



Brady Statute Data: Adjudicated Mental Defectives and Involuntary Mental Commitments

Report submitted to the
Bureau of Justice Statistics
and the
Alaska Department of Public Safety

by

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Introduction

This project is a component of the National Criminal History Improvement Program (NCHIP). It is funded by the United States Department of Justice, Office of Justice Planning, Bureau of Justice Statistics, grant number 96-RU-RX-K026.

The purpose of this Advanced State Awards program (ASAP) project is to determine the feasibility of identifying and assembling information on persons other than felons who are prohibited from purchasing firearms under 18 U.S.C. 922 (g) and (n), as amended by the Violent Crime Control Act of 1994. The information on the non-felons covered by the act would be added to the Alaska Public Safety Information Network (APSIN) used by the Alaska Department of Public Safety for background checks prior to the purchase or sale of handguns. The APSIN system was created in the early 1980's as a computerized criminal history database for law enforcement agencies.

Currently, state law enforcement agencies do not obtain data on the following four non-criminal categories prohibited by the above federal law from obtaining guns: adjudicated mental defectives and involuntary mental commitments; individuals subject to any court order restraining them from threatening or committing acts of domestic violence or abuse; aliens illegally in the United States; and those who are an unlawful user of, or addicted to, any controlled substance.

This is the first in a series of Alaska Statistical Analysis Unit reports describing how each category can be defined within an Alaska context and discussing the possible procedures, problems and solutions associated with data collection. At the conclusion of this project a summary report will be written that will synopsise the four components of the project.

The first of these four non-criminal classifications to be examined is that of adjudicated mental defectives and involuntary mental commitments.

Adjudicated Mental Defectives

Neither the State of Alaska nor the federal government maintain any type of central repository of those persons found to be "adjudicated mental defectives"; therefore, in researching possible sources we had to look at definitions for terms set out in the federal statute and those agencies that furnish some sort of monetary or physical assistance to the disabled.

Definitions

Federal statute, 18 U.S.C. 922 (g), as amended by the Violent Crime Control Act , lists the provisions which prohibit the purchase, sale or transport of firearms by some individuals. It reads:

- (g) It shall be unlawful for any person~~
 - (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
 - (2) who is a fugitive from justice;
 - (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
 - (4) **who has been adjudicated as a mental defective or who has been committed to a mental institution;**
 - (5) who, being an alien, is illegally or unlawfully in the United States;
 - (6) who has been discharged from the Armed Forces under dishonorable conditions;
 - (7) who, having been a citizen of the United States, has renounced his citizenship;
 - (8) who is subject to a court order that~~
 - (A) was issued after a hearing of which such person received actual notice, and which such person had an opportunity to participate;
 - (B) restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
 - (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.(Emphasis added)

The definitions for “adjudicated as a mental defective” and “ committed to a mental institution” found in 27 CFR 178.11 were amended June 27, 1997 and finalized August 26, 1997. They read:

- Adjudicated as a mental defective. (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
- (1) Is a danger to himself or to others; or
 - (2) Lacks the mental capacity to contract or manage his own affairs.
- (b) The term shall include--
- (1) A finding of insanity by a court in a criminal case; and
 - (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes a commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

The term *lawful authority*, though not specifically defined in the statute, is explained in the notice published June 27, 1997. The notice states:

In ATF's view, "lawful authority" as used in the proposed regulations clearly means a government entity having the legal authority to make adjudications or commitments, other than courts, boards, or other commissions which are specifically mentioned.

This would, in our opinion, include social service agencies such as the Social Security Administration, the Anchorage School District and the Alaska Department of Health and Social Services, each of which make determinations on the eligibility of persons for assistance. Each of these agencies handle a number of clients who may or may not be included among those prohibited from obtaining handguns. For example, persons with a physical disability such as paraplegia may require assistance from the Department of Health and Social Services but are neither "a danger to themselves or others" nor are they "lacking the mental capacity to manage their own affairs." In order to capture those persons who should be included in APSIN the agency would be required to flag the appropriate cases.

Also, the term "mental defective" is not used by any social service or mental health agency in this state, nor is there a standard alternative term. These agencies use the terms "developmentally delayed," "mentally retarded," "disabled" or "developmental disability," with each agency defining these terms differently. The state definition for a person with a developmental disability is found in Alaska Statute 47.80.900:

- (7) "person with a developmental disability" means a person who is experiencing a severe, chronic disability that
- (A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (B) is manifested before the person attains age 22;
 - (C) is likely to continue indefinitely;
 - (D) results in substantial functional limitations in three or more of the following areas of major life activity: self care, receptive and expressive language, learning, mobility, self direction, capacity for independent living, and economic self sufficiency; and
 - (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated;

Current Policies

The Department of Health and Social Services, Division of Developmental Disabilities, in Juneau, handles compensation for developmentally disabled persons seeking assistance in Alaska. Most of the division's clients are children and young adults, and their disabilities range from mental retardation to a physical handicap. Though the division has a database with information about the types of clients it serves, because of privacy laws it does not include any identifying information.

At this time, it would be impossible to identify any single person who should be included in the APSIN database.

The Social Security Administration (SSA) also administers monetary compensation benefits for persons with disabilities. Only those drawing Supplemental Security Income (SSI) have identifying information in the database; however, the database can only be accessed by social security number and there is no way to differentiate between those with physical disabilities and those with mental disabilities without a manual search of the files. Currently federal privacy laws restrict access to information on individuals contained in this database unless the individual gives written consent. Court orders are scrutinized to insure that information is released only for a valid reason and even then may require the individual's written consent.

The Anchorage School District Special Education Department keeps records on children for five years after they leave school regardless of age of matriculation, but because of the Family Educational Rights Privacy Act (20 U.S.C.A. 1232(g)), the office is not able to release any information on a student or former student without written permission from the parent, guardian or the individual himself (if over the age of 18). The Family Educational Rights Privacy Act reads in part:

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following ~~

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, or (iii) State educational authorities under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted~~

...

(I) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if~~

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under state law without the prior written consent of the parent of the student.

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such is necessary to protect the health or safety of the student or other persons; and

(J) (i) the entity of persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless~~

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1) (J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

Private agencies such as Charter North Hospital and Providence Alaska Medical Center would not be included as they are not a "lawful authority" as defined by the Bureau of Alcohol, Tobacco and Firearms. In Addition, they do not maintain any type of database on clients other than those currently being served and/or billed, and because of state privacy laws would be unable to release any information on an individual without a court order.

Discussion

Many agencies within the state, both public and private, assist people with mental disabilities, but currently no central repository for information on those persons who have been found to be developmentally disabled exists. Unless a person has applied for monetary compensation or physical assistance, no way exists to determine who has been found to be developmentally disabled. In

order to obtain this information, either a manual check of all files within an agency would have to be done or a central repository would have to be set up and laws would have to be initiated requiring all persons with developmental disabilities to be registered with the repository agency, whether or not they require assistance. This would best be done at the federal level requiring compliance by all states. Also, statutory changes would have to be made to both state and federal privacy laws to allow any access of information. However, two problems would still remain even if privacy laws were amended. The first would be of a technical nature.

If a central repository was set up through the Department of Health and Social Services (the most logical flagging point) their computer system would have to be modified so that it would be possible for their system to interface with the APSIN system or additional permanent manpower would be required to initiate and maintain a manual search of files. Either way this would be a costly procedure and may require the purchase of a brand new computer system or the hiring of additional personnel. Secondly, the requirement for all developmentally disabled to register with the state, which may infringe on their constitutional rights, would undoubtedly create considerable litigation. Considering the small number of individuals this bill intends to capture, the cost of identification, computerization and potential litigation could be prohibitive.

Involuntary Mental Commitments

Involuntary mental commitment is a process through which a person can be confined in a mental institution or hospital for treatment against his or her will. In order for this process to occur the person has to be believed to pose a substantial risk of physically harming himself or others or be found to be unable to take care of his own basic needs. The handbook from the Alaska Court System states the following criteria:

The person must be mentally ill and, as a result of his mental illness, he must be GRAVELY DISABLED OR PRESENT A LIKELIHOOD OF SERIOUS HARM TO HIMSELF OR OTHERS.

Gravely disabled means that the person cannot take care of his own basic needs, like food and shelter, and this inability puts him in danger of serious harm. A person is also considered gravely disabled if he will suffer severe and abnormal mental, emotional or physical distress if not treated, and this distress is associated with significant impairment of judgement, reason or behavior causing him/her to be able to function much less independently.

Under this law, a person presents a likelihood of causing serious harm if: (1) he poses a substantial risk of physically harming himself as shown by his behavior causing, attempting to threatening harm to himself OR (2) he poses a substantial risk of harm to others shown by recent behavior and is likely in the near future to physically hurt someone else or cause substantial property damage, OR (3) he shows a current intent to carry out plans of serious harm to himself. (Alaska Court System 1989, p. 2; emphases in original. A complete copy of this pamphlet is contained in Appendix A.)

There are three ways to achieve a court-ordered confinement: an ex parte order, a police officer application (POA) or a criminal confinement. The first two are civil commitments and require a

hearing before a judge or court official. In Anchorage, Alaska's largest city, all civil commitments are handled by the Probate Division, with hearings conducted by a court master and given to a Superior Court judge for signature. In other areas of the state, the hearings are held before a Superior Court judge. (Appendix B contains copies of forms used by the courts for the commitment process.)

The Process of Commitment: Getting to Court

The two civil commitments are used in different circumstances. The first, an ex parte order, is used when no emergency situation exists. Any adult who believes that an individual is mentally ill, gravely disabled, and cannot function normally can petition the Superior Court to order a screening investigation for that individual. If the court finds that the petition lists appropriate grounds for an examination the Superior Court Judge will order that the individual be temporally confined for a screening investigation. The screening investigation takes up to 48 hours. A hearing is scheduled within 72 hours of the original confinement to determine whether the respondent should continue to be institutionalized or be released.

A police officer application (POA) is used under emergency circumstances. A police officer or other public health official can place a person in custody and take the individual to the nearest hospital or treatment facility if the official has good reason to believe that a person is gravely disabled and a threat to his or her own safety or the safety of others. An evaluation must take place within 24 hours and a hearing convened to determine if the person should remain in the hospital or be released.

The third court-ordered confinement is a criminal commitment. When someone is found guilty but mentally ill, the inmate is taken directly to the hospital for treatment. These types of incidents are already noted in APSIN because of the criminal conviction and therefore would show up during a Brady check.

Time Frames

A screening investigation for an ex parte order cannot take longer than 48 hours, and an evaluation for a police officer application cannot take longer than 24 hours. In either case, a hearing before the court must take place within 72 hours after the initial confinement. If the court decides that it is in the best interest of the person to be institutionalized, it will order a 30-day commitment. If at the end of 30 days, the person's condition has not improved to the point of warranting release, another hearing is scheduled and a new order can be entered for up to 90 days confinement. Again, at the end of 90 days, if the person has not shown significant improvement, another hearing is ordered and a commitment will be ordered for up to 180 days. All hearings after that are held every 180 days.

Participants

Many people are required to take part in the hearing process. Depending upon the area of the state, participants differ. In Anchorage, the Probate Division of the court system handles all involuntary mental commitments. Though a Superior Court Judge is required to sign a commitment order, the hearings in Anchorage are presided over by a court master who in turn will present findings to a Superior Court judge for his signature. In all other areas of the state it appears that a Superior Court judge presides over the hearings, as defined by Alaska Statutes 47.30.915.

Present at all hearings are the court paralegal, the respondent, the respondent's attorney (usually an attorney from the Public Defender's Office), the petitioner, and any witnesses. In the case of a police officer application (POA) instead of the petitioner, the police officer or public health official making the original application is present.

Available Institutions

No listing specifying which facilities within the state are currently under contract to provide for involuntary mental commitments appears to exist. The "Mental Health Commitment" handbook given out by the Probate Division states that Alaska Psychiatric Institute (API), Fairbanks Memorial Hospital, and Mt Edgecumbe Hospital in Sitka are allowed to accept involuntary mental commitments. The Anchorage office of the Division of Mental Health and Developmental Disabilities (MHDD) in the Department of Health and Social Services states that API, Providence Medical Center, and Charter North Hospital all accept involuntary mental commitments. The regional director's office of MHDD states that only API can accept them. API states that only API and Mt. Edgecumbe can accept involuntary mental commitments. Mt. Edgecumbe Hospital personnel state that they do accept involuntary mental commitments for a limited time period (up to 90 days), but after that the person is sent to API. The actual hospitals used vary depending upon the contracts signed each year. One year a hospital may elect to take an involuntary mental commitment but the next, due to rising costs, they may elect to discontinue the practice. API is the only hospital required by statute to take involuntary mental commitments. Other than API, each institution's willingness to take involuntary mental commitments appears to be solely an artifact of budgetary constraints. Consequently, tracking the institutions accepting commitments would have to be researched on a yearly basis and would cause problems with maintaining an accurate database because the system could not be automated and each individual commitment would have to be manually researched and input into the APSIN system on a continuing basis.

Court Records

Because no central database exists listing involuntary mental commitments, tracking for the Brady legislation will have to be done through the courts. Since statute requires that a Superior

Court judge sign all commitments, court records would be the logical place to obtain the information. Again, a major problem would be getting the two computer systems to interface with each other. Currently neither system is capable of interfacing with the other so a major overhaul of one or both of the systems would be necessary or permanent manpower would have to be hired to gather the information from the court and input it in the APSIN system.

The Anchorage Superior Court, Probate Division would have the most information on involuntary commitments since they handle the majority of cases within the state. A computerized database of all cases exists, and flagging the commitments would take only adding another field to their database for inclusion in APSIN. However, other courts in the state may not have a computerized database that can be used to flag information for Brady checks; hence, a hand check of all court records would be required unless additional funds were expended to bring all court systems across the state on line with the APSIN system. This may cause not only logistical problems as mentioned but security problems as well. Decisions would have to be made regarding who would have access and for what purposes. The information about involuntary commitments should only be available to those in the Department of Public Safety responsible for completing the handgun check. Therefore, a system would have to be designed that allows this potentially damaging information to be accessed only by specific persons within the state law enforcement network.

Another problem for acquiring data on who can be included in this category is that the involuntary status of a commitment can be changed at any time. Alaska Statute 47.30.803 allows conversion from involuntary to voluntary status. After the initial screening, the respondent can change the status of his commitment from involuntary to voluntary as long as a responsible physician agrees that the individual is an appropriate patient for voluntary commitment. Even after the respondent has been released from the institution, he can petition the court to expunge the records of the proceedings. Alaska Statute 47.30.850 states:

Following the discharge of the respondent from a treatment facility or the issuance of a court order denying a petition for commitment, the respondent may at any time move to have all court records pertaining to the proceedings expunged on condition that the respondent file a full release of all claims of whatever nature arising out of the proceedings and the statement and actions of persons and facilities in connection with the proceedings. Upon the filing of the motion and full release, the court shall order the court records either expunged or sealed, whichever the court considers appropriate under the circumstances.

Both of these statutes would complicate establishing thorough databases on involuntary commitments. The statutory provision would have to be changed to allow for status change only in special circumstances or be removed completely, and expunging or sealing the records after release would have to be limited to special circumstances. Such changes would require legislative action.

Discussion

People outside of the law enforcement community tend to overrate the accuracy, extent, and reliability of criminal records, assuming that they are much more sophisticated than they really are. Consequently, problem-solving remedies are frequently based on the spurious perception of law enforcement's ability to capture, process and retain criminal history information. Capturing information and making it accessible to criminal history records for the purpose of a very limited classification of individuals is most problematic.

At this time there is no clear or cost-effective way to create and maintain a database for either of the two categories -- adjudicated mental defectives and involuntary mental commitments -- with any accuracy. Records are not kept on mentally ill individuals, and even if they were, because of the right to privacy, access would be denied. This would preclude even a manual check of the files of social service agencies. Involuntary mental commitments, on the other hand, are handled through the court system so records are available, but current statutory provisions allowing changes in status or the expungement or sealing of records preclude maintaining the accuracy needed for a Brady handgun check. As a stop-gap measure to insure accuracy of the information added to the system personnel could be hired to gather, verify and input information from the Probate Court records in Anchorage and in the various Superior Courts across the state. This would involve checking the system monthly not only to pick up additional cases for input into the APSIN system but also to check for changes in status for those who have already been added.

In the long run major issues need to be addressed at both the state and federal levels to provide limited access to this sensitive information. The first of these issues involves the right to privacy, which is protected by both state and federal privacy laws. Numerous federal statutory provisions limit access to an individual's records. The limitations for access to a mentally ill person's records is contained in federal code 42 U.S.C.A. 9501(H), which states the mentally ill have "the right to confidentiality of such person's records." In fact, the federal government limits access to individual information that is not of a criminal nature to even law enforcement agencies without a court order. Major statutory revisions to numerous privacy laws would have to be made at the federal level for such access to be allowed.

Additionally, the Alaska Constitution (Art. I, §22) guarantees Alaskans' personal privacy, further limiting access to an individual's information. To change this provision would require a two-thirds vote in each house of the state legislature and a simple majority vote in the general election.

Alaska Statute also limits access to information about individuals except for very specific purposes. Alaska Statute 47.30.845 states:

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 given written consent to have information disclosed;
- (3) a person authorized by a court order;
- (4) a person doing research or maintaining health statistics, if the anonymity of the patient is assured, and the facility recognizes the project as a bona fide research or statistical undertaking;
- (5) the Department of Corrections in a case in which a prisoner confined to the state prison is a patient in the state hospital on authorized transfer either by voluntary admission or by court order;
- (6) a governmental or law enforcement agency when necessary to secure the return of a patient who is on unauthorized absence from a facility where the patient was undergoing evaluation or treatment;
- (7) a law enforcement agency when there is substantiated concern over *imminent* danger to the community by a presumed mentally ill person. (Emphasis added)

Also, technical problems exist with the creation of a central database for “mental defectives” or the automation of records from the state courts. Currently the various computer systems across the state are unable to “talk” to each other and major overhauls of the systems would be required to correct this problem. Until this can be accomplished the state would have to rely on a manual check of all files containing the required information. This is a lengthy and costly procedure and because of the time involved in researching and inputting the information it would mean a delay in the completeness of the records for certain individuals. Given the time limit mandated by federal law for a handgun check, this could create difficulties in assuring the accuracy of records.

To overcome the above difficulties will require extensive federal leadership and coordination amongst the various and diverse state agencies. In Alaska we would recommend that a database listing those persons found to be mentally defective be established and maintained by the Department of Health and Social Services. The data identifying these individuals are obviously very sensitive and should be statutorily protected. The maintenance and control of a database by one central agency such as DHSS which is acutely aware of the sensitivity of these records/needs of these individuals would be the most logical repository. Statutory provisions could be made for limited access for the Department of Public Safety exclusively for the purpose of meeting the mandates of the Brady Bill. These various state databases could also meet a myriad of needs of other concerned local, state, and federal agencies who could also be given statutory access for their limited needs, e.g. school districts, medical and psychological providers, Social Security Administration, and Aid to Families with Dependent Children (AFDC). With sufficient protection this database would not have to be an intrusive element but rather one that in the long run would benefit those individuals that it identifies.

References

- Alaska Court System. 1989. *Mental Health Commitments (Civil Commitments): Answers to Some Common Questions*. PUB-6 STWD (2.89) MHC. Anchorage: Administrative Office of the Alaska Court System. February.
- Definitions for the Categories of Persons Prohibited from Receiving Firearms, 62 Red. Reg. 34,634 (1997) (to be codified at 27 C.F.R. § 178.11).

Appendix A

Mental Health Commitments (Civil Commitments) Answers to Some Common Questions

Administrative Office of the Alaska Court System
Revised February 1989

Mental Health Commitments (Civil Commitments): Answers to Some Common Questions

Administrative Office of the Alaska Court System.
Revised February 1989
PUB-6 STWD (2/89) MHC

Note: This appendix contains the complete text of the original pamphlet; the original's pagination is indicated by italicized page numbers in brackets at the start of each page's text.

[page 1]

WHAT IS A CIVIL COMMITMENT?

A civil commitment is a procedure by which a mentally ill person is placed in a hospital or other type of health care center for treatment of his or her mental illness.

WHAT IF A MENTALLY ILL PERSON DOESN'T WANT TREATMENT?

There are two types of commitments: voluntary and involuntary.

A mentally ill person may voluntarily admit himself to a treatment facility by signing papers agreeing that he wants to be admitted. A person who has voluntarily committed himself can request to be released at any time. The person must be released or involuntary proceedings must be started within 48 hours after receipt of the patient's request.

(At this point in time, Alaska Psychiatric Institute in Anchorage, Fairbanks Memorial Hospital, and Mt. Edgecumbe Hospital in Sitka are the only treatment facilities in Alaska designated by the Department of Health and Social Services to receive persons seeking to formally commit themselves on a voluntary commitment. However, a number of other hospitals will also admit persons who seek to enter the hospitals because they are mentally ill.)

If a mentally ill person does not want to get treatment, or if he is so ill that it is impossible to determine what he wants, the superior court can commit him for treatment against his will under certain special circumstances which are described in the Alaska Statutes.

A person who has been involuntarily committed can convert to voluntary status at any time if his doctor agrees that the person is an appropriate patient for voluntary hospitalization and is acting in good faith.

[page 2]

HOW SICK DOES THE MENTALLY ILL PERSON HAVE TO BE BEFORE HE CAN BE INVOLUNTARILY COMMITTED?

Alaska law is clear on this point. The person must be mentally ill and, as a result of his mental illness, he must be **GRAVELY DISABLED OR PRESENT A LIKELIHOOD OF SERIOUS HARM TO HIMSELF OR OTHERS.**

Gravely disabled means that the person cannot take care of his own basic needs, like food and shelter, and this inability puts him in danger of serious harm. A person is also considered gravely disabled if he will suffer severe

and abnormal mental, emotional or physical distress if not treated, and this distress is associated with significant impairment of judgment, reason or behavior causing him/her to be able to function much less independently.

Under this law, a person presents a likelihood of causing serious harm if: (1) he poses a substantial risk of physically harming himself as shown by his behavior causing, attempting or threatening harm to himself OR (2) he poses a substantial risk of harm to others shown by recent behavior and is likely in the near future to physically hurt someone else or cause substantial property damage, OR (3) he shows a current intent to carry out plans of serious harm to himself.

WHO MAKES THE DECISION ABOUT WHETHER OR NOT SOMEONE SHOULD BE INVOLUNTARILY COMMITTED?

A superior court judge will decide whether or not a mentally ill person will be involuntarily committed after the judge hears the facts of the case and the opinions of mental health professionals (for example, psychiatrists) who have examined the mentally ill person.

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HOW DOES THE INVOLUNTARY COMMITMENT PROCEDURE START?

The procedure usually starts in one of two ways.

1. Any adult can file a petition with the superior court (not a district court judge or magistrate).

A petition is a legal document which says:

- a. That the petitioner (the person who makes out the petition) believes the mentally ill person (called the respondent) is likely to seriously harm himself or others or is gravely disabled as a result of mental illness.
- b. the facts which support the petitioner's belief, and
- c. the names and addresses of all persons known to the petitioner who have knowledge of the facts through personal observation.

When a superior court judge receives a petition, he or she immediately takes steps to direct a mental health professional to do a screening investigation of the mentally ill person. Depending on the results of that investigation, either the mentally ill person will be hospitalized and a court hearing will then be scheduled, or no further action will be taken.

2. If a peace officer (for example, a state trooper or a policeman) has a good reason to believe **THAT A PERSON IS GRAVELY DISABLED OR IS SUFFERING FROM MENTAL ILLNESS AND IS LIKELY TO CAUSE SERIOUS HARM TO HIMSELF OR OTHERS OF SUCH IMMEDIATE NATURE THAT CONSIDERATIONS OF SAFETY DO NOT ALLOW FOR A PETITION TO BE FILED AND SCREENED AS DESCRIBED ABOVE**, the peace officer can take immediate action. The peace officer can take the mentally ill person into custody and deliver him to the nearest hospital or other appropriate facility which can evaluate the person.

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(Government health officers and public health nurses are considered peace officers under this law, also.)

When the peace officer delivers the person to the evaluation facility, the peace officer fills out a request that the person be examined by a mental health professional. The person is admitted to the facility and held while an investigation is conducted. The investigation must take place within 24 hours after the person's arrival. Depending on the results of that investigation, the mentally ill person may be hospitalized and a court hearing will then be scheduled.

WHAT CAN I DO IF I KNOW SOMEONE WHOM I THINK IS MENTALLY ILL AND NEEDS HELP? WHOM SHOULD I CONTACT?

You can get information about how you can help a mentally ill person by contacting your community mental health center or your regional CMHC coordinator. A list of these agencies is provided at the back of this pamphlet.

If the situation is an emergency (for example, if you think the person is going to hurt himself or others if some immediate action isn't taken), contact a peace officer. As described above, a peace officer can take immediate custody of the mentally ill person.

If the situation is not an emergency, you or any other adult can write up and sign a petition about the mentally ill person and give it to a superior court. There is no filing fee or other charge for doing this. Each superior court in the State has petition forms you can fill out and sign. The addresses of all superior courts are listed on the back of this pamphlet. (The contents of the petition were described above.)

This petition cannot be handled by a district court. It can only be handled by a superior court. IF YOU LIVE IN A COMMUNITY IN WHICH A MAGISTRATE IS THE ONLY JUDGE, THE MAGISTRATE CANNOT HANDLE THIS CASE FOR YOU.

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A person who files a petition in good faith upon either actual knowledge or reliable information cannot be found civilly or criminally liable as a result of filing the petition.

However, a person who willfully begins an involuntary commitment procedure by filing a petition with the superior court without good cause to believe 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.

IF A PERSON IS COMMITTED, WHERE DOES HE GO?

At this point in time, Alaska Psychiatric Institute in Anchorage, Fairbanks Memorial Hospital, and Mt. Edgecumbe Hospital in Sitka are the only treatment facilities in Alaska at which committed persons are placed for treatment on an inpatient basis.

WHO PROTECTS THE COMMITTED PERSON'S RIGHTS AND MAKES SURE THAT THE PERSON IS TREATED FAIRLY?

From the time any action is taken against a mentally ill person, that person is entitled to legal protection and help. The person has definite legal rights which will be protected.

The person has the right to be notified, orally and in writing, of the commitment proceedings and his rights. These explanations must be given in a language the person understands. The person has the right to communicate with his guardian or another adult of his choice. He will be represented by a lawyer, and he is entitled to a free lawyer if he and his family cannot pay to hire a lawyer. He will be able to attend court hearings about his case, and he can present evidence and cross-examine witnesses. He has a right to have a court hearing within 72 hours (excluding weekends and holidays) after he arrives at a treatment facility for evaluation, and he has the right to have further hearings 30 days later, then 90 days later and then 180 days later if he continues to be committed.

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He has specific rights to receive treatment and to refuse specific types of treatment which are listed in the Alaska Statutes, and his freedom can only be restricted to the extent necessary for his treatment. He must be released at any time if his condition improves to the point that he is no longer committable. He retains his civil rights, and his care and treatment are kept confidential. He has the right to a nutritional evaluation and the right to receive a medically

appropriate diet while he remains in the treatment facility. He has the right to be free of corporal punishment, the right to exercise and recreation and the right to be in contact with a lawyer.

After his release, he can request that all records of his commitment proceedings be expunged (erased).

There is a non-profit mental health advocacy agency which responds to complaints of abuse, neglect and other rights violations from individuals in mental health facilities such as API. Advocacy Services of Alaska has offices in Anchorage, Fairbanks and Juneau (see page 13 for addresses and phone numbers).

HOW LONG IS A CIVIL COMMITMENT FOR?

That depends. A committed person must always be released as soon as his condition improves to the point that he could no longer be committed under the standards of the law.

If the person was taken to a treatment facility by a peace officer, the first court hearing must be held within 72 hours (excluding weekends and holidays) of when the mentally ill person arrives at a treatment facility for evaluation. If the superior court judge finds that the person should be committed, a 30 day commitment order is made. At the end of 30 days, if the person's condition has not improved, another hearing is held and the person may be committed for up to 90 days more. Likewise, at the end of 90 days, another hearing may be held and a commitment order of up to 180 more days may be made. After that, hearings are held and orders are made every 180 days.

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A voluntary commitment can last as long as the person continues to be mentally ill and continues to consent to a voluntary commitment.

CAN A CHILD BE CIVILLY COMMITTED?

Yes, but the procedures are slightly different. The child's parents or guardians are involved in the procedures.

CAN A PERSON APPEAL FROM A JUDGE'S DECISION ORDERING A CIVIL COMMITMENT OF THAT PERSON?

Yes, the person can appeal from any court order of involuntary commitment, and the judge must tell him about his right to appeal.

WHO PAYS FOR ALL OF THIS?

To the extent that they are able, a person who is committed, or his legal guardian, or his spouse, or his parents if the person is under 18 years of age, must pay for the care, transportation and treatment of the person. If no one else can pay the expenses, the State of Alaska will pay.

When the commitment process is started, the Department of Health and Social Services is required to arrange and pay for the transportation of the person to a treatment facility. The department also pays for appropriate persons to go with the mentally ill person, and for return transportation for these people. When advisable, one or more relatives or friends shall be permitted to go with the mentally ill person. The department may pay necessary travel, housing and meal expenses for one relative or friend to go with the person, if the department finds that the person's best interests require that he travel with the relative or friend and the relative or friend doesn't have enough money to pay his own expenses. For more information about this possibility, contact your community mental health center or your regional CMHC coordinator.

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COMMUNITY MENTAL HEALTH PROGRAMS

REGION I PROGRAMS

Community Mental Health Center Coordinator
Department of Health and Social Services
Division of Mental Health and DD
350 Main Street
P. O. Box H-04
Juneau, Alaska 99811-0620
(907) 465-3370

Juneau Regional Mental Health Clinic
210 Admiral Way
Juneau, AK 99801
Ivan H. Frasier, MA, Director (907) 586-5280

Lynn Canal Mental Health Program
P. O. Box 117
Haines, AK 99827
William Stacy, MSW (907) 766-2177

Baranof Mental Health Clinic
Box 1180
Sitka, AK 99835
Stanley Laughridge, Ph.D., Director (907) 747-8994

COHO Mental Health Services
P. O. Box 8
Craig, AK 99921
Dick Puckett, Director

Cordova Community Hospital
Mental Health Program
Box 160
Cordova, AK 99574
John P. Crowley, Ph.D. (907) 424-8300

Gateway Community M.H. Center
3134 Tongass Avenue
Ketchikan, AK 99901
Ann Graham (907) 225-4135

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REGION II PROGRAMS

Ken Taylor, ACSW, Community Mental Health Center Coordinator
Department of Health and Social Services
Division of Mental Health and Developmental Disabilities
3601 "C" Street, Suite 580
P. O. Box 240249
Anchorage, AK 99519-0249
(907) 561-4247

Southcentral Counseling Center
 4020 Folker Street
 Anchorage, AK 99508
 Glade Birch, Executive Director (907) 563-1000

Mat-Su Community Counseling Center
 230 E. Paulson
 Wasilla, AK 99687
 Bob Irvine, Director (907) 376-2411

Central Peninsula Mental Health Center
 11355 Kenai Spur Hwy., Suite 228
 Kenai, AK 99611
 Kathy Dinius, Ph.D., Ex. Director (907) 283-7501

South Peninsula Mental Health Center
 3948 Ben Walters Lane
 Home [*sic*], AK 99603
 Malgosia Cegielski, Ph.D., Director (907) 235-7701

Seward Mental Health Program
 Box 1045
 Seward, AK 99664
 Dennis Scholl, Ph.D., Director (907) 224-3027

Aleutian Counseling Center
 Box 485
 Dutch Harbor, AK 99692
 Charles Gasta, Ph.D., Director (907) 581-1761

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REGION II PROGRAMS - continued

Bristol Bay Mental Health Center
 P. O. Box 130
 Dillingham, AK 99576
 Cecilie Martin, MA, Director (907) 842-1230

Kodiak Island Mental Health Center
 316 Mission Rd., #119
 Kodiak, AK 99615
 Pamela Delys-Baglien, Ph.D., Director (907) 486-5742

Valdez Counseling Center
 Box 1050
 Valdez, AK 99686
 Robert Donald, MA, Director (907) 835-2838

Copper River Mental Health Center
 Drawer "H"
 Copper Center, AK 99573
 Clara (Billie) Lewis, Health Director (907) 822-5241

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REGION III PROGRAMS

Norma Forbes, Ph.D., Community Mental Health Center Coordinator
Department of Health and Social Services
Division of Mental Health & Development Disabilities
Regional Office Building
675 7th Avenue
Station A
Fairbanks, AK 99701
(907) 451-2855

Fairbanks Community Health Center
1305 21st Avenue
Fairbanks, AK 99701
Wes Terwilliger, MA, Ex. Director (907) 452-1575

Tok Area Mental Health Program
P. O. Box 398
Tok, AK 99780
Irene Orr, MSW, Director (907) 883-5106

North Slope Borough M.H. Program
Box 669
Barrow, AK 99723 (907) 852-5600

McGrath-Anvik Community and Family Services
Box 44
McGrath, AK 99627 (907) 524-3867

Yukon-Koyukuk Mental Health Center
Box 17
Galena, AK 99741
Moira Kirkpatrick, Ph.D., Director (907) 656-1617

KNA Community Counseling Program
Box 155
Aniak, AK 99557
John Bajowski, Director (907) 675-4445

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REGION III PROGRAMS - continued

Yukon-Kuskokwim Health Corporation
Box 528
Bethel, AK 99559
Margaret Berendes, M.D., Director (907) 543-3321

Maniilaq Mental Health Center
Box 256
Kotzebue, AK 99752
Elizabeth Leo, MSS, ACSW, Director (907) 442-3311

Norton Sound Family Services
Box 966
Nome, AK 99762
Sharon Walluk, MSW, Director (907) 443-5206

Fort Yukon Behavioral Health Center
Box 21
Fort Yukon, AK 99740
Ann R. Davis, MSW, Director (907) 662-2526

Yukon-Tanana Mental Health Program
Box 49
Tanana, AK 99777
Vicki Koehler, ACSW, Director (907) 366-7269

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ADVOCACY SERVICES OF ALASKA (“ASK”)

ANCHORAGE: 325 E. Third Avenue, Suite 400
Anchorage, Alaska 99501
274-3658; Toll Free: 800-478-1234

FAIRBANKS: 250 Cushman, Suite 3H
Fairbanks, Alaska 99701
456-1070

JUNEAU: 230 South Franklin, Suite 213
Juneau, Alaska 99801
586-1627

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SUPERIOR COURT LOCATIONS

ANCHORAGE: 303 K Street, Anchorage AK 99501-2083
264-0440

BARROW: Box 2700, Barrow AK 99723-2700
852-4800

BETHEL: Box 130, Bethel AK 99559-0130
543-2196

FAIRBANKS: 604 Barnette Street, Room 228
Fairbanks AK 99702-4571
452-9256

JUNEAU: P. O. Box U, Juneau AK 99811-4100
463-4700

KENAI: 145 Main Street Loop, Room 106-Main Floor
Kenai AK 99611
283-3110

KETCHIKAN: 415 Main Street, Room 400,
Ketchikan AK 99901-6399, 225-3195

KODIAK: 202 Marine Way, Kodiak AK 99615-1367
486-5765

KOTZEBUE: Box 317, Kotzebue AK 99752-0317
442-3208

NOME: Box 100, Nome AK 99762-0100, 443-5216

PALMER: 435 S. Denali, Palmer AK 99645-0860
745-4283

PETERSBURG: Box 1009, Petersburg AK 99833-1009
772-4466/4468

SITKA: 304 Lake Street, Rm. 203, Sitka AK 99835
747-3291

VALDEZ: Box 127, Valdez AK 99686-0127, 835-2266

WRANGELL: Box 869, Wrangell AK 99929-0869, 874-2311

DISTRICT COURT LOCATION WHICH WILL ACCEPT
CIVIL COMMITMENT PETITIONS

HOMER: 3670 Lake Street, Homer AK 99603, 235-8171

Appendix B

Forms Used in the Alaska Court System During the Involuntary Mental Commitment Process

Ex Parte Order (Temporary Custody for Emergency Examination/Treatment), MC-305
Peace Officer/Mental Health Professional Application for Examination, MC-105
 Order for Screening Investigation
 Order of Dismissal of Petition for Commitment, MC-325
 Petition for Initiation of Involuntary Commitment, MC-100
Notice of Respondent's Arrival at Evaluation Facility, MC-400
 Notice of Rights Upon Detention for Evaluation, MC-405
 Notice of 30-Day Commitment Hearing, MC-200
 Petition for 30-Day Commitment, MC-110
 Order for 30-Day Commitment, MC-310
 Notice of 90-Day Commitment Hearing, MC-205
 Petition for 90-Day Commitment, MC-115
 Order for 90-Day Commitment, MC-315
 Notice of 180-Day Commitment Hearing, MC-210
 Petition for 180-Day Commitment, MC-120
 Order for 180-Day Commitment, MC-320
 Notice of Release, MC-410