

Original sponsors: Parr, Cotten
and Gruening

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For Today's Calendar

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 472 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to mentally ill and developmentally
7 disabled persons; and providing for an effective date."

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

9 * Section 1. AS 47.30 is amended by adding new sections to read:

10 ARTICLE 6. MENTAL HEALTH PROGRAM.

11 Sec. 47.30.655. PURPOSE. The purpose of this major revision of
12 Alaska civil commitment statutes is to more adequately protect the legal
13 rights of persons suffering from mental illness. The legislature has
14 attempted to balance the individual's constitutional right to physical
15 liberty and the state's interest in (1) protecting society from persons
16 who are dangerous to others; and (2) protecting persons who are dan-
17 gerous to themselves, by providing due process safeguards at all stages
18 of commitment proceedings. In addition, the following principles of
19 modern mental health care have guided this revision:

20 (1) that persons be given every opportunity to accept volun-
21 tary treatment before involvement with the judicial system;

22 (2) that persons be treated in the least restrictive alter-
23 native environment consistent with their treatment needs;

24 (3) that treatment occur as promptly as possible and as close
25 to the individual's home as possible;

26 (4) that a system of mental health community facilities and
27 supports be available;

28 (5) that patients be informed of their legal rights and be
29 informed of and allowed to participate in their treatment program as

1 much as possible.

2 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The department
3 is the mental health authority of the state and shall

4 (1) administer a comprehensive program for the prevention of
5 mental illness and the care and treatment of the mentally ill, including
6 inpatient and outpatient care and treatment and the procurement of
7 services of specialists or other persons on a contractual or other
8 basis;

9 (2) take the actions and undertake the obligations which are
10 necessary to participate in federal grants-in-aid programs and accept
11 federal or other financial aid from whatever sources for the study,
12 examination, care, and treatment of the mentally ill;

13 (3) administer secs. 655 - 915 of this chapter;

14 (4) designate, operate, and maintain treatment facilities
15 equipped and qualified to provide inpatient and outpatient care and
16 treatment for the mentally ill;

17 (5) provide for the placement of mentally ill patients in
18 designated treatment facilities;

19 (6) enter into arrangements with the United States Public
20 Health Service for the care or treatment of the mentally ill in facili-
21 ties of the Public Health Service in the state or in another state;

22 (7) enter into contracts with treatment facilities for the
23 custody and care or treatment of the mentally ill;

24 (8) enter into contracts which incorporate safeguards consis-
25 tent with secs. 655 - 915 of this chapter and the preservation of the
26 civil rights of the patients with another state for the custody and care
27 or treatment of patients previously committed from this state under 48
28 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd Session, 70
29 Stat. 709;

1 (9) prescribe the form of applications, records, reports,
2 requests for release, and consents to medical or psychological treatment
3 required by secs. 655 - 915 of this chapter;

4 (10) require reports from the head of a treatment facility
5 concerning the care of patients;

6 (11) visit each treatment facility at least annually to review
7 methods of care or treatment for patients;

8 (12) investigate complaints made by a patient or an interested
9 party on behalf of a patient;

10 (13) delegate upon mutual agreement to another officer or
11 agency of it, or a political subdivision of this state, or a treatment
12 facility designated, any of the duties and powers imposed upon it by
13 secs. 655 - 915 of this chapter; and

14 (14) promulgate regulations to implement the provisions of
15 secs. 655 - 915 of this chapter.

16 Sec. 47.30.665. PRAYER TREATMENT. The provisions of this chapter
17 shall not be construed to deny treatment by spiritual means through
18 prayer in accordance with the tenets and practices of a church or denom-
19 ination to any person detained for evaluation or treatment who desires
20 that treatment, or to a minor if his parent or guardian desires that
21 treatment.

22 ARTICLE 7. VOLUNTARY ADMISSION FOR TREATMENT.

23 Sec. 47.30.670. STANDARDS FOR VOLUNTARY ADMISSION. A person 14
24 years of age or older may be voluntarily admitted to a treatment facil-
25 ity if he is suffering from mental illness and he voluntarily signs the
26 admission papers.

27 Sec. 47.30.675. NOTICE OF RIGHTS. (a) Upon application for
28 voluntary admission a person shall be given a copy of the following
29 documents which shall be explained to him as necessary:

1 (1) notice of rights as set out in secs. 825 - 865 of this
2 chapter and an explanation of any document served upon him; and

3 (2) notice that should he desire to leave at a time when the
4 treatment facility determines that he is mentally ill and as a result is
5 likely to cause serious harm to himself or others or is gravely dis-
6 abled, the facility could initiate commitment proceedings against him.

7 (b) If the applicant for voluntary admission does not understand
8 English, the explanation shall be given in a language he understands.

9 Sec. 47.30.680. DISCHARGE OF VOLUNTARY PATIENTS. The professional
10 person in charge of the treatment facility or his designee shall dis-
11 charge any patient who no longer meets the standards established in sec.
12 670 of this chapter.

13 Sec. 47.30.685. NOTICE OF INTENT TO LEAVE FACILITY; COMMITMENT. A
14 voluntary patient who is 14 years of age or older and who desires to
15 leave a treatment facility must submit to the facility a written notice
16 of intent to leave on a form provided to him by the facility. Upon
17 immediate investigation, the professional person in charge of the treat-
18 ment facility or a designated mental health professional shall evaluate
19 the patient in writing and discharge the patient immediately or give him
20 written notice that involuntary commitment proceedings will be initiated
21 against him. The treatment facility may detain the patient for no more
22 than 48 hours after receipt of the patient's notice of intent to leave
23 in order to initiate involuntary commitment proceedings.

24 Sec. 47.30.690. VOLUNTARY ADMISSION OF MINORS UNDER 14 YEARS OF
25 AGE. A minor under 14 years of age may be admitted voluntarily if his
26 parent or guardian signs the voluntary admission papers and the facility
27 agrees that he is suffering from a mental illness.

28 Sec. 47.30.695. NOTICE OF REQUEST FOR RELEASE OF MINORS UNDER 14
29 YEARS OF AGE FROM VOLUNTARY DETENTION AND COMMITMENT. The parent or

1 guardian of any minor who is less than 14 years of age may request and
2 obtain immediate release of the minor at any time.

3 ARTICLE 8. INVOLUNTARY ADMISSION FOR TREATMENT.

4 Sec. 47.30.700. INITIATION OF INVOLUNTARY COMMITMENT PROCEDURES.

5 (a) Upon petition of any adult person, a judge may issue an ex parte
6 order orally, or in writing, within 48 hours of the petition stating
7 that there is probable cause to believe a person is mentally ill and
8 that condition causes the person to be gravely disabled or to present a
9 likelihood of serious harm to himself or others. The court shall pro-
10 vide findings on which the conclusion is based, appoint an attorney to
11 represent the respondent, and may direct that a peace officer take the
12 person into custody and deliver him to the nearest designated appro-
13 priate facility for emergency examination or treatment. The ex parte
14 order shall be provided to the respondent and made a part of the re-
15 spondent's clinical record.

16 (b) The petition required in (a) of this section shall allege that
17 the respondent is reasonably believed to present a likelihood of serious
18 harm to himself or others or is gravely disabled as a result of mental
19 illness and shall specify the factual information on which that belief is
20 based including the names and addresses of all persons known to the
21 petitioner who have knowledge of those facts through personal observation.

22 Sec. 47.30.705. EMERGENCY DETENTION FOR EVALUATION. A peace
23 officer who has probable cause to believe that a person is gravely
24 disabled or is suffering from mental illness and is likely to cause
25 serious harm to himself or others of such an immediate nature that
26 considerations of safety do not allow initiation of involuntary commit-
27 ment procedures set out in sec. 700 of this chapter, may cause the
28 person to be taken into custody and delivered to a treatment or eval-
29 uation facility. Upon arrival at the treatment facility, the peace

1 officer shall complete an application for examination of the person in
2 custody and be interviewed by a mental health professional at the
3 facility.

4 Sec. 47.30.710. EXAMINATION. (a) A patient who is delivered under
5 sec. 700 or 705 of this chapter for emergency examination and treatment
6 to a treatment facility shall be thoroughly examined and evaluated as to
7 his mental and physical condition by a mental health professional and by
8 a physician within 24 hours after arrival at the facility.

9 (b) If the mental health professional who performs the emergency
10 examination has reason to believe that the patient is (1) mentally ill
11 and that condition causes the person to be gravely disabled or to present
12 a likelihood of serious harm to himself or others, and (2) is in need of
13 care or treatment, the mental health professional may hospitalize him on
14 an emergency basis. If a judicial order has not been obtained under
15 sec. 700 of this chapter, the mental health professional shall apply for
16 an ex parte order authorizing hospitalization for emergency treatment.

17 Sec. 47.30.715. ACCEPTANCE OF ORDER. When a facility receives a
18 proper order for evaluation, it must accept the order and the person for
19 an evaluation period not to exceed 72 hours. The facility shall
20 promptly notify the court of the date and time of the respondent's
21 arrival. The court shall set a date, time and place for a probable
22 cause hearing, to be held if needed within 72 hours after the respon-
23 dent's arrival, and the court shall notify the facility, the respondent,
24 his attorney, and the prosecuting attorney of the hearing arrangements.
25 Evaluation personnel, where used, shall similarly notify the court of
26 the date and time when they first met with the respondent.

27 Sec. 47.30.720. RELEASE BEFORE EXPIRATION OF 72-HOUR PERIOD. If
28 at any time in the course of the 72-hour period the mental health pro-
29 fessionals conducting the evaluation determine that the respondent does

1 not meet the standards for commitment specified in sec. 700 of this
2 chapter, the respondent shall be discharged from the facility or the
3 place of evaluation by evaluation personnel and the petitioner and the
4 court so notified.

5 Sec. 47.30.725. COMMITMENT PROCEEDING RIGHTS; NOTIFICATION. (a)
6 When a person is detained for evaluation under this chapter, he shall be
7 immediately notified orally and in writing of his rights under this sec-
8 tion. Notification shall be in a language understood by the respondent.
9 His guardian, if any, and if the respondent requests, an adult desig-
10 nated by the respondent, shall also be notified of the respondent's
11 rights under this section.

12 (b) Unless a person is released or voluntarily admits himself for
13 treatment within 72 hours of his arrival at the facility or, if he is
14 evaluated by evaluation personnel, within 72 hours from the beginning of
15 his meeting with evaluation personnel, he is entitled to a court hearing
16 to be set for no later than the end of that 72-hour period to determine
17 whether there is probable cause to detain him after the 72 hours have
18 expired for up to an additional 14 days on the grounds that he is grave-
19 ly disabled or mentally ill and as a result presents a likelihood of
20 serious harm to himself or others. The facility or evaluation person-
21 nel shall give notice to the court of the releases and voluntary
22 admissions under secs. 700 - 820 of this chapter.

23 (c) The respondent has a right to communicate immediately, at the
24 department's expense, with his guardian, if any, or an adult designated
25 by the respondent and the attorney designated in the ex parte order, or
26 any attorney of the respondent's choice.

27 (d) The respondent has the right to present evidence and to cross-
28 examine witnesses who testify against him at the hearing.

29 (e) The respondent has the right to be free of the effects of

1 medication and other forms of treatment to the maximum extent possible
2 before the probable cause hearing; however, the facility or evaluation
3 personnel shall be able to treat him with medication under prescription
4 by a licensed physician or a less restrictive alternative of his pre-
5 ference if, in the opinion of a licensed physician and another mental
6 health professional, these treatments are necessary to

- 7 (1) prevent bodily harm to the respondent or others;
- 8 (2) prevent such deterioration of the respondent's mental
9 condition that subsequent treatment might not enable him to recover; or
- 10 (3) allow the respondent to prepare for and participate in
11 the proceedings.

12 Sec. 47.30.730. PROCEDURE FOR 14-DAY COMMITMENT; PETITION FOR
13 COMMITMENT. (a) In the course of the 72-hour evaluation period, a
14 petition for commitment to a treatment facility may be filed in court.
15 The petition must be signed by two mental health professionals who have
16 examined the respondent. The petition must

17 (1) allege the facts and specific behavior of the respondent
18 showing that the respondent is mentally ill and as a result is likely to
19 cause harm to himself or others or is gravely disabled;

20 (2) allege that the evaluation staff has considered but has
21 not found that there are any less restrictive alternatives available
22 that would adequately protect the respondent or others; or, if a less
23 restrictive involuntary form of treatment is sought, specify the treat-
24 ment and the basis for supporting it;

25 (3) allege with respect to a gravely disabled respondent that
26 there is reason to believe that the respondent's mental condition could
27 be improved by the course of treatment sought;

28 (4) allege that a specified treatment facility or less
29 restrictive alternative that is appropriate to the respondent's condi-

1 tion has agreed to accept the respondent;

2 (5) allege that the respondent has been advised of the need
3 for, but has not accepted, voluntary treatment, and request that the
4 court commit the respondent to the specified treatment facility or less
5 restrictive alternative for a period not to exceed 14 days;

6 (6) list the prospective witnesses who will testify in sup-
7 port of commitment or involuntary treatment.

8 (b) A copy of the petition shall be served on the respondent, his
9 attorney, and his guardian, if any, before the probable cause hearing.

10 Sec. 47.30.735. PROBABLE CAUSE HEARING. (a) Upon receipt of a
11 proper petition for commitment, the court shall hold a probable cause
12 hearing at the date and time previously specified according to proce-
13 dures set out in sec. 715 of this chapter.

14 (b) The hearing shall be conducted in a physical setting least
15 likely to have a harmful effect on the mental or physical health of the
16 respondent, within practical limits. At the hearing, in addition to
17 other rights specified in this chapter, the respondent has the right

18 (1) to be present at the hearing;

19 (2) to view and copy all petitions and reports in the court
20 file of his case;

21 (3) to have the hearing open or closed to the public as he
22 elects;

23 (4) to be proceeded against according to the rules of evi-
24 dence applicable to civil proceedings;

25 (5) to have an interpreter if he does not understand English;

26 (6) to present evidence on his behalf;

27 (7) to cross-examine witnesses who testify against him;

28 (8) to remain silent.

29 (c) At the conclusion of the hearing the court may commit the re-

1 spondent to a treatment facility for no more than 14 days if it finds,
2 by clear and convincing evidence, that the allegations required in sec.
3 730(a) of this chapter are true.

4 (d) If the court finds that there is a viable less restrictive
5 alternative available and that the respondent has been advised of and
6 refused voluntary treatment through the alternative, the court may order
7 the less restrictive alternative treatment for no more than 14 days.

8 (e) The court shall specifically state to the person committed,
9 and give the person written notice, that if commitment or other invol-
10 untary treatment beyond the 14 days is to be sought, the person shall
11 have the right to a full hearing or jury trial.

12 Sec. 47.30.740. PROCEDURE FOR 90-DAY COMMITMENT FOLLOWING 14-DAY
13 COMMITMENT. (a) At any time during the respondent's 14-day commitment,
14 the professional person in charge of the treatment facility to which the
15 person has been confined, or his professional designee, may file with
16 the court a petition for 90-day commitment of that person. The petition
17 must include all material required under sec. 730(a) of this chapter
18 except that references to "14 days" shall be read as "90 days"; and

19 (1) allege that the respondent has threatened, attempted, or
20 inflicted serious bodily harm upon himself or another since his accep-
21 tance for evaluation, or that he was committed initially as a result of
22 conduct in which he attempted or inflicted serious bodily harm upon
23 himself or another, or that he continues to be gravely disabled;

24 (2) allege that the respondent has received appropriate and
25 adequate care and treatment during his 14-day commitment;

26 (3) be verified by the professional person in charge of the
27 facility providing treatment during the 14-day commitment, or his pro-
28 fessional designee.

29 (b) The court shall have copies of the petition for 90-day commit-

1 ment served upon the respondent, his attorney, and his guardian, if any.
2 The petition for 90-day commitment and proofs of service shall be filed
3 with the clerk of the court, and a date for hearing shall be set, by the
4 end of the next judicial day, for no later than five judicial days from
5 the date of filing of the petition. The clerk shall notify the respon-
6 dent, his attorney, and the petitioner of the hearing date at least
7 three judicial days in advance of the hearing.

8 Sec. 47.30.745. 90-DAY COMMITMENT HEARING RIGHTS. (a) A person
9 subject to a petition for 90-day commitment has, in addition to the
10 rights specified elsewhere in this chapter, or otherwise applicable, the
11 rights enumerated in this section. Written notice of these rights shall
12 be served on the respondent, his attorney, his guardian, if any, and an
13 adult designated by the respondent at the time the petition for 90-day
14 commitment is served. An attempt shall be made by oral explanation to
15 insure that the respondent understands the rights enumerated in the
16 notice. If the respondent does not understand English, the explanation
17 shall be given in a language he understands.

18 (b) Unless the respondent is released or voluntarily admits him-
19 self following the filing of a petition for 90-day commitment and before
20 the hearing, he is entitled to a judicial hearing within five judicial
21 days of the filing of the petition as set out in sec. 740(b) of this
22 chapter to determine whether the allegations required in sec. 740(a) of
23 this chapter are true.

24 (c) The respondent is entitled to a jury trial upon request filed
25 with the court if the request is made at least two judicial days before
26 the hearing. If the respondent requests a jury trial, the hearing may
27 be continued for no more than 10 calendar days. The jury shall consist
28 of six persons.

29 (d) If a jury trial is not requested, the court may still continue

1 the hearing at the respondent's request for no more than 10 calendar
2 days.

3 (e) The respondent has a right to retain an independent licensed
4 physician or other mental health professional to examine him and to
5 testify on his behalf. Upon request by an indigent respondent, the
6 court shall appoint an independent licensed physician or other mental
7 health professional to examine him and testify on his behalf. The court
8 shall give consideration to an indigent respondent's request for a
9 specific physician or mental health professional. A motion for the
10 appointment may be filed in court at any reasonable time before the
11 hearing and shall be acted upon promptly. Reasonable fees and expenses
12 for such expert examiners shall be determined by the rules of court.

13 (f) The proceeding shall in all respects be in accord with con-
14 stitutional guarantees of due process and, except as specifically pro-
15 vided in this chapter, the rules of evidence and procedure in civil
16 proceedings.

17 (g) Until the court issues a final decision, the respondent shall
18 continue to be treated at the treatment facility unless the petition for
19 90-day commitment is withdrawn. If no decision has been made within 20
20 days of filing of the petition, not including extensions of time due to
21 jury trial or other requests by the respondent, he shall be released.

22 Sec. 47.30.750. CONDUCT OF HEARING. The hearing shall be con-
23 ducted in the same manner, and with the same rights for the respondent,
24 as set out in sec. 735(b) of this chapter.

25 Sec. 47.30.755. COURT ORDER. (a) After the hearing and within
26 the time limit specified in sec. 745 of this chapter, the court may
27 commit the respondent to a treatment facility for no more than 90 days
28 only if the court or jury finds by clear and convincing evidence that
29 the allegations required in sec. 740(a) of this chapter are true.

1 (b) If the court or jury finds that there is a less restrictive
2 alternative available and that the respondent has been advised of and
3 refused voluntary treatment through the alternative, the court may order
4 the less restrictive alternative treatment after acceptance of the
5 program by the respondent for a period not to exceed 90 days.

6 Sec. 47.30.760. PLACEMENT AT CLOSEST FACILITY. Treatment shall
7 always be available at a state-operated hospital; however, if space is
8 available and upon acceptance by another treatment facility, a respon-
9 dent who is committed shall be placed by the court at the treatment
10 facility closest to his home unless the court finds that

11 (1) another treatment facility in the state has a program
12 more suited to the respondent's condition, and this interest outweighs
13 the desirability of the respondent being closer to home;

14 (2) another treatment facility in the state is closer to the
15 respondent's friends or relatives who could benefit him through their
16 visits and communications; or

17 (3) the respondent wants to be further removed from his home,
18 and the mental health professionals who sought his commitment concur in
19 the desirability of removed placement.

20 Sec. 47.30.765. APPEAL. The respondent shall have the right to an
21 appeal from any order of involuntary commitment. The court shall inform
22 the respondent of this right.

23 Sec. 47.30.770. ADDITIONAL 120-DAY COMMITMENT. (a) The respon-
24 dent shall be released from involuntary treatment at the expiration of
25 90 days unless the professional person in charge of the treatment faci-
26 lity, or his designee, files a petition for a 120-day commitment con-
27 forming to the requirements of sec. 740(a) of this chapter except that
28 all references to "14-day commitment" shall be read as "the previous
29 90-day commitment" and all references to "90-day commitment" shall be

1 read as "120-day commitment".

2 (b) The procedures for service of the petition, notification of
3 rights and judicial hearing shall be as set out in secs. 740 - 750 of
4 this chapter. If the court or jury finds by clear and convincing evi-
5 dence that the grounds for 90-day commitment as set out in sec. 755 of
6 this chapter are present, the court may order the respondent committed
7 for an additional treatment period not to exceed 120 days from the date
8 on which the first 90-day treatment period would have expired.

9 (c) Successive 120-day commitments are permissible on the same
10 ground and under the same procedures as the original 120-day commitment.
11 No order of commitment may exceed 120 days.

12 Sec. 47.30.775. COMMITMENT OF MINORS. The provisions of secs.
13 700 - 820 of this chapter are applicable to minors; however, all notices
14 required to be served on the respondent in secs. 700 - 820 of this chap-
15 ter shall also be served on the parent or guardian of respondents who
16 are minors, and parents or guardians of minor respondents shall be
17 notified that they may appear as parties in any commitment proceeding
18 concerning the minor and that as parties they are entitled to retain
19 their own attorney or have one appointed for them by the court. A minor
20 has the same rights to waiver and informed consent as an adult under
21 this chapter; however, he shall be represented by counsel in waiver and
22 consent proceedings.

23 Sec. 47.30.780. EARLY DISCHARGE. The professional person in
24 charge of a treatment facility or his designee shall at any time dis-
25 charge a committed person on the ground that the person is no longer
26 gravely disabled or likely to cause serious harm as a result of mental
27 illness. A certificate to this effect shall be sent to the court which
28 shall enter an order officially terminating the involuntary commitment.

29 Sec. 47.30.785. AUTHORIZED ABSENCES. A respondent undergoing

1 involuntary treatment on an inpatient basis under this chapter may be
2 given authorization to be absent from the treatment facility during
3 times specified by the professional person in charge of the facility, or
4 his professional designee, when an authorization to be absent is in the
5 best interests of the respondent and he is not likely to cause harm to
6 himself or others.

7 Sec. 47.30.790. RETURN FROM UNAUTHORIZED ABSENCE. When a re-
8 spondent undergoing involuntary treatment on an inpatient basis under
9 this chapter is absent from the treatment facility without, or in excess
10 of, authorization under sec. 785 of this chapter, the professional
11 person in charge of the facility or his professional designee may cause
12 the respondent to be taken into custody and returned to the treatment
13 facility.

14 Sec. 47.30.795. INVOLUNTARY OUTPATIENT CARE FOR COMMITTED PERSONS.
15 (a) A committed person who was not originally committed to involuntary
16 outpatient care under the provisions of this chapter may be released
17 before the expiration of his commitment period on the condition that he
18 receive specified outpatient treatment from a provider of outpatient
19 care, for a length of time not to exceed the duration of his commitment
20 period, when the professional person in charge of the treatment facility
21 or his professional designee finds that

22 (1) security for the person or others no longer requires that
23 he be treated on an inpatient basis;

24 (2) there is reason to believe that the person's mental con-
25 dition would improve as a result of the specified outpatient treatment.

26 (b) A copy of the conditions for early release shall be given to
27 the person, his attorney, his guardian, if any, the provider of out-
28 patient care, and the court.

29 (c) If at any time during the commitment period the provider of

1 outpatient care determines that the person can no longer be treated on
2 an outpatient basis because he is likely to cause harm to himself or
3 others or is gravely disabled, the provider shall give the patient oral
4 and written notice, with copies to the patient's attorney, his guardian,
5 if any, the court and inpatient treatment facility, that he must return
6 to the inpatient treatment facility within 24 hours for a length of time
7 not to exceed the duration of his commitment period. If the person
8 fails to arrive at the treatment facility under a 24-hour notice, the
9 facility shall cause the person to be taken into custody and transported
10 to the facility. A peace officer shall assist the provider of out-
11 patient care or the facility if requested.

12 (d) If the provider of outpatient care determines that the patient
13 will require continued outpatient care after the expiration of his
14 commitment period, the provider is entitled to initiate further commit-
15 ment proceedings in the same manner as if the provider were the pro-
16 fessional person in charge of a treatment facility, and the provisions
17 of this chapter are applicable, except that provisions relating to
18 inpatient treatment shall be read as applicable to outpatient treatment.

19 Sec. 47.30.800. CONVERSION OF INVOLUNTARY OUTPATIENT TREATMENT TO
20 INPATIENT COMMITMENT. (a) A respondent ordered by the court under the
21 provisions of this chapter to receive involuntary outpatient treatment
22 may be required to undergo inpatient treatment when the provider of out-
23 patient care finds that (1) the respondent is mentally ill and is likely
24 to cause serious harm to himself or others or is still gravely disabled;
25 (2) the respondent's behavior since the hearing resulting in court-
26 ordered treatment indicates that he now needs inpatient treatment to
27 protect himself or others; (3) there is reason to believe that the
28 respondent's mental condition will improve as a result of inpatient
29 treatment; and (4) there is an inpatient facility appropriate to the re-

1 spondent's need which will accept him as a patient. Treatment for these
2 respondents shall be available at state-operated hospitals at all times.

3 (b) Upon making the findings specified in (a) of this section, the
4 provisions of sec. 795(b) of this chapter relating to notice and sec.
5 745 of this chapter relating to hearing are applicable.

6 Sec. 47.30.805. COMPUTING PERIODS OF TIME. (a) Except as pro-
7 vided in (b) of this section,

8 (1) computations of a 72-hour evaluation period do not in-
9 clude Saturdays, Sundays, legal holidays, or any period of time neces-
10 sary to transport the respondent to the treatment facility;

11 (2) a 14-day commitment period shall expire at the end of the
12 14th day after the 72 hours following initial acceptance;

13 (3) a 90-day commitment period shall expire at the end of the
14 90th day after the expiration of a 14-day period of treatment;

15 (4) a 120-day commitment period shall expire at the end of
16 the 120th day, after the expiration of a 90-day period of treatment or
17 previous 120 day period, whichever is applicable.

18 (b) When a respondent has failed to appear or absented himself
19 contrary to any order properly made or entered under this chapter, the
20 relevant commitment period shall be extended for a period of time equal
21 to the respondent's absence if written notice of absence is promptly
22 provided to the respondent's attorney and his guardian, if there is one,
23 and if, within 24 hours after the respondent has returned to the evalu-
24 ation or treatment facility, written notice of the corresponding exten-
25 sion and the reason for it is given to the respondent, his attorney, and
26 to the court.

27 Sec. 47.30.810. HABEAS CORPUS. Nothing in this chapter may be
28 construed as limiting a person's right to a writ of habeas corpus.

29 Sec. 47.30.815. LIMITATION OF LIABILITY; PENALTY FOR FALSE APPLI-

1 CATION. (a) A person acting in good faith upon either actual knowledge
2 or reliable information who makes application for evaluation or treat-
3 ment of another person under this chapter is not subject to civil or
4 criminal liability.

5 (b) A mental health professional or peace officer who in good
6 faith exercises his professional judgment in fulfilling an obligation or
7 discretionary responsibility under this chapter is not subject to civil
8 or criminal liability for his act unless it can be shown that it was
9 done with gross negligence.

10 (c) A person who makes application for evaluation or treatment of
11 another person without having good cause to believe that the other
12 person is suffering from a mental illness and as a result is gravely
13 disabled or likely to cause serious harm to himself or others, is guilty
14 of a misdemeanor and is punishable by imprisonment for not more than one
15 year, or by a fine of not more than \$1,000, or by both.

16 Sec. 47.30.820. RETROACTIVITY. Except as provided in this chap-
17 ter, the provisions of this chapter do not in themselves impair any
18 action taken in a proceeding pending under statutes in effect before
19 October 1, 1978, nor do they apply retroactively to terminate the deten-
20 tion of a person previously committed under statutes in effect before
21 October 1, 1978. However, 90 days after October 1, 1978, the provisions
22 of this chapter apply to all persons committed under statutes in effect
23 before October 1, 1978.

24 ARTICLE 9. PATIENT RIGHTS.

25 Sec. 47.30.825. PATIENT RIGHTS: MEDICAL. All patients who are
26 receiving services from a treatment facility licensed under AS 18.20.-
27 020, have the following rights:

28 (1) The patient, or his counsel, guardian, or the adult
29 designated in accordance with sec. 725 of this chapter if the patient is

1 mentally incapable of participation, shall be entitled to participate in
2 formulating his individualized treatment plan and in the evaluation
3 process as much as possible, at minimum to the extent of requesting
4 specific forms of therapy, inquiring why specific therapies are or are
5 not included in his treatment program, and being informed as to his
6 present medical and psychological condition and prognosis. The treating
7 physician may not withhold any of this information from the patient.

8 (2) Counsel and guardian for a patient, or if there is no
9 guardian the adult designated in accordance with sec. 725 of this chap-
10 ter, have the right at all reasonable times to examine all records of,
11 and plans for, the patient's treatment and to make copies, upon payment
12 of costs if requested, of any portion of these records.

13 (3) Every patient has the right to know the name of medica-
14 tion that he is asked to take, what its purpose is, and what side
15 effects may occur with this medication. If the patient is incapable of
16 understanding the purpose and side effects of the medication, the treat-
17 ing physician or mental health professional shall explain it to the
18 patient's counsel or guardian, or if there is no guardian the adult
19 designated in accordance with sec. 725 of this chapter.

20 (4) The quiet room, or other form of physical restraint, may
21 not be used, except as provided in this paragraph unless a patient is
22 likely to physically harm himself or others unless restrained. The form
23 of restraint utilized shall be that which is in the patient's best
24 interest and which constitutes the least restrictive alternative avail-
25 able. When practicable, the patient shall be consulted as to his pre-
26 ference among forms of adequate, medically advisable restraints in-
27 cluding medication, and his preference shall be considered. Nothing in
28 this section is intended to limit the right of staff to use the quiet
29 room at the patient's request or with his knowing concurrence when deem-

1 ed in the best interests of the patient. Patients placed in a quiet
2 room or other physical restraint shall be checked at least every 15
3 minutes or more often if good medical practice so indicates. Patients
4 in the quiet room must be visited by a staff member at least once every
5 hour and must be given adequate food and drink and access to bathroom
6 facilities. At no time may a patient be kept in the quiet room or other
7 form of physical restraint against his will longer than necessary to
8 accomplish the purposes set out in this paragraph. All uses of the
9 quiet room or other restraint shall be recorded in the patient's medical
10 record, the information including but not limited to the reasons for its
11 use, the duration of use, and the name of the authorizing staff member.

12 (5) All persons have the right to be free from unnecessary or
13 excessive medication. Psychotropic medication shall be administered
14 only on the order of a licensed physician when the physician determines
15 that such medication is in the best interest of the patient or will
16 prevent serious harm to others.

17 (6) A patient capable of giving informed consent shall have
18 the absolute right to accept or refuse electro-convulsive therapy or
19 aversive conditioning. Patients who lack substantial capacity to make
20 this decision may not be given such therapy or conditioning without a
21 court order following a hearing compatible with full due process.

22 (7) In no event may treatment include psychosurgery, lobotomy
23 or other comparable form of treatment without specific informed consent
24 of the patient, including a minor unless he is clearly too young or
25 disabled to give an informed consent in which case the consent of his
26 legal guardian shall be required. In addition, no such treatment may be
27 given without a court order after hearing in accord with full rights of
28 due process.

29 (8) When, in the written opinion of a patient's attending

1 physician, a true medical emergency exists and a surgical operation is
2 necessary to save the life, physical health, eyesight, hearing or member
3 of the patient, the professional person in charge of the treatment
4 facility or his professional designee may give consent to the surgical
5 operation if time will not permit obtaining the consent of the proper
6 relatives or guardian or appropriate judicial authority. However, no
7 operation may be authorized if the patient is not a minor and knowingly
8 withholds consent on religious grounds.

9 (9) Each person upon discharge shall have a discharge plan
10 specifying the kinds and amount of care and treatment he should have
11 after discharge and such other steps as he might take to benefit his
12 mental health after leaving the facility. The patient shall have the
13 right to participate, as far as practicable, in formulating this plan.
14 A copy of the plan shall be given to him, his guardian, the court, if
15 appropriate, and any follow-up agencies.

16 Sec. 47.30.830. PROHIBITION OF EXPERIMENTAL TREATMENTS. (a) No
17 experimental treatments involving any significant risk of physical or
18 psychological harm may be administered to any patient.

19 (b) If the personnel of an evaluation or treatment facility are
20 uncertain as to whether a proposed technique is experimental or is
21 experimental as applied to a particular respondent or would involve a
22 significant risk of mental or physical harm to the patient, the matter
23 may be referred to the commissioner of health and social services for a
24 determination. The patient, his attorney, his guardian, if any, and an
25 adult designated by the patient, shall, simultaneously with the referral
26 to the commissioner, be provided with copies of all the documents by
27 which the referral is made and shall have the opportunity to provide
28 evidence to the commissioner on the question.

29 (c) A determination that a treatment technique is experimental and

1 entails significant risks of mental or physical harm shall be binding
2 upon all persons involved in the administration of treatment to a
3 patient for purposes of this section.

4 Sec. 47.30.835. CIVIL RIGHTS NOT IMPAIRED. No person undergoing
5 evaluation or treatment under this chapter may be denied a civil right,
6 including but not limited to, the right to free exercise of religion and
7 the right to dispose of property, sue and be sued, enter into contrac-
8 tual relationships and vote. Court-ordered treatment or evaluation
9 under this chapter is not a determination of legal incompetency.

10 Sec. 47.30.840. RIGHT TO PRIVACY AND PERSONAL POSSESSIONS. A
11 person undergoing evaluation or treatment under this chapter shall

12 (1) not be photographed without his consent and that of his
13 guardian if a minor, except that he may be photographed upon admission
14 to a facility for identification and administrative purposes of the
15 facility; all photographs shall be confidential and may not be released
16 by the facility except under court order;

17 (2) at the time of admission to an evaluation or treatment
18 facility, have reasonable precautions taken by the staff to inventory
19 and safeguard his personal property; a copy of the inventory signed by
20 the staff member making it shall be given to the patient and made avail-
21 able to his attorney and any other person authorized by the patient to
22 inspect the document;

23 (3) have access to individual storage space for his private
24 use while undergoing evaluation or treatment;

25 (4) be permitted to wear his own clothing, to keep and use
26 his own personal possessions including his toilet articles if they are
27 not considered unsafe for him or other patients who might have access to
28 them, and to keep and be allowed to spend a reasonable sum of his own
29 money for his own needs and comfort;

- 1 (5) be allowed to have visitors at reasonable times;
2 (6) have ready access to letter writing materials, including
3 stamps, and have the right to send and receive unopened mail;
4 (7) have reasonable access to a telephone, both to make and
5 receive confidential calls.

6 Sec. 47.30.845. CONFIDENTIAL RECORDS. Information and records
7 obtained in the course of evaluation, examination or treatment are
8 confidential and are not public records, except as the requirements
9 of a hearing under this chapter may necessitate a different procedure.
10 Information and records may be disclosed under regulations established
11 by the department only to

12 (1) physicians and providers of health, mental health or
13 social and welfare services involved in caring for, treating or rehabil-
14 itating the patient;

15 (2) individuals to whom the patient has given written consent
16 to have information disclosed;

17 (3) persons authorized by a court order;

18 (4) persons doing research or maintaining health statistics,
19 if the anonymity of the patient is assured, and the facility recognizes
20 the project as a bona fide research or statistical undertaking;

21 (5) the division of corrections in cases in which prisoners
22 confined to the state prison are patients in the state hospital on
23 authorized transfers either by voluntary admission or by court order;

24 (6) governmental or law enforcement agencies when necessary
25 to secure the return of a patient who is on unauthorized absence from a
26 facility where the patient was undergoing evaluation or treatment.

27 Sec. 47.30.850. EXPUNGEMENT OF RECORDS. Following the discharge
28 of a respondent from a treatment facility or the issuance of a court
29 order denying a petition for commitment, a respondent may at any time

1 move to have all court records pertaining to the proceedings expunged on
2 condition that he file a full release of all claims of whatever nature
3 arising out of the proceedings and the statements and actions of persons
4 and facilities in connection with the proceedings.

5 Sec. 47.30.855. POSTING OF RIGHTS. The rights set out in secs.
6 825 - 855 of this chapter shall be prominently posted in all treatment
7 facilities in places accessible to all patients. A patient who does not
8 understand English shall have his rights explained to him in a language
9 he understands.

10 Sec. 47.30.860. NOTICES IN LANGUAGES OTHER THAN ENGLISH. Where
11 practicable all documents and notices required by this chapter to be
12 served on a respondent, or on his parents, guardian or adult designee,
13 shall be explained in a language the person understands if he is not
14 competent in English.

15 Sec. 47.30.865. DISCRIMINATION PROHIBITED. (a) The fact that a
16 person is or has been evaluated or treated for mental illness may not be
17 a basis for discrimination in:

- 18 (1) seeking employment;
- 19 (2) resuming or continuing professional practice or previous
20 occupation;
- 21 (3) obtaining or retaining housing;
- 22 (4) obtaining or retaining licenses or permits, including but
23 not limited to motor vehicle licenses, motor vehicle operator's and
24 chauffeur's licenses, and professional or occupational licenses.

25 (b) Applications for positions, licenses and housing may contain no
26 requests for information concerning evaluation or treatment experiences.

27 (c) It is unlawful for a person to aid, abet, incite, compel or
28 coerce the doing of an act forbidden under this section or to attempt to
29 do so.

1 dents of that state who are mentally ill. Mentally ill residents of
2 this state who have been placed in a facility outside this state may be
3 admitted with the approval of the department to a treatment facility in
4 the state designated by the department. The department may enter into
5 reciprocal agreements or contracts with another state providing for
6 custody, care or treatment, or return of mentally ill residents of this
7 state by the other state and for the custody and care or treatment of
8 mentally ill residents of that state by this state on a reimbursable
9 basis. A resident of this state who has been committed in another state
10 and is returned in accordance with this section shall, within 72 hours
11 of his admission to the designated facility, be examined. After exami-
12 nation the mental health professional in charge of the facility shall
13 release him or shall petition for involuntary commitment as prescribed
14 in sec. 740 of this chapter.

15 (c) In taking action under (a) and (b) of this section, consider-
16 ation shall be given to the best interests of the patient particularly
17 to the relationship of the patient to his family, legal guardian, or
18 friends to maintain relationships and encourage visits beneficial to the
19 patient.

20 Sec. 47.30.880. INTERSTATE COMPACT. This state ratifies and
21 adopts by reference "The Interstate Compact on Mental Health" consisting
22 of 14 articles approved on September 30, 1955, by the Northeast State
23 Governments Conference on Mental Health. The department is designated
24 as compact administrator with full power to carry out the purpose of the
25 compact and to make all necessary regulations to implement the compact.

26 Sec. 47.30.885. RIGHTS OUTSIDE STATE. Nothing in this chapter
27 alters or impairs the application or availability to a patient, while
28 hospitalized in another state under contractual arrangements entered in
29 accordance with the provisions of this chapter, of the rights, remedies

1 or protective safeguards provided by the laws of this state.

2 Sec. 47.30.890. PROVISION FOR PERSONAL NEEDS UPON DISCHARGE. The
3 department shall make arrangements which are necessary to insure that

4 (1) no patient is discharged from a treatment facility with-
5 out suitable clothing; and

6 (2) an indigent patient discharged is furnished suitable
7 transportation to his permanent residence in this state or other suit-
8 able place at the discretion of the department and a reasonable amount
9 of money to meet his immediate needs.

10 Sec. 47.30.895. DISPOSITION OF PERSONAL EFFECTS AND UNCLAIMED
11 FUNDS. (a) All assets in the custody of a treatment facility which
12 belong to a patient who dies before his discharge, or to a patient who
13 leaves the hospital without authority, if unclaimed by the patient or
14 his legal heirs or representatives within four years after the death or
15 departure of the patient, shall be disposed of in the manner prescribed
16 by the department and the proceeds shall be deposited in the state
17 treasury.

18 (b) If a mentally ill individual has died in a foreign facility
19 and the department desires to recover the patient's personal property
20 under this section, the commissioner of health and social services or
21 his designated representative may secure the property and for that pur-
22 pose only is designated the decedent's administrator. All property so
23 recovered shall be disposed of as provided by law.

24 Sec. 47.30.900. DISPOSITION OF FUNDS SUBJECT TO CLAIM. The de-
25 partment shall make diligent inquiry in every instance after departure
26 without authority or death of a patient, to ascertain his whereabouts or
27 that of his legal heirs or representatives, and shall turn over to the
28 proper person the money or articles of personal property in the custody
29 of the head of the facility to the credit of the patient. Claims to the

1 money or articles of personal property, including claims by this state,
2 may be presented to the department at any time. If a claim other than
3 by this state is established by clear and convincing evidence more than
4 four years after the death or departure without authority of a patient,
5 it shall be certified to the legislature for consideration and the
6 legislature may pay the claim.

7 Sec. 47.30.905. FEES AND EXPENSES FOR JUDICIAL PROCEEDINGS. (a)
8 The witnesses and the jury in commitment proceedings are entitled to the
9 fees, compensation and mileage established by law. Compensation, mile-
10 age, fees and other expenses arising from commitment proceedings shall
11 be audited and allowed by the superior court of the district in which
12 the proceedings are held and when audited and allowed shall be paid by
13 the clerk of the court in the same manner and from the fund as he pays
14 the other incidental expenses of the court. To the extent that services
15 of a peace officer are used to carry out the provisions of this chapter,
16 he is entitled to fees and actual expenses from the same source and in
17 the same manner as for his other official duties.

18 (b) An attorney appointed for a person under this chapter shall be
19 compensated for his services as follows:

20 (1) the person for whom an attorney is appointed shall, if he
21 is financially able under standards as to financial capability and
22 indigency set by the court, bear the costs of the legal services;

23 (2) if the person is indigent under those standards, the
24 costs of the services shall be borne by the state.

25 Sec. 47.30.910. LIABILITY FOR EXPENSE OF PLACEMENT IN A TREATMENT
26 FACILITY. (a) A patient, or his legal representative acting in a
27 representative capacity, or his spouse, or his parents if the person is
28 under the age of 18, shall pay or contribute to the payment of the
29 charges for the care or treatment of the patient when hospitalized under

1 secs. 655 - 915 of this chapter. The charges may not exceed the actual
2 cost of the care and treatment as determined by the department. The
3 department may order payment of charges by the patient or by the person
4 responsible for payment of the charges for the patient's care and treat-
5 ment under this subsection, according to ability to provide for payment.
6 The department may make necessary investigations to determine the
7 ability to provide for payment and may require sworn statements of
8 income by the patient, or his legal representative acting in a represen-
9 tative capacity, or his spouse or parent. In the exercise of his des-
10 cretion, the commissioner may impose full liability for the patient's
11 actual cost of care and treatment on the patient, his legal representa-
12 tive, his spouse or parent for refusal to supply a sworn statement of
13 income. An order for payment of charges shall be issued by the depart-
14 ment within six months after the date on which the charge was incurred.
15 The order shall remain in full force and effect unless modified by
16 subsequent court or department order. Liability under this subsection
17 shall be determined as follows:

18 (1) a patient hospitalized on a voluntary basis under secs.
19 655 - 915 of this chapter, or the person responsible for payment of
20 charges for the patient, may be required to pay according to his ability
21 to provide for payment, as determined by the department, and in the
22 manner and proportion which the department finds is not detrimental to
23 the patient's rehabilitation; however, after the patient has been hospi-
24 talized under this chapter for an aggregate period of 12 months, the
25 patient or person responsible for payment may not be required to pay
26 more than \$50 a month toward the charges for the care and treatment of
27 the patient;

28 (2) a patient hospitalized on an involuntary basis under
29 secs. 655 - 915 of this chapter, or the person responsible for payment

1 of charges for the patient under this subsection, may not be required to
2 pay more than \$50 a month toward the charges for the care and treatment
3 of the patient.

4 (b) As used in (a) of this section, the term "actual cost of the
5 care and treatment" means either the rate provided for by a contract
6 entered into under secs. 655 - 915 of this chapter, or, in the absence
7 of a contract, a daily rate fixed by the department, and includes
8 expenses of transportation incidental to examination or hospitalization.

9 (c) The department may charge, or accept from a person money or
10 property, for the care or treatment of an in-patient or out-patient or
11 for other purposes, even if the payment is not required by an order of
12 the department, so long as the total payments received do not exceed the
13 actual cost of care or treatment.

14 (d) All money paid by the patient or on his behalf, under this
15 section, shall be deposited in the state treasury.

16 (e) If an order of placement is entered by the department under
17 this section, and delinquency in the payment of any amount due the state
18 under the order continues for a period of more than 30 days after the
19 notification to the patient or the legal representative, spouse, or
20 parent of the patient by the department, the state may proceed to
21 collect the amounts due by appropriate proceedings. Actions to enforce
22 the collection of payments may only be brought within three years after
23 the date of notification of a delinquent payment.

24 (f) The orders of the department issued under this section shall
25 relate only to charges incurred after October 1, 1978.

26 Sec. 47.30.915. DEFINITIONS. In this chapter

27 (1) "court" means a superior or district court of the state;

28 (2) "department" means the Department of Health and Social

29 Services;

1 (3) "evaluation facility" means a health care facility that
2 has been designated or is operated by the department to perform the
3 evaluations described in this chapter; however, no correctional insti-
4 tution or facility or jail may be used as an evaluation facility for
5 purposes of this chapter;

6 (4) "evaluation personnel" means mental health professionals
7 designated by the department to conduct evaluations as prescribed in
8 this chapter who conduct evaluations in places in which no staffed
9 evaluation facility exists;

10 (5) "gravely disabled" means a condition in which a person,
11 as a result of mental illness, is in danger of physical harm arising
12 from such complete neglect of basic needs for food, clothing, shelter,
13 or personal safety as to render serious accident, illness or death
14 highly probable if care by another is not taken;

15 (6) "inpatient treatment" means care and treatment rendered
16 inside or on the premises of a treatment facility, or a part or unit of
17 a treatment facility for a continual period of 24 hours or longer;

18 (7) "least restrictive alternative" means mental health
19 treatment facilities and conditions of treatment which are

20 (A) no more harsh, hazardous or intrusive than neces-
21 sary to achieve the treatment objectives of the patient; and

22 (B) involve no restrictions on physical movement nor
23 supervised residence or inpatient care except as reasonably neces-
24 sary for the administration of treatment or the protection of the
25 patient or others from physical injury;

26 (8) "likely to cause serious harm" means

27 (A) a substantial risk of imminent and substantial
28 bodily harm to the person himself, as manifested by recent attempts
29 at suicide or bodily harm; or

1 (B) substantial risk of imminent and substantial bodily
2 harm to one or more other persons as manifested by behavior caus-
3 ing, or attempting harm, including, in regard to evaluations, at
4 least one incident within 30 days before the filing of a petition
5 for emergency hospitalization;

6 (9) "mental health professional" means a psychiatrist or
7 physician who is licensed to practice in this state; a clinical psychol-
8 ogist certified by the state Board of Psychologist and Psychological
9 Associate Examiners; a registered nurse with psychiatric training,
10 licensed by the State Board of Nursing; and a social worker with a
11 master's degree and experience in the field of mental illness;

12 (10) "mental illness" means an organic, mental or emotional
13 impairment which has substantial adverse effects on an individual's
14 ability to exercise conscious control of his actions or ability to
15 perceive reality or to reason or understand; mental retardation, epi-
16 lepsy, drug addiction and alcoholism do not per se constitute mental
17 illness, although persons suffering from these conditions may also be
18 suffering from mental illness;

19 (11) "peace officer" includes a state police officer, municipi-
20 pal or other local police officer, state, municipal, or other local
21 health officer, public health nurse, United States marshal or deputy
22 United States marshal, or a person authorized by the court.

23 (12) "provider of outpatient care" means a mental health pro-
24 fessional or hospital, clinic, institution, center or other health care
25 facility who has been designated by the department to accept for treat-
26 ment patients who are ordered to undergo involuntary outpatient treat-
27 ment by the court or who are released early from inpatient commitments
28 on condition that they undergo outpatient treatment;

29 (13) "state" means a state of the United States, the District

1 of Columbia, the territories and possessions of the United States, and
2 the Commonwealth of Puerto Rico, and, with the approval of the United
3 States Congress, Canada;

4 (14) "treatment facility" means a hospital, clinic, institu-
5 tion, center or other health care facility which has been designated by
6 the department for the treatment or rehabilitation of mentally ill
7 persons and for the receipt of these persons by court-ordered commit-
8 ment, but does not include correctional institutions;

9 (15) "professional person in charge of the treatment facility"
10 means the senior mental health professional at the facility; in the
11 absence of a mental health professional it means the chief of staff or
12 other senior physician.

13 * Sec. 2. INTENT. Section 3 of this Act is intended to assure the provi-
14 sion of quality services to those children and adults who have handicaps by
15 reason of mental or physical disabilities, including persons qualifying for
16 special education services under AS 14.30.180 - 14.30.350, other persons with
17 the same or similar handicaps, and persons handicapped by mental retardation,
18 cerebral palsy, epilepsy, autism or by other developmental disabilities
19 defined in this Act. The primary objective of the Act is to bring together
20 and make optimal use of all available resources -- federal, state, local, and
21 private -- so that persons with handicaps may be served in the most effective
22 and efficient way. A second goal of the Act is to assure the dignity of
23 persons with handicaps, by reaffirming, and providing for the protection and
24 advocacy of, their rights, which are the same rights as other people of the
25 state of the same age and include the right to live as complete and normal
26 lives as possible and develop their ability and potential to the fullest
27 extent possible.

28 * Sec. 3. AS 47 is amended by adding a new chapter to read:

29 CHAPTER 80. PERSONS WITH HANDICAPS.

1 ARTICLE 1. RIGHTS.

2 Sec. 47.80.010. RIGHTS OF PERSONS WITH HANDICAPS. Persons with
3 handicaps have the same legal rights and responsibilities guaranteed all
4 other persons by the Constitution of the United States and federal laws
5 and by the constitution and laws of the state. No otherwise qualified
6 person by reason of having a handicap may be excluded from participation
7 in, be denied the benefits of, or be subjected to discrimination under,
8 any program or activity which receives public funds. Some persons with
9 handicaps may be unable, due to the severity of their handicap, to
10 exercise for themselves all of their rights in a meaningful way; for
11 others modification of some or all of their rights is appropriate. The
12 procedure used for modification of rights shall contain proper legal
13 safeguards against every form of abuse, shall be based on an evaluation
14 of the social capability of the person by qualified experts, and shall
15 be subject to periodic reviews and to the right of appeal to higher
16 authorities.

17 Sec. 47.80.020. PROTECTION AND ADVOCACY OF RIGHTS. The department
18 shall establish a system to protect and advocate rights of persons with
19 handicaps. The system

20 (1) has the authority to pursue legal, administrative, and
21 other appropriate remedies to assure the protection of the rights of
22 persons with handicaps; and

23 (2) shall be independent of any state agency which provides
24 treatment, services or habilitation of persons with handicaps.

25 ARTICLE 2. GOVERNOR'S COUNCIL FOR THE
26 HANDICAPPED AND GIFTED.

27 Sec. 47.80.030. GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED.
28 There is established the Governor's Council for the Handicapped and
29 Gifted. For budgetary purposes, the council is located within the

1 Department of Health and Social Services but is the interdepartmental
2 planning and coordinating agency of the Department of Health and Social
3 Services, the Department of Education, and other departments which
4 deliver services to persons who are handicapped or gifted. In addition,
5 the council is the state planning council for purposes of federal laws
6 relating to the handicapped or gifted.

7 Sec. 47.80.040. COMPOSITION. (a) The council consists of no
8 fewer than 18 nor more than 23 members appointed by the governor in
9 accordance with P.L. 91-517, P.L. 94-103, P.L. 94-142, as amended, and
10 AS 14.30.231.

11 (b) No fewer than one-third of the members shall be representa-
12 tives of the principal state agencies concerned with services for handi-
13 capped or gifted persons.

14 (c) No fewer than one-third of the members shall be developmen-
15 tally disabled persons or parents or guardians of such persons, who are
16 not officers or directors of an entity, or employees of a state agency,
17 which receives funds or provides services under P.L. 91-517 or P.L. 94-
18 103, as amended.

19 (d) The remaining members shall be appointed to represent the
20 public at large, local agencies, non-governmental agencies, and groups
21 concerned with services to handicapped or gifted persons.

22 (e) Membership of the council shall at all times comply with the
23 requirements of P.L. 91-517, as amended.

24 (f) In the appointment of all members other than state agency
25 members, due regard shall be given to geographically balanced represen-
26 tation of areas of the state and to representation of persons with a
27 variety of different mental and physical handicaps.

28 Sec. 47.80.050. TERM OF OFFICE. (a) Council members' terms are
29 three years. Of the initial appointees, one-third shall be appointed

1 for one-year terms, one-third for two-year terms, and one-third for
2 three-year terms.

3 (b) A vacancy occurring in the membership of the council shall be
4 filled by appointment of the governor for the unexpired portion of the
5 vacated term.

6 (c) Council members serve at the pleasure of the governor, not-
7 withstanding their terms of office.

8 (d) It is the legislative intent that the governor replace any
9 member who, by poor attendance or lack of contribution to the council's
10 work, demonstrates ineffectiveness as a council member.

11 Sec. 47.80.060. COMPENSATION, PER DIEM, AND EXPENSES. Members of
12 the council receive no salary but are entitled to per diem and reim-
13 bursement for travel and other expenses as authorized by law for boards.

14 Sec. 47.80.070. OFFICERS AND STAFF. (a) The council, by a ma-
15 jority of its membership, shall elect a chairman and other officers it
16 considers necessary from among its membership, to serve on a yearly
17 basis.

18 (b) The department shall provide for the assignment of personnel
19 to the council to ensure that the council has the capacity to fulfill
20 its responsibilities. The personnel shall be directly responsible to
21 the council for performance of their duties.

22 Sec. 47.80.080. BYLAWS. The council, on approval of a majority of
23 its membership, shall adopt and amend bylaws governing its composition,
24 proceedings and other activities consistent with secs. 30 - 90 of this
25 chapter and including, but not limited to, provisions concerning a
26 quorum to transact council business and other aspects of procedure,
27 frequency and location of meetings, and establishment, functions and
28 membership of council committees.

29 Sec. 47.80.090. RESPONSIBILITIES. The council shall

1 (1) serve as a forum by which issues and benefits regarding
2 current and potential services to handicapped and gifted persons may be
3 discussed by consumer, public, private, professional, and lay interests;

4 (2) advocate the needs of handicapped and gifted persons
5 before the executive and legislative branches of the state government
6 and before the public;

7 (3) advise the executive and legislative branches of the
8 state government and the private sector on programs and policies per-
9 taining to current and potential services to handicapped or gifted
10 persons and their families;

11 (4) submit periodic reports to the commissioner of health
12 and social services, the commissioner of education and to other appro-
13 priate departments, on the effects of current federal and state programs
14 regarding services to handicapped or gifted persons; these reports shall
15 include program performance reports to the governor, the federal govern-
16 ment, and to state agencies as required by P.L. 91-517, P.L. 94-103, or
17 P.L. 94-142, as amended;

18 (5) in conjunction with the Departments of Health and Social
19 Services and Education, develop, prepare, adopt, periodically review,
20 and revise as necessary an annual state plan prescribing programs which
21 meet the needs of persons with developmental disabilities as required
22 under P.L. 91-517 or P.L. 94-103, as amended;

23 (6) review and comment to commissioners of state departments
24 on all state plans and proposed regulations relating to programs for
25 persons with handicaps before the adoption of a plan or regulation; for
26 this purpose, the appropriate departments shall submit the plans and
27 proposed regulations to the council;

28 (7) recommend the priorities and specifications for the use
29 of funds received by the state under P.L. 91-517, P.L. 94-103 and P.L.

1 94-142, as amended;

2 (8) submit annually to the commissioner of health and social
3 services, the commissioner of education, and the commissioner of com-
4 munity and regional affairs a proposed interdepartmental program budget
5 for services to handicapped or gifted persons which includes, insofar as
6 possible, projected revenues and expenditures for programs implemented
7 by state agencies, local governmental agencies, and private organiza-
8 tions; the interdepartmental program budget is an informational supple-
9 ment to the regular annual budgetary submissions of the departments to
10 the office of the governor;

11 (9) provide information and guidance for the development of
12 appropriate special educational programs and services for exceptional
13 children as defined in AS 14.30.350;

14 (10) monitor and evaluate budgets or other implementation
15 plans and programs for handicapped and gifted persons to assure nondup-
16 lication of services and encourage efficient and coordinated use of
17 federal, state and private resources in the provision of services;
18 members of the council with the approval of the council, have access to
19 information in the possession of state agencies subject to disclosure
20 restrictions imposed by state or federal confidentiality or privacy
21 laws; and

22 (11) perform other duties required under P.L. 91-517, P.L. 94-
23 103, P.L. 94-142, as amended, or AS 14.30.231, and as the governor may
24 assign.

25 ARTICLE 3. PROGRAMS AND PLANS.

26 Sec. 47.80.100. PROGRAMS FOR PERSONS WITH HANDICAPS. (a) The
27 Department of Health and Social Services, the Department of Education,
28 and other departments of the state as appropriate, shall, in coordina-
29 tion, plan, develop, and implement a comprehensive system of services

1 and facilities for persons with handicaps, which is consistent with the
2 state plan adopted under sec. 90(5) of this chapter and is dispersed
3 geographically within the state.

4 (b) The services required in (a) of this section are specialized
5 services or special adaptations of services available to the general
6 population and shall be directed toward the social, personal, physical,
7 or economic habilitation or rehabilitation of persons with handicaps.

8 (c) Within the limits of appropriations and other available funds,
9 the appropriate department may itself provide the services and estab-
10 lish, operate, and maintain the facilities required under (a) and (b) of
11 this section, or it may provide the services or facilities entirely or
12 in part through contractual arrangements with public or private agen-
13 cies.

14 Sec. 47.80.110. PROGRAM PRINCIPLES. The system of services and
15 facilities required under sec. 100 of this chapter shall accord with the
16 principle that treatment, services, and habilitation shall be designed
17 to maximize individual potential, minimize institutionalization, and
18 shall be provided in the least restrictive setting, enabling a person to
19 live as normally as possible within the limitations of the handicap.

20 Sec. 47.80.120. HABILITATION PLANS. A state agency, contractor,
21 or grantee who is directly responsible for providing services to persons
22 with handicaps shall develop an individual habilitation plan for each
23 person whose program of services utilizes state funds. The plan shall
24 be completed in writing and furnished to the department within 30 days
25 of admission of a client to the program of services. The plan, its re-
26 newals, and any changes of it, shall have the written concurrence of the
27 client, or his parent or guardian when appropriate, and the agency or
28 contractor responsible for providing services. The development and
29 content of a plan shall conform to requirements established by the

1 department by regulation. Insofar as practicable, the requirements
2 shall conform to those established for individual habilitation plans
3 under P.L. 91-517 or P.L. 94-103, as amended. Each plan shall be time-
4 limited, evaluated, and renewed at least annually.

5 Sec. 47.80.130. POWERS AND DUTIES OF THE DEPARTMENT. (a) The
6 department shall

7 (1) develop budgets and receive and distribute appropriations
8 and funds under this section;

9 (2) adopt regulations regarding standards of services and
10 facilities for persons with handicaps and the quality of services and
11 the process by which services are to be delivered;

12 (3) adopt any other regulations necessary to implement this
13 chapter;

14 (4) provide technical assistance to public and private agen-
15 cies in planning, developing, and implementing programs to serve handi-
16 capped persons;

17 (5) operate programs and facilities, and enter into agree-
18 ments, contracts, or grants necessary to provide services required under
19 this chapter;

20 (6) take the actions and undertake the obligations which are
21 necessary to participate in federal grant-in-aid programs and accept
22 federal or other financial aid for the study, examination, care and
23 treatment of the handicapped.

24 (b) For purposes of P.L. 91-517 and P.L. 94-103, as amended, the
25 department is designated the sole administering agency; it shall make
26 applications for, receive, and expend grants under P.L. 91-517 or P.L.
27 94-103, as amended, and otherwise exercise the powers and perform the
28 duties and functions necessary to comply with P.L. 91-517 and P.L. 94-
29 103, as amended.

1 (c) The Department of Education may make applications for, re-
2 ceive, and expend grants under P.L. 91-230 (The Education for the Handi-
3 capped Act), as amended, and otherwise exercise the powers and perform
4 the functions necessary to comply with that Act.

5 Sec. 47.80.140. LICENSING AND CERTIFICATES OF NEED. (a) No
6 person may establish or operate a residential facility without first
7 obtaining a license to do so. The department by regulation shall pro-
8 vide for licensing of residential facilities which are not within the
9 licensing provisions of AS 18.20.010 - 18.20.130, AS 47.35.010 - 47.35.-
10 080 or other law requiring state licensing of such facilities. Regula-
11 tions of the department shall include but need not be limited to (1)
12 standards of operation promoting and protecting public health, safety,
13 and welfare, and (2) procedures governing applications for and issuance
14 of licenses and duration, renewal, and revocation of licenses for cause.
15 The department may at reasonable times inspect and examine residential
16 facilities, licensed under this subsection, for conformity with licens-
17 ing requirements.

18 (b) A certificate of need is required as a prerequisite for li-
19 censing a residential facility established after the effective date of
20 this Act and not otherwise provided for in AS 18.07.031 - 18.07.111. A
21 certificate shall be issued and regulated in the same manner as provided
22 in AS 18.07.031 - 18.07.111 for certificates of need for health care
23 facilities.

24 Sec. 47.80.150. LIABILITY FOR EXPENSE OF SERVICES. (a) A person
25 with a handicap or his legal representative acting in a representative
26 capacity, or his spouse or parents, shall pay or contribute to the
27 payment of the charges for the care or treatment in the manner and
28 proportion which the department finds is not detrimental to rehabili-
29 tation and which is within the responsible person's ability to pay. The

1 charges may not exceed the actual cost of the care or treatment as
2 determined by the department. The order of the department relating to
3 the payment of charges shall be prospective in effect and shall relate
4 only to charges to be incurred, except that if a person intentionally
5 conceals his ability to pay, he shall be ordered to pay to the extent of
6 his ability the charges accruing during the period of the concealment.
7 The order of the department relating to the payment of charges by the
8 person with a handicap or his legal representative, or his spouse or
9 parents, shall be issued within six months of the date on which the
10 charge was incurred. The department may make necessary investigations
11 to determine the ability to pay. The order shall remain in full force
12 and effect unless modified by subsequent court or department orders.

13 (b) As used in (a) of this section, the term "actual cost of the
14 care and treatment" means either the rate provided for by a contract
15 entered into under this chapter, or, in the absence of a contract, a
16 daily rate fixed by the department, and includes expenses of transpor-
17 tation incidental to treatment and carrying out the intent of this
18 chapter.

19 (c) A person with a handicap who receives benefits under this
20 chapter who is developmentally disabled as defined in sec. 900(7) of
21 this chapter or the person responsible for payment of charges for such a
22 person, may not be required to pay more than \$50 a month toward the
23 charges for the care, treatment, and transportation in connection with
24 treatment of the person with a handicap.

25 (d) The department may charge, or accept from a person money or
26 property, for the care or treatment of an in-patient or out-patient or
27 for other purposes, even if the payment is not required by an order of
28 the department, so long as the total payments received do not exceed the
29 actual cost of care or treatment.

1 (e) All money paid by the person with a handicap or on his behalf,
2 under this section, shall be deposited in the state treasury.

3 (f) If an order of payment is entered by the department under this
4 section and delinquency in the payment of any amount due the state under
5 the order continues for a period of more than 30 days after the noti-
6 fication by the department to the legal representative, parent, or
7 spouse of the person with a handicap, the state may proceed to collect
8 the amounts due by appropriate proceedings. Actions to enforce the
9 collection of payments may only be brought within three years after the
10 date of notification of a delinquent payment.

11 Sec. 47.80.160. TRANSPORTATION. When an individual is to be
12 treated under this chapter, the department shall arrange, upon the
13 request of a person having a proper interest in the individual's treat-
14 ment, and may pay for the individual's transportation to the designated
15 facility, with appropriate medical or nursing attendants and by the
16 available means which are appropriate and suitable. The department may
17 pay return transportation of an individual and appropriate medical and
18 nursing attendants. When practicable, one or more relatives or friends
19 of the individual to be treated shall be permitted to accompany him.
20 The department may pay necessary travel, housing and meal expenses
21 incurred by one relative or friend in accompanying the individual to the
22 facility if the department determines

23 (1) that the best interests of the individual's health re-
24 quire that he be accompanied by the relative or friend;

25 (2) the relative or friend accompanying the individual is
26 indigent.

27 Sec. 47.80.170. PROVISION FOR PERSONAL NEEDS UPON DISCHARGE. The
28 department shall make arrangements which are necessary to ensure that

29 (1) no patient is discharged or placed on convalescent status

1 from a designated facility without suitable clothing; and

2 (2) an indigent patient discharged or placed on convalescent
3 status is furnished suitable transportation to his permanent residence
4 in this state or other suitable place at the discretion of the depart-
5 ment, and a reasonable amount of money to meet his immediate needs.

6 ARTICLE 4. GENERAL PROVISIONS.

7 Sec. 47.80.900. DEFINITIONS. In this chapter

8 (1) "council" means the Governor's Council for the Handi-
9 capped and Gifted created by sec. 30 of this chapter;

10 (2) "department" means the Department of Health and Social
11 Services;

12 (3) "facilities for persons with handicaps" means publicly or
13 privately operated facilities, or specified portions of facilities,
14 designed primarily for the delivery of services to those persons; the
15 term includes but is not limited to residential facilities;

16 (4) "habilitation" means education or training for the handi-
17 capped to enable them to function better in society;

18 (5) "least restrictive setting" means a residential or other
19 setting for meeting the needs of a handicapped person which requires the
20 least amount of restriction of personal liberty by enabling the person
21 to function in as normal an environment as possible, and to live as
22 normally as possible, within the limitations of the handicap;

23 (6) "person with a handicap" means a person with a develop-
24 mental disability as defined in (7) of this section or a person who is
25 hard of hearing, deaf, speech impaired, visually handicapped, seriously
26 emotionally disturbed, orthopedically or otherwise health impaired, or
27 who has a specific learning disability; the term includes but is not
28 limited to "exceptional children" as defined in AS 14.30.350(1) and AS
29 47.20.050(1);

1 (7) "person with a developmental disability" means a person
2 having a disability which

3 (A) is attributable to

4 (i) mental retardation, cerebral palsy, epilepsy,
5 or autism;

6 (ii) any other condition found to be closely re-
7 lated to mental retardation because the condition results in
8 impairment of general intellectual functioning or adaptive
9 behavior similar to impairment resulting from mental retarda-
10 tion; or

11 (iii) dyslexia resulting from a disability des-
12 cribed in (i) or (ii) of this subparagraph; and

13 (B) constitutes a substantial handicap to the person's
14 ability to function normally in society;

15 (8) "residential facility" means a publicly or privately
16 operated facility which provides 24-hour care for four or more persons
17 with handicaps, excluding family, foster family, or adoptive homes;

18 (9) "substantial handicap" means a disability which prevents,
19 or substantially impedes the person's participating in and benefiting
20 from the social, economic, educational, recreational, or other opportu-
21 nities generally available to peers in the community who are not simi-
22 larly handicapped.

23 * Sec. 4. TRANSITION. The Governor's Council for the Handicapped and
24 Gifted established under this Act succeeds to all contracts, rights, liabili-
25 ties and obligations of the Alaska Developmental Disabilities Planning
26 Council appointed under law repealed by this Act which are in effect on the
27 effective date of this Act. The council also succeeds to all contract
28 rights, liabilities, and obligations of the Special Education Advisory
29 Council established under the authority of AS 14.30.231 and made part of the

1 Governor's Council for the Handicapped and Gifted by Administrative Order No.
2 42A dated November 25, 1977. Records, equipment and other property of the
3 former councils shall be transferred upon this Act's taking effect. The
4 amount of any appropriation to the former councils which is encumbered but
5 not expended on the effective date of this Act shall not lapse but shall be
6 transferred to the Governor's Council for the Handicapped and Gifted con-
7 currently with the effective date of this Act.

8 * Sec. 5. AS 18.05.031 and AS 47.30.010 - 47.30.340 are repealed.

9 * Sec. 6. This Act takes effect October 1, 1978.

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