

Offered: 4/21/90
Referred: Rules

6-1528H

Original sponsor(s): SEN. UEHLING

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SENATE BILL NO. 336 (Finance)
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."

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

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

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

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

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

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

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

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

29 (b) Except for a person who may be apprehended for possible

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

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

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

1 consent to remain in the facility as long as the physician in charge
2 considers it appropriate.

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

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

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

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

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

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

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

23 (j) For purposes of (b) of this section, "incapacitated by
24 alcohol or other drugs" means a person who, as the result of consump-
25 tion of alcohol or other drugs, is rendered unconscious or has judg-
26 ment or physical mobility so impaired that the person cannot readily
27 recognize or escape conditions of apparent or imminent danger to
28 personal health or safety. The definition in AS 47.37.270 applies to
29 other portions of this chapter.

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

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

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

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

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

25 (c) Upon approval of the application by the administrator in
26 charge of the facility, the person may be brought to the facility by a
27 peace officer, a health officer, a member of the emergency service
28 patrol, the applicant for commitment, the patient's spouse, the pa-
29 tient's guardian, or any other interested person. The person shall be

1 retained at the facility to which the person was admitted, or trans-
2 ferred to another appropriate public or private treatment facility,
3 until discharged under (e) of this section. However, a [NO] person ma
4 not be detained under this section for more than 72 [48] hours unless
5 a district or superior court judge has reviewed and approved the
6 commitment application.

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

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

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

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

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

12 (a) At the hearing required under AS 47.37.190(b), the court or
13 the jury, if requested under AS 47.37.190(c), shall hear all relevant
14 testimony, which may be telephonic, including, if possible, the testi-
15 mony of at least one licensed physician who has examined the person
16 whose commitment is sought. The person whose commitment is sought
17 shall be present unless the court believes that being present is
18 likely to be injurious to the person, in which case the court shall
19 appoint a guardian ad litem to represent the person throughout the
20 proceeding. The court may examine the person in open court, or if
21 advisable, examine the person out of court. If the person has refused
22 to be examined by a licensed physician, the person shall be given an
23 opportunity to request examination by a court-appointed licensed
24 physician. If the person fails to request a medical examination and
25 there is sufficient evidence to believe that the allegations of the
26 petition are true, or if the court believes that more medical evidence
27 is necessary, the court may issue a temporary order committing the
28 person to a private or public facility for a period of not more than
29 five days for purposes of a diagnostic examination.

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

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

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

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

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

22 (e) Upon the filing of a petition for recommitment under (c) [OR
23 (d)] of this section, the court shall fix a date for hearing no less
24 than two and no later than seven [10] days after the date the petition
25 was filed. A copy of the petition and of the notice of hearing,
26 including the date fixed by the court, shall be served on (1) the
27 petitioner; (2) the person whose commitment is sought; (3) the next of
28 kin of the person whose commitment is sought; (4) the original peti-
29 tioner under AS 47.37.190(a), if different from the petitioner for

1 recommitment; (5) any other person the court considers appropriate.
2 AS 47.37.180(c) applies to hearings for recommitment under this sec-
3 tion. At the hearing the court or the jury shall proceed as provided
4 in (a) of this section.

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

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

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

13 (A) [IS NO LONGER CONSIDERED AN ALCOHOLIC OR] the
14 likelihood of the person inflicting physical harm no longer
15 exists;

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

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

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

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

27 Sec. 47.37.203. PROVISIONS FOR EARLY RELEASE. (a) When, in the
28 opinion of the professional person in charge of a facility providing
29 involuntary treatment under this chapter, the committed patient can be

1 appropriately served by less restrictive treatment before expiration
2 of the period of commitment, the less restrictive care may be required
3 as a condition for early release for a period that, when added to the
4 initial treatment period, does not exceed the period of commitment.
5 If the facility designated to provide the less restrictive care is not
6 the facility providing the initial involuntary treatment, the second
7 facility must agree in writing to assume responsibility for the per-
8 son.

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

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

22 (d) With a request under (c) of the section, the office shall
23 file a petition with the court stating the facts substantiating the
24 need for the hearing along with treatment recommendations. The pa-
25 tient has the same rights with respect to notice, hearing, and counsel
26 as for the original involuntary treatment proceedings. The issues to
27 be determined at the hearing are

28 (1) whether the conditionally released patient did or did
29 not adhere to the terms and conditions of release to less restrictive

1 care or whether substantial deterioration of the patient's functioning
2 has occurred; and

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

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

10 * Sec. 21. AS 47.37.210 is amended to read:

11 Sec. 47.37.210. RECORDS [OF ALCOHOLICS AND INTOXICATED PER-
12 SONS]. (a) Except as provided in (b) - (d) of this section and
13 [REQUIRED BY] AS 28.35.030(d), the registration and other records of
14 treatment facilities shall remain confidential and are privileged to
15 the patient.

16 (b) The [NOTWITHSTANDING (a) OF THIS SECTION, THE] coordinator
17 may make available information from patients' records for purposes of
18 research into the causes and treatment of alcoholism or drug addic-
19 tion. Information [NO INFORMATION] may not disclose a patient's name.

20 * Sec. 22. AS 47.37.210 is amended by adding new subsections to read:

21 (c) The administrator in charge of a treatment facility may make
22 allegations in a petition filed in proceedings under this chapter that
23 are based on information contained in records of the treatment facil-
24 ity.

25 (d) In proceedings under this chapter, there is no privilege
26 under (a) of this section for records created within one year of the
27 date the petition was filed under this chapter if the records relate
28 to the condition or treatment of the respondent that is at issue in
29 the proceedings.

1 * Sec. 23. AS 47.37.240 is amended by adding new subsections to read:

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

7 (d) The department may limit admissions of applicants under this
8 chapter or modify its programs in order to ensure that expenditures
9 for services or programs do not exceed amounts appropriated by the
10 legislature and allocated for the services or programs. The depart-
11 ment may establish admission priorities for use in the event that the
12 number of eligible applicants for services under this chapter exceeds
13 the limits set by the department.

14 * Sec. 24. AS 47.37 is amended by adding a new section to read:

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

20 * Sec. 25. AS 47.37.250(a) is amended to read:

21 (a) Nothing in this chapter affects a statute, ordinance, or
22 regulation relating to (1) drunken driving, driving under the influ-
23 ence of alcohol, driving while intoxicated, or other similar offenses
24 involving alcohol or other drugs and the operation of a vehicle,
25 aircraft, boat, machinery, or other equipment, (2) the sale, purchase,
26 dispensation, possession, or use of alcoholic beverages or other drugs
27 at specified times and places or by a particular class of persons,
28 including prohibitions against drinking intoxicating beverages in
29 specified public places, or (3) being upon the traveled portion of a

1 highway so as to be a hazard to the motoring public.

2 * Sec. 26. AS 47.37.270(1) is amended to read:

3 (1) "alcoholic" means a person who suffers from the disease
4 of alcoholism, characterized by a physiological dependency on alco-
5 holic beverages, loss of control over the amount and circumstances of
6 use, symptoms or tolerance, physiological or psychological withdrawal
7 if use is reduced or discontinued, and impairment of health or disrup-
8 tion of social or economic functioning [HABITUALLY LACKS SELF-CONTROL
9 IN USING ALCOHOLIC BEVERAGES, OR USES ALCOHOLIC BEVERAGES TO THE
10 EXTENT THAT THE PERSON'S HEALTH IS SUBSTANTIALLY IMPAIRED OR ENDAN-
11 GERED, OR THE PERSON'S SOCIAL OR ECONOMIC FUNCTION IS SUBSTANTIALLY
12 DISRUPTED];

13 * Sec. 27. AS 47.37.270(10) is amended to read:

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

21 * Sec. 28. AS 47.37.270(13) is amended to read:

22 (13) "intoxicated person" means a person whose mental or
23 physical functioning is substantially impaired as a result of the use
24 of alcohol or other drugs;

25 * Sec. 29. AS 47.37.270(15) is amended to read:

26 (15) "treatment" means the broad range of emergency, outpa-
27 tient, intermediate, and inpatient services and care which may be
28 extended to alcoholics, drug addicts, persons incapacitated or gravely
29 disabled by alcohol or other drugs, and intoxicated persons, including

1 diagnostic evaluation, medical, psychiatric, psychological, and social
2 service care, vocational rehabilitation and career counseling;

3 * Sec. 30. AS 47.37.270 is amended by adding new paragraphs to read:

4 (17) "drug addict" means a person who uses drugs other than
5 alcohol in a chronic, compulsive, or uncontrollable manner to the
6 extent that it is seriously interfering with the person's health,
7 economic, or social functioning, characterized by a compulsive desire
8 for one or more drugs, loss of control when exposed to one or more
9 drugs, and continued use in spite of adverse consequences;

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

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

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

19 * Sec. 31. AS 47.37.200(d) is repealed.