ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1466 SHESS SB 99 - SB 100

1466

MEMO TO SUPERINTENDENT

You may use this form as a model for the memo you write to your superintendent.

Dear Mr.____,

We are a group of citizens interested in the problem of sex bias in public schools. We are beginning a short examination of _____ schools to see whether any sex bias or discrimination exists in the areas of (sports, vocational education, textbooks, counseling, employment; include those that your group has decided to study.)

If we find that improvement is needed in our schools, we may decide to press for passage of Alaska House Bill 411, which would eliminate sex bias and discrimination in education. We would then go to the _____School Board with our findings and urge that they and your local legislators support HB411.

We would very much appreciate your helping us by supplying the following information: (include those that your group needs)

-- Names of local school board members

-- Names and salaries of school district administrators

-- Names and salaries of school employees

-- List of high school graduation requirements

We know that you can share our interest in providing a quality education in our district. Thank you very much for your help.

Sincerely,

A recent poll of Anchorage high school girls asked the question, "What will you be doing in ten to fifteen years?"

Here are some typical answers:

"I think I'll be coaching a basketball team. That's what I want, but I bet I'll be home with four screaming kids."

"Raising a family. I'd rather be working in a lab as a biologist."

".... because I'm going to get married, and by that time I'll probably have children which will mean all my schooling will be a waste." (this girl wants to be an attorney)

"Either continue in this field (oceanography) or get married and be a housewife because if I have kids, I would have to take care of them."[1]

THE PROBLEM:

We live in an age in which women need to prepare themselves for new challenges. 1975 figures indicate that the average married woman will hold a paying job for 25 years.[2] Yet statewide and nationwide surveys show that girls still plan to enter low-paying traditionally "female" occupations; they plan to become nurses, teachers, and secretaries, or they plan to become homemakers and do not prepare for paying jobs.[3]

In order to expand their career options into growing fields like engineering, chemistry, and systems analysis, highschool girls need a background in advanced math and science; yet most girls do not choose these courses.

Highschool counselors are in a unique position to help girls cope with the new economic realities. By advice and testing, they can help girls discover their aptitudes, and consider and prepare for new types of careers. On the other hand, if counselors have stereotyped ideas of the abilities of girls and feel that only a few occupations are suitable for women, these ideas may limit the student's sights.

THE GOAL:

The goal of career and course selection counseling should be to discover the student's innate ability and to open to him or her options which are suitable to those interests and abilities, regardless of traditional notions of "men's work" and "women's work".

This means taking into account that the student may have sex-role assumptions that will need to be questioned.

FINDING OUT
About
Counseling
in your
School:

Large schools employ counselors to guide students in choice of courses and careers by administering and interpreting tests and giving advice. In small schools sometimes there is a part-time counselor and sometimes teachers do whatever guidance is done.

Find out who has this responsibility at your school, and arrange to visit the counseling office or teacher's room.

I. Interviewing the Counselor (one or two people to gather information and report to the group)

1. Ask for enrollment information for high school math and science courses. How many boys are enrolled? How many girls? (exclude remedial and business courses.)

2. Ask the counselor what is done to encourage girls to take these courses.

3. Ask what help is given to boys and girls to expand their horizons, to help them choose non-traditional careers if their abilities and interests point in that direction.

4. Does the counselor discuss changing roles and responsibilities of students and remind them of useful courses that they might overlook, such as P.E. and shop for the girls and cooking and child-rearing for the boys?

5. Does the counselor give girls realistic information about their probable job futures (i.e., most of them can expect to hold paying jobs, even if they marry)?

6. If the counseling office acts as an employment service for students, how does it assure itself that employers do not discriminate?

7. Do occupational interest tests include both males and females in consideration for all occupations and provide the same occupational scores for each?

8. Ask for copies of course descriptions, career brochures, and other materials given to students.

II. Analyzing Counseling Materials (one person or the whole group)

1. Are course descriptions and titles worded in such a way as to discourage one sex or the other? For example, are there titles like "Powder Puff Mechanics" or "Bachelor Cooking"?

Watch for course descriptions that discourage one sex. For example, compare these two descriptions of a basic auto mechanics course:

a. "If you like to tinker with your car and want to learn more...."

b. "Basic auto mechanics will teach you how to check out the car you drive."

Since girls in our society still do not tinker with their cars as much as boys do, they might be discouraged by the first course description.

2. Do career brochures suggest that some occupations are only for one sex? How many pictures of men do they show? How many of women? Are there photos of each in non-traditional occupations?

3. Are there materials which deal directly with the fact that many occupations are newly opened to and attractive to women?

4. Are there materials which discuss traditional sex stereotyping in career choices, and deal with changing roles and lifestyles?

5. Are there materials which explain that employers, unions and employment agencies may not discriminate with regard to sex? (Title VII of the 1964 Civil Rights Act.)

III. Polling the Students (one or two people to gather information and report to group)

Ask the counselor if there is a recent poll of high school students asking their career plans. If so, ask for a copy of the results. If not, arrange with a teacher to conduct the following simple poll. (page 23) Be sure that the student group includes both boys and girls.

IV. Interpreting poll results (one person to analyze and report to group, or one whole group to analyze and discuss)

This information will simply tell you how youg people view their prospects. If your students are like the national average, your results will be something like this.

1. Girls traditionally choose: secretary, stewardess, teacher, medical technologist, dental hygienist, nurse, housewife.

2. Boys traditionally choose: doctor, veterinarian, dentist, attorney, scientist, engineer, accountant, electronics techinician, truck driver, fire fighter and skilled trades.

3. Boys usually can name more options than girls can.

4. National figures show that men spend more years in college and training programs than women.

5. National figures show that men will work for 43 years, the average married woman, for 25.6

If your poll results agree with the national averages, you can conclude that choices for both boys and girls in your community are limited by sex-role expectations.

NOTES on Counseling:

Attached are copies of sex-fair or female-oriented materials from a high school counselor's office. The math brochure pictures both male and female math graduates, an effort to break the "math is for boys" stereotype. The other two brochures are more direct attempts to interest high school girls in careers which have traditionally been male-dominated. Such materials can help counteract years of training and the pervasively male orientation of many other counseling materials.

Career Choice Poll

We are interested in knowing your career plans, so that we can help you and other students prepare for the future. You do not need to sign your name to this poll. Thank you for your time.

Female _____ Male _____

1. What occupation do you plan to enter when you are finished with school?

2. Name several other occupations you might enter if you can't have your first choice.

3. For how many years do you expect to work? _____

4. Do you plan to go to college or training school? _____
   If so, for how many years? _____

SOURCES:

1. The Status of Women in Alaska, 1977 Dorthy M. Jones, Marsha Bennett, Mariana W. Fcliart, Mary Ann Vandecastle and Joan M. Katz (Institute of Social & Economic Research, Anchorage, Alaska 1977) pp.8-9.

2. Project Awareness, A Training Program, Feminists Northwest (Seattle, Washington 1976) p. H 2-1.

3. Status of Women in Alaska, p. 8.

4. Activities based partially on materials in Project Awareness and Cracking the Glass Slipper: Peer's Guide to Ending Sex Bias in Your Schools, Mary Ellen Verheyden-Hilliard (NOW Legal Defense & Education Fund, 1977) "Counseling".

5. Cracking the Glass Slipper, "Vocational Education," p. 3.

6. Project Awareness, p. H 2-1.

7. Tables of Degrees Earned By Women, United States, 1959-60, 1969-72 (Council for University Women's Progress, University of Minnesota, 1971).

"It makes good common sense when you think about it. The right to test yourself, to meet a challenge, to know that you can survive and win are important learnings for later life. We routinely provide these opportunities for our sons, our daughters deserve the chance to grow, too."[1]

THE PROBLEM:

School sports programs have long been dominated by traditionally male sports. In the past, schools might require boys to take more physical education courses than girls for high school graduation, and almost all P.E. classes were sex-segregated, with boys concentrating on competitive, high prestige sports such as football, wrestling, hockey, baseball, and track, while girls took volleyball, gymanastics, and swimming.

Extracurricular athletic programs have been even more dominated by male-oriented activities, with boys' sports programs given heavy financial and community support; girls have often been relegated to a cheering role.

THE GOAL:

To give individual students equal chance to develop their physical abilities and their qualities of leadership and cooperation. Girls as well as boys need to learn that they can demand a great deal of their bodies, that they are worthy of community support and that they can be winners.

FINDING OUT
About the
Sports Program
in your School:

Physical Education is part of the curriculum for all students in your school. Under Title IX, sex-segregated P.E. classes are illegal, although classes may be divided during the playing of contact sports such as football, hockey, and wrestling. HB 411 makes the same stipulation.

I. Curriculum (one person to gather information and share with the group)[2]
Obtain a list of high school graduation requirements and a list of P.E. course offerings in the school you are examining.

1. Does your program offer a good balance of contact sports and lifetime sports? (e.g., physical fitness, archery, badminton, tennis, bait-casting, canoeing, running, dance).

2. Are all P.E. classes co-educational? (Exception: only while actually participating in contact sports may students be separated on the basis of sex.)

3. Do course descriptions imply that a course is only for one sex or the other?

4. Are high school graduation requirements the same for boys and girls?

II. Interview one or more P.E. teachers. (One or two people)

1. Do you emphasize certain fitness activities, such as running, for both boys and girls? If so, what are these activities?

2. Do you ever organize exercises for the girls to "improve their figures?" for boys?

3. Do you ever excuse girls, but not boys, from such exercises as chi -ups?

4 By what standards do you judge progress within a course? Are these standards explicit, and not slanted toward one sex or the other?

5. Do you use as examples successful female athletes as well as male athletes?

6. Does your district negotiate longer and better contracts with some coaches than with others? If so, who are they, and what do they coach?

Athletics are extracurricular activities, and provide organized competition.

I. The Budget. Although sex-fairness cannot be judged entirely on the basis of how much money is spent on boys' and girls' programs, the school budget will give you a good indication of the main emphasis of your school's athletic program.

The information needed below should be available from the school district budget office and the high school principal's office. It will be easiest if you pick only one school and analyze its entire sports program. (One or two people to gather and analyze information and share with group, or one or two people to gather information and present to group for analysis.)

ATHLETICS SURVEY

SPORT	LEVEL (Elem., Jr. High, Sr. High)	NUMBER OF PARTICIPANTS	SINGLE SEX TEAM?	NUMBER OF DAYS IN OPERATION	NUMBER OF INTRAMURAL COMPETITIONS	NUMBER OF INTER-SCHOLASTIC COMPETITIONS	TOTAL EXPENDITURE OTHER THAN SALARIES	SEX OF COACH(ES)	SALARY OF COACH(ES)
		Females:							
		Males:							
		Females:							
		Males:							
		Females:							
		Males:							
		Females:							
		Males:							
		Females:							
		Males:							
		Females:							
		Males:							
		Females:							
		Males:							

1. What is the total expenditure for boys' sports? for girls'?

2. In how many sports do boys predominate? girls? In how many sports is participation equal?

3. Add together your expenditure figures for all predominately male sports. Divide by the number of students participating. This tells you how much the school district spends on each male athlete. Do the same for female athletes, and compare the figures.

4. Are there several levels of competence in boys' sports? In girls'? (e.g. can students play on intramural, junior varsity, or varsity teams, according to ability?)

5. Do coaches seem to be chosen on the basis of sex?

II. Ask the Coaches the following questions (one or two people to gather information and report to group).

1. How often does each team travel? Who pays for boys' travel? girls' travel?

2. Who pays for the boys' uniforms? For the girls'? Are the uniforms in equally good condition?

3. Are boys and girls granted the same awards for their achievements? (letter jackets, trophies, banquets, etc.).

4. Do school and community media give equal publicity to boys' and girls' sports events? Ask for copies of the school paper and check this out.

5. Are both boys and girls informed about athletic scholarships?

6. Get a schedule of boys' and girls' games and a practice schedule. Does either sex seem to have a more convenient and popular schedule?

NOTES on Sports:

Attached is information on how some secondary schools have developed sex-integrated physical education programs. The P.E. programs discussed in these articles are in large urban schools with resources different from those in many Alaskan schools, but it is often useful to know how other schools have solved their problems.

SOURCES:

1. Cracking the Glass Slipper: Peer's Guide to Ending Sex bias in Your Schools, Mary Ellen Verheyden-Hilliard (NOW Legal Defense and Education Fund, 1977), "Cinderella, the Bonsai Tree, and You" p. 2

2. Activities adpated from Project Awareness, A Training Program, Feminists Northwest, (Seattle, Washington, 1976) pp. H3-31 through H3-52.

3. Title IX Sex-Integrated Programs That Work (American Alliance for Health, Physical Education and Recreation, Washington, D.C., 1977) pp. 8-9

-- 90% of all women will be employed at some time in their lives.

-- 40% of the labor force are women.

-- One out of eight families is headed by a women.

-- Even if a women marries, she can expect to spend 25 years working outside the home.

-- The majority of women work because of economic need.[1]

THE PROBLEM:

Girls traditionally are not aware of these economic facts and do not adequately prepare themselves for employment. When they do take vocational education courses, they tend to concentrate in areas that are low-paying, or in non-paying, "self-improvement" courses.

THE GOAL:

To offer both boys and girls vocational training suitable to their needs and interests, regardless of sex; to make girls as capable of supporting themselves as boys with the same level of training. Because of changing lifestyles and family roles, boys also need to learn the skills necessary to run a home and raise children.

Finding Out About Vocational Education in Your Community

Each school district has some sort of vocational education program. In your school district, vocational education may begin in junior high, with exploratory industrial arts and home economics courses, or it may begin in the high school grades. It may be handled in a separate school. If there is a community college in your area, the college will probably offer vocational education courses.

Call the central office of your school district and get the name of the person responsible for vocational education. Arrange a visit and interview that person.

I. Interviewing the Vocational Education Supervisor

(one or two people to gather information and present to group)[2]

Note: It is helpful to read part II of this section before the interview.

1. Do junior highs offer prevocational programs? If so, ask for a breakdown of enrollment by sex.

2. What vocational courses are offered? Get an enrollment breakdown by sex.

3. How are students counseled into these courses?

4. Ask for some of the promotional materials the vocational program distributes to prospective students. How are these materials distributed?

5. What is done to encourage boys and girls to enter non-traditional fields of study?

6. Ask for a copy of the course descriptions that are given to students when they choose courses.

7. If the vocational program serves as an employment placement service for students, how does the school assure itself that the employer does not hire or pay different wages on the basis of sex?

II. Analyzing your Findings

(one or two people to present to group, or whole group analyzes)

1. Course Enrollment: Here is a list of courses commonly offered in vocational schools. An M in the second column means the course has traditionally been a male field of study; F means female, and N neutral. Use the third column to show how your school compares.[3]

COURSE	Traditional Enrollment	Your School
Homemaking	F	
Health Occupations	F	
Child Care	F	
Cosmetology	F	
Secretarial Skills	F	
Fashion Merchandising	F	
Interior Decorating	F	
Tourism	F	
Small Engine Repair	M	
Auto Mechanics	M	
Carpentry	M	
Electronics	M	
Masonry	M	
Surveying	M	
Fire Management	M	
Photography	M	
Commercial Fishing	M	
Commercial Food Preparation	N	
Horticulture	N	
Commercial Art	N	

Notice that traditionally male and neutral fields prepare students for jobs that pay well, whereas many traditionally female fields are low-paying or non-paying. If enrollment in your community follows traditional lines, then your young women entering the job market will be earning approximately 47% less than your young men.[4] A sex-biased education costs females money.

2. Counseling and Encouragement: Part of the problem in vocational education is that girls have stereotyped ideas of occupations and need to expand their horizons. High school counselors and vocational schools can do much to offer girls new options. Some possibilities are:

   -- using women carpenters, mechanics, surveyors, etc., as recruiters to talk to junior high school girls about their jobs.
   -- holding workshops for teachers and counselors to alert them to the problems and possibilities for girls in vocational education.
   -- developing brochures and personal counseling techniques that deal directly with changing roles and options.

3. Promotional Materials: How many pictures of girls are there in the brochures, and how many of boys? Do photos show girls in non-traditional courses as well as traditional ones? Boys?

4. Distribution of Materials: Be aware that in some communities, vocational education brochures are sent only to boys.[5]

5. Course Titles and Descriptions: Titles may be worded so that they exclude one sex; for example, "Powder Puff Mechanics" and "Bachelor Cooking".

Sometimes course descriptions have the effect of discouraging one sex from enrolling. For example, compare these two descriptions of a basic auto mechanics course:

   a. "If you like to tinker with your car and want to learn more..."

   b. "Basic auto mechanics will teach you how to check out the car you drive."

Since girls in our society still do not tinker with their cars as much as boys do, they might be discouraged by the first course description.[6]

Notes on Vocational Education: See the attached brochure from Anchorage Career Center for an example of an attempt at non-sexist promotion.

Notice that females are pictured in not just one, but several non-traditional jobs, as well as traditional ones, and that the language is sex-fair.

SOURCES:

1. Guidelines: Sex-Bias - Free Vocational Education Programs (State of Alaska Department of Education, Juneau, Alaska, 1978) P.4

2. This activity based on Cracking the Glass Slipper: Peer's Guide to Ending Sex Bias in Your Schools, May Ellen Verheyden Hilliard (NOW Legal Defense and Education Fund, 1977) "Vocational Education".

SOURCES (Cont'd)

3. Compiled from information supplied by Anchorage Career Center and Alaska State Department of Education.

4. The Status of Women in Alaska, 1977, Dorothy M. Jones, Marsha Bennett, Mariana W. Foliart, Mary Ann Vandecastel, and Joan M. Katz (Institute of Social and Economic Research, Alaska 1977) pp- 38-40.

5. Cracking the Glass Slipper, "Vocational Education", p. 3-6 Ibid., P. 4

In Alaska in 1976:

-- 62.5% of elementary and secondary schools teachers were women.

-- 20.3% of head teachers were women.

-- 10.6% of principals were women.

-- 1.5% of superintendents were women

THE PROBLEM.

Although several federal and state laws specifically prohibit sex discrimination in employment in educational institutions, 1976 statewide figures show that the overwhelming majority of principals and superintendents are men and that even when women do have high positions in education, they sometimes earn less than men of the same rank.[1]

As of June, 1979, there are no female superintendents in Alaska.[2]

THE GOAL:

To offer men and women equal opportunities for employment in the educational system, in order to improve conditions for employees and in order to furnish students with good models of men and women who exercise leadership and authority with other adults as well as with students.

Finding Out About Employment in Your School District

I. School Census (one or two people to gather and analyze information and report to group)[3]

The Superintendent's office should be able to furnish you with this census of school employees, along with salary figures for each position.

You may handle salary figures in either of two ways:

Average salary: Add together salaries for all females in a particular job. Divide the total figure by the number of women holding the job. Do the same for men. This process is time consuming, but it will give you detailed results and show clearly any differences in male and female salaries.

Salary Range: Simply use the schools district's salary range figure for each position. This figure will probably be the same for both men and women in each job, but it will at least give you an idea which jobs are highest-paying, and who holds them.

A. School Board Men_____

Women_____

B. Superintendent's Office

Administrators	Men_____	Salary_____
	_____	_____
Heads and assistants	_____	_____
	_____	_____
Heads of programs	_____	_____
	_____	_____
Support Staff	_____	_____

1. Are men and women present in approximately equal numbers at each staff level?

2. How do salaries compare for each of the categories? Which jobs pay the highest salaries? Are these jobs held equally by men and women?

II. Interview the Personnel Director or other person responsible for hiring for your district. (one or two people to gather information and present to group).

1. Is there a formal hiring announcement, search and interview mechanism which is used for all candidates?

2. Do recruitment practices include non-traditional channels for promising women candidates?

3. Are men and women with comparable experience and qualifications hired at the same level?

4. Do women and men at comparable levels receive equal pay?

5. Are recruitment and hiring procedures ever based on assumptions about family obligations and willingness to relocate?

6. Do contracts include childbirth leave policies which do not penalize women in status, pay, or benefits?

7. Are fringe benefit programs the same for both males and females?

8. Is a good teaching candidate ever overlooked in favor of one who can coach?

SOURCES:

1. The Status of Women in Alaska, 1977, Dorothy M. Jones, Marsha Bennett, Mariana W. Foliart, Mary Ann Vandecastle and Joan M. Katz (Institute of Social and Economic Research, Anchorage, Alaska 1977) P. 14.

2. Information provided by Alaska State Department of Education, Juneau, Alaska in telephone conversation.

3. Activities adapted from Project Awareness/A Training Program, Feminist Northwest (Seattle, W[illegible] 1976) pp H 3-31 thru H 3-52.

C. SCHOOLS

		Elementary	Middle or Jr. High	Secondary	Salary
Principals	M				
	F				
Teachers	M				
	F				
Counselors	M				
	F				
Librarians	M				
	F				
Teacher Aids	M				
	F				
Clerical Staff	M				
	F				
Coaches	M				
	F				
Custodians	M				
	F				
Lunch Staff	M				
	F				
Bus Drivers	M				
	F				

"Boys are doctors, girls are nurses. Boys invent things, girls use what boys invent."[1]

"I have yet to find a textbook that states categorically that, for example, females are illogical or that they cannot be the principal source of family income or that the male's work is more important than the female's .... nevertheless, the cues are there."[2]

THE PROBLEM:

During the years when children are forming their ideas of how they should act when they become adults, they are exposed in school to hundreds of textbooks containing thousands of examples of boys and girls, men and women.

Unfortunately, many textbooks use illustrations, anecdotes, and examples which are based on sex-role stereotypes. These stereotypes are so much a part of our culture that they often go undetected, while they subtly influence our children.

THE GOAL:

Textbooks ought to present models that encourage children to become full human beings capable of a wide range of human activities, interests and emotions.

Finding Out About the Textbooks Your School Uses:

Obtain a selection of textbooks used in different subjects in your school. Try to include some of the oldest books now in use and some of the newest.

1. Counting and Listing Activities (allot one textbook and one or more exercises to each group member)

1. In a literature or reading book, count the number of male main characters and the number of female main characters in the stories and poems contained in the first hundred pages.

2. In any illustrated text, count the number of males and the number of females pictured in the first hundred pages.

3. In any illustrated text, list the occupations shown for adult males and for adult females (e.g., police officer, homemaker, secretary, factory worker, chemist).

4. List the activities shown in which girls engage and ones in which boys engage. (e.g., running, playing baseball, cooking, watching others).

5. List the emoticns males express in text or illustrations, and the emotions females express (e.g., happiness, anger).

II. Textbook Evaluation (each group member evaluates one or more books)

Based on the information you gathered in Part I and on your general examination of the book, answer all questions below which apply to your book.

YES	NO	
___	___	1. Females comprise roughly half the illustrations, stories and examples in the book.
___	___	2. Adult women are portrayed in a wide variety of occupations, including some non-traditional ones. (They might be doctors, engineers, carpenters, as well as homemakers, teachers, nurses.)
___	___	3. Adult men are portrayed in a wide variety of occupations including non-traditional ones. (They might be shown as homemakers, secretaries, school teachers, fathers).
___	___	4. Boys and girls participate equally in intellectual activities.
___	___	5. Boys and girls particpate equally in physical activies.
___	___	6. Girls are shown expressing a wide variety of emotions, including some traditionally "unfeminine" ones, such as pride in accomplishment, competitiveness, anger.
___	___	7. Boys are shown expressing a wide variety of emotions, including some traditionally "unmasculine" ones, such as tenderness, fear, loneliness, and uncertainty.
___	___	8. Both boys and girls are shown to be self-reliant, clever, brave, capable of facing their own problems and finding their own solutions.
___	___	9. Achievements of girls and women are based on initiative and intelligence, and not solely on good looks or their relationship to men.
___	___	10. Some quotations, reference and extra reading recommendations are authored by women.
___	___	11. Women have names, and are not solely referred to as Mother, Mrs.___, or ____'s wife.
___	___	12. Terms like "the weaker sex" or "the little woman" are not used without being challenged. (students may be asked to challenge or evaluate these terms, or the text may comment on the injustice of such terms.)
___	___	13. Historical inequities are not portrayed without being challenged. (see "notes")
___	___	14. There are no unchallenged derogatory sex-stereotyped characterizations, such as "boys make the best architects" or "girls are silly."
___	___	15. Non-human characters are not personified in sex stereotypes.

For an ideal textbook, all answers above would be yes.

NOTES ON TEXTBOOKS:

One often hears the arguement that textbooks ought to reflect the "real world", and that since, for example, American political history was made mainly by men, it is only realistic for U. S. history textbooks to reflect this.

Unfortunately, presenting our country's sexist past without questioning the values which lay behind it only perpetuates sexist behavior. To break this cycle, the best new textbooks are doing three things:

1. Increasing the representations of female authors, editors, and story characters, and including more examples of great achievements by women scientists, social reformers, etc.

2. Raising outright the issue of sex bias and encouraging the students to deal with questions like "why were so few women active in public life at this time in history?" or "how did the educational system of colonial New England contribute to the perpetuation of a male-dominated social system?"

3. Broadening the scope of coverage of textbooks to include not only those activities which have been dominated by men, but also those traditionally dominated by women. For example, a U. S. history text chapter on pioneering might include not only the usual accounts of settlement-building, wars and treaties, but might also examine how cloth, soap, preserved foods, candles, and toys were made and how children were reared in pioneer times. In this way students are brought to understand the contributions of women to American culture.

Attached are copies of pages from a new social studies textbook[4] which attempts to present a fair image of both women and men, and to deal directly with the damaging effects of stereotyping. Notice that the section on technology (pp 54-55) not only shows an equal number of women and men, in photographs, but also avoids the use of generic "he", "man", and "mankind", in the text, using instead the more equitable terms "human beings", "people", and "human groups."

SOURCES:

1. I'm Glad I'm a Boy! I'm Glad I'm a Girl (Whitney Darrow, Jr.) (Simon and Schuster, New York, 1970)

2. "Sexism in Textbooks: A Guide to Detection," John P. Schenck (American Vocational Journal, October, 1976) p. 43.

3. Activities adapted from:

   a. Project Awareness, A Training Program, Feminists Northwest (Seattle, Washington, 1976) pp. H3-31 thru H3-52.

   b. Images of Males and Females in Elementary School Textbooks Lenore, J. Weitzman and Diane M. Risso (University of California Davis, California, 1975)

4. Windows on our World: The Way People Live, Margaret Stimmann Branson (Houghton-Miflin Co., Boston, 1976) pp. 54-55, 148-149

IMPLEMENTATION

Follow-up Activities

Now that your group has finished its study, perhaps you have found areas that need improvement. Here is a list of steps your group will need to take to press for passage of HB 411.

Some of these activities will demand time and commitment from you, but they are all important. None should be considered optional except the last two. You have done the vital information gathering; now you must get that information into the hands of people who have the power to do something about the problem.

1. Write a brief summary of the findings of your workshop. Include a brief explanation of the damaging effects of sex bias and some of the specific problems you have discovered in the schools.

2. Arrange to make a presentation to your local School Board.

   a. Present your written summary, and be there in person to explain your findings in more detail.

   b Request that the School Board formally push for passage of HB 411. Request that part of this support be in the form of letters to legislators, and that your group be sent a copy of each letter.

   c. Get the School Board to give you a definite date when you can come back to get a progress report. Do not make the mistake of not following through on this demand if you want to see it done. School Boards, like everyone else, work better with a deadline.

3. Call your local newspaper and explain what your group is doing. Give them your written summary and report the responses you have had from the School Board.

4. Spread the word in your community: give your story to local radio and tv stations. Offer to speak at citizens' group meetings explaining what your group has found.

5. Arrange to meet with local legislators before the 1980 session begins. Explain to them the findings of your group and ask for a commitment to support HB 411. Supply them with your written summary.

6. Call the Legislative Information Office nearest you regularly to find out the progress of HB 411. Each time it goes to a new committee or back to the floor of the legislative body, send public opinion messages and letters to the legislators on the committee or to legislators from your area. See the contact list for names, addresses, and information on how to send public opinion messages.

7. Please keep in touch with the Commission on the Status of Women; we would like to have a copy of your written summary and a report on your progress.

8. When you are satisfied that HB 411 is well on its way to passage, you may want to press for implementation of Title IX, if you feel that your district is not in compliance.

You will need to contact your local Title IX Coordinator and possibly the state Title IX Coordinator; these names are listed in the contact list. Be aware that HEW has money available to help local school districts put on workshops, conferences, and other activities needed to bring the district into compliance with Title IX; the coordinator should be able to help with this.

If necessary, you can file a complaint with HEW. Title IX coordinators have information on how to do this, or send for this citizen's packet on Title IX Compliance: Cracking the Glass Slipper; Peer's Guide to Ending Sex Bias in Your Schools. Mary Ellen Verheyden-Hilliard. Available from Peer, 1029 Vermont Avenue, NW, Suite 800, Washington, D.C. 20005. $5.00

SIGNING ON TO STAIRS

You sign on to STAIRS by entering: aqua (space) password (space) user name

PRESS: CLEAR KEY
TYPE: aqua alaa hhgjington
PRESS: ENTER KEY

aqua alaa jrosier

The next screen that you see briefly displays the word "AQUARIUS," which is the name of the real-time query subsystem of STAIRS.

IDENTIFYING THE DATA BASE TO BE SEARCHED

The system prompts you to enter the name of the data base which you want to search by displaying the words:

R0102 ENTER DATA BASE NAME

You respond by typing:

TYPE: at80

PRESS: ENTER KEY

This data base contains the Alaska Statutes.

INTRODUCTION

Today, organizations in both the private and public sectors are inundated with tremendous volumes of paperwork.

Documents must be typed, edited, revised and published. Once prepared, the documents--reports, directories, minutes, transcripts, procedures, regulations, budgets, statutes, contracts--must be distributed and filed. The documents must be readily available for use by many different people in many departments and locations. Redundant typing and proofreading is common, and the cost to maintain documents and files is staggering.

The computer with its speed, logic, and storage capacity, can be an effective tool to manage the awesome mass of textual information that business and government must process and control.

A computerized text management system, based on the IBM Advanced Text Management System (ATMS) and the Storage and Information Retrieval System (STAIRS), can:

* Simplify the preparation of documents
* Provide easy access to documents and files
* Eliminate manual indexing and filing
* Save retrieval time

Thus, productivity of professionals, managers and secretarial personnel can be improved. A text management system not only minimizes the cost of preparing documents, but also offers professionals--administrators, attorneys, legislators, and managers--a readily available pool of facts for better and faster decision making.

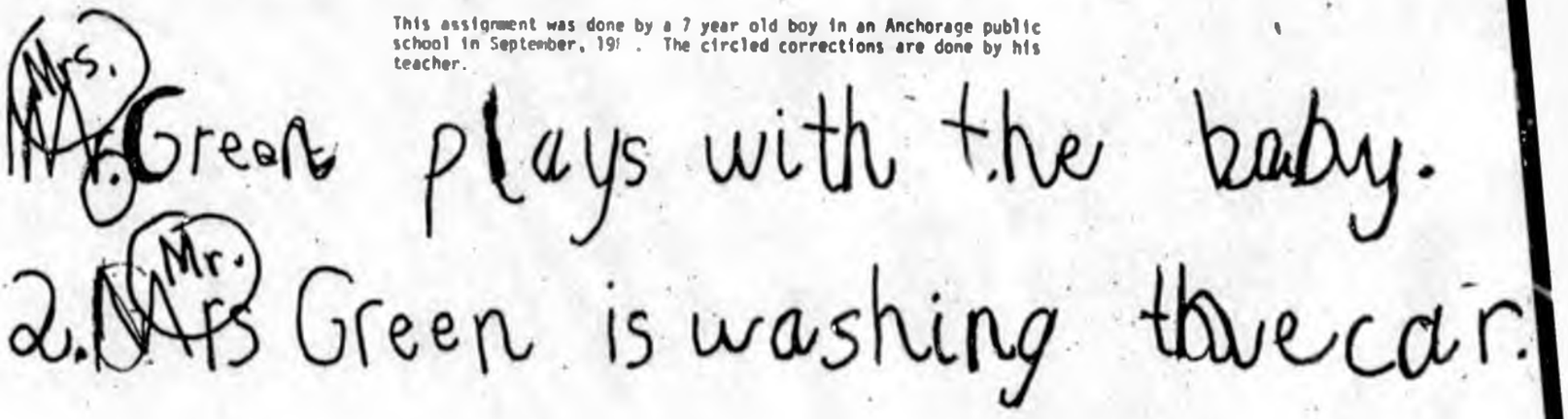
HOW DO I QUERY A STAIRS DATA BASE?

From your terminal, STAIRS lets you perform a flexible dialog with the computer to retrieve desired documents from one or more data bases. When the data bases are loaded into the system, every significant word is placed into a comprehensive dictionary. Hence, you don't need a list of predefined keywords to state your query--you can simply describe in your own words the subject or documents you're interested in.

You can state your query very generally and retrieve many documents that may relate to your subject. You can refine the search by entering query statements that contain more precise search criteria. By carrying on an interactive dialog with the system, you can quickly find the pertinent documents you're looking for.

Schools — the transmitters of patriarchal structure

This assignment was done by a 7 year old boy in an Anchorage public school in September, 19 . The circled corrections are done by his teacher.



Editorial

As I look around at the State of the Women's Movement, I feel depressed, not because there have not been tremenduus gains made, not because we are being threatened by powerful forces from the Neo-Conservative Movement, but because I see no active attacks being made toward an institution that is the major transmitter of patriarchal culture in the United States -- the public schools. Oh, a few individual feminists fight lonely battles to change sexist socialization, teaching and stereotyping in their schools, but by and large, the schools remain 19th century instotutions that teach us to buckle under to the prevailing societal traditions and to perpetuate them ourselves.

Much has changed in the sports arena for secondary students eliminating sex-biased discrimination against females, but there has been little real change in attitudes, or behaviors toward students anywhere else in the secondary schools.

IT IS TOO LATE....by the time a person is 12 years . She or he is already socialized into sex-role behavior that is severely limiting the futures of all our children, female and male, but especially our women-children. I feel real resentful toward women who have sons; I know life will be easier for their children than for my daughter. Because they have penises they will get more attention in school, more encouragementin athletics, more scholarships, more pres academically; people with peniseswill be wel institutions of higher learning, on the basis of compet aggressive,

When you have some data collected, you can go to a school board meeting and request that teachers receive new in-service training in sex-biased education. (You have to call the school district and ask to be put on the agenda by noon to be heard---meetings are held every other Monday.) Don't go alone; take some friend and wear women's rights paraphanalia. If you don't have the courage to do that, that's OK. Send it to Karen c/o PO Box 131, Anchorage, 99510. I will make good use of your information while protecting your identity if necessary.

File a Title IX complaint. This will serve to protect your child against "subtle recriminations". You may do this by calling the Community Relations office at the Anchorage School District offices. You may not have a case that can be pursued, but its worth the effort. Title IX is very broad, open to much interpretation, and tends to become refined as a result of court cases brought by people who wanted to test the law. It costs no money to file this complaint. To continue it in court will, but don't give up on that basis. There are women and maybe men who would be willing to help finance a suit; there are attorneys who would willingly fight such a case.

Last year, and every year for the past (a bill before the legislature speaking ucation, HB 411. It has been and Social Ser

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

SB
100

COMMITTEE REPORT

SENATE

FURTHER: Judiciary

1/19/81

Date: _____

Mr. President:

The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had SB 100

mentally ill persons

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for SB 100 (HESS) [✓] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [✓] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

March 17, 1981

State Senator Charlie Parr
Pouch V
Juneau, Alaska 99811

Dear Senator Parr:

I appreciate the work you are doing on Senate Bill 100 and the thoughtfulness with which the legislation has been considered. I promised to send you the Mental Health Advisory Council's input after our meeting in February. When I have reviewed our notes I find that our input is essentially the same as that of the Division of Mental Health. The Division in its testimony has pretty much covered the ground we wished to cover. We believe the bill is a good one as ammended and would like to encourage its passage this year as a much needed piece of legislation. We also approve of the fiscal note which has b een provided by the Divisior of Mental Health.

Sincerely yours,

Robert D. Bowers

Robert D. Bowers, Chairman
MENTAL HEALTH ADVISORY COUNCIL

alaska
state
hospital
association

319 Seward St., Juneau, Alaska 99801 (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

May 12, 1981

The Honorable Charles Parr
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Parr:

The Alaska State Hospital Association has reviewed the most recent proposed amendments to SB 100 and wishes to inform you of our support.

Senate Bill 100 is a valuable step forward in protecting a mental patient's right while at the same time providing the ability to provide sometimes necessary involuntary treatment. In addition, this measure provides a means for nonstate hospitals to become designated to provide involuntary mental treatment so that these services can be offered at facilities other than the Alaska Psychiatric Institute in Anchorage.

I would also like to take this opportunity to express my appreciation of your willingness to work with us to resolve the initial problems we had with this bill.

Sincerely,

Dennis L. DeWitt
Executive Director

DLD/b

cc: Senate Judiciary Committee
Tom Mingen, Fairbanks Memorial Hospital
Sharon White, Caregage North Health Care Center

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT

STATE OF ALASKA
JAY S. HAMMOND, GOVERNOR
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
POUCH K — STATE CAPITOL
JUNEAU 99811

March 7, 1977

The Honorable Francis S. L. Williamson
Commissioner
Department of Health & Social Services

ATTN: Dr. Gerald Schrader, Director
Division of Mental Health &
Developmental Disabilities

Re: Constitutionality of certain provisions of AS 47.30.010-.340

Dear Commissioner Williamson:

The Division of Mental Health has requested our opinion on the constitutionality of certain provisions of AS 47.30.010-.340, which govern commitments of mentally ill persons to designated hospitals, in view of recent federal court decisions and decisions in other state jurisdictions. The Division has also requested advice as to how it should proceed under the current statute.

Unless the issue is free from all doubt, the constitutionality or unconstitutionality of a statute is for the courts alone to decide. Where the issue has not been ruled on by the Alaska Supreme Court, the United States District Court for the District of Alaska, the Ninth Circuit Court of Appeals, or the United States Supreme Court, we can only attempt to predict whether any parts of AS 47.30.010-.340, if challenged, would be found unconstitutional. With this understanding as to the un-

certain nature of the predictions, this opinion will point out several areas of possible unconstitutionality in Alaska's civil commitment procedures for mentally ill persons, based on recent judicial trends throughout the United States at the federal court level. An analysis of judicial decisions in other jurisdictions in relation to the Alaska statutes will be followed by advice to the Division of Mental Health on how best to proceed under the current statute -- recognizing, however, that the Division cannot control all aspects of the commitment process, which frequently involves police officers, private physicians, relatives and other interested private parties.

We are not aware of specific abuses in civil commitments under AS 47.30.010-.340. In fact, it is our understanding that, at least where the state is involved, the rights of persons being committed are generally provided protections which are not required by the statutes. Our concern is that Alaska's mental commitment statutes, if followed to the letter, permit practices which other courts have found to be unconstitutional, such as a standard for commitment not based on harm to self or others, an absence of an automatic hearing after an involuntary emergency commitment, a long potential delay before a hearing and absence of a notice and hearing mechanism when convalescent leave from a mental institution is revoked. Our general recommendation is for legislative revision of Alaska's current civil commitment statutes.

INTRODUCTION

Advocacy on behalf of mentally ill persons has increased dramatically in recent years throughout the United States and has resulted in federal court decisions striking down parts of several states' civil commitment statutes on constitutional grounds. 1/ Some courts have also interpreted state statutes or state and federal constitutions as providing certain rights to involuntarily committed persons, such as a right to treatment while institutionalized 2/ and a right to be placed in the least restrictive setting consistent with

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1/ For example, the following state's statutes have been found to be unconstitutional in part: Alabama - Lynch v. Baxley, 386 F. Supp. 378 (M.D. Ala. 1974); Georgia - J. L. v. Parham, 412 F. Supp. 112, motion denied at 412 F. Supp. 141 (M.D. Ga. 1976); Hawaii - Suzuki v. Quisenberry, 411 F. Supp. 1113 (D. Ha. 1976); Kentucky - Kendall v. True, 391 F. Supp. 413 (W.D. Ky. 1975); Nebraska - Doremus v. Farrell, 407 F. Supp. 509 (D. Neb. 1975); Michigan - Bell v. Wayne County General Hospital at Eloise, 384 F. Supp. 1085 (E.D. Mich. 1974); Pennsylvania - Goldy v. Beal, No. 75-791 (N.D. Pa., July 8, 1976); Meisel v. Kremens, 405 F. Supp. 1039 (E.D. Pa. 1975); Dixon v. Attorney General of Com. of Pa., 325 F. Supp. 966 (M.D. Pa. 1971); Wisconsin - Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972), vacated on procedural grounds 414 U.S. 473 (1974), on remand 379 F. Supp. 1376 (E.D. Wis. 1974), vacated on procedural grounds 421 U.S. 957 (1975), on remand 413 F. Supp. 1318 (E.D. Wis. 1976); West Virginia - State ex rel. Hawks v. Lazaro, 202 S.E.2d 109 (W. Va. 1974).

2/ E.g., Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966); Nason v. Superintendent of Bridgewater State Hospital, 233 N.E.2d 908 (Mass 1968); Wyatt v. Stickney, 325 F.Supp. 781 (M.D. Ala. 1971), 344 F.Supp. 373, 344 F.Supp. 387 (M.D. Ala. 1972), affirmed sub. nom.; Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974); Welsch v. Likins, 373 F.Supp. 487 (D. Minn. 1974) dealing with mentally retarded persons; Davis v. Watkins, 384 F.Supp. 1196 (N.D. Ohio 1974); Stachulak v. Coughlin, 364 F.Supp. 686 (N.D. Ill. 1973).

the treatment of the patient and the protection of the patient and others from harm. 3/ The clear trend in judicial decisions in other jurisdictions is toward more specific rights for mental patients and tighter procedural safeguards surrounding the serious deprivation of personal liberty involved in an involuntary commitment.

Civil commitment procedures in other jurisdictions have been challenged for their lack of procedural safeguards and consequent violation of the due process clause of the 14th Amendment of the federal constitution. 4/ The United States Supreme Court has adopted a two-step approach to due process analysis: (1) Is the private interest affected a "liberty" or "property" interest within the meaning of the due process clause? 5/ (2) If so, do the individual

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3/ E.g., Lake v. Cameron, 364 F.2d 657 (D.C. Cir. 1966); Lessard v. Schmidt, supra; Lynch v. Baxley, supra; Dixon v. Weinberger, 405 F. Supp. 974 (D.D.C. 1975); J. L. v. Parham, supra.

4/ Section 1 of the 14th Amendment to the United States Constitution provides in part:

> . . . nor shall any state deprive any person of life, liberty or property without due process of law . . . .

See also, Constitution of the State of Alaska, Article I, Section 7.

5/ See, e.g., Perry v. Sindermann, 408 U.S. 593, 599-603 (1972); Board of Regents v. Roth, 408 U.S. 564, 569 72 (1972).

interests and the importance of the procedure in protecting them outweigh the state's objectives? 6/

In the context of a civil commitment, the individual's interest is physical liberty. The state's interest is confinement of those individuals who pose a significant danger to the community (the police power of the state) and care and treatment of individuals who may do harm to themselves (the parens patriae authority of the state). The deprivation of liberty in a commitment must be balanced against the state's interest in protecting the public and the individual.

The United States Supreme Court has not yet had occasion to address the issue of procedural safeguards in a civil commitment proceeding. In O'Connor v. Donaldson, 422 U.S. 563 (1975), the Supreme Court's most recent decision in the area of civil commitments, the Court did not find it necessary to reach the constitutional questions of standards for civil commitment and procedural safeguards. The Court's holding was a narrow one:

> In short, a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends. Since the jury found, upon ample evidence, that O'Connor, as an agent of the State, knowingly did so confine Donaldson, it properly concluded that

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6/ See, e.g., Morrisey v. Brewer, 408 U.S. 471, 481-90 (1972); Bell v. Burson, 402 U.S. 535, 539-42; Richardson v. Perales, 402 U.S. 401-07 (1971); Goldberg v. Kelly, 397 U.S. 254, 263-71 (1970).

O'Connor violated Donaldson's constitutional right to freedom. 422 U.S. at 576.

COMMITMENTS UNDER AS 47.30

AS 47.30 provides for three methods of commitment for persons alleged to be mentally ill: (1) voluntary commitments under section 20; (2) emergency commitments under section 30; and (3) judicial commitments under section 70.

(1) Voluntary Commitments. 7/ Under sec. 20(1) a person may be admitted on his own application, but a minor needs parental consent. Sec. 20(2) does not appear to present independent grounds for admission to a mental hospital, but merely sets out the circumstances under which the head of a designated hospital may receive an individual who is not a voluntary committee. (These grounds are covered by sections 30 and 70).

7/ Sec. 47.30.020. AUTHORITY TO RECEIVE PATIENTS. The head of a hospital designated by the department under § 10 of this chapter may receive for observation, diagnosis, care, and treatment of an individual (1) upon application by the individual, including a minor with the consent of a 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.

(2) Emergency Commitments. 8/ Sec. 30(a) provides that a person may be admitted if: (1) a licensed physician signs a certificate that the individual is likely to harm himself or others if allowed to remain at liberty or is in need of immediate

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8/ Sec. 47.30.030. EMERGENCY HOSPITALIZATION. (a) If the certificate by a licensed physician under § 20 of this chapter 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 § 70 of this chapter. Transportation shall be allowed as is set out in § 110 of this chapter. The application for admission shall state the circumstances under which the individual was taken into custody and the reason for the belief.

(c) Sections 10 - 340 of this chapter 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.

hospitalization; (2) the certificate is endorsed by the Department of Health and Social Services or by a superior court; and (3) an interested party or peace officer who has this endorsed certificate takes the individual into custody, applies to a hospital for admission and transports the person there.

Sec. 30(b) provides that an interested party or a peace officer may take an individual into custody and transport him to a hospital before obtaining an endorsed medical certificate if he has "good and valid" reason to believe that because of mental illness a person is likely to injure himself or others if not immediately restrained. After transporting the person to a hospital the interested party or peace officer must either obtain an endorsed medical certificate as in 30(a) or initiate judicial commitment proceedings.

(3) Judicial Commitment Proceedings. 9/ Sec. 70 pro-

9/ 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 reciept 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

9/ continued:

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 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.

9/ continued:

(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 find 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 §§ 10--340 of this chapter, except § 170 of this chapter, commitment proceedings under this section shall not be commenced with respect to a patient admitted under § 20 of this chapter unless release of the patient is first requested in accordance with § 50 of this chapter.

(l) An order for hospitalization under this section is not a judicial determination of legal incompetency, except to the extent provided in § 130(b) of this chapter. 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.

vides for hospitalization upon a court order after a full judicial hearing initiated by a petition from an interested party, physician, peace officer, the Department of Health and Social Services or the head of an institution in which an individual is hospitalized. The proposed patient has an opportunity to be represented by an attorney or an advisor and may request a jury of six. The court orders the person hospitalized for an indeterminate period if the court (or the jury, if requested) finds that the proposed patient is "mentally ill and because of his illness is likely to injure himself or others if allowed to remain at liberty" or 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."

DUE PROCESS CONSIDERATIONS

Areas of AS 47.30 which might be challenged on due process grounds because of an absence of adequate procedural safeguards include the following:

A. Standards for Commitment

(1) Analysis: There are two standards for commitment in AS 47.30: Mental illness which results in (1) likelihood of injury to self or others and (2) need for immediate care or

treatment in a hospital, i.e., that the individual, because of his mental illness, lacks sufficient insight or capacity to make responsible decisions concerning his need for hospitalization. These standards are found at section 20(2), 10/ section 30(a) and (b), 11/ section 40(b), 12/ section 70(i) 13/.

The first standard -- likelihood of harm to self or others -- appears to be constitutionally adequate. A few courts have required that the standard of future dangerousness must include a showing that the person has actually been dangerous in the recent past and that such danger was manifested by an overt act, attempt or threat to do substantial harm to himself or to

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10/ See footnote 7.

11/ See footnote 8.

12/ AS 47.30.040. NEWLY ADMITTED PATIENTS.

. . (b) At the end of the 48 hours, a patient admitted under § 20 or 30 of this chapter, 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 § 70 of this chapter or otherwise.

13/ See footnote 9.

another. Lynch v. Baxley, 386 F. Supp. at 391; Lessard v. Schmidt, 349 F. Supp. at 1093; Cross v. Harris, 418 F.2d 1095, 1102 (D.C. Cir. 1969); Doremus v. Farrell, 407 F. Supp. at 515.

The second standard -- need for care and treatment -- appears to be open to serious question on due process grounds. In Jackson v. Indiana, 406 U.S. 715 (1972), and Humphrey v. Cady, 405 U.S. 504 (1971) the United States Supreme Court addressed issues relative to involuntary commitment of criminally insane persons. In reaching its decision in these cases, the Court interpreted Indiana's civil commitment standard ("in the interest of the welfare of such persons or others") and Wisconsin's standard ("is mentally ill and a proper subject for custody and treatment") to require an independent showing of dangerousness. The Supreme Court applied the balancing test and found that the state's interest in the welfare of a person was insufficient to justify such a "massive curtailment of liberty", Humphrey v. Cady, 405 U.S. at 509, unless there was an implicit requirement in the statute that the person was dangerous to himself or others.

The following cases have held that the standard of "need for care and treatment" as a basis for involuntary commitment because of mental illness violates due process: Suzuki v. Quisenberry, 411 F. Supp. 1121-25; Kendall v. True, 391 F. Supp. at 417-19; Lessard v. Schmidt, 349 F. Supp. at 1093-94; Lynch v. Baxley, 386 F. Supp. at 389-92; Doremus v. Farrell,

407 F. Supp. at 513-15; Bell v. Wayne County General Hospital at Eloise, 384 F. Supp. at 1096. All of these cases have held that dangerousness -- harm to oneself or others -- is a constitutional requirement for involuntary commitment. In other words, without a showing of dangerousness, the State may not constitutionally deprive an individual of his liberty without his consent, even though it could show that it would be to the individual's benefit to provide him with certain care and treatment.

One court has held that the "in need of care or treatment" standard where no evidence of dangerousness is required is impermissibly vague because the standard is susceptible to several interpretations and may be enforced arbitrarily. The court in Goldy v. Beal, ___ F. Supp. ___ (N.D. Pa., July 18, 1976) stated:

> Such lack of specificity in a statute that authorizes an interference with a constitutionally protected right of physical liberty places insufficient limits on the discretion of officials who are responsible for its implementation, with the result that there is nothing in the statute to prevent it from being enforced arbitrarily. Such a result amounts to vagueness that violates due process. (Reported in Mental Disability Law Reporter, Vol. 1, No. 2, p. 137, Sept-Oct, 1976)

It would seem difficult for a court to save the "in need of care and treatment" standard in AS 47.30 by reading in an implicit requirement of harm to self and others. The statute

specifically sets out two alternative grounds -- either harm to self or others or need of care and treatment in a hospital.

(2) Advice: In order for the Division of Mental Health to operate on safe constitutional grounds it is our advice that it should apply only the first standard -- harm to self or others -- in cases where it is in control of the petitioning process, i.e., where the department or the head of a state institution initiates the commitment. Harm to self can include a proven inability to meet one's fundamental needs, such as food, clothing, shelter, or essential medical care, because of mental illness. See, e.g., Doremus v. Farrell; In re Mostella, 215 S.E.2d 790 (N.C. App. 1975). It might also be well to prove the likelihood of future harm by a recent overt act, threat or attempt to inflict harm on self or others.

B. Time Before Hearing

(1) Analysis: While a prior hearing is normally a prerequisite to the state's interference with a person's liberty, it may be delayed until some time after the deprivation has taken place where there is a compelling state interest to warrant postponement. See, e.g., Goldberg v. Kelly, 397 U.S. 254 (1970). The authorities which approve emergency commitments to mental institutions without prior hearing where there is an immediate threat of harm to self or others are uniform in requiring that a

hearing be held after the commitment to determine if the person should be released or continued under hospitalization.

Some courts have required a preliminary hearing, i.e., an abreviated informal hearing where the state must convince the court that it will probably be able to show that person meets the legal criteria for commitment at a full, formal hearing later. See, e.g., Bell v. Wayne County General Hospital, 384 F. Supp. at 1098 (within 5 days); Lessard v. Schmidt, 349 F. Supp. at 1103 (within 48 hours); Lynch v. Baxley, 386 F. Supp. at 388 (within 7 days); Doremus v. Farrell, 407 F. Supp. at 388 (within 5 days); Kendall v. True, 391 F. Supp. at 419 (requires a preliminary hearing but no specific time limit set); Mignone v. Vincent, 411 F. Supp. 1386, 1389 (S.D.N.Y. 1976) ("quickly after the commitment").

Doremus v. Farrell, 407 F. Supp. at 515 requires a full and formal hearing, i.e. a hearing where each side presents all the evidence it has marshalled in support of its position and where rules of evidence apply, on the necessity for commitment within 14 days after the preliminary inquiry; Lessard v. Schmidt, 349 F. Supp. at 1092, requires a full hearing within 10 to 14 days after detention; Lynch v. Baxley, 386 F. Supp. at 388, sets an outside limit of 30 days from date of the initial detention for the holding of a full hearing; Kendall v. True, 391 F. Supp. at 419, requires a full hearing within 21 days of confinement.

Other courts have not required a preliminary hearing and have approved longer time periods of commitment prior to a full hearing. In Coll v. Hyland, 411 F. Supp. 905 (D. N.J. 1976), the court ruled that confinement of up to 20 days without a preliminary hearing and before a full hearing was constitutionally permissible. In Logan v. Arafeh, 346 F. Supp. 1265 (D. Conn. 1972) aff'd sub nom. Briggs v. Arafeh, 411 U.S. 911 (1973), the United States Supreme Court summarily affirmed a three-judge federal court ruling upholding a Connecticut statute allowing confinement of up to 45 days without a hearing. Some courts have openly disagreed with the length of time before hearing permitted in Logan. See, e.g., Kendall v. True, 391 F. Supp. at 419.

In Alaska, no hearing is automatically provided by statute after an emergency commitment. The main mechanism for triggering a hearing for a patient who has been committed on an emergency basis is a request for discharge, after which the head of the hospital must either issue a release or oppose the discharge by instituting judicial commitment proceedings under AS 47.30.070. Interested parties are notified of the patient's request for discharge and may oppose it by initiating judicial commitment proceedings if the head of the hospital does not.

When a request for discharge is opposed, it is possible under AS 47.30 that a hearing on the need for continued hos-

pitalization will not occur for 32 or more days (15 days limit for initiating the proceeding under section 50(a)(3); 14/ unknown amount of time for notice and appointing examiners; 2 days limit for examination and report; 15 days limit for a hearing after examiner's report under section 70(b), (c), and (e). 15/

14/ Sec. 47.30.050. APPLICATION FOR DISCHARGE AND EMERGENCY DETENTION. (a) An individual, 30 days after admission to a designated hospital under § 20 of this chapter or an individual admitted to a designated hospital under § 30 of this chapter, 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 § 20 of this chapter, 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 § 70 of this chapter; 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 §§ 10--340 of this chapter, and for assisting the patients in making requests for discharge under this section.

15/ See footnote 9.

There is always a possibility, too, that a committed person will not understand his right to ask for discharge, and therefore, will not trigger the hearing mechanism for some time.

A longer delay before hearing is possible for a voluntarily committed person who becomes, in essence, an involuntary committee when the person no longer desires to remain voluntarily and is kept against his or her will. Section 50(a) 16/ provides that immediate discharge for a voluntarily committed patient is not required before 30 days after admission, at which time the head of the hospital may file a petition for a judicial commitment if he believes that discharge would be unsafe to the patient or others. If a voluntary patient requests discharge after 5 days of hospitalization, for example, the head of the hospital would not be obliged to grant the discharge, and the patient could be kept for 25 more days before the request for discharge would trigger either a discharge or a judicial commitment proceeding. Thus a voluntary patient who is not discharged on request during the 30 day period after admission might not receive a hearing for the number of days between the first request and the end of the 30 day period plus the 32 or more days discussed above which can elapse under the statute before a hearing.

It is true that section 60 provides that the patient or an interested party may petition the superior court for a judicial

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16/ See footnote 14.

determination of the need for continued hospitalization under section 70. 17/ It is also true that section 100 provides that an individual detained under AS 47.30 as an involuntary committee is entitled to a writ of habeas corpus. 18/ Both of these procedures must be initiated by the patient or an interested person, and the statute does not provide that the patient must be informed of the availability of these procedures. The court in Fahgen v. Miller, 306 F.Supp. 634 (S.D.N.Y. 1969) discussed the habeas corpus remedy in these words:

> It is true that habeas corpus is always available to test the lawfulness of detention [under New York's Mental Hygiene Law]. But this assumes a patient has knowledge or has been advised of his right to so proceed. In any event, not only is the presumption that the confined person knows the law ### highly unrealistic, but if the statute is constitutionally defective, it will not be

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17/ Sec. 47.30.060. Petition for judicial determination. A patient who is hospitalized under § 20, 30 or 70 of this chapter 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 § 70 of this chapter 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 § 70 of this chapter; (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.

18/ Sec. 47 30.100. Writ of habeas corpus. An individual who is detained under §§ 10-340 of this chapter 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.

> saved by the Great Writ. Nor is it saved by express recognition in the state's Mental Hygiene Law of a patient's right to the writ. 306 F.Supp. at 638. (footnotes omitted.)

In view of cases from other jurisdictions it would seem that AS 47.30.020 - 47.30.070 is subject to attack on due process grounds for failure to provide for an automatic hearing to determine the legality of all emergency commitments which last more than a very short period of time and for providing procedures under which a long period of time may lapse before a hearing occurs in such cases 19/ and also in the case of persons voluntarily committed who no longer wish to remain committed.

(2) Advice. It is our advice that the Division of Mental Health or its designees should initiate a hearing under AS 47.30.070 for persons committed under section 30 and attempt to have the hearing occur within 7 to 10 days of commitment. For voluntary

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19/ In the New Jersey case of Coll v. Hyland, 411 F. Supp. 905 (D. N.J. 1976), and in the Connecticut case of Logan v. Arafeh, where 20 days and 45 days respectively without a hearing were held constitutionally acceptable, the patients involved had been determined by at least one physician (two under the New Jersey statute) to be dangerous to themselves or others as a result of mental illness. Because the Alaska statute allows for a standard of "in need of care or treatment in a hospital" which can probably not be interpreted to include an element of dangerousness to self or others, a person could be institutionalized under AS 47.30.030 without a hearing for a lengthy period of time on the basis of a physician's determination that the person is in need of hospitalization.

patients who desire discharge sooner than 30 days after commitment, it is our advice that the Division either release them or treat them as involuntary patients and promptly initiate a judicial commitment proceeding.

C. Rights of the Subject of a Judicial Commitment Hearing.

(1). Adequate Prior Notice.

(a). Analysis: Several courts have held that adequate prior notice to the subject of a final, i.e., non-preliminary hearing should include: the date, time and place of the hearing; a clear statement of the purpose of the proceedings and the possible consequences to the subject of the proceedings; the alleged factual basis for the proposed commitment; a statement of the legal standard upon which commitment is authorized; the names of examining physicians and other persons who may testify in support of the petition to commit and a summary of proposed testimony (some courts hold that this information does not have to be in the notice but must be made available to counsel in advance of the proceeding); a statement of the right to counsel and the right to jury trial (if the latter right is provided by statute --some courts have found that it is not constitutionally required; AS 47.30.070(h) provides for a jury of six on written request). Some courts have held that notice before a preliminary hearing should include the time and place of the hearing; the

grounds, reasons and necessity for emergency detention; and the right of the person being committed to counsel. See, e.g., Lessard v. Schmidt, 349 F.Supp. at 1092; Lynch v. Baxley, 386 F.Supp. at 388; State ex rel. Hawks v. Lazaro, 202 S.E.2d at 124; Suzuki v. Quisenberry, 411 F.Supp. at 1127; Doremus v. Farrell, 407 F.Supp. at 515; Bartley v. Kremens, 402 F.Supp. at 1050; cf. Commonwealth v. Root, 339 A.2d 764 (Pa. Super. 1975).

The court in Coll v. Hyland, 411 F.Supp. at 911, held that there was no constitutional necessity that notice to the patient include (1) a factual basis upon which commitment is sought, (2) names of examining physicians, (3) the names of any other individuals who might testify in support of commitment or (4) a summary of proposed testimony, because under New Jersey's scheme there was an absolute requirement of representation by counsel with most relevant information being readily available to the patient's counsel. Under AS 47.30 there is not an absolute requirement of representation by counsel. (See discussion in section (2) below.)

AS 47.30.070(b) and (c) 20/ do not specify the information which the notice to the proposed patient should contain, but this specificity could be added by judicial interpretation.

20/ See footnote 9.

(b). Advice: When the Division of Mental Health initiates a commitment proceeding, it should include the provisions mentioned in the first paragraph of this section in its notice. The notice could omit the summary of proposed testimony if such a summary is made available to counsel for the patient before the hearing.

(2). Representation by Counsel.

(a). Analysis: During a judicial commitment proceeding a patient is given the opportunity to be represented by "counsel or advisor", including an appointed counsel or advisor if he cannot provide one. AS 47.30.070(h). 21/

Almost all the courts which have examined the due process aspects of state civil commitment statutes have held that the subject of an involuntary commitment proceeding has a right to counsel at all stages of the proceeding; a right to be informed of the right to counsel and to appointment of counsel if indigent; a right to have counsel made available far enough in advance of the final commitment hearing to assure adequate opportunity for preparation; and a right to representation by a legally trained and qualified counsel instead of a lay person. See, e.g., Bell v. Wayne County General Hospital, 384 F.Supp. at 1093-94;

21/ See footnote 9.

Lessard v. Schmidt, 349 F.Supp. at 1097-98; Heryford v. Parker, 396 F.2d 395, 396 (10th Cir. 1968); Suzuki v. Quisenberry, 411 F.Supp. at 1129; Lynch v. Baxley, 386 F.Supp. at 38; Bartley v. Kremens, 402 F.Supp. at 1050-51; Doremus v. Farrell, 407 F.Supp. at 516; Dixon v. Attorney General of Comm. of Pa., 325 F.Supp. at 974.

The Alaska statute allows the proposed patient to choose representation by an advisor, who would presumably be a lay person. There is question as to whether this choice should be offered by the statute. The cases cited above hold that in view of the serious deprivation of liberty involved in a civil commitment, the need for representation by an attorney is similar to the need in a criminal case. In a criminal case the accused may waive the right to counsel only if the court determines that the waiver is voluntary and knowing. See, e.g., Boyd v. Dutton, 405 U.S. 1 (1972); Johnson v. Zerbst, 304 U.S. 458 (1938); Gregory v. State, 550 P.2d 374 (Alaska 1976).

It would almost certainly, therefore, be argued that the proposed patient should not be able to choose an advisor instead of an attorney unless the court determines that his waiver of the right to counsel is voluntary and knowing. Representation by an attorney and an advisor might be a possibility instead of an attorney or an advisor.

(b). Advice: When the Division or its designees initiate commitment proceedings, they should encourage the patient to choose an attorney and encourage the court to appoint an attorney instead of an advisor -- or in addition to an advisor.

(3). Presence of the Proposed Patient at the Judicial Hearing.

(a) Analysis: Section 70(f) of AS 47.30 22/ provides that the proposed patient shall not be required to be present at a hearing under section 70. Some courts have required the presence of the patient at such a hearing unless it is judicially determined that the patient has knowingly and voluntarily waived his right to be present or that presence at the hearing would be harmful to the patient.

In Bell v. Wayne County General Hospital, 384 F.Supp. at 1094, the court found that due process standards were not met where the patient was not present at the hearing unless his presence would be so disruptive that the proceeding could not continue in any reasonable manner, as in the case of a criminal defendant. The Bell court held that the court could not make such a decision in advance of the hearing and solely on the certificate of physicians that the respondent should not be allowed to appear. Where the removal of the defendant to the

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22/ See footnote 9.

court house would be "improper and unsafe", the court in Bell required that some method alternative to total exclusion be attempted first, such as holding the proceedings at the mental health facility. See also, Suzuki v. Quisenberry, 411 F.Supp. at 1129; Lynch v. Baxley, 386 F.Supp. at 388-89; State ex rel Hawks v. Lazaro, 202 S.E.2d at 125.

(b) Advice: Where the Division of Mental Health is involved in a judicial commitment proceeding it should encourage the presence of the patient at the hearing unless the court has made a judicial determination that the patient has effectively waived his right to be present or that presence would be medically harmful to the patient or seriously disruptive of the proceeding.

(4). Standard of Proof.

(a) Analysis: Section 70 23/ of AS 47.30 provides no standard of proof for judicial commitment of an allegedly mentally ill individual. There are essentially three standards of proof which might be required to prove that a person is committable: (1) by a preponderance of evidence, (2) by clear and convincing evidence, or (3) beyond a reasonable doubt. Courts which have considered the issue have concluded that, in view of the deprivа-

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23/ See footnote 9.

tion of liberty involved in a commitment, proof must be either by clear and convincing evidence or beyond a reasonable doubt.

Proof by preponderance of the evidence (the standard used in most civil actions) has been rejected in commitment proceedings by at least two courts. Lessard v. Schmidt, 349 F.Supp. at 1094-95; In re Ballay, 482 F.2d 648, 653-5 (D.C. Cir. 1973). As far as we have been able to determine, proof by a preponderance of the evidence has not been approved by any court.

Proof by clear and convincing evidence has been approved by the majority of courts which have considered the issue. Lynch v. Baxley, 386 F.Supp. at 392-94; State ex rel. Hawks v. Lazaro, 202 S.E.2d at 126-7; Castillo v. U.S., 406 F.Supp. 585, 595 (D.N.M. 1975); Doremus v. Farrell, 407 F.Supp. at 517; Bartley v. Kremens, 402 F.Supp. at 1051-53; Dixon v. Attorney General of Pennsylvania, 325 F.Supp. at 974.

Proof beyond a reasonable doubt has been required by some courts. Lessard v. Schmidt, 349 F.Supp. at 1094-95; In re Ballay, 482 F.2d at 653-5; United States ex rel. Stachulak v. Coughlin, 364 F.Supp. 686 (N.D. Ill. 1973), affirmed 52 F.2d 931, 935-37 (7th Cir. 1975); Suzuki v. Quisenberry, 411 F.Supp. at 1132. Cf. In re Winship, 397 U.S. 358 (1970), where the

United States Supreme Court held that the standard of proof in juvenile proceedings which involve a loss of liberty must be beyond a reasonable doubt, even though a juvenile proceeding is not technically a criminal proceeding.

Section 70 of AS 47.30 might be found to be violative of due process in not specifically setting out a higher standard of proof than the preponderance of the evidence standard which is applied in most civil cases. This defect can be cured by judicial interpretation, and, apparently most Alaska courts do apply a higher standard of proof in commitment proceedings.

(b) Advice: When the Division of Mental Health is involved in a judicial commitment proceeding it should be prepared to meet, and if there is any doubt that the court will not do so on its own initiative, should encourage the court to apply a standard of proof higher than in a normal civil case.

(5). Formality of the Proceeding and Rules of Evidence.

(a) Analysis: Subsection (g) of section 70 of AS 47.30 24/ provides that the hearing shall be conducted as informally as is consistent with orderly procedure and that the court may relax rules of evidence to the extent of receiving affidavits,

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24/ See footnote 9.

certificates of licensed physicians and other writings of similar apparent authenticity and reliability.

Several courts have held that there should be no relaxation of the rules of evidence, specifically those governing hearsay (use of out-of-court statements at a judicial proceeding made by someone who is not a witness at the proceeding). See State ex rel. Hawks v. Lazaro, 202 S.E.2d at 125; Lessard v. Schmidt, 349 F.Supp. at 1102-03; Lynch v. Baxley, 386 F.Supp. 394; Suzuki v. Quisenberry, 411 F.Supp. at 1130; Doremus v. Farrell, 407 F.Supp. at 517. These courts hold that the seriousness of the deprivation of liberty and the consequences which follow an adjudication of mental illness make imperative strict adherence to the rules of evidence generally applicable to other proceedings in which an individual's liberty is in jeopardy. Cf. In re Gault, 387 U.S. 1, 11, n. 7 (1967), where the U.S. Supreme Court considered the use of hearsay evidence in an informal non-criminal juvenile proceeding:

> [T]o the extent that the rules of evidence are not merely technical or historical, but like the hearsay rule have a sound basis in human experience, they should not be rejected in any judicial inquiry.

To the extent that a hearing under section 70 may be conducted with relaxed rules of evidence, it appears to be in conflict with the decisions cited above.

(b) Advice: To the extent that the Division of Mental Health has any control of witnesses in favor of commitment, it should have them testify in person rather than by affidavit or certificate.

(6). Other Rights at Hearing.

(a) Analysis: A few courts have found an additional due process requirement that the patient be informed of his or her right to invoke the privilege against self-incrimination before a psychiatric examination on which a finding of mental illness is to be based. Lessard v. Schmidt, 349 F.Supp. at 1100-02; Suzuki v. Quisenberry, 411 F.Supp. at 1130-32. The necessity for this requirement has been questioned in a balancing test of state vs. individual interest. See "Civil Commitment of the Mentally Ill", 1974 Harv. L.Rev. 1191 at 1306-13.

(b) Advice: It is our opinion that recognition of the individual's right to remain silent would seriously impair the state's ability to achieve the valid objectives of civil commitment. The state's interest in protecting the public from a mentally ill person who is likely to cause harm to others and in protecting a mentally ill person from causing harm to himself must outweigh the right of a proposed patient to remain silent during a court-ordered psychiatric examination. The purpose of

the examination is neither accusation nor inquisition but rather to gather current medical information about the patient's mental condition which can be obtained in no other manner. Without this essential information, the state would be unable to proceed with its case, and a person dangerous to himself or others could not be hospitalized.

D. Recommitment After Release on Convalescent Statute.

(1). Analysis: Section 200 of AS 47.30 provides for release on convalescent status when the head of the hospital believes that it is in the best interest of the patient. Section 210 provides in part:

> If there is reason to believe that it is to the best interest of the patient to be re-hospitalized, the department or head of the designated hospital may issue an order for the immediate re-hospitalization of the patient.

The court in Meisel v. Kremens, 405 F.Supp. 1253 (E.D. Pa. 1975) held that a Pennsylvania statute which provides for summary revocation of leaves of absence from state mental health facilities at the discretion of the directors of those facilities is unconstitutional as violative of due process. The Meisel court relied on two decisions from New York: Shaban v. Essen, 385 F.Supp. 1042 (E.D.N.Y. 1974), aff'd 516 F.2d 897 (2d Cir. 1974), and Ball v. Jones, 351 N.Y.S.2d 199 (1974). In these

cases the federal and state courts held that a provision of the New York mental hygiene law providing for revocation of out-patient status of a person adjudged to be a drug dependent person without written notice of violation or opportunity to be heard violated due process.

The courts in Meisel, Shaban and Ball found that the principles of due process enunciated by the United States Supreme Court in Morrisey v. Brewer, 408 U.S. 471 (1972), requiring notice and a hearing with regard to revocation of parole for criminals should apply to revocation of leave for mental patients or drug-addicted patients. The "conditional liberty" of the mental out-patient was not seen to differ in any significant respect from the "conditional liberty" of the paroled criminal.

Section 210 might, therefore, be subject to constitutional attack for failure to provide notice and a hearing when release on convalescent status is revoked and the patient is recommitted. It might also be argued that the same standards should apply for recommitment as for the original commitment.

(2). Advice: The Division or its designee should not recommit a person released on convalescent status without notice and hearing. If there is no emergency, a hearing under AS 47.30.070 should be initiated by the Division or its designee. If emergency

commitment is necessary, the person should have the same safeguards as attend an original emergency commitment.

E. Indeterminate Commitment and Provisions for Periodic Judicial Review.

(1). Analysis: Commitment in Alaska is for an indeterminate period (sec. 70(i); sec. 40(b)) and discharge occurs when, in the opinion of the head of a designated hospital, there is no further need for hospitalization (sec. 220; sec. 40(b)). The United States Supreme Court in O'Connor v. Donaldson, 422 U.S. at 574-5 held that even if the commitment was initially founded on a constitutionally adequate basis, it could not constitutionally continue after that basis no longer existed. This seems to put the burden on the state to re-establish from time to time the basis for continued confinement.

The issue then is whether AS 47.30.060 violates due process because the periodic judicial determinations (where the burden is on the state to re-establish the basis for continued confinement) must be initiated by the patient or an interested party rather than the state and cannot be initiated more than once within a time period of 6 months initially and after that only once a year. One of the only courts which has considered the issue held that a similar provision in the Hawaii statutes

was not violative of a patient's due process rights in Suzuki v. Quisenberry, 411 F.Supp. at 1134. The court nevertheless stated that limitation of the period of confinement to 90 days without another commitment hearing would be "in line with current mental health doctrine" and clearly protective of due process rights.

(2). Advice: Even if the current provisions are not violative of due process, the Division of Mental Health would assure greater protection for patients if it initiated an annual judicial review for all involuntarily committed patients who did not initiate such a review themselves.

F. Minors.

(1) Analysis: Minors are treated specially under AS 47.30 in two ways: (1) a minor needs the consent of a parent or guardian for voluntary admission to a hospital under AS 47.30.-020(1), 25/ and (2) a minor admitted under the voluntary commitment section and discharged while still a minor may have his discharge conditioned upon the consent of his parent or guardian under AS 47.30.050(a)(2). 26/

25/ See footnote 7.

26/ See footnote 14.

We have found no cases addressing the first situation where a minor wishes to be hospitalized and a parent or guardian refuses. The second situation where a voluntarily committed minor's discharge is blocked by a parent or guardian has been addressed by at least one court. In In the Matter of Williams, 336 A.2d 468 (Essex Co., N.J. 1976), the court ruled that a minor voluntarily committed to a mental hospital for treatment with his parent's signature has the right to sign himself out on 72 hours' notice without parental consent. Hospital authorities could invoke involuntary commitment procedures in response to the minor's request for discharge if they believed discharge would be unsafe. The court stated:

> To require parental consent to leave the hospital would, in effect, convert John Williams' status from that of a voluntary patient to that of an involuntary patient. This court will not be party to such a situation. 336 A.2d at 471.

It should be noted that in Williams, the New Jersey statutes did not contain a special provision for minors but stated that any voluntary patient is to be discharged on request within 72 hours.

The state must be able to show a fair and substantial relation between the special restrictions on minors under AS 47.30.020(1) and 47.30.050(a)(2) and the state's interest. We

question whether the state could do so in a situation where a voluntarily committed minor desires discharge, the head of the hospital does not oppose the discharge on grounds of harm to self or others, but the parents of the minor block the discharge.

(2). Advice: The language of AS 47.30.050(a)(2) is discretionary: "discharge may be conditioned upon the consent of his parent or guardian". The heads of designated hospitals under the control of the Division are advised to discharge voluntarily committed minors on the minor's request when the head of the hospital does not believe that discharge of the minor would be harmful to the minor or others, even if the parent or guardian is opposed to the discharge. If the parent or guardian believes that the minor should remain hospitalized, the parent or guardian should initiate judicial commitment proceedings.

G. Substantive Rights of Committed Persons.

(1). Consent to Treatment.

(a) Analysis: Section 130(b) 27/ of AS 47.30 requires consent to surgery and psychiatric therapies which the department

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27/ AS 47.30.130(b) provides:

> (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,

determines are necessary. This is an area of recent litigation, particularly as concerns those forms of treatment which are considered to be most intrusive, such as electro-shock therapy (ECT), psycho-surgery, lobotomy, and aversion behavior control therapy. 28/

27/ continued:

chiatric therapies or autopsies from one of the following persons: spouse, guardian, either parent, or oldest 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 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 secs. 10 - 340 of this chapter.

28/ See, e.g., Doe v. Younger, California Court of Appeals, April 23, 1976, (reported in Mental Disability Law Rptr., Vol. 1, No. 2, Sept-Oct., p. 119-120), Price v. Sheppard, 239 N.W.2d 905 (Minn. 1976); Scott v. Plante, 532 F.2d 939 (3rd Cir. 1976); Knecht v. Gillman, 488 F.2d 1136 (8th Cir. 1973); Mackey v. Procunier, 477 F.2d 65 (2d Cir. 1971), cert. den. 404 U.S. 985 (1971). The most significant decision in this area was Kaimowitz v. Mich. Dept. of Mental Health, Civil No. 73-19434-AW (Cir. Ct., Wayne Co., Mich., July 10, 1973), (an involuntary patient cannot effectively consent to experimental psychosurgery.)

Some of these therapies have significant, permanent and painful side effects (aversion therapy); some are irreversible, highly intrusive and often debilitating (psychosurgery and lobotomy). 29/ A fundamental interest in bodily privacy has long been recognized at common law, and several judicial opinions have sketched the outline of a constitutional right to protection of bodily integrity from unwanted state intrusion. 30/

(b) Advice: The provisions for consent in section 130(b) should be strictly construed, and for intrusive forms of treatment, every effort should be made to see that the patient's informed consent, or the substitute informed consent of a spouse, guardian, parent or oldest adult child, is obtained. Consent is not informed if the person consenting does not understand the dangers and possible negative consequences of the treatment. If informed consent or substitute informed consent cannot be obtained under AS 47.30.130(b) the commissioner or his designee might be wise to obtain a court order before allowing the most intrusive treatments such as psychosurgery or lobotomy (cf. Price v. Sheppard, 239 N.W.2d 905 (Minn. 1976)), even though he has statutory authority to consent under sec. 130(b).

29/ "Civil Commitment of the Mentally Ill", 1974 Harv.L.Rev. 1190, 1345, n. 122.

30/ Id. at 1194-97, n. 11 and 12.

(2). Consideration of less restrictive alternatives.

(a) Analysis: Some courts have held that the burden is on the state to show that the goal of treatment and protection from harm for the mentally ill cannot be more narrowly achieved than by institutionalization, i.e., the state must show that institutionalization is the least restrictive alternative possible.

In Lessard v. Schmidt, 394 F.Supp. at 1096, the United States District Court for the Eastern District of Wisconsin set out the requirement that less drastic means than commitment be investigated. The court said:

> We believe that the person recommending full-time involuntary hospitalization must bear the burden of proving (1) what alternatives are available; (2) what alternatives were investigated; and (3) why the investigated alternatives were not deemed suitable. These alternatives include voluntary or court-ordered out-patient treatment, day treatment in a hospital, placement in the custody of a friend or relative, placement in a nursing home, referral to a community mental health clinic, and home health aid services.

The same requirement was stated in Lynch v. Baxley, 386 F.Supp. at 392, in these words:

> In addition to the findings which are required to be made by the fact-finder, the state . . . shall have the burden of demonstrating the proposed commitment is the least restrictive environment consistent with the needs of the person to be committed.

The principle has been applied in other cases such as Welsch v. Likins, 373 F.Supp. at 502; Suzuki v. Quisenberry, 411 F.Supp. at 1132-33.

In Dixon v. Weinberger, 405 F.Supp. 974 (D. D.C. 1975) the court interpreted a District of Columbia statute to require placement of committed patients in less restrictive appropriate facilities than a hospital and held that the responsible authorities were obliged to create such facilities if they did not currently exist. See also, Covington v. Harris, 419 F.Supp. 617 (D.C. Cir. 1969); Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966). The statute for the District of Columbia contains language referring to hospitalization or "alternative treatment".

In the Alaska statutes governing civil comitments, section 20(a)(B), section 30(a), and section 70(i) all set out the standard of "care or treatment in a hospital" or "immediate hospitalization". A court should read these statutory words to require that alternatives short of hospitalization have been considered and are not appropriate.

(b) Advice: The Division of Mental Health is advised to utilize institutionalization only after it has determined that the danger to the subject himself or to others cannot be avoided by out-patient treatment, day treatment in a hospital, night

treatment in a hospital or treatment at a community mental health clinic. When the Division or its designee is involved in a judicial commitment hearing, it should show the court that other alternatives short of institutionalization have been considered. The Division or its designee should attempt to move committed patients to less restrictive treatment settings inside or outside an institution as soon as their mental condition improves, even when a restrictive setting is initially appropriate.

CONCLUSION

A number of areas of AS 47.30 which may be vulnerable to attack on due process grounds have been set out. The most serious defects appear to be the "in need of care or treatment" standard for commitments; the absence of a mandatory hearing to test all involuntary emergency commitments which last more than a short period of time; the long delay which is possible before a judicial determination occurs after an emergency commitment or after a voluntary commitment becomes involuntary; the absence of due process protections when conditional leave is revoked.

This opinion has pointed out other areas of potential legal problems with the statute in view of developing case law in other jurisdictions and has advised the Division of the safest

way to proceed under the present statute. It is obvious, however, that the Division of Mental Health does not control the entire process of civil commitment, which includes the court system, private physicians, police officers, relatives, and other interested parties.

A more definite way to proceed would be to revise Alaska's current civil commitment statutes. We recommend that any new or amended civil commitment statute include the following due process safeguards:

(1) A standard for commitment based on dangerousness o self or others;

(2) A hearing initiated by the state to test the legal basis for all involuntary emergency commitments within a short period of time after the commitment (a preliminary hearing plus a full hearing later or only a full hearing);

(3) Procedural due process at a commitment hearing, which should include:

(a) adequate prior notice;

(b) a neutral judicial officer;

(c) right to effective assistance of counsel;

(d) right to be present at the hearing except in exceptional circumstances;

(e) right to cross-examine witnesses and to offer evidence;

(f) adherence to the rules of evidence;

(g) proof by clear and convincing evidence (or beyond a reasonable doubt, although the clear and convincing standard is recommended as a better balance between individual and state interests, given the lack of consensus among mental health professionals about what constitutes mental illness and whether future harm can be predicted);

(h) consideration of less restrictive alternatives to commitment;

(i) record of the proceedings and written findings of fact;

(j) appellate review;

(k) periodic judicial redetermination of the basis for confinement;

(4) Notice and hearing when conditional leave is revoked, with the same safeguards as in (3)(a) - (k);

(5) Informed consent or informed substitute consent to intrusive or irreversible treatment;

(6) Explanation to the patient of his rights while hospitalized and assistance in exercising these rights.

We are available to assist in amending the current civil commitment statutes by working with the Division of Mental Health, legislators or legislative committees who address the problem, or other interested groups.

Very truly yours,

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