

CS FOR SENATE BILL NO. 153 (JUDICIARY)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/1/92
 Referred: Finance

Sponsor(s): SENATORS POURCHOT, Collins

A BILL
 FOR AN ACT ENTITLED

1 "An Act relating to mental health."

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

3 * Section 1. AS 44.21.410(a) is amended by adding a new paragraph to read:

4 (8) provide visitors and guardians ad litem in proceedings under AS 47.30.839.

5 * Sec. 2. AS 47.30.660 is amended by adding a new paragraph to read:

6 (15) set standards under which each designated treatment facility shall provide
 7 programs to meet patients' medical, psychological, social, vocational, educational, and
 8 recreational needs.

9 * Sec. 3. AS 47.30.772 is amended to read:

10 Sec. 47.30.772. MEDICATION AND TREATMENT. An evaluation facility or [A]
 11 designated treatment facility may administer medication or other treatment to an involuntarily
 12 committed patient only in a manner that is consistent with the provisions of AS 47.30.825 -
 13 47.30.865.

14 * Sec. 4. AS 47.30.800(b) is amended to read:

1 (b) Upon making the findings specified in (a) of this section, the provisions of
2 AS 47.30.795(c) [AS 47.30.795(b)] relating to notice and AS 47.30.745 relating to hearing apply.

3 * Sec. 5. AS 47.30.825(b) is amended to read:

4 (b) The patient and the following persons, at the request of the patient, are [A
5 PATIENT, OR THE PATIENT'S COUNSEL, GUARDIAN, OR THE ADULT DESIGNATED
6 IN ACCORDANCE WITH AS 47.30.725 IF THE PATIENT IS MENTALLY INCAPABLE OF
7 PARTICIPATION, IS] entitled to participate in formulating the patient's individualized treatment
8 plan and to participate in the evaluation process as much as possible, at minimum to the extent
9 of requesting specific forms of therapy, inquiring why specific therapies are or are not included
10 in the treatment program, and being informed as to the patient's present medical and
11 psychological condition and prognosis: (1) the patient's counsel, (2) the patient's guardian,
12 (3) a mental health professional previously engaged in the patient's care outside of the
13 evaluation facility or designated treatment facility, (4) a representative of the patient's
14 choice, and (5) the adult designated under AS 47.30.725. The mental health care
15 professionals [TREATING PHYSICIAN] may not withhold any of the [THIS] information
16 described in this subsection from the patient or from others if the patient has signed a waiver
17 of confidentiality.

18 * Sec. 6. AS 47.30.825(d) is amended to read:

19 (d) A locked quiet room, or other form of physical restraint, may not be used, except as
20 provided in this subsection, unless a patient is likely to physically harm self or others unless
21 restrained. The form of restraint used shall be that which is in the patient's best interest and
22 which constitutes the least restrictive alternative available. When practicable, the patient shall
23 be consulted as to the patient's preference among forms of adequate, medically advisable
24 restraints including medication, and that preference shall be honored [CONSIDERED]. Nothing
25 in this section is intended to limit the right of staff to use a quiet room at the patient's request
26 or with the patient's knowing concurrence when considered in the best interests of the patient.
27 Patients placed in a quiet room or other physical restraint shall be checked at least every 15
28 minutes or more often if good medical practice so indicates. Patients in a quiet room must be
29 visited by a staff member at least once every hour and must be given adequate food and drink
30 and access to bathroom facilities. At no time may a patient be kept in a quiet room or other
31 form of physical restraint against the patient's will longer than necessary to accomplish the

1 purposes set out in this subsection. Ali uses of a quiet room or other restraint shall be recorded
2 in the patient's medical record, the information including but not limited to the reasons for its
3 use, the duration of use, and the name of the authorizing staff member.

4 * Sec. 7. AS 47.30.825(c) is repealed and reenacted to read:

5 (c) A patient who is capable of giving informed consent has the right to give and
6 withhold consent to medication and treatment in all situations that do not involve a crisis or
7 impending crisis as described in AS 47.30.838(a)(1). A facility shall follow the procedures
8 required under AS 47.30.836 - 47.30.839 before administering psychotropic medication.

9 * Sec. 8. AS 47.30 is amended by adding new sections to read:

10 Sec. 47.30.836. PSYCHOTROPIC MEDICATION IN NONEMERGENCIES. An
11 evaluation facility or designated treatment facility may not administer psychotropic medication
12 to a patient in a situation that does not involve a crisis under AS 47.30.838(a)(1) unless

13 (1) the patient has the capacity to give informed consent to the medication, as
14 described in AS 47.30.837, and gives that consent; the facility shall document the consent in the
15 patient's medical chart; or

16 (2) the patient is determined by a court to lack the capacity to give informed
17 consent to the medication and the court approves use of the medication under AS 47.30.839.

18 Sec. 47.30.837. INFORMED CONSENT. (a) A patient has the capacity to give informed
19 consent for purposes of AS 47.30.836 if the patient is competent to make mental health or
20 medical treatment decisions and the consent is voluntary and informed.

21 (b) When seeking a patient's informed consent under this section, the evaluation facility
22 or designated treatment facility shall give the patient information that is necessary for informed
23 consent in a manner that ensures maximum possible comprehension by the patient.

24 (c) If an evaluation facility or designated treatment facility has provided to the patient
25 the information necessary for the patient's consent to be informed and the patient voluntarily
26 consents, the facility may administer psychotropic medication to the patient unless the facility
27 has reason to believe that the patient is not competent to make medical or mental health treatment
28 decisions. If the facility has reason to believe that the patient is not competent to make medical
29 or mental health treatment decisions and the facility wishes to administer psychotropic medication
30 to the patient, the facility shall follow the procedures of AS 47.30.839.

31 (d) In this section,

1 (1) "competent" means that the patient

2 (A) has the capacity to assimilate relevant facts and to appreciate and
3 understand the patient's situation with regard to those facts, including the information
4 described in (2) of this subsection;

5 (B) appreciates that the patient has a mental disorder or impairment, if the
6 evidence so indicates; denial of a significantly disabling disorder or impairment, when
7 faced with substantial evidence of its existence, constitutes evidence that the patient lacks
8 the capability to make mental health treatment decisions;

9 (C) has the capacity to participate in treatment decisions by means of a
10 rational thought process; and

11 (D) is able to articulate reasonable objections to using the offered
12 medication;

13 (2) "informed" means that the evaluation facility or designated treatment facility
14 has given the patient all information that is material to the patient's decision to give or withhold
15 consent, including

16 (A) an explanation of the patient's diagnosis and prognosis, or their
17 predominant symptoms, with and without the medication;

18 (B) information about the proposed medication, its purpose, the method
19 of its administration, the recommended ranges of dosages, possible side effects and
20 benefits, ways to treat side effects, and risks of other conditions, such as tardive
21 dyskinesia;

22 (C) a review of the patient's history, including medication history and
23 previous side effects from medication;

24 (D) an explanation of interactions with other drugs, including over-the-
25 counter drugs, street drugs, and alcohol;

26 (E) information about alternative treatments and their risks, side effects,
27 and benefits, including the risks of nontreatment; and

28 (F) a statement describing the patient's right to give or withhold consent
29 to the administration of psychotropic medications in nonemergency situations, the
30 procedure for withdrawing consent, and notification that a court may override the patient's
31 refusal;

1 (3) "voluntary" means having genuine freedom of choice; a choice may be
2 encouraged and remain voluntary, but consent obtained by using force, threats, or direct or
3 indirect coercion is not voluntary.

4 Sec. 47.30.838. PSYCHOTROPIC MEDICATION IN EMERGENCIES. (a) Except as
5 provided in (c) of this section, an evaluation facility or designated treatment facility may
6 administer psychotropic medication to a patient without the patient's informed consent, regardless
7 of whether the patient is capable of giving informed consent, only if

8 (1) there is a crisis situation, or an impending crisis situation, that requires
9 immediate use of the medication to preserve the life of, or prevent significant physical harm to,
10 the patient or another person, as determined by a licensed physician or a registered nurse; the
11 behavior or condition of the patient giving rise to a crisis under this paragraph and the staff's
12 response to the behavior or condition must be documented in the patient's medical record; the
13 documentation must include an explanation of alternative responses to the crisis that were
14 considered or attempted by the staff and why those responses were not sufficient; and

15 (2) the medication is ordered by a licensed physician; the order

16 (A) may be written or oral and may be received by telephone, facsimile
17 machine, or in person;

18 (B) may include an initial dosage and may authorize additional, as needed,
19 doses; if additional, as needed, doses are authorized, the order must specify the
20 medication, the quantity of each authorized dose, the method of administering the
21 medication, the maximum frequency of administration, the specific conditions under
22 which the medication may be given, and the maximum amount of medication that may
23 be administered to the patient in a 24-hour period;

24 (C) is valid for only 24 hours and may be renewed by a physician for a
25 total of 72 hours, including the initial 24 hours, only after a personal assessment of the
26 patient's status and a determination that there is still a crisis situation as described in (1)
27 of this subsection; upon renewal of an order under this subparagraph, the facts supporting
28 the renewal shall be written into the patient's medical record.

29 (b) When a patient is no longer in the crisis situation that lead to the use of psychotropic
30 medication without consent under (a) of this section, an appropriate health care professional shall
31 discuss the crisis with the patient, including precursors to the crisis, in order to increase the

1 patient's and the professional's understanding of the episode and to discuss prevention of future
2 crises. The professional shall seek and consider the patient's recommendations for managing
3 potential future crises.

4 (c) If crisis situations as described in (a)(1) of this section occur repeatedly, or if it
5 appears that they may occur repeatedly, the evaluation facility or designated treatment facility
6 may administer psychotropic medication during no more than three crisis periods without the
7 patient's informed consent only with court approval under AS 47.30.839.

8 Sec. 47.30.839. COURT-ORDERED ADMINISTRATION OF MEDICATION. (a) An
9 evaluation facility or designated treatment facility may use the procedures described in this
10 section to obtain court approval of administration of psychotropic medication if

11 (1) there have been, or it appears that there will be, repeated crisis situations as
12 described in AS 47.30.838(a)(1) and the facility wishes to use psychotropic medication in future
13 crisis situations; or

14 (2) the facility wishes to use psychotropic medication in a noncrisis situation and
15 has reason to believe the patient is incapable of giving informed consent.

16 (b) An evaluation facility or designated treatment facility may seek court approval for
17 administration of psychotropic medication to a patient by filing a petition with the court,
18 requesting a hearing on the capacity of the person to give informed consent.

19 (c) A patient who is the subject of a petition under (b) of this section is entitled to an
20 attorney to represent the patient at the hearing. If the patient cannot afford an attorney, the court
21 shall direct the Public Defender Agency to provide an attorney. The court may, upon request of
22 the patient's attorney, direct the office of public advocacy to provide a guardian ad litem for the
23 patient.

24 (d) Upon the filing of a petition under (b) of this section, the court shall direct the office
25 of public advocacy to provide a visitor to assist the court in investigating the issue of whether
26 the patient has the capacity to give or withhold informed consent to the administration of
27 psychotropic medication. The visitor shall gather pertinent information and present it to the court
28 in written or oral form at the hearing. The information must include documentation of the
29 following:

30 (1) the patient's responses to a capacity assessment instrument administered at the
31 request of the visitor;

1 (2) any expressed wishes of the patient regarding medication, including wishes
2 that may have been expressed in a power of attorney, a living will, or oral statements of the
3 patient, including conversations with relatives and friends that are significant persons in the
4 patient's life as those conversations are remembered by the relatives and friends; oral statements
5 of the patient should be accompanied by a description of the circumstances under which the
6 patient made the statements, when possible.

7 (e) Within 72 hours after the filing of a petition under (b) of this section, the court shall
8 hold a hearing to determine the patient's capacity to give or withhold informed consent as
9 described in AS 47.30.837 and the patient's capacity to give or withhold informed consent at the
10 time of previously expressed wishes regarding medication if previously expressed wishes are
11 documented under (d)(2) of this section. The court shall consider all evidence presented at the
12 hearing, including evidence presented by the guardian ad litem, the petitioner, the visitor, and the
13 patient. The patient's attorney may cross-examine any witness, including the guardian ad litem
14 and the visitor.

15 (f) If the court determines that the patient is competent to provide informed consent, the
16 court shall order the facility to honor the patient's decision about the use of psychotropic
17 medication.

18 (g) If the court determines that the patient is not competent to provide informed consent
19 and, by clear and convincing evidence, was not competent to provide informed consent at the
20 time of previously expressed wishes documented under (d)(2) of this section, the court shall
21 approve the facility's proposed use of psychotropic medication. The court's approval under this
22 subsection applies to the patient's initial period of commitment if the decision is made during that
23 time period. If the decision is made during a period for which the initial commitment has been
24 extended, the court's approval under this subsection applies to the period for which commitment
25 is extended.

26 (h) If an evaluation facility or designated treatment facility wishes to continue the use
27 of psychotropic medication without the patient's consent during a period of commitment that
28 occurs after the period in which the court's approval was obtained, the facility shall file a request
29 to continue the medication when it files the petition to continue the patient's commitment. The
30 court that determines whether commitment shall continue shall also determine whether the patient
31 continues to lack the capacity to give or withhold informed consent by following the procedures

1 described in (b) - (e) of this section. The reports prepared for a previous hearing under (e) of
2 this section are admissible in the hearing held for purposes of this subsection, except that they
3 must be updated by the visitor and the guardian ad litem.

4 (i) If a patient for whom a court has approved medication under this section regains
5 competency at any time during the period of the patient's commitment and gives informed
6 consent to the continuation of medication, the evaluation facility or designated treatment facility
7 shall document the patient's consent in the patient's file in writing.

8 * Sec. 9. AS 47.30.840(a) is amended to read:

9 (a) A person undergoing evaluation or treatment under AS 47.30.660 - 47.30.915

10 (1) may not be photographed without the person's consent and that of the person's
11 guardian if a minor, except that the person may be photographed upon admission to a facility for
12 identification and for administrative purposes of the facility; all photographs shall be confidential
13 and may only be released by the facility to the patient or the patient's designee unless a court
14 orders otherwise;

15 (2) at the time of admission to an evaluation or treatment facility, shall have
16 reasonable precautions taken by the staff to inventory and safeguard the patient's personal
17 property; a copy of the inventory signed by the staff member making it shall be given to the
18 patient and made available to the patient's attorney and any other person authorized by the
19 patient to inspect the document;

20 (3) shall have access to an individual storage space for the patient's private use
21 while undergoing evaluation or treatment;

22 (4) shall be permitted to wear personal clothing, to keep and use personal
23 possessions including toilet articles if they are not considered unsafe for the patient or other
24 patients who might have access to them, and to keep and be allowed to spend a reasonable sum
25 of the patient's own money for the patient's needs and comfort;

26 (5) shall be allowed to have visitors at reasonable times;

27 (6) shall have ready access to letter writing materials, including stamps, and have
28 the right to send and receive unopened mail;

29 (7) shall have reasonable access to a telephone, both to make and receive
30 confidential calls;

31 (8) has the right to be free of corporal punishment;

1 (9) has the right to reasonable opportunity for indoor and outdoor exercise and
2 recreation;

3 (10) has the right, at any time, to have a telephone conversation with or be visited
4 by an attorney;

5 (11) may not be retaliated against or subjected to any adverse change of
6 conditions or treatment solely because of assertion of rights under this section.

7 * Sec. 10. AS 47.30 is amended by adding a new section to read:

8 Sec. 47.30.847. PATIENTS' GRIEVANCE PROCEDURES. (a) A patient has the right
9 to bring grievances about the patient's treatment, care, or rights to an impartial body within an
10 evaluation facility or designated treatment facility.

11 (b) An evaluation facility and a designated treatment facility shall have a formal
12 grievance procedure for patient grievances brought under (a) of this section. The facility shall
13 inform each patient of the existence and contents of the grievance procedure.

14 (c) An evaluation facility and a designated treatment facility shall have a designated staff
15 member who is trained in mental health consumer advocacy who will serve as an advocate, upon
16 a patient's request, to assist the patient in bringing grievances or pursuing other redress for
17 complaints concerning care, treatment, and rights.

18 * Sec. 11. AS 47.30.850 is amended to read:

19 Sec. 47.30.850. EXPUNGING OR SEALING [EXPUNGEMENT OF] RECORDS.
20 Following the discharge of a respondent from a treatment facility or the issuance of a court order
21 denying a petition for commitment, the respondent may at any time move to have all court
22 records pertaining to the proceedings expunged on condition that the respondent file a full release
23 of all claims of whatever nature arising out of the proceedings and the statements and actions of
24 persons and facilities in connection with the proceedings. Upon the filing of the motion and
25 full release, the court shall order the court records either expunged or sealed, whichever
26 the court considers appropriate under the circumstances.

27 * Sec. 12. AS 47.30.825(e) is repealed.