



# LAWS OF ALASKA

1981

**Source**

CSSB 100(Jud)

**Chapter No.**

84

## AN ACT

Relating to mentally ill persons; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: July 16, 1981  
Actual Effective Date: October 1, 1981

AN ACT

Relating to mentally ill persons; and providing for an effective date.

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

ARTICLE 6. MENTAL HEALTH PROGRAM.

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

- (1) that persons be given every opportunity to accept voluntary treatment before involvement with the judicial system;
- (2) that persons be treated in the least restrictive alternative environment consistent with their treatment needs;
- (3) that treatment occur as promptly as possible and as close to the individual's home as possible;
- (4) that a system of mental health community facilities and supports be available;
- (5) that patients be informed of their legal rights and be informed of and allowed to participate in their treatment program as

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1 much as possible;

2 (6) that persons who are mentally ill but not dangerous to  
3 others be committed only if there is a reasonable expectation of im-  
4 proving their mental condition.

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

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

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

16 (3) administer AS 47.30.660 - 47.30.915;

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

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

22 (6) enter into arrangements with governmental agencies for  
23 the care or treatment of the mentally ill in facilities of the govern-  
24 mental agencies in the state or in another state;

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

27 (8) enter into contracts which incorporate safeguards consis-  
28 tent with AS 47.30.660 - 47.30.915 and the preservation of the civil  
29 rights of the patients with another state for the custody and care or

treatment of patients previously committed from this state under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd Session, 70 Stat. 709;

(9) prescribe the form of applications, records, reports, requests for release, and consents to medical or psychological treatment required by AS 47.30.660 - 47.30.915;

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

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

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

(13) delegate upon mutual agreement to another officer or agency of it, or a political subdivision of the state, or a treatment facility designated, any of the duties and powers imposed upon it by AS 47.30.660 - 47.30.915; and

(14) adopt regulations to implement the provisions of AS 47.-30.660 - 47.30.915.

ARTICLE 7. VOLUNTARY ADMISSION FOR TREATMENT.

Sec. 47.30.670. STANDARDS FOR VOLUNTARY ADMISSION. A person 14 years of age or older may be voluntarily admitted to a treatment facility if he is suffering from mental illness and he voluntarily signs the admission papers.

Sec. 47.30.675. NOTICE OF RIGHTS. (a) Upon the application of a person for voluntary admission, or at the time a person admitted under AS 47.30.690 reaches the age of 14, he shall be given a copy of the following documents which shall be explained to him as necessary:

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

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

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

7 Sec. 47.30.680. DISCHARGE OF VOLUNTARY PATIENTS. A patient who  
8 no longer meets the standards established in AS 47.30.670 shall be  
9 discharged from the treatment facility.

10 Sec. 47.30.685. NOTICE OF INTENT TO LEAVE FACILITY; COMMITMENT.  
11 A voluntary patient who is 14 years of age or older and who desires to  
12 leave a treatment facility must submit to the facility a written notice  
13 of intent to leave on a form provided to him by the facility. Upon  
14 immediate investigation, the patient shall be evaluated in writing and  
15 discharged immediately or given written notice that involuntary commit-  
16 ment proceedings will be initiated against him. The treatment facility  
17 may detain the patient for no more than 48 hours after receipt of the  
18 patient's notice of intent to leave in order to initiate involuntary  
19 commitment proceedings.

20 Sec. 47.30.690. ADMISSION OF MINORS UNDER 14 YEARS OF AGE. (a)  
21 A minor under the age of 14 may be admitted for 21 days evaluation,  
22 diagnosis, and treatment at a designated treatment facility if his  
23 parent or guardian signs the admission papers and if, in the opinion of  
24 the professional person in charge,

25 (1) he is gravely disabled or is suffering from mental ill-  
26 ness and as a result he is likely to cause serious harm to himself or  
27 others;

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

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

(b) The minor may be released by the treatment facility at any time during the 21-day period if the professional person in charge or his designated mental health professional determines the minor would no longer benefit from continued hospitalization and the minor is not dangerous. The minor's parents or his guardian must be notified by the facility of the contemplated release and that, unless they initiate involuntary commitment proceedings, the minor will be released.

Sec. 47.30.695. NOTICE OF REQUEST FOR RELEASE OF MINORS UNDER 14 YEARS OF AGE FROM DETENTION AND COMMITMENT. The parent or guardian of a minor who is less than 14 years of age may request and obtain immediate release of the minor at any time, unless as the result of mental illness, the minor is likely to cause serious harm to himself or others.

ARTICLE 8. INVOLUNTARY ADMISSION FOR TREATMENT.

Sec. 47.30.700. INITIATION OF INVOLUNTARY COMMITMENT PROCEDURES.

(a) Upon petition of any adult, a judge shall immediately conduct a screening investigation or direct a local mental health professional employed by the department or by a local mental health program that receives money from the department under AS 47.30.520 - 47.30.620 or another mental health professional designated by the judge, to conduct a screening investigation of the person alleged to be mentally ill and, as a result of that condition, alleged to be gravely disabled or to present a likelihood of serious harm to himself or others. Within 48 hours after the completion of the screening investigation, a judge may issue an ex parte order orally or in writing, stating that there is probable cause to believe the respondent is mentally ill and that condition causes the respondent to be gravely disabled or to present a

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1 likelihood of serious harm to himself or others. The court shall pro-  
2 vide findings on which the conclusion is based, appoint an attorney to  
3 represent the respondent, and may direct that a peace officer take the  
4 person into custody and deliver him to the nearest appropriate facility  
5 for emergency examination or treatment. The ex parte order shall be  
6 provided to the respondent and made a part of the respondent's clinical  
7 record. The court shall confirm an oral order in writing within 24  
8 hours after it is issued.

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

16 Sec. 47.30.705. EMERGENCY DETENTION FOR EVALUATION. A peace  
17 officer who has probable cause to believe that a person is gravely  
18 disabled or is suffering from mental illness and is likely to cause  
19 serious harm to himself or others of such an immediate nature that con-  
20 siderations of safety do not allow initiation of involuntary commitment  
21 procedures set out in AS 47.30.700, may cause the person to be taken  
22 into custody and delivered to the nearest evaluation facility. A  
23 correctional facility may be used as an emergency evaluation facility  
24 if an evaluation facility is not available. Upon arrival at the  
25 evaluation facility, the peace officer shall complete an application  
26 for examination of the person in custody and be interviewed by a mental  
27 health professional at the facility.

28 Sec. 47.30.710. EXAMINATION. (a) A respondent who is delivered  
29 under AS 47.30.700 or 47.30.705 for emergency examination and treatment

to an evaluation facility shall be examined and evaluated as to his mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.

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

Sec. 47.30.715. ACCEPTANCE OF ORDER. When a facility receives a proper order for evaluation, it must accept the order and the respondent for an evaluation period not to exceed 72 hours. The facility shall promptly notify the court of the date and time of the respondent's arrival. The court shall set a date, time and place for a 21-day commitment hearing, to be held if needed within 72 hours after the respondent's arrival, and the court shall notify the facility, the respondent, his attorney, and the prosecuting attorney of the hearing arrangements. Evaluation personnel, when used, shall similarly notify the court of the date and time when they first met with the respondent.

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

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1           Sec. 47.30.725. COMMITMENT PROCEEDING RIGHTS; NOTIFICATION. (a)

2           When a respondent is detained for evaluation under AS 47.30.660 - 47.30.915, he shall be immediately notified orally and in writing of his  
3           rights under this section. Notification shall be in a language understood by the respondent. His guardian, if any, and if the respondent  
4           requests, an adult designated by the respondent, shall also be notified  
5           of the respondent's rights under this section.  
6

7           (b) Unless a respondent is released or voluntarily admits himself  
8           for treatment within 72 hours of his arrival at the facility or, if he  
9           is evaluated by evaluation personnel, within 72 hours from the beginning  
10          of his meeting with evaluation personnel, he is entitled to a court  
11          hearing to be set for not later than the end of that 72-hour period to  
12          determine whether there is cause to detain him after the 72 hours have  
13          expired for up to an additional 21 days on the grounds that he is  
14          gravely disabled or mentally ill and as a result presents a likelihood  
15          of serious harm to himself or others. The facility or evaluation  
16          personnel shall give notice to the court of the releases and voluntary  
17          admissions under AS 47.30.700 - 47.30.820.  
18

19          (c) The respondent has a right to communicate immediately, at the  
20          department's expense, with his guardian, if any, or an adult designated  
21          by the respondent and the attorney designated in the ex parte order, or  
22          an attorney of the respondent's choice.  
23

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

27          (e) The respondent has the right to be free of the effects of  
28          medication and other forms of treatment to the maximum extent possible  
29          before the 21-day commitment hearing; however, the facility or evaluation  
30          personnel may treat him with medication under prescription by a

licensed physician or by a less restrictive alternative of his preference if, in the opinion of a licensed physician in the case of medication, or of a mental health professional in the case of alternative treatment, the treatment is necessary to

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

(f) A respondent, if he is represented by counsel, may waive, orally or in writing, the 72-hour time limit on the 21-day commitment hearing and have the hearing set for a date no more than seven calendar days after his arrival at the facility. The respondent's counsel shall immediately notify the court of the waiver.

Sec. 47.30.730. PROCEDURE FOR 21-DAY COMMITMENT; PETITION FOR COMMITMENT. (a) In the course of the 72-hour evaluation period, a petition for commitment to a treatment facility may be filed in court. The petition must be signed by two mental health professionals who have examined the respondent, one of whom is a physician. The petition must

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

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

(3) allege with respect to a gravely disabled respondent that there is reason to believe that the respondent's mental condition

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1 could be improved by the course of treatment sought;

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

5 (5) allege that the respondent has been advised of the need  
6 for, but has not accepted, voluntary treatment, and request that the  
7 court commit the respondent to the specified treatment facility or less  
8 restrictive alternative for a period not to exceed 21 days;

9 (6) list the prospective witnesses who will testify in sup-  
10 port of commitment or involuntary treatment;

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

13 (b) A copy of the petition shall be served on the respondent, his  
14 attorney, and his guardian, if any, before the 21-day commitment hear-  
15 ing.

16 Sec. 47.30.735. 21-DAY COMMITMENT. (a) Upon receipt of a proper  
17 petition for commitment, the court shall hold a hearing at the date and  
18 time previously specified according to procedures set out in AS 47.30.-  
19 715.

20 (b) The hearing shall be conducted in a physical setting least  
21 likely to have a harmful effect on the mental or physical health of the  
22 respondent, within practical limits. At the hearing, in addition to  
23 other rights specified in AS 47.30.660 - 47.30.915, the respondent has  
24 the right

25 (1) to be present at the hearing; this right may be waived  
26 only with the respondent's informed consent; if the respondent is in-  
27 capable of giving informed consent, the respondent may be excluded from  
28 the hearing only if the court, after hearing, finds that the incapacity  
29 exists and that there is a substantial likelihood that the respondent's

presence at the hearing would be severely injurious to his mental or physical health;

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

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

(4) to be proceeded against according to the rules of evidence applicable to civil proceedings;

(5) to have an interpreter if he does not understand English;

(6) to present evidence on his behalf;

(7) to cross-examine witnesses who testify against him;

(8) to remain silent.

(c) At the conclusion of the hearing the court may commit the respondent to a treatment facility for not more than 21 days if it finds, by clear and convincing evidence, that the respondent is mentally ill and as a result is likely to cause harm to himself or others or is gravely disabled.

(d) If the court finds that there is a viable less restrictive alternative available and that the respondent has been advised of and refused voluntary treatment through the alternative, the court may order the less restrictive alternative treatment for not more than 21 days if the program accepts the respondent.

(e) The court shall specifically state to the respondent, and give him written notice, that if commitment or other involuntary treatment beyond the 21 days is to be sought, the respondent shall have the right to a full hearing or jury trial.

Sec. 47.30.740. PROCEDURE FOR 90-DAY COMMITMENT FOLLOWING 21-DAY COMMITMENT. (a) At any time during the respondent's 21-day commitment, the professional person in charge, or his professional designee, may

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1 file with the court a petition for 90-day commitment of that respondent.  
2 The petition must include all material required under AS 47.30.730(a)

3 except that references to "21 days" shall be read as "90 days"; and

4 (1) allege that the respondent has attempted to inflict or  
5 has inflicted serious bodily harm upon himself or another since his  
6 acceptance for evaluation, or that he was committed initially as a  
7 result of conduct in which he attempted or inflicted serious bodily  
8 harm upon himself or another, or that he continues to be gravely dis-  
9 abled, or that he demonstrates a current intent to carry out plans of  
10 serious harm to himself or another;

11 (2) allege that the respondent has received appropriate and  
12 adequate care and treatment during his 21-day commitment;

13 (3) be verified by the professional person in charge, or his  
14 professional designee, during the 21-day commitment.

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

23 (c) Findings of fact relating to the respondent's behavior made  
24 at a 21-day commitment hearing under AS 47.30.735 shall be admitted as  
25 evidence and may not be rebutted except that newly discovered evidence  
26 may be used for the purpose of rebutting the findings.

27 Sec. 47.30.745. 90-DAY COMMITMENT HEARING RIGHTS. (a) A respon-  
28 dent subject to a petition for 90-day commitment has, in addition to  
29 the rights specified elsewhere in this chapter, or otherwise applicable,

the rights enumerated in this section. Written notice of these rights shall be served on the respondent, his attorney, his guardian, if any, and may be served on an adult designated by the respondent at the time the petition for 90-day commitment is served. An attempt shall be made by oral explanation to insure that the respondent understands the rights enumerated in the notice. If the respondent does not understand English, the explanation shall be given in a language he understands.

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

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

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

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1 calendar days.

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

12 (f) The proceeding shall in all respects be in accord with con-  
13 stitutional guarantees of due process and, except as otherwise specifi-  
14 cally provided in AS 47.30.700 - 47.30.915, the rules of evidence and  
15 procedure in civil proceedings.

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

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

25 Sec. 47.30.755. COURT ORDER. (a) After the hearing and within  
26 the time limit specified in AS 47.30.745, the court may commit the  
27 respondent to a treatment facility for no more than 90 days if the  
28 court or jury finds by clear and convincing evidence that the respondent  
29 is mentally ill and as a result is likely to cause harm to himself or

others, or is gravely disabled.

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

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

(1) another treatment facility in the state has a program more suited to the respondent's condition, and this interest outweighs the desirability of the respondent being closer to home;

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

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

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

Sec. 47.30.770. ADDITIONAL 120-DAY COMMITMENT. (a) The respondent shall be released from involuntary treatment at the expiration of 90 days unless the professional person in charge files a petition for a 120-day commitment conforming to the requirements of AS 47.30.740(a) except that all references to "21-day commitment" shall be read as "the

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1 previous 90-day commitment" and all references to "90-day commitment"  
2 shall be read as "120-day commitment".

3 (b) The procedures for service of the petition, notification of  
4 rights, and judicial hearing shall be as set out in AS 47.30.740 -  
5 47.30.750. If the court or jury finds by clear and convincing evidence  
6 that the grounds for 90-day commitment as set out in AS 47.30.755 are  
7 present, the court may order the respondent committed for an additional  
8 treatment period not to exceed 120 days from the date on which the  
9 first 90-day treatment period would have expired.

10 (c) Successive 120-day commitments are permissible on the same  
11 ground and under the same procedures as the original 120-day commitment.  
12 An order of commitment may not exceed 120 days.

13 (d) Findings of fact relating to the respondent's behavior made  
14 at a 21-day commitment hearing under AS 47.30.735, a 90-day commitment  
15 hearing under AS 47.30.750, or a previous 120-day commitment hearing  
16 under this section shall be admitted as evidence and may not be rebutted  
17 except that newly discovered evidence may be used for the purpose of  
18 rebutting the findings.

19 Sec. 47.30.775. COMMITMENT OF MINORS. The provisions of AS 47.-  
20 30.700 - 47.30.815 apply to minors. However, all notices required to  
21 be served on the respondent in AS 47.30.700 - 47.30.815 shall also be  
22 served on the parent or guardian of a respondent who is a minor, and  
23 parents or guardians of a minor respondent shall be notified that they  
24 may appear as parties in any commitment proceeding concerning the minor  
25 and that as parties they are entitled to retain their own attorney or  
26 have one appointed for them by the court. A minor respondent has the  
27 same rights to waiver and informed consent as an adult respondent under  
28 AS 47.30.655 - 47.30.915; however, he shall be represented by counsel  
29 in waiver and consent proceedings.

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

Sec. 47.30.785. AUTHORIZED ABSENCES. A respondent undergoing involuntary treatment on an inpatient basis under AS 47.30.700 - 47.30.815 may be authorized to be absent from the treatment facility during times specified by the professional person in charge, or his professional designee, when an authorization to be absent is in the best interests of the respondent and he is not likely to cause harm to himself or others.

Sec. 47.30.790. RETURN FROM UNAUTHORIZED ABSENCE. When a respondent undergoing involuntary treatment on an inpatient basis is absent from the treatment facility without, or in excess of, authorization under AS 47.30.785, the professional person in charge, or his professional designee, may contact the appropriate peace officers who shall take the respondent into custody and return him to the treatment facility. If it is determined by the professional person in charge to be necessary, a member of the treatment facility staff shall accompany the peace officers when they take the respondent into custody.

Sec. 47.30.795. INVOLUNTARY OUTPATIENT CARE FOR COMMITTED PERSONS.

(a) A respondent who was originally committed to involuntary inpatient care under AS 47.30.700 - 47.30.915 may be released before the expiration of his commitment period if a provider of outpatient care accepts him for specified outpatient treatment for a period of time not to exceed the duration of his commitment, and if the professional person in charge, or his professional designee, finds that

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1 (1) it is not necessary to treat the respondent as an in-  
2 patient to prevent him from harming himself or others; and

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

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

8 (c) If during the commitment period the provider of outpatient  
9 care determines that the respondent can no longer be treated on an  
10 outpatient basis because he is likely to cause harm to himself or  
11 others or is gravely disabled, the provider shall give the respondent  
12 oral and written notice that he must return to the treatment facility  
13 within 24 hours, with copies to the respondent's attorney, his guardian,  
14 if any, the court, and the inpatient treatment facility. If the respon-  
15 dent fails to arrive at the treatment facility within 24 hours after  
16 receiving the notice, the professional person in charge may contact the  
17 appropriate peace officers who shall take the respondent into custody  
18 and transport him to the facility. If it is determined by the profes-  
19 sional person in charge to be necessary, a member of the treatment  
20 facility staff shall accompany the peace officers when they take the  
21 respondent into custody.

22 (d) If the provider of outpatient care determines that the  
23 respondent will require continued outpatient care after the expiration  
24 of his commitment period, the provider may initiate further commitment  
25 proceedings as if he were the professional person in charge, and the  
26 provisions of AS 47.30.655 - 47.30.915 apply, except that provisions  
27 relating to inpatient treatment shall be read as applicable to out-  
28 patient treatment.

29 Sec. 47.30.800. CONVERSION OF INVOLUNTARY OUTPATIENT TREATMENT TO

INPATIENT COMMITMENT. (a) A respondent ordered by the court under the provisions of AS 47.30.700 - 47.30.915 to receive involuntary outpatient treatment may be required to undergo inpatient treatment when the provider of outpatient care finds that (1) the respondent is mentally ill and is likely to cause serious harm to himself or others or is still gravely disabled; (2) the respondent's behavior since the hearing resulting in court-ordered treatment indicates that he now needs inpatient treatment to protect himself or others; (3) there is reason to believe that the respondent's mental condition will improve as a result of inpatient treatment; and (4) there is an inpatient facility appropriate to the respondent's need which will accept him as a patient. Treatment for these respondents shall be available at state-operated hospitals at all times.

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

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

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

(2) a 21-day commitment period expires at the end of the 21st day after the 72 hours following initial acceptance;

(3) a 90-day commitment period expires at the end of the 90th day after the expiration of a 21-day period of treatment;

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

(b) When a respondent has failed to appear or absented himself

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1 contrary to any order properly made or entered under AS 47.30.655 -  
2 47.30.915, the relevant commitment period shall be extended for a  
3 period of time equal to the respondent's absence if written notice of  
4 absence is promptly provided to the respondent's attorney and his  
5 guardian, if there is one, and if, within 24 hours after the respondent  
6 has returned to the evaluation or treatment facility, written notice of  
7 the corresponding extension and the reason for it is given to the  
8 respondent, his attorney, his guardian, if any, and to the court.

9 Sec. 47.30.810. HABEAS CORPUS. Nothing in AS 47.30.655 - 47.30.-  
10 915 may be construed as limiting a person's right to a writ of habeas  
11 corpus.

12 Sec. 47.30.815. LIMITATION OF LIABILITY; PENALTY FOR FALSE APPLI-  
13 CATION. (a) A person acting in good faith upon either actual knowledge  
14 or reliable information who makes application for evaluation or treat-  
15 ment of another person under AS 47.30.700 - 47.30.915 is not subject to  
16 civil or criminal liability.

17 (b) The following persons may not be held civilly or criminally  
18 liable for detaining a person under AS 47.30.700 - 47.30.915 or for  
19 releasing a person under AS 47.30.700 - 47.30.915 at or before the end  
20 of the period for which the person was admitted or committed for evalu-  
21 ation or treatment if the persons have performed their duties in good  
22 faith and without gross negligence:

23 (1) an officer of a public or private agency;  
24 (2) the superintendent, the professional person in charge,  
25 the professional designee of the professional person in charge, and the  
26 attending staff of a public or private agency;

27 (3) a public official performing functions necessary to the  
28 administration of AS 47.30.700 - 47.30.915;

29 (4) a peace officer responsible for detaining a person under

AS 47.30.700 - 47.30.915.

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

ARTICLE 9. PATIENT RIGHTS.

Sec. 47.30.825. PATIENT RIGHTS: MEDICAL. Each patient who is receiving services under AS 47.30.660 - 47.30.915 has the following rights:

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

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

(3) A locked quiet room, or other form of physical restraint, may not be used, except as provided in this paragraph, unless a patient is likely to physically harm himself or others unless restrained. The

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1 form of restraint used shall be that which is in the patient's best  
2 interest and which constitutes the least restrictive alternative avail-  
3 able. When practicable, the patient shall be consulted as to his pre-  
4 ference among forms of adequate, medically advisable restraints in-  
5 cluding medication, and his preference shall be considered. Nothing in  
6 this section is intended to limit the right of staff to use a quiet  
7 room at the patient's request or with his knowing concurrence when  
8 considered in the best interests of the patient. Patients placed in a  
9 quiet room or other physical restraint shall be checked at least every  
10 15 minutes or more often if good medical practice so indicates. Pa-  
11 tients in a quiet room must be visited by a staff member at least once  
12 every hour and must be given adequate food and drink and access to  
13 bathroom facilities. At no time may a patient be kept in a quiet room  
14 or other form of physical restraint against his will longer than neces-  
15 sary to accomplish the purposes set out in this paragraph. All uses of  
16 a quiet room or other restraint shall be recorded in the patient's  
17 medical record, the information including but not limited to the  
18 reasons for its use, the duration of use, and the name of the authoriz-  
19 ing staff member.

20 (4) A patient has the right to be free from unnecessary or  
21 excessive medication. Psychotropic medication shall be administered  
22 only on the order of a licensed physician when the physician determines  
23 that such medication is in the best interest of the patient or will  
24 prevent serious harm to others.

25 (5) A patient capable of giving informed consent has the  
26 absolute right to accept or refuse electro-convulsive therapy or aver-  
27 sive conditioning. A patient who lacks substantial capacity to make  
28 this decision may not be given such therapy or conditioning without a  
29 court order.

(6) In no event may treatment include psychosurgery, lobotomy, or other comparable form of treatment without specific informed consent of the patient, including a minor unless he is clearly too young or disabled to give an informed consent in which case the consent of his legal guardian is required. In addition, such treatment may not be given without a court order after hearing compatible with full due process.

(7) When, in the written opinion of a patient's attending physician, a true medical emergency exists and a surgical operation is necessary to save the life, physical health, eyesight, hearing or member of the patient, the professional person in charge, or his professional designee, may give consent to the surgical operation if time will not permit obtaining the consent of the proper relatives or guardian or appropriate judicial authority. However, an operation may not be authorized if the patient is not a minor and knowingly withholds consent on religious grounds.

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

Sec. 47.30.830. PROHIBITION OF EXPERIMENTAL TREATMENTS. (a) Experimental treatments involving any significant risk of physical or psychological harm may not be administered to a patient.

(b) If the personnel of an evaluation or treatment facility are uncertain as to whether a proposed treatment is experimental or is experimental as applied to a particular patient or would involve a

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1 significant risk of mental or physical harm to the patient, the matter  
2 may be referred to the commissioner for a determination. The patient,  
3 his attorney, his guardian, if any, and an adult designated by the  
4 patient, shall, simultaneously with the referral to the commissioner,  
5 be provided with copies of all the documents by which the referral is  
6 made and shall have the opportunity to provide evidence to the commis-  
7 sioner on the question.

8 (c) A determination by the commissioner that a treatment is  
9 experimental and entails significant risks of mental or physical harm  
10 is binding upon all persons involved in the administration of treatment  
11 to a patient.

12 Sec. 47.30.835. CIVIL RIGHTS NOT IMPAIRED. (a) A person may not  
13 deny to a person who is undergoing evaluation or treatment under AS 47.  
14 30.660 - 47.30.915 a civil right, including but not limited to, the  
15 right to free exercise of religion and the right to dispose of property,  
16 sue and be sued, enter into contractual relationships, and vote. A  
17 person who violates this subsection commits the crime of interference  
18 with constitutional rights under AS 11.76.110.

19 (b) Court-ordered evaluation or treatment under AS 47.30.660 -  
20 47.30.915 is not a determination of legal incapacity under AS 13.26.

21 Sec. 47.30.840. RIGHT TO PRIVACY AND PERSONAL POSSESSIONS. A  
22 person undergoing evaluation or treatment under AS 47.30.660 - 47.30.915  
23 shall

24 (1) not be photographed without his consent and that of his  
25 guardian if a minor, except that he may be photographed upon admission  
26 to a facility for identification and for administrative purposes of the  
27 facility; all photographs shall be confidential and may only be released  
28 by the facility to the patient or his designee unless a court orders  
29 otherwise;

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

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

(4) be permitted to wear his own clothing, to keep and use his own personal possessions including his toilet articles if they are not considered unsafe for him or other patients who might have access to them, and to keep and be allowed to spend a reasonable sum of his own money for his own needs and comfort;

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

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

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

Sec. 47.30.845. CONFIDENTIAL RECORDS. Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to

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

(2) the patient or an individual to whom the patient has

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1 given written consent to have information disclosed;

2 (3) a person authorized by a court order;

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

6 (5) the division of corrections in a case in which a prisoner  
7 confined to the state prison is a patient in the state hospital on  
8 authorized transfer either by voluntary admission or by court order;

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

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

19 Sec. 47.30.855. POSTING OF RIGHTS. The rights set out in AS 47.-  
20 30.825 - 47.30.855 shall be prominently posted in all treatment facili-  
21 ties in places accessible to all patients. A patient who does not  
22 understand English shall have his rights explained to him in a language  
23 he understands.

24 Sec. 47.30.860. NOTICES IN LANGUAGES OTHER THAN ENGLISH. When  
25 practicable all documents and notices required by AS 47.30.660 -  
26 47.30.915 to be served on a respondent, or on his parents, guardian or  
27 adult designee, shall be explained in a language the person understands  
28 if he is not competent in English.

29 Sec. 47.30.865. DISCRIMINATION PROHIBITED. (a) The fact that a

person is or has been evaluated or treated for mental illness may not be a basis for discrimination in

(1) seeking employment;

(2) resuming or continuing professional practice or previous occupation;

(3) obtaining or retaining housing;

(4) obtaining or retaining licenses or permits, including but not limited to a motor vehicle license, motor vehicle operator's and chauffeur's license, and a professional or occupational license.

(b) Applications for positions, licenses, and housing may not contain requests for information concerning evaluation or treatment experiences.

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

#### ARTICLE 10. MISCELLANEOUS PROVISIONS.

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

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1 require that he be accompanied by the relative or friend and the rela-  
2 tive or friend is indigent.

3 Sec. 47.30.875. NONRESIDENT PATIENTS. (a) The admission papers  
4 of a person who is admitted to a treatment facility under AS 47.30.660 -  
5 47.30.915 shall include a statement as to his residence. The department  
6 may return a patient who is not a resident of the state to the state of  
7 his residence with court approval if the person has been committed. If  
8 the state in which he has residence does not accept him as a patient,  
9 the person shall be treated as a resident of this state under the pro-  
10 visions of AS 47.30.660 - 47.30.915.

11 (b) To facilitate the return of nonresident patients the depart-  
12 ment may enter into a reciprocal agreement or compact with another  
13 state providing for the prompt return under appropriate supervision of  
14 residents of that state who are mentally ill. A mentally ill resident  
15 of this state who has been placed in a facility outside this state may  
16 be admitted with the approval of the department to a treatment facility  
17 in the state designated by the department. The department may enter  
18 into reciprocal agreements or contracts with another state providing  
19 for custody, care or treatment, or return of mentally ill residents of  
20 this state by the other state and for the custody and care or treatment  
21 of mentally ill residents of that state by this state on a reimbursable  
22 basis. A resident of this state who has been committed in another  
23 state and is returned in accordance with this section shall, within 72  
24 hours of his admission to the designated facility, be examined. After  
25 examination the mental health professional in charge shall release him  
26 or shall petition for involuntary commitment as prescribed in AS 47.30.-  
27 740.

28 (c) In taking action under (a) and (b) of this section, consider-  
29 ation shall be given to the best interests of the patient, particularly

to the relationship of the patient to his family, legal guardian, or friends to maintain relationships and encourage visits beneficial to the patient.

Sec. 47.30.885. RIGHTS OUTSIDE STATE. Nothing in AS 47.30.660 - 47.30.915 alters or impairs the application or availability to a patient, while hospitalized in another state under contractual arrangements entered in accordance with AS 47.30.660 - 47.30.915, of the rights, remedies or safeguards provided by the laws of this state.

Sec. 47.30.890. PROVISION FOR PERSONAL NEEDS UPON DISCHARGE. The department shall insure that

(1) a patient is not discharged from a treatment facility without suitable clothing; and

(2) a discharged indigent patient is furnished

(A) suitable transportation to his permanent residence in this state or to another suitable place at the discretion of the department; and

(B) a reasonable amount of money to meet his immediate needs.

Sec. 47.30.895. DISPOSITION OF PERSONAL PROPERTY AND UNCLAIMED MONEY. (a) Articles of personal property and unclaimed money in the custody of a treatment facility that belong to a patient who dies before discharge, or to a patient who leaves the hospital without authority, if unclaimed by the patient or his legal heirs or representatives within one year after the death or departure of the patient, shall be disposed of in the manner prescribed by the department and the proceeds shall be deposited in the state treasury.

(b) If a mentally ill individual has died in a foreign facility and the department desires to recover the patient's personal property under this section, the commissioner or his designated representative

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1 may secure the property and for that purpose only is designated the  
2 decedent's administrator. Property so recovered shall be disposed of  
3 as provided by law.

4 Sec. 47.30.900. DISPOSITION OF MONEY AND PERSONAL PROPERTY SUBJECT  
5 TO CLAIM. The department shall make diligent inquiry in every instance  
6 after departure without authority or death of a patient, to ascertain  
7 the whereabouts of the patient or that of his legal heirs or representa-  
8 tives, and shall turn over to the proper person the money or articles  
9 of personal property in the custody of the facility to the credit of  
10 the patient. Claims to the money or articles of personal property,  
11 including claims by the state, may be presented to the department at  
12 any time. If a claim other than by the state is established by clear  
13 and convincing evidence more than one year after the death or departure  
14 without authority of a patient, it shall be certified to the legisla-  
15 ture for consideration and the legislature may pay the claim.

16 Sec. 47.30.905. FEES AND EXPENSES FOR JUDICIAL PROCEEDINGS. (a)  
17 The witnesses, expert witnesses, and the jury in commitment proceedings  
18 under AS 47.30.655 - 47.30.915 are entitled to the fees, compensation,  
19 and mileage established by the administrative rules of court for other  
20 jurors and witnesses. Compensation, mileage, fees, transportation  
21 expenses for a respondent, and other expenses arising from evaluation  
22 and commitment proceedings shall be audited and allowed by the superior  
23 court of the judicial district in which the proceedings are held. To  
24 the extent that services of a peace officer are used to carry out the  
25 provisions of AS 47.30.655 - 47.30.915, he is entitled to fees and  
26 actual expenses from the same source and in the same manner as for his  
27 other official duties.

28 (b) An attorney appointed for a person under AS 47.30.655 - 47.-  
29 30.915 shall be compensated for his services as follows:

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

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

Sec. 47.30.910. LIABILITY FOR EXPENSE OF PLACEMENT IN A TREATMENT FACILITY. (a) A patient, or his legal representative acting in a representative capacity, or his spouse, or his parents if the patient is under the age of 18, shall pay or contribute to the payment of the charges for the care, transportation, and treatment of the patient when hospitalized under AS 47.30.655 - 47.30.915. Charges assessed after an order for commitment for treatment is issued and charges assessed when a patient is hospitalized at a facility operated by the department, or under a contract for services with the department, may not exceed the actual cost of the care and treatment. The department may order payment by the patient or by the person responsible for payment for the patient's care and treatment under this subsection, according to ability to provide for payment. The department may make necessary investigations to determine the ability to pay and may require sworn statements of income by the patient, or his legal representative acting in a representative capacity, or his spouse or parent. In the exercise of his discretion, the commissioner may impose full liability for the patient's actual cost of care and treatment on the patient, his legal representative, his spouse, or parent for refusal to supply a sworn statement of income. An order for payment shall be issued by the department within six months after the date on which the charge was incurred. The order shall remain in full force and effect unless modified by subsequent court or department order. Liability under this subsection shall be determined as follows: a patient hospitalized under

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1 AS 47.30.660 - 47.30.915, or the person responsible for payment of  
2 charges for the patient, may be required to pay according to his  
3 ability to provide for payment, and in the manner and proportion which  
4 the department finds is not detrimental to the patient's rehabilitation.  
5 The department shall, at any time that it determines the action will  
6 serve the best interests of the state and the patient or the person  
7 responsible for payment, relieve the patient or the person responsible  
8 for payment from liability for charges for the care, transportation,  
9 and treatment of the patient.

10 (b) As used in (a) of this section, the term "actual cost of the  
11 care and treatment" means either the rate provided for by a contract  
12 entered into under AS 47.30.660 - 47.30.915, or, in the absence of a  
13 contract, a daily rate approved by the department.

14 (c) The department may charge, or accept from a person money or  
15 property, for the care or treatment of an inpatient or outpatient or  
16 for other purposes, even if the payment is not required by an order of  
17 the department, so long as the total payments received do not exceed  
18 the actual cost of care or treatment.

19 (d) All money paid by the patient or on his behalf to the depart-  
20 ment under this section shall be deposited in the state treasury.

21 (e) If an order for payment is entered by the department under  
22 this section, and delinquency in the payment of any amount due the  
23 state under the order continues for a period of more than 30 days after  
24 the notification to the patient or the legal representative, spouse, or  
25 parent of the patient by the department, the state may proceed to col-  
26 lect the amounts due by appropriate proceedings. An action to enforce  
27 the collection of payments may only be brought within three years after  
28 the date of notification of a delinquent payment.

29 (f) The orders of the department issued under this section may

relate only to charges incurred after October 1, 1981.

Sec. 47.30.915. DEFINITIONS. In AS 47.30.660 - 47.30.915

- (1) "commissioner" means the commissioner of health and social services;
- (2) "court" means a superior court of the state;
- (3) "department" means the Department of Health and Social Services;
- (4) "designated treatment facility" means a hospital, clinic, institution, center, or other health care facility that has been designated by the department for the treatment or rehabilitation of mentally ill persons and for the receipt of these persons by court-ordered commitment, but does not include correctional institutions;
- (5) "evaluation facility" means a health care facility that has been designated or is operated by the department to perform the evaluations described in AS 47.30.660 - 47.30.915; or a medical facility licensed under AS 18.20.020;
- (6) "evaluation personnel" means mental health professionals designated by the department to conduct evaluations as prescribed in AS 47.30.660 - 47.30.915 who conduct evaluations in places in which no staffed evaluation facility exists;
- (7) "gravely disabled" means a condition in which a person, as a result of mental illness, is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness or death highly probable if care by another is not taken;
- (8) "inpatient treatment" means care and treatment rendered inside or on the premises of a treatment facility, or a part or unit of a treatment facility, for a continual period of 24 hours or longer;
- (9) "least restrictive alternative" means mental health

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1 treatment facilities and conditions of treatment which are

2 (A) no more harsh, hazardous, or intrusive than neces-  
3 sary to achieve the treatment objectives of the patient; and

4 (B) involve no restrictions on physical movement nor  
5 supervised residence or inpatient care except as reasonably neces-  
6 sary for the administration of treatment or the protection of the  
7 patient or others from physical injury;

8 (10) "likely to cause serious harm" means a person who

9 (A) poses a substantial risk of imminent and substan-  
10 tial bodily harm to himself, as manifested by recent attempts at  
11 suicide or bodily harm;

12 (B) poses a substantial risk of imminent and substantial  
13 bodily harm to one or more other persons as manifested by behavior  
14 causing or attempting harm, including, in regard to evaluations,  
15 at least one incident within 30 days before the filing of a peti-  
16 tion for emergency hospitalization; or

17 (C) demonstrates a current intent to carry out plans of  
18 serious harm to himself or another;

19 (11) "mental health professional" means a psychiatrist or  
20 physician who is licensed to practice in this state or employed by the  
21 federal government; a clinical psychologist licensed by the state Board  
22 of Psychologists and Psychological Associate Examiners; a psychological  
23 associate with a clinical psychology or counseling specialty licensed  
24 by the Board of Psychologists and Psychological Associate Examiners; a  
25 registered nurse with a master's degree in psychiatric nursing, licensed  
26 by the State Board of Nursing; and a social worker with a master's  
27 degree in social work and experience in the field of mental illness;

28 (12) "mental illness" means an organic, mental, or emotional  
29 impairment that has substantial adverse effects on an individual's

ability to exercise conscious control of his actions or ability to perceive reality or to reason or understand; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

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

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

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

(16) "state" means a state of the United States, the District of Columbia, the territories and possessions of the United States, and the Commonwealth of Puerto Rico, and, with the approval of the United States Congress, Canada;

(17) "professional person in charge" means the senior mental health professional at a facility or his designee; in the absence of a mental health professional it means the chief of staff or a physician

1 designated by the chief of staff.

2 \* Sec. 2. AS 12.45.087(a) is amended to read:

3 (a) If a defendant has filed a notice of intention to rely on the  
4 defense of mental disease or defect excluding responsibility, or there  
5 is reason to doubt his fitness to proceed, or there is reason to believe  
6 that mental disease or defect of the defendant will otherwise become an  
7 issue in the cause, the court shall appoint at least one qualified  
8 psychiatrist, or a forensic psychologist certified by the American  
9 Board of Forensic Psychology, or shall request the superintendent of  
10 the Alaska Psychiatric Institute to designate at least one qualified  
11 psychiatrist, which designation may be or include himself, to examine  
12 and report upon the mental condition of the defendant. If the defen-  
13 dant has filed notice under AS 12.45.090(a) the report shall consider  
14 whether the defendant can still be committed under AS 12.45.090. The  
15 court may order the defendant to be committed to a hospital or other  
16 suitable facility for the purpose of the examination for not more than  
17 60 days or such longer period as the court determines to be necessary  
18 for the purpose and may direct that a qualified psychiatrist retained  
19 by the defendant be permitted to witness and participate in the exam-  
20 ination.

21 \* Sec. 3. AS 12.45.090 is repealed and reenacted to read:

22 Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF MENTAL DISEASE  
23 OR DEFECT. (a) At the time the defendant files notice to raise the  
24 affirmative defense of mental disease or defect as excluding responsi-  
25 bility he shall also file notice as to whether if found not guilty by  
26 reason of mental disease or defect as excluding responsibility he will  
27 assert that he is not presently suffering from a mental disease or  
28 defect that causes him to be dangerous to the public peace or safety.

29 (b) If the defendant is found not guilty by reason of mental

disease or defect as excluding responsibility and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of health and social services.

(c) If the defendant is found not guilty by reason of mental disease or defect as excluding responsibility, and he has filed the notice required under (a) of this section, a hearing shall be held immediately after the verdict is returned to determine the necessity of further commitment. The hearing shall be held before the same trier of fact as the underlying charge, but if a jury was the trier of fact, the hearing shall be held before a jury of six drawn from the original jury in accordance with rules adopted by the supreme court. At the hearing, the defendant has the burden of proving by a preponderance of the evidence that he is not presently suffering from a mental disease or defect that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083 or until the mental disease is cured or the defect corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this position may have the need for his continued hospitalization determined or redetermined under a petition filed in the superior court at intervals beginning no sooner than six months from his initial commitment and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section except

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1 that the defendant is not entitled to a jury unless he files a motion  
2 for a jury no later than 15 days before the date set for the hearing.  
3 A copy of all petitions for release shall be served on the attorney  
4 general at Juneau, Alaska. A copy shall also be served upon the attor-  
5 ney of record, if he is not the attorney general, who represented the  
6 state or a municipality at the time the defendant was first committed.

7 (f) Continued commitment following expiration of the maximum term  
8 of imprisonment for the crime for which the defendant was acquitted  
9 under AS 12.45.083 is governed by the standards pertaining to civil  
10 commitments as set out in AS 47.30.735.

11 (g) A person committed under this section may not be released  
12 during the term of commitment except upon court order following a  
13 hearing in accordance with (c) of this section. On the grounds that  
14 the defendant has been cured of the mental disease or defect and is no  
15 longer dangerous to public peace or safety the state may at any time  
16 request the court to hold a hearing to decide if the defendant should  
17 be released.

18 (h) The commissioner of health and social services or his autho-  
19 rized representative shall submit periodic written reports to the court  
20 on the mental condition of a person committed under this section.

21 \* Sec. 4. AS 12.45.110 is repealed and reenacted to read:

22 Sec. 12.45.110. COMMITMENT ON FINDING OF INCOMPETENCY. (a) When  
23 the trial court determines by a preponderance of the evidence, in  
24 accordance with AS 12.45.100, that a defendant is so mentally incompe-  
25 tent that he is unable to understand the proceedings against him or  
26 properly to assist in his own defense, the court shall order the pro-  
27 ceedings against him stayed, except as provided in (d) of this section,  
28 and may commit the defendant to the custody of the commissioner of  
29 health and social services or his authorized representative for further

evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against him are disposed of according to law, but in no event longer than 90 days.

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

(c) The defendant is not responsible for the expenses of hospital-

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1        ization or transportation incurred as a result of his commitment under  
2        this section. Liability for payment under AS 47.30.910 does not apply  
3        to commitments under this section.

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

9        \* Sec. 5. AS 12.45.115 is amended to read:

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

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

23        (c) If at the hearing the court determines that the accused is  
24        still presently mentally incompetent, the court shall recommit the  
25        accused in accordance with AS 12.45.110 [AS PROVIDED IN AS 12.45.-  
26        110(a)].

27        (d) A finding by the court that the accused is mentally competent  
28        to stand trial in no way prejudices the accused in a defense based on  
29        mental disease or defect excluding responsibility. This finding may

not be introduced in evidence on that issue or otherwise be brought to the notice of the jury.

\* Sec. 6. Except as provided in this Act, the provisions of AS 47.30.-660 - 47.30.815 enacted by sec. 1 of this Act do not in themselves impair any action taken in a proceeding pending under statutes in effect before October 1, 1981, nor do they apply retroactively to terminate the detention of a person previously committed under statutes in effect before October 1, 1981. However, 90 days after October 1, 1981, the provisions of this Act apply to all persons committed under statutes in effect before October 1, 1981.

\* Sec. 7. AS 47.30.010 - 47.30.170 and AS 47.30.190 - 47.30.340 are repealed.

\* Sec. 8. This Act takes effect October 1, 1981.