

SENATE BILL NO. 19

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS UEHLING, Collins

Introduced: 1/21/91

Referred: HESS, Judiciary and Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to treatment related to the use of alcohol and other drugs."

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

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

4 Sec. 47.37.010. DECLARATION OF POLICY. It is the policy of the state that
5 alcoholics and intoxicated persons should not be criminally prosecuted for their consumption of
6 alcoholic beverages and that they should, within available funds, be afforded a continuum of
7 treatment so they may lead normal lives as productive members of society. Within available
8 funds, treatment should also be provided for drug addicts.

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

10 (a) An alcoholic **or drug addict** may voluntarily apply for treatment directly to an
11 approved public treatment facility.

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

13 (c) When a patient receiving inpatient care leaves an approved public treatment facility,
14 the patient shall be encouraged to consent to appropriate outpatient or intermediate treatment.

1 If it appears to the administrator in charge of the treatment facility that the patient is an alcoholic
2 or drug addict who requires help, the administrator shall arrange for assistance in obtaining
3 supportive services and residential facilities.

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

5 (b) Except for a person who may be apprehended for possible violation of laws not
6 relating to alcoholism, drug addiction, or intoxication and except for a person who may be
7 apprehended for possible violation of laws relating to operating a vehicle while intoxicated,
8 a [A] person who appears to be incapacitated or gravely disabled by alcohol or other drugs
9 and who is in a public place or has threatened, attempted, or inflicted physical harm on that
10 person or another, shall be taken into protective custody by a peace officer or a member of the
11 emergency service patrol and, as soon as practicable but in no event beyond eight hours,
12 [IMMEDIATELY] brought to an approved public treatment facility, an approved private
13 treatment facility, or another appropriate health facility or service for emergency medical treat-
14 ment. If no treatment facility or emergency medical service is available, the [A] person [WHO
15 APPEARS TO BE INCAPACITATED BY ALCOHOL IN A PUBLIC PLACE] shall be taken
16 to a state or municipal detention facility in the area, if that appears necessary for the protection
17 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 incapacitated or gravely
20 disabled by alcohol or other drugs at the time of admission or to have become incapacitated or
21 gravely disabled at any time after admission, may not be detained at a facility after the person
22 is no longer incapacitated or gravely disabled by alcohol or other drugs. A person may not
23 be detained at a facility if the person remains incapacitated or gravely disabled by alcohol or
24 other drugs for more than 72 [48] hours after admission as a patient, unless the person is
25 committed under AS 47.37.180. The treatment personnel at an approved treatment facility
26 may use reasonable physical restraint necessary to retain an incapacitated or gravely
27 disabled person for up to 72 hours from the time of admission. A person may consent to
28 remain in the facility as long as the physician in charge considers it appropriate.

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

30 (e) A person who is not admitted to an approved public treatment facility, is not referred
31 to another health facility, and has no funds, may be taken to the person's home, if any. If the

1 person has no home, the approved public treatment facility shall provide [ASSIST] the person
2 with information and assistance to access available community shelter resources [IN
3 OBTAINING SHELTER].

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

5 (f) If a patient is admitted to an approved public treatment facility, the patient's family
6 or next of kin shall be promptly notified by the treatment facility. If an adult patient who is
7 not incapacitated requests that there be no notification of next of kin, the patient's request shall
8 be granted.

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

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

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

15 (j) For purposes of (b) of this section, "incapacitated by alcohol or other drugs" means
16 a person who, as the result of consumption of alcohol or other drugs, is rendered unconscious
17 or has judgment or physical mobility so impaired that the person cannot readily recognize or
18 escape conditions of apparent or imminent danger to personal health or safety. The definition
19 in AS 47.37.270 applies to other portions of this chapter.

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

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

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

28 (b) The certifying physician, spouse, guardian, or relative of the person to be committed,
29 or any other responsible person, may make a written application for commitment under this
30 section, directed to the administrator of the approved public treatment facility. The application
31 must state facts to support the need for emergency treatment and be accompanied by a

1 physician's certificate supporting the need for emergency treatment and stating that the physician
2 has examined the person sought to be committed within five [TWO] days before the certificate's
3 date, unless the person whose commitment is sought has refused to submit to a medical
4 examination, in which case the fact of refusal shall be alleged in the petition. The certificate
5 must set out the physician's findings in support of the allegations of the petition.

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

7 (c) Upon approval of the application by the administrator in charge of the facility, the
8 person may be brought to the facility by a peace officer, a health officer, a member of the
9 emergency service patrol, the applicant for commitment, the patient's spouse, the patient's
10 guardian, or any other interested person. The person shall be retained at the facility to which the
11 person was admitted, or transferred to another appropriate public or private treatment facility,
12 until discharged under (e) of this section. However, a person may not be detained under this
13 section for more than 72 [48] hours unless a district or superior court judge has reviewed and
14 approved the commitment application.

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

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

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

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

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

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

24 (b) If after hearing all relevant evidence, including the results of any diagnostic
25 examination by the private or public facility, the court or the jury finds that grounds for
26 involuntary commitment have been clearly established, the court shall issue an order of
27 commitment to the private or public facility. A court may not order the commitment of a person
28 unless it determines that a private or public facility is available and able to provide adequate and
29 appropriate treatment for the person.

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

31 (c) A person committed under AS 47.37.190 - 47.37.200 shall remain in the custody of

1 a private or public facility for treatment for a period of up to 60 [30] days. At the end of the
2 60-day [30-DAY] period, the person shall be discharged automatically unless the division, before
3 the expiration of the period, obtains a court order for recommitment upon the grounds set out in
4 AS 47.37.190(a) for a further period of up to 90 days. If a person has been committed because
5 the person is an alcoholic or drug addict likely to inflict physical harm on another, the division
6 shall apply for recommitment if after examination it is determined that the likelihood still exists.

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

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

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

17 (g) A person committed to the custody of the division for treatment shall be discharged
18 at any time before the end of the period for which the person has been committed if either of the
19 following conditions is met:

20 (1) in the case of [WHEN] an alcoholic or drug addict committed on the
21 grounds of likelihood of infliction of physical harm 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 exists;

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

28 (C) [(B)] treatment is no longer adequate or appropriate; or

29 (2) in the case of an alcoholic or drug addict committed on the grounds of
30 the need for treatment and incapacity, that the incapacity no longer exists.

31 * 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 opinion of
2 the professional person in charge of a facility providing involuntary treatment under this chapter,
3 the committed patient can be appropriately served by less restrictive treatment before expiration
4 of the period of commitment, the less restrictive care may be required as a condition for early
5 release for a period that, when added to the initial treatment period, does not exceed the period
6 of commitment. If the facility designated to provide the less restrictive care is not the facility
7 providing the initial involuntary treatment, the second facility must agree in writing to assume
8 responsibility for the person.

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

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

19 (d) With a request under (c) of the section, the office shall file a petition with the court
20 stating the facts substantiating the need for the hearing along with treatment recommendations.
21 The patient has the same rights with respect to notice, hearing, and counsel as for the original
22 involuntary treatment proceedings. The issues to be determined at the hearing are

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

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

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

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

2 Sec. 47.37.210. RECORDS [OF ALCOHOLICS AND INTOXICATED PERSONS]. (a)
3 Except as provided in (b) - (d) of this section and [REQUIRED BY] AS 28.35.030(d), the
4 registration and other records of treatment facilities shall remain confidential and are privileged
5 to the patient.

6 (b) The [NOTWITHSTANDING (a) OF THIS SECTION, THE] director may make
7 available information from patients' records for purposes of research into the causes and
8 treatment of alcoholism or drug addiction. The [NO] information may not disclose a patient's
9 name.

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

11 (c) The administrator in charge of a treatment facility may make allegations in a petition
12 filed in proceedings under this chapter that are based on information contained in records of the
13 treatment facility.

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

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

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

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

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

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

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

1 (a) Nothing in this chapter affects a statute, ordinance, or regulation relating to

2 (1) drunken driving, driving under the influence of alcohol, driving while
3 intoxicated, or other similar offenses involving alcohol or other drugs and the operation of a
4 vehicle, aircraft, boat, machinery, or other equipment;

5 (2) the sale, purchase, dispensation, possession, or use of alcoholic beverages or
6 other drugs [AT SPECIFIED TIMES AND PLACES OR BY A PARTICULAR CLASS OF
7 PERSONS], including prohibitions against drinking intoxicating beverages in specified public
8 places; or

9 (3) being upon the traveled portion of a highway so as to be a hazard to the
10 motoring public.

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

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

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

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

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

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

30 * Sec. 29. AS 47.37.270(14) is amended to read:

31 (14) "treatment" means the broad range of emergency, outpatient, intermediate,

1 and inpatient services and care that may be extended to alcoholics, drug addicts, persons
2 incapacitated or gravely disabled by alcohol or other drugs, and intoxicated persons, including
3 diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational
4 rehabilitation and career counseling;

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

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

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

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

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

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