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6-1528A

BY SEN. UEHLING

1 IN THE SENATE

2

SENATE BILL NO. 336

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to treatment related to the use of
7 alcohol and other drugs; amending Rules 501 - 512 and
8 803, Alaska Rules of Evidence."

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

10 * Section 1. AS 47.37.010 is amended to read:

11 Sec. 47.37.010. DECLARATION OF POLICY. It is the policy of the
12 state that alcoholics and intoxicated persons should not be criminally
13 prosecuted for their consumption of alcoholic beverages or other drugs
14 and that they should, within available funds, be afforded a continuum
15 of treatment so they may lead normal lives as productive members of
16 society. Within available funds, treatment should also be provided
17 for drug addicts.

18 * Sec. 2. AS 47.37.160(a) is amended to read:

19 (a) An alcoholic or drug addict may voluntarily apply for treat-
20 ment directly to an approved public treatment facility.

21 * Sec. 3. AS 47.37.160(c) is amended to read:

22 (c) When a patient receiving inpatient care leaves an approved
23 public treatment facility, the patient shall be encouraged to consent
24 to appropriate outpatient or intermediate treatment. If it appears to
25 the administrator in charge of the treatment facility that the patient
26 is an alcoholic or drug addict who requires help, the administrator
27 shall arrange for assistance in obtaining supportive services and
28 residential facilities.

29 * Sec. 4. AS 47.37.170(b) is amended to read:

1 (b) Except for a person who may be apprehended for possible
2 violation of laws not relating to alcoholism, drug addiction, or
3 intoxication and except for a person who may be apprehended for possi-
4 ble violation of laws relating to operating a vehicle while intoxi-
5 cated, a [A] person who appears to be incapacitated or gravely dis-
6 abled by alcohol or other drugs and who is in a public place or has
7 threatened, attempted, or inflicted physical harm on that person or
8 another, shall be taken into protective custody by a peace officer or
9 a member of the emergency service patrol and, as soon as practicable
10 but in no event beyond eight hours, [IMMEDIATELY] brought to an
11 approved public treatment facility, an approved private treatment
12 facility, or another appropriate health facility or service for emer-
13 gency medical treatment. If no treatment facility or emergency medi-
14 cal service is available, the [A] person [WHO APPEARS TO BE INCAPACI-
15 TATED BY ALCOHOL IN A PUBLIC PLACE] shall be taken to a state or
16 municipal detention facility in the area, if that appears necessary
17 for the protection of the person's health or safety.

18 * Sec. 5. AS 47.37.170(d) is amended to read:

19 (d) A person who, after medical examination, is found to be
20 incapacitated or gravely disabled by alcohol or other drugs at the
21 time of admission or to have become incapacitated or gravely disabled
22 at any time after admission, may not be detained at a facility after
23 the person is no longer incapacitated or gravely disabled by alcohol
24 or other drugs. A person may not be detained at a facility if the
25 person remains incapacitated or gravely disabled by alcohol or other
26 drugs for more than 72 [48] hours after admission as a patient, unless
27 the person is committed under AS 47.37.180. The treatment personnel
28 at an approved treatment facility may use reasonable physical re-
29 straint necessary to retain an incapacitated or gravely disabled

1 person for up to 72 hours from the time of admission. The 72-hour
2 periods specified in this subsection shall be computed by excluding
3 Saturdays, Sundays, and holidays. A person may consent to remain in
4 the facility as long as the physician in charge considers it appropri-
5 ate.

6 * Sec. 6. AS 47.37.170(e) is amended to read:

7 (e) A person who is not admitted to an approved public treatment
8 facility, is not referred to another health facility, and has no
9 funds, may be taken to the person's home, if any. If the person has
10 no home, the approved public treatment facility shall provide [ASSIST]
11 the person with information and assistance to access available commu-
12 nity shelter resources [IN OBTAINING SHELTER].

13 * Sec. 7. AS 47.37.170(f) is amended to read:

14 (f) If a patient is admitted to an approved public treatment
15 facility, the patient's family or next of kin shall be promptly noti-
16 fied by the treatment facility. If an adult patient who is not inca-
17 pacitated requests that there be no notification of next of kin, the
18 patient's request shall be granted.

19 * Sec. 8. AS 47.37.170(h) is amended to read:

20 (h) If the physician in charge of the approved public treatment
21 facility determines that appropriate treatment is available [IT IS FOR
22 THE PATIENT'S BENEFIT], an attempt shall be made to encourage the
23 patient to submit to further diagnosis and appropriate voluntary
24 treatment.

25 * Sec. 9. AS 47.37.170(j) is amended to read:

26 (j) For purposes of (b) of this section, "incapacitated by
27 alcohol or other drugs" means a person who, as the result of consump-
28 tion of alcohol or other drugs, is rendered unconscious or has judg-
29 ment or physical mobility so impaired that the person cannot readily

1 recognize or escape conditions of apparent or imminent danger to
2 personal health or safety. The definition in AS 47.37.270 applies to
3 other portions of this chapter.

4 * Sec. 10. AS 47.37.180(a) is amended to read:

5 (a) An intoxicated person who (1) has threatened, attempted to
6 inflict, or inflicted physical harm on another or is likely to inflict
7 physical harm on another unless committed, or (2) is incapacitated by
8 alcohol or other drugs, may be committed to an approved public treat-
9 ment facility for emergency treatment if placement is available and
10 considered appropriate. A refusal to undergo treatment does not, by
11 itself, constitute evidence of lack of judgment as to the need for
12 treatment.

13 * Sec. 11. AS 47.37.180(b) is amended to read:

14 (b) The certifying physician, spouse, guardian, or relative of
15 the person to be committed, or any other responsible person, may make
16 a written application for commitment under this section, directed to
17 the administrator of the approved public treatment facility. The
18 application shall state facts to support the need for emergency treat-
19 ment and be accompanied by a physician's certificate supporting the
20 need for emergency treatment and stating that the physician has exam-
21 ined the person sought to be committed within five [TWO] days before
22 the certificate's date, unless the person whose commitment is sought
23 has refused to submit to a medical examination, in which case the fact
24 of refusal shall be alleged in the petition. The certificate must set
25 out the physician's findings in support of the allegations of the
26 petition.

27 * Sec. 12. AS 47.37.180(c) is amended to read:

28 (c) Upon approval of the application by the administrator in
29 charge of the facility, the person may be brought to the facility by a

1 peace officer, a health officer, a member of the emergency service
2 patrol, the applicant for commitment, the patient's spouse, the
3 patient's guardian, or any other interested person. The person shall
4 be retained at the facility to which the person was admitted, or
5 transferred to another appropriate public or private treatment facil-
6 ity, until discharged under (e) of this section. However, a [NO]
7 person may not be detained under this section for more than 72 [48]
8 hours unless a district or superior court judge has reviewed and
9 approved the commitment application.

10 * Sec. 13. AS 47.37.190(a) is amended to read:

11 (a) After a hearing initiated by petition of a spouse or guard-
12 ian, a relative, the certifying physician, or the administrator in
13 charge of an approved public treatment facility, a person may be
14 committed to the custody of a private or public facility by the supe-
15 rior court if placement is available and considered appropriate. The
16 petition shall allege that the person is an alcoholic or drug addict
17 [WHO HABITUALLY LACKS SELF-CONTROL IN USING ALCOHOLIC BEVERAGES] and
18 that the person (1) has threatened, attempted to inflict, or inflicted
19 physical harm on another and that unless committed is likely to in-
20 flict physical harm on another; [OR] (2) has twice before in the
21 preceding twelve months been admitted for detoxification or for treat-
22 ment under this chapter; or (3) is incapacitated by alcohol or other
23 drugs. A refusal to undergo treatment does not, by itself, constitute
24 evidence of lack of judgment as to the need for treatment. The peti-
25 tion shall be accompanied by a certificate of a licensed physician who
26 has examined the person within five [TWO] days before submission of
27 the petition, unless the person whose commitment is sought has refused
28 to submit to a medical examination, in which case the fact of refusal
29 shall be alleged in the petition. The certificate must [SHALL] set

1 out the physician's findings in support of the allegations of the
2 petition.

3 * Sec. 14. AS 47.37.190(b) is amended to read:

4 (b) After the petition is filed, the court shall fix a date for
5 a hearing no less than two and no later than seven [10] days after the
6 date the petition was filed. A copy of the petition and of the notice
7 of the hearing, including the date fixed by the court, shall be served
8 on (1) the petitioner; (2) the person whose commitment is sought; (3)
9 the next of kin of the person whose commitment is sought; (4) the
10 administrator in charge of the approved public treatment facility in
11 which the committed person has been committed for emergency care; and
12 (5) any other person the court considers appropriate. A copy of the
13 petition and certificate shall be delivered to each person notified.

14 * Sec. 15. AS 47.37.200(a) is amended to read:

15 (a) At the hearing required under AS 47.37.190(b), the court or
16 the jury, if requested under AS 47.37.190(c), shall hear all relevant
17 testimony, which may be telephonic, including, if possible, the testi-
18 mony of at least one licensed physician who has examined the person
19 whose commitment is sought. The person whose commitment is sought
20 shall be present unless the court believes that being present is
21 likely to be injurious to the person, in which case the court shall
22 appoint a guardian ad litem to represent the person throughout the
23 proceeding. The court may examine the person in open court, or if
24 advisable, examine the person out of court. If the person has refused
25 to be examined by a licensed physician, the person shall be given an
26 opportunity to request examination by a court-appointed licensed
27 physician. If the person fails to request a medical examination and
28 there is sufficient evidence to believe that the allegations of the
29 petition are true, or if the court believes that more medical evidence

1 is necessary, the court may issue a temporary order committing the
2 person to a private or public facility for a period of not more than
3 five days for purposes of a diagnostic examination.

4 * Sec. 16. AS 47.37.200(b) is amended to read:

5 (b) If after hearing all relevant evidence, including the re-
6 sults of any diagnostic examination by the private or public facility,
7 the court or the jury finds that grounds for involuntary commitment
8 have been clearly established, the court shall issue an order of
9 commitment to the private or public facility. A court may not order
10 the commitment of a person unless it determines that a private or
11 public facility is available and able to provide adequate and appro-
12 priate treatment for the person.

13 * Sec. 17. AS 47.37.200(c) is amended to read:

14 (c) A person committed under AS 47.37.190 - 47.37.200 shall
15 remain in the custody of a private or public facility for treatment
16 for a period of up to 60 [30] days. At the end of the 60-day [30-DAY]
17 period, the person shall be discharged automatically unless the
18 office, before the expiration of the period, obtains a court order for
19 recommitment upon the grounds set out in AS 47.37.190(a) for a further
20 period of up to 90 days. If a person has been committed because the
21 person is an alcoholic or drug addict likely to inflict physical harm
22 on another, the office shall apply for recommitment if after examina-
23 tion it is determined that the likelihood still exists.

24 * Sec. 18. AS 47.37.200(e) is amended to read:

25 (e) Upon the filing of a petition for recommitment under (c) [OR
26 (d)] of this section, the court shall fix a date for hearing no less
27 than two and no later than seven [10] days after the date the petition
28 was filed. A copy of the petition and of the notice of hearing,
29 including the date fixed by the court, shall be served on (1) the

1 petitioner; (2) the person whose commitment is sought; (3) the next of
2 kin of the person whose commitment is sought; (4) the original peti-
3 tioner under AS 47.37.190(a), if different from the petitioner for
4 recommitment; (5) any other person the court considers appropriate.
5 AS 47.37.180(c) applies to hearings for recommitment under this sec-
6 tion. At the hearing the court or the jury shall proceed as provided
7 in (a) of this section.

8 * Sec. 19. AS 47.37.200(g) is amended to read:

9 (g) A person committed to the custody of the office for treat-
10 ment shall be discharged at any time before the end of the period for
11 which the person has been committed if either of the following condi-
12 tions is met:

13 (1) in the case of [WHEN] an alcoholic or drug addict
14 committed on the grounds of likelihood of infliction of physical harm
15 to that person or [ON] another,

16 (A) [IS NO LONGER CONSIDERED AN ALCOHOLIC OR] the
17 likelihood of the person inflicting physical harm no longer
18 exists;

19 (B) [OR (2) WHEN, IN THE CASE OF AN ALCOHOLIC COMMIT-
20 TED ON THE GROUNDS OF THE LIKELIHOOD OF INFLICTION OF PHYSICAL
21 HARM ON ANOTHER, EITHER (A)] further treatment will not be likely
22 to bring about significant improvement in the person's condition;
23 [,] or

24 (C) [(B)] treatment is no longer adequate or appropri-
25 ate; or

26 (2) in the case of an alcoholic or drug addict committed on
27 the grounds of the need for treatment and incapacity, that the inca-
28 capacity no longer exists.

29 * Sec. 20. AS 47.37 is amended by adding a new section to read:

1 Sec. 47.37.203. PROVISIONS FOR EARLY RELEASE. (a) When, in the
2 opinion of the professional person in charge of a facility providing
3 involuntary treatment under this chapter, the committed patient can be
4 appropriately served by less restrictive treatment before expiration
5 of the period of commitment, the less restrictive care may be required
6 as a condition for early release for a period that, when added to the
7 initial treatment period, does not exceed the period of commitment.
8 If the facility designated to provide the less restrictive care is not
9 the facility providing the initial involuntary treatment, the second
10 facility must agree in writing to assume responsibility for the per-
11 son.

12 (b) The original facility shall give a copy of the conditions
13 for early release to the patient, the office, and the court of origi-
14 nal commitment. The facility designated to provide less restrictive
15 care may modify the conditions for continued release if the modifica-
16 tions are in the best interests of the patient.

17 (c) If the facility providing less restrictive care and the
18 office determine that a conditionally released patient is failing to
19 adhere to the terms and conditions of release or that substantial
20 deterioration in the patient's functioning has occurred, the office
21 shall notify the court of original commitment and request a hearing to
22 determine whether or not the person should be returned to the more
23 restrictive care. The hearing shall be held no less than two and no
24 more than seven days after the date of the request.

25 (d) With a request under (c) of the section, the office shall
26 file a petition with the court stating the facts substantiating the
27 need for the hearing along with treatment recommendations. The
28 patient has the same rights with respect to notice, hearing, and
29 counsel as for the original involuntary treatment proceedings. The

1 issues to be determined at the hearing are

2 (1) whether the conditionally released patient did or did
3 not adhere to the terms and conditions of release to less restrictive
4 care or whether substantial deterioration of the patient's functioning
5 has occurred; and

6 (2) whether the conditions of release should be modified or
7 the person should be returned to a more restrictive facility.

8 (e) The hearing under (d) of this section may be waived by the
9 patient and the patient's counsel, guardian, and conservator, if any,
10 but only if each of these persons agrees to the waiver. Upon waiver,
11 the person may be returned for involuntary treatment or continued on
12 conditional release on the same or modified conditions.

13 * Sec. 21. AS 47.37 is amended by adding a new section to read:

14 Sec. 47.37.205. PRIVILEGES WAIVED. The privilege not to dis-
15 close communications otherwise privileged under the laws or court
16 rules of this state is considered waived in proceedings under this
17 chapter when a court of competent jurisdiction in its discretion
18 determines that the waiver is necessary to protect either the detained
19 person or the public. The waiver of a privilege under this section is
20 limited to records or testimony relevant to evaluation of the detained
21 person for purposes of a proceeding under this chapter. Upon motion
22 by the detained person, or on its own motion, the court shall examine
23 a record or testimony sought by a petitioner to determine whether it
24 is within the scope of the waiver.

25 * Sec. 22. AS 47.37 is amended by adding a new section to read:

26 Sec. 47.37.207. MEDICAL RECORDS. (a) The record maker is not
27 required to testify in order to introduce medical, nursing, or psycho-
28 logical records of persons detained under this chapter if the require-
29 ments of (b) of this section are met except that portions of a record

1 that contain an opinion as to whether the detained person is an alco-
2 holic or drug addict shall be deleted from the record unless the
3 person offering the opinion is available for cross-examination.

4 (b) A record introduced under (a) of this section is competent
5 evidence insofar as it is relevant if

6 (1) the custodian or other qualified witness testifies to
7 its identity and the mode of its preparation;

8 (2) it was made in the regular course of business at or
9 near the time the record maker learned of the act, condition, or
10 event; and

11 (3) in the opinion of the court, the sources of informa-
12 tion, method, and time of preparation justify its admission.

13 * Sec. 23. AS 47.37.210 is amended to read:

14 Sec. 47.37.210. RECORDS [OF ALCOHOLICS AND INTOXICATED PER-
15 SONS]. (a) Except as required by AS 28.35.030(d) and AS 47.37.205,
16 the registration and other records of treatment facilities shall
17 remain confidential and are privileged to the patient.

18 (b) Notwithstanding (a) of this section, the coordinator may
19 make available information from patients' records for purposes of
20 research into the causes and treatment of alcoholism or drug addic-
21 tion. Information [NO INFORMATION] may not disclose a patient's name.

22 * Sec. 24. AS 47.37.240 is amended by adding new subsections to read:

23 (c) The department may not refuse admission for diagnosis,
24 evaluation, guidance, or treatment to an applicant because it is
25 determined that the applicant is financially unable to contribute
26 fully or in part to the cost of a service or facility available under
27 this chapter.

28 (d) The department may limit admissions of applicants under this
29 chapter or modify its programs in order to ensure that expenditures

1 for services or programs do not exceed amounts appropriated by the
2 legislature and allocated for the services or programs. The depart-
3 ment may establish admission priorities for use in the event that the
4 number of eligible applicants for services under this chapter exceeds
5 the limits set by the department.

6 * Sec. 25. AS 47.37 is amended by adding a new section to read:

7 Sec. 47.37.245. AVAILABILITY OF SERVICES NOT GUARANTEED. This
8 chapter may not be construed to entitle an individual to services
9 authorized in this chapter or to require the department or its con-
10 tractors to reallocate funds in order to ensure that services are
11 available to an eligible person upon demand.

12 * Sec. 26. AS 47.37.250(a) is amended to read:

13 (a) Nothing in this chapter affects a statute, ordinance, or
14 regulation relating to (1) drunken driving, driving under the influ-
15 ence of alcohol, driving while intoxicated, or other similar offenses
16 involving alcohol or other drugs and the operation of a vehicle,
17 aircraft, boat, machinery, or other equipment, (2) the sale, purchase,
18 dispensation, possession, or use of alcoholic beverages or other drugs
19 at specified times and places or by a particular class of persons,
20 including prohibitions against drinking intoxicating beverages in
21 specified public places, or (3) being upon the traveled portion of a
22 highway so as to be a hazard to the motoring public.

23 * Sec. 27. AS 47.37.270(1) is amended to read:

24 (1) "alcoholic" means a person who suffers from the disease
25 of alcoholism, characterized by a physiological dependency on alco-
26 holic beverages, loss of control over the amount and circumstances of
27 use, symptoms or tolerance, physiological or psychological withdrawal
28 if use is reduced or discontinued, and impairment of health or disrup-
29 tion of social or economic functioning [HABITUALLY LACKS SELF-CONTROL

1 IN USING ALCOHOLIC BEVERAGES, OR USES ALCOHOLIC BEVERAGES TO THE
2 EXTENT THAT THE PERSON'S HEALTH IS SUBSTANTIALLY IMPAIRED OR ENDAN-
3 GERED, OR THE PERSON'S SOCIAL OR ECONOMIC FUNCTION IS SUBSTANTIALLY
4 DISRUPTED];

5 * Sec. 28. AS 47.37.270(10) is amended to read:

6 (10) "incapacitated by alcohol or other drugs" means a
7 person who, as a result of the use of alcohol or other drugs, is
8 unconscious or whose judgment is otherwise so impaired that the person
9 is incapable of realizing and making a rational decision with respect
10 to a need for treatment or care, as evidenced objectively by extreme
11 physical debilitation, physical harm or threats of harm to the person
12 or to others or chronic inability to hold regular employment;

13 * Sec. 29. AS 47.37.270(13) is amended to read:

14 (13) "intoxicated person" means a person whose mental or physi-
15 cal functioning is substantially impaired as a result of the use of
16 alcohol or other drugs;

17 * Sec. 30. AS 47.37.270(15) is amended to read:

18 (15) "treatment" means the broad range of emergency, outpa-
19 tient, intermediate, and inpatient services and care which may be
20 extended to alcoholics, drug addicts, persons incapacitated or gravely
21 disabled by alcohol or other drugs, and intoxicated persons, including
22 diagnostic evaluation, medical, psychiatric, psychological, and social
23 service care, vocational rehabilitation and career counseling;

24 * Sec. 31. AS 47.37.270 is amended by adding new paragraphs to read:

25 (17) "drug addict" means a person who uses drugs other than
26 alcohol in a chronic, compulsive, or uncontrollable manner to the
27 extent that it is seriously interfering with the person's health,
28 economic, or social functioning, characterized by a compulsive desire
29 for one or more drugs, loss of control when exposed to one or more

1 drugs, and continued use in spite of adverse consequences;

2 (18) "gravely disabled by alcohol or other drugs" means
3 that a person, as a result of the use of alcohol or other drugs,

4 (A) is in danger of serious physical harm resulting
5 from a failure to provide for the person's essential human needs
6 for health or safety; or

7 (B) manifests severe deterioration in routine func-
8 tioning evidenced by a repeated and escalating loss of cognition
9 or volitional control over the person's actions and is not re-
10 ceiving care that is essential for the person's health or safety.

11 * Sec. 32. AS 47.37.200(d) is repealed.

12 * Sec. 33. AS 47.37.205, enacted by sec. 21 of this Act, has the effect
13 of amending Rules 501 - 512, Alaska Rules of Evidence, by providing that
14 the privilege not to disclose certain communications is considered waived
15 in certain proceedings.

16 * Sec. 34. AS 47.37.207, enacted by sec. 22 of this Act, has the effect
17 of amending Rule 803, Alaska Rules of Evidence, by providing an additional
18 exception for the acceptance of hearsay when the availability of the de-
19 clarant is immaterial.