

Offered: 5/8/90
For Today's Calendar

6-1528M

Original sponsor(s): SEN. UEHLING

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 336 (Judiciary)

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 and that they
13 should be afforded a continuum of treatment so they may lead normal
14 lives as productive members of society. Treatment should also be
15 provided for drug addicts.

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

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

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

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

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

28 (b) Except for a person who may be apprehended for possible
29 violation of laws not relating to alcoholism, drug addiction, or

1 intoxication and except for a person who may be apprehended for possi-
2 ble violation of laws relating to operating a vehicle while intoxi-
3 cated, a [A] person who appears to be incapacitated or gravely dis-
4 abled by alcohol or other drugs and who either is in a public place or
5 has threatened, attempted, or inflicted physical harm on that person
6 or another, shall be taken into protective custody by a peace officer
7 or a member of the emergency service patrol and immediately brought to
8 an approved public treatment facility, an approved private treatment
9 facility, or another appropriate health facility or service for emer-
10 gency medical treatment. If no treatment facility or emergency medi-
11 cal service is available, the [A] person [WHO APPEARS TO BE INCAPACI-
12 TATED BY ALCOHOL IN A PUBLIC PLACE] shall be taken to a state or
13 municipal detention facility in the area, if that appears necessary
14 for the protection of the person's health or safety.

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

16 (d) A person who, after medical examination, is found to be
17 incapacitated or gravely disabled by alcohol or other drugs at the
18 time of admission or to have become incapacitated or gravely disabled
19 at any time after admission, may not be detained at a facility after
20 the person is no longer incapacitated or gravely disabled by alcohol
21 or other drugs. A person may not be detained at a facility if the
22 person remains incapacitated or gravely disabled by alcohol or other
23 drugs for more than 48 hours after admission as a patient, unless the
24 person is committed under AS 47.37.180. The treatment personnel at an
25 approved treatment facility may use reasonable means to prevent the
26 person from committing self-harm or harming another or as necessary to
27 retain the person for up to 48 hours from the time of admission. A
28 person may consent to remain in the facility as long as the physician
29 in charge considers it appropriate.

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

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

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

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

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

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

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

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

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

29 (a) An intoxicated person who (1) has threatened, attempted to

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

7 * Sec. 11. 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 constitute evidence of
21 lack of judgment as to the need for treatment. The petition shall be
22 accompanied by a certificate of a licensed physician who has examined
23 the person within two days before submission of the petition, unless
24 the person whose commitment is sought has refused to submit to a
25 medical examination, in which case the fact of refusal shall be al-
26 leged in the petition. The certificate must [SHALL] set out the
27 physician's findings in support of the allegations of the petition.

28 * Sec. 12. AS 47.37.190(b) is amended to read:

29 (b) After the petition is filed, the court shall fix a date for

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

10 * Sec. 13. AS 47.37.200(b) is amended to read:

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

19 * Sec. 14. AS 47.37.200(c) is amended to read:

20 (c) A person committed under AS 47.37.190 - 47.37.200 shall
21 remain in the custody of a private or public facility for treatment
22 for a period of up to 30 days. At the end of the 30-day period, the
23 person shall be discharged automatically unless the office, before the
24 expiration of the period, obtains a court order for recommitment upon
25 the grounds set out in AS 47.37.190(a) for a further period of up to
26 90 days. If a person has been committed because the person is an
27 alcoholic or drug addict likely to inflict physical harm on another,
28 the office shall apply for recommitment if after examination it is
29 determined that the likelihood still exists.

1 * Sec. 15. AS 47.37.200(e) is amended to read:

2 (e) Upon the filing of a petition for recommitment under (c) or
3 (d) of this section, the court shall fix a date for hearing no less
4 than two and no later than seven [10] days after the date the petition
5 was filed. A copy of the petition and of the notice of hearing,
6 including the date fixed by the court, shall be served on (1) the
7 petitioner; (2) the person whose commitment is sought; (3) the next of
8 kin of the person whose commitment is sought; (4) the original peti-
9 tioner under AS 47.37.190(a), if different from the petitioner for
10 recommitment; (5) any other person the court considers appropriate.
11 AS 47.37.180(c) applies to hearings for recommitment under this sec-
12 tion. At the hearing the court or the jury shall proceed as provided
13 in (a) of this section.

14 * Sec. 16. AS 47.37.200(g) is amended to read:

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

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

22 (A) [IS NO LONGER CONSIDERED AN ALCOHOLIC OR] the
23 likelihood of the person inflicting physical harm no longer
24 exists;

25 (B) [OR (2) WHEN, IN THE CASE OF AN ALCOHOLIC COMMIT-
26 TED ON THE GROUNDS OF THE LIKELIHOOD OF INFLECTION OF PHYSICAL
27 HARM ON ANOTHER, EITHER (A)] further treatment will not be likely
28 to bring about significant improvement in the person's condition;
29 [,] or

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

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

6 * Sec. 17. AS 47.37 is amended by adding a new section to read:

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

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

23 (c) If the facility providing less restrictive care and the
24 office determine that a conditionally released patient is failing to
25 adhere to the terms and conditions of release or that substantial
26 deterioration in the patient's functioning has occurred, the office
27 shall notify the court of original commitment and request a hearing to
28 determine whether or not the person should be returned to the more
29 restrictive care. The hearing shall be held no less than two and no

1 more than seven days after the date of the request.

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

8 (1) whether the conditionally released patient did or did
9 not adhere to the terms and conditions of release to less restrictive
10 care or whether substantial deterioration of the patient's functioning
11 has occurred; and

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

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

19 * Sec. 18. AS 47.37.210 is amended to read:

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

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

29 * Sec. 19. AS 47.37.210 is amended by adding new subsections to read:

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

5 (d) In proceedings under this chapter, there is no privilege
6 under (a) of this section for records created within one year of the
7 date the petition was filed under this chapter only if the records
8 relate to the condition or treatment of the respondent that is at
9 issue in the proceedings.

10 * Sec. 20. AS 47.37.240 is amended by adding new subsections to read:

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

16 (d) The department may limit admissions of applicants under this
17 chapter or modify its programs in order to ensure that expenditures
18 for services or programs do not exceed amounts appropriated by the
19 legislature and allocated for the services or programs. The depart-
20 ment may establish admission priorities for use in the event that the
21 number of eligible applicants for services under this chapter exceeds
22 the limits set by the department.

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

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

29 * Sec. 22. AS 47.37.250(a) is amended to read:

1 (a) Nothing in this chapter affects a statute, ordinance, or
2 regulation relating to (1) drunken driving, driving under the influ-
3 ence of alcohol, driving while intoxicated, or other similar offenses
4 involving alcohol or other drugs and the operation of a vehicle,
5 aircraft, boat, machinery, or other equipment, (2) the sale, purchase,
6 dispensation, possession, or use of alcoholic beverages or other drugs
7 [AT SPECIFIED TIMES AND PLACES OR BY A PARTICULAR CLASS OF PERSONS],
8 including prohibitions against drinking intoxicating beverages in
9 specified public places, or (3) being upon the traveled portion of a
10 highway so as to be a hazard to the motoring public.

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

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

22 * Sec. 24. AS 47.37.270(10) is amended to read:

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

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

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

8 * Sec. 26. AS 47.37.270 is amended by adding new paragraphs to read:

9 (17) "drug addict" means a person who uses a drug other
10 than alcohol in a chronic, compulsive, or uncontrollable manner to the
11 extent that it is seriously interfering with the person's health,
12 economic, or social functioning, characterized by a compulsive desire
13 for one or more drugs, loss of control when exposed to one or more
14 drugs, physiological or psychological withdrawal if use is reduced or
15 discontinued, and continued use in spite of adverse consequences;

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

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

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