

West's Alaska Statutes Annotated
Title 47. Welfare, Social Services, and Institutions
Chapter 10. Children in Need of Aid (Refs & Annos)
Article 1. Children's Proceedings

AS § 47.10.087

§ 47.10.087. Placement in secure residential psychiatric treatment centers

Currentness

(a) The court may authorize the department to place a child who is in the custody of the department under AS 47.10.080(c)(1) or (3) or 47.10.142 in a secure residential psychiatric treatment center if the court finds, based on the testimony of a mental health professional, that

(1) the child is gravely disabled or is suffering from mental illness and, as a result, is likely to cause serious harm to the child or to another person;

(2) there is no reasonably available, appropriate, and less restrictive alternative for the child's treatment or that less restrictive alternatives have been tried and have failed; and

(3) there is reason to believe that the child's mental condition could be improved by the course of treatment or would deteriorate if untreated.

(b) A court shall review a placement made under this section at least once every 90 days. The court may authorize the department to continue the placement of the child in a secure residential psychiatric treatment center if the court finds, based on the testimony of a mental health professional, that the conditions or symptoms that resulted in the initial order have not ameliorated to such an extent that the child's needs can be met in a less restrictive setting and that the child's mental condition could be improved by the course of treatment or would deteriorate if untreated.

(c) The department shall transfer a child from a secure residential psychiatric treatment center to another appropriate placement if the mental health professional responsible for the child's treatment determines that the child would no longer benefit from the course of treatment or that the child's treatment needs could be met in a less restrictive setting. The department shall notify the child, the child's parents or guardian, and the child's guardian ad litem of a determination and transfer made under this subsection.

(d) In this section, "likely to cause serious harm" has the meaning given in AS 47.30.915.

Credits

SLA 1998, ch. 107, § 7.

AS § 47.10.087, AK ST § 47.10.087

West's Alaska Statutes Annotated
Title 47. Welfare, Social Services, and Institutions
Chapter 30. Mental Health
Article 9. Involuntary Admission for Treatment (Refs & Annos)

AS § 47.30.775

§ 47.30.775. Commitment of minors

Currentness

[involuntary commitment statutes]

The provisions of AS 47.30.700 - 47.30.815 apply to minors. However, all notices required to be served on the respondent in AS 47.30.700 - 47.30.815 shall also be served on the parent or guardian of a respondent who is a minor, and parents or guardians of a minor respondent shall be notified that they may appear as parties in any commitment proceeding concerning the minor and that as parties they are entitled to retain their own attorney or have the office of public advocacy appointed for them by the court. A minor respondent has the same rights to waiver and informed consent as an adult respondent under AS 47.30.660 - 47.30.915; however, the minor shall be represented by counsel in waiver and consent proceedings.

Credits

SLA 1981, ch. 84, § 1; SLA 1984, ch. 55, § 18.

AS § 47.30.775, AK ST § 47.30.775

Current with legislation through October 17, 2019 of the 2019 First Regular Session and 2019 First Special Session of the 31st Legislature.

West's Alaska Statutes Annotated
Title 47. Welfare, Social Services, and Institutions
Chapter 30. Mental Health
Article 8. Voluntary Admission for Treatment

AS § 47.30.690

§ 47.30.690. Admission of minors under 18 years of age

Currentness

(a) A minor under the age of 18 may be admitted for 30 days of evaluation, diagnosis, and treatment at a designated treatment facility if the minor's parent or guardian signs the admission papers and if, in the opinion of the professional person in charge,

(1) the minor is gravely disabled or is suffering from mental illness and as a result is likely to cause serious harm to the minor or others;

(2) there is no less restrictive alternative available for the minor's treatment; and

(3) there is reason to believe that the minor's mental condition could be improved by the course of treatment or would deteriorate further if untreated.

(b) A guardian ad litem for a minor admitted under this section shall be appointed under AS 25.24.310 to monitor the best interests of the minor as soon as possible after the minor's admission. If the guardian ad litem finds that placement is not appropriate, the guardian ad litem may request that an attorney be appointed under AS 25.24.310 to represent the minor. The attorney may request a hearing on behalf of the minor during the 30-day admittance.

(c) The minor may be released by the treatment facility at any time if the professional person in charge or the minor's designated mental health professional determines the minor would no longer benefit from continued treatment and the minor is not dangerous. The minor's parents or guardian must be notified by the facility of the contemplated release.

Credits

SLA 1981, ch. 84, § 1; SLA 1984, ch. 142, § 5.

AS § 47.30.690, AK ST § 47.30.690

Current with legislation through October 17, 2019 of the 2019 First Regular Session and 2019 First Special Session of the 31st Legislature.

West's Alaska Statutes Annotated
Title 47. Welfare, Social Services, and Institutions
Chapter 30. Mental Health
Article 8. Voluntary Admission for Treatment

AS § 47.30.695

§ 47.30.695. Request by parent or guardian to release of
minors under 18 years of age from detention and commitment

Currentness

The parent or guardian of a minor who is less than 18 years of age may file a notice to withdraw the minor from the facility. On receipt of the notice,

(1) the facility may discharge the minor to the custody of the parent or guardian; or

(2) if, in the opinion of the treating physician, release of the minor would be seriously detrimental to the minor's health, the treating physician may

(A) discharge the minor to the custody of the parent or guardian after advising the parent or guardian that this action is against medical advice and after receiving a written acknowledgment of the advice; or

(B) refuse to discharge the minor, initiate involuntary commitment proceedings, and continue to hold the minor until a court order under AS 47.30.700 has been issued; or

(3) if, in the opinion of the treating physician, the minor is likely to cause serious harm to self or others and there is reason to believe the release could place the minor in imminent danger, the treating physician shall refuse to discharge the minor, and shall initiate involuntary commitment proceedings and continue to hold the minor until a court order under AS 47.30.700 has been issued.

Credits

SLA 1981, ch. 84, § 1; SLA 1984, ch. 142, § 7. Amended by SLA 2010, ch. 58, § 28, eff. June 10, 2010.

AS § 47.30.695, AK ST § 47.30.695

Current with legislation through October 17, 2019 of the 2019 First Regular Session and 2019 First Special Session of the 31st Legislature.

PRE-HEARING PREPARATION

Review the Department's Request for Hearing, if one is filed.

Determine whether hearing will be open or closed. See AS 47.10.070(c)(3).

PERSONS ENTITLED TO NOTICE AND PARTICIPATION AT HEARING

CINA R. 3(a) & 2(l)

- Child
- Parents whose rights are not terminated.
- Legal guardian
- Indian custodian
- Indian child's tribe, if it has intervened
- OCS protective services specialist
- GAL/CASA
- Out-of-home care provider and grandparents
- Intervenor
- Parties' attorneys

PROCEDURAL DECISIONS & ORDERS

Timing of Hearing: A hearing to authorize a child's future placement in a secure residential psychiatric treatment center (RTC) must be held prior to the child's placement in such a facility. A hearing reviewing a child's placement at North Star Hospital must be held within 30 days of the child's admission to North Star as required by the preliminary injunction issued in *Native Village of Hooper Bay v. State*.

Order to Public. Order members of the public not to disclose identity of child. AS 47.10.070(f).

EVIDENTIARY CONSIDERATIONS

Statements. Any party or witness upon whom the court relies in reaching its findings must be sworn in and testify under oath. See *Diego K*.

Hearsay. CINA R. 9(a) applies to hearings pursuant to AS 47.10.087.

- The mental health professional testifies as an expert in these hearings. ARE 703 applies to

facts or data relied upon by the expert in reaching their opinion. Those facts and data need not be admissible in evidence.

- Other hearsay exceptions may apply. See ARE 803(4).

Burden of Proof/Standard. The Department bears the burden of proof, by clear and convincing evidence.

REQUIRED SUBSTANTIVE FINDINGS AND ORDERS

Findings Required. AS 47.10.087.

- Child must be in the custody of the department under AS 47.10.080(c)(1) or (3) or 47.10.142. AS 47.10.087(a).
- Testimony of a mental health professional is required. AS 47.10.087(a).
 - Mental health professionals include:
 - psychiatrist
 - physician;
 - clinical psychologist;
 - a psychological associate trained in clinical psychology and licensed by the Board of Psychologist and Psychological Associate Examiners;
 - an advanced practice registered nurse or registered nurse with a master's degree in psychiatric nursing and licensed by the State Board of Nursing;
 - a marital and family therapist licensed by the Board of Marital and Family Therapy;
 - a professional counselor licensed by the Board of Professional Counselors;
 - a clinical social worker licensed by the Board of Social Work Examiners;
 - and a person who:
 - Has a master's degree in the field of mental health;
 - Has at least 12 months of post-masters working experience in the field of mental illness; and
 - Is working under the supervision of a type of licensee listed above.
- AS 47.30.915(13), AS 47.10.990(21).

- **Initial Placement Hearing.** OCS must prove by clear and convincing evidence that:
 - The child is gravely disabled (as a result of a mental illness) or is suffering from mental illness and, as a result, is likely to cause serious harm to the child or to another person. AS 47.10.087(a)(1). Terms are defined in AS 47.30.912.
 - There is no reasonably available, appropriate, and less restrictive alternative for the child’s treatment or that less restrictive alternatives have been tried and failed. AS 47.10.087(a)(2).
 - There is reason to believe that the child’s mental condition could be improved by the course of treatment or would deteriorate if untreated. AS 47.10.087(a)(3).
 - If one of the above findings cannot be made, the child cannot remain in the placement.
- **Subsequent hearings.** If placement in a secure residential psychiatric treatment center is authorized, that placement must be reviewed every 90 days. At subsequent hearings, the department must show by clear and convincing evidence and the testimony of a mental health professional that:
 - The conditions or symptoms that resulted in the initial order have not ameliorated to such an extent that the child’s needs can be met in a less restrictive setting; and
 - That the child’s mental condition could be improved by the course of treatment or would deteriorate if untreated. AS 47.10.087(b).
 - If one of these findings cannot be made, the child cannot remain in the placement.

DEFINITIONS

- **Gravely disabled.** A condition in which a person as a result of mental illness
 - (A) 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; or
 - (B) will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of the person’s previous ability to function independently. AS 47.30.915(9)(A)-(B).
 - Distress in subsection 7(B) is constitutional if construed such that the “distress” that justifies commitment refers to a level of incapacity that prevents the person in question from being able to live safely outside a controlled environment. *Wetherhorn v. API*, 156 P.3d 371 (Alaska 2007).

FUTURE HEARINGS AND ONGOING RESPONSIBILITIES

Psychiatric Treatment Center. If it is determined that the child is placed in a secure residential psychiatric treatment center or continued in such a facility, the court must review the placement order and make new findings every 90 days. AS 47.10.087(b).

ADDITIONAL CONSIDERATIONS

- Youth present for hearing, if youth wishes.
- Appointment of attorney for youth, if youth wishes.
- Hold more frequent hearings for youth in acute care.
- Psychotropic medications over the objection of a parent. See *Kiva O*.
- Discharge planning