

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

BY THE SENATE RULES COMMITTEE

Offered: 5/8/92  
Referred: Today's Calendar

Sponsor(s): SENATORS POURCHOT, Collins

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mental health treatment and evaluation facilities and patients or  
2 former patients of those facilities."

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

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

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

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

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

10 \* Sec. 3. AS 47.30.772 is amended to read:

11 Sec. 47.30.772. MEDICATION AND TREATMENT. An evaluation facility or [A]  
12 designated treatment facility may administer medication or other treatment to an involuntarily  
13 committed patient only in a manner that is consistent with the provisions of AS 47.30.825 -  
14 47.30.865.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) In this section,

2 (1) "competent" means that the patient

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

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

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

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

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

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

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

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

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

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

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

1 refusal;

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

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

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

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

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

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

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

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

1 discuss the crisis with the patient, including precursors to the crisis, in order to increase the  
2 patient's and the professional's understanding of the episode and to discuss prevention of future  
3 crises. The professional shall seek and consider the patient's recommendations for managing  
4 potential future crises.

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

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

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

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

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

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

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

31 (1) the patient's responses to a capacity assessment instrument administered at the

1 request of the visitor;

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

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

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

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

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

1 continues to lack the capacity to give or withhold informed consent by following the procedures  
2 described in (b) - (e) of this section. The reports prepared for a previous hearing under (e) of  
3 this section are admissible in the hearing held for purposes of this subsection, except that they  
4 must be updated by the visitor and the guardian ad litem.

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

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

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

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

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

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

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

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

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

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

- 1 (8) has the right to be free of corporal punishment;
- 2 (9) has the right to reasonable opportunity for indoor and outdoor exercise and  
3 recreation;
- 4 (10) has the right, at any time, to have a telephone conversation with or be visited  
5 by an attorney;
- 6 (11) may not be retaliated against or subjected to any adverse change of  
7 conditions or treatment solely because of assertion of rights under this section.

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

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

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

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

19 \* Sec. 11. AS 47.30.850 is amended to read:

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

28 \* Sec. 12. AS 47.30.825(e) is repealed.