

LAWS OF ALASKA 2014

Source CSHB 366(JUD)

Chapter No.

AN ACT

Relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; relating to the sealing of records of mental health proceedings; and relating to relief from a disability resulting from an involuntary commitment or an adjudication of mental illness or mental incompetence.

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

THE ACT FOLLOWS ON PAGE 1

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1	Relating to reporting an involuntary mental health commitment to the National Instan
2	Criminal Background Check System; relating to the sealing of records of mental health
3	proceedings; and relating to relief from a disability resulting from an involuntary commitment
4	or an adjudication of mental illness or mental incompetence.

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* Section 1. AS 44.41 is amended by adding a new section to read:

Sec. 44.41.045. Information and records concerning involuntary commitment and adjudication of mental illness or mental incompetence. (a) Upon receiving information under AS 47.30.907, the Department of Public Safety shall transmit the information to the United States Department of Justice for inclusion in the National Instant Criminal Background Check System established under P.L. 103-159, 107 Stat. 1536 (Brady Handgun Violence Prevention Act).

(b) In transmitting information to the National Instant Criminal Background Check System under (a) of this section, the Department of Public Safety may not

1 disclose diagnostic or treatment information regarding the person. 2 (c) The Department of Public Safety may not use or permit the use of the 3 information obtained or retained under this section for a purpose not specified in this 4 section, except that the department may use the information to determine whether a 5 person is qualified to receive and hold a permit to carry a concealed handgun under AS 18.65.705. 6 7 (d) Information obtained or retained under this section is confidential and is 8 not a public record. 9 * **Sec. 2.** AS 47.30.845 is amended to read: 10 Sec. 47.30.845. Confidential records. Information and records obtained in the 11 course of a screening investigation, evaluation, examination, or treatment are 12 confidential and are not public records, except as the requirements of a hearing under 13 AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and 14 records may be copied and disclosed under regulations established by the department 15 only to 16 (1) a physician or a provider of health, mental health, or social and 17 welfare services involved in caring for, treating, or rehabilitating the patient; 18 (2) the patient or an individual to whom the patient has given written 19 consent to have information disclosed; 20 (3) a person authorized by a court order; 21 (4) a person doing research or maintaining health statistics if the 22 anonymity of the patient is assured and the facility recognizes the project as a bona 23 fide research or statistical undertaking; 24 the Department of Corrections in a case in which a prisoner 25 confined to the state prison is a patient in the state hospital on authorized transfer 26 either by voluntary admission or by court order; 27 (6) a governmental or law enforcement agency when necessary to 28 secure the return of a patient who is on unauthorized absence from a facility where the 29 patient was undergoing evaluation or treatment;

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imminent danger to the community by a presumed mentally ill person;

(7) a law enforcement agency when there is substantiated concern over

1	(8) the department in a case in which services provided under
2	AS 47.30.660 - 47.30.915 are paid for, in whole or in part, by the department or in
3	which a person has applied for or has received assistance from the department for
4	those services:
5	(9) the Department of Public Safety as provided in AS 47.30.907:
6	information provided under this paragraph may not include diagnostic or clinical
7	information regarding a patient.
8	* Sec. 3. AS 47.30.850 is amended to read:
9	Sec. 47.30.850. Sealing [EXPUNGING OR SEALING] records. Following
10	the discharge of a person [RESPONDENT] from a treatment facility or the issuance
11	of a court order denying a petition for commitment, the person [RESPONDENT] may
12	at any time move to have all court records pertaining to the proceedings sealed
13	[EXPUNGED] on condition that the person [RESPONDENT] file a full release of all
14	claims of whatever nature arising out of the proceedings and the statements and
15	actions of persons and facilities in connection with the proceedings. Upon the filing of
16	the motion and full release, the court shall order the court records [EITHER
17	EXPUNGED OR] sealed [, WHICHEVER THE COURT CONSIDERS
18	APPROPRIATE UNDER THE CIRCUMSTANCES].
19	* Sec. 4. AS 47.30 is amended by adding a new section to read:
20	Sec. 47.30.851. Relief from legal disability. (a) A person who is prohibited
21	from possessing a firearm or ammunition under 18 U.S.C. 922(g)(4) as a result of an
22	involuntary commitment or an adjudication of mental illness or mental incompetence
23	that occurred in this state may, at any time, move to be relieved from the disability
24	resulting from an involuntary commitment or an adjudication of mental illness or
25	mental incompetence.
26	(b) In ruling on a motion under (a) of this section, the court
27	(1) shall consider
28	(A) the circumstances of the involuntary commitment or
29	adjudication of mental illness or mental incompetence;
30	(B) the time that has elapsed since the involuntary commitment
31	or adjudication of mental illness or mental incompetence;

1	(C) the person's reputation and mental health and criminal
2	history records;
3	(D) any conduct by the person that would constitute a crime
4	against a person under AS 11.41 or a violation of AS 11.61.190 - 11.61.250;
5	and
6	(E) any changes in the person's condition or circumstances
7	relevant to the relief sought; and
8	(2) shall grant relief from the disability resulting from an involuntary
9	commitment or adjudication of mental illness or mental incompetence if the court
10	finds, by a preponderance of the evidence, that
11	(A) the person is unlikely to act in a manner dangerous to self
12	or to public safety; and
13	(B) granting the relief is not contrary to the public interest.
14	(c) The court shall order a hearing conducted under (b) of this section to be
15	held open or closed to the public at the option of the person.
16	(d) A decision to grant or deny relief under this section may be appealed as
17	provided in AS 22.05.010. In reviewing the decision of the superior court, the standard
18	of review may be de novo.
19	* Sec. 5. AS 47.30 is amended by adding a new section to read:
20	Sec. 47.30.907. Report to Department of Public Safety concerning
21	involuntary commitment or relief from a disability resulting from an involuntary
22	commitment or an adjudication of mental illness or mental incompetence. (a)
23	Notwithstanding AS 47.30.845, when a superior court orders the involuntary
24	commitment of a person under AS 47.30.735 - 47.30.755 or when relief from a
25	disability resulting from an involuntary commitment or an adjudication of mental
26	illness or mental incompetence is granted under AS 47.30.851(b), the court shall
27	immediately transmit the following information, if known, to the Department of Public
28	Safety:
29	(1) the person's
30	(A) name, date of birth, and address;
31	(B) aliases;

I	(C) social security number;
2	(D) driver's license or state identification card number;
3	(2) the date of the order and whether the order is
4	(A) an involuntary commitment; or
5	(B) relief from the disability resulting from an involuntary
6	commitment or an adjudication of mental illness or mental incompetence;
7	(3) the statutory authority for the involuntary commitment or the
8	disability resulting from an involuntary commitment or an adjudication of mental
9	illness or mental incompetence;
10	(4) whether the person was offered an opportunity to be heard and
11	represented by counsel in the involuntary commitment proceeding or adjudication of
12	mental illness or mental incompetence; and
13	(5) any other information required by the Department of Public Safety
14	or by the United States Department of Justice for inclusion in the National Instant
15	Criminal Background Check System established under P.L. 103-159, 107 Stat. 1536
16	(Brady Handgun Violence Prevention Act).
17	(b) This section does not apply to initial involuntary commitment procedures.
18	emergency detention for evaluation, or hospitalization for examination under
19	AS 47.30.700 - 47.30.715 if the person is released under AS 47.30.720.
20	* Sec. 6. AS 47.30.915 is amended by adding new paragraphs to read:
21	(19) "adjudication of mental illness or mental incompetence" means a
22	court order finding that a person is
23	(A) not guilty by reason of insanity or guilty but mentally ill
24	under AS 12.47.040;
25	(B) incompetent to stand trial for a criminal offense under
26	AS 12.47.100 - 12.47.120; or
27	(C) a danger to self or others, or is gravely disabled because of
28	incapacity, incompetence, mental illness, dementia, or some other cause;
29	(20) "disability resulting from an involuntary commitment or an
30	adjudication of mental illness or mental incompetence" means the prohibition against
31	the possession of a firearm or ammunition under 18 U.S.C. 922(g)(4) that results from

1	an involuntary commitment or adjudication of mental illness or mental incompetence.