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BY SEN. RODEY, Kelly

1 IN THE SENATE

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SENATE BILL NO. 380

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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 the treatment of minors for
7 substance abuse; and amending Rule 38 of the Alaska
8 Rules of Civil Procedure."

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

10 * Section 1. AS 47.10 is amended by adding new sections to read:

11 ARTICLE 6. TREATMENT FOR SUBSTANCE ABUSE.

12 Sec. 47.10.400. APPLICABILITY. (a) The provisions of AS 47.-
13 10.400 - 47.10.590 apply to a minor

14 (1) who, due to substance abuse, has threatened to inflict,
15 attempted to inflict, or inflicted physical harm

16 (A) on the minor's own person, or is likely to inflict
17 physical harm on the minor's person unless treatment is secured;
18 or

19 (B) on another, or is likely to inflict physical harm
20 on another unless treatment is secured; or

21 (2) whose judgment is so impaired by the effects of sub-
22 stance abuse that the minor is incapable of realizing a need for
23 treatment and is unable to make a rational decision about the need for
24 treatment.

25 (b) The provisions of AS 47.10.010 - 47.10.290 do not apply to a
26 minor who is the subject of an application or petition brought under
27 AS 47.10.400 - 47.10.590.

28 Sec. 47.10.410. EMERGENCY ADMISSION PROCEDURES. (a) A minor,
29 the minor's spouse, parent, guardian, or physician, or any other

1 responsible person, may make written application under this section
2 for emergency admission of the minor to a substance abuse treatment
3 program. The application must

4 (1) be directed to the director of a substance abuse treat-
5 ment program;

6 (2) state facts sufficient to support the need for emer-
7 gency treatment of the minor under AS 47.10.400;

8 (3) be supported by a physician's certificate stating that
9 the physician has examined the minor sought to be admitted to the
10 program and providing evidence sufficient to support the need of the
11 minor for emergency treatment.

12 (b) The administrator of the substance abuse program may refuse
13 to admit the minor if the administrator believes that the application
14 and physician's certificate fail to sustain the grounds for the
15 minor's admission.

16 (c) If the application submitted under (a) of this section is
17 approved by the administrator of the substance abuse program, the
18 minor may be brought to the program facility. The minor shall be
19 retained at the facility to which the minor was admitted or may be
20 transferred to another appropriate treatment program, until discharged
21 under AS 47.10.420 - 47.10.430.

22 (d) Within 24 hours of admission of a minor to a substance abuse
23 treatment program under (c) of this section, the administrator of the
24 program shall provide the minor

25 (1) copies of the written application for admission and the
26 physician's certificate; and

27 (2) a written explanation of the minor's right to legal
28 counsel.

29 (e) The administrator of a program to which a minor is admitted

1 under (c) of this section shall provide the minor reasonable oppor-
2 tunity to consult with legal counsel.

3 Sec. 47.10.420. JUDICIAL REVIEW OF EMERGENCY ADMISSION. If a
4 minor has been admitted to a substance abuse treatment program under
5 AS 47.10.410 and the administrator intends to detain the minor for
6 more than 48 hours, the administrator of the program shall seek review
7 of the admission by the court. A minor may not be detained in the
8 program for more than 48 hours unless a court has reviewed and ap-
9 proved the admission application.

10 Sec. 47.10.430. DISCHARGE OF MINOR FROM EMERGENCY ADMISSION. (a)
11 Except as provided in (b) of this section, a minor admitted to a
12 substance abuse program under AS 47.10.410 may not be detained in the
13 program for more than five days.

14 (b) If a petition for involuntary admission has been filed under
15 AS 47.10.440 within the period provided in (a) of this section, the
16 program administrator may detain the minor until the petition has been
17 heard and determined, but for not more than 10 days after filing the
18 petition, if the administrator finds that the reasons for emergency
19 admission still exist.

20 Sec. 47.10.440. PETITION FOR INVOLUNTARY ADMISSION. (a) The
21 minor's spouse, parent, guardian, or physician, or the administrator
22 of a substance abuse program admitting a minor under AS 47.10.410 may
23 submit a petition under this section for the minor's involuntary
24 admission to a substance abuse treatment program. The petition must

25 (1) be filed with the superior court;
26 (2) state facts sufficient to support the need for treat-
27 ment of the minor for substance abuse;

28 (3) be supported by a physician's certificate stating that
29 the physician has examined the minor sought to be admitted to the

1 program and providing evidence sufficient to support the need of the
2 minor for treatment for substance abuse; and

3 (4) provide the names and addresses of persons who must be
4 served by the clerk of the court under (b)(1) - (4) of this section.

5 (b) When a petition is filed under (a) of this section, the
6 court shall set a date for hearing the petition. The hearing shall be
7 held no later than 10 days after the petition was filed. The clerk of
8 the court shall deliver or mail copies of the petition and notice of
9 the hearing, including the date set by the court to hear the petition,
10 to

11 (1) the petitioner;

12 (2) the minor who is the subject of the petition;

13 (3) the next of kin of the minor;

14 (4) the administrator in charge of the program, if the
15 minor was admitted to the program for emergency treatment under
16 AS 47.10.410 - 47.10.430; and

17 (5) any other person the court considers appropriate.

18 (c) The court shall consider the petition without a jury.
19 However, if, not less than two days before the date set for hearing
20 the petition, the minor or the minor's legal counsel files a written
21 request with the superior court, the court shall summon and impanel a
22 jury to hear and consider evidence concerning the condition of the
23 minor sought to be admitted.

24 Sec. 47.10.450. HEARING ON PETITION AND DETERMINATION. (a) At
25 the hearing under AS 47.10.440, the court, or the jury if one is
26 impanelled under AS 47.10.440(c), shall hear all relevant testimony,
27 including, if possible, the testimony of at least one licensed physi-
28 cian who has examined the minor whose admission to the substance abuse
29 program is sought in the petition.

1 (b) The minor who is the subject of the petition shall be pre-
2 sent at the hearing unless the court believes that the minor's being
3 present is likely to be injurious to the minor or dangerous to others.
4 If the minor is not present, the court shall appoint a guardian ad
5 litem to represent the best interests of the minor throughout the
6 proceeding.

7 (c) If the minor has refused to be examined by a licensed physi-
8 cian, the court shall give the minor an opportunity to request an
9 examination by a court-appointed licensed physician. If the minor
10 fails to request a medical examination and there is sufficient evi-
11 dence to believe that the allegations of the petition are true, or if
12 the court believes that additional medical evidence is necessary, the
13 court may issue a temporary order admitting the minor to a facility
14 for a period of not more than five days for purposes of diagnostic
15 examination.

16 (d) If, after hearing all relevant evidence, including a diag-
17 nostic examination, the court or the jury finds that grounds for
18 admission of the minor to the substance abuse program under AS 47.10.-
19 400 have been established by a preponderance of the evidence, the
20 court shall issue an order of admission to the program. The court may
21 not order the minor's admission to the program unless it determines
22 that the program is able to provide adequate and appropriate treatment
23 for the minor.

24 Sec. 47.10.460. DURATION OF TREATMENT UNDER INVOLUNTARY ADMIS-
25 SION. A minor ordered admitted to a program under AS 47.10.450 may
26 not be ordered into the custody of the program for substance abuse
27 treatment for a period of more than 30 days, exclusive of admission
28 under AS 47.10.410, if any. At the end of the 30-day period, the
29 minor shall be discharged unless the person who petitioned for the

1 minor's admission obtains a court order under AS 47.10.470 for ex-
2 tended admission and treatment of the minor.

3 Sec. 47.10.470. EXTENDED ADMISSION. (a) A minor admitted to a
4 substance abuse program under AS 47.10.450 or the person who peti-
5 tioned for the minor's admission to the program under AS 47.10.450 may
6 petition for the minor's extended admission to the substance abuse
7 program. The provisions of AS 47.10.440 and 47.10.450 apply to a
8 petition that is filed under this subsection.

9 (b) Upon a showing of one or more of the reasons set out in
10 AS 47.10.400, the court may order the minor's extended admission to
11 the substance abuse program for a period not to exceed 90 additional
12 days.

13 Sec. 47.10.480. TREATMENT AUTHORIZED. (a) A program is re-
14 quired to provide adequate and appropriate substance abuse treatment
15 to a minor admitted to the program under AS 47.10.410, 47.10.450, or
16 47.10.470.

17 (b) A program may transfer a minor in its custody to another
18 program if a transfer is medically advisable. A program receiving a
19 minor transferred under this subsection must meet the requirements of
20 (a) of this section. If a minor is transferred under this subsection,
21 the program making the transfer shall provide notice of the transfer
22 to the petitioner and to the court.

23 Sec. 47.10.490. EARLY DISCHARGE. A minor admitted to a sub-
24 stance abuse program under AS 47.10.410, 47.10.450, or 47.10.470 shall
25 be discharged from the program at any time before the end of the
26 period for which the minor has been admitted if

27 (1) the conditions specified in AS 47.10.400 no longer
28 exist;

29 (2) treatment of the minor is no longer adequate or

1 appropriate; or

2 (3) treatment of the minor would not likely cause a signif-
3 icant improvement in the minor's condition.

4 Sec. 47.10.500. PROCEDURAL GUARANTEES. (a) A minor whose
5 involuntary admission or extended admission to a substance abuse
6 program is sought under AS 47.10.420 - 47.10.490 has the right to

7 (1) contest the admission;

8 (2) be represented by counsel at every stage of the pro-
9 ceedings;

10 (3) have counsel appointed by the court or provided by the
11 court if the minor is unable to obtain counsel;

12 (4) a jury trial if applicable and requested under AS 47.-
13 10.440(c).

14 (b) The court shall inform the minor of the rights granted by
15 (a) of this section.

16 (c) If the court believes that the minor requires the assistance
17 of counsel, the court shall require counsel, by appointment if neces-
18 sary, regardless of the minor's objection.

19 (d) The court shall inform the minor whose admission or extended
20 admission is sought of the right to be examined by a licensed physi-
21 cian of the minor's choice. If the minor is unable to obtain a li-
22 censed physician and requests examination by a physician, the court
23 shall employ a licensed physician to conduct the examination.

24 (e) A minor may at any time seek discharge from an emergency,
25 involuntary, or extended admission under AS 47.10.400 - 47.10.490 by a
26 writ of habeas corpus under the provisions of AS 12.75.

27 (f) The court may require the parent, guardian, or other person
28 responsible for the minor to pay the costs of persons appointed or
29 employed under (c) and (d) of this section.

1 Sec. 47.10.510. COMMUNICATION INVOLVING A MINOR. (a) A minor
2 admitted to a substance abuse program under AS 47.10.400 - 47.10.590
3 shall be granted reasonable opportunities for adequate consultation
4 with counsel, and for continuing contact with family and friends if
5 contact is consistent with an effective treatment program.

6 (b) Except when authorized by the court or when the director of
7 the substance abuse program reasonably determines that communication
8 to or from the minor is not in the best interest of the minor, mail
9 and other communication to or from a minor while admitted under
10 AS 47.10.410, 47.10.450, or 47.10.470 may not be intercepted, read, or
11 censored.

12 Sec. 47.10.520. RECORDS. The provisions of AS 47.10.090 apply
13 to the registration and other records of treatment programs. The
14 minor may claim the privilege.

15 Sec. 47.10.530. PAYMENT FOR TREATMENT. Unless the minor has
16 been emancipated under AS 09.55.590, the parent, guardian, or other
17 person responsible for a minor who is admitted to a substance abuse
18 treatment program under AS 47.10.400 - 47.10.590 is responsible to
19 provide for the cost of the minor's treatment in that program.

20 Sec. 47.10.590. DEFINITIONS. In AS 47.10.400 - 47.10.590

21 (1) "controlled substance" has the meaning given in AS 11.-
22 71.900;

23 (2) "hazardous volatile material or substance"

24 (A) means a material or substance that is readily
25 vaporizable at room temperature and whose vapors or gases, when
26 inhaled, pose an immediate threat to the life or health of the
27 minor, or are likely to have adverse delayed effects on the
28 minor's health;

29 (B) includes, but is not limited to, gasoline,

1 materials and substances containing petroleum distillates, and
2 common household materials and substances whose containers bear a
3 notice warning that inhalation of the vapors or gases may cause
4 physical harm;

5 (3) "minor" means a person under 18 years of age, but does
6 not include a minor who has been emancipated under AS 09.55.590 or who
7 has achieved the age of majority under AS 25.20.020;

8 (4) "substance abuse" means

9 (A) a physiological or psychological dependency, or
10 both, on one or more controlled substances;

11 (B) habitual lack of self-control in using one or more
12 controlled substances to the extent that the minor's health is
13 substantially impaired or the minor's social or economic function
14 is substantially disrupted; or

15 (C) intentional misuse of a hazardous volatile ma-
16 terial or substance;

17 (5) "treatment" means services and care extended to a minor
18 to overcome the effects of substance abuse; the term includes

19 (A) diagnostic evaluation of the minor;

20 (B) medical, psychiatric, and psychological care;

21 (C) vocational rehabilitation; and

22 (D) counseling.

23 * Sec. 2. AS 47.10.440(c), added by sec. 1 of this Act, amends Rule 38
24 of the Alaska Rules of Civil Procedure by limiting the time in which demand
25 for jury trial on a petition for involuntary admission must be filed.