

Introduced: 3/6/73
Referred: Health, Education &
Social Sciences and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 302

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act entering into the Interstate Compact on the
7 Mentally Disordered Offender; providing for
8 implementation of the compact; and providing for an
9 effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 47 is amended by adding a new chapter to read:

12 CHAPTER 32. INTERSTATE COMPACT ON THE MENTALLY DISORDERED OFFENDER.

13 Sec. 47.32.010. ADOPTION OF COMPACT. The Interstate Compact on
14 the Mentally Disordered Offender is enacted into law and is entered
15 into with all other jurisdictions legally joining in it in the form
16 substantially as follows:

17 ARTICLE I. PURPOSE AND POLICY.

18 (a) The party states, desiring by common action to improve
19 their programs for the care and treatment of mentally disordered
20 offenders, declare that it is the policy of each of the party states to:

- 21 1. Strengthen their own programs and laws for the care and
22 treatment of the mentally disordered offender.
- 23 2. Encourage and provide for such care and treatment in the
24 most appropriate locations, giving due recognition to the need to
25 achieve adequacy of diagnosis, care, treatment, after-care and
26 auxiliary services and facilities and, to every extent practicable,
27 to do so in geographic locations convenient for providing a therapeutic
28 environment.
- 29 3. Authorize cooperation among the party states in pro-

1 viding services and facilities, when it is found that cooperative
2 programs can be more effective and efficient than programs separately
3 pursued.

4 4. Place each mentally disordered offender in a legal
5 status which will facilitate his care, treatment and rehabilitation.

6 5. Authorize research and training of personnel on a co-
7 operative basis, in order to improve the quality or quantity of
8 personnel available for the proper staffing of programs, services and
9 facilities for mentally disordered offenders.

10 6. Care for and treat mentally disordered offenders under
11 conditions which will improve the public safety.

12 (b) Within the policies set forth in this Article, it is the
13 purpose of this compact to:

14 1. Authorize negotiation, entry into, and operations under
15 contractual arrangements among any two or more of the party states for
16 the establishment and maintenance of cooperative programs in any one
17 or more of the fields for which specific provision is made in the
18 several articles of this compact.

19 2. Set the limits within which such contracts may operate,
20 so as to assure protection of the civil rights of mentally disordered
21 offenders and protection of the rights and obligations of the public
22 and of the party states.

23 3. Facilitate the proper disposition of criminal charges
24 pending against mentally disordered offenders, so that programs for
25 their care, treatment and rehabilitation may be carried on efficiently.

ARTICLE II. DEFINITIONS.

As used in this compact:

28 (a) "Mentally disordered offender" means a person who has
29 been determined, by adjudication or other method legally sufficient for

1 the purpose in the party state where the determination is made, to be
2 mentally ill and:

- 3 1. is under sentence for the commission of crime; or
- 4 2. who is confined or committed on account of the
5 commission of an offense for which, in the absence of mental illness,
6 said person would be subject to incarceration in a penal or correctional
7 facility.

8 (b) "Patient" means a mentally disordered offender who is cared
9 for, treated, or transferred pursuant to this compact.

10 (c) "Sending state" means a state party to this compact in
11 which the mentally disordered offender was convicted; or the state in
12 which he would be subject to trial on or conviction of an offense,
13 except for his mental condition; or, within the meaning of Article V
14 of this compact, the state whose authorities have filed a petition in
15 connection with an untried indictment, information or complaint.

16 (d) "Receiving state" means a state party to this compact to
17 which a mentally disordered offender is sent for care, after-care,
18 treatment or rehabilitation, or within the meaning of Article V of
19 this compact, the state in which a petition in connection with an
20 untried indictment, information or complaint has been filed.

21 ARTICLE III. CONTRACTS.

22 (a) Each party state may make one or more contracts with any one
23 or more of the other party states for the care and treatment of mentally
24 disordered offenders on behalf of a sending state in facilities situated
25 in receiving states, or for the participation of such mentally disordered
26 offenders in programs of after-care on conditional release administered
27 by the receiving state. Any such contract shall provide for:

- 28 1. Its duration.
- 29 2. Payments to be made to the receiving state by the send-

1 ing state for patient care, treatment, and extraordinary services, if
2 any.

3 3. Determination of responsibility for ordering or permit-
4 ting the furnishing of extraordinary services, if any.

5 4. Participation in compensated activities, if any, avail-
6 able to patients; the disposition or crediting of any payment received
7 by patients on account thereof; and the crediting of proceeds from or
8 disposal of any products resulting therefrom.

9 5. Delivery and retaking of mentally disordered offenders.

10 6. Such other matters as may be necessary and appropriate
11 to fix the obligations, responsibilities and rights of the sending and
12 receiving states.

13 (b) Prior to the construction or completion of construction of
14 any facility for mentally disordered offenders or addition to such
15 facility by a party state, any other party state or states may contract
16 therewith for the enlargement of the planned capacity of the facility
17 or addition thereto, or for the inclusion therein of particular equip-
18 ment or structures, and for the reservation of a specific percentum of
19 the capacity of the facility to be kept available for use by patients
20 of the sending state or states so contracting. Any sending state so
21 contracting may, to the extent that monies are legally available there-
22 for, pay to the receiving state, a reasonable sum as consideration for
23 such enlargement of capacity, or provision of equipment or structures,
24 and reservation of capacity. Such payment may be in a lump sum or in
25 installments as provided in the contract.

26 (c) A party state may contract with any one or more other party
27 states for the training of professional or other personnel whose
28 services, by reason of such training, would become available for or
29 be improved in respect of ability to participate in the care and treat-

1 ment of mentally disordered offenders. Such contracts may provide for
2 such training to take place at any facility being operated or to be
3 operated for the care and treatment of mentally disordered offenders;
4 at any institution or facility having resources suitable for the offer-
5 ing of such training; or may provide for the separate establishment of
6 training facilities, provided that no such separate establishment shall
7 be undertaken, unless it is determined that an appropriate existing
8 facility or institution cannot be found at which to conduct the con-
9 templated program. Any contract entered into pursuant to this
10 paragraph shall provide for:

- 11 1. The administration, financing, and precise nature of
12 the program.
- 13 2. The status and employment or other rights of the trainees.
- 14 3. All other necessary matters.

15 (d) No contract entered into pursuant to this compact shall be
16 inconsistent with any provision thereof.

17 ARTICLE IV. PROCEDURES AND RIGHTS.

18 (a) Whenever the duly constituted judicial or administrative
19 authorities in a state party to this compact, and which has entered
20 into a contract pursuant to Article III of this compact, shall decide
21 that custody, care and treatment in, or transfer of a patient to, a
22 facility within the territory of another party state, or conditional
23 release for after-care in another party state is necessary in order to
24 provide adequate care and treatment or is desirable in order to provide
25 an appropriate program of therapy or other treatment, or is desirable
26 for clinical reasons, said officials may direct that the custody, care
27 and treatment be within a facility or in a program of after-care within
28 the territory of said other party state, the receiving state to act in
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1 that regard solely as agent for the sending state.

2 (b) The appropriate officials of any state party to this compact
3 shall have access, at all reasonable times, to any facility in which
4 it has a contractual right to secure care or treatment of patients for
5 the purpose of inspection and visiting such of its patients as may be
6 in the facility or served by it.

7 (c) Except as otherwise provided in Article VI, of this compact,
8 patients in a facility pursuant to the terms of this compact shall at
9 all times be subject to the jurisdiction of the sending state and may
10 at any time be removed for transfer to a facility within the sending
11 state, for transfer to another facility in which the sending state may
12 have a contractual or other right to secure care and treatment of
13 patients, for release on after-care or other conditional status, for
14 discharge, or for any other purpose permitted by the laws of the send-
15 ing state: provided that the sending state shall continue to be
16 obligated to such payments as may be required pursuant to the terms
17 of any contract entered into under the terms of Article III.

18 (d) Each receiving state shall provide regular reports to each
19 sending state on the patients of that sending state in facilities
20 pursuant to this compact including a psychiatric and behavioral record
21 of each patient and certify said record to the official designated by
22 the sending state, in order that each patient may have the benefit of
23 his or her record in determining and altering the disposition of said
24 patient in accordance with the law which may obtain in the sending
25 state and in order that the same may be a source of information for the
26 sending state.

27 (e) All patients who may be in a facility or receiving after-care
28 from a facility pursuant to the provisions of this compact shall be
29 treated in a reasonable and humane manner and shall be cared for,

1 treated and supervised in accordance with the standards pertaining to
2 the program administered at the facility. The fact of presence in a
3 receiving state shall not deprive any patient of any legal rights which
4 said patient would have had if in custody or receiving care, treatment
5 or supervision as appropriate in the sending state.

6 (f) Any hearing or hearings to which a patient present in a
7 receiving state pursuant to this compact may be entitled by the laws
8 of the sending state shall be had before the appropriate authorities
9 of the sending state, or of the receiving state if authorized by the
10 sending state. The receiving state shall provide adequate facilities
11 for such hearings as may be conducted by the appropriate officials of
12 a sending state. In the event such hearing or hearings are had before
13 officials of the receiving state, the governing law shall be that of
14 the sending state and a record of the hearing or hearings as prescribed
15 by the sending state shall be made. Said record together with any
16 recommendations of the hearing officials shall be transmitted forthwith
17 to the official or officials before whom the hearing would have been
18 had if it had taken place in the sending state. In any and all
19 proceedings had pursuant to the provisions of this paragraph, the
20 officials of the receiving state shall act solely as agents of the
21 sending state and no final determination shall be made in any matter
22 except by the appropriate officials of the sending state. Costs of
23 records made pursuant to this paragraph shall be borne by the sending
24 state.

25 (g) Any patient confined pursuant to this compact shall be re-
26 leased within the territory of the sending state unless the patient,
27 and the sending and receiving states, shall agree upon release in some
28 other place. The sending state shall bear the cost of such return to
29 its territory.

1 (h) Any patient pursuant to the terms of this compact shall be
2 subject to civil process and shall have any and all rights to sue, be
3 sued and participate in and derive any benefits or incur or be relieved
4 of any obligations or have such obligations modified or his status
5 changed on account of any action or proceeding in which he could have
6 participated if in any appropriate facility of the sending state or
7 being supervised therefrom, as the case may be, located within such
8 state.

9 (i) The parent, guardian, trustee, or other person or persons
10 entitled under the laws of the sending state to act for, advise, or
11 otherwise function with respect to any patient shall not be deprived
12 of or restricted in his exercise of any power in respect of any patient
13 pursuant to the terms of this compact.

14 ARTICLE V. DISPOSITION OF CHARGES.

15 (a) Whenever the authorities responsible for the care and treat-
16 ment of a mentally disordered offender, whether convicted or adjudicated
17 in the state or subject to care, after-care, treatment or rehabilitation
18 pursuant to a contract, are of the opinion that charges based on untried
19 indictments, informations or complaints in another party state present
20 obstacles to the proper care and treatment of a mentally disordered
21 offender or to the planning or execution of a suitable program for him,
22 such authorities may petition the appropriate court in the state where
23 the untried indictment, information or complaint is pending for prompt
24 disposition thereof. If the mentally disordered offender is a patient
25 in a receiving state, the appropriate authorities of the sending state,
26 upon recommendation of the appropriate authorities in the receiving
27 state, shall, if they concur in the recommendation, file the petition
28 contemplated by this paragraph.

29 (b) The court shall hold a hearing on the petition within thirty

1 employees, or agencies of the receiving state in providing or facilitat-
2 ing detention, housing or transportation for the mentally disordered
3 offender shall be only as agents for the sending state.

4 (e) Promptly upon conclusion of the hearing the court shall
5 dismiss the untried indictment, information or complaint, if it finds
6 that the purposes enumerated in paragraph (b) of this Article would
7 be served thereby. Otherwise, the court shall make such order with
8 respect to the petition and the untried indictment, information or
9 complaint as may be appropriate in the circumstances and consistent
10 with the status of the defendant as a mentally disordered offender in
11 the custody of and subject to the jurisdiction of the sending state.

12 (f) No fact or other matter established or adjudicated at any
13 hearing pursuant to this Article, or in connection therewith, shall be
14 deemed established or adjudicated, nor shall the same be admissible in
15 evidence, in any subsequent prosecution of the untried indictment,
16 information or complaint concerned in a petition filed pursuant to
17 this Article unless:

18 1. The defendant or his duly empowered legal representative
19 requested or expressly acquiesced in the making of the petition, and
20 was afforded an opportunity to participate in person in the hearing; or

21 2. The defendant himself offers or consents to the intro-
22 duction of the determination or adjudication at such subsequent
23 proceedings.

24 ARTICLE VI. ACTS NOT REVIEWABLE IN
25 RECEIVING STATE; RETURN.

26 (a) Any decision of the sending state in respect of any matter
27 over which it retains jurisdiction pursuant to this compact shall be
28 conclusive upon and not reviewable within the receiving state, but if at
29 the time the sending state seeks to remove a patient from the receiving

1 state there is pending against the patient within such state any
2 criminal charge or if the patient is suspected of having committed
3 within such state a criminal offense, the patient shall not be returned
4 without the consent of the receiving state until discharged from
5 prosecution or other form of proceeding, imprisonment or detention for
6 such offense. The duly accredited officers of the sending state shall
7 be permitted to transport patients pursuant to this compact through
8 any and all states party to this compact without interference.

9 (b) A patient who escapes while receiving care and treatment or
10 who violates provisions of after-care by leaving the jurisdiction, or
11 while being detained or transported pursuant to this compact shall
12 be deemed an escapee from the sending state and from the state in which
13 the facility is situated or the after-care was being provided. In the
14 case of an escape to a jurisdiction other than the sending or receiving
15 state, the responsibility for return shall be that of the sending state,
16 but nothing contained herein shall be construed to prevent or affect
17 the activities of officers and agencies of any jurisdiction directed
18 toward the apprehension and return of an escapee.

19 ARTICLE VII. FEDERAL AID.

20 Any state party to this compact may accept federal aid for use in
21 connection with any facility or program, the use of which is or may be
22 affected by this compact or any contract pursuant thereto and any
23 patient in a receiving state pursuant to this compact may participate
24 in any such federally aided program or activity for which the sending
25 and receiving states have made contractual provisions: provided that
26 if such program or activity is not part of the customary regimen of
27 the facility or program the express consent of the appropriate official
28 of the sending state shall be required therefor.

29 ARTICLE VIII. ENTRY INTO FORCE.

1 This compact shall enter into force and become effective and
2 binding upon the states so acting when it has been enacted into law
3 by any two states from among the states of Illinois, Indiana, Iowa,
4 Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio,
5 South Dakota and Wisconsin. Thereafter, this compact shall enter
6 into force and become effective and binding as to any other of said
7 states, or any other state upon similar action by such state.

8 ARTICLE IX. WITHDRAWAL AND TERMINATION.

9 This compact shall continue in force and remain binding upon a
10 party state until it shall have enacted a statute repealing the same and
11 providing for the sending of formal written notice of withdrawal from
12 the compact to the appropriate officials of all other party states. An
13 actual withdrawal shall not take effect until two years after the notices
14 provided in said statute have been sent. Such withdrawal shall not
15 relieve the withdrawing state from its obligations assumed hereunder
16 prior to the effective date of withdrawal. Before the effective date
17 of withdrawal, a withdrawing state shall remove to its territory, at
18 its own expense, such patients as it may have in other party states
19 pursuant to the provisions of this compact.

20 ARTICLE X. OTHER ARRANGEMENTS UNAFFECTED.

21 Nothing contained in this compact shall be construed to abrogate
22 or impair any agreement or other arrangement which a party state may
23 have with a nonparty state for the custody, care, treatment,
24 rehabilitation or after-care of patients nor to repeal any other laws
25 of a party state authorizing the making of cooperative arrangements.

26 ARTICLE XI. CONSTRUCTION AND SEVERABILITY.

27 The provisions of this compact shall be liberally construed and
28 shall be severable. If any phrase, clause, sentence or provision of
29 this compact is declared to be contrary to the constitution of any

1 participating state or of the United States or the applicability there-
2 of to any government, agency, person or circumstance is held invalid,
3 the validity of the remainder of this compact and the applicability
4 thereof to any government, agency, person or circumstance shall not
5 be affected thereby. If this compact shall be held contrary to the
6 constitution of any state participating therein, the compact shall
7 remain in full force and effect as to the remaining states and in full
8 force and effect as to the state affected as to all severable matters.

9 Sec. 47.32.020. CONTRACTING AGENCY. The Commissioner of the
10 Department of Health and Social Services may negotiate and enter into
11 contracts on behalf of this state pursuant to Article III of this
12 compact and may perform such contracts: provided that no funds,
13 personnel, facilities, equipment, supplies, or materials shall be
14 pledged for, committed or used on account of any such contract, unless
15 legally available therefor.

16 * Sec. 2. This Act takes effect on the day after its passage and
17 approval or on the day it becomes law without approval.
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