

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8630 HOUSE JUDICIARY

**HB**

**484**

HOUSE COMMITTEE REPORT

2/21/96  
Rules

(7)  
Date Referred to Committee: February 9, 1996

FURTHER REFERRALS:

Date of Committee Action: 2.19.96

The JUDICIARY Committee considered:

HB 484

HOUSE BILL NO. 484

ENFORCE RESTITUTION ORDER AGAINST MINOR

"An Act relating to enforcement of restitution orders entered against minors."

recommends it be replaced with the following committee substitute \_\_\_\_\_  
[ ] the same title  
[ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee  
[ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_

(3) [X] zero fiscal note(s) Court, Law, HSS, [ ] zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Brian Porter</i>	Porter	✓			
<i>William Vezev</i>	Vezev	✓			
<i>Paul Finkelstein</i>	Finkelstein	✓			
<i>Betty Davis</i>	B. Davis	✓			
<i>Green</i>	Green	✓			
<i>Bunde</i>	Bunde	✓			
<i>Toohy</i>	Toohy	✓			
		(7)			

CHAIR'S SIGNATURE Brian Porter  
Porter

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB484

Revision Date: \_\_\_\_\_  
 Title: Enforcement of Restitution Orders  
 Against Juveniles \_\_\_\_\_  
 Sponsor: Representative Therriault  
 Requestor: House (JUD)

Dept. Affected: Health and Social Services  
 BRU: Family and Youth Services  
 Component: DFYS Central Office  
 COMPONENT SERIAL NO. 259  
 See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: \$0.0

**ANALYSIS:** (Attach a separate page if necessary)

There would be no fiscal impact to the Division of Family & Youth Services if this bill were to become law.

SA/16/96 Prepared by: L. Diane Worley, Director Phone: 465-3191  
 Division: Family & Youth Services Date: 02/16/96  
 Approved by Commissioner: Karen Perdue, Commissioner Date: 2/16/96  
 Agency: Department of Health & Social Services

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 484

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to enforcement of restitution orders entered against minors." BRU: Criminal Division, Civil Division  
 Sponsor: Representative Therriault Component: General Legal Services  
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2085, 2087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends the Children's Proceedings statutes, AS 47.10.10 - 142, to provide that when restitution to a victim has been ordered as part of a juvenile delinquency adjudication, the victim recipient of the restitution may enforce payment of the restitution order in a civil proceeding. This is a matter between private parties and there will not be a fiscal impact for the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/16/96  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/16/96  
 Agency: Department of Law

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# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT  
P.O. Box 55320  
North Pole, Alaska 99705  
(907) 488-0862



Write in Inseal  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797

House District 33

## House Of Representatives

To: Representative Brian Porter  
Chairman, House Judiciary Committee

From: Representative Gene Therrault *Gene Therrault*

Date: February 13, 1996

Re: Hearing Request for House Bill 484

---

I would like to request a hearing for House Bill 484, "An Act relating to enforcement of restitution orders entered against minors."

This legislation is intended to make it easier for victims of juvenile crimes to collect damages by allowing a judge to convert a criminal restitution order into a civil judgment.

As requested in your memorandum of January 16, 1995, attached to this request are:

1. Sponsor Statement
2. Sectional Analysis
3. Background material

In accordance with the January 22, 1996 memo from Legislative Director Pat Pourchot recommending that requests for fiscal notes come through the committee, I will leave that request up to your office. The Department of Law has been asked to put its position on the bill in writing. I will forward that to your office as soon as I receive it.

Probable supporters of the bill include the Fairbanks North Star Borough and the State Department of Law. I do not know of any opponents to the bill at this time.

I would like to request a teleconference site be scheduled at the Fairbanks Legislative Information Office.

I would appreciate consideration of this bill at the Committee's earliest convenience. Thank you.

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIALT

P.O. Box 55326  
North Pole, Alaska 99705  
(907) 488-0862

House District 33



White in Room  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797

## House Of Representatives

**House Bill 484 :** "An Act relating to enforcement of restitution orders entered against minors."

**Sponsor:** Representative Gene Therriault

---

### Sponsor Statement

This legislation would allow the courts to convert a restitution order in a juvenile criminal case into a civil judgment. The bill is in response to a recent Alaska Court of Appeals case, *R.I v. State*, which held that a Superior Court judge lacks statutory authority to treat a restitution order as if it were a civil judgment in a juvenile case. AS 12.55.051(d) grants the state such authority in adult cases.

A civil judgment is especially helpful when the offender fails or refuses to make restitution payments. A civil judgment would allow the victim in such cases to execute against the offender's assets, including his or her permanent fund dividend, in order to enforce the restitution order without going to civil court and obtaining a civil judgment for the damages. Currently, if a juvenile does not pay a restitution order by his or her 19th birthday, the court has no more jurisdiction over the juvenile and the restitution order is basically moot. A victim must go to civil court, prove again that the juvenile was liable for the damages and obtain a civil judgment against the juvenile offender. This seems like an unnecessary and costly burden for the victim, who has already been hurt once.

## Sectional Analysis

**House Bill 484, "An Act relating to enforcement of restitution orders against minors."**

**Section 1** Adds a new section modeled after adult criminal procedure AS 12.55.051(d) to give the court authority to convert a restitution order into a civil judgment. The last line clarifies that the statute does not preclude the court from taking advantage of any other remedies that may be available.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 484

Revision Date: \_\_\_\_\_  
Title: Enforce Restitution Order Against Minor

Dept. Affected: Alaska Court System  
BRU: Trial Courts  
Component: \_\_\_\_\_

Sponsor: Rep. Therriault, Kelly  
Requestor: House Judiciary

COMPONENT SERIAL NO. 768

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**Fund Source**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

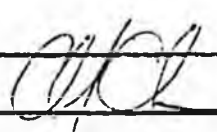
Estimate of any current year (FY 96) cost: None

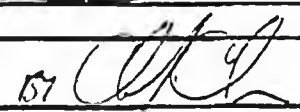
**Positions**

Full-Time						
Part-Time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel   
Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director   
Agency: Alaska Court System

Phone: 264-8228  
Date: 02/15/96  
Date: 02/15/96

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# LEGAL SERVICES

Porter

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

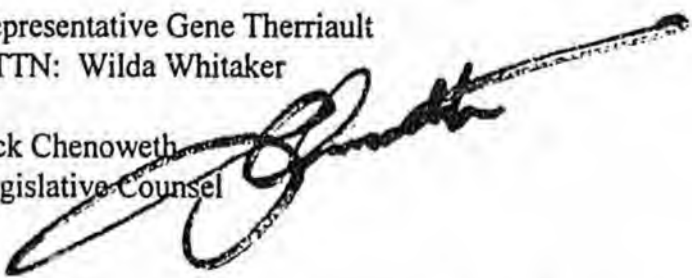
## MEMORANDUM

February 19, 1996

**SUBJECT:** House Bill 484, addressing the enforcement of restitution orders entered against minors (Work Order No. 9-LS1553\C)

**TO:** Representative Gene Therriault  
ATTN: Wilda Whitaker

**FROM:** Jack Chenoweth  
Legislative Counsel



Under AS 47.10.080(b), applicable to minors as to whom the court has made a finding of delinquency, the court has the ability to enter one or more orders. Included in the list of permissible orders is the ability--indeed, in some instances, the obligation--under AS 47.10.080(b)(4) for the court to enter an order of "suitable restitution."

For minors adjudicated delinquent, as a general rule jurisdiction of the court over the minor ends when the minor reaches the age of 19, though in some cases and under some circumstances, that limitation may be extended by one year with the minor's (now an adult) consent.

You expressed a concern that restitution orders entered by a court against a minor adjudicated a delinquent might be treated like other court orders applicable to minors adjudicated delinquent, suggesting that the authority of the court to enforce or otherwise compel payment of restitution would expire when the court's jurisdiction over the minor terminated or, in any case, when the minor became 19 (or 20, if the court's jurisdiction were extended). You have introduced HB 484 to clarify that, when ordered under AS 47.10.080(b)(4), the person in whose favor the order of restitution is entered "may enforce payment of the restitution order against the minor under AS 09.35 as if the order were a civil judgment enforceable by execution."

Your question of Friday asks whether the authority of the person in whose favor the order of restitution has been entered under AS 47.10.080(b)(4) ends when the court loses jurisdiction of the minor under AS 47.10.080(b)--that is, whether the authority to enforce the restitution order would survive the termination of the court's jurisdiction over the minor.

\*

Representative Gene Therriault

February 19, 1996

Page 2

Let me note at the outset that this is a matter the disposition of which is entirely a matter of statute. HB 484 proposes to treat restitution orders as the equivalent of "civil judgment[s] enforceable by execution." Execution on judgments is addressed in AS 09.35.

In the first instance, the answer to your question may turn on the context in which the court enters its restitution order. Under existing AS 47.10.080(b)(4), restitution may be ordered "in lieu of or in addition to" a court entered under one of the three preceding paragraphs authorizing commitment or placement of a juvenile adjudicated delinquent. If payment of restitution is ordered "in addition to" a commitment or placement order entered under AS 47.10.080(b)(1) - (3), then entry of that restitution order might be treated by a court simply as one element of the minor's rehabilitation. Once jurisdiction over the minor was lost, at the end of the period of the minor's commitment or placement, or at age 19, or, with the consent of the minor, at age 20, further proceedings asking a court to enforce the order would likely be challenged as beyond the authority of the juvenile court to consider and deal with.

On the other hand, if payment of restitution is ordered "in lieu of" a commitment or placement order entered under AS 47.10.080(b)(1) - (3), the restitution order would stand alone and should not be regarded as only an element of the plan for the minor's rehabilitation. Under that interpretation, HB 484 appears to be essential to maintain the authority to enforce a restitution order entered under AS 47.10.080(b)(4) against a minor found to be a delinquent minor in those instances in which would not terminate when the court's jurisdiction over the minor otherwise ended.

Under the second clause of AS 47.10.030(b)(4), the courts may not refuse to make a restitution order to benefit the victim of the act of the minor. That obligation to order the minor to make good certain losses, it seems to me, adds weight to the argument that court-ordered payment from a minor for a victim's loss stands independently of any other condition or obligation the court may impose in conjunction with implementing a plan for the minor's treatment or rehabilitation.

However the courts may ultimately treat rehabilitation orders, the recent decision of State Department of Revenue ex rel. Innan v. Dean, 902 P.2d 1321 (Alaska 1995), is helpful to determine whether the orders have ongoing vitality. In that decision, the Alaska Supreme Court distinguished between actions brought upon a judgment and the process of executing upon a judgment already obtained. As to the latter, the court determined that there is no definite time limit for commencing an execution, noting only that, both by statute (AS 09.35.020) and court rule (Civil Rule 6)(d), if execution on a judgment is delayed by more than five years, the person seeking enforcement must show good cause for the delay. The court is of a mind to treat execution of judgment as a remedy that, once obtained, exists independently of the action that gave rise to it. By implication, then, the authority to enforce by execution as a civil judgment a restitution order entered under AS 47.10.080(b)(4) against

Representative Gene Therriault

February 19, 1996

Page 3

a minor found to be a delinquent minor would have continuing vitality and would not terminate when the court's jurisdiction over the minor otherwise ended.

Consequently, unless the court determines that a restitution order is substantively treatable only as an element of a minor's rehabilitation, terminated when the court loses jurisdiction over the minor under one of the circumstances set out in the statute, then HB 484, applied in conjunction with the Inman decision, should achieve the result you seek in making certain that the minor's obligation to fulfill the restitution order would not terminate when the court's jurisdiction over the minor otherwise ended.

JBC:lmb:glc

96-051.lmb

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 484

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to enforcement of restitution orders entered against minors." BRU: Criminal Division, Civil Division  
 Sponsor: Representative Therriault Component: General Legal Services  
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2085, 2087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends the Children's Proceedings statutes, AS 47.10.10 - 142, to provide that when restitution to a victim has been ordered as part of a juvenile delinquency adjudication, the victim recipient of the restitution may enforce payment of the restitution order in a civil proceeding. This is a matter between private parties and there will not be a fiscal impact for the Department of Law.

*Richard I. Peques*

Prepared by: Richard I. Peques, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: 2/16/96  
 Date: 2/16/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB484

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Enforcement of Restitution Orders BRU: Family and Youth Services  
 Against Juveniles Component: DFYS Central Office  
 Sponsor: Representative Therriault COMPONENT SERIAL NO. 259  
 Requestor: House (JUD) See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ( )						
-------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: \$0.0

**ANALYSIS:** (Attach a separate page if necessary)

There would be no fiscal impact to the Division of Family & Youth Services if this bill were to become law.

5/16/96 Prepared by: L. Diane Worley, Director Phone: 465-3191  
 Division: Family & Youth Services Date: 02/16/96  
 Approved by Commissioner: Karen Perdue, Commissioner Date: 2/16/96  
 Agency: Department of Health & Social Services

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R.I., Appellant,  
v.  
STATE of Alaska, Appellee.

No. A-5130.  
Court of Appeals of Alaska.  
May 12, 1995.

After juvenile was adjudicated delinquent and ordered to make restitution, the Superior Court, Fourth Judicial District, Fairbanks, Mary E. Greene, J., later revoked probation and entered civil judgment in amount of unpaid restitution. Appeal was taken. The Court of Appeals, Mannheimer, J., held that even though delinquent minor could evade restitution order by waiting until he became "too old" for court to take action against him, court lacked authority to issue civil judgment ordering payment of restitution in connection with delinquency matter.

Reversed.

1. CRIMINAL LAW k1208.4(2)  
110 ---  
110XXVI Punishment of Crime  
110k1208 Extent of Punishment in General  
110k1208.4 Power to Impose Particular  
Kinds of Punishment  
110k1208.4(2) Restitution.

[See headnote text below]

1. INFANTS k224  
211 ---  
211VIII Dependent, Neglected, and  
Delinquent Children  
211VIII(E) Judgment; Disposition of Child  
211k223 Delinquents and Law Violators  
211k224 Fines and restitution orders.

Alaska App. 1995.

In both criminal cases and juvenile delinquency cases, superior court has authority to order that defendant pay restitution.

2. CRIMINAL LAW k982.5(2)  
110 ----  
110XXIII Judgment, Sentence, and Final  
Commitment  
110k982 Probation and Suspension of  
Sentence  
110k982.5 Conditions

110k982.5(2) Validity.

[See headnote text below]

2. CRIMINAL LAW k1208.4(2)  
110 ---  
110XXVI Punishment of Crime  
110k1208 Extent of Punishment in General  
110k1208.4 Power to Impose Particular  
Kinds of Punishment  
110k1208.4(2) Restitution.

Alaska App. 1995.

Sentencing court can order convicted defendant to pay restitution either as independent component of sentence or as condition of defendant's probation. *AS 12.55.045(a), 12.55.100(a)(2)*.

3. INFANTS k224  
211 ---  
211VIII Dependent, Neglected, and  
Delinquent Children  
211VIII(E) Judgment; Disposition of Child  
211k223 Delinquents and Law Violators  
211k224 Fines and restitution orders.

Alaska App. 1995.

In juvenile delinquency case, superior court can order restitution in lieu of or in addition to other authorized dispositions. *AS 47.10.080(b)(1-3)*.

4. CRIMINAL LAW k1208.4(2)  
110 ---  
110XXVI Punishment of Crime  
110k1208 Extent of Punishment in General  
110k1208.4 Power to Impose Particular  
Kinds of Punishment  
110k1208.4(2) Restitution.

[See headnote text below]

4. INFANTS k224  
211 ----  
211VIII Dependent, Neglected, and  
Delinquent Children  
211VIII(E) Judgment; Disposition of Child  
211k223 Delinquents and Law Violators  
211k224 Fines and restitution orders.

Alaska App. 1995.

Statutes allowing for imposition of restitution for criminal cases and juvenile delinquency cases do not

894 P.2d 683, R.I. v. State, (Alaska App. 1995)

authorize sentencing court to issue civil judgment in favor of crime victim for amount of damage or loss inflicted by either adult or juvenile defendant. *AS 47.10.010 et seq.*

5. INFANTS k224  
 211 ---  
 211VIII Dependent, Neglected, and Delinquent Children  
 211VIII(E) Judgment; Disposition of Child  
 211k223 Delinquents and Law Violators  
 211k224 Fines and restitution orders.

Alaska App. 1995.

Superior Court lacks authority to enter civil judgment in juvenile case in favor of intended recipient of restitution. *AS 47.10.010 et seq.*

6. CRIMINAL LAW k977(1)  
 110 ---  
 110XXIII Judgment, Sentence, and Final Commitment  
 110k977 Power and Duty of Court in General  
 110k977(1) In general.

Alaska App. 1995.

Legislation, and not inherent judicial power is source of court's sentencing authority.

7. CRIMINAL LAW k982.5(1)  
 110 ---  
 110XXIII Judgment, Sentence, and Final Commitment  
 110k982 Probation and Suspension of Sentence  
 110k982.5 Conditions  
 110k982.5(1) In general.

Alaska App. 1995.

While court has wide discretion in setting conditions of defendant's probation, court must have legislative authorization before imposing conditions that fundamentally alter defendant's status as probationer.

8. INFANTS k223.1  
 211 ---  
 211VIII Dependent, Neglected, and Delinquent Children  
 211VIII(E) Judgment; Disposition of Child

- 211k223 Delinquents and Law Violators  
 211k223.1 In general.

Alaska App. 1995.

In juvenile delinquency cases, superior court's authority to impose particular types of disposition in juvenile case is granted by and governed by legislation.

9. INFANTS k223.1  
 211 ---  
 211VIII Dependent, Neglected, and Delinquent Children  
 211VIII(E) Judgment; Disposition of Child  
 211k223 Delinquents and Law Violators  
 211k223.1 In general.

Alaska App. 1995.

Superior court may not issue civil judgment in favor of crime victim as part of juvenile disposition, despite superior court's broad, inherent power to fashion dispositional orders in juvenile cases.

\*684 J. John Franich, Asst. Public Advocate, Fairbanks, and Brant McGee, Public Advocate, Anchorage, for appellant.

D. Rebecca Snow, Asst. Atty. Gen., Fairbanks, and Bruce M. Botelho, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and MANNHEIMER, JJ.

OPINION

MANNHEIMER, Judge.

R.I. was adjudicated a juvenile delinquent under *AS 47.10.080(a)*. As one of the conditions of his probation, he was ordered to make restitution in the amount of \$3,018.83. Later, because of various violations of his probation (including failure to make restitution), the superior court revoked R.I.'s probation and institutionalized him. In addition, the court entered a civil judgement against R.I. (in favor of the victims of his crimes) for the amount of the unpaid restitution.

R.I. appeals this last aspect of the superior court's dispositional order. He contends that the superior court, by entering the civil judgement against him, in

894 P.2d 683, R.I. v. State, (Alaska App. 1995)

effect increased the severity of his sentence and thus violated the double jeopardy clauses of the federal and state constitutions. We asked the parties to brief a related issue: whether the superior court had the authority to convert the unpaid restitution into a civil judgement. After consideration of the supplemental briefing, we now hold that the superior court lacked authority to convert the restitution order into a civil judgement.

The superior court's decision to issue a civil judgement against R.I. was apparently prompted by the fact that the court's jurisdiction over R.I. was about to end. (FN1) The \*685 court wished to ensure that R.I. eventually paid the restitution, even if payment did not occur until after R.I.'s release from juvenile supervision. However, in attempting to achieve this goal, the court acted beyond its legal powers.

[1][2][3] In both criminal cases and juvenile delinquency cases, the legislature has authorized the superior court to order a defendant to pay restitution. In criminal prosecutions, a sentencing court can order a convicted defendant to pay restitution either as an independent component of the defendant's sentence, see AS 12.55.045(a), or as a condition of the defendant's probation, see AS 12.55.100(a)(2). And in juvenile cases, AS 47.10.080(b)(4) authorizes the superior court to order restitution "in lieu of or in addition to" the dispositions authorized by AS 47.10.080(b)(1)-(b)(3).

[4][5] These statutes, however, do not authorize a sentencing court to issue a civil judgement in favor of a crime victim for the amount of damage or loss inflicted by an adult or juvenile defendant. (FN2) More specifically, no provision of AS 47.10 gives the superior court the authority to enter civil judgement in a juvenile case in favor of the intended recipient of restitution. This lack of statutory authority determines the outcome of R.I.'s appeal.

[6][7] In the realm of criminal law, the Alaska Supreme Court has repeatedly held that legislation, not inherent judicial power, is the source of a court's sentencing authority. The legislature sets the maximum, minimum, and presumptive terms of imprisonment for crimes. See Nell v. State, 642 P.2d 1361, 1368 (Alaska App.1982), (citing several Alaska cases "which have explicitly recognized the

authority of the legislature in the area of fixing criminal sentences"). The legislature decrees whether a defendant's sentence may be suspended in whole or in part. Pete v. State, 379 P.2d 625, 626 (Alaska 1963) (a court has no inherent power to suspend a sentence of imprisonment and place a defendant on probation; such authority must be granted by the legislature). The legislature determines what length of probation may be imposed. Gonzales v. State, 608 P.2d 23, 25-26 (Alaska 1980); Jackson v. State, 541 P.2d 23, 25 (Alaska 1975) (when a defendant's sentence of imprisonment is suspended and the defendant is placed on probation, the defendant's total period of probation may not exceed the 5-year period specified in AS 12.55.090(c)); Tiedeman v. State, 576 P.2d 114, 116 n. 11 (Alaska 1978) (because a different statute (AS 12.55.085(a)) governs probation when a defendant receives a suspended imposition of sentence (SIS), the 5-year limitation does not apply; rather, SIS probation is limited to the same number of years as the maximum sentence of imprisonment for the crime). And, while a court has wide discretion in setting the conditions of a defendant's probation, a court must have legislative authorization before imposing conditions that fundamentally alter a defendant's status as a "probationer" (that is, someone who is released from custody upon his or her promise to abide by certain conditions). Whittlesey v. State, 626 P.2d 1066, 1067 (Alaska 1980); Boyne v. State, 586 P.2d 1250, 1251 (Alaska 1978) (absent explicit legislative authorization, a court may not impose imprisonment as a condition of probation). See Brown v. State, 559 P.2d 107, 110 (Alaska 1977) (because AS 12.55.100(a)(1) authorizes a court to impose a fine as a condition of probation, a sentencing court can order a defendant to pay a fine as a condition of probation even when the underlying crime is punishable by imprisonment only).

[8] In juvenile cases, the supreme court has followed the same rule: the superior \*686 court's authority to impose particular types of disposition in a juvenile case is granted by and governed by legislation. In re E.M.D., 490 P.2d 658 (Alaska 1971). In E.M.D., the superior court found a minor to be a "child in need of supervision" under former AS 47.10.290(7) (a status that is now termed "child in need of aid" under AS 47.10.010(a)(2)). Based on this finding, the superior court ordered E.M.D. to be

894 P.2d 683, R.I. v. State, (Alaska App. 1995)

institutionalized "in a correctional or detention facility ... until released therefrom upon a showing ... that the minor has completed a program of rehabilitation and has been amenable thereto". *E.M.D.*, 490 P.2d at 659.

The minor appealed, contending that the superior court had exceeded its authority when it ordered her to be institutionalized. *E.M.D.* argued that the legislature had authorized institutionalization only for delinquent minors, not for children in need of supervision. The supreme court agreed:

Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children.... Of controlling significance here is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter.

Study of our children's laws leads to the conclusion that the legislature has authorized institutionalization only where the child is found to be a delinquent minor.... [T]he only instance under our children's laws authorizing institutionalization or incarceration is when the child has violated the laws of the state[.] Since the runaway child in the case at bar was found to be a child in need of supervision, not a delinquent minor, no legal basis existed for her incarceration.

*E.M.D.*, 490 P.2d at 659-660.

Attempting to avoid this result, the State in *E.M.D.* argued that the superior court was not bound by the literal terms of AS 47.10. The State contended that, "in light of the legislature's broad policy declaration [that] protection of children is the paramount purpose [of the] laws pertaining to children's courts", the superior court should be deemed to enjoy broad power to fashion dispositions different from, or in addition to, the ones specifically listed in AS 47.10.080. *Id.* at 660. The supreme court rejected this argument:

[W]e recently held that the benevolent social theory supposedly underlying children's court [legislation] does not furnish justification for dispensing with constitutional safeguards [citing *R.L.R. v. State*, 487 P.2d 27, 30-31 (Alaska 1971)] (a child alleged to be a delinquent minor is

entitled to a trial by jury) ]. [In] the case at bar, it is equally appropriate to note that notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings.

*E.M.D.*, 490 P.2d at 660.

[9] Returning to the present case, no provision of AS 47.10 authorizes the superior court to issue a civil judgement in favor of a crime victim as part of a juvenile disposition. The State attempts to deal with this lack of statutory authority by asserting that, in children's cases, the superior court enjoys broad, inherent power to fashion dispositional orders. The State reasons that there was no need for the legislature to specify the superior court's power to convert a restitution order to a civil judgement in children's cases because the superior court has "broad dispositional discretion" to pursue any mode of enforcing its judgement.

This is essentially the same argument that the supreme court rejected in *E.M.D.*. The superior court does not have unfettered dispositional power in children's cases; rather, the court's authority arises from, and is limited by, statute. The legislation defining the superior court's authority in juvenile cases does not authorize the court to enter civil judgement in favor of a crime victim or convert a previously-entered restitution order into a civil judgement. Because no provision of AS 47.10 confers this power on the superior court, we hold that the superior court lacked the authority to convert the restitution portion of its dispositional order into a civil judgement against R.I..

The State contends that, if the superior court lacks the power to convert its restitution orders to civil judgements, then delinquent \*687. minors might evade the court's orders "simply by waiting to get too old" for the court to take action against them. Nevertheless, as the State's brief in *E.M.D.* recognized, courts must not exceed their granted powers "even where ... the factual circumstances cry out for a disposition beyond the fingertips of the [sentencing] court". *E.M.D.*, 490 P.2d at 660-61 n. 10.

The contested portion of the superior court's

894 P.2d 683, R.I. v. State, (Alaska App. 1995)

judgement is REVERSED.

*FN1.* Under *AS 47.10.100(a)*, the superior court's jurisdiction over a juvenile ends when the juvenile reaches his or her nineteenth birthday (or, with the child's consent, his or her twentieth birthday). *State v. T.M.*, 860 P.2d 1286, 1288 (Alaska App.1993).

*FN2.* We note that, in criminal prosecutions, the legislature has authorized crime victims to pursue execution upon a restitution order as if it were a

civil judgement in their favor. *Alaska Statute 12.55.051(d)* provides:

The state may enforce payment of a fine and [a] restitution recipient may enforce payment of a restitution order against a defendant under AS 09.35 as if the order were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce fines and orders of restitution to victims.

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 16, 1996

The Hon. Gene Therriault  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Re: HB 484

Dear Representative Therriault:

You have requested an analysis of the referenced bill, entitled "An Act relating to enforcement of restitution orders entered against minors." The bill provides the statutory authority for courts to enforce an order under AS 47.10.080(b)(4) for a minor to pay restitution as a civil judgment enforceable by execution under AS 09.35. We believe that the bill corrects a "loophole" in existing law, and is necessary to fully protect the rights of innocent victims of crime.

The need for statutory authority arose from a recent decision by the Alaska Court of Appeals. In R.I. v. State, 894 P.2d 683 (Alaska App. 1995), the court found that since there is no specific statutory authority in AS 47.10 to enter civil judgments in juvenile cases in favor of the restitution recipient, the court could not do so. This bill supplies the required authority. It is similar to the statutory authority which allow a court to enforce an order for restitution in a criminal case in adult court as a civil judgment under AS 09.35. AS 12.55.051(d).

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL  
OFFICE  
P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
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FAX: (907) 269-6270

The Hon. Gene Therriault  
Alaska State Legislature

February 16, 1996  
Page 2

If you have any questions or need further information, please feel free to call me. We are happy to provide any assistance you need in seeking passage of this legislation.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:



Anne D. Carpeneti  
Assistant Attorney General

ADC:jf

**HB**

**493**

## CS FOR HOUSE BILL NO. 493(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE IVAN

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to treatment for alcoholism or drug abuse."

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

3 \* Section 1. AS 47.37.170(b) is amended to read:

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

12 \* Sec. 2. AS 47.37.170(d) is amended to read:

13 (d) A person who, after medical examination at an approved private  
 14 treatment facility, or another appropriate health facility or service for emergency  
 15 medical treatment, is found to be incapacitated by alcohol or drugs at the time of

1 admission or to have become incapacitated by alcohol or drugs at any time after  
2 admission, may not be detained at a facility after the person is no longer incapacitated  
3 by alcohol or drugs. A person may not be detained at a facility if the person remains  
4 incapacitated by alcohol for more than 48 hours after admission as a patient [,  
5 UNLESS THE PERSON IS COMMITTED UNDER AS 47.37.180]. A person may  
6 consent to remain in the facility as long as the physician in charge considers it  
7 appropriate.

8 \* Sec. 3. AS 47.37.170(f) is amended to read:

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

13 \* Sec. 4. AS 47.37.170(g) is amended to read:

14 (g) A person may not bring an action for damages based on the decision under  
15 this section to take or not to take an intoxicated person or a person incapacitated by  
16 alcohol or drugs into protective custody, unless the action is for damages caused by  
17 gross negligence or intentional misconduct.

18 \* Sec. 5. AS 47.37.170(i) is amended to read:

19 (i) A person taken to a detention facility under (a) or (b) of this section may  
20 be detained only (1) until a treatment facility or emergency medical service is made  
21 available, [OR] (2) until the person is no longer intoxicated or incapacitated by alcohol  
22 or drugs, or (3) for a maximum period of 12 hours, whichever occurs first. A  
23 detaining officer or a detention facility official may release a person who is detained  
24 under (a) or (b) of this section at any time to the custody of a responsible adult. A  
25 peace officer or a member of the emergency service patrol, in detaining a person under  
26 (a) or (b) of this section and in taking the person to a treatment facility, an emergency  
27 medical service, or a detention facility, is taking the person into protective custody and  
28 the officer or patrol member shall make reasonable efforts to provide for and protect  
29 the health and safety of the detainee. In taking a person into protective custody under  
30 (a) and (b) of this section, a detaining officer, a member of the emergency service  
31 patrol, or a detention facility official may take reasonable steps for self-protection,  
32 including a full protective search of the person of a detainee. Protective custody under

1 (a) and (b) of this section does not constitute an arrest and no entry or other record  
2 may be made to indicate that the person detained has been arrested or charged with a  
3 crime, except that a confidential record may be made that [WHICH] is necessary for  
4 the administrative purposes of the facility to which the person has been taken or that  
5 [WHICH] is necessary for statistical purposes where the person's name may not be  
6 disclosed.

7 \* Sec. 6. AS 47.37.180(a) is amended to read:

8 (a) An intoxicated person who is (1) incapacitated by alcohol or drugs; [HAS  
9 THREATENED, ATTEMPTED TO INFLICT, OR INFLICTED PHYSICAL HARM ON  
10 ANOTHER OR IS LIKELY TO INFLICT PHYSICAL HARM ON ANOTHER  
11 UNLESS COMMITTED,] or (2) at risk of serious physical harm or illness unless  
12 committed [IS INCAPACITATED BY ALCOHOL], may be committed to an approved  
13 public treatment facility for emergency treatment. A refusal to undergo treatment does  
14 not constitute evidence of lack of judgment as to the need for treatment.

15 \* Sec. 7. AS 47.37.190(a) is amended to read:

16 (a) A [AFTER A HEARING INITIATED BY PETITION OF A] spouse or  
17 guardian, a relative, the certifying physician, or the administrator in charge of an  
18 approved public treatment facility may petition the court for a 30-day involuntary  
19 commitment order [, A PERSON MAY BE COMMITTED TO THE CUSTODY OF  
20 A PRIVATE OR PUBLIC FACILITY BY THE SUPERIOR COURT]. The petition  
21 must allege that the person is an alcoholic or drug abuser who [HABITUALLY  
22 LACKS SELF-CONTROL IN USING ALCOHOLIC BEVERAGES AND THAT THE  
23 PERSON (1) HAS THREATENED, ATTEMPTED TO INFLICT, OR INFLICTED  
24 PHYSICAL HARM ON ANOTHER AND THAT UNLESS COMMITTED IS LIKELY  
25 TO INFLICT PHYSICAL HARM ON ANOTHER; OR (2)] is incapacitated by alcohol  
26 or drugs, or who, if not treated, will be at risk of serious physical harm or illness.  
27 A refusal to undergo treatment does not constitute evidence of lack of judgment as to the  
28 need for treatment. The petition must be accompanied by a certificate of a licensed  
29 physician who has examined the person within two days before submission of the  
30 petition, unless the person whose commitment is sought has refused to submit to a  
31 medical examination, in which case the fact of refusal must be alleged in the petition.  
32 The certificate must set out the physician's findings in support of the allegations of the

1 petition.

2 \* Sec. 8. AS 47.37.190(b) is amended to read:

3 (b) After the petition is filed, the court shall fix a date for a hearing no later than  
4 10 days after the date the petition was filed. A copy of the petition and of the notice of  
5 the hearing, including the date fixed by the court, shall be served on

6 (1) the petitioner;

7 (2) the person whose commitment is sought or the person's guardian.  
8 if any;

9 (3) the attorney representing [NEXT OF KIN OF] the person whose  
10 commitment is sought;

11 (4) the administrator in charge of the approved public or private  
12 treatment facility in which the committed person has been committed for emergency  
13 care; and

14 (5) any other person the court considers appropriate. [A COPY OF THE  
15 PETITION AND CERTIFICATE SHALL BE DELIVERED TO EACH PERSON  
16 NOTIFIED.]

17 \* Sec. 9. AS 47.37.190(c) is repealed and reenacted to read:

18 (c) A person who is the subject of a petition filed under this section does not  
19 have the right to a jury.

20 \* Sec. 10. AS 47.37.200 is repealed and reenacted to read:

21 Sec. 47.37.200. HEARING ON PETITION FOR INVOLUNTARY  
22 COMMITMENT. (a) At the hearing for a 30-day commitment required under  
23 AS 47.37.190(b), the court shall hear all relevant testimony, including, if possible, the  
24 testimony of at least one licensed physician who has examined the person whose  
25 commitment is sought. The person whose commitment is sought shall be present unless  
26 the court believes that being present is likely to be injurious to the person, in which case  
27 the court may conduct the hearing telephonically. The court may examine the person in  
28 open court, or, if advisable, examine the person out of court. If the person has refused  
29 to be examined by a licensed physician, the person shall be given an opportunity to  
30 request examination by a court-appointed licensed physician. If the person fails to  
31 request a medical examination and there is sufficient evidence to believe that the  
32 allegations of the petition are true, or, if the court believes that more medical evidence

1 is necessary, the court may issue a temporary order committing the person to a private  
2 or public facility for a period of not more than five days for purposes of a diagnostic  
3 examination.

4 (b) If after hearing all relevant evidence, including the results of any diagnostic  
5 examination by the private or public facility, the court finds that grounds for involuntary  
6 commitment have been clearly established, the court shall issue an order of 30-day  
7 commitment to the private or public facility.

8 (c) A person committed for a 30-day period shall remain in the custody of a  
9 private or public facility for treatment for a period of not more than 30 days. At the end  
10 of the 30-day period, the person shall be automatically discharged unless the director of  
11 the approved public facility or approved private facility, before the expiration of the  
12 period, files a petition for recommitment under AS 47.37.205.

13 (d) A private or public facility shall provide adequate and appropriate treatment  
14 for a person in its custody. A public facility may transfer a person in its custody from  
15 one approved public treatment facility to another if the transfer is medically advisable.

16 (e) A person committed to the custody of an approved public facility or an  
17 approved private facility shall be discharged at any time before the end of the period for  
18 which the person has been committed if either of the following conditions is met:

19 (1) further treatment is not likely to bring about significant improvement  
20 in the person's condition; or

21 (2) treatment is no longer adequate or appropriate.

22 (f) The court shall inform the person whose commitment or recommitment is  
23 sought of the right to contest the petition, to be represented by counsel at every stage of  
24 the proceedings relating to commitment and recommitment, to have counsel appointed  
25 by the court or provided by the court, if the person is unable to obtain counsel, and of  
26 the right to a jury trial if recommitment is sought under AS 47.37.205. The person  
27 whose commitment or recommitment is sought shall be informed of the right to be  
28 examined by a licensed physician of the person's choice. If the person is unable to  
29 obtain a licensed physician and requests examination by a physician, the court shall  
30 appoint a licensed physician for the examination.

31 (g) If a private treatment facility agrees with the request of a competent patient  
32 or the patient's parent, adult sibling, adult child, or guardian to accept the patient for

1 treatment, the administrator of the public treatment facility shall transfer the patient to  
2 the private treatment facility.

3 (h) A person committed under this chapter may at any time seek discharge from  
4 commitment by writ of habeas corpus under AS 12.75.

5 \* Sec. 11. AS 47.37 is amended by adding a new section to read:

6 Sec. 47.37.205. PROCEDURE FOR RECOMMITMENT FOLLOWING 30-  
7 DAY COMMITMENT. (a) At any time during a person's 30-day commitment, the  
8 director of an approved public facility or approved private facility may file with the court  
9 a petition for a 180-day commitment of that person. The petition must include all  
10 material required under AS 47.37.190(a) except that references to "30 days" shall be read  
11 as "180 days" and must allege that the person continues to be an alcoholic or drug abuser  
12 who is incapacitated by alcohol or drugs, or who continues to be at risk of serious  
13 physical harm or illness.

14 (b) Upon the filing of a petition for recommitment under (a) of this section, the  
15 court shall fix a date for hearing no later than 10 days after the date the petition was  
16 filed. A copy of the petition and of the notice of hearing, including the date fixed by  
17 the court, shall be served on

18 (1) the petitioner;

19 (2) the person whose recommitment is sought or the person's guardian,  
20 if any;

21 (3) the attorney representing the person whose recommitment is sought;

22 (4) the original petitioner under AS 47.37.190(a), if different from the  
23 petitioner for recommitment;

24 (5) any other person the court considers appropriate.

25 (c) If, not less than two days before the date set for a recommitment hearing  
26 under (a) of this section the person being recommitted or the person's counsel or advisor  
27 files a written request with the court, the court shall summon and impanel a jury of six  
28 residents of the judicial district to hear and consider evidence concerning the condition  
29 of the person being recommitted.

30 (d) At the hearing regarding recommitment for a 180-day period, the court or  
31 jury shall proceed as provided in AS 47.37.200(a) and (b).

32 (e) The provisions of AS 47.37.200(c) - (h) shall apply equally to periods of

1           recommitment under this section, except that references to "30 days" shall be read as  
2           "180 days."

3       \* Sec. 12. AS 47.37.210(b) is amended to read:

4           (b) Notwithstanding (a) of this section, the director may make available  
5           information from patients' records for purposes of research into the causes and  
6           treatment of alcoholism or drug abuse. Information [. NO INFORMATION] may  
7           not disclose a patient's name.

8       \* Sec. 13. AS 47.37.270(1) is amended to read:

9           (1) "alcoholic or drug abuser" means a person who demonstrates  
10          increased tolerance to alcohol or drugs, who suffers from withdrawal when alcohol  
11          or drugs are not available, whose habitual lack of self-control concerning the use  
12          of alcohol or drugs causes significant hazard to the person's health, and who  
13          continues to use alcohol or drugs despite the adverse consequences [HABITUALLY  
14          LACKS SELF-CONTROL IN USING ALCOHOLIC BEVERAGES, OR USES  
15          ALCOHOLIC BEVERAGES TO THE EXTENT THAT THE PERSON'S HEALTH IS  
16          SUBSTANTIALLY IMPAIRED OR ENDANGERED, OR THE PERSON'S SOCIAL  
17          OR ECONOMIC FUNCTION IS SUBSTANTIALLY DISRUPTED];

18       \* Sec. 14. AS 47.37.270(10) is amended to read:

19          (10) "incapacitated by alcohol or drugs" means a person who, as a  
20          result of alcohol or drugs, is unconscious or whose judgment is otherwise so impaired  
21          that the person (A) is incapable of realizing and making [A] rational decisions  
22          [DECISION] with respect to the [A] need for treatment and (B) is unable to take care  
23          of the person's basic safety or personal needs, including food, clothing, shelter, or  
24          medical care [, AS EVIDENCED OBJECTIVELY BY EXTREME PHYSICAL  
25          DEBILITATION, PHYSICAL HARM OR THREATS OF HARM TO OTHERS OR  
26          CHRONIC INABILITY TO HOLD REGULAR EMPLOYMENT];

27       \* Sec. 15. AS 47.37.270(13) is amended to read:

28          (13) "intoxicated person" means a person whose mental or physical  
29          functioning is substantially impaired as a result of the use of alcohol or drugs;

30       \* Sec. 16. AS 47.37.270(14) is amended to read:

31          (14) "treatment" means the broad range of emergency, outpatient,  
32          intermediate, and inpatient services and care that may be extended to alcoholics, [AND]

1 intoxicated persons, or drug abusers, including diagnostic evaluation, medical, psychiatric,  
2 psychological, and social service care, vocational rehabilitation and career counseling;

3 \* Sec. 17. AS 47.37.270 is amended by adding a new paragraph to read:

4 (16) "drugs" means a drug that is included in the controlled substance  
5 schedules set out in AS 11.71.140 - 11.71.190.

6 \* Sec. 18. AS 47.37.170(j) is repealed.

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 9, 1996

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/18/96

The JUDICIARY Committee considered:

HB 493

HOUSE BILL NO. 493

INVOLUNTARY COMMITMENT: ALCOHOL/DRUG ABUSE

An Act relating to involuntary commitment for alcoholism or drug abuse."

recommends it be replaced with the following committee substitute CSAB (JUD) [ ] the same title [X] a new title

[ ] additional referral to \_\_\_\_\_ Committee [ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) Courts, HSS [ ] fiscal note(s) \_\_\_\_\_

[X] zero fiscal note(s) P.S. [ ] zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS

Table with 5 columns: Name, DNP, NR, AM. Rows include signatures of Brian Porter, David Finkelstein, Benjamin D. ... and others.

CHAIR'S SIGNATURE Brian Porter

## House District 39

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**Representative Ivan M. Ivan**

### SECTIONAL ANALYSIS - CS for HOUSE BILL 493 Draft 9-LS1607\G, Dated 3/14/96

**Section 1.** Amends 47.37.170(b), Treatment and Services for Intoxicated Persons and Persons Incapacitated by Alcohol. Adds "drugs" to incapacitation. This conforms this section to other commitment statutes that are amended in this act.

**Section 2.** Amends AS 47.37.170(d), Treatment and Services for Intoxicated Persons and Persons Incapacitated by Alcohol. Clarifies that the medical examination must take place at an approved private treatment facility or another appropriate health facility and the person is incapacitated by alcohol or drugs.

**Section 3.** Amends AS 47.37.170(f), Treatment and Services for Intoxicated Persons and Persons Incapacitated by Alcohol. Clarifies the person is not incapacitated by alcohol or drugs.

**Section 4.** Amends 47.37.170(g), Treatment and Services for Intoxicated Persons and Persons Incapacitated by Alcohol. Adds "drugs" to incapacitation. This conforms this section to other commitment statutes that are amended in this act.

**Section 5.** Amends 47.37.170(i), Treatment and Services for Intoxicated Persons and Persons Incapacitated by Alcohol. Adds "drugs" to incapacitation. This conforms this section to other commitment statutes that are amended in this act.

**Section 6.** Amends AS 47.37.180(a), Emergency Commitment. Redefines who may be committed to an approved public treatment facility for emergency treatment due to intoxication.

**Section 7.** Amends AS 47.37.190(a), Involuntary Commitment. Language is added to include a drug abuser and is at risk of serious physical harm or illness. This section also clarifies this is for a 30 day commitment order and the procedures to petition for such a commitment.

**Section 8.** Amends AS 47.37.190 (b), Involuntary Commitment. Adds the person's guardian and an administrator of a private treatment center to the list of those who would be served with a copy of the petition to commit and a court notice of hearing.

**Section 9.** Repeals and reenacts AS 47.37.190 (c), Involuntary Commitment. This section establishes that the person who is the subject of a petition to commit to treatment does not have the right to a jury. This applies only to the 30 day commitment process and not to further recommitment processes in other sections.

**Section 10.** Repeals and reenacts AS 47.37.200, Hearing on Petition for Involuntary Commitment. This section establishes new procedures for a 30 day commitment process.

**Section 11.** Adds a new section to AS 47.37; AS 47.37.205, Procedure for Recommitment Following 30-Day Commitment. This section establishes new procedures in obtaining a 180 day commitment of a person who is an alcoholic or drug abuser who is incapacitated.

**Section 12.** Amends AS 47.37.210(b), Records of Alcoholics and Intoxicated Persons. Adds drug abuse to this section to conform with the changes made in this act.

**Section 13.** Amends AS 47.37.270(1), Definitions. The new definition of a person who may be involuntary committed is broadened to include a drug abuser. New language also includes a criteria of symptoms that may be used to demonstrate the need for commitment.

**Section 14.** Amends AS 47.37.270(10), Definitions. Redefines incapacitated by alcohol and adds drugs to this definition.

**Section 15.** Amends AS 47.37.270(13), Definitions. Adds drugs to the definition of intoxicated person.

**Section 16.** Amends AS 47.37.270(14), Definitions. Adds drug abusers to the definition of treatment.

**Section 17.** Repeals AS 47.37.170(j), Treatment and Services for Intoxicated Persons and Persons Incapacitated by Alcohol. This subsection defined incapacitated by alcohol and did not conform with the definition found in Section 14 of this bill. Thus it was deleted and the definition in Section 14 is used throughout the entire act as the definition for incapacitated by alcohol or drugs.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 493

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to involuntary commitment for BRU: Civil Division  
alcoholism or drug abuse." Component: General Legal Services  
 Sponsor: Representative Ivan  
 Requester: Representative Ivan COMPONENT SERIAL NO. 2087

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends the state's existing statute, AS 47.37, concerning the involuntary commitment of persons addicted to alcohol, for the treatment of their addiction, to include addiction to drugs. The bill also increases the period of recommitment, when a person has not adequately responded to treatment during the initial 30-day commitment period, from 90 days to 180 days. Finally, the bill changes the standard of behavioral conduct that a person must exhibit before a court can order a person to be committed for treatment involuntarily. Court hearings that are necessary to invoke involuntary commitment are initiated by petition of a spouse, guardian, or a relative of the addicted person, or by a certifying physician or the administrator in charge of an approved public treatment facility. The Department of Law is not involved in these proceedings, and the bill will not have a fiscal impact on the department. We are concerned, however, with the language in the bill, which describes the grounds for involuntary commitment for alcoholism or drug abuse. Language may need to be changed so that the standards used for commitment are legally defensible. Department of Law staff is available to help resolve this concern.

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/15/96  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/15/96  
 Agency: Department of Law

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# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO: HB 493**

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Involuntary commitment of alcoholism or BRU: Alaska State Troopers  
drug abuse. Component: Detachments and Judicial Services  
 Sponsor: Representative Ivan  
 Requestor: H. Judiciary **COMPONENT SERIAL NO. 0799 and 0831**

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

**FUND'NG: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-


Estimate of current year (FY 96) impact: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS: (Attach a separate page if necessary.)**

This bill will have the impact of state troopers and court services officers being required to attend more commitment hearings or serving additional pieces of process. The impact however is estimated at less than \$500.

Prepared By: Lt. Dan Lowden Phone: 465-5505  
 Division: Alaska State Troopers Date: February 22, 1996  
 Approved by Commissioner:  Date: 2/26/96  
 Agency: Ronald L. Otte, Department of Public Safety

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# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO. HB 493**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to involuntary commitment for alcoholism or drug abuse."  
 Sponsor: Representative Ivan  
 Requestor: House Judiciary

Dept. Affected: Administration  
 BRU: Public Defender Agency  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	***	***	***	***	***	***
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	***	***	***	***	***	***

<b>CAPITAL EXPENDITURES</b>	***	***	***	***	***	***
-----------------------------	-----	-----	-----	-----	-----	-----

<b>CHANGE IN REVENUES ( )</b>	***	***	***	***	***	***
-------------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Heal'n						
OTHER						
<b>TOTAL</b>	***	***	***	***	***	***

Estimate of any current year (FY 96) cost: \$ -0-

**POSITIONS:**

FULL-TIME	***	***	***	***	***	***
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

It is anticipated that there will be a fiscal impact for the Public Defender. Cases will increase in number, as the definition is expanded to include more individuals. The recommitment hearing, as outlined under Section 8, may proceed to consideration by jury, which will require additional resources. Until some experiential basis is established, the fiscal impact is not quantifiable in terms of caseload or resource allocation.

Prepared by: John Salemi, Director  
 Division: Public Defender Agency

Phone: 264-4400  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 5/12/95

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 493

Revision Date: \_\_\_\_\_  
 Title: " An Act relating to involuntary commitment for alcoholism  
 or drug abuse."  
 Sponsor: Representative Ivan  
 Requestor: House Judiciary

Dept. Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 COMPONENT SERIAL NO. 43

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	***	***	***	***	***	***
<b>CAPITAL EXPENDITURES</b>	***	***	***	***	***	***
<b>CHANGE IN REVENUES ( )</b>	***	***	***	***	***	***

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	***	***	***	***	***	***

Estimate of any current year (FY 96) cost: \$ -0-

**POSITIONS:**

FULL-TIME	***	***	***	***	***	***
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

It is anticipated that there will be a fiscal impact for the Office of Public Advocacy. Section 4 of the bill calls for the appointment of a guardian ad litem to represent the individual throughout the proceedings. This, it is assumed would involve the Office of Public Advocacy. Without some experiential basis, however, the fiscal impact is not quantifiable in terms of caseload increase or resource allocation.

Prepared by: Brant McGee, Public Advocate  
 Division: Office of Public Advocacy

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 1/16/96

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**Remarks on H.B. 493**  
**"An Act Relating to Involuntary Commitment for  
Alcoholism or Drug Abuse"**

House Judiciary Committee  
Representative Brian Porter, Chairperson

Mr. Chairman and Committee:

I have several quick comments concerning the proposed legislation to amend the statutes covering the involuntary commitment of alcoholics and drug addicts.

My first and most significant concern is the lack of enforcement authorization for the involuntary commitment order. I believe it would benefit this legislation if we contrasted the language on involuntary commitment of alcoholics and drug addicts to the language on involuntary mental health commitments. Under AS 47.30.790, law enforcement personnel are directed to take involuntarily committed mental health patients into custody and, if they walk away, to return them to the treatment facility. No similar language exists in H.B. 493 for alcoholic or drug addicts who walk away from the facilities to which they are committed. For this reason, some law enforcement agencies are extremely reluctant to stop alcoholics and drug abusers when they walk away from treatment facilities. Without the immediate ability to enforce the court's order, the involuntary commitment procedures become meaningless. Without language requiring law enforcement to take walk-aways into custody, I do not believe any other changes in the involuntary commitment statutes will have the desired effect.

Another concern involves the short amount of time given by the current statute to file documents with the court. In the past, most requests for commitment have typically arrived on a Friday, which requires that all other business be halted, so as to complete and file the documents by the close of the court at 4:30 p.m. Frequently, more than 12 hours of the 48 hours required by law have passed, before we are able to even deliver the case to our city attorney.

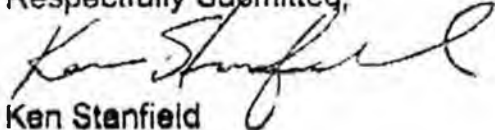
Again, we need to contrast the language of the involuntary commitment of alcoholics and drug addicts to the language of the involuntary mental health commitments (AS 47.30.805). The mental health commitment language excludes weekends and holidays when computing time. The absence of such language in the proposed law governing commitment of alcoholics and drug addicts, greatly and unnecessarily complicates the involuntary commitment process. In fact, it makes more sense to exclude weekends and holidays from the computation of time for alcohol and drug addict commitment cases. While mental health commitments can be expected to rise during regular working hours, alcohol and drug addict commitments appear to rise in the late evening, weekends, and immediately prior to weekends. Furthermore, the alcoholism and drug addict commitments require careful coordination with several professionals, including physicians who may or may not be available within the narrow time limits provided under current law.

**Remarks on H.B. 493**  
**“An Act Relating to Involuntary Commitment for  
Alcoholism or Drug Abuse”**  
**(Continued)**

One final issue concerns Section 2 of the bill, AS47.190(b), as amended. The amendment does not address the problem of service on the next-of-kin. Under present law and under the proposed revision, we are obligated to serve the next-of-kin. This is difficult to do in the very short time period allowed for service and hearing. It is also difficult because the next-of-kin for most of the alcoholics and drug addicts we deal with are unknown or difficult to locate. How do we discover who their next-of-kin is when they are in an alcoholic or drug stupor?

We are generally in support of the bill but feel it could be made more user-friendly and effective if the above-stated concerns are addressed.

Respectfully Submitted,



Ken Stanfield  
Supervisor  
Substance Abuse Services Division  
City of Ketchikan

# Alaska State Legislature



House of Representatives  
House Judiciary Committee

State Capitol, Room 120  
Juneau, Alaska 99801-1182  
(907) 465-4990

March 7, 1996

TO: House Judiciary Committee members

FROM: Tom Meyer

RE: March 8, 1996, hearing

Attached are materials for your HB 493 packets. They are the new CS version "F" of the bill and a memo from Mike Ford.

First on the calendar tomorrow, however, will be HB 341 Tax appeals. There will be a new CS but it is unavailable at the time of this memo. Several amendments to the new CS will be submitted by the Department of Revenue. Those are not yet available. Once the new CS and the amendments are available, copies will be distributed to you.



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary  
committee name

committee on HB 443 , dated 3-8-96  
bill/subject

*I support Involuntary Commitment Bill. It is  
badly needed. I support expansion of a program  
but I do not support a new program. Programs  
in existence should be provided for first.*

Signed: Leonard M. Meyer  
Testifier

Subscribed as Past Assistant Director of Long  
Term Treatment.  
Representing (Optional) With 30 years experience

P.O. Box 87-2735  
Address

Windsor, AK 99687

Phone No. 907-745-5304

9/86 Legislative Information Office 907-745-5165 FAX



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary  
 committee name  
 committee on HB 493, dated 3/8/96  
 bill/subject

I support the changes to the involuntary commitment act.

The fiscal note to this bill is not correct as we do not need any new programs in the state. The state already has programs that could use funds in expanding their services to assist this population. There is a need for Transitional housing, this should only be the new service needed in the state.

There is already a long-term program that should be applied for meeting the needs this bill address.

Signed: Ramon Nugen-Ligon  
 Testifier  
Nugen Ranch  
 Representing (Optional)  
P.O. Box 871545  
 Address  
376 4534  
 Phone No.

**Remarks on H.B. 493**  
**"An Act Relating to Involuntary Commitment for**  
**Alcoholism or Drug Abuse"**

House Judiciary Committee  
Representative Brian Porter, Chairperson

Mr. Chairman and Committee:

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**LEGISLATIVE INFORMATION OFFICE**

352 Front Street  
Ketchikan, Alaska 99901

Phone: (907) 225-9675  
Fax: (907) 225-3546

\*\*\*\*\*

Fax To: HOUSE JUDICIARY COMMITTEE  
Fax #: 465-3834  
Date: 3/6/96

Number of pages including this cover page: 2 TC # 60493  
\*\*\*\*\*

... business be halted, so as to complete and file the documents by the close of the court at 4:30 p.m. Frequently, more than 12 hours of the 48 hours required by law have passed, before we are able to even deliver the case to our city attorney.

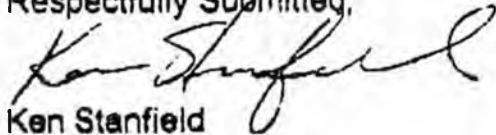
Again, we need to contrast the language of the involuntary commitment of alcoholics and drug addicts to the language of the involuntary mental health commitments (AS 47.30.805). The mental health commitment language excludes weekends and holidays when computing time. The absence of such language in the proposed law governing commitment of alcoholics and drug addicts, greatly and unnecessarily complicates the involuntary commitment process. In fact, it makes more sense to exclude weekends and holidays from the computation of time for alcohol and drug addict commitment cases. While mental health commitments can be expected to rise during regular working hours, alcohol and drug addict commitments appear to rise in the late evening, weekends, and immediately prior to weekends. Furthermore, the alcoholism and drug addict commitments require careful coordination with several professionals, including physicians who may or may not be available within the narrow time limits provided under current law.

**Remarks on H.B. 493**  
**"An Act Relating to Involuntary Commitment for  
Alcoholism or Drug Abuse"**  
(Continued)

One final issue concerns Section 2 of the bill, AS47.190(b), as amended. The amendment does not address the problem of service on the next-of-kin. Under present law and under the proposed revision, we are obligated to serve the next-of-kin. This is difficult to do in the very short time period allowed for service and hearing. It is also difficult because the next-of-kin for most of the alcoholics and drug addicts we deal with are unknown or difficult to locate. How do we discover who their next-of-kin is when they are in an alcoholic or drug stupor?

We are generally in support of the bill but feel it could be made more user-friendly and effective if the above-stated concerns are addressed.

Respectfully Submitted,



Ken Stanfield  
Supervisor  
Substance Abuse Services Division  
City of Ketchikan

It is not Representative Ivan's intent to impose unlawful restrictions on an individual. However, by using the involuntary commitment process, he hopes that lives may be saved. He also hopes that the financial impacts on different agencies may be lessened if the revolving door process many inebriates find themselves when the protective custody statues are applied."

MR. WRIGHT also added that work was done on this legislation with the Department of Law and the Division of Alcohol and Drug Abuse. He noted the CS as well with explanations about the changes to it.

Number 1930

ART SNOWDEN, II, Administrative Director, Alaska Court System stated that they had a lot of small questions which they have no answers to and some suggestions about this bill. He did give these questions and suggestions to the sponsor's aid.

MR. SNOWDEN referred to page 1, line 7 - 15. The courts want to know if there is a reason why this new commitment standard and the addition of drug abusers was included in the involuntary commitment statute, section 190 and was not included in the emergency commitment statutes section 180. If the current standard is inappropriate for regular commitments, why does it remain appropriate for emergency commitments. These are the types of issues they are most concerned with and felt confident that staff could work these out. He noted their next comment regarded page 1, line 11, and noted that the following words appear to be missing, between the words health and despite, which are "and who continue to use alcohol or drugs." He pointed out as a comparison on page 5, lines 23 and 24 where these words are spelled out. There are additional technical sections such as this which could be cleaned up as necessary.

MR. SNOWDEN stated that the fiscal note attached to this

9-LS1607F  
Ford  
3/4/96

CS FOR HOUSE BILL NO. 493( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to treatment for alcoholism or drug abuse."

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

3 \* Section 1. AS 47.37.180(a) is amended to read:

4 (a) An intoxicated person who (1) is incapacitated by alcohol or drugs: [HAS  
5 THREATENED, ATTEMPTED TO INFLICT, OR INFLICTED PHYSICAL HARM ON  
6 ANOTHER OR IS LIKELY TO INFLICT PHYSICAL HARM ON ANOTHER  
7 UNLESS COMMITTED,] or (2) <sup>15</sup> will be at risk of serious physical harm or illness  
8 unless committed [IS INCAPACITATED BY ALCOHOL], may be committed to an  
9 approved public treatment facility for emergency treatment. A refusal to undergo  
10 treatment does not constitute evidence of lack of judgment as to the need for treatment.

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

12 (a) A [AFTER A HEARING INITIATED BY PETITION OF A] spouse or  
13 guardian, a relative, the certifying physician, or the administrator in charge of an  
14 approved public treatment facility may petition the court for a 30-day involuntary  
15 commitment order [, A PERSON MAY BE COMMITTED TO THE CUSTODY OF

1 A PRIVATE OR PUBLIC FACILITY BY THE SUPERIOR COURT]. The petition  
2 must allege that the person is an alcoholic or drug abuser who [HABITUALLY  
3 LACKS SELF-CONTROL IN USING ALCOHOLIC BEVERAGES AND THAT THE  
4 PERSON (1) HAS THREATENED, ATTEMPTED TO INFLICT, OR INFLICTED  
5 PHYSICAL HARM ON ANOTHER AND THAT UNLESS COMMITTED IS LIKELY  
6 TO INFLICT PHYSICAL HARM ON ANOTHER; OR (2)] is incapacitated by alcohol  
7 or drugs, or who, if not treated, will be at risk of serious physical harm or illness.

8 A refusal to undergo treatment does not constitute evidence of lack of judgment as to the  
9 need for treatment. The petition must be accompanied by a certificate of a licensed  
10 physician who has examined the person within two days before submission of the  
11 petition, unless the person whose commitment is sought has refused to submit to a  
12 medical examination, in which case the fact of refusal must be alleged in the petition.  
13 The certificate must set out the physician's findings in support of the allegations of the  
14 petition.

15 \* Sec. 3. AS 47.37.190(b) is amended to read:

16 (b) After the petition is filed, the court shall fix a date for a hearing no later than  
17 10 days after the date the petition was filed. A copy of the petition and of the notice of  
18 the hearing, including the date fixed by the court, shall be served on

19 (1) the petitioner;

20 (2) the person whose commitment is sought or the person's guardian,

21 if any;

22 (3) the attorney representing [NEXT OF KIN OF] the person whose  
23 commitment is sought;

24 (4) the administrator in charge of the approved public or private  
25 treatment facility in which the committed person has been committed for emergency  
26 care; and

27 (5) any other person the court considers appropriate. [A COPY OF THE  
28 PETITION AND CERTIFICATE SHALL BE DELIVERED TO EACH PERSON  
29 NOTIFIED.]

30 \* Sec. 4. AS 47.37.190(c) is repealed and reenacted to read:

31 (c) A person who is the subject of a petition filed under this section does not  
32 have the right to a jury.

1 \* Sec. 5. AS 47.37.200 is repealed and reenacted to read:

2 Sec. 47.37.200. HEARING ON PETITION FOR INVOLUNTARY  
3 COMMITMENT. (a) At the hearing for a 30-day commitment required under  
4 AS 47.37.190(b), the court shall hear all relevant testimony, including, if possible, the  
5 testimony of at least one licensed physician who has examined the person whose  
6 commitment is sought. [The person whose commitment is sought shall be present unless  
7 the court believes that being present is likely to be injurious to the person,] in which case  
8 the court shall appoint a guardian ad litem to represent the person throughout the  
9 proceeding. [The court may examine the person in open court, or, if advisable, examine  
10 the person out of court. If the person has refused to be examined by a licensed  
11 physician, the person shall be given an opportunity to request examination by a court-  
12 appointed licensed physician. If the person fails to request a medical examination and  
13 there is sufficient evidence to believe that the allegations of the petition are true, or, if  
14 the court believes that more medical evidence is necessary, the court may issue a  
15 temporary order committing the person to a private or public facility for a period of not  
16 more than five days for purposes of a diagnostic examination.

17 (b) If after hearing all relevant evidence, including the results of any diagnostic  
18 examination by the private or public facility, the court finds that grounds for involuntary  
19 commitment have been clearly established, the court shall issue an order of 30-day  
20 commitment to the private or public facility.

21 (c) A person committed for a 30-day period shall remain in the custody of a  
22 private or public facility for treatment for a period of not more than 30 days. At the end  
23 of the 30-day period, the person shall be automatically discharged unless the director of  
24 the approved public facility or approved private facility, before the expiration of the  
25 period, <sup>files a petition</sup> ~~obtains a court order~~ for recommitment under AS 47.37.205.

26 (d) A private or public facility shall provide adequate and appropriate treatment  
27 for a person in its custody. A public facility may transfer a person in its custody from  
28 one approved public treatment facility to another if the transfer is medically advisable.

29 (e) A person committed to the custody of an approved public facility, or an  
30 approved private facility shall be discharged at any time before the end of the period for  
31 which the person has been committed if either of the following conditions is met:

32 (1) further treatment is not likely to bring about significant improvement

1 in the person's condition; or

2 (2) treatment is no longer adequate or appropriate.

3 (f) The court shall inform the person whose commitment or recommitment is  
4 sought of the right to contest the petition, to be represented by counsel at every stage of  
5 the proceedings relating to commitment and recommitment, to have counsel appointed  
6 by the court or provided by the court, if the person is unable to obtain counsel, and of  
7 the right to a jury trial if recommitment is sought under AS 47.37.205. If the court  
8 believes that the person needs the assistance of counsel, the court shall require counsel,  
9 by appointment if necessary, regardless of the person's objection. ] The person whose  
10 commitment or recommitment is sought shall be informed of the right to be examined  
11 by a licensed physician of the person's choice. If the person is unable to obtain a  
12 licensed physician and requests examination by a physician, the court shall appoint a  
13 licensed physician for the examination.

14 (g) If a private treatment facility agrees with the request of a competent patient  
15 or the patient's parent, adult sibling, adult child, or guardian to accept the patient for  
16 treatment, the administrator of the public treatment facility shall transfer the patient to  
17 the private treatment facility.

18 (h) A person committed under this chapter may at any time seek discharge from  
19 commitment by writ of habeas corpus under AS 12.75.

20 \* Sec. 6. AS 47.37 is amended by adding a new section to read:

21 Sec. 47.37.205. PROCEDURE FOR RECOMMITMENT FOLLOWING 30-  
22 DAY COMMITMENT. (a) At any time during a person's 30-day commitment, the  
23 director of an approved public facility or approved private facility may file with the court  
24 a petition for a 180-day commitment of that person. The petition must include all  
25 material required under AS 47.37.190(a) except that references to "30 days" shall be read  
26 as "180 days" and must allege that the person continues to be an alcoholic or drug abuser  
27 who is incapacitated by alcohol or drugs, or who continues to be at risk of serious  
28 physical harm or illness.

29 (b) Upon the filing of a petition for recommitment under (a) of this section, the  
30 court shall fix a date for hearing no later than 10 days after the date the petition was  
31 filed. A copy of the petition and of the notice of hearing, including the date fixed by  
32 the court, shall be served on

- 1 (1) the petitioner;
- 2 (2) the person whose recommitment is sought or the person's guardian,
- 3 if any;
- 4 (3) the attorney representing the person whose recommitment is sought;
- 5 (4) the original petitioner under AS 47.37.190(a), if different from the
- 6 petitioner for recommitment;
- 7 (5) any other person the court considers appropriate.

8 (c) If, not less than two days before the date set for a recommitment hearing

9 under (a) of this section, the person being recommitted or the person's counsel or advisor

10 files a written request with the court, the court shall summon and impanel a jury of six

11 residents of the judicial district to hear and consider evidence concerning the condition

12 of the person being recommitted.

13 (d) At the hearing regarding recommitment for a 180-day period, the court or

14 jury shall proceed as provided in AS 47.37.200(a) and (b).

15 (e) The provisions of AS 47.37.200(d) - (h) shall apply equally to periods of

16 recommitment under this section, except that references to "30 days" shall be read as

17 "180 days."

18 \* Sec. 7. AS 47.37.270(1) is amended to read:

19 (1) "alcoholic or drug abuser" means a person who demonstrates

20 increased tolerance to alcohol or drugs, who suffers from withdrawal when alcohol

21 or drugs are not available, <sup>who</sup> whose habitual <sup>is</sup> lack of self-control concerning the use

22 of alcohol or drugs causes significant hazard to the person's health, and who

23 continues to use alcohol or drugs despite the adverse consequences [HABITUALLY

24 LACKS SELF-CONTROL IN USING ALCOHOLIC BEVERAGES, OR USES

25 ALCOHOLIC BEVERAGES TO THE EXTENT THAT THE PERSON'S HEALTH IS

26 SUBSTANTIALLY IMPAIRED OR ENDANGERED, OR THE PERSON'S SOCIAL

27 OR ECONOMIC FUNCTION IS SUBSTANTIALLY DISRUPTED];

28 \* Sec. 8. AS 47.37.270(1G) is amended to read:

29 (10) "incapacitated by alcohol or drugs" means a person who is

30 unconscious or whose judgment is otherwise so impaired that the person is incapable of

31 realizing and making [A] rational decisions [DECISION] with respect to the [A] need

32 for treatment, is unable to take care of the person's basic personal needs or safety,

1 including food, clothing, shelter, or medical care [AS EVIDENCED OBJECTIVELY  
2 BY EXTREME PHYSICAL DEBILITATION, PHYSICAL HARM OR THREATS OF  
3 HARM TO OTHERS OR CHRONIC INABILITY TO HOLD REGULAR  
4 EMPLOYMENT];

5 \* Sec. 9. AS 47.37.270(13) is amended to read:

6 (13) "intoxicated person" means a person whose mental or physical  
7 functioning is substantially impaired as a result of the use of alcohol or drugs;

8 \* Sec. 10. AS 47.37.270(14) is amended to read:

9 (14) "treatment" means the broad range of emergency, outpatient,  
10 intermediate, and inpatient services and care that may be extended to alcoholics, [AND]  
11 intoxicated persons, or drug abusers, including diagnostic evaluation, medical,  
12 psychiatric, psychological, and social service care, vocational rehabilitation and career  
13 counseling;

March 7, 1996

TO: BP

FROM: Tom

RE: New CS v. "F" of HB <sup>493</sup>341 Involuntary commitment

Attached is the new "F" of <sup>493</sup>341 and a memo from Mike Ford about it. Version "C" is the previous version.

The title is changed.

Section 1: This is new. Amends AS 47.37.180(a) which is the provision for emergency commitment of inebriates. This provision wasn't covered in the previous version and is appropriately amended to reflect the changes in the companion provisions below.

The amendment changes the standard for emergency commitments. Instead of being assaultive or incapacitated by alcohol to be committed, the person must be incapacitated by alcohol or drugs or at risk of serious physical harm or illness unless committed.

"Incapacitated by alcohol or drugs" is defined later in the bill in section 8.

Section 2: Unchanged from section 1 of "C": creates a new standard for committing inebriates and drug users. Presently, to be committed, one has to habitually lack self control due to alcohol and has to (attempt to) assault others and unless committed will likely assault another, *OR* be incapacitated by alcohol.

Now, in the new bill, you can be committed if you are *incapacitated by alcohol or drugs and if left untreated would be at risk of serious physical harm or illness.*

So, with the new bill, there is no longer any element involving being assaultive to others.

The definition of "incapacitated by alcohol or drugs" must be reviewed at this point. In section 8 of the bill, this is now being defined as being a person who "is unconscious or whose judgment is otherwise so impaired that the person is incapable of realizing and making rational decisions with

to the need for treatment, is unable to take care of the person's basic personal needs or safety, including food, clothing, shelter, or medical care.

The new definition adds the inability to take of basic personal needs and drops objective behaviours and conditions such as physical debilitation and harm to self/others and chronic unemployment.

Section 3: This is section 2 from "C". It amends AS 47.37.190(b) which discusses the procedure for petition filing. The new version reorganizes "C". Other changes are that the inebriate's guardian must be served and his attorney, rather than the next of kin. (The Courts had a problem with service on next of kin--too expensive.)

Section 4: No jury trial on 30-day commitment. Same as section 3 of "C".

Section 5: This is section 4 of "C". It is unchanged. It sets forth the pretrial, trial, and post-trial procedures and related rights.

*Art Snowden raised a concern about appointment of counsel and whether the PD/OPA were involved.* The new version has not changed "C" with respect to appointment. In AS 47.37.200(f), the provision is simply that the inebriate has the right to counsel, can be appointed counsel by the court and that the court can do so over objection of the inebriate.<sup>1</sup> Licensed physicians can also be appointed by the court if the inebriate so requests. It doesn't appear that Snowden's concerns were addressed.

Section 6: This is the same as section 5 in "C". It sets forth the procedures for recommitment. The periods of commitment are doubled from existing law--90 days to 180. <sup>2</sup>

Section 7: Unchanged from section 6 of "C". Presently, an "alcoholic" habitually lacks self-control in use of alcohol, or uses alcohol to the extent that their health is substantially impaired or endangered, or their social or economic function is substantially disrupted.

---

<sup>1</sup>In a criminal proceeding, a defendant can waive the right to counsel provided he is competent to represent oneself. I'm not sure its appropriate to bootstrap an attorney to the respondent.

<sup>2</sup>I fielded a call from the head of Akeela House in Anchorage, a long-term facility. She complained that 180 days had no basis in reality and was too long.

Now, an alcoholic or drug abuser "demonstrates increased tolerance to alcohol or drugs, suffers from withdrawal, whose [sic] habitual lack of self-control causes a significant hazard to health and continues to use despite adverse consequences."<sup>3</sup>

Section 8: Unchanged from section 7 of "C". This is the definition of "incapacitated by alcohol or drugs".

Section 9: Ditto for section 8.

Section 10: Ditto for section 9.

Per Mike Ford's attached memo, you can see that he has a problem with the definition for "intoxicated person" found in section 9 above. He states that the new definition will affect AS 47.37.030 - 050, 130(c), 150, 170(a),(g),(i). These provisions are part of the Uniform Alcoholism and Intoxication Treatment Act, which includes the commitment procedures. Mike's concerns may be valid and broader than he realizes. What Ford is saying is that by adding in drug abusers, we change by implication part of the focus of the act.

---

<sup>3</sup>I have several concerns about the new definition, not that the old one was any good. First, are we sure that an "alcoholic" and "drug abuser" should draw the same description? Both terms are tied together in the definition. For purposes of the commitment statute, would the experts agree that alcoholics and drug abusers be defined similarly? Second, this definition is drawn up by an attorney--did they rely on an expert's advice in deciding how the State defines an alcoholic or drug abuser? Third, there is inartfulness in the definition. We are defining what an alcoholic and drug abuser are. There are essentially four ingredients in this definition. I do not like the third: "...whose habitual lack of self-control concerning...". The other three ingredients use adverbs, "demonstrates", "suffers", and "continues". This third ingredient needs to read "habitually lacks self-control concerning". Left unchanged, there is a built-in assumption that the person has the habit of no self-control.

legislation is just under \$80,000. Their fiscal note could be cut more than in half if some small changes were made. On the original bill and also in the present draft, on page 2, line 26, it is suggested that the court would appoint a guardian ad litem. The courts would have to do this privately and it has a cost. If it was stated rather that the court could appoint the Office of Public Advocacy (OPA), who has guardian ad litem services, then it wouldn't have a cost for the court system. OPA presently has some of the best trained guardian ad litem representatives in the nation.

MR. SNOWDEN stated that if the court has to pay for appointed counsel, perhaps it should be in OPA, for example, now the public defender does represent people who have been committed based on mental illness. The only significant comment Mr. Snowden wished to make other than the technical, was that the courts think there is an unworkable provision in the bill, which requires the respondent's next-of-kin be notified of the commitment petition and be given notice of a hearing. It is often the case that respondents in this type of hearing are very transient and uncooperative, or might have mental illness and don't know who their next-of-kin is. It is very hard to make these notifications, if not impossible. The courts believe that this legislation should allow a provision for a waiver of this requirement. If not a waiver, at least a notice in the newspaper.

Number 2182

REPRESENTATIVE TOOHEY asked in his long history of handling these involuntary commitments, did Mr. Snowden feel that these ever worked.

MR. SNOWDEN pointed out that his job is to administer the court and keep it efficient. He felt as though judge's opinions on this subject would vary. A lot of people might say that it's good to

get these individuals off the street since they pose a danger to themselves or others, but there are some people who say that this commitment process would not make a difference one way or another.

REPRESENTATIVE TOOHEY said she feared that this type of commitment would be very expensive. She also questioned this procedure being applied in small villages which might not have incarceration facilities. Would these individuals be shipped to Anchorage or Nome?

CHAIRMAN PORTER asked if there was a requirement for appointed counsel under the current commitment procedure.

MR. SNOWDEN responded that they have done this, but it's very rare. However, the court felt that under the terms of this bill that the appointment of an attorney for indigent people, which would cost over \$45,000 of this bill's fiscal note which would go to the private bar. He thought a guardian ad litem provision would cut the cost in half.

Number 2300

DON DAPCEVICH, Executive Director, Governor's Advisory Board on Alcoholism & Drug Abuse, testified in support of HB 493. In preparation for this hearing his staff prepared a cost benefit analysis related to commitments, based on commitments executed in the community of Juneau. Juneau is the only community which uses the commitment law presently in place. Mr. Dapcevich was the treatment director for this program in a previous life and he's had the opportunity to bring 35 commitments, a first hand exposure to the process.

MR. DAPCEVICH felt as though this commitment process was a humane way to treat people who are not willing or unable to recognize their needs for intervention. The board recognizes that the treatment success rate is fairly low with this population, but the

# Alaska State Legislature



## House of Representatives House Judiciary Committee

State Capitol, Room 120  
Juneau, Alaska 99801-1182  
(907) 465-4990

March 7, 1996

TO: House Judiciary Committee members

FROM: Tom Meyer

RE: March 8, 1996, hearing

Attached are materials for your HB 493 packets. They are the new CS version "F" of the bill and a memo from Mike Ford.

First on the calendar tomorrow, however, will be HB 341 **Tax appeals**. There will be a new CS but it is unavailable at the time of this memo. Several amendments to the new CS will be submitted by the Department of Revenue. Those are not yet available. Once the new CS and the amendments are available, copies will be distributed to you.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

March 4, 1996

**SUBJECT:** Alcoholism treatment - (CSHB 493( ))

**TO:** Representative Ivan Ivan  
Attn: Tom Wright

**FROM:** Michael F. Ford *M.F. Ford*  
Legislative Counsel

The enclosed work draft reflects the changes suggested by Shannon O'Fallon. As a result of the change to the definition of "intoxicated person" in sec. 9 of the work draft, the term now includes impairment from both alcohol and drugs. This change affects other provisions of AS 47.37 and therefore I have broadened the title of the work draft.

The change to the definition of "intoxicated person" affects AS 47.37.030 - 47.37.050 and 47.37.150 and also raises other substantive issues regarding the application of existing law. You should carefully consider the effects of this change as to AS 47.37.130(c), 47.37.170(a), (g), and (i), and 47.37.230. For example, under AS 47.37.230 it would appear that a change to the definition of "intoxicated person" may require additional training for emergency service patrols. Finally, you should consider whether AS 47.37.210(b) should be amended to specifically include "drugs".

Let me know if you wish to make additional changes.

MFF:klb  
96-148.klb

Enclosure

# STATE OF ALASKA

## DEPARTMENT OF CORRECTIONS

TONY KNOWLES, GOVERNOR

REPLY TO:

4500 DIPLOMACY DRIVE  
ANCHORAGE, ALASKA 99508-5918

October 26, 1995

RECEIVED OCT 30 1995

Mr. Don Dapcevitch  
Executive Director  
State of Alaska Advisory Board  
on Alcoholism & Drug Abuse  
Post Office Box 10608  
Juneau, Alaska 99811-0608

Re: Title 47 Admissions

Dear Don:

Steve Schwartz, DOC Research Analyst, recently compiled more information on the Title 47 Admissions. I believe it will be helpful in understanding who the Title 47's are:

### Glossary for Non-Criminal Admission by FY Year, Location & Month

(1)

Page one is the total number of Non-Criminal admissions for the last five fiscal years. The table further indicates the facility where the admissions occurred and the month of occurrence for each of the last five fiscal years. Admissions are totaled by location for the fiscal year as well as by month. A grand total for each fiscal year is also computed.

(2)

Page two is the total number of Non-Criminal admissions for the last five fiscal years by gender and race. Totals for race and gender are computed as well as a total for the fiscal year. A grand total for all five fiscal years is also computed.

(3)

Pages three, four, and five are the total number of Non-Criminal admissions for the last five fiscal years by race and age group. Totals for race and age group are computed as well as a total for the fiscal year. A grand total for all five fiscal years is also computed for race and age group.

D. Dapcevitch  
Re: Title 47's  
October 26, 1995  
Page 2

(4)

Pages six, seven, and eight are the frequency of Non-Criminal admissions for individuals by fiscal year, for the last five fiscal years. In other words in fiscal year 1991 1,176 individuals were admitted one time under title 47, 235 individuals were admitted twice under title 47 in 1991. One individual was admitted 58 times in 1991 under title 47.

(5)

Page nine is a grand total for the frequency of Non-Criminal admissions for individuals for the entire five year period. Frequency totals, percentage of the total, cumulative frequency and cumulative percent for frequency of admission is computed for the five year period.

Please feel free to give me(269-7417) or Steve Schwartz(269-7392) a call if you have any questions regarding the data.

Yours truly,



Sarah Williams  
Substance Abuse Program Coordinator

SW:dc

cc: Margaret Pugh, Commissioner  
Frank Sauser, Director, Division of Institutions  
Lynda Zaugg, Director, Community Corrections  
Bob Cole, Director, Administrative Services  
Loren Jones, Executive Director, ADA

Non-Criminal Admissions by FY Year, Location and Month

FY 1986	July	August	September	October	November	December	January	February	March	April	May	June	Yearly Total
ANCHORAGE-8TH AVE.	33	26	29	51	37	49	34	43	25	22	20	14	369
ANVIL MTH CC	25	27	14	32	5	20	24	19	30	25	17	15	273
FAIRBANKS CC	105	101	116	92	57	95	57	60	111	140	82	90	1,112
KETCHIKAN CC	1	1	3	2	2	0	1	1	1	1	3	1	17
LEMON CREEK CC	10	14	12	15	7	12	11	10	10	22	21	18	171
MATSU PRE-TRIAL	2	2	0	2	3	0	3	1	2	3	4	0	28
WILDWOOD PT	9	6	4	4	0	7	6	5	5	7	2	4	59
YUKON-KUSKOKWIM CC	93	103	85	124	76	61	50	69	75	89	58	82	963
<b>Total</b>	<b>278</b>	<b>260</b>	<b>240</b>	<b>322</b>	<b>207</b>	<b>264</b>	<b>186</b>	<b>214</b>	<b>268</b>	<b>309</b>	<b>211</b>	<b>224</b>	<b>3,012</b>

FY 1984	July	August	September	October	November	December	January	February	March	April	May	June	Yearly Total
ANCHORAGE-8TH AVE.	18	30	30	28	31	43	44	64	123	124	66	40	641
ANVIL MTH CC	11	10	8	6	16	6	6	2	6	7	5	6	93
FAIRBANKS CC	63	72	87	61	87	47	57	64	82	81	75	84	850
KETCHIKAN CC	3	7	4	3	5	4	3	0	1	2	0	3	35
LEMON CREEK CC	19	6	10	22	6	6	6	6	6	4	6	9	114
MATSU PRE-TRIAL	3	1	2	0	4	2	2	0	0	1	0	1	16
WILDWOOD PT	7	5	7	6	6	4	6	3	2	3	5	6	60
YUKON-KUSKOKWIM CC	100	113	60	71	106	64	28	55	60	54	68	58	843
<b>Total</b>	<b>230</b>	<b>248</b>	<b>188</b>	<b>199</b>	<b>263</b>	<b>178</b>	<b>154</b>	<b>194</b>	<b>282</b>	<b>286</b>	<b>225</b>	<b>207</b>	<b>2,652</b>

FY 1983	July	August	September	October	November	December	January	February	March	April	May	June	Yearly Total
ANCHORAGE-8TH AVE.	30	27	34	25	45	34	29	42	50	54	25	24	426
ANVIL MTH CC	7	11	10	7	9	17	9	9	11	15	14	17	136
FAIRBANKS CC	83	63	53	63	66	71	82	54	92	71	86	66	810
KETCHIKAN CC	9	8	7	3	8	5	5	11	2	6	6	1	71
LEMON CREEK CC	9	12	10	15	17	5	16	8	14	14	13	18	149
MATSU PRE-TRIAL	4	4	5	6	1	4	6	4	1	1	3	3	44
WILDWOOD PT	8	10	6	7	1	4	5	3	5	3	7	3	64
YUKON-KUSKOKWIM CC	76	93	72	83	101	101	59	55	80	71	99	67	937
<b>Total</b>	<b>228</b>	<b>276</b>	<b>190</b>	<b>189</b>	<b>248</b>	<b>241</b>	<b>193</b>	<b>193</b>	<b>255</b>	<b>235</b>	<b>233</b>	<b>197</b>	<b>2,837</b>

FY 1982	July	August	September	October	November	December	January	February	March	April	May	June	Yearly Total
ANCHORAGE-8TH AVE.	38	35	31	48	46	32	54	42	37	20	22	17	420
ANVIL MTH CC	14	15	11	8	15	11	9	9	14	13	18	10	147
FAIRBANKS CC	58	60	82	45	33	43	48	31	55	45	89	70	619
KETCHIKAN CC	13	9	14	10	5	6	9	7	15	15	4	3	110
LEMON CREEK CC	19	29	27	18	31	17	10	13	16	5	14	21	220
MATSU PRE-TRIAL	13	20	10	11	14	18	11	6	4	3	6	7	123
WILDWOOD PT	12	5	3	5	4	3	3	2	5	10	9	3	64
YUKON-KUSKOKWIM CC	68	84	43	47	74	29	38	44	50	47	33	54	600
<b>Total</b>	<b>231</b>	<b>257</b>	<b>201</b>	<b>192</b>	<b>222</b>	<b>157</b>	<b>182</b>	<b>158</b>	<b>196</b>	<b>158</b>	<b>175</b>	<b>165</b>	<b>2,312</b>

FY 1981	July	August	September	October	November	December	January	February	March	April	May	June	Yearly Total
ANCHORAGE-8TH AVE.	41	40	54	62	72	80	75	101	93	55	42	39	751
ANVIL MTH CC	9	11	25	14	10	12	7	16	12	19	21	15	171
FAIRBANKS CC	45	60	80	51	64	42	45	39	73	80	47	32	658
KETCHIKAN CC	14	12	25	9	12	7	7	6	7	4	3	9	115
LEMON CREEK CC	16	19	25	19	11	12	13	23	28	19	23	12	220
MATSU PRE-TRIAL	6	15	17	7	9	10	6	7	7	6	8	11	109
WILDWOOD PT	8	2	2	3	3	1	1	4	2	5	1	2	34
YUKON-KUSKOKWIM CC	110	103	70	77	94	68	56	53	52	47	41	49	620
<b>Total</b>	<b>240</b>	<b>282</b>	<b>278</b>	<b>242</b>	<b>275</b>	<b>232</b>	<b>210</b>	<b>249</b>	<b>274</b>	<b>235</b>	<b>188</b>	<b>166</b>	<b>2,878</b>

**Title 47 Admissions by Fiscal Year  
Sex and Race**

Fiscal Year 1991	Native					Total
	Asian	Black	Hispanic	American	White	
Female	0	3	1	524	74	602
Male	3	26	17	1,733	498	2,277
Unknown	0	0	0	0	0	0
Total	3	29	18	2,257	572	2,879

Fiscal Year 1992	Native					Total
	Asian	Black	Hispanic	American	White	
Female	0	3	0	421	52	476
Male	3	10	22	1,383	419	1,837
Unknown	0	0	0	0	0	0
Total	3	13	22	1,804	471	2,313

Fiscal Year 1993	Native					Total
	Asian	Black	Hispanic	American	White	
Female	1	10	1	498	75	585
Male	4	11	14	1,586	437	2,052
Unknown	0	0	0	0	0	0
Total	5	21	15	2,084	512	2,637

Fiscal Year 1994	Native					Total
	Asian	Black	Hispanic	American	White	
Female	1	6	2	516	74	599
Male	3	12	18	1,528	491	2,052
Unknown	0	0	0	0	0	1
Total	4	18	20	2,044	565	2,652

Fiscal Year 1995	Native					Total
	Asian	Black	Hispanic	American	White	
Female	2	7	0	650	64	723
Male	8	32	14	1,755	477	2,286
Unknown	0	0	0	0	0	3
Total	10	39	14	2,405	541	3,012

Grand Totals	25	120	89	10,594	2,661	13,493
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**Title 47 Admissions by Fiscal Year  
Race and Age**

Fiscal Year 1995	Native					Total
	Asian	Black	Hispanic	American	White	
18 and Under	0	0	0	13	4	17
19 to 20	0	1	0	28	5	34
21 to 24	0	3	2	185	21	211
25 to 29	1	5	1	260	69	336
30 to 34	0	2	2	459	96	559
35 to 39	0	2	1	409	113	525
40 to 44	1	16	3	365	92	477
45 to 49	8	7	0	216	80	311
50 to 54	0	0	0	182	29	211
55 to 59	0	1	4	139	21	165
60 to 64	0	1	1	73	5	80
65 and Older	0	1	0	76	6	83
Unknown						3
Total	10	39	14	2,405	541	3,012
Grand Total	25	120	89	10,592	2,661	13,487

**Title 47 Admissions by Fiscal Year  
Race and Age**

Fiscal Year 1993	Native					Total
	Asian	Black	Hispanic	American	White	
18 and Under	0	0	0	18	5	23
19 to 20	0	1	0	33	6	40
21 to 24	0	1	1	153	24	179
25 to 29	0	2	2	351	48	403
30 to 34	1	1	5	328	109	442
35 to 39	1	10	3	354	112	480
40 to 44	0	3	1	251	111	366
45 to 49	2	0	0	198	49	249
50 to 54	1	0	3	120	15	139
55 to 59	0	1	0	146	28	175
60 to 64	0	0	0	53	1	54
65 and Older	0	2	0	81	4	87
<b>Total</b>	<b>5</b>	<b>21</b>	<b>15</b>	<b>2,084</b>	<b>512</b>	<b>2,637</b>

Fiscal Year 1994	Native					Total
	Asian	Black	Hispanic	American	White	
18 and Under	0	0	0	17	4	21
19 to 20	0	1	1	18	4	24
21 to 24	0	0	1	127	19	147
25 to 29	0	2	2	283	31	318
30 to 34	1	8	4	394	123	530
35 to 39	0	2	3	336	155	496
40 to 44	0	1	7	278	94	380
45 to 49	2	4	0	206	82	294
50 to 54	0	0	2	114	25	141
55 to 59	0	0	0	134	14	148
60 to 64	0	0	0	74	3	77
65 and Older	1	0	0	63	11	75
Unknown						1
<b>Total</b>	<b>4</b>	<b>18</b>	<b>20</b>	<b>2,044</b>	<b>565</b>	<b>2,652</b>

**Title 47 Admissions by Fiscal Year  
Race and Age**

Fiscal Year 1991	Native					Total
	Asian	Black	Hispanic	American	White	
18 and Under	0	0	0	21	2	23
19 to 20	0	1	0	40	5	46
21 to 24	1	8	0	196	32	237
25 to 29	0	5	4	390	74	473
30 to 34	1	4	6	426	103	540
35 to 39	1	3	7	304	117	432
40 to 44	0	7	0	259	104	370
45 to 49	0	1	1	194	46	242
50 to 54	0	0	0	128	38	166
55 to 59	0	0	0	134	25	159
60 to 64	0	0	0	66	16	82
65 and Older	0	0	0	98	10	108
<b>Total</b>	<b>3</b>	<b>29</b>	<b>18</b>	<b>2,256</b>	<b>572</b>	<b>2,878</b>

Fiscal Year 1992	Native					Total
	Asian	Black	Hispanic	American	White	
18 and Under	0	0	0	15	3	18
19 to 20	0	0	0	23	7	30
21 to 24	1	2	2	153	37	195
25 to 29	1	0	2	316	51	370
30 to 34	1	3	2	276	99	381
35 to 39	0	4	5	293	130	432
40 to 44	0	3	3	188	59	253
45 to 49	0	0	0	170	29	199
50 to 54	0	1	8	93	27	129
55 to 59	0	0	0	118	14	132
60 to 64	0	0	0	59	2	61
65 and Older	0	0	0	99	13	112
<b>Total</b>	<b>3</b>	<b>13</b>	<b>22</b>	<b>1,803</b>	<b>471</b>	<b>2,312</b>

## Title 47 Admissions by Fiscal Year

### Fiscal Year 1991

Number of Admissions	Frequency Percent		Cumulative Frequency Percent	
	Frequency	Percent	Cumulative Frequency	Cumulative Percent
1	1,176	72.3	1,176	72.3
2	235	14.4	1,411	86.7
3	87	5.3	1,498	92.1
4	45	2.8	1,543	94.8
5	22	1.4	1,565	96.2
6	15	0.9	1,580	97.1
7	10	0.6	1,590	97.7
8	9	0.6	1,599	98.3
9	5	0.3	1,604	98.6
10	4	0.2	1,608	98.8
11	2	0.1	1,610	99
12	2	0.1	1,612	99.1
13	4	0.2	1,616	99.3
14	1	0.1	1,617	99.4
15	1	0.1	1,618	99.4
16	1	0.1	1,619	99.5
17	1	0.1	1,620	99.6
18	2	0.1	1,622	99.7
19	1	0.1	1,623	99.8
25	1	0.1	1,624	99.8
31	1	0.1	1,625	99.9
36	1	0.1	1,626	99.9
58	1	0.1	1,627	100

### Fiscal Year 1992

Number of Admissions	Frequency Percent		Cumulative Frequency Percent	
	Frequency	Percent	Cumulative Frequency	Cumulative Percent
1	1,026	73.8	1,026	73.8
2	195	14	1,221	87.8
3	79	5.7	1,300	93.5
4	29	2.1	1,329	95.5
5	18	1.3	1,347	96.8
6	11	0.8	1,358	97.6
7	9	0.6	1,367	98.3
8	4	0.3	1,371	98.6
9	6	0.4	1,377	99
10	3	0.2	1,380	99.2
11	1	0.1	1,381	99.3
12	4	0.3	1,385	99.6
13	1	0.1	1,386	99.6
16	2	0.1	1,388	99.8
19	1	0.1	1,389	99.9
21	1	0.1	1,390	99.9
65	1	0.1	1,391	100

## Title 47 Admissions by Fiscal Year

### Fiscal Year 1993

Number of Admissions	Frequency Percent		Cumulative Frequency Percent	
	Frequency	Percent	Frequency	Percent
1	1,139	72.6	1,139	72.6
2	241	15.4	1,380	88
3	79	5	1,459	93
4	47	3	1,506	96
5	15	1	1,521	96.9
6	14	0.9	1,535	97.8
7	6	0.4	1,541	98.2
8	3	0.2	1,544	98.4
9	6	0.4	1,550	98.8
10	3	0.2	1,553	99
11	5	0.3	1,558	99.3
12	1	0.1	1,559	99.4
13	2	0.1	1,561	99.5
16	1	0.1	1,562	99.6
17	1	0.1	1,563	99.6
19	1	0.1	1,564	99.7
20	1	0.1	1,565	99.7
22	1	0.1	1,566	99.8
23	1	0.1	1,567	99.9
25	1	0.1	1,568	99.9
47	1	0.1	1,569	100

### Fiscal Year 1994

Number of Admissions	Frequency Percent		Cumulative Frequency Percent	
	Frequency	Percent	Frequency	Percent
1	1,172	73	1,172	73
2	224	14	1,396	87
3	87	5.4	1,483	92.4
4	49	3.1	1,532	95.5
5	26	1.6	1,558	97.1
6	15	0.9	1,573	98
7	6	0.4	1,579	98.4
8	8	0.5	1,587	98.9
9	4	0.2	1,591	99.1
10	2	0.1	1,593	99.3
11	3	0.2	1,596	99.4
12	2	0.1	1,598	99.6
14	2	0.1	1,600	99.7
18	2	0.1	1,602	99.8
21	1	0.1	1,603	99.9
24	1	0.1	1,604	99.9
27	1	0.1	1,605	100

## Title 47 Admissions by Fiscal Year

Fiscal Year 1995

Number of Admissions			Cumulative	Cumulative
	Frequency	Percent	Frequency	Percent
1	1,192	70.6	1,192	70.6
2	245	14.5	1,437	85.1
3	106	6.3	1,543	91.4
4	39	2.3	1,582	93.7
5	24	1.4	1,606	95.1
6	23	1.4	1,629	96.5
7	17	1	1,646	97.5
8	10	0.6	1,656	98.1
9	10	0.6	1,666	98.7
10	2	0.1	1,668	98.8
11	3	0.2	1,671	99
12	5	0.3	1,676	99.3
13	2	0.1	1,678	99.4
14	4	0.2	1,682	99.6
15	1	0.1	1,683	99.7
16	1	0.1	1,684	99.8
17	1	0.1	1,685	99.8
18	1	0.1	1,686	99.9
23	1	0.1	1,687	99.9
25	1	0.1	1,688	100

## Title 47 Admissions by Fiscal Year

Fiscal Year 1991 - 1995

Number of Admissions	Frequency Percent		Cumulative Frequency Percent	
	Frequency	Percent	Cumulative Frequency	Cumulative Percent
1	3,311	62.4	3,311	62.4
2	822	15.5	4,133	77.9
3	382	7.2	4,515	85.1
4	197	3.7	4,712	88.8
5	121	2.3	4,833	91.1
6	93	1.8	4,926	92.8
7	73	1.4	4,999	94.2
8	65	1.2	5,064	95.4
9	38	0.7	5,102	96.1
10	33	0.6	5,135	96.8
11	21	0.4	5,156	97.2
12	18	0.3	5,174	97.5
13	14	0.3	5,188	97.8
14	21	0.4	5,209	98.2
15	4	0.1	5,213	98.2
16	13	0.2	5,226	98.5
17	8	0.2	5,234	98.6
18	10	0.2	5,244	98.8
19	11	0.2	5,255	99
20	4	0.1	5,259	99.1
21	4	0.1	5,263	99.2
23	1	0	5,264	99.2
24	3	0.1	5,267	99.2
25	1	0	5,268	99.3
27	2	0	5,270	99.3
28	2	0	5,272	99.3
29	4	0.1	5,276	99.4
30	4	0.1	5,280	99.5
31	2	0	5,282	99.5
32	3	0.1	5,285	99.6
34	2	0	5,287	99.6
35	2	0	5,289	99.7
38	3	0.1	5,292	99.7
41	2	0	5,294	99.8
44	1	0	5,295	99.8
48	1	0	5,296	99.8
49	1	0	5,297	99.8
50	2	0	5,299	99.8
51	1	0	5,300	99.9
59	1	0	5,301	99.9
64	1	0	5,302	99.9
69	1	0	5,303	99.9
71	2	0	5,305	100
104	1	0	5,306	100
170	1	0	5,307	100

# Memorandum

## Alaska Court System

303 K Street, Anchorage, AK 99501-2099  
Phone: 264-8229 Fax: 258-4968

TO: Art Snowden

DATE: February 26, 1996

FROM: Susan Miller  
Special Projects

SUBJ: House Bill 493

- 
1. Page 1, lines 7-15. Is there a reason why this new commitment standard and the addition of drug abusers is being made in the involuntary commitment statute (section .190) and not in the emergency commitment statute (section .180)? If the current standard is inappropriate for regular commitments, why does it remain appropriate for emergency commitments?
  2. Page 1, line 11. The following words appear to be missing between the words "health" and "despite": "and who continues to use alcohol or drugs." Compare page 5, lines 23-24.
  3. Page 2, lines 1-2. The following sentence should probably be deleted: "a refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment." This sentence appears to relate to the previous definition of an alcoholic, not the new definition. See the definition of "incapacitated by alcohol" beginning on page 5, line 30.
  4. Page 2, line 11. The existing statute requires that a number of people be "served" with a copy of the petition and the notice of hearing. The statute does not explain what method of service is required or who should do it.
  5. Page 2, line 12. The term "next of kin" is not defined.
  6. Page 2, line 26. Should the court pay for this guardian ad litem or should OPA be appointed?
  7. Page 2, line 30. Presumably the court is required to pay for this "court-appointed licensed physician" since there appears to be no provision for anyone else to pay for it.
  8. Page 3, lines 2-4. The existing law does not indicate who is supposed to pay for this diagnostic examination at a private or public facility. It thus appears the court would be responsible. (I do not think these 5-day commitments for diagnostic examination are currently happening. However, if the expanded coverage of the new law leads to more "contested" commitments, such examinations may become necessary.)
  9. Page 3, lines 9-12. What is the reason for deleting this language? According to Jack Duggan, if there is no bed available at Clitheroe, the court does not commit the person. The petition is either held in abeyance or dismissed without prejudice. If the deletion of this language is supposed to affect that practice, what is the court supposed to do when no bed is available?
  10. Page 3, line 20. The word "petitioner" at the end of this line is probably incorrect. Does it mean the original petitioner or the "director of an approved public facility or approved private facility"? Compare page 4, lines 1-2.
  11. Page 4, lines 12-13. Same questions about "served" and "next of kin" as in paragraphs 4 and 5 above.

12. Page 4, line 15. The reference to AS 47.37.180(c) at the end of this line doesn't make sense. Section .180(c) is part of the emergency commitment statute, and is not about hearings.
13. Page 5, line 9. It appears that the word "application" should be "petition."
14. Page 5, lines 10-15. Apparently the court has to pay for appointed counsel. Perhaps this should be added to the OPA statute (AS 44.21.410) since it appears similar to other types of representation OPA is required to perform (or to the public defender agency statute, AS 18.85.100(a), since that statute includes representation of indigent persons against whom commitment proceedings for mental illness have been initiated).
15. Page 5, line 18. Note the court's obligation to employ a licensed physician for this examination.

Sec. 47.37.180. EMERGENCY COMMITMENT.

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

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

(c) Upon approval of the application by the administrator in charge of the facility, the person may be brought to the facility by a peace officer, a health officer, a member of the emergency service patrol, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be retained at the facility to which the person was admitted, or transferred to another appropriate public or private treatment facility, until discharged under (e) of this section. However, a person may not be detained under this section for more than 48 hours unless a district or superior court judge has reviewed and approved the commitment application.

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

(e) When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, the administrator shall discharge a person committed under this section. A person committed under this section may not be detained in a treatment facility for more than five days. If a petition for involuntary commitment under AS 47.37.190 has been filed within the five days and the administrator in charge of an approved public treatment facility finds that grounds for emergency commitment still exist, the administrator may detain the person until the petition has been heard and determined, but no longer than 10 days after filing the petition.

(f) A copy of the written application for commitment and of the physician's certificate, and a written explanation of the person's right to legal counsel, shall be given to the person within 24 hours after commitment by the administrator, who shall provide a reasonable opportunity for the person to consult with legal counsel.

History -

(sec. 1 ch 207 SLA 1972)

Revisors Notes -

Enacted as AS 47.37.120. Renumbered in 1972.

Sec. 47.37.190. INVOLUNTARY COMMITMENT.

(a) After a hearing initiated by petition of a spouse or guardian, a relative, the certifying physician, or the administrator in charge of an approved public treatment facility, a person may be committed to the custody of a private or public facility by the superior court. The petition must allege that the person is an alcoholic who habitually lacks self-control in using alcoholic beverages and that the person (1) has threatened, attempted to inflict, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another; or (2) is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set out the physician's findings in support of the allegations of the petition.

(b) After the petition is filed, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served on (1) the petitioner; (2) the person whose commitment is sought; (3) the next of kin of the person whose commitment is sought; (4) the administrator in charge of the approved public treatment facility in which the committed person has been committed for emergency care; and (5) any other person the court considers appropriate. A copy of the petition and certificate shall be delivered to each person notified.

(c) If, not less than two days before the date fixed for the hearing, the person sought to be committed or the person's 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 lists, if available, to hear and consider evidence concerning the condition of the person sought to be committed.

History -

(sec. 1 ch 207 SLA 1972; am sec. 7 ch 150 SLA 1980)

Revisors Notes -

Enacted as AS 47.37.130. Renumbered in 1972.

Collateral Refs -

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent. 23 ALR4th 563.

**Sec. 47.37.200. HEARING ON PETITION FOR INVOLUNTARY COMMITMENT.**

(a) At the hearing required under AS 47.37.190(b), the court or the jury, if requested under AS 47.37.190(c), shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person whose commitment is sought shall be present unless the court believes that being present is likely to be injurious to the person, in which case the court shall appoint a guardian ad litem to represent the person throughout the proceeding. The court may examine the person in open court, or if advisable, examine the person out of court. If the person has refused to be examined by a licensed physician, the person shall be given an opportunity to request examination by a court-appointed licensed physician. If the person fails to request a medical examination and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may issue a temporary order committing the person to a private or public facility for a period of not more than five days for purposes of a diagnostic examination.

(b) If after hearing all relevant evidence, including the results of any diagnostic examination by the private or public facility, the court or the jury finds that grounds for involuntary commitment have been clearly established, the court shall issue an order of commitment to the private or public facility. A court may not order the commitment of a person unless it determines that a private or public facility is able to provide adequate and appropriate treatment for the person.

(c) A person committed under AS 47.37.190 - 47.37.200 shall remain in the custody of a private or public facility for treatment for a period of up to 30 days. At the end of the 30-day period, the person shall be discharged automatically unless the division, before the expiration of the period, obtains a court order for recommitment upon the grounds set out in AS 47.37.190(a) for a further period of up to 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the division shall apply for recommitment if after examination it is determined that the likelihood still exists.

(d) A person recommitted under (c) of this section who has not been discharged by the private or public facility before the end of the 90-day period shall be discharged at the expiration of that period unless the division, before expiration of the period, obtains a court order on the grounds set out in AS 47.37.190(a) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the division shall apply for recommitment if after examination it is determined that the likelihood still exists. No more than two recommitment orders may be permitted under (c) of this section and this subsection.

(e) Upon the filing of a petition for recommitment under (c) or (d) of this section, the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served on (1) the petitioner, (2) the person whose commitment is sought, (3) the next of kin of the person whose commitment is sought, (4) the original petitioner under AS 47.37.190(a), if different from the petitioner for recommitment, (5) any other person the court considers appropriate. AS 47.37.180(c) applies to hearings for recommitment under this section. At the hearing the court or the jury shall proceed as provided in (a) of this section.

(f) A private or public facility shall provide adequate and appropriate treatment for a person in its custody. A public facility may transfer a person in its custody from one approved public treatment facility to another if the transfer is medically advisable.

(g) A person committed to the custody of the division for treatment shall be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(1) when an alcoholic committed on the grounds of likelihood of infliction of physical harm on another is no longer considered an alcoholic or the likelihood of the person inflicting physical harm no longer exists; or

(2) when, in the case of an alcoholic committed on the grounds of the likelihood of infliction of physical harm on another, either

(A) further treatment will not be likely to bring about significant improvement in the person's condition, or

(B) treatment is no longer adequate or appropriate.

(h) The court shall inform the person whose commitment or recommitment is sought of the right to contest the application, be represented by counsel at every stage of the proceedings relating to commitment and recommitment, to have counsel appointed by the court or provided by the court, if the person is unable to obtain counsel, and to a jury trial, if requested, as specified in AS 47.37.190(c). If the court believes that the person needs the assistance of counsel, the court shall require counsel, by appointment if necessary, regardless of the person's objection. The person whose commitment or recommitment is sought shall be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician for the examination.

(i) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the administrator of the public treatment facility shall transfer the patient to the private treatment facility.

(j) A person committed under this chapter may at any time seek discharge from commitment by writ of habeas corpus under AS 12.75.

History -

(sec. 1 ch 207 SLA 1972; am sec. 8 - 12 ch 150 SLA 1980; am E.O. No. 76 sec. 11 - 13 (1990))

Revisors Notes -

Enacted as AS 47.37.140. Renumbered in 1972.

Sec. 47.37.270. DEFINITIONS.

In this chapter

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

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

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

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

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

(6) "director" means the director of the division of alcoholism and drug abuse;

(7) "division" means the division of alcoholism and drug abuse in the Department of Health and Social Services;

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

(9) "hazardous volatile material or substance"

(A) means a material or substance that is readily vaporizable at room temperature and whose vapors or gases, when inhaled,

(i) pose an immediate threat to the life or health of the person; or

(ii) are likely to have adverse delayed effects on the health of the

person;

(B) includes, but is not limited to,

(i) gasoline,

(ii) materials and substances containing petroleum distillates; and

(iii) common household materials and substances whose containers

bear a notice warning that inhalation of vapors or gases may cause physical harm;

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

(11) "incompetent person" means a person who has been adjudged incompetent by the appropriate court,

(12) "inhalant abuse" means the misuse of a hazardous volatile material or substance by inhaling its vapors;

(13) "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(14) "treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to alcoholics and intoxicated persons, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling,

(15) "work therapy"

(A) means an activity that involves a patient in basic employment skills and assists the patient in reintegration into a community;

(B) does not include

(i) activities such as personal housekeeping chores or cooperative responsibilities expected of each patient in the program; or

(ii) work that produces goods or services for sale or distribution, the proceeds of which would be returned to the owners, operators, or businesses of the rehabilitation program.

History -

(sec. 1 ch 207 SLA 1972; am sec. 4 ch 116 SLA 1978; am sec. 15 - 18 ch 150 SLA 1980; am sec. 3 ch 58 SLA 1983; am sec. 69 ch 37 SLA 1986; am E.O. No. 71, sec. 23 (1988); am sec. 5 ch 75 SLA 1989; am E.O. No. 76 sec. 18 - 20 (1990))

Revisors Notes -

Enacted as AS 47.37.210. Renumbered in 1972. Reorganized in 1983 to alphabetize the terms defined, and in 1989 and 1990 to maintain alphabetical order.

Decisions -

Quoted in *Peter v. State*, 531 P.2d 1263 (Alaska 1975).

State of Alaska  
Advisory Board on Alcoholism and Drug Abuse

**Cost/Benefit Analysis  
of  
Involuntary Commitments for Public Inebriates**

1. Involuntary commitments to alcoholism treatment of persons who meet certain criteria is authorized under Alaska Statute 47.37.190. While this process has been in statute for some time, it is not widely used in Alaska for several reasons. First, many of those who have a need and/or opportunity to use it find the process cumbersome, time and labor intensive, and expensive (if they need to retain an attorney). Second, many individuals doubt that committing someone to treatment against their will accomplishes anything.

2. The purpose of this analysis is to quantify, to the extent possible, the benefits of committing a person as opposed to not committing them. This analysis will not deal with the issue of whether the person enters a program of recovery after treatment or even the issue of appropriate or compassionate treatment of alcoholics. It will deal specifically with the financial issues surrounding public inebriates and what impact commitment has on that problem.

- Assumptions:
- (1) *The data gathered to support this analysis is from the Juneau Recovery Hospital which operates a detoxification unit. We assume that a certain "core" of individuals who access these services would be candidates for a Title 47 hold in communities without a detox facility.*
  - (2) *The average cost of providing medical screens and related care at Ketchikan General Hospital, Barilett Memorial Hospital, Bristol Bay Area Health Corporation, Kodiak Island Hospital and Petersburg Medical Center closely approximates the statewide cost of providing medical screens and related care per Title 47 hold. Likewise, the cost of police, ambulance and community services patrol services shown are representative of costs throughout the state.*
  - (3) *Individuals whose alcohol consumption pattern makes them a candidate for a commitment will likely continue in their consumption pattern unless intervened on in some manner.*

## Analysis Process/Questions:

**Question 1:** *Based on information gathered from medical facilities, police, community services patrols, ambulance services, and correctional facilities around the state, what is the estimated average cost to the public for dealing with a single Title 47 hold?*

Based on information gathered from five communities (Juneau, Ketchikan, Petersburg, Kodiak, and Dillingham), the average cost of dealing with a single Title 47 Hold is \$1,275. This is an average of the costs in these communities and we assume it to be a fair approximation of the cost of dealing with a Title 47 hold in other communities around the state. (See Attachment 1)

**Question 2:** *Based on data collected at the Juneau Recovery Hospital, does there appear to be a core of individuals whose alcohol consumption pattern results in a disproportionate impact on services?*

In a study of 897 consecutive admissions to detoxification over a period of one year (1993-1994), 17 individuals (4.4% of unduplicated clients) all having more than ten admissions to detox in a year accounted for 231 admissions to detox (25.8% of all admissions) (See Attachment 2).

**Question 3:** *For communities that make extensive use of Involuntary Alcohol Commitments, is there any significant difference in the resource utilization patterns of persons after the commitment compared to patterns before the commitment?*

Based on a survey of all alcohol commitments pursued in Juneau (the only community that makes extensive use of the commitment provisions of Title 47), during 1994 and 1995 there is a significant difference in the use of resources by these individuals after the commitment compared to their use before the commitment. During 1994 and 1995 there were 32 involuntary commitments pursued in Juneau. Of these individuals, ten were committed for medical reasons and were not candidates for Title 47 holds. Of those individuals who were committed and were repeated candidates for Title 47 holds, the average number of admissions to detox prior to commitment was 7.1 and the average number after commitment was 2.3. (See Attachments 3 & 4)

**Question 4:** *For those individuals who are likely candidates for Title 47 holds and who are involuntarily committed to alcoholism treatment, is there any quantifiable savings to be realized by commitment vs allowing the continued use pattern (based on the cost of dealing with a Title 47 hold as well as the cost of providing alcoholism treatment)?*

Using the utilization data reported in Question 3 above (7.1 admissions prior to commitment and 2.3 admissions after commitment), the average cost of dealing with a single Title 47 hold reported in Question 1 above (\$1,275/per hold), and an assumed cost of alcoholism treatment of \$3900 per experience (\$130/day for residential care), the cost to the system over a six month period of a person with no intervention is \$9,051. The cost to the system for a six

month period after commitment, including the cost of treatment, is \$6,832. This represents a 24.5% reduction in system costs in cases where commitments are pursued.

**Question 5:** *Can the quantified cost of allowing a continued pattern of drinking (not intervening/committing) vs the cost of pursuing a commitment be expressed in terms of savings to a community?*

The cost savings to a community can be quantified using the information reported above with two caveats: (1) The costs reported are generally fixed costs, therefore, any savings would translate into increased opportunity costs for resources such as police, hospitals, ambulance services, etc.; and (2) In order to quantify the savings, an estimate of the number of Title 47 holds being conducted would need to be known.

**Example:** Fairbanks  
FY-95  
# Title 47 Holds: 1112

Based on the experiences in Juneau where 4% of the clients represent approximately 25% of the admissions. Those easily identifiable clients who represent a disproportionate impact on the system (25% of admissions) are considered candidates for commitment.

25% of admissions:	278
Cost per Admission:	\$1,275
Cost to System:	\$354,450
24.5% Reduction after commitment:	\$86,840

**Question 6:** *Does this data take into account those individuals for whom commitment seems to have no impact, that is, they immediately return to their consumption patterns following treatment?*

The short answer is YES, these figures take that into account. Further, in analyzing the commitment data, we note that the 32 commitments involved 24 persons. Of these 24 persons, 4 (16.7%) had repeat commitments while 20 (83.3%) had no further commitments. If the analysis had focused only on those individuals who had no further commitments, then the savings would have been significantly higher (\$6,300 or 49.4% reduction).

**Question 7:** *What are the possible sources of error in this analysis and what has been done to minimize them?*

The primary sources of error are in the identification of costs in dealing with a Title 47 hold. Hospitals, police departments, etc., do not collect data in such a way that it is readily reportable in the format that is needed. In order to develop these figures, we used multiple sources from each community to develop inferences of the costs. In order to minimize possible errors, we used multiple communities and cross-checked, particularly where sources provided

only estimates. We also looked for consistency and reasonableness of data. The most effective way to ensure the precision and accuracy of the data would be to conduct a multi-year study using a carefully selected group of communities and health care facilities.



**Analysis of Admission to Detox  
Juneau, Alaska  
8/93 - 8/94**

<b>Total Admissions to Detox:</b>	897
<b>Number of unduplicated clients</b>	384
<b>Admission to Detox for persons with only a single admission</b>	238 (62% of unduplicated clients) (26.5% of total admissions)
<b>Admission to Detox for persons with more than 10 admissions</b>	231 (25.8% of total admissions)
<b>Number of Persons with more than 10 admissions to detox</b>	17 (4.4% of unduplicated clients)
<b>Admissions to Detox for persons with more than 1 admission but less than 10 admissions</b>	428 (47.7% of total admissions)
<b>Number of Persons with more than 1 admission but less than 10</b>	129 (33.6% of unduplicated clients)

*Note: For those individuals who had 10 or more admissions to detox, 10 of the 17 were subsequently committed.*

Clients with More than 10 Detox Admissions in 1 Year	
73006	18
77156	17
8500283	17
80235	16
9100270	16
81064	15
83125	15
76031	14
77200	14
8800211	14
73034	12
79173	12
78094	11
80374	10
82050	10
82079	10
9200070	10
Total	231

Multiple Commitment Clients						
N = 4						
Client #	Commitment Date	# Admits Prior to Commitment	# Admits After Commitment	Time Between Commitments		
79019	1/12/95	4	0			
	9/6/95	3	0	9 Months		
9100270	8/24/94	11	5			
	2/7/95	5	5	6 Months		
	6/28/95	5	4	4.5 Months		
	9/6/95	4	8	2.5 Months		
	12/21/95	8	1	3.5 Months		
	1/24/96	1	Still in Treatment		1 Month	
80263	5/16/94	6	2			
	7/27/94	2	0	2.5 Months		
75330	7/8/94	5	2			
	8/20/94	2	3	1.5 Month		
<b>Total</b>		<b>56</b>	<b>30</b>			
<b>Average</b>		<b>4.7</b>	<b>2.7</b>			
<b>Totals: Single &amp; Multiple Admissions</b>		<b>156</b>	<b>50</b>			
<b>Cumulative Averages</b>		<b>7.1</b>	<b>2.3</b>			

ATTACHMENT 3

		Single Commitments			
Persons with > 5 Admits 6 Months prior to Commitment					
		N=10			
Client #		# Admits Prior to Commitment		# Admits After Commitment	
73034		10		1	
73006		5		4	
77200		14		3	
8500279		6		0	
80235		13		0	
82050		12		1	
76031		12		8	
74076		9		1	
9301080		10		0	
81064		9		2	
<b>Total</b>		<b>100</b>		<b>20</b>	
<b>Average</b>		<b>10</b>		<b>2</b>	

ATTACHMENT 4



CITY/BOROUGH OF JUNEAU  
★ ALASKA'S CAPITAL CITY

COMMUNITY SURVEY OF  
THE PUBLIC INEBRIATE PROBLEM  
IN SELECTED ALASKA CITIES

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COMMUNITY SURVEY OF  
THE PUBLIC INEBRIATE PROBLEM  
IN SELECTED ALASKA CITIES

Executive Summary

This survey was undertaken to examine the public inebriate problem, which involves both public safety and substance abuse treatment, and is being faced by nearly all cities in Alaska. Alaskan communities are expending enormous amounts of resources to deal with this issue. Still, even with this large commitment of scarce resources, solutions have been hard to come by.

Up to this point, many community leaders have felt that the solution is to increase detoxification beds, or to incorporate an alternative solution commonly referred to as "sleep-off" facilities. This study is intended to clarify these and other approaches by collecting data from four major population centers in Alaska, and comparing the methods employed by each community.

At the very least, it was thought that sharing information, problems and solutions would allow communities to benefit from each others' successes and failures. Ultimately, this document could act as a springboard for change. The most important lesson we learned is that meaningful change will come when partnerships are established among cities, and between cities collectively and the

- c. Including drugs other than alcohol in involuntary holds and commitment procedures; and
  - d. Establishing a policy for dealing with public inebriates who are combative or who refuse treatment.
2. The Department of Health and Social Services should issue regulations to establish which type of health practitioner must complete screenings of public inebriates.
  3. Insure that the statutory requirement for regular meetings of the Interdepartmental Coordinating Committee are met. This committee can resolve many of the issues creating problems in our communities.
  4. Pool interdepartmental resources to combat substance abuse problems in our state. The time is ripe for departments to work in symbiotic relationships that will reap benefits for the cooperating departments, the communities and Alaskan citizens.
  5. The opening of a statewide domiciliary care center to care for and treat alcoholics and addicts whose disease has progressed to the point where their mental faculties are so diminished they cannot respond to traditional treatment.