiction in which the offense under investigation arose to deliver the person to a crisis stabilization center, a crisis residential center, or an evaluation facility as provided in AS 12.25.031.

Section 10: Conforming amendment to AS 18.65.530(g) to add "a crisis residential center" to the Mandatory Arrest for Crimes Involving Domestic Violence, Violation of Protective Orders, and Violation of Conditions of Release statutes (AS 18.65.530). This section requires a peace officer who delivers a person to a crisis stabilization center, a crisis residential center, or evaluation facility to leave their contact information with the crisis stabilization center or evaluation facility and, if notified of a release from crisis stabilization under AS 12.25.031(d), to make reasonable efforts to inform the victim of a crime under (a) (1) and (2) of AS 18.65.530.

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MS. CARPENTER continued her overview of the sectional analysis, which read as follows [original punctuation provided]:

Section 11: Amends AS 47.30.705(a) to expand the category of who can cause a person to be taken into custody for delivery to a crisis stabilization center, a crisis residential center, evaluation facility, or treatment facility. The new language would allow a "health officer" as newly defined in Section 22, the existing "mental health professional" as defined in AS 47.30.915(13), or a physician assistant licensed by the State Medical Board to practice in this state, in addition to a peace officer to take someone into custody. Clarifies that a person is taken "into custody" by a peace officer or health officer and then delivered to the nearest crisis stabilization center, crisis residential center, evaluation facility or

treatment facility. Clarifies that a person taken into custody may not be placed in jail or other correctional facility except for protective custody purposes while they await transportation to a crisis stabilization center, crisis residential center, evaluation facility, or treatment facility.

Section 12: Adds a new subsection (c) to AS 47.30.705 that requires a peace officer or health officer to prioritize delivery to a crisis stabilization center if one exists in the area served by the peace officer or health officer.

Section 13: Adds a new section AS 47.30.707 for admission to and detention at a crisis stabilization center or crisis residential center with the following options and rights for a patient:

(a) Requires a mental health professional to examine the patient (respondent) delivered to a crisis stabilization center within 3 hours after arrival when a patient (respondent) is delivered pursuant to AS 47.30.705 and specifies that a hold may last no longer than 23 hours and 59 minutes.

(b) Creates a new process for evaluation, stabilization, and treatment at crisis residential centers which provides a less restrictive alternative to traditional involuntary commitment holds at a Designated Evaluation and Treatment Facility (DET) or the Alaska Psychiatric Institute (API). If there is probable cause to believe the person's crisis could be stabilized by admitting to a crisis residential center, the mental health professional in charge at the 23-hour, 59-minute crisis stabilization center can apply to the court for an ex parte detention order after which the person could be detained at a crisis residential center for no more than 7 days.

Adds a new section AS 47.30.708 for admission to and detention at a crisis residential center with the following options and rights for a patient:

(a) Requires a mental health professional to examine the patient's (respondent) mental and physical condition within 3 hours after arrival.

(b) Allows the mental health professional who performs the emergency examination under (a) to admit the patient (respondent) to the crisis residential center if:

1. The patient (respondent) is mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to self or others; and

2. The patient's (respondent's) acute behavioral health crisis will be resolved during admission to the crisis residential center.

(c) Allows the mental health professional to apply for an ex parte order under AS 47.30.700 if admission is made to a crisis residential center and a judicial order has not been obtained. Sets forth that the court will grant an application if there is probable cause to believe that the patient's (respondent's) acute behavioral health crisis will be resolved during admission to a crisis residential center.

(d) Requires the court to set a time for a 72-hour evaluation hearing to be held if needed within 72 hours after the patient's (respondent's) arrival to the crisis stabilization center or crisis residential center, whichever is earlier, if a court grants admission to a crisis residential center under (c). Sets out the parties the court must notify of the time and place of the hearing. Provides for the computation of time of the 72-hour period, which does not include Saturdays, Sundays, and legal holidays. Requires hearings to be held at the crisis residential center in person by contemporaneous two-way video conference or by teleconference.

(e) Sets forth the requirements for a petition filed in court for a 30-day commitment or for detention at a crisis stabilization center. Requires a petition for a 30-day commitment to confirm with AS 47.30.730, which is the statute regarding petitions for 30-day commitment to a treatment facility. Specifies the items that must be included in any petition.

(f) Provides for the court reviewing a 30-day commitment petition under (d) to hold the next hearing in accordance with AS 47.30.735. If the 30-day commitment petition is granted, allows the patient (respondent) to remain at the crisis residential center until admission to a designated treatment facility.

(g) Provides for patients' rights listed in AS 47.30-735(b)(1)-(9) when the court is reviewing a petition for detention under (d) to a crisis residential center. Allows the court to order a patient (respondent) to be detained at a crisis residential

center for up to seven days from the date of first admission to a crisis stabilization center or crisis residential center if the court has probable cause to believe:

A. The patient (respondent) is mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to self or others; and

B. The patient's (respondent's) acute behavioral health crisis will be resolved during admission to the crisis residential center. Adds a new section AS 47.30.709. Rights of respondents at crisis stabilization centers and crisis residential centers; psychotropic medication; time.

(a) Requires that if at any time during an involuntary hold at a crisis stabilization center or crisis residential center, the patient (respondent) no longer meets the standards for a stabilization hold or detention, that they no longer be held or detained and the court notified if applicable.

(b) Provides for the patient's (respondent's) rights when being involuntarily held at a crisis stabilization center or crisis residential center.

(c) Allows for the patient (respondent) to convert to voluntary status for care.

(d) Allows a crisis stabilization center or crisis residential center to administer crisis psychotropic medication consistent with the practice permitted in AS 47.30.838 for evaluation and designated treatment facilities.

(e) Adds language to clarify how time is calculated in this section for the 23-hour, 59- minutes holding period at a crisis stabilization center and the seven-day detention at a crisis residential center. In this section "professional person in charge" has the meaning given in AS 47.30.915(17).

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MS. CARPENTER drew attention to Section 14, page 8, beginning on line 17 of the analysis and explained that it would provide clarifying edits to AS 47.30.710. Pertaining to examination and hospitalization, the proposed CS would remove references to "crisis stabilization center". These would be the same changes as in Section 13. She explained that a medical professional, after an examination, would be permitted to decide whether an individual should be admitted to a crisis residential center,

hospital, or hospitalized in an emergency room. She explained that Section 15, page 9, on line 8 would add a subsection to require an application for an ex parte order, should a judicial order not be in place. If the patient is readmitted to an evaluation facility after discharge from a subacute mental health facility, it would require a mental health professional to apply for an ex parte order. This applies when the individual is not willing to stay [in the facility] voluntarily and should remain in the facility until the court issues a decision on the ex parte petition. She noted that when a patient is readmitted, the 72-hour clock is reset.

MS. CARPENTER directed attention to Sections 16, 17, and 18, which read as follows [original punctuation provided]:

Section 16: Amends AS 47.30.715 to clarify that orders for evaluation are directed to "evaluation facilities" and to require admission of the patient (respondent) for a 72-hour evaluation to determine if a petition for 30-day commitment should be filed. Clarifies the individuals that are required to be notified by the court of the hearing arrangements.

Section 17: Amends AS 47.30.805(a), a computation of time statute, to include computation for proceedings or transportation to a crisis residential center. Adds a new computation for a seven-day detention at a crisis residential center.

Section 18: Amends AS 47.30.838(c) to include crisis stabilization center and crisis residential center as a type of facility authorized to administer psychotropic crisis medication when there is a crisis situation where the patient requires immediate medication to prevent significant physical harm to themselves or others. Current law allows a facility to administer three periods of crisis medication without further court approval but also states a facility should consider the patient's view on how to manage future crises.

MS. CARPENTER added that currently the statute only applies to evaluation facilities, treatment facilities, or the Alaska Psychiatric Institute. She noted the other facilities which could be included are the Fairbanks Memorial Hospital, the Mat-Su Regional Medical Center, and the Bartlett Regional Hospital.

MS. CARPENTER continued the sectional analysis, which read as follows [original punctuation provided]:

Section 19: Adds a new section to AS 47.30 to require the department to adopt regulations to implement these changes to the involuntary commitment statutes.

Section 20: Amends AS 47.30.915(7) to clarify that "evaluation facility" means a department-designated hospital or crisis residential center that has been designated to perform evaluations, or a medical facility operated by the federal government that performs evaluations.

MS. CARPENTER noted that a "health care facility" could include a hospice facility; however, the department would never designate this type of facility as an evaluation facility, and the proposed CS would clarify the meaning as facilities designed to perform evaluations for a federal facility or tribal operated medical facility. She expressed the importance of the term "designated," as this would apply only to facilities with adequate time to perform a 72-hour evaluation to determine whether criteria are met for a 30-day commitment. She continued the sectional analysis, which read as follows [original punctuation provided]:

Section 21: Amends the definition of "peace officer" in AS 47.30.915(15) to have the meaning given in AS 01.10.060(a).

Section 22: Amends AS 47.30.915 to provide definitions:

- "crisis residential center" means a subacute mental health facility that has a maximum stay of seven days.
- "crisis stabilization center" means a subacute mental health facility that has a maximum stay of 23 hours and 59 minutes.
- "health officer" means a state, municipal, or other local health officer, public health nurse, emergency medical technician, paramedic, firefighter, or a personal authorized by the court to carry out AS 47.30.660-47.30.915. This definition removed these provider types from the current definition of "peace officer" found in AS 47.30.917(7) and creates a new term for them.

- "subacute mental health facility" is defined in AS 47.32.900. Section 23: Amends the licensing statutes in AS 47.32.010(b) to change "crisis stabilization centers" to "subacute mental health facilities."

Section 23: Amends the licensing statutes in AS 47.32.010(b) to change "crisis stabilization centers" to "subacute mental health facilities."

Section 24: Adds a new paragraph to AS 47.32.900 to define "subacute mental health facilities" in the licensing statutes and provides for "crisis residential centers" and "crisis stabilization centers" as subtypes of "subacute mental health facilities."

MS. CARPENTER added that "health officer" would be a new term and would include a peace officer, an emergency medical technician, a paramedic, or a firefighter.

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MS. CARPENTER concluded the sectional analysis, which read as follows [original punctuation provided]:

Section 25: Repeals AS 47.32.900(5), the current definition for "crisis stabilization centers" since it is replaced with the new definition in Section 24.

Section 26: Adds a new section to the uncodified law to clarify that DHSS will consider previously issued "crisis stabilization center" licenses as a license for "subacute mental health facility."

Section 27: Adds a new section to the uncodified law to allow the department to adopt transition regulations to implement this act.

Section 28: Provides for an immediate effective date for the bill.

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REPRESENTATIVE SNYDER moved to adopt the proposed CS for HB 172, 32-GH1730\W, Foote, 2/16/22, ("Version W"), as a working document. There being no objection, Version W was before the committee.

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REPRESENTATIVE KURKA questioned the purpose of Version W.

MS. CARPENTER answered that, following consultation with stakeholders, including the Alaska Mental Health Trust Authority, the Disability Law Center, and the Public Defender, it was determined to modify language to clarify the 72-hour hold would begin on a patient's arrival at a facility. She added that the hospitalization statute, AS 47.37.10, would add clarity to the law. She noted that other drafting changes had been made.

REPRESENTATIVE KURKA questioned whether the sectional analysis presented pertained to Version W.

CHAIR CLAMAN answered yes. He added that, under the original version of the bill, a person could be held for five days without an ex parte order or judicial order. Patient advocates had expressed concerns and encouraged language to mandate a hearing within 72 hours.

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REPRESENTATIVE SNYDER, regarding a judicial hearing, expressed the understanding of the timing when a guardian should be contacted; however, she questioned the timing requirement pertaining to the arrival of a patient at a facility. She questioned the current practice versus the proposed changes. She expressed awareness concerning complexities for individual circumstances.

2:02:02 PM

STEVEN BOOKMAN, Senior Assistant Attorney General, Human Services Section, Civil Division (Anchorage), Department of Law, responded that the [notification of guardians] would be found within the current [patient] rights statute; this does not specify when a guardian would be notified, only that the guardian shall be notified. He referred to page 5, Section 708, on line 30, which directs the court to set a timeframe for a hearing when a petition to commit a patient to a crisis residential center occurs. He further referred to page 6, on line 3, which directs the court to notify a respondent's guardian, if known, of the timing of the hearing. He added that the hearings occur within short timeframes.

MR. BOOKMAN, in response to a question from Representative Eastman, answered that the respondent, or patient, would request a hearing. He added that most patients are voluntarily admitted to facilities. In response to a follow-up question, he answered that, should the patient be an adult with a guardian, the designated guardian would be the patient's ward. He added that, should the patient be a minor and no parent can be located, the hearing would be scheduled, and the minor and the attorney would decide how to proceed.

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REPRESENTATIVE EASTMAN noted that the bill would address individuals who are experiencing a behavioral crisis and those who are gravely disabled. He questioned how the proposed bill would pertain to the latter.

MR. BOOKMAN responded by noting that the bill would pertain to those who are in immediate danger in the short term. He gave examples, including an individual who may not understand [harsh] weather, those who may have a physical medical problem, such as a neglected injury, or an individual who may not understand safety, such as walking into traffic. He noted that there exists a definition of "grave disability" in AS 47.30.915.

REPRESENTATIVE EASTMAN noted that different facilities have differing resources and tools. He questioned whether it would be more appropriate to transport an individual to the nearest facility.

MS. CARPENTER answered that the nearest facility would be selected if it was appropriate. She noted that it would depend on the facilities available in a particular community, and the individual's needs. She noted that a system would be established for care closer to home, as this would reduce transportation costs and allow a patient to receive treatment closer to home.

REPRESENTATIVE EASTMAN pointed out page 11, line 11, pertaining to federal evaluation facilities and asked for the definition of "evaluation."

MS. CARPENTER stated that the evaluations would be those described in AS 47.30.660 through AS 47.39.15, which are specific to involuntary commitment and the 72-hour evaluation. She stated that there exists an available list of definitions,

and she offered to follow up with this to the committee. She added that a hospital would inform the department and request that it perform evaluations, as a designated evaluation and treatment facility. The court would be notified, and the hearing could result in treatment for 30 days. She stated that a crisis evaluation center would have the resources necessary to provide a seven-day treatment. She added that federal facilities could include tribal facilities under authority of the federal government.

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REPRESENTATIVE EASTMAN asked whether the department would maintain a list of the types of hospitals and facilities which meet the criteria. He asked the rationale of the bill having not included federal facilities on the list.

MS. CARPENTER answered that no medical facilities in Alaska meet the criteria and are operated by the federal government.

CHAIR CLAMAN announced that HB 172 was held over.

[2:15:46 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:15 p.m.