

1 IN THE HOUSE

BY THE COMMITTEE ON HEALTH AND
WELFARE

2

HOUSE BILL NO. 165

3

IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4

TWENTY-THIRD SESSION

5

A BILL

6

For an Act entitled: "An Act to provide for the commitment,
hospitalization and care of the mentally
ill; to designate the Department of Health
as the Mental Health Authority of Alaska;
providing penalties; providing for the
repeal of certain statutes; declaring an
emergency and providing for an effective
date and for other purposes."

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17 Section 100. PURPOSE. The purpose of this Act is to estab-
18 lish and provide modern procedures for the Commitment, hospitali-
19 zation, care and treatment of the mentally ill, and to establish
20 a Mental Health Authority.

21 All rights and safeguards provided by this Act shall apply
22 to all patients in a public or private hospital without regard
23 to whether or not the cost of such patients' care or treatment is
24 paid in whole or in part from Territorial funds.

25 Section 101. DEFINITIONS. When used in this Act, unless
26 otherwise expressly stated or unless the context or subject
27 matter requires:

28 (a) "Alaska" means the Territory of Alaska, or in
29 the event Congress grants statehood, the State of Alaska.

1 (b) "Board" means the Board of Health created by
2 Section 40-1-3, ACLA 1949, as amended, or its designee.

3 (c) "Commissioner" means a United States Commissioner
4 acting in the capacity of an ex officio probate judge and
5 appointed pursuant to Section 6 of the Act of June 6, 1900
6 (21 Stat. 323; 48 U.S.C.A., Sec. 104), or his successor or
7 equivalent serving in the office of probate judge in the event
8 Alaska becomes a state.

9 (d) "Department" means the Department of Health,
10 created by Section 40-1-2, ACLA 1949, as amended, or its designee.

11 (e) The term "designated examiner" means a licensed
12 physician designated by the Department as specially qualified,
13 under standards established by it for the purpose of this Act,
14 in the diagnosis of mental illness; provided, that for areas in
15 which no licensed physician so qualified is available, any
16 licensed physician may be designated.

17 (f) "Head of a hospital" means the individual in
18 charge of a hospital, or his designated representative, except
19 that when the individual or his designee in charge of a hospital
20 is not a licensed physician, authority placed in the head of a
21 hospital by this Act (which involves in major part the exercise
22 of medical judgment) shall be exercised by such licensed medical
23 official of the hospital as shall be designated by the individual
24 in charge of the hospital.

25 (g) "Hospital" means a public or private hospital or
26 institution, or any part thereof, located in Alaska or in any
27 state, equipped and otherwise qualified to provide care and
28 treatment for the mentally ill.

29 (h) The term "designated Hospital" means a "hospital"

1 which has been designated and authorized by contract with the De-
2 partment to provide care and treatment of the mentally ill.

3 (i) "Individual", as used in Sections 103, 104 and
4 105 of this Act, means a resident of, or a person in, Alaska.

5 (j) "Interested party" or "interested parties" means
6 any interested responsible adult including but not limited to the
7 legal guardian, spouse, parent or parents, adult children, or next
8 of kin of an allegedly mentally ill individual or patient.

9 (k) "Licensed physician" means an individual licensed
10 under the laws of Alaska to practice medicine; a medical officer of
11 the Government of the United States while in Alaska in the perform-
12 ance of his official duties; or a medical officer of the Territory
13 of Alaska; or a physician licensed under the laws of a state.

14 (l) "Mentally ill individual" means an individual having
15 a psychiatric or other disease or senile changes which substantially
16 impair his mental health or who is mentally deficient.

17 (m) "Patient" means a resident of, or person in, Alaska,
18 qualified under this Act for hospitalization as a mentally ill
19 individual.

20 (n) "Peace Officer", when used in connection with
21 cases which involve individuals who, because of mental illness,
22 are likely to injure themselves or others if allowed to remain
23 at liberty, includes any Territorial police officer, municipal
24 or other local police officer, Territorial, municipal, or other
25 local health officer, Public Health Nurse, U. S. Marshal or
26 Deputy U.S. Marshal, or a person deputized by a Commissioner.

27 (o) "Resident of Alaska" means (i) a person who has
28 been physically present and lived continuously in Alaska for one
29 year immediately preceding his admission as a patient or immedi-

1 ately preceding his becoming a proposed patient, or (ii) a person
2 who has shown an intention to make Alaska his home for an indefi-
3 nite period of time and has lived in Alaska. Such intention may
4 be evidenced by prior statements or it may be implied from facts
5 which show that the person continues, in fact, to make Alaska his
6 permanent home. A married woman shall be capable of establishing
7 a residence apart from her husband, and an unemancipated minor
8 shall take the residence of the parent or guardian with whom
9 actually living.

10 (p) "State" or "States" includes all states of the
11 United States, the District of Columbia, the Territories and
12 possessions of the United States, and the Commonwealth of Puerto
13 Rico, and, with the approval of the United States Congress, Canada.

14 Section 102. DEPARTMENT DESIGNATED AS MENTAL HEALTH
15 AUTHORITY: POWERS AND DUTIES THEREOF. The Department is hereby
16 designated as the mental health authority of Alaska, and is
17 hereby authorized and directed, through the Commissioner of
18 Health or his designee, to develop and submit to the Surgeon
19 General of the United States Public Health Service, and to
20 administer, a complete and comprehensive program for the
21 prevention of mental illness and the care and treatment of
22 persons who are mentally ill, including inpatient and outpatient
23 care and treatment of such persons, and to take such actions
24 and undertake such obligations as may be necessary to participate
25 in any Federal grant-in-aid program and to accept Federal or
26 other financial aid from whatever sources for the study,
27 examination, care and treatment of the mentally ill, and the
28 Department, through the Commissioner of Health or his designee,
29 is particularly authorized to take full advantage of the

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1 provisions of the Alaska Mental Health Enabling Act (P.L. 830,
2 84th Congress, 2nd Session, 70 Stat. 709).

3 Except insofar as this Act specifically confers certain
4 powers, duties, and functions upon others, the Department, through
5 the Commissioner of Health or his designee, shall be charged with
6 the administration of this Act. In addition to such authority
7 as may be conferred upon it by other sections of this Act, the
8 Department, through the Commissioner of Health or his designee,
9 is hereby authorized to

10 (a) designate, operate, and maintain hospitals and
11 other health facilities equipped and otherwise qualified to pro-
12 vide inpatient and outpatient care and treatment for individuals
13 who are mentally ill;

14 (b) (i) take such action as may be necessary to carry
15 out a program for the prevention of mental illness or for the
16 furnishing of inpatient and outpatient care or treatment for
17 persons who are mentally ill, including the procurement of ser-
18 vices of specialists or other persons on a contractual or other
19 basis; (ii) provide for the hospitalization of mentally ill
20 patients in designated hospitals; (iii) enter into arrangements
21 with the Surgeon General of the Public Health Service for the
22 care or treatment of such patients in hospitals of the Public
23 Health Service in Alaska or in any state; (iv) negotiate and
24 enter into contracts with any hospitals for the custody and care
25 or treatment of such patients; (v) negotiate and enter into con-
26 tracts, which shall incorporate safeguards consistent with the
27 provisions of this Act and the preservation of the civil rights
28 of the patients, with any state for the custody and care or treat-
29 ment of such patient or patients previously committed from Alaska

1 pursuant to 49 U.S.C.A. 46, et seq., and P.L. 830, 84th Congress
2 2nd Session, 70 Stat. 709;

3 (c) prescribe the form of applications, records, re-
4 ports, and medical certificates required by this Act, and the
5 information to be contained therein;

6 (d) require reports from the head of a hospital con-
7 cerning the care of patients;

8 (e) visit each hospital to review methods of care or
9 treatment for all patients;

10 (f) investigate complaints made by a patient or an
11 interested party on behalf of a patient;

12 (g) delegate upon mutual agreement to any officer or
13 agency of Alaska, or any political subdivision thereof, or any
14 hospital designated, any of the duties and powers imposed upon it
15 by this Act; and

16 (h) provide for and pay the costs of transportation
17 of patients and of such attendants as may be needed, where trans-
18 portation is necessary for the purpose of securing appropriate
19 examinations or hospitalization of such patients, or for return-
20 ing a patient discharged or placed on convalescent status from a
21 hospital to his home or place of convalescence.

22 Section 103. AUTHORITY TO RECEIVE PATIENTS. The head of any
23 designated hospital which has been designated by the Department pur-
24 suant to Section 102 is authorized to receive therein for observa-
25 tion, diagnosis, care, and treatment any individual whose admission
26 is applied for by one of the following means:

27 Any individual, including minors, may be admitted to a
28 hospital for observation, care and treatment if necessary,
29 upon application by the individual or by an interested party,

1 by a peace officer, by the Department, or by the head of any
2 institution in which the individual may be, if the applica-
3 tion is accompanied by a certificate of a licensed physician
4 stating that on a basis of an examination held in not more
5 than fifteen days prior to the individual's admission, such
6 individual is in his opinion mentally ill, or has symptoms
7 of mental illness, and because of his illness either (1)
8 is likely to injure himself or others if allowed to remain
9 at liberty, or (11) is in need of custody and care or treat-
10 ment in a hospital.

11 Section 104. EMERGENCY HOSPITALIZATION.

12 (a) With medical certification and endorsement. If
13 the certificate by a licensed physician under Section 103
14 states a belief that the individual is (1) likely to injure him-
15 self or others if allowed to remain at liberty, or (11) is in
16 need of immediate hospitalization, any interested party or peace
17 officer shall have authority, upon endorsement of the certificate
18 for such purpose by the Department or by a Commissioner, to take
19 the individual into custody, apply to a designated hospital for
20 his admission, and transport him thereto.

21 (b) Without medical certification or endorsement. Any
22 interested party or peace officer who has good and valid reason
23 to believe that an individual is mentally ill, and because of
24 his illness is likely to injure himself or others if not immedi-
25 ately restrained, pending examination or certification by a
26 licensed physician or pending endorsement of such certification
27 as provided in subsection (a) of this section, may take the
28 individual into custody, and transport him to the most accessible
29 medical facility and secure a certificate for endorsement as is

1 required under Section 104(a), or take such steps as may be
2 necessary to arrange for a judicial commitment under Section 108,
3 Arrangement for transportation herein shall be allowed as is set
4 forth in Section 113. The application for admission shall state
5 the circumstances under which the individual was taken into
6 custody and the reason for such belief.

7 (c) Utilization of designated hospitals. Nothing in
8 this Act shall be deemed to limit the availability and utiliza-
9 tion of designated hospitals or designated parts thereof for
10 other appropriate purposes; provided, however, that the use of
11 said designated hospitals or parts thereof shall be primarily for
12 the care and treatment of the mentally ill.

13 Section 105. NEWLY-ADMITTED PATIENTS.

14 (a) The head of the hospital shall cause to be held
15 a preliminary examination within a period not to exceed 48 hours
16 after the close of the day of admission of every patient, by a
17 designated examiner, to determine if there is a reasonable neces-
18 sity existing for the patient's continued hospitalization and
19 immediate medical attention.

20 (b) At the end of the 48-hour period, any patient so
21 admitted pursuant to Section 103 and 104, shall, without need of
22 application therefor, be discharged if a preliminary examination
23 has not been held or if, upon examination, the designated examiner
24 refuses or fails to certify to the head of the designated hospital
25 that in his opinion the patient is mentally ill and either is
26 likely to injure himself or others if allowed at liberty, or is in
27 need of custody and care or treatment in a hospital and because
28 of his illness lacks sufficient insight or capacity to
29 make responsible decision therefor. All other patients shall be

1 discharged when, in the opinion of the head of the designated
2 hospital, there is no further need for their hospitalization.
3 Notice of discharged shall be given to (1) the Department, and (2)
4 the Commissioner or person responsible for the order of hospitaliza-
5 tion, who shall have an additional 48 hours within which to make
6 other arrangements under Section 103 or otherwise.

7 (c) Any patient admitted under Sections 103 and/or 104
8 may remain for treatment on a voluntary basis under the same condi-
9 tions prescribed for patients admitted under Section 103 of this Act,
10 with the conditions stated in Section 106 applying with respect to
11 discharge. If a patient admitted under Section 103 or 104 elects to
12 remain for treatment on a voluntary basis, it is the duty of the head
13 of the designated hospital in such instance to ascertain that such
14 patient has at the time sufficient insight or capacity to make respon-
15 sible application for his own hospitalization and the head of the
16 hospital or his designee shall certify his opinion thereto. In
17 these instances, notice shall be given of the patient's decision to
18 remain on a voluntary basis to the court that issued the order.

19 Section 106. RIGHT TO DISCHARGE ON APPLICATION; EMERGENCY
20 DETENTION.

21 (a) Any individual after 30 days following admission to
22 a designated hospital under authority of Section 103 or any individ-
23 ual admitted to a designated hospital under authority of Section
24 104 shall be forthwith discharged therefrom upon his request or
25 upon the request in writing of an interested party or peace officer,
26 except that:

27 (1) if admitted upon his own application, his dis-
28 charge may be conditioned upon his agreement;

29 (ii) if under eighteen years of age and admitted

1 pursuant to Section 103, his discharge prior to becoming
2 eighteen years of age may be conditioned upon the consent
3 of his parent or guardian;

4 (iii) if the head of a designated hospital, within
5 48 hours from the receipt of the request, files with any
6 Commissioner a certification that in his opinion the discharge
7 of the patient would be unsafe to the patient or others, the
8 discharge may be postponed for such period not to exceed five
9 days for the commencement of commitment proceedings pursuant
10 to Section 108; provided, that if the Commissioner finds
11 that because of justifiable circumstances, proceedings for
12 judicial hospitalization cannot reasonably be instituted in
13 such time, the discharge may be postponed for a period not
14 to exceed fifteen days.

15 (b) The head of the designated hospital shall provide
16 reasonable means and arrangements for informing patients of their
17 right to discharge, as provided in this section and other sections
18 of this Act, and for assisting them in making and presenting requests
19 for discharge under this section.

20 Section 107. PETITION FOR JUDICIAL DETERMINATION. Any
21 patient hospitalized pursuant to Sections 103, 104, or 108 shall
22 be entitled to have the need for his continued hospitalization
23 determined or redetermined on his own petition or that of an
24 interested party, or peace officer, to the Commissioner. Upon
25 receipt of the petition, the Commissioner shall conduct proceed-
26 ings in accordance with Section 108, except that such proceedings
27 shall not be required to be conducted if (a) the petition is
28 filed sooner than six months after the issuance of an order of
29 hospitalization under Section 108; or (b) sooner than one year

1 appoint one or more designated examiners to examine the proposed
2 patient and report to the Commissioner his or their findings as
3 to the mental condition of the patient and his need for care or
4 treatment in a hospital. The Commissioner may consider the
5 choice of the patient in appointing an examiner. If the designat-
6 ed examiner reports that the proposed patient refuses to submit,
7 to an examination, the Commissioner shall give notice to the
8 proposed patient and order him to submit to such examination.
9 Such an order may direct that the proposed patient be taken into
10 custody and detained pending a hearing.

11 (d) The examination shall be held at a hospital or
12 other medical facility, at the home of the proposed patient, or
13 other suitable place, whether within or without Alaska, not
14 likely to have a harmful effect on his health.

15 (e) If the report of the designated examiner or
16 examiners states that the proposed patient is not mentally ill,
17 the Commissioner shall, without taking any further action,
18 terminate the proceedings and dismiss the application. Otherwise,
19 he shall forthwith fix a date for, and give notice of, a hearing
20 to be held not more than fifteen days from receipt of the report
21 of the designated examiner.

22 (f) The proposed patient, the applicant, the legal
23 guardian and other interested parties, as determined by the
24 Commissioner, shall be given notice and afforded an opportunity
25 to appear at the hearing, to testify, and to present and cross-
26 examine witnesses, and the Commissioner may, in his discretion,
27 receive the testimony of any other person. The proposed
28 patient shall not be required to be present, and the Commissioner
29 is authorized to exclude all persons not necessary for the conduct

1 of the proceedings. The hearings shall be conducted as informally
2 as may be consistent with orderly procedure and in a physical
3 setting not likely to have a harmful effect on the mental health
4 of the proposed patient. The entire proceeding may be recorded
5 stenographically or with the use of mechanical recording devices
6 as the Commissioner may approve. The Commissioner shall, in any
7 event, prepare and maintain a summary record of all relevant and
8 material evidence which may be offered concerning the mental
9 condition and the residence of the proposed patient and may
10 relax the rules of evidence to the extent of receiving affidavits,
11 certificates of licensed physicians and other writings of similar
12 apparent authenticity and reliability. An opportunity to be re-
13 presented by counsel or advisor shall be afforded to every pro-
14 posed patient, and if neither he nor others provide counsel or
15 advisor the Commissioner shall appoint such. If, not less than
16 two days prior to the date fixed for the hearing, the proposed
17 patient or his counsel or advisor, files a written request with
18 the Commissioner therefor, the Commissioner shall summon and
19 impanel a jury of six adult residents of the Precinct in which
20 the Commissioner officiates, preferably from the United States
21 District Court's jury list or the last voters' list, if
22 available, to hear and consider the evidence concerning the
23 mental condition and residence of the proposed patient.

24 (g) If, upon completion of the hearing and consider-
25 tion of the record, the Commissioner, or in the event the right
26 to a jury has been exercised pursuant to subsection (f) hereof,
27 the jury, finds the proposed patient is

28 (1) mentally ill; and

29 (11) (A) because of his illness is likely to

1 injure himself or others if allowed to remain at liberty;
2 or (B) is in need of immediate care or treatment in a
3 hospital, and because of his illness, lacks sufficient
4 insight or capacity to make responsible decisions concern-
5 ing hospitalization,
6 the Commissioner shall order his hospitalization for an indeter-
7 minate period; otherwise, he shall terminate the proceedings and
8 dismiss the application. If the Commissioner orders the hospitali-
9 zation of the proposed patient, a finding shall be made as to the
10 residence of the patient. A copy of such finding and the summary
11 of proceedings shall accompany the patient to the hospital.

12 (h) The order of hospitalization shall be directed to
13 the Department and it shall be the responsibility of the Depart-
14 ment to secure the carrying out of such order.

15 (i) Notwithstanding any other provision of this Act,
16 except for Section 119, commitment proceedings under this section
17 shall not be commenced with respect to a patient admitted pursuant
18 to Section 103 unless release of the patient has been requested
19 according to the provisions of Section 106.

20 (j) An order for hospitalization pursuant to this
21 section shall not be deemed to constitute a judicial determina-
22 tion of legal incompetency, except to the extent provided under
23 Section 115(b). Proceedings for a determination of legal
24 incompetency of, and the appointment of a guardian for, any
25 patient who has been ordered hospitalized may be instituted
26 prior, concurrently with, or following the completion of pro-
27 ceedings under this section, where the circumstances of the case
28 so require and the condition of the patient permits.

29 Section 109. COMMITMENT OR TRANSFER TO AN AGENCY OF THE
30

1 UNITED STATES; CONTINUING JURISDICTION OF COMMISSIONER.

2 (a) If, at any time before or during the commitment
3 proceeding conducted pursuant to Section 108, the Commissioner
4 receives a certificate from an agency of the United States
5 showing that accommodations are available and that the individual
6 is eligible for care, he may, if the individual is found to be
7 in need of hospitalization, order the individual to be placed in
8 the custody of such agency for hospitalization. When any such
9 individual is admitted, pursuant to the order of a Commissioner,
10 to any hospital or institution operated by any agency of the
11 United States within or without Alaska, he shall be subject to
12 the rules and regulations of such agency. The head of any
13 hospital or institution operated by such agency and in which the
14 individual is so hospitalized shall, with respect to such
15 individual, be vested with the same powers as the Department or
16 the head of a hospital, concerning the detention, transfer,
17 custody, conditional release, or discharge of patients;
18 provided, however, jurisdiction shall be retained in the
19 Commissioner to inquire at any time into the mental condition
20 of an individual so hospitalized, and to determine the necessity
21 for continuance of his hospitalization, and every order of hospi-
22 talization issued pursuant to this section is so conditioned.

23 (b) An order of a court of competent jurisdiction of
24 any state to any agency of the United States, authorizing
25 hospitalization of any individual, shall have the same force and
26 effect as to the individual while in Alaska as in the jurisdic-
27 tion in which the court entering the order is situated; and the
28 courts of the jurisdiction issuing the order shall be deemed to
29 have retained jurisdiction of the individual so hospitalized for

1 the purpose of inquiring into his mental condition and of deter-
2 mining the necessity for continuance of his hospitalization, as
3 is provided in subsection (a) of this section with respect to
4 individuals ordered hospitalized by the Commissioner. Consent
5 is hereby given to the application of the law of the state in
6 which is located the court issuing the order for hospitalization,
7 with respect to the authority of the head of any hospital or
8 institution operated in Alaska by any agency of the United States
9 to retain custody, transfer, conditionally release or discharge
10 the individual hospitalized. Nothing in this section shall pre-
11 vent the Territory from entering into a contract with any Federal
12 agency for the custody and care or treatment of persons coming
13 under the jurisdiction or assistance of the Federal agency.

14 Section 110. DETENTION UNDER SPECIAL CIRCUMSTANCES,

15 (a) Pending his removal to a hospital, a patient
16 taken into custody under Section 104 or 108 or ordered to be
17 hospitalized pursuant to Section 108, or pending the hearing
18 under Section 108, may be detained in a medical facility, his
19 home, a licensed foster home, or any other suitable facility
20 under such reasonable conditions as the Department may fix, but
21 he shall not, except because of and during an extreme emergency,
22 be detained in a non-medical facility used for the detention of
23 individuals charged with or convicted of penal offenses. The
24 Department shall take such reasonable measures, including provi-
25 sion for medical care, as may be necessary to assure proper care
26 of an individual temporarily detained pursuant to this section.

27 (b) Notwithstanding any other provision of this Act,
28 no patient shall be released or discharged from custody during
29 the pendency of proceedings for judicial hospitalization if, in

1 the opinion of the head of the hospital, it would be unsafe to
2 the patient or others, unless the Commissioner, upon the applica-
3 tion of the patient or of an interested party, determines justi-
4 fiable reason exists for release or discharge.

5 (c) No patient held on order of a court or judge in
6 any action or proceeding arising out of a criminal offense shall
7 be discharged except after 10 days written notice to such court
8 or judge.

9 Section 111. WRIT OF HABEAS CORPUS. Any individual detained
10 pursuant to this Act shall be entitled to a writ of habeas corpus
11 upon proper petition by himself or interested party to any court
12 generally empowered to issue the writ of habeas corpus in the
13 jurisdiction in which he is detained.

14 Section 112. APPEAL FROM DECISION OR ORDER OF UNITED STATES
15 COMMISSIONER. Any person adjudged to be mentally ill may appeal
16 To the District Court for the District of Alaska or, in the event
17 of statehood, to the appropriate court, from any decision or
18 order of a Commissioner pursuant to this Act, within five days
19 of the date of the decision or order, and said court shall hear
20 the case either de novo without jury or upon the record sent up
21 from the Commissioner, at the option of the District Judge,
22 While such appeal is pending, the decision or order of the
23 Commissioner shall, unless otherwise directed by the court, be
24 given full force and effect as if no appeal had been taken. Any
25 appeal from a final or interlocutory decision of the District
26 Court in a proceeding under this Act shall be governed by the
27 law applicable generally to appeals from the District Court for
28 the District of Alaska.

29 Section 113. TRANSPORTATION. Whenever an individual is

1 about to be hospitalized under the provisions of this Act, the
2 Department shall arrange, upon the request of a person having
3 proper interest in the individual's hospitalization, and is
4 authorized to pay for the individual's transportation to the
5 designated hospital, with appropriate medical or nursing attendants
6 and by such available means as may be appropriate and suitable;
7 provided, that the Department is authorized to pay return trans-
8 portation of an individual and appropriate medical and nursing
9 attendants after a finding within the provisions of this Act that
10 such individual is not mentally ill. Whenever practicable, the
11 individual to be hospitalized shall be permitted to be accompanied
12 by one or more of his relatives or friends, who shall travel at
13 their own expense. When necessary, the Department shall arrange
14 for a peace officer or other suitable person to accompany the
15 individual.

16 Section 114. NOTICE OF HOSPITALIZATION. Whenever a patient
17 has been admitted to a hospital pursuant to this Act other than
18 upon his own application, the head of the designated hospital shall
19 notify immediately the patient's legal guardian, parent or parents,
20 spouse, or next-of-kin, if known. The head of the designated
21 hospital admitting an individual under any provision of this Act,
22 or discharging an individual so admitted, shall forthwith make a
23 report thereof to the appropriate Commissioner, if any, and to the
24 Department.

25 Section 115. RIGHT TO HUMANE CARE AND TREATMENT; CONSENT
26 TO SURGERY, CERTAIN PSYCHIATRIC THERAPIES AND AUTOPSIES.

27 (a) the Department shall be guided by the principles
28 of humane care and treatment, and, to the extent that facilities,
29 equipment and personnel are available, shall provide medical

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1 care or treatment in accordance with the highest standards of
2 accepted medical practice.

3 (b) Consent to surgery, such psychiatric therapies as
4 the Department shall determine, and autopsies must be obtained
5 for any patient prior to the undertaking of any such surgery,
6 certain psychiatric therapies or autopsies from any one of the
7 following persons: spouse, guardian, either parent or oldest
8 adult child; provided, however, that if no such relative or
9 guardian be found in Alaska within a reasonable time, or in the
10 case of an emergency, the Commissioner of Health or his designee,
11 upon being notified of all the pertinent facts pertaining to
12 such medical action, may give such consent in lieu of any
13 guardian or relative; provided, further, that when the head of
14 the hospital is of the opinion that the patient has insight or
15 capacity to make a responsible decision that the patient's
16 consent shall be secured prior to any such surgery or psychi-
17 atric therapies, and such consent shall be determinative, and
18 no further consent or denial thereof from any guardian or relative
19 shall be necessary. Any person giving such consent, or any
20 person who acts after such consent has been given and is duly
21 authorized to perform the act undertaken by him, shall not be
22 liable civilly or criminally if said act was done by him in his
23 official capacity or in the capacity set forth above.

24 Section 116. MECHANICAL RESTRAINTS. Mechanical restraint
25 shall not be applied to a patient unless determined by the head
26 of the hospital or his designee to be required by the medical
27 needs of the patient. Every use of a mechanical restraint and
28 reasons therefor shall be made a part of the clinical record of
29 the patient over the signature of the head of the hospital or

1 his designee.

2 Section 117. RIGHT TO COMMUNICATE AND RECEIVE VISITORS;
3 EXERCISE OF CIVIL RIGHTS.

4 (a) Subject to the general rules and regulations of
5 the hospital and except to the extent that the head of the
6 hospital determines that it is necessary for the medical welfare
7 of the patient to impose restrictions, every patient shall be
8 entitled to

9 (i) communicate by sealed mail or otherwise with
10 persons, including official agencies, inside or outside the
11 hospital;

12 (ii) receive visitors; and

13 (iii) exercise all civil rights, except as
14 modified under Section 115(b), including, but not limited
15 to, the right to dispose of property, execute instruments,
16 make purchases, enter contractual relationships, and vote,
17 unless he has been adjudicated incompetent and has not been
18 restored to legal capacity.

19 (b) Notwithstanding any limitations authorized by
20 this section on the right of communication, every patient shall
21 be entitled to communicate by sealed mail with the Department,
22 Governor, and with the Commissioner, if any, who ordered his
23 hospitalization.

24 (c) Any limitations imposed by the head of a hospital
25 on the exercise of these rights by a patient and the reasons for
26 such limitations shall be made a part of the clinical record of
27 the patient.

28 Section 118. TRANSFER OF PATIENTS GENERALLY.

29 (a) The Department may authorize the transfer of a

1 patient from one hospital to another within or without Alaska,
2 if it determines that it would be consistent with the medical
3 needs of the patient to do so. In all such transfers, due
4 consideration shall be given to the relationship of the patient
5 to his family, legal guardian, or friends, so as to maintain such
6 relationships and encourage visits beneficial to the patient.

7 (b) Upon receipt by the Department of a certificate
8 from an agency of the United States that accommodations are
9 available for the care of any individual theretofore hospitalized
10 in any hospital for care or treatment of the mentally ill, and
11 that such individual is eligible for care or treatment in a
12 hospital or institution of such agency, the Department may
13 authorize his hospitalization by such agency of the United
14 States. Any person hospitalized as provided in this Section by
15 any agency of the United States, shall be deemed to be hospi-
16 talized by that agency pursuant to the original order of
17 hospitalization.

18 (c) Whenever a patient is moved from one hospital to
19 another, written notice thereof shall be given to the appropriate
20 Commissioner, if any, his legal guardian, if any, parent or
21 parents, and spouse, or, if none be known, to any other interested
22 party.

23 Section 119. RETURN OF NONRESIDENT PATIENTS; AUTHORITY TO
24 ENTER INTO COMPACTS.

25 (a) The admission papers of any person hospitalized
26 pursuant to this Act shall include a statement as to his resi-
27 dence. The Department is authorized to return any patient who
28 is not a resident of Alaska to the state in which he has resi-
29 dence. If the state in which he has residence does not consent

1 to accept him as a patient, the Department may order the
2 discharge of the patient; provided, that nothing herein shall
3 prevent the Department from initiating proceedings for judicial
4 hospitalization with respect to such patient, pursuant to Section
5 108 of this Act, if the patient is certified by the head of a
6 hospital to be mentally ill and (i) dangerous to himself or to
7 others if allowed at liberty, or (ii) in need of immediate
8 custody and care or treatment, and lacking sufficient insight
9 and capacity to make responsible decisions concerning hospitali-
10 zation.

11 (b) For the purpose of facilitating the return of such
12 nonresident patients, the Department may enter into a reciprocal
13 agreement or compact with any state, providing for the prompt
14 return, under appropriate supervision, of residents of such
15 state who are mentally ill. Mentally ill residents of Alaska
16 who have been hospitalized outside Alaska may be admitted, with
17 the approval of the Department, to a hospital designated by the
18 Department.

19 (c) The Department is hereby authorized to enter into
20 reciprocal agreements or contracts with any state, providing for
21 custody and care or treatment of mentally ill residents of Alaska
22 by such state, and for the custody and care or treatment of
23 mentally ill residents of such state by Alaska, each on a
24 reimbursable basis.

25 (d) In taking action under subsections (a) and (b)
26 of this section, due consideration shall be given to the relation-
27 ship of the patient to his family, legal guardian, or friends,
28 so as to maintain relationships and encourage visits beneficial
29 to the patient.

1 Section 120. CONTRACT CARE OUTSIDE ALASKA; RIGHTS UNDER
2 STATE LAW. Nothing in this Act shall be deemed to alter or
3 impair the application or availability to any patient, while
4 hospitalized in a state outside Alaska, pursuant to contractual
5 arrangements under this Act, of any rights, remedies, or pro-
6 tective safeguards provided by the laws of Alaska or of such
7 state.

8 Section 121. RELEASE ON CONVALESCENT STATUS. The head of
9 a designated hospital may release any patient on convalescent status
10 when he believes that such status is in the best interest of the
11 patient. Convalescent status shall, so far as practicable, include
12 provisions for continuing responsibility to and by the hospital,
13 and for a plan of treatment on an outpatient basis or under the
14 direction of a licensed physician. Periodically, at intervals
15 consistent with good medical practice and with then-existing
16 circumstances, the head of the designated hospital shall re-examine
17 the facts relating to the condition of the patient on a conval-
18 cent status and, if he determines that hospitalization is no longer
19 necessary, he shall discharge the patient.

20 Section 122. READMISSION. At any time prior to such dis-
21 charge the head of the designated hospital from which the patient
22 is given convalescent status may readmit the patient. If there is
23 reason to believe that it is to the best interest of the patient
24 to be rehospitalized, the Department or the head of the designated
25 hospital may issue an order for the immediate rehospitalization of
26 the patient. Such an order, if not voluntarily complied with, shall,
27 upon the endorsement by any Commissioner, authorize any peace
28 officer to take the patient into custody and transport him to the
29 designated hospital, or if the order is issued by the Department

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1 to a hospital designated by it.

2 Section 123. DISCHARGE UPON MEDICAL REVIEW. The head of a
3 designated hospital shall cause the condition of every patient to
4 be reviewed as frequently as is consistent with good medical
5 practice, and whenever the head of a designated hospital determines
6 that the conditions justifying hospitalization no longer exist, the
7 patient shall be discharged and the Department so notified. If the
8 patient was admitted on other than his own application, notice of
9 such discharge shall also be given to any one of the following
10 persons: the patient's legal guardian, parent or parents, spouse,
11 or next-of-kin, if known, and, if the patient was hospitalized by
12 judicial process, to the Commissioner who ordered him to be
13 committed.

14 Section 124. PROVISION FOR PERSONAL NEEDS OF A PATIENT, ON
15 DISCHARGE OR PLACEMENT ON CONVALESCENT STATUS. The Department
16 shall make such arrangements as may be necessary to insure:

17 (a) That no patient is discharged or placed on con-
18 valescent status from a designated hospital without suitable
19 clothing; and

20 (b) That any indigent patient discharged or placed on
21 convalescent status is furnished suitable transportation to his
22 permanent residence in Alaska or other suitable place at the
23 discretion of the Department, and a reasonable amount of money to
24 meet his immediate needs.

25 Section 125. DISPOSITION OF PERSONAL EFFECTS AND UNCLAIMED
26 FUNDS OF PATIENTS. All articles of personal property remaining
27 in the custody of the head of the designated hospital and belonging
28 to a patient who has died prior to his release on convalescent
29 status or discharge, or who has departed therefrom without

1 authority, if unclaimed by such patient, or his legal heirs or
2 representatives, within the period of one year after the decease
3 of such patient or the date of his leaving the hospital, shall
4 be disposed of in such manner as the Department may prescribe,
5 and any proceeds resulting therefrom shall be covered into the
6 general fund without the necessity of legal action. Any monies
7 remaining to the credit of such patient, if unclaimed by his
8 legal heirs or representatives or by such patient within the
9 period of one year after the decease of such patient or the
10 date of his leaving the hospital, shall be covered into the
11 general fund without the necessity of legal action.

12 Section 126. DISPOSITION OF FUNDS SUBJECT TO CLAIM AFTER
13 DEATH OR DEPARTURE WITHOUT AUTHORITY. The Department shall
14 cause diligent inquiry to be made in every instance after de-
15 parture without authority or death of any patient, to ascertain
16 his whereabouts or that of his legal heirs or representatives,
17 and shall turn over to the proper party or parties any monies
18 or articles of personal property in the custody of the head of
19 the hospital to the credit of such person. Claims to such monies
20 or articles of personal property, including any claims by Alaska,
21 may be presented to the Department at any time. Claims by Alaska
22 shall have priority, as set forth in Section 128. In the event
23 a claim other than by Alaska is established by clear and convinc-
24 ing evidence more than one year after the death or departure with-
25 out authority of a patient, it shall be certified to the Alaska
26 Legislature for consideration, which may, in its discretion pay
27 the same.

28 Section 127. DISCLOSURE OF INFORMATION.

29 (a) All certificates, applications, records and re-

1 ports, other than an order of a court or Commissioner made for
2 the purpose of this Act, and directly or indirectly identifying
3 a patient or former patient or an individual whose hospitalization
4 has been sought under this Act, together with clinical informa-
5 tion relating to such patients, shall be kept confidential and
6 shall not be disclosed by any person except insofar as

7 (i) the individual identified, or his legal guar-
8 dian, if any (or if he be a minor, his parent or legal
9 guardian), shall consent; or

10 (ii) disclosure may be necessary to carry out any
11 of the provisions of this Act; or

12 (iii) a court may direct, upon its determination
13 that disclosure is necessary for the conduct of proceedings
14 before it and that failure to make such disclosure would be
15 contrary to the public interest.

16 (b) Nothing in this section shall preclude disclosure,
17 upon proper inquiry, of information concerning current medical
18 condition to the members of the family of a patient or to his
19 relatives or friends.

20 (c) Any person violating any provision of this section
21 shall be guilty of a misdemeanor and subject to a fine of not more
22 than \$500.00 or imprisonment for not more than one year, or both.

23 Section 128. LIABILITY FOR EXPENSE OF HOSPITALIZATION AND
24 TRANSPORTATION; LIEN; CLAIM AGAINST ESTATE.

25 (a) It shall be the duty of a patient, or his legal
26 representative acting in a representative capacity, spouse,
27 parents, adult children, in that sequence, to pay or contribute
28 to the payment of the charges for the care or treatment of such
29 patient when hospitalized pursuant to the provisions of this Act.

1 in such manner and proportion as the Department may find not
2 detrimental to the patient's rehabilitation and to be within
3 their ability to pay; provided, that such charges shall in no
4 case exceed the actual cost of such care or treatment as may be
5 determined by the Department. The order of the Department
6 relating to the payment of charges by persons other than the
7 patient, or his legal representative, shall be prospective in
8 effect and shall relate only to charges to be incurred subsequent
9 to the order; provided, however, that if any of the above-named
10 persons intentionally conceal their ability to pay, such persons
11 shall be ordered to pay to the extent of their ability the
12 charges accruing during the period of such concealment. The
13 Department may cause to be made such investigations as may be
14 necessary to determine such ability to pay, and may require
15 sworn statements of income by such persons.

16 (b) As used in subsection (a), the term "Actual cost
17 of such care and treatment" shall mean either the rate provided
18 for by any contract entered into pursuant to this Act, or, in
19 the absence of such contract, a per diem rate fixed by the De-
20 partment, and shall include expenses of transportation incidental
21 to examination or hospitalization.

22 (c) The amount of liability for such care and treat-
23 ment determined by the Department pursuant to subsection (a)
24 of this section not paid for by the patient or by someone in his
25 behalf, shall constitute a lien in favor of Alaska against all
26 property of the patient. Said unpaid amount of liability shall
27 also be an indebtedness owing Alaska by the patient or those
28 liable for his care and shall be a first, prior and preferred
29 claim against the estate of such beneficiary or person liable

1 for his care, after death, and after expenses of administration
2 and all just claims for medical care and burial expenses have
3 been paid. Said claim based upon information submitted by the
4 Department, shall be prepared and filed by the Attorney General's
5 office.

6 (d) The Department is authorized to accept from any
7 person any monies or property for the care or treatment of any
8 patient or for other purposes, even if such payment is not
9 required by an order of the Department under subsection (a), so
10 long as the total payments received under subsection (a) and this
11 subsection do not exceed the actual cost of care or treatment.

12 (e) All monies paid by the patient or on his behalf,
13 pursuant to this section, shall be covered into the Treasury of
14 Alaska to the credit of the Department, for expenditure by the
15 Department for the administration of this Act.

16 Section 129. FEES AND EXPENSES FOR JUDICIAL PROCEEDINGS,
17 A Commissioner, the witnesses, and the jurymen, if any, in
18 proceedings for judicial hospitalization shall be entitled to
19 such fees, compensation and mileage as shall be established by
20 law. All compensation, mileage, fees, and all other expenses
21 arising from judicial hospitalization proceedings shall be
22 audited and allowed by the district judge of the division in
23 which said proceedings are held, and when so audited and allowed
24 shall be paid by the clerk of the court in said division in the
25 same manner and from the same fund as he pays the other incidental
26 expenses of the court. To the extent that services of a United
27 States Marshal or Deputy Marshal are utilized to carry out the
28 provisions of this Act, such marshal or deputy marshal shall be
29 entitled to fees and actual expenses from the same source and in

1 the same manner as for their other official duties.

2 Section 130. DEPARTMENT MAY FROMULGATE AND ISSUE REGULA-
3 TIONS. The Department is hereby granted authority to promulgate
4 and issue appropriate regulations to implement the provisions of
5 this Act and to cover matters not expressly touched upon or
6 anticipated but necessarily implied by the provisions hereof.
7 All such regulations shall be filed with the Secretary of Alaska,
8 and when so filed shall have the force and effect of law.

9 Section 131. COMMITMENTS PREVIOUSLY ORDERED UNDER TITLE
10 48 U.S.C.A. 46, ET SEQ., AND P.L. 830, 84TH CONGRESS, 2ND
11 SESSION. All commitments previously ordered under Title 48
12 U.S.C.A. 46, et seq., and P.L. 830, 84th Congress, 2nd Session,
13 or under any laws of the Territory, shall remain fully effective
14 unless the status of any of the same are altered or otherwise
15 changed pursuant to the provisions of this Act.

16 Section 132. TRANSFER OF PATIENTS COMMITTED PURSUANT TO
17 TITLE 48 U.S.C.A. 46, ET SEQ., AND P.L. 830, 84TH CONGRESS,
18 2ND SESSION. Any mental patient committed from Alaska pursuant
19 to Title 48 U.S.C.A. 46, et seq., and P. L. 830, 84th Congress,
20 2nd Session, may be transferred anytime after February 22, 1957,
21 to any designated hospital or other facility as shall be determined
22 by the Department and to the same extent and in the same manner as
23 a patient can be transferred who is committed pursuant to this Act.

24 Section 133. CRIMINAL PENALTIES. Whoever intentionally
25 causes, or attempts to cause, or conspires with any other person
26 to cause any individual to be committed to any hospital under
27 this Act, knowing or having reasonable grounds for believing
28 that such individual is not mentally ill, and in need of hos-
29 pitalization, shall be fined a sum not exceeding \$10,000.00 or

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1 imprisoned not more than ten years, or both such fine and im-
2 prisonment. The court in its discretion may order all or any
3 part of an imposed fine to be paid over to the injured indivi-
4 dual.

5 Section 134. FEDERAL STATUTES SUPERSEDED BY PROCLAMATION
6 OF THE GOVERNOR. Pursuant to Title III, Section 301, of Public
7 Law 830, 84th Congress, 2nd Session, the governor of Alaska may,
8 by proclamation, declare to be superseded by this Act, all of
9 the laws cited in said Section 301 of Public Law 830, 84th
10 Congress, 2nd Session, and that the same shall be repealed as of
11 the effective date specified in said proclamation.

12 Section 135. REPEALING CHAPTER 175, SLA 1955, AND CHAPTER
13 62, SLA 1951. Chapter 175, SLA 1955, and Chapter 62, SLA 1951
14 are hereby repealed.

15 Section 136. SEVERABILITY. The fact that any Section, sub-
16 section, sentence, clause or phrase of this Act is declared inval-
17 id for any reason shall not affect the remaining portions of
18 this Act.

19 Section 137. DECLARATION OF AN EMERGENCY AND SETTING AN
20 EFFECTIVE DATE. An emergency is hereby declared to exist and
21 this Act shall be in full force and effect as of the effective
22 date specified in the Governor's proclamation.

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