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HJ

HB 567

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# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

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

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Please put the attached work draft in final version form.

Thank you.

WO 7549  
Guthrie

Original sponsor: Judiciary Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 567

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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