

Original sponsor: Parr

Offered: 3/22/79
Referred: Rules

1 IN THE HOUSE

BY THE RULES COMMITTEE

2

CS FOR HOUSE BILL NO. 2 (Rules)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to mentally ill persons; and providing
7 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 (6) that persons who are mentally ill but not dangerous to
3 others be committed only if there is a reasonable expectation of im-
4 proving their mental condition.

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

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

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

16 (3) administer AS 47.30.655 - 47.30.915;

17 (4) designate, operate, and maintain treatment facilities
18 equipped and qualified to provide inpatient and outpatient care and
19 treatment for the mentally ill;

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

22 (6) enter into arrangements with governmental agencies for
23 the care or treatment of the mentally ill in facilities of the govern-
24 mental agencies in the state or in another state;

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

27 (8) enter into contracts which incorporate safeguards consis-
28 tent with AS 47.30.655 - 47.30.915 and the preservation of the civil
29 rights of the patients with another state for the custody and care or

1 treatment of patients previously committed from this state under 48
2 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd Session, 70
3 Stat. 709;

4 (9) prescribe the form of applications, records, reports,
5 requests for release and consents to medical or psychological treatment
6 required by AS 47.30.655 - 47.30.915;

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

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

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

13 (13) delegate upon mutual agreement to another officer or
14 agency of it, or a political subdivision of this state, or a treatment
15 facility designated, any of the duties and powers imposed upon it by
16 AS 47.30.655 - 47.30.915; and

17 (14) promulgate regulations to implement the provisions of
18 AS 47.30.655 - 47.30.915.

19 ARTICLE 7. VOLUNTARY ADMISSION FOR TREATMENT.

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

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

27 (1) notice of rights as set out in AS 47.30.825 - 47.30.865
28 and an explanation of any document served upon him; and

29 (2) notice that should he desire to leave at a time when the

1 treatment facility determines that he is mentally ill and as a result is
2 likely to cause serious harm to himself or others or is gravely dis-
3 abled, the facility could initiate commitment proceedings against him.

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

6 Sec. 47.30.680. DISCHARGE OF VOLUNTARY PATIENTS. The professional
7 person in charge of the treatment facility or his designee shall dis-
8 charge any patient who no longer meets the standards established in AS
9 47.30.670.

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

21 Sec. 47.30.690. VOLUNTARY ADMISSION OF MINORS UNDER 14 YEARS OF
22 AGE. (a) A minor under the age of 14 may be admitted for 30 days
23 evaluation, diagnosis and treatment at a designated treatment facility
24 if his parent or guardian signs the admission papers and if, in the
25 opinion of the professional person in charge of the facility,

26 (1) he is gravely disabled or is suffering from mental ill-
27 ness and as a result he is likely to cause serious harm to himself or
28 others;

29 (2) there is no less restrictive alternative available for

1 his treatment; and

2 (3) there is reason to believe that the patient's mental
3 condition could be improved by the course of treatment.

4 (b) The minor may be released by the treatment facility at any
5 time during the 30-day period if the professional person in charge of
6 the facility or his designated mental health professional determines the
7 minor would no longer benefit from continued hospitalization and the
8 minor is not dangerous. The minor's parents or his guardian must be
9 notified by the facility of the contemplated release and that, unless
10 they initiate involuntary commitment proceedings, the minor will be
11 released.

12 Sec. 47.30.695. NOTICE OF REQUEST FOR RELEASE OF MINORS UNDER 14
13 YEARS OF AGE FROM VOLUNTARY DETENTION AND COMMITMENT. The parent or
14 guardian of any minor who is less than 14 years of age may request and
15 obtain immediate release of the minor at any time.

16 ARTICLE 8. INVOLUNTARY ADMISSION FOR TREATMENT.

17 Sec. 47.30.700. INITIATION OF INVOLUNTARY COMMITMENT PROCEDURES.

18 (a) Upon petition of any adult person, a judge shall immediately con-
19 duct a screening investigation or direct a local mental health profes-
20 sional employed by the department or by a program which receives money
21 from the department under AS 47.30.520 - 47.30.620 to conduct a screen-
22 ing investigation of the person alleged to be mentally ill and, as a
23 result of that condition, alleged to be gravely disabled or to present a
24 likelihood of serious harm to himself or others. Within 48 hours after
25 the completion of the screening investigation, a judge may issue an ex
26 parte order orally or in writing, stating that there is probable cause
27 to believe a person is mentally ill and that condition causes the person
28 to be gravely disabled or to present a likelihood of serious harm to
29 himself or others. The court shall provide findings on which the con-

1 clusion is based, appoint an attorney to represent the respondent, and
2 may direct that a peace officer take the person into custody and deliver
3 him to the nearest designated appropriate facility for emergency examina-
4 tion or treatment. The ex parte order shall be provided to the respon-
5 dent and made a part of the respondent's clinical record.

6 (b) The petition required in (a) of this section shall allege that
7 the respondent is reasonably believed to present a likelihood of serious
8 harm to himself or others or is gravely disabled as a result of mental
9 illness and shall specify the factual information on which that belief
10 is based including the names and addresses of all persons known to the
11 petitioner who have knowledge of those facts through personal observa-
12 tion.

13 Sec. 47.30.705. EMERGENCY DETENTION FOR EVALUATION. A peace
14 officer who has probable cause to believe that a person is gravely
15 disabled or is suffering from mental illness and is likely to cause
16 serious harm to himself or others of such an immediate nature that con-
17 siderations of safety do not allow initiation of involuntary commitment
18 procedures set out in AS 47.30.700, may cause the person to be taken
19 into custody and delivered to a treatment or evaluation facility. Upon
20 arrival at the treatment facility, the peace officer shall complete an
21 application for examination of the person in custody and be interviewed
22 by a mental health professional at the facility.

23 Sec. 47.30.710. EXAMINATION. (a) A patient who is delivered
24 under AS 47.30.700 or 47.30.705 for emergency examination and treatment
25 to a treatment facility shall be thoroughly examined and evaluated as to
26 his mental and physical condition by a mental health professional and by
27 a physician within 24 hours after arrival at the facility.

28 (b) If the mental health professional who performs the emergency
29 examination has reason to believe that the patient is (1) mentally ill

1 and that condition causes the person to be gravely disabled or to pre-
2 sent a likelihood of serious harm to himself or others, and (2) is in
3 need of care or treatment, the mental health professional may hospi-
4 talize him on an emergency basis. If a judicial order has not been
5 obtained under AS 47.30.700, the mental health professional shall apply
6 for an ex parte order authorizing hospitalization for emergency treat-
7 ment.

8 Sec. 47.30.715. ACCEPTANCE OF ORDER. When a facility receives a
9 proper order for evaluation, it must accept the order and the person for
10 an evaluation period not to exceed 72 hours. The facility shall
11 promptly notify the court of the date and time of the respondent's
12 arrival. The court shall set a date, time and place for a 14-day
13 commitment hearing, to be held if needed within 72 hours after the
14 respondent's arrival, and the court shall notify the facility, the
15 respondent, his attorney, and the prosecuting attorney of the hearing
16 arrangements. Evaluation personnel, where used, shall similarly notify
17 the court of the date and time when they first met with the respondent.

18 Sec. 47.30.720. RELEASE BEFORE EXPIRATION OF 72-HOUR PERIOD. If
19 at any time in the course of the 72-hour period the mental health pro-
20 fessionals conducting the evaluation determine that the respondent does
21 not meet the standards for commitment specified in AS 47.30.700, the
22 respondent shall be discharged from the facility or the place of evalua-
23 tion by evaluation personnel and the petitioner and the court so noti-
24 fied.

25 Sec. 47.30.725. COMMITMENT PROCEEDING RIGHTS; NOTIFICATION. (a)
26 When a person is detained for evaluation under this chapter, he shall be
27 immediately notified orally and in writing of his rights under this sec-
28 tion. Notification shall be in a language understood by the respondent.
29 His guardian, if any, and if the respondent requests, an adult desig-

1 nated by the respondent, shall also be notified of the respondent's
2 rights under this section.

3 (b) Unless a person is released or voluntarily admits himself for
4 treatment within 72 hours of his arrival at the facility or, if he is
5 evaluated by evaluation personnel, within 72 hours from the beginning of
6 his meeting with evaluation personnel, he is entitled to a court hearing
7 to be set for not later than the end of that 72-hour period to determine
8 whether there is cause to detain him after the 72 hours have expired for
9 up to an additional 14 days on the grounds that he is gravely disabled
10 or mentally ill and as a result presents a likelihood of serious harm to
11 himself or others. The facility or evaluation personnel shall give
12 notice to the court of the releases and voluntary admissions under
13 AS 47.30.700 - 47.30.820.

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

18 (d) The respondent has the right to be represented by an attorney,
19 to present evidence and to cross-examine witnesses who testify against
20 him at the hearing.

21 (e) The respondent has the right to be free of the effects of
22 medication and other forms of treatment to the maximum extent possible
23 before the 14-day commitment hearing; however, the facility or evalua-
24 tion personnel shall be able to treat him with medication under pre-
25 scription by a licensed physician or a less restrictive alternative of
26 his preference if, in the opinion of a licensed physician and another
27 mental health professional, these treatments are necessary to

- 28 (1) prevent bodily harm to the respondent or others;
29 (2) prevent such deterioration of the respondent's mental

1 condition that subsequent treatment might not enable him to recover; or

2 (3) allow the respondent to prepare for and participate in
3 the proceedings.

4 (f) A respondent, if he is represented by counsel, may waive,
5 orally or in writing, the 72-hour time limit on the 14-day commitment
6 hearing and have the hearing set for a date no more than seven calendar
7 days after his arrival at the facility. The respondent's counsel shall
8 immediately notify the court of the waiver.

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

14 (1) allege that the respondent is mentally ill and as a
15 result is likely to cause harm to himself or others or is gravely dis-
16 abled;

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

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

25 (4) allege that a specified treatment facility or less re-
26 strictive alternative that is appropriate to the respondent's condition
27 has agreed to accept the respondent;

28 (5) allege that the respondent has been advised of the need
29 for, but has not accepted, voluntary treatment, and request that the

1 court commit the respondent to the specified treatment facility or less
2 restrictive alternative for a period not to exceed 14 days;

3 (6) list the prospective witnesses who will testify in sup-
4 port of commitment or involuntary treatment;

5 (7) list the facts and specific behavior of the respondent
6 supporting the allegation in (1) of this subsection.

7 (b) A copy of the petition shall be served on the respondent, his
8 attorney, and his guardian, if any, before the 14-day commitment
9 hearing.

10 Sec. 47.30.735. 14-DAY COMMITMENT. (a) Upon receipt of a proper
11 petition for commitment, the court shall hold a hearing at the date and
12 time previously specified according to procedures set out in AS 47.30.-
13 715.

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; this right may be waived
19 only with the respondent's informed consent; if the respondent is in-
20 capable of giving informed consent, the respondent may be excluded from
21 the hearing only if the court, after hearing, finds that the incapacity
22 exists and that there is a substantial likelihood that the respondent's
23 presence at the hearing would be severely injurious to his mental or
24 physical health;

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

27 (3) to have the hearing open or closed to the public as he
28 elects;

29 (4) to be proceeded against according to the rules of evi-

1 dence applicable to civil proceedings;

- 2 (5) to have an interpreter if he does not understand English;
3 (6) to present evidence on his behalf;
4 (7) to cross-examine witnesses who testify against him;
5 (8) to remain silent.

6 (c) At the conclusion of the hearing the court may commit the re-
7 spondent to a treatment facility for not more than 14 days if it finds,
8 by clear and convincing evidence, that the allegations required in
9 AS 47.30.730(a) are true.

10 (d) If the court finds that there is a viable less restrictive
11 alternative available and that the respondent has been advised of and
12 refused voluntary treatment through the alternative, the court may order
13 the less restrictive alternative treatment for not more than 14 days.

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

18 Sec. 47.30.740. PROCEDURE FOR 90-DAY COMMITMENT FOLLOWING 14-DAY
19 COMMITMENT. (a) At any time during the respondent's 14-day commitment,
20 the professional person in charge of the treatment facility to which the
21 person has been confined, or his professional designee, may file with
22 the court a petition for 90-day commitment of that person. The petition
23 must include all material required under AS 47.30.730(a) except that
24 references to "14 days" shall be read as "90 days"; and

25 (1) allege that the respondent has attempted to inflict or
26 has inflicted serious bodily harm upon himself or another since his
27 acceptance for evaluation, or that he was committed initially as a
28 result of conduct in which he attempted or inflicted serious bodily harm
29 upon himself or another, or that he continues to be gravely disabled;

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

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

6 (b) The court shall have copies of the petition for 90-day commit-
7 ment served upon the respondent, his attorney, and his guardian, if any.
8 The petition for 90-day commitment and proofs of service shall be filed
9 with the clerk of the court, and a date for hearing shall be set, by the
10 end of the next judicial day, for not later than five judicial days from
11 the date of filing of the petition. The clerk shall notify the respon-
12 dent, his attorney, and the petitioner of the hearing date at least
13 three judicial days in advance of the hearing.

14 (c) Findings of fact relating to the respondent's behavior made at
15 a 14-day commitment hearing under AS 47.30.735 shall be admitted as
16 evidence and may not be rebutted except that newly discovered evidence
17 may be used for the purpose of rebutting the findings.

18 Sec. 47.30.745. 90-DAY COMMITMENT HEARING RIGHTS. (a) A person
19 subject to a petition for 90-day commitment has, in addition to the
20 rights specified elsewhere in this chapter, or otherwise applicable, the
21 rights enumerated in this section. Written notice of these rights shall
22 be served on the respondent, his attorney, his guardian, if any, and an
23 adult designated by the respondent at the time the petition for 90-day
24 commitment is served. An attempt shall be made by oral explanation to
25 insure that the respondent understands the rights enumerated in the
26 notice. If the respondent does not understand English, the explanation
27 shall be given in a language he understands.

28 (b) Unless the respondent is released or voluntarily admits him-
29 self following the filing of a petition and before the hearing, he is

1 entitled to a judicial hearing within five judicial days of the filing
2 of the petition as set out in AS 47.30.740(b) to determine whether the
3 allegations required in AS 47.30.740(a) are true. If the respondent
4 voluntarily admits himself following the filing of the petition, the
5 voluntary admission constitutes a waiver of any hearing rights under
6 AS 47.30.740 or under AS 47.30.685. If at any time during the respon-
7 dent's voluntary admission under this subsection, the respondent submits
8 to the facility a written notice of intent to leave, the professional
9 person in charge of the treatment facility may file with the court a
10 petition for 120-day commitment of the respondent under AS 47.30.770.
11 The 120-day commitment hearing shall be scheduled for a date not earlier
12 than 90 days after the respondent's voluntary admission.

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

18 (d) If a jury trial is not requested, the court may still continue
19 the hearing at the respondent's request for no more than 10 calendar
20 days.

21 (e) The respondent has a right to retain an independent licensed
22 physician or other mental health professional to examine him and to
23 testify on his behalf. Upon request by an indigent respondent, the
24 court shall appoint an independent licensed physician or other mental
25 health professional to examine him and testify on his behalf. The court
26 shall give consideration to an indigent respondent's request for a
27 specific physician or mental health professional. A motion for the
28 appointment may be filed in court at any reasonable time before the
29 hearing and shall be acted upon promptly. Reasonable fees and expenses

1 for such expert examiners shall be determined by the rules of court.

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

6 (g) Until the court issues a final decision, the respondent shall
7 continue to be treated at the treatment facility unless the petition for
8 90-day commitment is withdrawn. If no decision has been made within 20
9 days of filing of the petition, not including extensions of time due to
10 jury trial or other requests by the respondent, he shall be released.

11 Sec. 47.30.750. CONDUCT OF HEARING. The hearing shall be con-
12 ducted in the same manner, and with the same rights for the respondent,
13 as set out in AS 47.30.735(b).

14 Sec. 47.30.755. COURT ORDER. (a) After the hearing and within
15 the time limit specified in AS 47.30.745, the court may commit the
16 respondent to a treatment facility for no more than 90 days if the court
17 or jury finds by clear and convincing evidence that the allegations
18 required in AS 47.30.740(a) are true.

19 (b) If the court finds that there is a less restrictive alterna-
20 tive available and that the respondent has been advised of and refused
21 voluntary treatment through the alternative, the court may order the
22 less restrictive alternative treatment after acceptance by the program
23 of the respondent for a period not to exceed 90 days.

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

29 (1) another treatment facility in the state has a program

1 more suited to the respondent's condition, and this interest outweighs
2 the desirability of the respondent being closer to home;

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

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

9 Sec. 47.30.765. APPEAL. The respondent shall have the right to an
10 appeal from any order of involuntary commitment. The court shall inform
11 the respondent of this right.

12 Sec. 47.30.770. ADDITIONAL 120-DAY COMMITMENT. (a) The respondent
13 shall be released from involuntary treatment at the expiration of 90
14 days unless the professional person in charge of the treatment facility,
15 or his designee, files a petition for a 120-day commitment conforming to
16 the requirements of AS 47.30.740(a) except that all references to "14-
17 day commitment" shall be read as "the previous 90-day commitment" and
18 all references to "90-day commitment" shall be read as "120-day commit-
19 ment".

20 (b) The procedures for service of the petition, notification of
21 rights and judicial hearing shall be as set out in AS 47.30.740 -47.30.-
22 750. If the court or jury finds by clear and convincing evidence that
23 the grounds for 90-day commitment as set out in AS 47.30.755 are pre-
24 sent, the court may order the respondent committed for an additional
25 treatment period not to exceed 120 days from the date on which the first
26 90-day treatment period would have expired.

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

1 (d) Findings of fact relating to the respondent's behavior made at
2 a 14-day commitment hearing under AS 47.30.735, a 90-day commitment
3 hearing under AS 47.30.750, or a previous 120-day commitment hearing
4 under this section shall be admitted as evidence and may not be rebutted
5 except that newly discovered evidence may be used for the purpose of
6 rebutting the findings.

7 Sec. 47.30.775. COMMITMENT OF MINORS. The provisions of AS 47.-
8 30.700 - 47.30.820 are applicable to minors; however, all notices re-
9 quired to be served on the respondent in AS 47.30.700 - 47.30.820 shall
10 also be served on the parent or guardian of respondents who are minors,
11 and parents or guardians of minor respondents shall be notified that
12 they may appear as parties in any commitment proceeding concerning the
13 minor and that as parties they are entitled to retain their own attorney
14 or have one appointed for them by the court. A minor has the same
15 rights to waiver and informed consent as an adult under this chapter;
16 however, he shall be represented by counsel in waiver and consent pro-
17 ceedings.

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

24 Sec. 47.30.785. AUTHORIZED ABSENCES. A respondent undergoing
25 involuntary treatment on an inpatient basis under this chapter may be
26 given authorization to be absent from the treatment facility during
27 times specified by the professional person in charge of the facility, or
28 his professional designee, when an authorization to be absent is in the
29 best interests of the respondent and he is not likely to cause harm to

1 himself or others.

2 Sec. 47.30.790. RETURN FROM UNAUTHORIZED ABSENCE. When a re-
3 spondent undergoing involuntary treatment on an inpatient basis under
4 this chapter is absent from the treatment facility without, or in excess
5 of, authorization under AS 47.30.785, the professional person in charge
6 of the facility or his professional designee may cause the respondent to
7 be taken into custody and returned to the treatment facility.

8 Sec. 47.30.795. INVOLUNTARY OUTPATIENT CARE FOR COMMITTED PERSONS.

9 (a) A committed person who was not originally committed to involuntary
10 outpatient care under the provisions of this chapter may be released
11 before the expiration of his commitment period on the condition that he
12 receive specified outpatient treatment from a provider of outpatient
13 care, for a length of time not to exceed the duration of his commitment
14 period, when the professional person in charge of the treatment facility
15 or his professional designee finds that

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

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

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

23 (c) If at any time during the commitment period the provider of
24 outpatient care determines that the person can no longer be treated on
25 an outpatient basis because he is likely to cause harm to himself or
26 others or is gravely disabled, the provider shall give the patient oral
27 and written notice, with copies to the patient's attorney, his guardian,
28 if any, the court and inpatient treatment facility, that he must return
29 to the inpatient treatment facility within 24 hours for a length of time

1 not to exceed the duration of his commitment period. If the person
2 fails to arrive at the treatment facility under a 24-hour notice, the
3 facility shall cause the person to be taken into custody and transported
4 to the facility. A peace officer shall assist the provider of out-
5 patient care or the facility if requested.

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

13 Sec. 47.30.800. CONVERSION OF INVOLUNTARY OUTPATIENT TREATMENT TO
14 INPATIENT COMMITMENT. (a) A respondent ordered by the court under the
15 provisions of this chapter to receive involuntary outpatient treatment
16 may be required to undergo inpatient treatment when the provider of out-
17 patient care finds that (1) the respondent is mentally ill and is likely
18 to cause serious harm to himself or others or is still gravely disabled;
19 (2) the respondent's behavior since the hearing resulting in court-
20 ordered treatment indicates that he now needs inpatient treatment to
21 protect himself or others; (3) there is reason to believe that the
22 respondent's mental condition will improve as a result of inpatient
23 treatment; and (4) there is an inpatient facility appropriate to the re-
24 spondent's need which will accept him as a patient. Treatment for these
25 respondents shall be available at state-operated hospitals at all times.

26 (b) Upon making the findings specified in (a) of this section, the
27 provisions of AS 47.30.795(b) relating to notice and AS 47.30.745 re-
28 lating to hearing are applicable.

29 Sec. 47.30.805. COMPUTING PERIODS OF TIME. (a) Except as pro-

1 vided in (b) of this section,

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

5 (2) a 14-day commitment period expires at the end of the 14th
6 day after the 72 hours following initial acceptance;

7 (3) a 90-day commitment period expires at the end of the 90th
8 day after the expiration of a 14-day period of treatment;

9 (4) a 120-day commitment period expires at the end of the
10 120th day, after the expiration of a 90-day period of treatment or
11 previous 120-day period, whichever is applicable.

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

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

23 Sec. 47.30.815. LIMITATION OF LIABILITY; PENALTY FOR FALSE APPLI-
24 CATION. (a) A person acting in good faith upon either actual knowledge
25 or reliable information who makes application for evaluation or treat-
26 ment of another person under this chapter is not subject to civil or
27 criminal liability.

28 (b) The following persons may not be held civilly or criminally
29 liable for detaining a person under AS 47.30.700 - 47.30.915 or for

1 releasing a person under AS 47.30.700 - 47.30.915 at or before the end
2 of the period for which the person was admitted or committed for evalua-
3 tion or treatment if the persons have performed their duties in good
4 faith and without gross negligence:

5 (1) an officer of a public or private agency;

6 (2) the superintendent, the professional person in charge,
7 the professional designee of the professional person in charge, and the
8 attending staff of a public or private agency;

9 (3) a public official performing functions necessary to the
10 administration of AS 47.30.700 - 47.30.915;

11 (4) a peace officer responsible for detaining a person under
12 AS 47.30.700 - 47.30.915.

13 (c) A person who wilfully initiates an involuntary commitment pro-
14 cedure under AS 47.30.700 without having good cause to believe that the
15 other person is suffering from a mental illness and as a result is
16 gravely disabled or likely to cause serious harm to himself or others,
17 is guilty of a felony.

18 Sec. 47.30.820. RETROACTIVITY. Except as provided in this chap-
19 ter, the provisions of this chapter do not in themselves impair any
20 action taken in a proceeding pending under statutes in effect before
21 October 1, 1979, nor do they apply retroactively to terminate the deten-
22 tion of a person previously committed under statutes in effect before
23 October 1, 1979. However, 90 days after October 1, 1979, the provisions
24 of this chapter apply to all persons committed under statutes in effect
25 before October 1, 1979.

26 ARTICLE 9. PATIENT RIGHTS.

27 Sec. 47.30.825. PATIENT RIGHTS; MEDICAL. All patients who are
28 receiving services from a treatment facility licensed under AS 18.20.-
29 020, have the following rights:

1 (1) The patient, or his counsel, guardian, or the adult
2 designated in accordance with AS 47.30.725 if the patient is mentally
3 incapable of participation, shall be entitled to participate in form-
4 ulating his individualized treatment plan and in the evaluation process
5 as much as possible, at minimum to the extent of requesting specific
6 forms of therapy, inquiring why specific therapies are or are not in-
7 cluded in his treatment program, and being informed as to his present
8 medical and psychological condition and prognosis. The treating phy-
9 sician may not withhold any of this information from the patient.

10 (2) Counsel and guardian for a patient, or if there is no
11 guardian the adult designated in accordance with AS 47.30.725, have the
12 right at all reasonable times to examine all records of, and plans for,
13 the patient's treatment and to make copies, upon payment of costs if
14 requested, of any portion of these records.

15 (3) Every patient has the right to know the name of medica-
16 tion that he is asked to take, what its purpose is, and what side
17 effects may occur with this medication. If the patient is incapable of
18 understanding the purpose and side effects of the medication, the treat-
19 ing physician or mental health professional shall explain it to the
20 patient's counsel or guardian, or if there is no guardian the adult
21 designated in accordance with AS 47.30.725.

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

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

due process.

(8) When, in the written opinion of a patient's attending physician, a true medical emergency exists and a surgical operation is necessary to save the life, physical health, eyesight, hearing or member of the patient, the professional person in charge of the treatment facility or his professional designee may give consent to the surgical operation if time will not permit obtaining the consent of the proper relatives or guardian or appropriate judicial authority. However, no operation may be authorized if the patient is not a minor and knowingly withholds consent on religious grounds.

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

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

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

1 evidence to the commissioner on the question.

2 (c) A determination that a treatment technique is experimental and
3 entails significant risks of mental or physical harm shall be binding
4 upon all persons involved in the administration of treatment to a
5 patient for purposes of this section.

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

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

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

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

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

27 (4) be permitted to wear his own clothing, to keep and use
28 his own personal possessions including his toilet articles if they are
29 not considered unsafe for him or other patients who might have access to

1 them, and to keep and be allowed to spend a reasonable sum of his own
2 money for his own needs and comfort;

3 (5) be allowed to have visitors at reasonable times;

4 (6) have ready access to letter writing materials, including
5 stamps, and have the right to send and receive unopened mail;

6 (7) have reasonable access to a telephone, both to make and
7 receive confidential calls.

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

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

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

19 (3) persons authorized by a court order;

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

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

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

29 Sec. 47.30.850. EXPUNGEMENT OF RECORDS. Following the discharge

1 of a respondent from a treatment facility or the issuance of a court
2 order denying a petition for commitment, a respondent may at any time
3 move to have all court records pertaining to the proceedings expunged on
4 condition that he file a full release of all claims of whatever nature
5 arising out of the proceedings and the statements and actions of persons
6 and facilities in connection with the proceedings.

7 Sec. 47.30.855. POSTING OF RIGHTS. The rights set out in AS 47.-
8 30.825 - 47.30.855 shall be prominently posted in all treatment facili-
9 ties in places accessible to all patients. A patient who does not
10 understand English shall have his rights explained to him in a language
11 he understands.

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

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

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

27 (b) Applications for positions, licenses and housing may contain
28 no requests for information concerning evaluation or treatment experi-
29 ences.

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

4 ARTICLE 10. MISCELLANEOUS PROVISIONS.

5 Sec. 47.30.870. TRANSPORTATION. When a person is to be evaluated
6 or involuntarily committed to a facility, or presented for a judicial
7 hearing under this chapter, the department shall arrange, and is autho-
8 rized to pay for, the person's necessary transportation to the desig-
9 nated facility or hearing with appropriate medical or nursing attendants
10 and if necessary a peace officer. The department shall pay return
11 transportation of a person, appropriate medical and nursing attendants,
12 and if necessary a peace officer, after a determination that the person
13 is not committable, at the end of a commitment period, or at the end of
14 a voluntary stay following an evaluation conducted in accordance with AS
15 47.30.715 at a treatment facility. When advisable, one or more rela-
16 tives or friends shall be permitted to accompany the person. The de-
17 partment may pay necessary travel, housing and meal expenses incurred by
18 one relative or friend in accompanying the person if the department
19 determines that the person's best interests require that he be accom-
20 panied by the relative or friend and the relative or friend is indigent.

21 Sec. 47.30.875. NONRESIDENT PATIENTS. (a) The admission papers
22 of a person who is admitted to a treatment facility under this chapter
23 shall include a statement as to his residence. The department may
24 return a patient who is not a resident of the state to the state of his
25 residence with court approval if the person has been committed. If the
26 state in which he has residence does not accept him as a patient, the
27 person shall be treated as a resident under the provisions of this
28 chapter.

29 (b) To facilitate the return of nonresident patients the depart-

1 ment may enter a reciprocal agreement or compact with another state
2 providing for the prompt return under appropriate supervision of resi-
3 dents of that state who are mentally ill. Mentally ill residents of
4 this state who have been placed in a facility outside this state may be
5 admitted with the approval of the department to a treatment facility in
6 the state designated by the department. The department may enter into
7 reciprocal agreements or contracts with another state providing for
8 custody, care or treatment, or return of mentally ill residents of this
9 state by the other state and for the custody and care or treatment of
10 mentally ill residents of that state by this state on a reimbursable
11 basis. A resident of this state who has been committed in another state
12 and is returned in accordance with this section shall, within 72 hours
13 of his admission to the designated facility, be examined. After exami-
14 nation the mental health professional in charge of the facility shall
15 release him or shall petition for involuntary commitment as prescribed
16 in AS 47.30.740.

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

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

28 Sec. 47.30.885. RIGHTS OUTSIDE STATE. Nothing in this chapter
29 alters or impairs the application or availability to a patient, while

1 hospitalized in another state under contractual arrangements entered in
2 accordance with the provisions of this chapter, of the rights, remedies
3 or protective safeguards provided by the laws of this state.

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

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

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

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

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

26 Sec. 47.30.900. DISPOSITION OF FUNDS SUBJECT TO CLAIM. The de-
27 partment shall make diligent inquiry in every instance after departure
28 without authority or death of a patient, to ascertain his whereabouts or
29 that of his legal heirs or representatives, and shall turn over to the

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

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

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

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

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

27 Sec. 47.30.910. LIABILITY FOR EXPENSE OF PLACEMENT IN A TREATMENT
28 FACILITY. (a) A patient, or his legal representative acting in a
29 representative capacity, or his spouse, or his parents if the person is

1 under the age of 18, shall pay or contribute to the payment of the
2 charges for the care or treatment of the patient when hospitalized under
3 AS 47.30.655 - 47.30.915. The charges may not exceed the actual cost of
4 the care and treatment as determined by the department. The department
5 may order payment of charges by the patient or by the person responsible
6 for payment of the charges for the patient's care and treatment under
7 this subsection, according to ability to provide for payment. The
8 department may make necessary investigations to determine the ability to
9 provide for payment and may require sworn statements of income by the
10 patient, or his legal representative acting in a representative ca-
11 pacity, or his spouse or parent. In the exercise of his discretion, the
12 commissioner may impose full liability for the patient's actual cost of
13 care and treatment on the patient, his legal representative, his spouse
14 or parent for refusal to supply a sworn statement of income. An order
15 for payment of charges shall be issued by the department within six
16 months after the date on which the charge was incurred. The order shall
17 remain in full force and effect unless modified by subsequent court or
18 department order. Liability under this subsection shall be determined
19 as follows: a patient hospitalized under AS 47.30.655 - 47.30.915, or
20 the person responsible for payment of charges for the patient, may be
21 required to pay according to his ability to provide for payment, as
22 determined by the department, and in the manner and proportion which the
23 department finds is not detrimental to the patient's rehabilitation;
24 however, after the patient has been hospitalized under this chapter for
25 an aggregate period of 12 months, the patient or person responsible for
26 payment may not be required to pay more than \$50 a month toward the
27 charges for the care and treatment of the patient.

28 (b) As used in (a) of this section, the term "actual cost of the
29 care and treatment" means either the rate provided for by a contract

1 entered into under AS 47.30.655 - 47.30.915, or, in the absence of a
2 contract, a daily rate fixed by the department, and includes expenses of
3 transportation incidental to examination or hospitalization.

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

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

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

19 (f) The orders of the department issued under this section shall
20 relate only to charges incurred after October 1, 1979.

21 Sec. 47.30.915. DEFINITIONS. In this chapter

22 (1) "court" means a superior court of the state;

23 (2) "department" means the Department of Health and Social
24 Services;

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

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

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

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

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

15 (A) no more harsh, hazardous or intrusive than necessary
16 to achieve the treatment objectives of the patient; and

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

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

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

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

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

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

14 (11) "peace officer" includes a state police officer, muni-
15 cipal or other local police officer, state, municipal, or other local
16 health officer, public health nurse, United States marshal or deputy
17 United States marshal, or a person authorized by the court.

18 (12) "provider of outpatient care" means a mental health pro-
19 fessional or hospital, clinic, institution, center or other health care
20 facility who has been designated by the department to accept for treat-
21 ment by the court or who are released early from inpatient commitments
22 on condition that they undergo outpatient treatment;

23 (13) "screening investigation" means the investigation and
24 review of facts which have been alleged to warrant emergency examination
25 or treatment, including interviews with the persons making such allega-
26 tions, any other significant witnesses who can readily be contacted for
27 interviews, and, if possible, the respondent;

28 (14) "state" means a state of the United States, the District
29 of Columbia, the territories and possessions of the United States, and

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

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

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

12 * Sec. 2. AS 12.45.090 is repealed and re-enacted to read:

13 Sec. 12.45.090. COMMITMENT AFTER JUDGMENT OF NOT GUILTY. (a) If
14 the court or jury finds the defendant not guilty on the ground of mental
15 disease or defect as excluding responsibility and the court considers
16 his being at large dangerous to the public peace or safety, the court
17 shall immediately commit the defendant to the custody of the commis-
18 sioner of health and social services.

19 (b) If the defendant asserts at the time a verdict of not guilty
20 on the ground of mental disease or defect as excluding responsibility is
21 returned that he is not presently suffering from a mental disease or
22 defect which causes him to be a danger to the public, a hearing shall be
23 set within 60 days to determine the necessity of further commitment.
24 The hearing shall be held before either the court or a jury of six
25 persons who may be drawn from the jury impaneled for a trial on the
26 underlying charge in accordance with rules promulgated by the supreme
27 court. At the hearing, the defendant has the burden of proving by a
28 preponderance of the evidence that he is not presently suffering from a
29 mental disease or defect which causes him to be a danger to the public.

1 (c) If the court or jury determines that the defendant has failed
2 to sustain his burden of proof, the court shall order him to be committed
3 to the custody of the commissioner of health and social services and
4 held in custody for a period of time not to exceed the maximum sentence
5 for the offense committed by the defendant or until the disease is cured
6 or the defect corrected or he is otherwise discharged from the institu-
7 tion by authority of law.

8 (d) The defendant may file a petition in the superior court for a
9 hearing to have the need for his continued hospitalization determined or
10 redetermined. The defendant is entitled to a hearing on the question no
11 sooner than six months after his initial commitment and annually there-
12 after. The burden and standard of proof at a release hearing shall be
13 the same as at the initial hearing and the defendant shall be entitled
14 to a hearing before a jury of six upon request filed not later than 15
15 days before the date set for the hearing with the court.

16 (e) Continued hospitalization following the expiration of the
17 maximum term of sentence of the criminal offense for which the defendant
18 was acquitted on the ground of mental disease or defect shall be
19 governed by the standards and burden of proof relating to civil commit-
20 ments under AS 47.30.700 - 47.30.915.

21 (f) A person committed under this section may not be released
22 during the term of commitment except upon court order following a hear-
23 ing under this section. The state may at any time request the court to
24 release the defendant on the grounds that the defendant has been cured
25 of the mental disease or defect and is no longer a danger to the public
26 peace or safety.

27 (g) The committing court in its commitment order shall require the
28 commissioner of health and social services or his authorized representa-
29 tive to submit periodic written reports on the mental condition of a

1 person who is committed under (a) of this section.

2 (h) A copy of all petitions for release shall be served on the
3 state attorney general. A copy shall also be served upon the attorney
4 of record, if he is not the attorney general, who represented the state
5 at the time the defendant was first committed.

6 * Sec. 3. AS 12.45.110 is repealed and re-enacted to read:

7 Sec. 12.45.110. COMMITMENT ON FINDING OF INCOMPETENCY. (a) When
8 the trial court determines by a preponderance of the evidence, in accor-
9 dance with AS 12.45.100, that a defendant is so mentally incompetent
10 that he is unable to understand the proceedings against him or properly
11 to assist in his own defense, the court shall order the proceedings
12 against him stayed, except as provided in (d) of this section, and may
13 commit the defendant to the custody of the commissioner of health and
14 social services or his authorized representative for further evaluation
15 and treatment until the defendant is mentally competent to stand trial,
16 or until the pending charges against him are disposed of according to
17 law, but in no event longer than 90 days.

18 (b) On or before the expiration of the initial 90-day period of
19 commitment the court shall conduct a hearing to determine whether or not
20 the defendant remains incompetent. If the court finds by a preponder-
21 ance of the evidence that the defendant remains incompetent, the court
22 may recommit the defendant for a second period of 90 days. The court
23 shall determine at the expiration of the second 90-day period whether
24 the defendant has become competent. If at the expiration of the second
25 90-day period the court determines that the defendant continues to be
26 incompetent to stand trial, the charges against him shall be dismissed
27 without prejudice and continued commitment of the defendant shall be
28 governed by the provisions relating to civil commitments under AS 47.30.
29 700 - 47.30.915 unless the defendant is charged with a crime involving

1 force against a person and the court finds that the defendant presents a
2 substantial danger of physical injury to other persons and that there is
3 a substantial probability that the defendant will regain competency
4 within a reasonable period of time, in which case the court may extend
5 the period of commitment for an additional six months. If the defendant
6 remains incompetent at the expiration of the additional six-month
7 period, the charges shall be dismissed without prejudice and either
8 civil commitment proceedings shall be instituted or the court shall
9 order the release of the defendant. If the defendant remains incompe-
10 tent for five years after the charges have been dismissed under this
11 subsection, the defendant may not be charged again for an offense
12 arising out of the facts alleged in the original charges, except if the
13 original charge is murder.

14 (c) The defendant is not subject to the expenses of hospitaliza-
15 tion or transportation incurred as a result of his commitment under this
16 section. Liability for payment under AS 47.30.910 does not apply to
17 commitments under this section.

18 (d) A defendant receiving medication for either a physical or a
19 mental condition may not be prohibited from standing trial, if the
20 medication either enables him to understand the proceedings against him
21 and to properly assist in his own defense or does not disable him from
22 understanding the proceedings and assisting in his own defense.

23 * Sec. 4. AS 12.45.115 is amended to read:

24 Sec. 12.45.115. DETERMINATION OF SANITY AFTER [RELEASE FROM]
25 COMMITMENT. (a) When, in the medical judgment of the custodian of an
26 accused person committed under AS 12.45.110 [AS 12.45.110(a)], the
27 accused is considered to be mentally competent to stand trial, the
28 committing court shall hold a hearing, after due notice, as soon as
29 conveniently possible [AFTER RELEASE OF THE ACCUSED FROM CUSTODY]. At

1 the hearing, evidence as to the mental condition of the accused may be
2 submitted including reports by the custodian to whom the accused was
3 committed for care.

4 (b) If at the hearing the court determines that the accused is
5 presently mentally competent to understand the nature of the proceedings
6 against him and [OR] to assist in his own defense, appropriate criminal
7 proceedings may [SHALL] be commenced against the accused.

8 (c) If at the hearing the court determines that the accused is
9 still presently mentally incompetent, the court shall recommit the
10 accused in accordance with AS 12.45.110 [AS PROVIDED IN AS 12.45.-
11 110(a)].

12 (d) A finding by the court that the accused is mentally competent
13 to stand trial in no way prejudices the accused in a defense based on
14 mental disease or defect excluding responsibility. This finding may not
15 be introduced in evidence on that issue or otherwise be brought to the
16 notice of the jury.

17 * Sec. 5. AS 47.30.010 - 47.30.340 are repealed.

18 * Sec. 6. This Act takes effect October 1, 1979.

19

20

21

22

23

24

25

26

27

28

29