

HB

567

(9)

# COMMITTEE REPORT

## HOUSE

1/18/80

FURTHER:

Date: \_\_\_\_\_

Mr. Speaker:

The Committee on JUDICIARY has had HP 567

"An Act relating to public drunkenness and emergency treatment of intoxicated persons."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title
- new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

*Larry Martin*  
 \_\_\_\_\_  
*Robert C. Council*  
 \_\_\_\_\_  
 \_\_\_\_\_  
*ROBERT COUNCIL*  
 \_\_\_\_\_  
*Charles W. Pan*  
 \_\_\_\_\_  
*Buckhart*  
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*Walter Anderson*  
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*Charles W. Pan*  
 \_\_\_\_\_  
 CHAIRMAN

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 567 - "An Act relating to public drunkenness and  
Title emergency treatment of intoxicated persons".  
Requested by \_\_\_\_\_ Date 4/7/80

II. FISCAL DETAIL

Agency Affected Public Safety  
Program Category Affected \_\_\_\_\_  
BRU, Program, or Subprogram(s) Affected \_\_\_\_\_  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE April 7, 1980 PREPARED BY Michael J. Clemens  
AGENCY Public Safety  
PHONE 465-4336  
Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)

recommencty

---

public or private, must be

— separate health facility,

of American A.C.E.s,

24 hrs, instead of 12

---

3x or 30 days?

# CAP

Fbx

198 - Title 47 intake 146 to jail  
major problem

hosp, jail - two up time  
CAP was only able to take 13 people  
in 1979

Sec A. Hosp

problem - must they remain in  
facility to dry out, or at least sober.

wants (12 hr

Alcohol is #1 health problem.  
welfare folks.

None - Treatment facility lacking

335 - Title 47

Bethel

~~3600~~  
3600

private  
24 instead of 12  
300 time / 30 days //

Butt Cove -

Problems with 4547

NR 561  
4/7/80

Anch - Bryan Porter -

- 12-hour hold not helpful -
- jail space might not be problem
- 2 public drunks last year, 1 this year killed traffic
- incapacitated definition causes problem
- Moen says 40-60 night in public drunk category
- sometimes "beat officers back to streets"
- thinks would reduce some street crime
- if convicted court can sentence to treatment program

Fbks Sgt Carnahan -

- 1979 - 198 people, 146 to correctional facility
- first to hospital, then to " "
- (Alcohol program could take only 13. (CAP))
- if no medical problem won't take
- if take to CAP, leave, officer picks up again and takes to jail
- 12-hour hold in conjunction with jail is adequate
- street problem is "keep alive for another day", treatment is somebody else's problem
- police deal mainly with street drunks
- sometimes want to get warm
- welfare plus larceny

Nome - Lt Finney -

- no treatment facility, only jail
- lady from village 3 days, 3 12-hour holds
- drunk to point commit crimes
- 1<sup>st</sup> 6 mos - 335 12-hour holds, usually more in summer
- bill would help separate drunks from alcoholics

Bethel - Loren Campbell, Chief

- jail 24 people capacity, last weekend had 34 in jail, 20-25 in sleep-off center
- 3600 to sleep-off center last year, plus those <sup>by facility</sup>
- need more techs in Title 47 - trim private home, confinement to 24-hours, 3d time in 30 days hold for treatment in facility

Bethel - Campbell (cont)

- 10-12 calls on Fri night to private home, pick up person doesn't live there.
- large % of 3600 are repeaters (1200 people)
- 

Robert Buttsane -

- "incapacitated" definition problem, but doesn't favor re-criminalizing
- likes 24-hour hold (sober up time, testing, begin treatment, coord treatment w/ family, etc)
- Sec 180 - problem w/ physician exam, need take into custody first, then exam.
- 3900 admissions to non-emergency medical treatment (sleep-off)
- sometimes want to escape, have good time


Juneau Capt Joe Ciravolo -

- amend to include intox by drugs
- a(i) - medical exam may be needed
- brings to alcohol agency -
-

BILL ANALYSIS

ASSIGNMENT DATE \_\_\_\_\_

UNASSIGNED \_\_\_\_\_

DEPARTMENT	SPONSOR (PRINCIPAL)		BILL NO.
Public Safety			HB 567
DEPARTMENT POSITION			
Support			
DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Anderson	3/21/80	<i>WCF</i> William R. Nix	3/21/80
GOVERNOR'S OFFICE USE			
<input type="checkbox"/> POSITION NOTED <input type="checkbox"/> POSITION APPROVED <input type="checkbox"/> POSITION DISAPPROVED			
BY: _____ DATE: _____			
SUMMARY			
(1) RELATED BILLS (SIMILAR OR CONFLICTING)			
(2) OTHER AGENCIES AFFECTED BY BILL			
(2) a. ORGANIZATIONAL SUPPORT FOR BILL			(2) b. ORGANIZATIONAL OPPOSITION TO BILL
(3) PROGRAM EFFECTS OF BILL			
(4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED			
(5) AMENDMENTS PROPOSED:			
(6) COMMENTS:			

A21 3335 15.45 JA01 0074 15.45 04/08/80

#####

TO: REP. CHARLES FARR

FM: KAREN L. MENEFFEE, EXECUTIVE DIRECTOR OF THE FBX DOWNTOWN ASSN  
551 1/2 SECOND AVE, FBX AK 99701 PHONE - 452-8671

RE: HB 567

THE FBX DOWNTOWN ASSN WOULD LIKE TO LEND ITS SUPPORT TO HB 567. IT IS OUR UNDERSTANDING THAT THIS BILL IS FOR AN ACT RELATING TO DRUNKNESS AND EMERGENCY TREATMENT OF INTOXICATED PERSONS. HOWEVER, WE FEEL THERE IS A NEED FOR A TYPE OF DEFINITIVE LAW FOR AUTHORITY TO HANDLE INTOXICATED PEOPLE. IF THE MEDICAL AUTHORITIES WILL NOT TAKE THESE PEOPLE, IT WOULD BE OF GREAT BENEFIT IF THE LAW CLARIFIED WHAT IS TO BE DONE WITH THEM.

WE FEEL THIS BILL CERTAINLY ADDRESSES SOME OF OUR CONCERNS AND WE APPRECIATE THE OPPORTUNITY TO BE ABLE TO WORK WITH YOU ON THIS MATTER.

CAN BE CONTACTED ANYTIME.

FBX LIO/LJ

#####

PROTECTIVE CUSTODY UNDER 47.37.170

In 1979 198 persons were taken into custody under Title 47 by the Fairbanks Police Department with the following statistical breakdown:

SEX

FEMALE: 64  
MALE: 134

AGE

36 AVERAGE

DISPOSITION

25 - to Hospital  
146 - to Fairbanks Correctional Facility  
13 - to Alcohol Treatment Facility  
10 - Taken home  
3 - Released to a responsible person

TIME OF OCCURANCE

12 to 8 AM - 95  
8 AM to 4 PM - 37  
4 PM to 12 PM - 66

Of 198 taken into custody 130 were from Core Area of the City.

Rate of recidivism: 23 Persons more than 1 time  
15 Persons more than 2 times  
9 Persons more than 3 times  
7 Persons more than 4 times  
4 Persons more than 5 times

FROM: CHIEF R. WOLFE

FAX/LIO/MW

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 567 - "An Act relating to public drunkenness and  
 Title emergency treatment of intoxicated persons".  
 Requested by \_\_\_\_\_ Date 4/7/80

II. FISCAL DETAIL

Agency Affected Public Safety  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE April 7, 1980 PREPARED BY Michael J. Clemens  
 AGENCY Public Safety  
 PHONE 465-4336  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

Charlie - (Juman Police)

Joe Ciraulo called -  
He said he was way  
off yesterday on his  
figures.

The number of persons  
assisted or picked up  
for '79 was 367.

26 were picked up  
or assisted in Jan.

If you need more  
info, his no. is 586-2177

file copy

POSITION PAPER  
HOUSE BILL NO. 567

"An Act relating to public drunkenness and emergency treatment of intoxicated persons."

Background

1. AS 47.37, which HB 567 seeks to amend, was based on the Federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, PL 91-616. This law had its roots in earlier federal legislation:
  - a) The Supreme Court decisions in the 1966 cases of Easter vs. District of Columbia and Driver vs. Minnant which held that, because alcoholism was an illness rather than a self-induced behavioral disorder, an alcoholic could not be punished for public intoxication.
  - b) The 1968 District of Columbia Alcoholism Rehabilitation Act (PL 90-452) which also held alcoholism to be an illness and stated that public intoxication could no longer be handled as criminal offense.
  - c) The Alcoholic Rehabilitation Act of 1968, PL 90-574, which dealt specifically with alcoholism on a national basis. Congress declared in that Act that prosecution of alcoholics within the system of criminal justice perpetuates the broad problem of alcoholism, whereas treating it as a health problem permits early detection, prevention and effective treatment.

These decisions were based on the primary symptomatic evidence of alcoholism, i.e., public drunkenness.

Effects

1. Sec. 11.66.282 sets forth the definition of public drunkenness which includes 11.66.282 (a)(1) "a person who is in immediate danger of loss of life or limb." Certainly those persons who endanger themselves as a result of being intoxicated should be protected; however, they are also in need of treatment. Incarcerating those persons incapacitated by alcohol does not provide alcohol abuse treatment. Providing short-term incarceration is a very expensive, ineffective method of dealing with the problem of severe alcohol abuse that does not involve a criminal act.


Under current statute 47.37.170, peace officers have the authority to take persons "incapacitated by alcohol" into protective custody and to escort them to an appropriate health facility or to their homes. If no treatment facility or emergency medical service is available, then a person who is incapacitated by alcohol may be placed in a detention setting for his/her protection for a period not to exceed 12 hours. Basically, the law has kept this particular group of people out of the correctional system.

POSITION PAPER / Department of Health and Social Services

By keeping those people who do not victimize others and who need treatment out of the correctional system, three constructive things occur: (1) Persons suffering from alcohol abuse will not be exposed to a prison environment and will receive appropriate treatment. (2) More bed space becomes available for persons charged and convicted of serious criminal acts. (3) Fewer detention beds will have to be built at the approximate construction cost of \$100,000 per bed and a maintenance cost of \$55.00 a day.

- 2. By the inclusion of the words "drunk in a private place," House Bill 567 goes even beyond the national tradition of "drunk-in-public" laws. Depending upon the point of view of the offended person, this bill places any drinking person in the position of being subject to investigation and/or prosecution by any other person according to the latter's personal opinion of what constitutes drunken behavior.
- 3. House Bill 567 would repeal AS 47.37.170 in its entirety. Sub-section (a) of Section 170 deals, in effect, with the alcoholic or intoxicated person's right to come voluntarily to a public treatment facility, or to remove himself from danger by calling for the assistance of a peace officer or an alcoholism agency's emergency patrol. Sub-sections of 47.37.170 deal with the question of medical management of alcoholics, and would violate the rights of persons who are legally ill.
- 4. Furthermore, repealing Section 47.37.170 in its entirety by the passage of House Bill No. 567 would jeopardize the receipt of \$390,000 of federal alcoholism funds. These funds, which do not require a State General Fund match, are provided to the State of Alaska each year to assist in the implementation of the Uniform Alcoholism Treatment and Intoxication Act.
- 5. That portion of the definition of public drunkenness in the proposed legislation is included in other sections of the revised criminal code: Sec. 11.66.282(a)(2) corresponds with Sec. 11.61.120(a)(1); Sec. 11.66.282(a)(3) corresponds with 11.61.120(a)(5). Individuals who display disruptive behavior as described in those statutes can presently be arrested and charged with a misdemeanor offense.

The Department would respectfully recommend that the current law relating to public drunkenness 47.37.170 be modified, i.e. simplification of the "involuntary commitment" procedure, rather than being repealed.

Recommended by:  March 24, 1980  
 Helen D. Beirne, Commissioner Date  
 Dept. of Health & Social  
 Services

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 567  
 Title "An Act relating to public drunkenness and emergency treatment of intoxicated persons.  
 Requested by Judiciary Committee Date 01/18/80

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services  
 Program Category Affected Administration of Justice/Mental Health  
 BRU, Program, or Subprogram(s) Affected Adult Confinement/Alcoholism Administration  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
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TOTAL		*				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

- \* The Division of Corrections cannot predict the fiscal impact of HB 567, other than to expect an increase in the prison population. This increase will occur because "public drunkenness" will become a Class B Misdemeanor which carries a maximum penalty of a \$1000 fine and/or a 90-day prison sentence.

Theoretically, the following maximum increase could occur: The Office of Alcoholism & Drug Abuse reported 1,931 admissions to sleep-off and detoxification centers in 1979. Had those 1,931 people been arrested, convicted of public drunkenness and sentenced to serve 90 days, then Corrections would have had to provide 342 additional full-time beds to accommodate that specific group of offenders. It is, of course, unrealistic to assume that the above would occur.

On the other hand, if only 20 of those 1,931 people admitted to sleep-off centers were convicted and sentenced to serve 90 days, the Division would have to provide 5 full-time beds.

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

Prepared by: Roger C. Lange Date: 02/28/80  
 Division/Office: Corrections PH: 465-3376  
 Department of Health & Social Services

Alaska correctional centers are presently filled to capacity; therefore, regardless of the number of additional beds required to accommodate this group of offenders, Corrections would have to either build additional beds at an approximate cost of \$100,000 each and \$55.00 a day to maintain or place more long-term offenders in the Federal Bureau of Prisons system. It should be noted that the Corrections Master Plan predicts an increase of up to 40% in prison population due to the revision of the Alaska Criminal Code.

Potential loss of federal funds to the Office of Alcoholism:

NIAAA - Formula Grant	\$ 200,000
NIAAA - AIS Grant	<u>190,000</u>
	390,000

For the above reasons, the Department cannot estimate the fiscal impact which would occur as a result of enactment of HB 567.

# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 23, 1980

SUBJECT:           Constitutionality of HB 567 and CSHB 567  
                    (Work Order No. 8449)

TO:                 Representative Charles H. Parr  
                    Chairman, House Judiciary Committee

FROM:             Joseph A. Guthrie *JAG*  
                    Legislative Counsel

Does HB 567 violate the Eighth Amendment of the U.S.  
Constitution?

You have asked me to respond to an assertion that HB 567, which makes public drunkenness a criminal offense, is unconstitutional in light of Driver v. Hinnant, 356 F.2d 761 and Easter v. District of Columbia, 124 App. D.C. 33, 361 F2d 50. The Department of Health and Social Services incorrectly states that these cases are U.S. Supreme Court cases; instead they were rendered by the Court of Appeals in the 4th District and the District of Columbia, respectively. The courts in those cases found that criminal punishment of chronic alcoholics for public drunkenness is a violation of the Eighth Amendment's prohibition of cruel and unusual punishment because imposing such punishment would constitute punishment of a disease or status, which punishment was earlier barred by Robinson v. California, (1962) 370 U.S. 660, 8 L. Ed. 2d 758, 82 S. Ct. 1417, re den 371 U.S. 905, 9 L. Ed. 2d 166, 83 S. Ct. 202.

However, in Powell v. Texas, (1968) 392 U.S. 514, 20 L. Ed. 2d 1254, 88 S. Ct. 2154, the U. S. Supreme Court failed to hold that chronic alcoholism is a disease and that punishment of drunkenness on the part of a chronic alcoholic is a violation of the Eighth Amendment; however, the court's decision was without a majority opinion, with eight justices split evenly on the issue of whether chronic alcoholism is a disease of which drunkenness is a symptom, the punishment of which would be cruel and unusual within the meaning of the

U.S. Constitution. The decisive concurring opinion skirted the constitutional issue by taking the position that there was a lack of evidence which would bring into play that constitutional issue. Therefore, in view of the fact that there were four dissenting justices, this opinion, without more, would cast substantial doubt on the constitutionality of any intoxication statute which could be interpreted to apply to chronic alcoholics.

However, the Alaska Supreme Court, in Vick v. State, 453 P.2d 342 (1969), upheld the punishment of a chronic alcoholic for public drunkenness. In finding such punishment not to violate the constitutional ban against cruel and unusual punishment, the court adopted the position that on the basis of the current state of medical knowledge, the court could not conclude that chronic alcoholics suffer from such an irresistible compulsion to drink and to get drunk in public that they are utterly unable to control their acts and that the accused was subject to punishment, even though his condition might, for medical purposes, be described as a disease.

Constitutionality of lengthening the maximum period a person may be held in protective custody under AS 47.37.170(i) from 12 to 24 hours.

You have requested a committee substitute for HB 567 which would lengthen the period a person could be held in a detention facility under AS 47.37.170(i) from 12 to 24 hours. Such a change raises two constitutional considerations.

First, would a 24 hour time period be justified by permissible state objectives. The ostensible purpose of the existing twelve hour time period specified in AS 47.37.170(i) is to allow the person sufficient time to sober up. However, authorizing detention for a longer period of time raises the question of whether the detention is designed to further state interests which may only be pursued through the criminal process, particularly since the grounds for detention specified in AS 47.37.170(a) include action harmful to others and not to just the person intoxicated, i.e. subsection (a) provides that a person who appears to be intoxicated in or upon a licensed premises where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee, or peace officer may be taken

into protective custody. In this regard, the court in Opinion of the Justices, Me., 339 A.2d 510 stated:

Absent (1) full impairment of a person's ability to control or regulate his behavior (as would be signified by the concept "incapacitated by alcohol") or (2) such impairment to a substantial degree (as would be connotated by "intoxicated"), the fundamental premise of our legal system is that government may validly assert and maintain custodial control of an adult person's body (however temporarily), as a method of protecting the public safety only within the framework of the State's penological interests -- as concretely expressed in the criminal law's delineation of the offenses against the state and as embodying constitutional safeguards for those subjected to criminal processes.

Unless some persons do in fact require 24 hours to sober up, increasing the period of time which a person in protective custody can spend in a detention facility to 24 hours would seem questionable on its face, even though the detaining officer is required to release the person when he is no longer incapacitated or intoxicated by alcohol. In Jackson v. Indiana, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972) the court said:

At least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.

406 U.S. at 738, 92 S. Ct. at 1858.

While non-penological reasons might justify holding a person taken to a public or private treatment facility for longer than the time required to sober up (AS 47.37.170(d) authorizes detention at a treatment facility of an incapacitated person for up to 48 hours), the treatment services which might justify holding a person for longer than needed to sober up are commonly not available in detention facilities. Therefore, it would seem that the necessity of extending the period within which a person could be held in a detention facility needs to be examined in terms of whether 24 hours would ever be required for a person to recover from being intoxicated or incapacitated.

The second constitutional issue which would be raised by increasing the period of time a person could be held in protective custody in a detention facility from 12 to 24 hours is the question of whether a person could be held that long without affording him a hearing before a judicial officer.

No case authority exists on the question of how long a person incapacitated or intoxicated by alcohol may be held without a hearing, but numerous courts have considered the same factors which would be involved in the pre-hearing detention of intoxicated or incapacitated persons in the context of challenges to the pre-hearing detention of persons alleged to be mentally ill. In Lessard v. Schmidt, 399 F. Supp. 1078 the court said:

It can be argued that no deprivation of liberty is permissible under the due process clause without a prior hearing. We think, however, that the state may sometimes have a compelling interest in persons who threaten violence to themselves or others for the purpose of protecting society and the individual . . . Such an emergency measure can be justified only for the length of time necessary to arrange for a hearing before a neutral judge at which probable cause for the detention must be established . . . we believe that the maximum period which a person may be detained without a preliminary hearing is 48 hours.

The court in Lynch v. Baxley, 386 F. Supp. 378 (M.D. Ala. 1974) joined the court in Lessard, supra, in holding that detention is only justified for that period of time necessary to arrange a probable cause hearing, but found that seven days was the maximum period of time within which a hearing must be held. Even longer periods, 15 days and 45 days, respectively, were approved in Fhagen v. Miller, 29 N.Y.S.2d 348, 278 N.E.2d 615, 328 N.Y.S.2d 393, cert denied, 409 U.S. 845 (1972) and in Logan v. Arafah, 346 F. Supp. 1265 (D. Conn 1972), aff'd mem. sub nom. Briggs v. Arafah, 411 U.S. 911 (1973).

Therefore, it seems likely that increasing the period of time an intoxicated or incapacitated person may be held from 12 to 24 hours would not violate due process in respect to no hearing provided within the 24 hour period.

Is the need for treatment sufficient grounds for commitment?

Committee substitute for HB 567 adds to the grounds for long term commitment of an alcoholic who habitually lacks self control in using alcoholic beverages the fact that the person has been taken into protective custody under AS 47.37.170(b) three times in the preceding 12 months and is in need of a more sustained treatment program. This presents the question of whether a need for treatment alone presents adequate justification for treatment.

Until recently, courts and legislatures have assumed that the parens patriae power justified the involuntary commitment of the mentally ill solely for care and treatment. The use of the parens patriae power to detain the mentally ill in order to facilitate their rehabilitation is commonly traced to an 1845 decision of the Massachusetts Supreme Judicial Court. In *re Oakes*, 8 Law Rep. 122 (Mass. 1945), Chief Justice Shaw held that "the great law of humanity" justified depriving an insane person of his liberty whenever "restraint (was) necessary for his restoration, or (would) be conducive thereto."

The benevolent intention of the state does not, however, shield its use of the parens patriae authority from the constitutional requirements of substantive due process. Substantive due process demands that all state actions be reasonably related to a valid state goal. Moreover, actions affecting fundamental interests -- such as the deprivation of physical freedom and the concomitant infringement of other fundamental liberties which would be produced by the involuntary commitment on the ground of need for treatment of a person who has been repeatedly detained for being incapacitated by alcohol -- must be necessary to promote a compelling state interest.

Several recent cases have adopted this reasoning in holding that only persons who are dangerous to themselves or others may be committed.

In *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972) vacated and remanded on other grounds, 94 S. Ct. 713 (1974), a three judge federal district court held that the Wisconsin civil commitment statute could withstand a constitutional challenge only if construed to require a showing of an

"extreme likelihood that if the person is not confined he will do immediate harm to himself or others." The Lessard court also ruled that proof of dangerousness must include "a finding of a recent overt act, attempt, or threat to do substantial harm to oneself or another." Standards similar to those mandated in Lessard, supra, were adopted as part of an earlier consent decree entered by another three judge federal district court in Dixon v. Attorney General, 325 F. Supp. 966 (M.D. Pa. 1971). In that case, Pennsylvania agreed to prove "manifest indications that the subject poses a present threat of serious physical harm to other persons or himself" as a precondition to commitment of the mentally disabled. In Lynch v. Baxley, 386 F. Supp. 378, 389 - 392 (M.D. Ala. 1974), a three judge court discussed the matter of dangerousness as follows:

A finding of dangerousness indicates the likelihood that the person to be committed will inflict serious harm on himself or on others. In the case of dangerousness to others, this threat of harm comprehends the positive infliction of injury -- ordinarily physical injury, but possibly emotional injury as well. In the case of dangerousness to self, both the threat of physical injury and discernable neglect may warrant a finding of dangerousness. Although he does not threaten actual violence to himself, a person may be properly committable under the dangerousness standard if it can be shown that he is mentally ill, that his mental illness manifests itself in neglect or refusal to care for himself, that such neglect or refusal poses a real and present threat of substantial harm to his well being, and that he is incompetent to determine for himself whether treatment for his mental illness is desirable.

In the following cases the courts presented reasons why no compelling interest could be found for involuntarily committing mentally ill individuals who are neither dangerous to themselves or to others.

In State ex rel Hawks v. Lazaro, 202 S.E.2d 109 (W.Va. 1974), subsequently cited with approval in Kendall v. True, 391 F. Supp. 413 (1975), the court pointed out, in holding that the state could show no compelling state interest for committing for treatment a person who is neither dangerous to himself or others, that the society abounds with persons who should

be hospitalized for physical causes and yet society would not contemplate involuntary hospitalization for treatment.

In Doremus v. Farrell, 407 F. Supp. 509, 513, subsequently quoted with approval in Stamus v. Leonhardt, 414 F. Supp. 439, the court said:

To permit involuntary commitment upon a finding of "mental illness" and the need for treatment alone would be tantamount to condoning the State's commitment of persons deemed socially undesirable for the purpose of indoctrination or conforming the individuals beliefs to the beliefs of the state. Due process and equal protection require that the standards for commitment must be (a) that person is mentally ill and poses a serious threat of substantial harm to himself or to others, and (b) that this threat of harm has been evidenced by a recent overt act or threat. The threat of harm to oneself may be through neglect or inability to care for oneself.

Other cases finding that only individuals who are dangerous to themselves or to others may be committed are Bell v. Wayne County General Hospital at Eloise, 384 F. Supp. 1085 (1974), Anderson v. Soloman, 315 F. Supp. 1192, and Suzuki v. Quisenberry, 411 F. Supp. 1113.

I could find only one recent case in which the court rejected a contention that commitment of the nondangerous mentally ill violates due process, Fhagen v. Miller, 29 N.Y.2d 348, 278 N.E.2d 615, 328 N.Y.S.2d 393, cert. denied, 409 U.S. 845 (1972). Even in that case the court did not validate the commitment of persons solely for treatment purposes, but expanded the state's authority to commit under the police power to encompass not only commitment of persons behaving in ways harmful to others, but also commitment of persons for the purpose of the "preservation of the public order and public health." The court said at p. 618:

The public is entitled to prompt protection against the acts of such a person which, though not dangerous, might, if committed by a sane person, constitute a punishable offense or which, by reason of his urgent need for immediate care and treatment, might harm others, albeit in a nonviolent manner. The "protection of society" --

which we declared in Coates (Matter of Coates, (9 N.Y.S.2d 242, 249, 213 N.Y.S.2d 74, 79 173 N.E.2d 797, 801)) authorizes "immediate action" in the case of one allegedly mentally ill (9 N.Y.2d at p. 249, 213 N.Y.S.2d at p. 79 173 N.E.2d at p. 801) -- requires more than the mere prevention of serious violence; it reasonably, and necessarily, includes the preservation of public order and public health. As Justice Bloustein stated at special term -- "if the allegedly mentally ill person is engaging in conduct which, if committed by a sane person, would constitute disorderly conduct, criminal nuisance, public lewdness, or sexual abuse of a minor, the State's legitimate interest in protecting society would warrant temporary confinement as surely as if the individual was engaging in conduct amounting to felonious assault or homicide."

(65 Misc.2d 163, 170, 317 N.Y.S.2d 128, 136)

While the foregoing would seem to include behavior which one might otherwise not consider to be dangerous among that behavior justifying commitment, it does not make need for treatment alone adequate justification for commitment.

The trend in judicial reasoning indicated in the foregoing cases runs counter to the provision in CSHB 567 which would authorize long term commitment of persons who have both been (1) detained three times in the past year for being "incapacitated by alcohol (defined in AS 47.37.270(8) as "a person who . . . is rendered unconscious or has his judgment or physical mobility so impaired that he cannot recognize or extricate himself from conditions of apparent or imminent danger to his health or safety) and (2) is in need of a more sustained treatment program". If CS for HB 567 were enacted, persons could be committed solely on the basis of their need for treatment, even though they are not incapacitated at the time of commitment. The requirement that a person have been detained for being incapacitated three times in the last year cannot substitute for a finding that the person is dangerous to himself, particularly in view of the fact that a judicial officer never gets an opportunity to review the factual basis for these detentions when they occur.

Therefore, it would seem that providing that a ground for long term commitment is presented if a person has been

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detained for being incapacitated three times in the last year and has been found to be in need of a more sustained treatment program is unconstitutional as a violation of due process.

Must the term "incapacitated by alcohol" be defined in terms of a persons incapacity to make a decision in respect to his need for treatment?

CSHB 567 would delete from the definition of "incapacitated by alcohol" a requirement that the person be incapable of making a decision in regard to his need for treatment.

Although courts tend to discuss the state's power to protect and care for the mentally ill without considering the question of incapacity, language in several recent opinions indicates an awareness of the impropriety of expanding *parens patriae* commitments applicable to people who are capable of making their own treatment decisions. In Lessard v. Smith, supra, the court argued that a mentally ill person should be permitted to determine whether to seek hospitalization "unless the state can prove that the person is unable to make a decision about hospitalization because of the nature of his illness." With regard to dangerousness to self, the court implied that the commitment power should not be invoked even to prevent rational individuals from attempting suicide. Despite these views, the Lessard, supra, court did not include a requirement of incapacity as part of its constitutionally based interpretation of Wisconsin's involuntary commitment standards. The distinction between incapacity and mental illness suggested in Lessard, supra, had been more sharply drawn by the Second Circuit in Winters v. Miller, 446 F.2d 65 (2d Cir. cert. denied 404 U.S. 985 (1971)). Reviewing a civil rights action brought by an involuntarily committed Christian Scientist protesting forced medication, the court noted that, absent a determination of incompetence, the mentally ill individual remains free to refuse treatment. The court stated that forced treatment might be acceptable if the state were acting as *parens patriae*, but it found that *parens patriae* power only extended to mentally incompetent persons.

The limitation on *parens patriae* commitments suggested by Lessard, supra, and Winters, supra, appears to be required by the due process clause. Since the state interest in

Representative Charles H. Parr

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acting as *parens patriae* is premised on the need for the state to act to protect the well being of its citizens when they cannot care for themselves, the imposition of involuntary detention and commitment of incapacitated persons would seem necessary to vindicate that interest only when and individual is incapable of making his own evaluation of his need for psychiatric treatment.

Therefore, the repeal and re-enactment of AS 47.37.270(8) defining incapacitated person in a way which does not provide that the incapacitated person be unable to determine his need for treatment would seem to offend due process.

JAG:jdn

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§ 47.37.170

ALASKA STATUTES

§ 47.37.170

shall, if possible, refer the person to another approved public treatment facility.

(c) When a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the treatment facility that the patient is an alcoholic who requires help, the office shall arrange for assistance in obtaining supportive services and residential facilities. (§ 1 ch 207 SLA 1972)

**Sec. 47.37.170. Treatment and services for intoxicated persons and persons incapacitated by alcohol.** (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to his home, an approved public treatment facility, an approved private treatment facility, or another appropriate health facility. If all of the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

(b) A person who appears to be <sup>intoxicated</sup> ~~incapacitated~~ by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be <sup>intoxicated</sup> ~~incapacitated~~ by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

(c) A person who voluntarily appears or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. After the examination, he may be admitted as a patient or referred to another health facility. The approved public treatment facility which refers him shall arrange for his transportation.

(d) No person who, after medical examination, is found to be <sup>intoxicated</sup> ~~incapacitated~~ by alcohol at the time of his admission or to have become <sup>intoxicated</sup> ~~incapacitated~~ at any time after his admission, may be detained at a facility after he is no longer <sup>intoxicated</sup> ~~incapacitated~~ by alcohol. No person may be detained at a facility if he remains <sup>intoxicated</sup> ~~incapacitated~~ by alcohol for more than 48 hours after admission as a patient, unless he is committed under AS 47.37.180. A person may consent to remain in the facility as long as the physician in charge considers it appropriate.

§ 47.37.170 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.37.170

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to his home, if any. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be promptly notified. If an adult patient who is not ~~incapacitated~~ <sup>intoxicated</sup> requests that there be no notification of next of kin, his request shall be granted.

(g) Peace officers or members of the emergency service patrol who comply with this section are acting in the course of their official duty and are not criminally or civilly liable for it.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, an attempt shall be made to encourage the patient to submit to further diagnosis and appropriate voluntary treatment.

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until he is no longer intoxicated ~~or incapacitated~~ by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking him to a treatment facility, an emergency medical service or a detention facility, is taking him into protective custody and he shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps to protect himself, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has his judgment or physical mobility so impaired that he cannot readily recognize or extricate himself from conditions of apparent or imminent danger to his health or safety. The definition in AS 47.37.270(8) applies to other portions of this chapter. (§ 1 ch 207 SLA 1972; am §§ 1-4 ch 101 SLA 1976)

Possible substitute

(j.) For the purposes of this section "intoxicated person" means a person who exhibits any symptom or symptoms that indicate substantial loss of control of physical or mental faculties, including but not limited to slurred speech, bloodshot eyes, clumsiness, drowsiness, heavy odor of alcoholic beverages, or undue or abnormal excitation or suppression of the passions or feelings.

**Effect of amendment.** — The 1976 amendment substituted the language beginning "or a person who appears to be intoxicated" and ending "taken into protective custody and assisted" for "if he consents, may be assisted" and inserted "a member of" preceding "the emergency service patrol" in the second sentence of subsection (a), added the third sentence of that subsection, rewrote subsection (b), and added subsections (i) and (j).

**Legislative history report.** — For report on ch. 101, SLA 1976 (CSSSSB 336 am H), see 1976 House Journal, p. 555.

**Constitutionality.** — For case holding that this section as it existed prior to the 1977 amendment, which among other things rewrote subsection (b), did not countenance an unreasonable search in violation of the 4th amendment to the United States Constitution, see *Peter v. State*, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

**Sec. 47.37.180. Emergency commitment.** (a) An intoxicated person who (1) has threatened, attempted to inflict, or inflicted physical harm on another or is likely to inflict physical harm on another unless committed, or (2) is incapacitated by alcohol, may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(b) The certifying physician, spouse, guardian, or relative of the person to be committed, or any other responsible person, may make a written application for commitment under this section, directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate supporting the need for emergency treatment and stating that the physician has examined the person sought to be committed within two days before the certificate's date.

(c) Upon approval of the application by the administrator in charge of the facility, the person may be brought to the facility by a peace officer, a health officer, a member of the emergency service patrol, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be retained at the facility to which he was admitted, or transferred to another appropriate public or private treatment facility, until discharged under (e) of this section. However, no person may be detained under this section for more than 48 hours unless a district or superior court judge has reviewed and approved the commitment application.

(d) The administrator in charge of an approved public treatment facility may refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(e) When on the advice of his medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in a treatment facility for more than five days. If a petition for involuntary commitment under AS 47.37.190 has been filed within the five days and the administrator in charge of an

shall, if possible, refer the person to another approved public treatment facility.

(c) When a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the treatment facility that the patient is an alcoholic who requires help, the office shall arrange for assistance in obtaining supportive services and residential facilities. (§ 1 ch 207 SLA 1972)

X **Sec. 47.37.170. Treatment and services for intoxicated persons and persons incapacitated by alcohol.** (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to his home, an approved public treatment facility, an approved private treatment facility, or another appropriate health facility. If all of the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

(b) A person who appears to be incapacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

(c) A person who voluntarily appears or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. After the examination, he may be admitted as a patient or referred to another health facility. The approved public treatment facility which refers him shall arrange for his transportation.

(d) No person who, after medical examination, is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may be detained at a facility after he is no longer incapacitated by alcohol. No person may be detained at a facility if he remains incapacitated by alcohol for more than 48 hours after admission as a patient, unless he is committed under AS 47.37.180. A person may consent to remain in the facility as long as the physician in charge considers it appropriate.

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(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to his home, if any. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

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

(g) Peace officers or members of the emergency service patrol who comply with this section are acting in the course of their official duty and are not criminally or civilly liable for it.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, an attempt shall be made to encourage the patient to submit to further diagnosis and appropriate voluntary treatment.

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until he is no longer intoxicated or incapacitated by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking him to a treatment facility, an emergency medical service or a detention facility, is taking him into protective custody and he shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps to protect himself, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has his judgment or physical mobility so impaired that he cannot readily recognize or extricate himself from conditions of apparent or imminent danger to his health or safety. The definition in AS 47.37.270(8) applies to other portions of this chapter. (§ 1 ch 207 SLA 1972; am §§ 1—4 ch 101 SLA 1976)

§ 47.37.260 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.37.270

(b) Nothing in this chapter affects AS 11.70.030, relating to the defense of voluntary intoxication. (§ 1 ch 207 SLA 1972; am § 1 ch 186 SLA 1976)

**Effect of amendment.** — The 1976 amendment deleted "or" from the end of clause (1), added "including prohibitions against drinking intoxicating beverages in specified public places, or" to the end of clause (2), and added clause (3).

This section refers only to the sale, purchase, dispensation or use of alcoholic beverages. *Peter v. State*, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

And not to being intoxicated at "specific times and places". — See *Peter v. State*, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

A construction to expand the nonapplicability section to include anyone intoxicated on a highway would have the effect of emasculating the statute. *Peter v. State*, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

**Sec. 47.37.260. Application of Administrative Procedure Act.** Except as otherwise provided in this chapter, the Administrative Procedure Act (AS 44.62) applies to and governs all administrative action taken by the coordinator under this chapter. (§ 1 ch 207 SLA 1972)

**Sec. 47.37.270. Definitions.** In this chapter

(1) "alcoholic" means a person who habitually lacks self-control in using alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered, or his social or economic function is substantially disrupted;

(2) "approved private treatment facility" means a private agency meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(3) "approved public treatment facility" means a treatment agency operating under the direction and control of the office or providing treatment under this chapter through a contract with the office under AS 47.37.130(g) or through a grant awarded under AS 47.30.475, and meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(4) "commissioner" means the commissioner of health and social services;

(5) "coordinator" means the coordinator of the office of alcoholism;

(6) "department" means the Department of Health and Social Services;

(7) "emergency service patrol" means a patrol established under AS 47.37.230;

(8) "incapacitated by alcohol" means a person who is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment, as evidenced objectively by extreme physical debilitation, physical harm or threats of harm to others or chronic inability to hold regular employment;

(9) "incompetent person" means a person who has been adjudged incompetent by the appropriate court;

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Becky

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 23, 1980

SUBJECT:           Constitutionality of HB 567 and CSHB 567  
                    (Work Order No. 8449)

TO:                Representative Charles H. Parr  
                    Chairman, House Judiciary Committee

FROM:             Joseph A. Guthrie *JAG*  
                    Legislative Counsel

Does HB 567 violate the Eighth Amendment of the U.S.  
Constitution?

You have asked me to respond to an assertion that HB 567, which makes public drunkenness a criminal offense, is unconstitutional in light of Driver v. Hinnant, 356 F.2d 761 and Easter v. District of Columbia, 124 App. D.C. 33, 361 F2d 50. The Department of Health and Social Services incorrectly states that these cases are U.S. Supreme Court cases; instead they were rendered by the Court of Appeals in the 4th District and the District of Columbia, respectively. The courts in those cases found that criminal punishment of chronic alcoholics for public drunkenness is a violation of the Eighth Amendment's prohibition of cruel and unusual punishment because imposing such punishment would constitute punishment of a disease or status, which punishment was earlier barred by Robinson v. California, (1962) 370 U.S. 660, 8 L. Ed. 2d 758, 82 S. Ct. 1417, re den 371 U.S. 905, 9 L. Ed. 2d 166, 83 S. Ct. 202.

However, in Powell v. Texas, (1968) 392 U.S. 514, 20 L. Ed. 2d 1254, 88 S. Ct. 2154, the U. S. Supreme Court failed to hold that chronic alcoholism is a disease and that punishment of drunkenness on the part of a chronic alcoholic is a violation of the Eighth Amendment; however, the court's decision was without a majority opinion, with eight justices split evenly on the issue of whether chronic alcoholism is a disease of which drunkenness is a symptom, the punishment of which would be cruel and unusual within the meaning of the

U.S. Constitution. The decisive concurring opinion skirted the constitutional issue by taking the position that there was a lack of evidence which would bring into play that constitutional issue. Therefore, in view of the fact that there were four dissenting justices, this opinion, without more, would cast substantial doubt on the constitutionality of any intoxication statute which could be interpreted to apply to chronic alcoholics.

However, the Alaska Supreme Court, in Vick v. State, 453 P.2d 342 (1969), upheld the punishment of a chronic alcoholic for public drunkenness. In finding such punishment not to violate the constitutional ban against cruel and unusual punishment, the court adopted the position that on the basis of the current state of medical knowledge, the court could not conclude that chronic alcoholics suffer from such an irresistible compulsion to drink and to get drunk in public that they are utterly unable to control their acts and that the accused was subject to punishment, even though his condition might, for medical purposes, be described as a disease.

Constitutionality of lengthening the maximum period a person may be held in protective custody under AS 47.37.170(i) from 12 to 24 hours.

You have requested a committee substitute for HB 567 which would lengthen the period a person could be held in a detention facility under AS 47.37.170(i) from 12 to 24 hours. Such a change raises two constitutional considerations.

First, would a 24 hour time period be justified by permissible state objectives. The ostensible purpose of the existing twelve hour time period specified in AS 47.37.170(i) is to allow the person sufficient time to sober up. However, authorizing detention for a longer period of time raises the question of whether the detention is designed to further state interests which may only be pursued through the criminal process, particularly since the grounds for detention specified in AS 47.37.170(a) include action harmful to others and not to just the person intoxicated, i.e. subsection (a) provides that a person who appears to be intoxicated in or upon a licensed premises where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee, or peace officer may be taken

into protective custody. In this regard, the court in Opinion of the Justices, Me., 339 A.2d 510 stated:

Absent (1) full impairment of a person's ability to control or regulate his behavior (as would be signified by the concept "incapacitated by alcohol") or (2) such impairment to a substantial degree (as would be connotated by "intoxicated"), the fundamental premise of our legal system is that government may validly assert and maintain custodial control of an adult person's body (however temporarily), as a method of protecting the public safety only within the framework of the State's penological interests -- as concretely expressed in the criminal law's delineation of the offenses against the state and as embodying constitutional safeguards for those subjected to criminal processes.

Unless some persons do in fact require 24 hours to sober up, increasing the period of time which a person in protective custody can spend in a detention facility to 24 hours would seem questionable on its face, even though the detaining officer is required to release the person when he is no longer incapacitated or intoxicated by alcohol. In Jackson v. Indiana, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972) the court said:

At least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.

406 U.S. at 738, 92 S. Ct. at 1858.

While non-penological reasons might justify holding a person taken to a public or private treatment facility for longer than the time required to sober up (AS 47.37.170(d) authorizes detention at a treatment facility of an incapacitated person for up to 48 hours), the treatment services which might justify holding a person for longer than needed to sober up are commonly not available in detention facilities. Therefore, it would seem that the necessity of extending the period within which a person could be held in a detention facility needs to be examined in terms of whether 24 hours would ever be required for a person to recover from being intoxicated or incapacitated.

The second constitutional issue which would be raised by increasing the period of time a person could be held in protective custody in a detention facility from 12 to 24 hours is the question of whether a person could be held that long without affording him a hearing before a judicial officer.

No case authority exists on the question of how long a person incapacitated or intoxicated by alcohol may be held without a hearing, but numerous courts have considered the same factors which would be involved in the pre-hearing detention of intoxicated or incapacitated persons in the context of challenges to the pre-hearing detention of persons alleged to be mentally ill. In Lessard v. Schmidt, 399 F. Supp. 1078 the court said:

It can be argued that no deprivation of liberty is permissible under the due process clause without a prior hearing. We think, however, that the state may sometimes have a compelling interest in persons who threaten violence to themselves or others for the purpose of protecting society and the individual . . . Such an emergency measure can be justified only for the length of time necessary to arrange for a hearing before a neutral judge at which probable cause for the detention must be established . . . we believe that the maximum period which a person may be detained without a preliminary hearing is 48 hours.

The court in Lynch v. Baxley, 386 F. Supp. 378 (M.D. Ala. 1974) joined the court in Lessard, *supra*, in holding that detention is only justified for that period of time necessary to arrange a probable cause hearing, but found that seven days was the maximum period of time within which a hearing must be held. Even longer periods, 15 days and 45 days, respectively, were approved in Fhagen v. Miller, 29 N.Y.S.2d 348, 278 N.E.2d 615, 328 N.Y.S.2d 393, cert denied, 409 U.S. 845 (1972) and in Logan v. Arafah, 346 F. Supp. 1265 (D. Conn 1972), aff'd mem. sub nom. Briggs v. Arafah, 411 U.S. 911 (1973).

Therefore, it seems likely that increasing the period of time an intoxicated or incapacitated person may be held from 12 to 24 hours would not violate due process in respect to no hearing provided within the 24 hour period.

Is the need for treatment sufficient grounds for commitment?

Committee substitute for HB 567 adds to the grounds for long term commitment of an alcoholic who habitually lacks self control in using alcoholic beverages the fact that the person has been taken into protective custody under AS 47.37.170(b) three times in the preceding 12 months and is in need of a more sustained treatment program. This presents the question of whether a need for treatment alone presents adequate justification for treatment.

Until recently, courts and legislatures have assumed that the parens patriae power justified the involuntary commitment of the mentally ill solely for care and treatment. The use of the parens patriae power to detain the mentally ill in order to facilitate their rehabilitation is commonly traced to an 1845 decision of the Massachusetts Supreme Judicial Court. In re Oakes, 8 Law Rep. 122 (Mass. 1945), Chief Justice Shaw held that "the great law of humanity" justified depriving an insane person of his liberty whenever "restraint (was) necessary for his restoration, or (would) be conducive thereto."

The benevolent intention of the state does not, however, shield its use of the parens patriae authority from the constitutional requirements of substantive due process. Substantive due process demands that all state actions be reasonably related to a valid state goal. Moreover, actions affecting fundamental interests -- such as the deprivation of physical freedom and the concomitant infringement of other fundamental liberties which would be produced by the involuntary commitment on the ground of need for treatment of a person who has been repeatedly detained for being incapacitated by alcohol -- must be necessary to promote a compelling state interest.

Several recent cases have adopted this reasoning in holding that only persons who are dangerous to themselves or others may be committed.

In Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972) vacated and remanded on other grounds, 94 S. Ct. 713 (1974), a three judge federal district court held that the Wisconsin civil commitment statute could withstand a constitutional challenge only if construed to require a showing of an

"extreme likelihood that if the person is not confined he will do immediate harm to himself or others." The Lessard court also ruled that proof of dangerousness must include "a finding of a recent overt act, attempt, or threat to do substantial harm to oneself or another." Standards similar to those mandated in Lessard, supra, were adopted as part of an earlier consent decree entered by another three judge federal district court in Dixon v. Attorney General, 325 F. Supp. 966 (M.D. Pa. 1971). In that case, Pennsylvania agreed to prove "manifest indications that the subject poses a present threat of serious physical harm to other persons or himself" as a precondition to commitment of the mentally disabled. In Lynch v. Baxley, 386 F. Supp. 378, 389 - 392 (M.D. Ala. 1974), a three judge court discussed the matter of dangerousness as follows:

A finding of dangerousness indicates the likelihood that the person to be committed will inflict serious harm on himself or on others. In the case of dangerousness to others, this threat of harm comprehends the positive infliction of injury -- ordinarily physical injury, but possibly emotional injury as well. In the case of dangerousness to self, both the threat of physical injury and discernable neglect may warrant a finding of dangerousness. Although he does not threaten actual violence to himself, a person may be properly committable under the dangerousness standard if it can be shown that he is mentally ill, that his mental illness manifests itself in neglect or refusal to care for himself, that such neglect or refusal poses a real and present threat of substantial harm to his well being, and that he is incompetent to determine for himself whether treatment for his mental illness is desirable.

In the following cases the courts presented reasons why no compelling interest could be found for involuntarily committing mentally ill individuals who are neither dangerous to themselves or to others.

In State ex rel Hawks v. Lazaro, 202 S.E.2d 109 (W.Va. 1974), subsequently cited with approval in Kendall v. True, 391 F. Supp. 413 (1975), the court pointed out, in holding that the state could show no compelling state interest for committing for treatment a person who is neither dangerous to himself or others, that the society abounds with persons who should

be hospitalized for physical causes and yet society would not contemplate involuntary hospitalization for treatment.

In Doremus v. Farrell, 407 F. Supp. 509, 513, subsequently quoted with approval in Stamus v. Leonhardt, 414 F. Supp. 439, the court said:

To permit involuntary commitment upon a finding of "mental illness" and the need for treatment alone would be tantamount to condoning the State's commitment of persons deemed socially undesirable for the purpose of indoctrination or conforming the individuals beliefs to the beliefs of the state. Due process and equal protection require that the standards for commitment must be (a) that person is mentally ill and poses a serious threat of substantial harm to himself or to others, and (b) that this threat of harm has been evidenced by a recent overt act or threat. The threat of harm to oneself may be through neglect or inability to care for oneself.

Other cases finding that only individuals who are dangerous to themselves or to others may be committed are Bell v. Wayne County General Hospital at Eloise, 384 F. Supp. 1085 (1974), Anderson v. Soloman, 315 F. Supp. 1192, and Suzuki v. Quisenberry, 411 F. Supp. 1113.

I could find only one recent case in which the court rejected a contention that commitment of the nondangerous mentally ill violates due process, Fhagen v. Miller, 29 N.Y.2d 348, 278 N.E.2d 615, 328 N.Y.S.2d 393, cert. denied, 409 U.S. 845 (1972). Even in that case the court did not validate the commitment of persons solely for treatment purposes, but expanded the state's authority to commit under the police power to encompass not only commitment of persons behaving in ways harmful to others, but also commitment of persons for the purpose of the "preservation of the public order and public health." The court said at p. 618:

The public is entitled to prompt protection against the acts of such a person which, though not dangerous, might, if committed by a sane person, constitute a punishable offense or which, by reason of his urgent need for immediate care and treatment, might harm others, albeit in a nonviolent manner. The "protection of society" --

which we declared in Coates (Matter of Coates, (9 N.Y.S.2d 242, 249, 213 N.Y.S.2d 74, 79 173 N.E.2d 797, 801)) authorizes "immediate action" in the case of one allegedly mentally ill (9 N.Y.2d at p. 249, 213 N.Y.S.2d at p. 79 173 N.E.2d at p. 801) -- requires more than the mere prevention of serious violence; it reasonably, and necessarily, includes the preservation of public order and public health. As Justice Bloustein stated at special term -- "if the allegedly mentally ill person is engaging in conduct which, if committed by a same person, would constitute disorderly conduct, criminal nuisance, public lewdness, or sexual abuse of a minor, the State's legitimate interest in protecting society would warrant temporary confinement as surely as if the individual was engaging in conduct amounting to felonious assault or homicide."

(65 Misc.2d 163, 170, 317 N.Y.S.2d 128, 136)

While the foregoing would seem to include behavior which one might otherwise not consider to be dangerous among that behavior justifying commitment, it does not make need for treatment alone adequate justification for commitment.

The trend in judicial reasoning indicated in the foregoing cases runs counter to the provision in CSHB 567 which would authorize long term commitment of persons who have both been (1) detained three times in the past year for being "incapacitated by alcohol (defined in AS 47.37.270(8) as "a person who . . . is rendered unconscious or has his judgment or physical mobility so impaired that he cannot recognize or extricate himself from conditions of apparent or imminent danger to his health or safety) and (2) is in need of a more sustained treatment program". If CS for HB 567 were enacted, persons could be committed solely on the basis of their need for treatment, even though they are not incapacitated at the time of commitment. The requirement that a person have been detained for being incapacitated three times in the last year cannot substitute for a finding that the person is dangerous to himself, particularly in view of the fact that a judicial officer never gets an opportunity to review the factual basis for these detentions when they occur.

Therefore, it would seem that providing that a ground for long term commitment is presented if a person has been

detained for being incapacitated three times in the last year and has been found to be in need of a more sustained treatment program is unconstitutional as a violation of due process.

Must the term "incapacitated by alcohol" be defined in terms of a persons incapacity to make a decision in respect to his need for treatment?

CSHB 567 would delete from the definition of "incapacitated by alcohol" a requirement that the person be incapable of making a decision in regard to his need for treatment.

Although courts tend to discuss the state's power to protect and care for the mentally ill without considering the question of incapacity, language in several recent opinions indicates an awareness of the impropriety of expanding *parens patriae* commitments applicable to people who are capable of making their own treatment decisions. In Lessard v. Smith, supra, the court argued that a mentally ill person should be permitted to determine whether to seek hospitalization "unless the state can prove that the person is unable to make a decision about hospitalization because of the nature of his illness." With regard to dangerousness to self, the court implied that the commitment power should not be invoked even to prevent rational individuals from attempting suicide. Despite these views, the Lessard, supra, court did not include a requirement of incapacity as part of its constitutionally based interpretation of Wisconsin's involuntary commitment standards. The distinction between incapacity and mental illness suggested in Lessard, supra, had been more sharply drawn by the Second Circuit in Winters v. Miller, 446 F.2d 65 (2d Cir. cert. denied 404 U.S. 985 (1971)). Reviewing a civil rights action brought by an involuntarily committed Christian Scientist protesting forced medication, the court noted that, absent a determination of incompetence, the mentally ill individual remains free to refuse treatment. The court stated that forced treatment might be acceptable if the state were acting as *parens patriae*, but it found that *parens patriae* power only extended to mentally incompetent persons.

The limitation on *parens patriae* commitments suggested by Lessard, supra, and Winters, supra, appears to be required by the due process clause. Since the state interest in

Representative Charles H. Parr  
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acting as *parens patriae* is premised on the need for the state to act to protect the well being of its citizens when they cannot care for themselves, the imposition of involuntary detention and commitment of incapacitated persons would seem necessary to vindicate that interest only when and individual is incapable of making his own evaluation of his need for psychiatric treatment.

Therefore, the repeal and re-enactment of AS 47.37.270(8) defining incapacitated person in a way which does not provide that the incapacitated person be unable to determine his need for treatment would seem to offend due process.

JAG:jdn



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

TO: Legislative Affairs Agency  
FROM: Margaret W. Berck, Staff  
DATE: April 24, 1980

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Please put the attached work draft in final version form.

Thank you.

WO 7549  
Guthrie

Original sponsor: Judiciary Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 567

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to intoxicated persons."

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

8 \* Section 1. AS 47.37.170(i) is amended to read:

9 (i) A person taken to a detention facility under (a) or (b) of  
10 this section may be detained only (1) until a treatment facility or  
11 emergency medical service is made available, or (2) until he is no  
12 longer intoxicated or incapacitated by alcohol, or (3) for a maximum  
13 period of 24 [12] hours, whichever occurs first. A detaining officer or  
14 a detention facility official may release a person who is detained under  
15 (a) or (b) of this section at any time to the custody of a responsible  
16 adult. A peace officer or a member of the emergency service patrol, in  
17 detaining a person under (a) or (b) of this section and in taking him to  
18 a treatment facility, an emergency medical service or a detention facil-  
19 ity, is taking him into protective custody and he shall make reasonable  
20 efforts to provide for and protect the health and safety of the detainee.  
21 In taking a person into protective custody under (a) and (b) of this  
22 section, a detaining officer, a member of the emergency service patrol  
23 or a detention facility official may take reasonable steps to protect  
24 himself, including a full protective search of the person of a detainee.  
25 Protective custody under (a) and (b) of this section does not constitute  
26 an arrest and no entry or other record may be made to indicate that the  
27 person detained has been arrested or charged with a crime, except that a  
28 confidential record may be made which is necessary for the administrative  
29 purposes of the facility to which the person has been taken, [OR] which

1 is necessary for statistical purposes where the person's name may not be  
2 disclosed, or which is necessary to establish under AS 47.37.200 whether  
3 grounds for involuntary commitment exist under AS 47.37.190(a).

4 \* Sec. 2. AS 47.37.190(a) is amended to read:

5 (a) After a hearing initiated by petition of his spouse or guar-  
6 dian, a relative, the certifying physician, or the administrator in  
7 charge of an approved public treatment facility, a person may be com-  
8 mitted to the custody of the office by the superior court. The petition  
9 shall allege that the person is an alcoholic who habitually lacks self-  
10 control in using alcoholic beverages and that he (1) has threatened,  
11 attempted to inflict, or inflicted physical harm on another and that  
12 unless committed is likely to inflict physical harm on another; [OR] (2)  
13 is incapacitated by alcohol; or (3) has been taken into protective cus-  
14 tody under AS 47.37.170(b) three times in the preceding <sup>6</sup>~~12~~ months and is  
15 in need of a more sustained treatment program. [A REFUSAL TO UNDERGO  
16 TREATMENT DOES NOT CONSTITUTE EVIDENCE OF LACK OF JUDGMENT AS TO THE  
17 NEED FOR TREATMENT.] The petition shall be accompanied by a certificate  
18 of a licensed physician who has examined the person within two days  
19 before submission of the petition, unless the person whose commitment is  
20 sought has refused to submit to a medical examination, in which case the  
21 fact of refusal shall be alleged in the petition. The certificate shall  
22 set out the physician's findings in support of the allegations of the  
23 petition.

24 \* Sec. 3. AS 47.37.270(8) is repealed and re-enacted to read:

25 (8) "incapacitated by alcohol" means a person who, as a  
26 result of consumption of alcohol, is rendered unconscious or has his  
27 judgment or physical mobility so impaired that he cannot recognize or  
28 extricate himself from conditions of apparent or imminent danger to his  
29 health or safety.

1 \* Sec. 4. AS 47.37.270(10) is repealed and re-enacted to read:

2 (10) "intoxicated" or "intoxicated person" means a person  
3 whose physical or mental conduct is substantially impaired as a result  
4 of the introduction of an alcoholic beverage into his body and who  
5 exhibits those plain and easily observed or discovered outward mani-  
6 festations of behavior commonly known to be produced by the use of  
7 alcoholic beverages.

8 \* Sec. 5. AS 47.37.170(j) is repealed.

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promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

(7) The police, members of the emergency service, or treatment facility personnel, who in good faith act in compliance with this chapter are performing in the course of their official duty and are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment. [1977 ex.s. c 62 § 1; 1974 ex.s. c 175 § 1; 1972 ex.s. c 122 § 12.]

#### 70.96A.140 Involuntary commitment of alcoholics.

(1) When the person in charge of a treatment facility, or his designee, receives information alleging that a person is incapacitated as a result of alcoholism, the person in charge, or his designee, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court or district court. The petition shall allege that the person is an alcoholic who is incapacitated by alcohol, or that the person has twice before in the preceding twelve months been admitted for the voluntary treatment for alcoholism pursuant to RCW 70.96A.110 and is in need of a more sustained treatment program, or that the person is an alcoholic who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the petitioning facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than five and no more than ten days after the date the petition was filed unless the person petitioned against is presently being detained by the facility, pursuant to RCW 70.96A.120, as now or hereafter amended, in which case the hearing shall be held within forty-eight hours of the filing of the petition: *Provided, however,* That the above specified forty-eight hours shall be computed by including Saturdays but excluding Sundays and holidays: *Provided further,* That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his next of kin, a parent or his legal guardian if he is a minor, and any

other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the court believes that his presence is likely to be injurious to him; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him throughout the proceeding. If deemed advisable, the court may examine the person out of court-room. If the person has refused to be examined by a licensed physician, he shall be given an opportunity to be examined by a court appointed licensed physician. If he refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment facility. It shall not order commitment of a person unless it determines that an approved treatment facility is able to provide adequate and appropriate treatment for him and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the facility for treatment for a period of thirty days unless sooner discharged. At the end of the thirty day period, he shall be discharged automatically unless the facility, before expiration of the period, files a petition for his recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitment under subsection (5) of this section who has not been discharged by the facility before the end of the ninety day period shall be discharged at the expiration of that period unless the facility, before expiration of the period, obtains a court order on the grounds set forth in subsection (1) of this section for recommitment for a further period not to exceed ninety days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) of this section are permitted.

(7) Upon the filing of a petition for recommitment under subsections (5) or (6) of this section, the court shall fix a date for hearing no less than five and no more than ten days after the date the petition was filed: *Provided,* That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the

petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his parents or his legal guardian if he is a minor, and his attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(8) The facility shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment facility to another if transfer is medically advisable.

(9) A person committed to the custody of a facility for treatment shall be discharged at any time before the end of the period for which he has been committed and he shall be discharged by order of the court if either of the following conditions are met:

(a) In case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer an alcoholic or the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(10) The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, be represented by counsel at every stage of any proceedings relating to his commitment and recommitment, and have counsel appointed by the court or provided by the court, if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person shall, if he is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(11) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(12) The venue for proceedings under this section is the county in which person to be committed resides or is present. [1977 ex.s. c 129 § 1; 1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

**70.96A.150 Records of alcoholics and intoxicated persons.** (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records

for purposes of research into the causes and treatment of alcoholism, and the evaluation of alcoholism and treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities. [1972 ex.s. c 122 § 15.]

**70.96A.160 Visitation and communication with patients.** (1) Subject to reasonable rules regarding hours of visitation which the secretary may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The secretary may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities. [1972 ex.s. c 122 § 16.]

**70.96A.170 Emergency service patrol—Establishment—Rules.** (1) The state and counties, cities and other municipalities may establish or contract for emergency service patrols which are to be under the administration of the appropriate jurisdiction. A patrol consists of persons trained to give assistance in the streets and in other public places to persons who are intoxicated. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and may transport intoxicated persons to their homes and to and from treatment facilities.

(2) The secretary shall adopt rules pursuant to chapter 34.04 RCW for the establishment, training, and conduct of emergency service patrols. [1972 ex.s. c 122 § 17.]

**70.96A.180 Payment for treatment—Financial ability of patients.** (1) If treatment is provided by an approved treatment facility or emergency treatment is provided by a facility under RCW 70.96A.080(2)(a), and the patient has not paid or is unable to pay the charge therefor, the facility is entitled to any payment (a) received by the patient or to which he may be entitled because of the services rendered, and (b) from any public or private source available to the facility because of the treatment provided to the patient.

(2) A patient in a facility, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable to the facility for cost of maintenance and treatment of the patient therein in accordance with rates established.

(3) The secretary shall adopt rules governing financial ability that take into consideration the income, savings and other personal and real property of the person required to pay, and any support being furnished by him to any person he is required by law to support. [1972 ex.s. c 122 § 18.]

**70.96A.190 Criminal laws limitations.** (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or