

HB

2

SHES 79th ^{at least relating to} CSHB 2 (Rules) ^{will personal provisions}

Introduced 3-22-79

Logged - 3-29-79

Referred to Finance

Comm. Hearing 4-18-80 - held due to others asking to make amendments later.

" Action 0

Sponsors' → Letter of Intent letter

Notify
John Stillner. 3370

CSHB 2 - Passed 30 AYE - 10 not voting

- FN (1) Brian Hestell (Public Defender)
- FN (2) Richard Barriar (Ch. Court System)
- FN (3) Thos. Brenton Coal Div. HSS (Krusnick)

Please Notify

Mrs. Reed - wk - 6-7370 ✓
Hm - 9-9355

Deborah Eukauf - 272-5522 ²⁷⁹⁻⁴⁶²⁴ ^{not a working number}

Dr. Michael Graf - 452-8251 ✓

also
(Milements) Dept of Public Safety } all good
at Bill Brown }
coming " of Law }
Court Division }
sponsored by Sen. Ray Cheryl Morgan with
the cost cover }
4-16-80

Picky Plotnick - message@ 3591


STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
937-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 21, 1979

SUBJECT: House Bill 2 - Mental Illness
TO: Senator Glenn Hackney 
FROM: Kenneth E. Vassar, Legislative Counsel

I would like to bring to your attention a typographical error which is in CSHB 2 (Rules). It is in the definition of "provider of outpatient care" on page 3, lines 18 - 22 of that bill. A line was inadvertently deleted from the definition. This error can be cured by the following amendment:

Page 34, line 21

Before "by" insert the following:

"patients who are ordered to undergo involuntary outpatient treatment"

KEV:nem



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 17, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

In recommending passage of HB 2, it is the intent of the Judiciary Committee that:

1. No funds be diverted from existing community mental health centers to carry out this legislation.
2. Not all facilities be designated at once, rather that the designation program start with a few key facilities and expand as agreements can be negotiated and funds become available.
3. In designation of facilities consideration should be given to surplus capacity in existing hospitals and medical facilities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Parr".

Charles H. Parr
Chairman

ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CS FOR HOUSE BILL 2 (Judiciary) Revised
 Title Relating to mentally ill persons; and providing for effective date.
 Requested by Judiciary Committee Date 3/15/79

II. FISCAL DETAIL
 Agency Affected Health & Social Services
 Program Category Affected Mental Health
 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 79 | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 |
|--------------------------|-------|--------|--------|--------|--------|--------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | 19.0 | 2.8 | 3.1 | 3.4 | 3.7 |
| 300 CONTRACTUAL | | -100.0 | -100.0 | -50.0 | -130.0 | -70.0 |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | -737.6 | -444.6 | -569.8 | -718.3 | -788.4 |
| TOTAL | 19.0 | 856.6 | 2.8 | 3.1 | 3.4 | 3.7 |
| | | 1194.2 | -547.4 | -622.9 | -851.7 | -862.1 |

FUNDING (Thousands of Dollars)

| | FY 79 | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 |
|-----------------------------|-------|--------|--------|--------|--------|--------|
| GENERAL FUND | | 19.0 | | | | |
| FEDERAL FUNDS | | 856.6 | 2.8 | 3.1 | 3.4 | 3.7 |
| OTHER (Specify Fund Source) | | 1194.2 | -547.4 | -622.9 | -851.7 | -862.1 |
| | | | | | | |
| | | | | | | |

POSITIONS

| | FY 79 | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

SEE ATTACHED

| Line Item | Description | Amount |
|-------------------------------------|---|---------|
| 200 | Transportation costs associated with required periodic hearings | \$ 19.0 |
| 300 | DELETE cost of designating facilities (\$100.0) | 0 |
| 700 | DELETE 8 new community mental health professionals (\$400.0) | 0 |
| 700 | DELETE patient costs in new designated facilities (\$337.6) | 0 |
| Total House Finance Recommendation: | | \$ 19.0 |

Russ Meekins
 Russ Meekins, Chairman
 House Finance Committee Date: _____

IV. DATE 3/19/79 PREPARED BY Thomas R. Branton, Asst. Director
 AGENCY Health & Social Services, Div. of MH & DD
 Original: Legislative Finance PHONE 465-3370
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

CS FOR HOUSE BILL 2 (Judiciary) Revised

III. ANALYSIS

The first fiscal impact is the requirement of Article 8, 47.30.700. In community programs where a single mental health professional is employed and service demands are already high, we project a need to add an additional mental health professional. This would be an immediate first-year need. Each staff and related salary costs is projected at 50.0:

8 X 50.0 = 400.0 new community resources.

FY 81 following this will become a part of the regular program costs.

All in BRU Community Mental Health Grants, 03-36-03, Object Code 700.

The Department would project some increase in escort and transportation costs associated with the required periodic hearings in AS 12.45.090 and AS 12.45.110.

Year 1 will require a full review of at least 10 patients currently in Atascadero. Each patient requires 2 trooper escorts, therefore, 4 round trips X 10 patients = 40 round trips @ \$400 = 16.0. 2 days per diem for 2 troopers for 30 trips = 60 days per diem @ \$50 = 3.0.

Year FY 81 thereafter we project 4 new cases per year.

5 round trips each = 2.0.

4 days per diem X 4 trips = 16 days @ \$50 = .8.

All in BRU Contract Forensic Service, 03-36-02, Object Code 200.

The cost of designating a facility is projected as the associated costs of one professional who must assume the designated title as the head of the designated facility. The projected schedule and cost is:

1980 - Fairbanks, Juneau @ 50. = 100.0

1981 - Ketchikan, Kodiak @ 50. = 100.0

1982 - Valdez @ 50. = 50.0

1983 - Kenai, Bethel @ 65. = 130.0

1984 - Nome @ 70. = 70.0

All in Contract Forensic Service, 03-36-02, Object Code 300.

We project an increase in State costs associated with patients in the new designated facilities. When no other party is found to pay these expenses, the emergency hospital fund of the Division of Mental Health and Developmental

Disabilities must make payment. Costs are estimated at bed years on a statewide basis (1 bed year is 365 X daily cost).

| | | |
|------|-----------------------|---------|
| 1980 | 5 bed years @ 185/day | = 337.6 |
| 1981 | 6 bed years @ 203/day | = 444.6 |
| 1982 | 7 bed years @ 223/day | = 569.8 |
| 1983 | 8 bed years @ 246/day | = 718.3 |
| 1984 | 8 bed years @ 270/day | = 788.4 |

All in Regional Community Mental Health Services, 03-36-03, Object Code 700.

ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS FOR HOUSE BILL 2 (Judiciary) *See Revised*
 Title Relating to mentally ill persons; and providing for effective date.
 Requested by Judiciary Committee Date 3/15/79

II. FISCAL DETAIL

Agency Affected Health & Social Services
 Program Category Affected Mental Health
 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 79 | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 |
|--------------------------|-------|------------------------------------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | 19.0 | 2.8 | 3.1 | 3.4 | 3.7 |
| 300 CONTRACTUAL | | 100.0 | 100.0 | 50.0 | 130.0 | 70.0 |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | 737.6 | 444.6 | 569.8 | 718.3 | 788.4 |
| TOTAL | | 1194.2 ^{856.6} | 547.4 | 622.9 | 851.7 | 862.1 |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|--|------------------------------------|-------|-------|-------|-------|
| GENERAL FUND | | 1194.2 ^{856.6} | 547.4 | 622.9 | 851.7 | 862.1 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

SEE ATTACHED

IV. DATE 3/19/79 PREPARED BY Thomas R. Branton, Asst. Director
 AGENCY Health & Social Services, Div. of MH & DD
 PHONE 465-3370
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE
CS FOR HOUSE BILL 2 (Judiciary)

III. ANALYSIS

The first fiscal impact is the requirement of Article 8, 47.30.700. In community programs where a single mental health professional is employed and service demands are already high, we project a need to add an additional mental health professional. This would be an immediate first-year need. Each staff and related salary costs is projected at 50.0:

$8 \times 50.0 = 400.0$ new community resources.

FY 81 following this will become a part of the regular program costs.

All in BRU Community Mental Health Grants, 03-36-03, Object Code 700.

The Department would project some increase in escort and transportation costs associated with the required periodic hearings in AS 12.45.090 and AS 12.45.110.

Year 1 will require a full review of at least 10 patients currently in Atascadero. Each patient requires 2 trooper escorts, therefore, 4 round trips \times 10 patients = 40 round trips @ \$400 = 16.0. 2 days per diem for 2 troopers for 30 trips = 60 days per diem @ \$50 = 3.0.

Year FY 81 thereafter we project 4 new cases per year
5 round trips each = 2.0.
4 days per diem \times 4 trips = 16 days @ \$50 = .8.

All in BRU Contract Forensic Service, 03-36-02, Object Code 200.

The cost of designating a facility is projected as the associated costs of one professional who must assume the designated title as the head of the designated facility. The projected schedule and cost is:

1980 - Fairbanks, Juneau @ 50. = 100.0
1981 - Ketchikan, Kodiak @ 50. = 100.0
1982 - Valdez @ 50. = 50.0
1983 - Kenai, Bethel @ 65. = 130.0
1984 - Nome @ 70. = 70.0

All in Contract Forensic Service, 03-36-02, Object Code 300.

We project an increase in State costs associated with patients in the new designated facilities. When no other party is found to pay these expenses, the emergency hospital fund of the Division of Mental Health and Developmental

ANALYSIS CONTINUED
PAGE TWO

Disabilities must make payment. Costs are estimated at bed years on a statewide basis (1 bed year is 365 X daily cost).

| | | |
|------|-----------------------|---------|
| 1980 | 5 bed years @ 185/day | = 337.6 |
| 1981 | 6 bed years @ 203/day | = 444.6 |
| 1982 | 7 bed years @ 223/day | = 569.8 |
| 1983 | 8 bed years @ 246/day | = 718.3 |
| 1984 | 8 bed years @ 270/day | = 788.4 |

All in Regional Community Mental Health Services, 03-36-03, Object Code 700.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 2
 Title An Act relating to mentally ill persons - effective date
 Requested by HESS Date March 15, 1979

II. FISCAL DETAIL

Agency Affected Office of the Governor
 Program Category Affected Justice
 BRU, Program, or Subprogram(s) Affected Public Defender Agency

(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 79 | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 |
|--------------------------|-------|-------------|-------------|-------------|-------------|-------------|
| 100 PERSONAL SERVICES | | 63.8 | 67.0 | 70.4 | 73.9 | 77.6 |
| 200 TRAVEL | | 2.5 | 2.6 | 2.7 | 2.9 | 3.0 |
| 300 CONTRACTUAL | | 6.0 | 6.3 | 6.6 | 7.0 | 7.3 |
| 400 COMMODITIES | | .7 | .7 | .8 | .8 | .9 |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | 74.5 | 76.6 | 80.5 | 84.6 | 88.8 |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------------------|--|------|------|------|------|------|
| GENERAL FUND | | 74.5 | 76.6 | 80.5 | 84.6 | 88.8 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL TIME | 1 | 2 | 2 | 2 | 2 | 2 |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

This act provides for new hearing procedures for involuntary commitment for persons suffering from mental illness. Probable cause hearings, (with right of defense counsel) are to be held according to the following schedule:

1. 72 hours
2. 14 days
3. 90 days,
4. 120 days
5. every 120 day period thereafter.

An indigent respondent is entitled to be represented by the Public Defender Agency. In addition, the respondent is entitled to have his/her own medical professional testi-

This new hearing schedule would require an additional attorney in Anchorage, plus legal secretary. Six thousand dollars would be needed in contractual services to pay for expert testimony.

IV. DATE March 15, 1979 PREPARED BY Brian Shortell
 AGENCY Public Defender Agency

Original: Legislative Finance PHONE 270-7541

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

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 2
Title An Act Relating to Mentally Ill Persons
Requested by House Judiciary Committee Date 2/22/79

II. FISCAL DETAIL

Agency Affected Alaska Court System
Program Category Affected Administration of Justice
Budget Request Unit(s) Affected Alaska Court System

EXPENDITURES (Thousands of Dollars)

| | FY 79 | FY 80 | FY 81 | FY 82 | FY 83 | FY 84 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | 13.6 | 19.2 | 20.4 | 21.6 | 22.9 |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | 22.5 | 31.8 | 33.7 | 35.7 | 37.8 |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | 36.1 | 51.0 | 54.1 | 57.3 | 60.7 |

FUNDING (Thousands of Dollars)

| | | | | | | |
|-----------------|--|------|------|------|------|------|
| GENERAL FUND | | 36.1 | 51.0 | 54.1 | 57.3 | 60.7 |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify) | | | | | | |

POSITIONS

| | | | | | | |
|-----------|--|----|----|----|----|----|
| FULL TIME | | | | | | |
| PART TIME | | .6 | .6 | .6 | .6 | .6 |
| TEMPORARY | | | | | | |

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

The primary fiscal impact of HB 2 on the Alaska Court System will come in two areas: 1) increased number of hearings will require additional professional and clerical staff time; 2) the Court System must, when requested, appoint and pay for independent physicians to examine patients prior to the hearing held within 14 days of their commitment. This analysis looks at each cost area separately.

The Court System, in conjunction with the staff of API, has developed rough estimates of the number of hearings required under HB 2. These estimates are:

72 hour hearing - 200-250/year
14 day hearing - 150/year
90 day hearing 10-20/year

IV. DATE February 26, 1979 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545

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

Fiscal Note: HB 2 (Cont'd)

At the present time, the court is conducting 50-100 hearings per year, which require an average of one afternoon per week for 2 hours. Hearings are conducted at API, and the Probate Master and In-Court Clerk for the Court System travel to API for the hearings. It is projected that the increase of approximately 300 hearings/year will add about 7 hours/week to the hearing schedule, or roughly 20 percent of a full-time work week. The Attorney General, API staff, and generally the Public Defender also must attend each of these hearings.

In addition to in-court time, the calendaring, noticing, and clerical follow-up of the additional hearings will require approximately 20 percent of a full-time clerical position.

The personnel cost associated with this bill is therefore:

| | | | | | | |
|----------------|------------|---------------|---|-----------------|---|--------------|
| Probate Master | (Range 24) | \$38,868 | X | 20% | = | 7,774 |
| In-Court Clerk | (Range 12) | 16,296 | X | 20% | = | 3,259 |
| Court Clerk | (Range 10) | <u>14,328</u> | X | 20% | = | <u>2,866</u> |
| | | | | | | 13,899 |
| | | | | Benefits at 30% | | <u>4,169</u> |
| | | | | | | \$18,068 |

The cost to the Court System for psychiatric examination by independent physicians is projected as follows:

150 evaluations at \$200 = \$30,000

The projected fiscal impact for FY 80 reflects 75 percent of a total year's cost, due to the October 1, 1979 effective date. The following years are projected at 6 percent inflation increases.

4/9/80

CURRENT STATUTE

NEW SECTION

CSHB 2

* Section 1. AS 47.30 is amended by adding new sections to read:

ARTICLE 6. MENTAL HEALTH PROGRAM.

Sec. 47.30.655. PURPOSE. The purpose of this major revision of Alaska civil commitment statutes is to more adequately protect the legal rights of persons suffering from mental illness. The legislature has attempted to balance the individual's constitutional right to physical liberty and the state's interest in (1) protecting society from persons who are dangerous to others; and (2) protecting persons who are dangerous to themselves, by providing due process safeguards at all stages of commitment proceedings. In addition, the following principles of modern mental health care have guided this revision:

- (1) that persons be given every opportunity to accept voluntary treatment before involvement with the judicial system;
- (2) that persons be treated in the least restrictive alternative environment consistent with their treatment needs;
- (3) that treatment occur as promptly as possible and as close to the individual's home as possible;
- (4) that a system of mental health community facilities and supports be available;
- (5) that patients be informed of their legal rights and be informed of and allowed to participate in their treatment program as much as possible;
- (6) that persons who are mentally ill but not dangerous to others be committed only if there is a reasonable expectation of improving their mental condition.

4/9/80

CURRENT STATUTE

Sec. 47.30.010. Powers and duties of department. (a) The department is the mental health authority of the state, and shall (1) develop and submit to the surgeon general of the United States Public Health Service, and administer a complete and comprehensive program for the prevention of mental illness and the care and treatment of the mentally ill, including in-patient and out-patient care and treatment; (2) take the actions and undertake the obligations which are necessary to participate in federal grants-in-aid programs and accept federal or other financial aid from whatever sources for the study, examination, care and treatment of the mentally ill; and (3) shall administer AS 47.30.010 — 47.30.340.

(b) The department may

(1) designate, operate, and maintain hospitals and other health facilities equipped and qualified to provide in-patient and out-patient care and treatment for the mentally ill;

(2) take the actions necessary to carry out a program for the prevention of mental illness or for the furnishing of in-patient and out-patient care or treatment for the mentally ill, including the procurement of services of specialists or other persons on a contractual or other basis;

(3) provide for the hospitalization of mentally ill patients in designated hospitals;

(4) enter into arrangements with the surgeon general of the public health service for the care or treatment of the mentally ill in hospitals of the public health service in the state or in another state;

(5) enter into contracts with hospitals for the custody and care or treatment of the mentally ill;

(6) enter into contracts which incorporate safeguards consistent with AS 47.30.010 — 47.30.340 and the preservation of the civil rights of the patients with another state for the custody and care or treatment of patients previously committed from this state under 48 U.S.C. § 46 et seq., and P.L. 830, 84th Congress, 2nd Session, 70 Stat. 709;

(7) prescribe the form of applications, records, reports, and medical certificates required by AS 47.30.010 — 47.30.340;

CSHB 2

Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The department is the mental health authority of the state and shall

(1) administer a comprehensive program for the prevention of mental illness and the care and treatment of the mentally ill, including inpatient and outpatient care and treatment and the procurement of services of specialists or other persons on a contractual or other basis;

(2) take the actions and undertake the obligations which are necessary to participate in federal grants-in-aid programs and accept federal or other financial aid from whatever sources for the study, examination, care, and treatment of the mentally ill;

(3) administer AS 47.30.655 - 47.30.915;

(4) designate, operate, and maintain treatment facilities equipped and qualified to provide inpatient and outpatient care and treatment for the mentally ill;

(5) provide for the placement of mentally ill patients in designated treatment facilities;

(6) enter into arrangements with governmental agencies for the care or treatment of the mentally ill in facilities of the governmental agencies in the state or in another state;

(7) enter into contracts with treatment facilities for the custody and care or treatment of the mentally ill;

4/9/80

CURRENT STATUTE

CSHB 2

(8) require reports from the head of a hospital concerning the care of patients;

(9) visit each hospital to review methods of care or treatment for patients;

(10) investigate complaints made by a patient or an interested party on behalf of a patient;

(11) delegate upon mutual agreement to another office or agency of it, or a political subdivision of this state, or a hospital designated, any of the duties and powers imposed upon it by AS 47.30.010 — 47.30.340; and

(12) provide for and pay the costs of transportation of patients and of the attendants who are needed, if transportation is necessary to secure appropriate examinations or hospitalization of the mentally ill, or for returning a patient discharged or placed on convalescent status from a hospital to his home or place of convalescence. (§ 102 ch 87 SLA 1957)

Am. Jur., ALR and C.J.S. references. —
26 Am. Jur., Hospitals and Asylums, § 1 et
seq.; 25 Am. Jur., Insane and Other
Incompetent Persons, § 1 et seq.

Municipal power to accept and administer
trust for insane asylum, 10 ALR 1377.
44 C.J.S. Insane Persons §§ 62 to 72.

Sec. 47.30.290. Department may adopt and issue regulations. The department may adopt appropriate regulations to implement AS 47.30.010 — 47.30.340 and to cover matters not expressly touched upon or anticipated but necessarily implied by the provisions of AS 47.30.010 — 47.30.340. (§ 130 ch 87 SLA 1957)

(8) enter into contracts which incorporate safeguards consistent with AS 47.30.655 - 47.30.915 and the preservation of the civil rights of the patients with another state for the custody and care or treatment of patients previously committed from this state under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd Session, 70

(9) prescribe the form of applications, records, reports, requests for release and consents to medical or psychological treatment required by AS 47.30.655 - 47.30.915;

(10) require reports from the head of a treatment facility concerning the care of patients;

(11) visit each treatment facility at least annually to review methods of care or treatment for patients;

(12) investigate complaints made by a patient or an interested party on behalf of a patient;

(13) delegate upon mutual agreement to another officer or agency of it, or a political subdivision of this state, or a treatment facility designated, any of the duties and powers imposed upon it by AS 47.30.655 - 47.30.915; and

(14) promulgate regulations to implement the provisions of AS 47.30.655 - 47.30.915.

4/9/80

CURRENT STATUTE

CSHB 2

NEW SECTION
SEC. 47.30.040(C)
NEWLY ADMITTED PATIENTS

ARTICLE 7. VOLUNTARY ADMISSION FOR TREATMENT.

Sec. 47.30.67C. STANDARDS FOR VOLUNTARY ADMISSION. A person 14 years of age or older may be voluntarily admitted to a treatment facility if he is suffering from mental illness and he voluntarily signs the admission papers.

Sec. 47.30.675. NOTICE OF RIGHTS. (a) Upon application for voluntary admission a person shall be given a copy of the following documents which shall be explained to him as necessary:

(1) notice of rights as set out in AS 47.30.825 - 47.30.865 and an explanation of any document served upon him; and

(2) notice that should he desire to leave at a time when the treatment facility determines that he is mentally ill and as a result is likely to cause serious harm to himself or others or is gravely disabled, the facility could initiate commitment proceedings against him.

(b) If the applicant for voluntary admission does not understand English, the explanation shall be given in a language he understands.

Sec. 47.30.680. DISCHARGE OF VOLUNTARY PATIENTS. The professional person in charge of the treatment facility or his designee shall discharge any patient who no longer meets the standards established in AS 47.30.670.

4/9/80

CURRENT STATUTECSHB 2

NEW SECTION

Sec. 47.30.685. NOTICE OF INTENT TO LEAVE FACILITY; COMMITMENT. A voluntary patient who is 14 years of age or older and who desires to leave a treatment facility must submit to the facility a written notice of intent to leave on a form provided to him by the facility. Upon immediate investigation, the professional person in charge of the treatment facility or a designated mental health professional shall evaluate the patient in writing and discharge the patient immediately or give him written notice that involuntary commitment proceedings will be initiated against him. The treatment facility may detain the patient for no more than 48 hours after receipt of the patient's notice of intent to leave in order to initiate involuntary commitment proceedings.

Sec. 47.30.690. VOLUNTARY ADMISSION OF MINORS UNDER 14 YEARS OF AGE. (a) A minor under the age of 14 may be admitted for 30 days evaluation, diagnosis and treatment at a designated treatment facility if his parent or guardian signs the admission papers and if, in the opinion of the professional person in charge of the facility,

(1) he is gravely disabled or is suffering from mental illness and as a result he is likely to cause serious harm to himself or others;

(2) there is no less restrictive alternative available for his treatment; and

(3) there is reason to believe that the patient's mental condition could be improved by the course of treatment.

4/9/80

CURRENT STATUTECSHB 2

New SECTION

(b) The minor may be released by the treatment facility at any time during the 30-day period if the professional person in charge of the facility or his designated mental health professional determines the minor would no longer benefit from continued hospitalization and the minor is not dangerous. The minor's parents or his guardian must be notified by the facility of the contemplated release and that, unless they initiate involuntary commitment proceedings, the minor will be released.

Sec. 47.30.695. NOTICE OF REQUEST FOR RELEASE OF MINORS UNDER 14 YEARS OF AGE FROM VOLUNTARY DETENTION AND COMMITMENT. The parent or guardian of any minor who is less than 14 years of age may request and obtain immediate release of the minor at any time.

4/9/80

CURRENT STATUTE

Sec. 47.30.070. Hospitalization upon court order. (a) An interested party, a licensed physician, a peace officer or the head of an institution in which an individual is hospitalized, or the department may, by filing an application with the superior court, start proceedings for the hospitalization of an individual by judicial commitment.

(b) On receipt of an application, the superior court shall give notice of the commencement of proceedings to the proposed patient, to his legal guardian, and to other interested parties.

(c) As soon as practicable after notice of the commencement of proceedings is given, the superior court shall appoint one or more designated examiners to examine the proposed patient and report within 48 hours to the court their findings as to the mental condition of the patient and his need for care or treatment in a hospital. The court may consider the choice of the patient in appointing an examiner. If the designated examiner reports that the proposed patient refuses to submit to an examination, the court shall give notice to the proposed patient and order him to submit to the examination. The order may direct that he be taken into custody and detained pending a hearing.

(d) The examination shall be held at a hospital or other medical facility, at the home of the proposed patient, or at another suitable place, inside or outside this state, not likely to have a harmful effect on his health.

(e) If the report of the designated examiner states that the proposed patient is not mentally ill, the court shall terminate the proceedings and dismiss the application. Otherwise, the court shall immediately fix a date for a hearing and give notice of the hearing. The hearing shall be held not more than 15 days from receipt of the report of the designated examiner.

(f) The proposed patient, the applicant, the legal guardian and other interested parties, as determined by the superior court, shall be given notice of the hearing and an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The proposed patient shall not be required to be present, and the court may exclude all persons not necessary for the conduct of the proceedings.

(g) The hearing shall be conducted as informally as is consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The entire proceedings may be recorded stenographically or with the use of mechanical recording devices which the superior court approves. The

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ARTICLE 8. INVOLUNTARY ADMISSION FOR TREATMENT.

Sec. 47.30.700. INITIATION OF INVOLUNTARY COMMITMENT PROCEDURES.

(a) Upon petition of any adult person, a judge shall immediately conduct a screening investigation or direct a local mental health professional employed by the department or by a program which receives money from the department under AS 47.30.520 - 47.30.620 to conduct a screening investigation of the person alleged to be mentally ill and, as a result of that condition, alleged to be gravely disabled or to present a likelihood of serious harm to himself or others. Within 48 hours after the completion of the screening investigation, a judge may issue an ex parte order orally or in writing, stating that there is probable cause to believe a person is mentally ill and that condition causes the person to be gravely disabled or to present a likelihood of serious harm to himself or others. The court shall provide findings on which the conclusion is based, appoint an attorney to represent the respondent, and may direct that a peace officer take the person into custody and deliver him to the nearest designated appropriate facility for emergency examination or treatment. The ex parte order shall be provided to the respondent and made a part of the respondent's clinical record.

(b) The petition required in (a) of this section shall allege that the respondent is reasonably believed to present a likelihood of serious harm to himself or others or is gravely disabled as a result of mental illness and shall specify the factual information on which that belief is based including the names and addresses of all persons known to the petitioner who have knowledge of those facts through personal observation.

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court shall prepare and maintain a summary record of all relevant and material evidence which is offered concerning the mental condition and the residence of the proposed patient and may relax the rules of evidence to the extent of receiving affidavits, certificates of licensed physicians and other writings of similar apparent authenticity and reliability.

(h) An opportunity to be represented by counsel or advisor shall be given to the proposed patient, and if neither he nor others provide counsel or advisor, the superior court shall appoint a counsel or advisor. If not less than two days before the date fixed for the hearing, the proposed patient or his counsel or advisor files a written request with the superior court, the court shall summon and impanel a jury of six adult residents of the judicial district in which the court officiates, preferably from the court's jury list or the last voters' list, if available, to hear and consider the evidence concerning the mental condition and residence of the proposed patient.

(i) The superior court shall terminate the proceedings and dismiss the application upon completion of the hearing and consideration of the record, except that the court shall order the hospitalization of the proposed patient for an indeterminate period if the court or the jury finds the proposed patient is mentally ill and (1) because of his illness is likely to injure himself or others if allowed to remain at liberty; or (2) is in need of immediate care or treatment in a hospital, and because of his illness, lacks sufficient insight or capacity to make responsible decisions concerning hospitalization.

(j) If the superior court orders the hospitalization of the proposed patient, a finding shall be made as to the residence of the patient. A copy of the finding and the summary of proceeding shall accompany the patient to the hospital. The order of hospitalization shall be directed to the department. The department shall assure the order's execution.

(k) Notwithstanding any other provision of AS 47.30.010 - 47.30.340, except AS 47.30.170, commitment proceedings under this section shall not be commenced with respect to a patient admitted under AS 47.30.020 unless release of the patient is first requested in accordance with AS 47.30.050.

(l) An order for hospitalization under this section is not a judicial determination of legal incompetency, except to the extent provided in AS 47.30.130(b). Proceedings for a determination of legal incompetency and the appointment of a guardian for a patient who has been ordered hospitalized may be started before, during or after proceedings under this section, if the circumstances of the case require and the condition of the patient permits. (§ 103 ch 87 SLA 1957; am §§ 5 - 7 ch 227 SLA 1959)

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This section and AS 47.30.060 are silent on burden and standard of proof. State v. Alto, Sup. Ct. Op. No. 1777 (File No. 3748), 589 P.2d 492 (1979).

Different treatment of persons civilly committed by reason of insanity and of persons acquitted of crime by reason of insanity. — See State v. Alto, Sup. Ct. Op.

No. 1777 (File No. 3748), 589 P.2d 402 (1979).

187 (File No. 311), 388 P.2d 816 (1964)
Kostic v. Smedley, Sup. Ct. Op. No. 103
(File No. 2140), 522 P.2d 535 (1974).

Cited in Clark v. State, Sup. Ct. Op. No.

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Sec. 17.30.030. Emergency hospitalization. (a) If the certificate by a licensed physician under AS 17.30.020 states a belief that the individual is likely to injure himself or others if allowed to remain at liberty, or is in need of immediate hospitalization, an interested party or peace officer may, upon endorsement of the certificate for this purpose by the department or by a superior court, take the individual into custody, apply to a designated hospital for his admission, and transport him to the hospital.

(b) An interested party or peace officer who has good and valid reason to believe that an individual is mentally ill, and because of his illness is likely to injure himself or others if not immediately restrained, may, pending examination or certification by a licensed physician, or pending endorsement of the certification as provided in (a) of this section, take the individual into custody, and transport him to the most accessible medical facility and obtain a certificate for endorsement under (a) of this section, or take the steps which are necessary to arrange for a judicial commitment under AS 17.30.070. Transportation shall be allowed as is set out in AS 17.30.110. The application for admission shall state the circumstances under which the individual was taken into custody and the reason for the belief.

(c) AS 17.30.010 — 17.30.240 do not limit the availability and utilization of designated hospitals or designated parts of them for other appropriate purposes except that the use of the designated hospitals or parts of them shall be primarily for the care and treatment of the mentally ill. (§ 104 ch 87 SLA 1957)

Sec. 47.30.705. EMERGENCY DETENTION FOR EVALUATION. A peace officer who has probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to himself or others of such an immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures set out in AS 47.30.700, may cause the person to be taken into custody and delivered to a treatment or evaluation facility. Upon arrival at the treatment facility, the peace officer shall complete an application for examination of the person in custody and be interviewed by a mental health professional at the facility.

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Sec. 17.30.090. Detention under special circumstances. (a) Pending removal to a hospital, a patient taken into custody under AS 47.30.030 or AS 47.30.070 or ordered hospitalized under AS 47.30.070 or pending the hearing under AS 47.30.070 may be detained in a medical facility, his home, a licensed foster home, or any other suitable facility under the reasonable conditions which the department fixes. The patient shall not, except because of and during an extreme emergency, be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. The department shall take the reasonable measures, including provision for medical care, which are necessary to

assure proper care of an individual temporarily detained under this section.

(b) No patient may be released or discharged from custody during the pendency of proceedings for judicial hospitalization if, in the opinion of the head of the hospital, it would be unsafe to the patient or others, unless the superior court, upon the application of the patient or an interested party, determines justifiable reason exists for release or discharge.

(c) No patient held on order of a court in an action or proceeding arising out of a criminal offense may be discharged except after 15 days' written notice to the court. (§ 110 ch 87 SLA 1957)

REFER TO AS 47.30.705

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Sec. 47.30.010. Newly-admitted patients. (a) The head of a designated hospital shall have a preliminary examination of each patient held within 48 hours after the close of the day of his admission by a designated examiner, to determine if there is a reasonable necessity existing for the patient's continued hospitalization and immediate medical attention.

(b) At the end of the 48 hours, a patient admitted under AS 47.30.020 or AS 47.30.030, shall be discharged without application if a preliminary examination has not been held or if, upon examination, the designated examiner refuses or fails to certify to the head of the designated hospital that in his opinion the patient is mentally ill and is either likely to injure himself or others if allowed at liberty, or in need of care or treatment in a hospital and because of his illness lacks sufficient insight or capacity to make responsible decisions concerning it. All other patients shall be discharged when, in the opinion of the head of the designated hospital, there is no further need for their hospitalization. Notice of discharge shall be given to the department and the court or person responsible for the order of hospitalization, who shall have an additional 48 hours within which to make other arrangements under AS 47.30.070 or otherwise.

(c) A patient admitted under AS 47.30.020 or AS 47.30.030 may remain for treatment on a voluntary basis under the same conditions prescribed for patients admitted under AS 47.30.020, with the conditions stated in AS 47.30.050 applying with respect to discharge. If a patient admitted under AS 47.30.020 or AS 47.30.030 elects to remain for treatment on a

voluntary basis, the head of the designated hospital in that instance shall ascertain that the patient has at the time sufficient insight or capacity to make responsible application for his own hospitalization and the head of the hospital or his designee shall certify his opinion to this. Notice of the patient's decision to remain on a voluntary basis shall be given to the court that issued the order. (§ 105 ch 87 SLA 1957; am § 4 ch 127 SLA 1959)

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Sec. 47.30.710. EXAMINATION. (a) A patient who is delivered under AS 47.30.700 or 47.30.705 for emergency examination and treatment to a treatment facility shall be thoroughly examined and evaluated as to his mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.

(b) If the mental health professional who performs the emergency examination has reason to believe that the patient is (1) mentally ill and that condition causes the person to be gravely disabled or to present a likelihood of serious harm to himself or others, and (2) is in need of care or treatment, the mental health professional may hospitalize him on an emergency basis. If a judicial order has not been obtained under AS 47.30.700, the mental health professional shall apply for an ex parte order authorizing hospitalization for emergency treatment.

Sec. 47.30.715. ACCEPTANCE OF ORDER. When a facility receives a proper order for evaluation, it must accept the order and the person for an evaluation period not to exceed 72 hours. The facility shall promptly notify the court of the date and time of the respondent's arrival. The court shall set a date, time and place for a 14-day commitment hearing, to be held if needed within 72 hours after the respondent's arrival, and the court shall notify the facility, the respondent, his attorney, and the prosecuting attorney of the hearing arrangements. Evaluation personnel, where used, shall similarly notify the court of the date and time when they first met with the respondent.

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Sec. 47.30.120. Notice of hospitalization. When a patient is admitted to a hospital under AS 47.30.010 — 47.30.340 other than upon his own application, the head of the designated hospital shall notify immediately the patient's legal guardian, parent, spouse, or next of kin, if known. The head of the designated hospital admitting an individual under a provision of AS 47.30.010 — 47.30.340, or discharging an individual so admitted, shall immediately make a report of the discharge to the superior court and to the department. (§ 114 ch 87 SLA 1957)

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Sec. 47.30.720. RELEASE BEFORE EXPIRATION OF 72-HOUR PERIOD. If at any time in the course of the 72-hour period the mental health professionals conducting the evaluation determine that the respondent does not meet the standards for commitment specified in AS 47.30.700, the respondent shall be discharged from the facility or the place of evaluation by evaluation personnel and the petitioner and the court so notified.

Sec. 47.30.725. COMMITMENT PROCEEDING RIGHTS; NOTIFICATION. (a) When a person is detained for evaluation under this chapter, he shall be immediately notified orally and in writing of his rights under this section. Notification shall be in a language understood by the respondent. His guardian, if any, and if the respondent requests, an adult desig-

nated by the respondent, shall also be notified of the respondent's rights under this section.

(b) Unless a person is released or voluntarily admits himself for treatment within 72 hours of his arrival at the facility or, if he is evaluated by evaluation personnel, within 72 hours from the beginning of his meeting with evaluation personnel, he is entitled to a court hearing to be set for not later than the end of that 72-hour period to determine whether there is cause to detain him after the 72 hours have expired for up to an additional 14 days on the grounds that he is gravely disabled or mentally ill and as a result presents a likelihood of serious harm to himself or others. The facility or evaluation personnel shall give notice to the court of the releases and voluntary admissions under AS 47.30.700 - 47.30.820.

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(c) The respondent has a right to communicate immediately, at the department's expense, with his guardian, if any, or an adult designated by the respondent and the attorney designated in the ex parte order, or any attorney of the respondent's choice.

(d) The respondent has the right to be represented by an attorney, to present evidence and to cross-examine witnesses who testify against him at the hearing.

(e) The respondent has the right to be free of the effects of medication and other forms of treatment to the maximum extent possible before the 14-day commitment hearing; however, the facility or evaluation personnel shall be able to treat him with medication under prescription by a licensed physician or a less restrictive alternative of his preference if, in the opinion of a licensed physician and another mental health professional, these treatments are necessary to

- (1) prevent bodily harm to the respondent or others;
- (2) prevent such deterioration of the respondent's mental condition that subsequent treatment might not enable him to recover; or
- (3) allow the respondent to prepare for and participate in the proceedings.

(f) A respondent, if he is represented by counsel, may waive, orally or in writing, the 72-hour time limit on the 14-day commitment hearing and have the hearing set for a date no more than seven calendar days after his arrival at the facility. The respondent's counsel shall immediately notify the court of the waiver.

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Sec. 47.30.730. PROCEDURE FOR 14-DAY COMMITMENT; PETITION FOR COMMITMENT. (a) In the course of the 72-hour evaluation period, a petition for commitment to a treatment facility may be filed in court. The petition must be signed by two mental health professionals who have examined the respondent. The petition must

(1) allege that the respondent is mentally ill and as a result is likely to cause harm to himself or others or is gravely disabled;

(2) allege that the evaluation staff has considered but has not found that there are any less restrictive alternatives available that would adequately protect the respondent or others; or, if a less restrictive involuntary form of treatment is sought, specify the treatment and the basis for supporting it;

(3) allege with respect to a gravely disabled respondent that there is reason to believe that the respondent's mental condition could be improved by the course of treatment sought;

(4) allege that a specified treatment facility or less restrictive alternative that is appropriate to the respondent's condition has agreed to accept the respondent;

(5) allege that the respondent has been advised of the need for, but has not accepted, voluntary treatment, and request that the court commit the respondent to the specified treatment facility or less restrictive alternative for a period not to exceed 14 days;

(6) list the prospective witnesses who will testify in support of commitment or involuntary treatment;

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(7) list the facts and specific behavior of the respondent supporting the allegation in (1) of this subsection.

(b) A copy of the petition shall be served on the respondent, his attorney, and his guardian, if any, before the 14-day commitment hearing.

Sec. 47.30.735. 14-DAY COMMITMENT. (a) Upon receipt of a proper petition for commitment, the court shall hold a hearing at the date and time previously specified according to procedures set out in AS 47.30.-715.

(b) The hearing shall be conducted in a physical setting least likely to have a harmful effect on the mental or physical health of the respondent, within practical limits. At the hearing, in addition to other rights specified in this chapter, the respondent has the right

(1) to be present at the hearing; this right may be waived only with the respondent's informed consent; if the respondent is incapable of giving informed consent, the respondent may be excluded from the hearing only if the court, after hearing, finds that the incapacity exists and that there is a substantial likelihood that the respondent's presence at the hearing would be severely injurious to his mental or physical health;

(2) to view and copy all petitions and reports in the court file of his case;

(3) to have the hearing open or closed to the public as he elects;

(4) to be proceeded against according to the rules of evi-

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dence applicable to civil proceedings;

- (5) to have an interpreter if he does not understand English;
- (6) to present evidence on his behalf;
- (7) to cross-examine witnesses who testify against him;
- (8) to remain silent.

(c) At the conclusion of the hearing the court may commit the respondent to a treatment facility for not more than 14 days if it finds, by clear and convincing evidence, that the allegations required in AS 47.30.730(a) are true.

(d) If the court finds that there is a viable less restrictive alternative available and that the respondent has been advised of and refused voluntary treatment through the alternative, the court may order the less restrictive alternative treatment for not more than 14 days.

(e) The court shall specifically state to the person committed, and give the person written notice, that if commitment or other involuntary treatment beyond the 14 days is to be sought, the person shall have the right to a full hearing or jury trial.

Sec. 47.30.740. PROCEDURE FOR 90-DAY COMMITMENT FOLLOWING 14-DAY COMMITMENT. (a) At any time during the respondent's 14-day commitment, the professional person in charge of the treatment facility to which the person has been confined, or his professional designee, may file with the court a petition for 90-day commitment of that person. The petition must include all material required under AS 47.30.730(a) except that references to "14 days" shall be read as "90 days"; and

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(1) allege that the respondent has attempted to inflict or has inflicted serious bodily harm upon himself or another since his acceptance for evaluation, or that he was committed initially as a result of conduct in which he attempted or inflicted serious bodily harm upon himself or another, or that he continues to be gravely disabled;

(2) allege that the respondent has received appropriate and adequate care and treatment during his 14-day commitment;

(3) be verified by the professional person in charge of the facility providing treatment during the 14-day commitment, or his professional designee.

(b) The court shall have copies of the petition for 90-day commitment served upon the respondent, his attorney, and his guardian, if any. The petition for 90-day commitment and proofs of service shall be filed with the clerk of the court, and a date for hearing shall be set, by the end of the next judicial day, for not later than five judicial days from the date of filing of the petition. The clerk shall notify the respondent, his attorney, and the petitioner of the hearing date at least three judicial days in advance of the hearing.

(c) Findings of fact relating to the respondent's behavior made at a 14-day commitment hearing under AS 47.30.735 shall be admitted as evidence and may not be rebutted except that newly discovered evidence may be used for the purpose of rebutting the findings.

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Sec. 47.30.745. 90-DAY COMMITMENT HEARING RIGHTS. (a) A person subject to a petition for 90-day commitment has, in addition to the rights specified elsewhere in this chapter, or otherwise applicable, the rights enumerated in this section. Written notice of these rights shall be served on the respondent, his attorney, his guardian, if any, and an adult designated by the respondent at the time the petition for 90-day commitment is served. An attempt shall be made by oral explanation to insure that the respondent understands the rights enumerated in the notice. If the respondent does not understand English, the explanation shall be given in a language he understands.

(b) Unless the respondent is released or voluntarily admits himself following the filing of a petition and before the hearing, he is entitled to a judicial hearing within five judicial days of the filing of the petition as set out in AS 47.30.740(b) to determine whether the allegations required in AS 47.30.740(a) are true. If the respondent voluntarily admits himself following the filing of the petition, the voluntary admission constitutes a waiver of any hearing rights under AS 47.30.740 or under AS 47.30.685. If at any time during the respondent's voluntary admission under this subsection, the respondent submits to the facility a written notice of intent to leave, the professional person in charge of the treatment facility may file with the court a petition for 120-day commitment of the respondent under AS 47.30.770. The 120-day commitment hearing shall be scheduled for a date not earlier than 90 days after the respondent's voluntary admission.

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(c) The respondent is entitled to a jury trial upon request filed with the court if the request is made at least two judicial days before the hearing. If the respondent requests a jury trial, the hearing may be continued for no more than 10 calendar days. The jury shall consist of six persons.

(d) If a jury trial is not requested, the court may still continue the hearing at the respondent's request for no more than 10 calendar days.

(e) The respondent has a right to retain an independent licensed physician or other mental health professional to examine him and to testify on his behalf. Upon request by an indigent respondent, the court shall appoint an independent licensed physician or other mental health professional to examine him and testify on his behalf. The court shall give consideration to an indigent respondent's request for a specific physician or mental health professional. A motion for the appointment may be filed in court at any reasonable time before the hearing and shall be acted upon promptly. Reasonable fees and expenses for such expert examiners shall be determined by the rules of court.

(f) The proceeding shall in all respects be in accord with constitutional guarantees of due process and, except as specifically provided in this chapter, the rules of evidence and procedure in civil proceedings.

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(g) Until the court issues a final decision, the respondent shall continue to be treated at the treatment facility unless the petition for 90-day commitment is withdrawn. If no decision has been made within 20 days of filing of the petition, not including extensions of time due to jury trial or other requests by the respondent, he shall be released.

Sec. 47.30.750. CONDUCT OF HEARING. The hearing shall be conducted in the same manner, and with the same rights for the respondent, as set out in AS 47.30.735(b).

Sec. 47.30.755. COURT ORDER. (a) After the hearing and within the time limit specified in AS 47.30.745, the court may commit the respondent to a treatment facility for no more than 90 days if the court or jury finds by clear and convincing evidence that the allegations required in AS 47.30.740(a) are true.

(b) If the court finds that there is a less restrictive alternative available and that the respondent has been advised of and refused voluntary treatment through the alternative, the court may order the less restrictive alternative treatment after acceptance by the program of the respondent for a period not to exceed 90 days.

Sec. 47.30.760. PLACEMENT AT CLOSEST FACILITY. Treatment shall always be available at a state-operated hospital; however, if space is available and upon acceptance by another treatment facility, a respondent who is committed shall be placed by the court at the treatment facility closest to his home unless the court finds that

(1) another treatment facility in the state has a program

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more suited to the respondent's condition, and this interest outweighs the desirability of the respondent being closer to home;

(2) another treatment facility in the state is closer to the respondent's friends or relatives who could benefit him through their visits and communications; or

(3) the respondent wants to be further removed from his home, and the mental health professionals who sought his commitment concur in the desirability of removed placement.

Sec. 47.30.765. APPEAL. The respondent shall have the right to an appeal from any order of involuntary commitment. The court shall inform the respondent of this right.

Sec. 47.30.770. ADDITIONAL 120-DAY COMMITMENT. (a) The respondent shall be released from involuntary treatment at the expiration of 90 days unless the professional person in charge of the treatment facility, or his designee, files a petition for a 120-day commitment conforming to the requirements of AS 47.30.740(a) except that all references to "14-day commitment" shall be read as "the previous 90-day commitment" and all references to "90-day commitment" shall be read as "120-day commitment".

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(b) The procedures for service of the petition, notification of right, and judicial hearing shall be as set out in AS 47.30.740 -47.30.750. If the court or jury finds by clear and convincing evidence that the grounds for 90-day commitment as set out in AS 47.30.755 are present, the court may order the respondent committed for an additional treatment period not to exceed 120 days from the date on which the first 90-day treatment period would have expired.

(c) Successive 120-day commitments are permissible on the same ground and under the same procedures as the original 120-day commitment. No order of commitment may exceed 120 days.

(d) Findings of fact relating to the respondent's behavior made at a 14-day commitment hearing under AS 47.30.735, a 90-day commitment hearing under AS 47.30.750, or a previous 120-day commitment hearing under this section shall be admitted as evidence and may not be rebutted except that newly discovered evidence may be used for the purpose of rebutting the findings.

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Sec. 47.30.775. COMMITMENT OF MINORS. The provisions of AS 47.-30.700 - 47.30.820 are applicable to minors; however, all notices required to be served on the respondent in AS 47.30.700 - 47.30.820 shall also be served on the parent or guardian of respondents who are minors, and parents or guardians of minor respondents shall be notified that they may appear as parties in any commitment proceeding concerning the minor and that as parties they are entitled to retain their own attorney or have one appointed for them by the court. A minor has the same rights to waiver and informed consent as an adult under this chapter; however, he shall be represented by counsel in waiver and consent proceedings.

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Sec. 47.30.050. Application for discharge and emergency detention. (a) An individual, 30 days after admission to a designated hospital under AS 47.30.020 or an individual admitted to a designated hospital under AS 47.30.030, shall be immediately discharged upon his request or upon the request in writing of an interested party or peace officer, except that

(1) if admitted upon his own application, his discharge may be conditioned upon his agreement;

(2) if under 18 years of age and admitted under AS 47.30.020, his discharge before becoming 18 years of age may be conditioned upon the consent of his parent or guardian; and

(3) if the head of a designated hospital, within 48 hours after receiving the request, files with the superior court a certification that in his opinion the discharge of the patient would be unsafe to the patient or others, the discharge may be postponed for not more than five days to begin commitment proceedings under AS 47.30.070; if the court finds that because of justifiable circumstances, proceedings for judicial hospitalization cannot reasonably be instituted in that time, the discharge may be postponed for not more than 15 days.

(b) The head of the designated hospital shall provide reasonable means and arrangements for informing patients of their right to discharge, as provided in AS 47.30.010 — 47.30.310, and for assisting the patients in making requests for discharge under this section. (§ 106 ch 87 SLA 1957)

Sec. 47.30.060. Petition for judicial determination. A patient who is hospitalized under AS 47.30.020, AS 47.30.030 or AS 47.30.070 may have the need for his continued hospitalization determined or redetermined on his own petition or that of an interested party or a peace officer, to the superior court. On receipt of the petition, the superior court shall conduct proceedings in accordance with AS 47.30.070 except that the proceedings need not be conducted if the petition is filed sooner than (1) six months after the issuance of an order of hospitalization under AS 47.30.070; (2) one year after the filing of a previous petition under this section; or (3) 30 days after the voluntary application and admission of a patient. (§ 107 ch 87 SLA 1957)

Superior courts have exclusive jurisdiction over proceedings under this article. 1959 Op. Att'y Gen., No. 34.

This section and AS 47.30.070 are silent on burden and standard of proof. State v. Alto, Sup. Ct. Op. No. 1777 (File No. 3748), 559 P.2d 402 (1979).

Different treatment of persons civilly committed by reason of insanity and of persons acquitted of crime by reason of insanity. — See State v. Alto, Sup. Ct. Op. No. 1777 (File No. 3748), 559 P.2d 402 (1979).

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Sec. 47.30.780. EARLY DISCHARGE. The professional person in charge of a treatment facility or his designee shall at any time discharge a committed person on the ground that the person is no longer gravely disabled or likely to cause serious harm as a result of mental illness. A certificate to this effect shall be sent to the court which shall enter an order officially terminating the involuntary commitment.

Sec. 47.30.785. AUTHORIZED ABSENCES. A respondent undergoing involuntary treatment on an inpatient basis under this chapter may be given authorization to be absent from the treatment facility during times specified by the professional person in charge of the facility, or his professional designee, when an authorization to be absent is in the himself or others. ~~respondent~~ and he is not likely to cause harm to

Sec. 47.30.790. RETURN FROM UNAUTHORIZED ABSENCE. When a respondent undergoing involuntary treatment on an inpatient basis under this chapter is absent from the treatment facility without, or in excess of, authorization under AS 47.30.785, the professional person in charge of the facility or his professional designee may cause the respondent to be taken into custody and returned to the treatment facility.

Sec. 47.30.795. INVOLUNTARY OUTPATIENT CARE FOR COMMITTED PERSONS. (a) A committed person who was not originally committed to involuntary outpatient care under the provisions of this chapter may be released before the expiration of his commitment period on the condition that he receive specified outpatient treatment from a provider of outpatient care, for a length of time not to exceed the duration of his commitment period, when the professional person in charge of the treatment facility or his professional designee finds that

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Sec. 47.30.200. Release on convalescent status. The head of a designated hospital may release a patient on convalescent status when he believes that convalescent status is in the best interest of the patient. Convalescent status shall, so far as practicable, include provisions for continuing responsibility to and by the hospital, and for a plan of treatment on an out-patient basis or under the direction of a licensed physician. Periodically, at intervals consistent with good medical practice and with existing circumstances, the head of the designated hospital shall re-examine the facts relating to the condition of the patient on a convalescent status and, if he determines that hospitalization is no longer necessary, he shall discharge the patient. (§ 121 ch 87 SLA 1957)

Stated in Clark v. State, Sup. Ct. Op. No. 187 (File No. 311), 388 P.2d 816 (1964).

Sec. 47.30.210. Readmission. Before the discharge of a patient under AS 47.30.200 the head of the designated hospital from which the patient is given convalescent status may readmit the patient. If there is reason to believe that it is to the best interest of the patient to be rehospitalized, the department or head of the designated hospital may issue an order for the immediate rehospitalization of the patient. The order, if not voluntarily complied with, upon the endorsement by the court, authorizes a peace officer to take the patient into custody and transport him to the designated hospital or, if the order is issued by the department, to a hospital designated by it. (§ 122 ch 87 SLA 1957)

Sec. 47.30.220. Discharge upon medical review. The head of a designated hospital shall have the condition of every patient reviewed as often as is consistent with good medical practice. If the head of a designated hospital determines that the conditions justifying hospitalization no longer exist, the patient shall be discharged, even if he was admitted on his own application, notwithstanding AS 47.30.050(a)(1), and the department shall be notified immediately. If the patient was not admitted on his own application, notice of the discharge shall also be given to one of the following persons: the patient's legal guardian, parent, spouse, or next of kin, if known, and, if the patient was hospitalized by judicial process, to the superior court which ordered him committed. (§ 123 ch 87 SLA 1957; am § 12 ch 127 SLA 1959)

Stated in Clark v. State, Sup. Ct. Op. No. 187 (File No. 311), 388 P.2d 816 (1964).

(1) security for the person or others no longer requires that he be treated on an inpatient basis; and

(2) there is reason to believe that the person's mental condition would improve as a result of the specified outpatient treatment.

(b) A copy of the conditions for early release shall be given to the person, his attorney, his guardian, if any, the provider of outpatient care, and the court.

(c) If at any time during the commitment period the provider of outpatient care determines that the person can no longer be treated on an outpatient basis because he is likely to cause harm to himself or others or is gravely disabled, the provider shall give the patient oral and written notice, with copies to the patient's attorney, his guardian, if any, the court and inpatient treatment facility, that he must return to the inpatient treatment facility within 24 hours for a length of time

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not to exceed the duration of his commitment period. If the person fails to arrive at the treatment facility under a 24-hour notice, the facility shall cause the person to be taken into custody and transported to the facility. A peace officer shall assist the provider of outpatient care or the facility if requested.

(d) If the provider of outpatient care determines that the patient will require continued outpatient care after the expiration of his commitment period, the provider is entitled to initiate further commitment proceedings in the same manner as if the provider were the professional person in charge of a treatment facility, and the provisions of this chapter are applicable, except that provisions relating to inpatient treatment shall be read as applicable to outpatient treatment.

Sec. 47.30.800. CONVERSION OF INVOLUNTARY OUTPATIENT TREATMENT TO INPATIENT COMMITMENT. (a) A respondent ordered by the court under the provisions of this chapter to receive involuntary outpatient treatment may be required to undergo inpatient treatment when the provider of outpatient care finds that (1) the respondent is mentally ill and is likely to cause serious harm to himself or others or is still gravely disabled; (2) the respondent's behavior since the hearing resulting in court-ordered treatment indicates that he now needs inpatient treatment to protect himself or others; (3) there is reason to believe that the respondent's mental condition will improve as a result of inpatient treatment; and (4) there is an inpatient facility appropriate to the respondent's need which will accept him as a patient. Treatment for these respondents shall be available at state-operated hospitals at all times.

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(b) Upon making the findings specified in (a) of this section, the provisions of AS 47.30.795(b) relating to notice and AS 47.30.745 relating to hearing are applicable.

Sec. 47.30.805. COMPUTING PERIODS OF TIME. (a) Except as provided in (b) of this section,

(1) computations of a 72-hour evaluation period do not include Saturdays, Sundays, legal holidays, or any period of time necessary to transport the respondent to the treatment facility;

(2) a 14-day commitment period expires at the end of the 14th day after the 72 hours following initial acceptance;

(3) a 90-day commitment period expires at the end of the 90th day after the expiration of a 14-day period of treatment;

(4) a 120-day commitment period expires at the end of the 120th day, after the expiration of a 90-day period of treatment or previous 120-day period, whichever is applicable.

(b) When a respondent has failed to appear or absented himself contrary to any order properly made or entered under this chapter, the relevant commitment period shall be extended for a period of time equal to the respondent's absence if written notice of absence is promptly provided to the respondent's attorney and his guardian, if there is one, and if, within 24 hours after the respondent has returned to the evaluation or treatment facility, written notice of the corresponding extension and the reason for it is given to the respondent, his attorney, and to the court.

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Sec. 47.30.100. Writ of habeas corpus. An individual who is detained under AS 47.30.010 — 47.30.340 is entitled to a writ of habeas corpus upon proper petition by himself or an interested party to a court authorized to issue writs of habeas corpus in the jurisdiction in which he is detained. (§ 111 ch 87 SLA 1957)

Sec. 47.30.330. Criminal penalties. A person who intentionally causes, or attempts to cause, or conspires with another person to cause an individual to be committed to a hospital under AS 47.30.010 — 47.30.340, knowing or having reasonable grounds for believing that the individual is not mentally ill and in need of hospitalization, is punishable by a fine of not more than \$10,000, or by imprisonment for not less than one year nor more than 10 years, or by both. The court may order all or part of the fine paid to the injured individual. (§ 133 ch 87 SLA 1957; am § 37 ch 43 SLA 1964)

Amendment of section inapplicable to
offense committed before October 1, 1964.
— See 1964 Op. Att'y Gen., No. 8.

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Sec. 47.30.810. HABEAS CORPUS. Nothing in this chapter may be construed as limiting a person's right to a writ of habeas corpus.

Sec. 47.30.815. LIMITATION OF LIABILITY; PENALTY FOR FALSE APPLICATION. (a) A person acting in good faith upon either actual knowledge or reliable information who makes application for evaluation or treatment of another person under this chapter is not subject to civil or criminal liability.

(b) The following persons may not be held civilly or criminally liable for detaining a person under AS 47.30.700 - 47.30.915 or for

releasing a person under AS 47.30.700 - 47.30.915 at or before the end of the period for which the person was admitted or committed for evaluation or treatment if the persons have performed their duties in good faith and without gross negligence:

- (1) an officer of a public or private agency;
- (2) the superintendent, the professional person in charge, the professional designee of the professional person in charge, and the attending staff of a public or private agency;
- (3) a public official performing functions necessary to the administration of AS 47.30.700 - 47.30.915;
- (4) a peace officer responsible for detaining a person under AS 47.30.700 - 47.30.915.

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(c) A person who wilfully initiates an involuntary commitment procedure under AS 47.30.700 without having good cause to believe that the other person is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others, is guilty of a felony.

Sec. 47.30.820. RETROACTIVITY. Except as provided in this chapter, the provisions of this chapter do not in themselves impair any action taken in a proceeding pending under statutes in effect before October 1, 1979, nor do they apply retroactively to terminate the detention of a person previously committed under statutes in effect before October 1, 1979. However, 90 days after October 1, 1979, the provisions of this chapter apply to all persons committed under statutes in effect before October 1, 1979.

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Sec. 17.30.130. Right to humane care and treatment and consent to surgery, certain psychiatric therapies and autopsies. (a) The department shall be guided by the principles of humane care and treatment, and, to the extent that facilities, equipment and personnel are available, shall provide medical care or treatment in accordance with the highest standards of accepted medical practice.

(b) Consent to surgery, the psychiatric therapies which the department determines, and autopsies must be obtained for a patient before the undertaking of the surgery, psychiatric therapies or autopsies from one of the following persons: spouse, guardian, either parent, or eldest adult child. If none of these persons is found in this state within a reasonable time, or in the case of an emergency, the commissioner of health and social services or his designee, upon being notified of the pertinent medical facts, may give the consent. However, when the head of the hospital is of the opinion that the patient has insight or capacity to make a responsible decision, the patient's consent shall be obtained before the surgery or psychiatric therapies; his consent shall be determinative, and no other consent is necessary. However, in the case of a minor, consent shall also be obtained from the parent or guardian. The person giving the consent, or a person who acts after the consent is given and is authorized to perform the act undertaken by him is not liable civilly or criminally if the act is done by him in his official capacity or in the capacity set out in AS 47.30.010 — 47.30.340. (§ 115 ch 87 SLA 1957; am § 9 ch 127 SLA 1959; am § 29 ch 70 SLA 1964; am § 6 ch 104 SLA 1971)

Sec. 47.30.140. Mechanical restraints. Mechanical restraint shall not be applied to a patient unless the head of the hospital or his designee determines that the medical needs of the patient require it. The use of a mechanical restraint and reasons for it shall be made a part of the clinical record of the patient over the signature of the head of the hospital or his designee. (§ 116 ch 87 SLA 1957)

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ARTICLE 9. PATIENT RIGHTS.

Sec. 47.30.825. PATIENT RIGHTS; MEDICAL. All patients who are receiving services from a treatment facility licensed under AS 18.20.-020, have the following rights:

(1) The patient, or his counsel, guardian, or the adult designated in accordance with AS 47.30.725 if the patient is mentally incapable of participation, shall be entitled to participate in formulating his individualized treatment plan and in the evaluation process as much as possible, at minimum to the extent of requesting specific forms of therapy, inquiring why specific therapies are or are not included in his treatment program, and being informed as to his present medical and psychological condition and prognosis. The treating physician may not withhold any of this information from the patient.

(2) Counsel and guardian for a patient, or if there is no guardian the adult designated in accordance with AS 47.30.725, have the right at all reasonable times to examine all records of, and plans for, the patient's treatment and to make copies, upon payment of costs if requested, of any portion of these records.

(3) Every patient has the right to know the name of medication that he is asked to take, what its purpose is, and what side effects may occur with this medication. If the patient is incapable of understanding the purpose and side effects of the medication, the treating physician or mental health professional shall explain it to the patient's counsel or guardian, or if there is no guardian the adult designated in accordance with AS 47.30.725.

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Sec. 47.30.150. Rights of patient. (a) Subject to the general rules and regulations of the hospital and except to the extent that the head of the hospital determines that it is necessary for the medical welfare of the patient to impose restrictions, every patient may

(1) communicate by sealed mail or other manner with persons, including official agencies, inside or outside the hospital;

(2) receive visitors; and

(3) exercise all civil rights, except as modified by AS 47.30.130(b) including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

(b) Notwithstanding the limitations authorized by this section on the right of communication, every patient may communicate by sealed mail with the department, the governor, and the superior court which ordered his hospitalization.

(c) The limitations imposed by the head of a hospital on the exercise of these rights by a patient and the reasons for the limitations shall be made a part of the clinical record of the patient. (§ 117 ch 87 SLA 1957)

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(4) The quiet room, or other form of physical restraint, may not be used, except as provided in this paragraph unless a patient is likely to physically harm himself or others unless restrained. The form of restraint utilized shall be that which is in the patient's best interest and which constitutes the least restrictive alternative available. When practicable, the patient shall be consulted as to his preference among forms of adequate, medically advisable restraints including medication, and his preference shall be considered. Nothing in

this section is intended to limit the right of staff to use the quiet room at the patient's request or with his knowing concurrence when deemed in the best interests of the patient. Patients placed in a quiet room or other physical restraint shall be checked at least every 15 minutes or more often if good medical practice so indicates. Patients in the quiet room must be visited by a staff member at least once every hour and must be given adequate food and drink and access to bathroom facilities. At no time may a patient be kept in the quiet room or other form of physical restraint against his will longer than necessary to accomplish the purposes set out in this paragraph. All uses of the quiet room or other restraint shall be recorded in the patient's medical record, the information including but not limited to the reasons for its use, the duration of use, and the name of the authorizing staff member.

(5) All persons have the right to be free from unnecessary or excessive medication. Psychotropic medication shall be administered only on the order of a licensed physician when the physician determines that such medication is in the best interest of the patient or will

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(6) A patient capable of giving informed consent shall have the absolute right to accept or refuse electro-convulsive therapy or aversive conditioning. Patients who lack substantial capacity to make this decision may not be given such therapy or conditioning without a court order following a hearing compatible with full due process.

(7) In no event may treatment include psychosurgery, lobotomy or other comparable form of treatment without specific informed consent of the patient, including a minor unless he is clearly too young or disabled to give an informed consent in which case the consent of his legal guardian shall be required. In addition, no such treatment may be given without a court order after hearing in accord with full rights of due process.

(8) When, in the written opinion of a patient's attending physician, a true medical emergency exists and a surgical operation is necessary to save the life, physical health, eyesight, hearing or member of the patient, the professional person in charge of the treatment facility or his professional designee may give consent to the surgical operation if time will not permit obtaining the consent of the proper relatives or guardian or appropriate judicial authority. However, no operation may be authorized if the patient is not a minor and knowingly withholds consent on religious grounds.

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(9) Each person upon discharge shall have a discharge plan specifying the kinds and amount of care and treatment he should have after discharge and such other steps as he might take to benefit his mental health after leaving the facility. The patient shall have the right to participate, as far as practicable, in formulating this plan. A copy of the plan shall be given to him, his guardian, the court, if appropriate, and any follow-up agencies.

Sec. 47.30.830. PROHIBITION OF EXPERIMENTAL TREATMENTS. (a) No experimental treatments involving any significant risk of physical or psychological harm may be administered to any patient.

(b) If the personnel of an evaluation or treatment facility are uncertain as to whether a proposed technique is experimental or is experimental applied to a particular respondent or would involve a significant risk of mental or physical harm to the patient, the matter may be referred to the commissioner of health and social services for a determination. The patient, his attorney, his guardian, if any, and an adult designated by the patient, shall, simultaneously with the referral to the commissioner, be provided with copies of all the documents by which the referral is made and shall have the opportunity to provide evidence to the commissioner on the question.

(c) A determination that a treatment technique is experimental and entails significant risks of mental or physical harm shall be binding upon all persons involved in the administration of treatment to a patient for purposes of this section.

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Sec. 47.30.835. CIVIL RIGHTS NOT IMPAIRED. No person undergoing evaluation or treatment under this chapter may be denied a civil right, including but not limited to, the right to free exercise of religion and the right to dispose of property, sue and be sued, enter into contractual relationships and vote. Court-ordered treatment or evaluation under this chapter is not a determination of legal incompetency.

Sec. 47.30.840. RIGHT TO PRIVACY AND PERSONAL POSSESSIONS. A person undergoing evaluation or treatment under this chapter shall

(1) not be photographed without his consent and that of his guardian if a minor, except that he may be photographed upon admission to a facility for identification and administrative purposes of the facility; all photographs shall be confidential and may not be released by the facility except under court order;

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

(3) have access to individual storage space for his private use while undergoing evaluation or treatment;

(4) be permitted to wear his own clothing, to keep and use his own personal possessions including his toilet articles if they are not considered unsafe for him or other patients who might have access to

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Sec. 47.30.260. Disclosure of information. (a) All certificates, applications, records and reports, other than an order of a court made for the purposes of AS 47.30.010 — 47.30.340, and directly or indirectly identifying a patient or former patient or an individual whose hospitalization was sought under AS 47.30.010 — 47.30.340, together with clinical information relating to the patients, shall be kept confidential and shall not be disclosed by a person except insofar as

(1) the individual, or his legal guardian or, if he is a minor, his parent or legal guardian consents;

(2) disclosure is necessary to carry out a provision of AS 47.30.010 — 47.30.340; or

(3) a court directs, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to the public interest.

(b) Nothing in this section precludes disclosure, upon proper inquiry, of information concerning current medical condition to the members of the immediate family of a patient.

(c) A person who violates this section is guilty of a misdemeanor, and is punishable by a fine of not more than \$500, or by imprisonment for not more than one year, or by both. (§ 127 ch 87 SLA 1957; am § 14 ch 127 SLA 1959)

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them, and to keep and be allowed to spend a reasonable sum of his own money for his own needs and comfort;

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

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

(7) have reasonable access to a telephone, both to make and receive confidential calls.

Sec. 47.30.845. CONFIDENTIAL RECORDS. Information and records obtained in the course of evaluation, examination or treatment are confidential and are not public records, except as the requirements of a hearing under this chapter may necessitate a different procedure. Information and records may be disclosed under regulations established by the department only to

(1) physicians and providers of health, mental health or social and welfare services involved in caring for, treating or rehabilitating the patient;

(2) individuals to whom the patient has given written consent to have information disclosed;

(3) persons authorized by a court order;

(4) persons doing research or maintaining health statistics, if the anonymity of the patient is assured, and the facility recognizes the project as a bona fide research or statistical undertaking;

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(5) the division of corrections in cases in which prisoners confined to the state prison are patients in the state hospital on authorized transfers either by voluntary admission or by court order;

(6) governmental or law enforcement agencies when necessary to secure the return of a patient who is on unauthorized absence from a facility where the patient was undergoing evaluation or treatment.

Sec. 47.30.850. EXPUNGEMENT OF RECORDS. Following the discharge of a respondent from a treatment facility or the issuance of a court order denying a petition for commitment, a respondent may at any time move to have all court records pertaining to the proceedings expunged on condition that he file a full release of all claims of whatever nature arising out of the proceedings and the statements and actions of persons and facilities in connection with the proceedings.

Sec. 47.30.855. POSTING OF RIGHTS. The rights set out in AS 47.-30.825 - 47.30.855 shall be prominently posted in all treatment facilities in places accessible to all patients. A patient who does not understand English shall have his rights explained to him in a language he understands.

Sec. 47.30.860. NOTICES IN LANGUAGES OTHER THAN ENGLISH. Where practicable all documents and notices required by this chapter to be served on a respondent, or on his parents, guardian or adult designee, shall be explained in a language the person understands if he is not competent in English.

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Sec. 47.30.865. DISCRIMINATION PROHIBITED. (a) The fact that a person is or has been evaluated or treated for mental illness may not be a basis for discrimination in:

- (1) seeking employment;
- (2) resuming or continuing professional practice or previous occupation;
- (3) obtaining or retaining housing;
- (4) obtaining or retaining licenses or permits, including but not limited to motor vehicle licenses, motor vehicle operator's and chauffeur's licenses, and professional or occupational licenses.

(b) Applications for positions, licenses and housing may contain no requests for information concerning evaluation or treatment experiences.

(c) It is unlawful for a person to aid, abet, incite, compel or coerce the doing of an act forbidden under this section or to attempt to do so.

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ARTICLE 10. MISCELLANEOUS PROVISIONS.

Sec. 47.30.110. Transportation. (a) When an individual is to be hospitalized under AS 47.30.010 — 47.30.340, the department shall arrange, upon the request of a person having a proper interest in the individual's hospitalization, and is authorized to pay for the individual's transportation to the designated hospital, with appropriate medical or nursing attendants and by the available means which are appropriate and suitable. The department may pay return transportation of an individual and appropriate medical and nursing attendants after a finding under AS 47.30.010 — 47.30.340 that the individual is not mentally ill. When practicable, one or more relatives or friends of the individual to be hospitalized shall be permitted to accompany him. The department may pay necessary travel, housing and meal expenses incurred by one relative or friend in accompanying the individual to the hospital if the department determines

(1) that the best interests of the individual's health require that he be accompanied by the relative or friend;

(2) the relative or friend accompanying the individual is indigent.

(b) When necessary, the department shall arrange for a peace officer or other suitable person to accompany the individual. (§ 113 ch 87 SLA 1957; am § 8 ch 127 SLA 1959; am § 1 ch. 36 SLA 1966)

Sec. 47.30.870. TRANSPORTATION. When a person is to be evaluated or involuntarily committed to a facility, or presented for a judicial hearing under this chapter, the department shall arrange, and is authorized to pay for, the person's necessary transportation to the designated facility or hearing with appropriate medical or nursing attendants and if necessary a peace officer. The department shall pay return transportation of a person, appropriate medical and nursing attendants, and if necessary a peace officer, after a determination that the person is not committable, at the end of a commitment period, or at the end of a voluntary stay following an evaluation conducted in accordance with AS 47.30.715 at a treatment facility. When advisable, one or more relatives or friends shall be permitted to accompany the person. The department may pay necessary travel, housing and meal expenses incurred by one relative or friend in accompanying the person if the department determines that the person's best interests require that he be accompanied by the relative or friend and the relative or friend is indigent.

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Sec. 47.30.170. Nonresident patients. (a) The admission papers of a person who is hospitalized under AS 47.30.010 — 47.30.340 shall include a statement as to his residence. The department may return a patient who is not a resident of the state to the state of his residence. If the state in which he has residence does not accept him as a patient, the department may order the discharge of the patient. The department may initiate proceedings for judicial hospitalization under AS 47.30.070, if the patient is certified by the head of a hospital to be mentally ill and (1) dangerous to himself or to others if allowed at liberty, or (2) in need of immediate custody and care or treatment, and lacking sufficient insight and capacity to make responsible decisions concerning hospitalization.

(b) To facilitate the return of nonresident patients, the department may enter a reciprocal agreement or compact with another state, providing for the prompt return, under appropriate supervision, of residents of that state who are mentally ill. Mentally ill residents of this state who have been hospitalized outside this state may be admitted, with the approval of the department, to a hospital designated by the department.

(c) The department may enter reciprocal agreements or contracts with another state, providing for custody and care or treatment of mentally ill residents of this state by the other state, and for the custody and care or treatment of mentally ill residents of that state by this state, on a reimbursable basis.

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Sec. 47.30.875. NONRESIDENT PATIENTS. (a) The admission papers of a person who is admitted to a treatment facility under this chapter shall include a statement as to his residence. The department may return a patient who is not a resident of the state to the state of his residence with court approval if the person has been committed. If the state in which he has residence does not accept him as a patient, the person shall be treated as a resident under the provisions of this chapter.

(b) To facilitate the return of nonresident patients the department may enter a reciprocal agreement or compact with another state providing for the prompt return under appropriate supervision of residents of that state who are mentally ill. Mentally ill residents of this state who have been placed in a facility outside this state may be admitted with the approval of the department to a treatment facility in the state designated by the department. The department may enter into reciprocal agreements or contracts with another state providing for custody, care or treatment, or return of mentally ill residents of this state by the other state and for the custody and care or treatment of mentally ill residents of that state by this state on a reimbursable basis. A resident of this state who has been committed in another state and is returned in accordance with this section shall, within 72 hours of his admission to the designated facility, be examined. After examination the mental health professional in charge of the facility shall release him or shall petition for involuntary commitment as prescribed in AS 47.30.740.

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(c) In taking action under (a) and (b) of this section, consideration shall be given to the best interests of the patient particularly to the relationship of the patient to his family, legal guardian, or friends to maintain relationships and encourage visits beneficial to the patient.

Sec. 47.30.180. Interstate compact. This state ratifies and adopts by reference "The Interstate Compact on Mental Health" consisting of 14 articles approved on September 30, 1955, by the Northeast State Governments Conference on Mental Health. The department is designated as compact administrator with full power to carry out the purpose of the compact and to make all necessary regulations to implement the compact. (§ 119(e) ch 87 SLA 1957; added by § 11 ch 127 SLA 1959)

Sec. 47.30.880. INTERSTATE COMPACT. This state ratifies and adopts by reference "The Interstate Compact on Mental Health" consisting of 14 articles approved on September 30, 1955, by the Northeast State Governments Conference on Mental Health. The department is designated as compact administrator with full power to carry out the purpose of the compact and to make all necessary regulations to implement the compact.

Sec. 47.30.190. Rights outside state. Nothing in AS 47.30.010 — 47.30.340 alters or impairs the application or availability to a patient, while hospitalized in another state, under contractual arrangements entered in accordance with AS 47.30.010 — 47.30.340 of the rights, remedies, or protective safeguards provided by the laws of this state or of the other state. (§ 120 ch 87 SLA 1957)

Sec. 47.30.885. RIGHTS OUTSIDE STATE. Nothing in this chapter alters or impairs the application or availability to a patient, while hospitalized in another state under contractual arrangements entered in accordance with the provisions of this chapter, of the rights, remedies or protective safeguards provided by the laws of this state.

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CURRENT STATUTE

Sec. 47.30.230. Provision for personal needs upon discharge. The department shall make arrangements which are necessary to insure that

(1) no patient is discharged or placed on convalescent status from a designated hospital without suitable clothing; and

(2) an indigent patient discharged or placed on convalescent status is furnished suitable transportation to his permanent residence in this state or other suitable place at the discretion of the department, and a reasonable amount of money to meet his immediate needs. (§ 124 ch 87 SLA 1957)

Sec. 47.30.219. Disposition of personal effects and unclaimed funds. (a) All articles of personal property in the custody of the head of the designated hospital which belong to a patient who dies before his release on convalescent status or discharge, or to a patient who leaves the hospital without authority, if unclaimed by the patient or his legal heirs or representatives within one year after the death or departure of the patient, shall be disposed of in the manner prescribed by the department, and the proceeds shall be deposited in the state treasury. The money remaining to the credit of the patient, if unclaimed by his legal heirs or representatives or by the patient within the period of one year after the death or departure of the patient, shall be deposited in the treasury.

(b) If a mentally ill individual has died in a foreign hospital and the department desires to recover the patient's personal property under this section, the commissioner of health and social services or his designated representative may secure the property and for that purpose only is designated the decedent's administrator. All property so recovered shall be disposed of as provided by law. (§ 125 ch 87 SLA 1957; am § 13 ch 127 SLA 1959; am § 1 ch 138 SLA 1962; am § 1 ch 35 SLA 1968; am § 6 ch 104 SLA 1971)

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Sec. 47.30.890. PROVISION FOR PERSONAL NEEDS UPON DISCHARGE. The department shall make arrangements which are necessary to insure that

(1) no patient is discharged from a treatment facility without suitable clothing; and

(2) an indigent patient discharged is furnished suitable transportation to his permanent residence in this state or other suitable place at the discretion of the department and a reasonable amount of money to meet his immediate needs.

Sec. 47.30.895. DISPOSITION OF PERSONAL EFFECTS AND UNCLAIMED FUNDS. (a) All assets in the custody of a treatment facility which belong to a patient who dies before his discharge, or to a patient who leaves the hospital without authority, if unclaimed by the patient or his legal heirs or representatives within four years after the death or departure of the patient, shall be disposed of in the manner prescribed by the department and the proceeds shall be deposited in the state treasury.

(b) If a mentally ill individual has died in a foreign facility and the department desires to recover the patient's personal property under this section, the commissioner of health and social services or his designated representative may secure the property and for that purpose only is designated the decedent's administrator. All property so recovered shall be disposed of as provided by law.

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Sec. 47.30.250. Disposition of funds subject to claim. The department shall make diligent inquiry in every instance after departure

without authority or death of a patient, to ascertain his whereabouts or that of his legal heirs or representatives, and shall turn over to the proper person the money or articles of personal property in the custody of the head of the hospital to the credit of the patient. Claims to the money or articles of personal property, including claims by this state, may be presented to the department at any time. Claims by this state have priority, as set out in AS 47.30.270. If a claim other than by this state is established by clear and convincing evidence more than one year after the death or departure without authority of a patient, it shall be certified to the legislature for consideration, and the legislature may pay the claim. (§ 126 ch 87 SLA 1957)

For meaning of "clear and convincing" evidence required to prove heirship where property has escheated, see Waks v. State,

Sup. Ct. Op. No. 111 (File No. 163), 375 P.2d 136 (1962), and note under AS 09.50.110.

Sec. 47.30.280. Fees and expenses for judicial proceedings. The witnesses and the jury in proceedings for judicial hospitalization are entitled to the fees, compensation and mileage established by law. Compensation, mileage, fees and other expenses arising from judicial hospitalization proceedings shall be audited and allowed by the superior court of the district in which the proceedings are held, and when audited and allowed shall be paid by the clerk of the court in the same manner and from the fund as he pays the other incidental expenses of the court. To the extent that services of a peace officer are used to carry out AS 47.30.010 — 47.30.340, he is entitled to fees and actual expenses from the same source and in the same manner as for his other official duties. (§ 129 ch 87 SLA 1957)

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Sec. 47.30.900. DISPOSITION OF FUNDS SUBJECT TO CLAIM. The department shall make diligent inquiry in every instance after departure without authority or death of a patient, to ascertain his whereabouts or that of his legal heirs or representatives, and shall turn over to the proper person the money or articles of personal property in the custody of the head of the facility to the credit of the patient. Claims to the money or articles of personal property, including claims by this state, may be presented to the department at any time. If a claim other than by this state is established by clear and convincing evidence more than four years after the death or departure without authority of a patient, it shall be certified to the legislature for consideration and the legislature may pay the claim.

Sec. 47.30.905. FEES AND EXPENSES FOR JUDICIAL PROCEEDINGS. (a) The witnesses and the jury in commitment proceedings are entitled to the fees, compensation and mileage established by law. Compensation, mileage, fees and other expenses arising from commitment proceedings shall be audited and allowed by the superior court of the district in which the proceedings are held and when audited and allowed shall be paid by the clerk of the court in the same manner and from the fund as he pays the other incidental expenses of the court. To the extent that services of a peace officer are used to carry out the provisions of this chapter, he is entitled to fees and actual expenses from the same source and in the same manner as for his other official duties.

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(b) An attorney appointed for a person under this chapter shall be compensated for his services as follows:

(1) the person for whom an attorney is appointed shall, if he is financially able under standards as to financial capability and indigency set by the court, bear the costs of the legal services;

(2) if the person is indigent under those standards, the costs of the services shall be borne by the state.

Sec. 47.30.270. Liability for expense of hospitalization and transportation. (a) A patient, or his legal representative acting in a representative capacity, or his parents if the patient is under the age of 18, shall pay or contribute to the payment of the charges for the care or treatment of the patient when hospitalized under AS 47.30.010 — 47.30.340, in the manner and proportion which the department finds is not detrimental to the patient's rehabilitation and which is within their ability to pay. The charges may not exceed the actual cost of the care or treatment as determined by the department. Notwithstanding the amount of the charge determined to be due, parents may not be required to pay more than \$50 a month for each child. The order of the department relating to the payment of charges by parents shall be prospective in effect and shall relate only to charges to be incurred after the order, except that if the parent intentionally conceals his ability to pay, he shall be ordered to pay to the extent of his ability the charges accruing during the period of the concealment. The order of the department relating to the payment of charges by the patient or his legal representative shall be issued within six months of the date on which the charge was incurred. The department may make necessary investigations to determine the ability to pay, and may require sworn statements of income by the parents. The order shall remain in full force and effect unless modified by subsequent court or department orders.

(b) As used in (a) of this section, the term "actual cost of the care and treatment" means either the rate provided for by a contract entered into under AS 47.30.010 — 47.30.340, or, in the absence of a contract, a daily rate fixed by the department, and includes expenses of transportation incidental to examination or hospitalization.

(c) The department may charge, or accept from a person money or property, for the care or treatment of an in-patient or out-patient or for other purposes, even if the payment is not required by an order of the department, so long as the total payments received do not exceed the actual cost of care or treatment.

Sec. 47.30.910. LIABILITY FOR EXPENSE OF PLACEMENT IN A TREATMENT FACILITY. (a) A patient, or his legal representative acting in a representative capacity, or his spouse, or his parents if the person is under the age of 18, shall pay or contribute to the payment of the charges for the care or treatment of the patient when hospitalized under AS 47.30.655 - 47.30.915. The charges may not exceed the actual cost of the care and treatment as determined by the department. The department may order payment of charges by the patient or by the person responsible for payment of the charges for the patient's care and treatment under this subsection, according to ability to provide for payment. The department may make necessary investigations to determine the ability to provide for payment and may require sworn statements of income by the patient, or his legal representative acting in a representative capacity, or his spouse or parent. In the exercise of his discretion, the commissioner may impose full liability for the patient's actual cost of care and treatment on the patient, his legal representative, his spouse or parent for refusal to supply a sworn statement of income.

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CURRENT STATUTE

(d) The amount of liability for care and treatment which is ordered by the department to be paid and which is not paid for by the patient or by his legal representative acting in a representative capacity constitutes a lien in favor of this state against all property of the patient. The unpaid amount of liability is a debt to the state and is a first, prior and preferred claim against the estate of the patient after death, and after expenses of administration and all just claims for medical care of last illness and burial expenses have been paid. The claim based upon information submitted by the department shall be prepared and filed by the attorney general. The amount of liability for care and treatment which is ordered by the department to be paid and which is not paid by the parent before the parent's death, shall be discharged or collected from the patient. No claim lies against the assets or estate of the deceased parent.

(e) All money paid by the patient or on his behalf, under this section, shall be deposited in the state treasury.

(f) If an order of payment is entered by the department under this section and delinquency in the payment of any amount due the state under the order continues for a period of more than 30 days after the notification of the legal representative or parent of the patient by the department, the state may proceed to collect the amounts due by appropriate proceedings. Actions to enforce the collection of payments may only be brought within three years after the date of notification of a delinquent payment. (§ 128 ch 87 SLA 1957; am §§ 15, 16 ch 127 SLA 1959; am § 2 ch 35 SLA 1968; am §§ 1-3 ch 98 SLA 1974)

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An order

for payment of charges shall be issued by the department within six months after the date on which the charge was incurred. The order shall remain in full force and effect unless modified by subsequent court or department order. Liability under this subsection shall be determined as follows: a patient hospitalized under AS 47.30.655 - 47.30.915, or the person responsible for payment of charges for the patient, may be required to pay according to his ability to provide for payment, as determined by the department, and in the manner and proportion which the department finds is not detrimental to the patient's rehabilitation; however, after the patient has been hospitalized under this chapter for an aggregate period of 12 months, the patient or person responsible for payment may not be required to pay more than \$50 a month toward the charges for the care and treatment of the patient.

(b) As used in (a) of this section, the term "actual cost of the care and treatment" means either the rate provided for by a contract entered into under AS 47.30.655 - 47.30.915, or, in the absence of a contract, a daily rate fixed by the department, and includes expenses of transportation incidental to examination or hospitalization.

(c) The department may charge, or accept from a person money or property, for the care or treatment of an in-patient or out-patient or for other purposes, even if the payment is not required by an order of the department, so long as the total payments received do not exceed the actual cost of care or treatment.

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Sec. 47.30.275. Property taken under eminent domain powers. (a) If a recipient's property to which, under AS 47.30.270(d), a lien for assistance has attached is taken for urban renewal or other public purposes, the department, with the approval of the attorney general, may release its lien upon the property or the proceeds which are paid the recipient as a result of the taking.

(b) If the recipient expresses his intent to purchase a personal dwelling, the proceeds shall be paid by the taking authority into an escrow account under escrow instructions approved by the department. If the proceeds are paid into such an account and are applied by the recipient within one year to the purchase of a personal dwelling, the proceeds may not cause a reduction of the amount of assistance to which the recipient would otherwise be entitled. The department shall inform the recipient of the provisions of this section at the time of the taking.

(c) Nothing in this section prohibits a lien in an amount equal to the total of all assistance granted the recipient from attaching to property purchased with the proceeds paid by the taking authority. (§ 2 ch 60 SLA 1968)

Legislative history report. — For report on ch. 60, SLA 1968 (CSHB 583 am), see 1968 House Journal, p. 540.

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(d) All money paid by the patient or on his behalf, under this section, shall be deposited in the state treasury.

(e) If an order of placement is entered by the department under this section, and delinquency in the payment of any amount due the state under the order continues for a period of more than 30 days after the notification to the patient or the legal representative, spouse, or parent of the patient by the department, the state may proceed to collect the amounts due by appropriate proceedings. Actions to enforce the collection of payments may only be brought within three years after the date of notification of a delinquent payment.

(f) The orders of the department issued under this section shall relate only to charges incurred after October 1, 1979.

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Sec. 47.30.915. DEFINITIONS. In this chapter

(1) "court" means a superior court of the state;

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

(3) "evaluation facility" means a health care facility that has been designated or is operated by the department to perform the evaluations described in this chapter, however, no correctional institution or facility or jail may be used as an evaluation facility for purposes of this chapter;

(4) "evaluation personnel" means mental health professionals designated by the department to conduct evaluations as prescribed in this chapter who conduct evaluations in places in which no state-funded evaluation facility exists;

(5) "gravely disabled" means a condition in which a person, as a result of mental illness, is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness or death highly probable if care by another is not taken;

(6) "inpatient treatment" means care and treatment rendered inside or on the premises of a treatment facility, or a part or unit of a treatment facility for a continual period of 24 hours or longer;

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Sec. 47.30.310. Definitions. In AS 47.30.010 — 47.30.340, unless the context otherwise requires,

- (1) "court" means the superior court;
- (2) "department" means the Department of Health and Social Services or its designee;
- (3) "designated examiner" means a licensed physician designated by the department as specially qualified, under standards established by it for the purpose of AS 47.30.010 — 47.30.340, in the diagnosis of mental illness, except that for areas in which no licensed physician so qualified is available, any licensed physician may be designated;
- (4) "designated hospital" means a "hospital" which is designated and authorized by contract with the department to provide care and treatment of the mentally ill;
- (5) "head of a hospital" means the individual in charge of a hospital, or his designated representative, except that when the individual or his designee in charge of a hospital is not a licensed physician, authority placed in the head of a hospital by AS 47.30.010 — 47.30.340 which involves in major part the exercise of medical judgment shall be exercised by a licensed medical official of the hospital who is designated by the individual in charge of the hospital;
- (6) "hospital" means a public or private hospital or institution located in the state or in another state equipped and qualified to provide care and treatment for the mentally ill;
- (7) "individual," as used in AS 47.30.020, 47.30.030 and 47.30.070, means a resident of or a person in the state;
- (8) "interested party" means an interested, responsible adult including the legal guardian, spouse, parent, adult children, or next of kin of an allegedly mentally ill individual or patient;
- (9) "licensed physician" means (A) an individual licensed under the laws of the state to practice medicine, (B) a medical officer of the government of the United States while in the state in the performance of his official duties, (C) a medical officer of the state, or (D) a physician licensed under the laws of another state;
- (10) "mentally ill individual" means an individual having a psychosis or senile changes which substantially impair his mental health to the degree that he is a danger to himself or others; the definition does not include an individual suffering from acute alcoholism or drug addiction;
- (11) "patient" means a resident of or person in the state qualified under AS 47.30.010 — 47.30.340 for hospitalization as a mentally ill individual;

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- (7) "least restrictive alternative" means mental health treatment facilities and conditions of treatment which are
 - (A) no more harsh, hazardous or intrusive than necessary to achieve the treatment objectives of the patient; and
 - (B) involve no restrictions on physical movement nor supervised residence or inpatient care except as reasonably necessary for the administration of treatment or the protection of the patient or others from physical injury;
- (8) "likely to cause serious harm" means
 - (A) a substantial risk of imminent and substantial bodily harm to the person himself, as manifested by recent attempts at suicide or bodily harm; or
 - (B) substantial risk of imminent and substantial bodily harm to one or more other persons as manifested by behavior causing, or attempting harm, including, in regard to evaluations, at least one incident within 30 days before the filing of a petition for emergency hospitalization;
- (9) "mental health professional" means a psychiatrist or physician who is licensed to practice in this state; a clinical psychologist certified by the state Board of Psychologist and Psychological Associate Examiners; a registered nurse with psychiatric training, licensed by the State Board of Nursing; and a social worker with a master's degree and experience in the field of mental illness;

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(12) "peace officer," when used in connection with cases which involve individuals who, because of mental illness, are likely to injure themselves or others if allowed to remain at liberty, includes a state police officer, municipal or other local police officer, state, municipal, or other local health officer, public health nurse, U.S. Marshal or Deputy U.S. Marshal, or a person authorized by a court;

(13) "resident" means a person who is residing in the state; a married woman may establish a residence apart from her husband, and an unemancipated minor takes the residence of the parent or guardian with whom he is living;

(14) "state" includes a state of the United States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada. (§ 101 ch 87 SLA 1957; am §§ 1, 2 ch 127 SLA 1959; am § 1 ch 115 SLA 1961; am § 65 ch 32 SLA 1971; am § 6 ch 104 SLA 1971; am § 3 ch 165 SLA 1978)

Cross reference. — As to persons with handicaps by reason of mental or physical disabilities, see AS 47.50.

Effect of amendment. — The 1978 amendment deleted "or a mentally deficient and severely mentally retarded person whom the commissioner of health and social services or his designee admits for treatment subject, however, to all the other admission and discharge procedures provided for in §§ 10 — 30 of this chapter"

following "danger to himself or others" in paragraph (10).

Editor's note. — As to intent of 1978 amendatory act, see § 1, ch. 165, SLA 1978, effective July 1, 1978, in the 1978 Temporary and Special Acts and Resolutions.

Legislative history report. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 128.

Sec. 47.30.020. Authority to receive patients. The head of a hospital designated by the department under AS 47.30.010 may receive for observation, diagnosis, care, and treatment an individual

(1) upon application by the individual, including a minor with the consent of parent or guardian; (2) upon application by an interested party, by a peace officer, by the department, or by the head of an institution in which the individual may be, subject to the approval of the head of the hospital if the application is accompanied by a certificate of a licensed physician stating that on a basis of an examination held not more than 15 days before the individual's admission, the individual is in the physician's opinion mentally ill, or has symptoms of mental illness, and because of his illness is (A) likely to injure himself or others if allowed to remain at liberty, or (B) in need of care or treatment in a hospital. (§ 103 ch 87 SLA 1957; am § 3 ch 127 SLA 1959)

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(10) "mental illness" means an organic, mental or emotional impairment which has substantial adverse effects on an individual's ability to exercise conscious control of his actions or ability to perceive reality or to reason or understand; mental retardation, epilepsy, drug addiction and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

(11) "peace officer" includes a state police officer, municipal or other local police officer, state, municipal, or other local health officer, public health nurse, United States marshal or deputy United States marshal, or a person authorized by the court.

(12) "provider of outpatient care" means a mental health professional or hospital, clinic, institution, center or other health care facility who has been designated by the department to accept for treatment by the court or who are released early from inpatient commitments on condition that they undergo outpatient treatment;

(13) "screening investigation" means the investigation and review of facts which have been alleged to warrant emergency examination or treatment, including interviews with the persons making such allegations, any other significant witnesses who can readily be contacted for interviews, and, if possible, the respondent;

(14) "state" means a state of the United States, the District of Columbia, the territories and possessions of the United States, and

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the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada;

(15) "treatment facility" means a hospital, clinic, institution, center or other health care facility which has been designated by the department for the treatment or rehabilitation of mentally ill persons and for the receipt of these persons by court-ordered commitment, but does not include correctional institutions;

(16) "professional person in charge of the treatment facility" means the senior mental health professional at the facility; in the absence of a mental health professional it means the chief of staff or other senior physician.

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CURRENT STATUTECSHB 2

Sec. 47.30.080. Commitment or transfer to a United States agency.

(a) If, before or during the commitment proceeding conducted under AS 47.30.070, the superior court receives a certificate from an agency of the United States showing that accommodations are available and that the individual is eligible for care, the court may, if the individual is found to be in need of hospitalization, order the individual to be placed in the custody of that agency for hospitalization. When by court order an individual is admitted to a hospital or institution operated by an agency of the United States inside or outside of the state, the patient is subject to the rules and regulations of the agency. The head of a hospital or institution operated by the agency and in which the individual is hospitalized has, with respect to the individual, the same powers as the department or the head of a hospital, concerning the detention, transfer, custody, conditional release, or discharge of patients. However, the court retains the jurisdiction to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuing his hospitalization, and every order of hospitalization issued under this section is so conditioned.

(b) An order of a court of another state to an agency of the United States authorizing hospitalization of an individual has the same effect as to the individual while in this state as in the jurisdiction in which the court entering the order is located, and the courts of the jurisdiction issuing the order retain jurisdiction of the individual for the purpose of inquiring into his mental condition and of determining the necessity for continuance of his hospitalization. This state consents to the application of the law of the state in which the court issuing the order for hospitalization is located, with respect to the authority of the head of a hospital or institution operated in this state by an agency of the United States to retain custody, transfer, conditionally release or discharge the individual hospitalized. This section does not prevent the state from entering into a contract with a federal agency for the custody and care or treatment of persons coming under the jurisdiction or assistance of the federal agency. (§ 109 ch 87 SLA 1957)

DELETED

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Sec. 17.30.160. Transfer. (a) The department may authorize the transfer of a patient from one hospital to another inside or outside of this state, if it determines that the transfer is consistent with the medical needs of the patient. In the determination, consideration shall be given to the maintenance of the relationship of the patient to his family, legal guardian, or friends and the encouragement of visits beneficial to the

Deleted

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CURRENT STATUTE

Sec. 12.45.090. Commitment after judgment of not guilty. If the jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the public peace or safety, the court shall order him to be committed to an institution authorized by the commissioner of health

and social services to receive that person, and held in custody until the disease is cured or the defect corrected or he is otherwise discharged from the institution by authority of law. (§ 6.10 ch 34 SLA 1961; am § 6 ch 104 SLA 1971; am § 2 ch 119 SLA 1972)

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* Sec. 2. AS 12.45.090 is repealed and re-enacted to read:

Sec. 12.45.090. COMMITMENT AFTER JUDGMENT OF NOT GUILTY. (a) If the court or jury finds the defendant not guilty on the ground of mental disease or defect as excluding responsibility and the court considers his being at large dangerous to the public peace or safety, the court shall immediately commit the defendant to the custody of the commissioner of health and social services.

(b) If the defendant asserts at the time a verdict of not guilty on the ground of mental disease or defect as excluding responsibility is returned that he is not presently suffering from a mental disease or defect which causes him to be a danger to the public, a hearing shall be set within 60 days to determine the necessity of further commitment. The hearing shall be held before either the court or a jury of six persons who may be drawn from the jury impaneled for a trial on the underlying charge in accordance with rules promulgated by the supreme court. At the hearing, the defendant has the burden of proving by a preponderance of the evidence that he is not presently suffering from a mental disease or defect which causes him to be a danger to the public.

(c) If the court or jury determines that the defendant has failed to sustain his burden of proof, the court shall order him to be committed to the custody of the commissioner of health and social services and held in custody for a period of time not to exceed the maximum sentence for the offense committed by the defendant or until the disease is cured or the defect corrected or he is otherwise discharged from the institution by authority of law.

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(d) The defendant may file a petition in the superior court for a hearing to have the need for his continued hospitalization determined or redetermined. The defendant is entitled to a hearing on the question no sooner than six months after his initial commitment and annually thereafter. The burden and standard of proof at a release hearing shall be the same as at the initial hearing and the defendant shall be entitled to a hearing before a jury of six upon request filed not later than 15 days before the date set for the hearing with the court.

(e) Continued hospitalization following the expiration of the maximum term of sentence of the criminal offense for which the defendant was acquitted on the ground of mental disease or defect shall be governed by the standards and burden of proof relating to civil commitments under AS 47.30.700 - 47.30.915.

(f) A person committed under this section may not be released during the term of commitment except upon court order following a hearing under this section. The state may at any time request the court to release the defendant on the grounds that the defendant has been cured of the mental disease or defect and is no longer a danger to the public peace or safety.

(g) The committing court in its commitment order shall require the commissioner of health and social services or his authorized representative to submit periodic written reports on the mental condition of a person who is committed under (a) of this section.

(h) A copy of all petitions for release shall be served on the state attorney general. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state

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CURRENT STATUTECSHB 2

Sec. 12.45.110. Commitment on finding of insanity. (a) When the trial court determines, in accordance with § 100 of this chapter, that an accused is or was so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, the court may commit the accused to the custody of the commissioner of health and social services or his authorized representative until the accused is mentally competent to stand trial, or until the pending charges against him are disposed of according to law. The accused is not subject to expenses of hospitalization and transportation incurred as a result of his commitment under this section and the liability for payment in AS 47.30.270 does not apply to commitments under this section.

(b) The committing court in its commitment order shall require the commissioner or his authorized representative to submit periodic written reports upon the mental condition of an accused person who is committed under (a) of this section. (§ 6.12 ch 34 SLA 1962; am § 1 ch 43 SLA 1966; am § 6 ch 104 SLA 1971)

* Sec. 3. AS 12.45.110 is repealed and re-enacted to read:

Sec. 12.45.110. COMMITMENT ON FINDING OF INCOMPETENCY. (a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.45.100, that a defendant is so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, the court shall order the proceedings against him stayed, except as provided in (d) of this section, and may commit the defendant to the custody of the commissioner of health and social services or his authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against him are disposed of according to law, but in no event longer than 90 days.

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent.

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If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against him shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is murder.

(c) The defendant is not subject to the expenses of hospitalization or transportation incurred as a result of his commitment under this section. Liability for payment under AS 47.30.910 does not apply to commitments under this section.

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(d) A defendant receiving medication for either a physical or a mental condition may not be prohibited from standing trial, if the medication either enables him to understand the proceedings against him and to properly assist in his own defense or does not disable him from understanding the proceedings and assisting in his own defense.

* Sec. 4. AS 12.45.115 is amended to read:

Sec. 12.45.115. Determination of sanity after release from commitment. (a) When, in the medical judgment of the custodian of an accused person committed under § 110(a) of this chapter, the accused is considered to be mentally competent to stand trial, the committing court shall hold a hearing, after due notice, as soon as conveniently possible after release of the accused from custody. At the hearing, evidence as to the mental condition of the accused may be submitted including reports by the custodian to whom the accused was committed for care.

(b) If at the hearing the court determines that the accused is presently mentally competent to understand the nature of the proceedings against him or to assist in his own defense, appropriate criminal proceedings shall be commenced against the accused.

(c) If at the hearing the court determines that the accused is still presently mentally incompetent, the court shall recommit the accused as provided in § 110(a) of this chapter.

(d) A finding by the court that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility. This finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury. (§ 2 ch 43 SLA 1966; am §§ 4—6 ch 119 SLA 1972)

Sec. 12.45.115. DETERMINATION OF SANITY AFTER [RELEASE FROM] COMMITMENT. (a) When, in the medical judgment of the custodian of an accused person committed under AS 12.45.110 [AS 12.45.110(a)], the accused is considered to be mentally competent to stand trial, the committing court shall hold a hearing, after due notice, as soon as conveniently possible [AFTER RELEASE OF THE ACCUSED FROM CUSTODY]. At the hearing, evidence as to the mental condition of the accused may be submitted including reports by the custodian to whom the accused was committed for care.

(b) If at the hearing the court determines that the accused is presently mentally competent to understand the nature of the proceedings against him and [OR] to assist in his own defense, appropriate criminal proceedings may [SHALL] be commenced against the accused.

(c) If at the hearing the court determines that the accused is still presently mentally incompetent, the court shall recommit the accused in accordance with AS 12.45.110 [AS PROVIDED IN AS 12.45.-110(a)].

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(d) A finding by the court that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility. This finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury.

* Sec. 5. AS 47.30.010 - 47.30.340 are repealed.

* Sec. 6. This Act takes effect October 1, 1979.