



May 12, 2022

Sen. David Wilson
State Capitol Room 121
Juneau AK, 99801

via e-mail

Re: SB124/HB172

Dear Sen. Wilson:

At the end of today's Senate Finance Committee hearing on SB124 & HB172, I understood you to request I submit in writing any concerns I might have with the current bills. I am pleased to do so.¹

All of the amendments proposed in my [March 7th letter](#) with an improvement suggested by the Department of Health have been incorporated into both versions I believe. These address statutory provisions that have been ruled unconstitutional by the Alaska Supreme Court. I drafted these in a way that I didn't feel anyone could legitimately object to, and no one did, with both the Department of Health and the Alaska Mental Health Trust Authority supporting them.

In my [March 23rd letter](#), I proposed additional amendments to address inconsistencies with respect to the standard justifying confinement. More specifically, in the proposed legislation and existing statutes the standard for confinement is the person "is suffering from mental illness and is likely to cause serious harm to self or others" in some places, and in other places the word "serious" is omitted.

I won't repeat everything in my [March 23rd letter](#) and follow-up [March 29th, letter](#), but for your convenience I will repeat the essence of the problem with respect to existing statutes. The serious criteria is included in AS 47.30.700, .705, & .710, pertaining evaluations and *ex parte* proceedings, but not in AS 47.30.730(a)(1), & .735(c) pertaining to 30 day commitments. This makes absolutely no sense. Then in the 90 & 180 day commitments of AS 47.30.740 & .770, respectively, to continue the commitments, the petition has to allege the respondent has

attempted to inflict or has inflicted serious bodily harm upon the respondent or another since the respondent's acceptance for evaluation, or that the respondent was committed initially as a result of conduct in which the respondent attempted or inflicted serious bodily harm upon the respondent or another, or that the respondent continues to be gravely disabled, or that the respondent demonstrates a current intent to carry out plans of serious harm to the respondent or another;" (emphasis added).

¹ These comments are addressed to Committee Substitute for Senate Bill No. 124 (JUD), SB0124C, dated May 11, 2022, and Committee Substitute for House Bill No. 172 (FIN), amended May 9, 2022, HB0172e, which passed the House on May 10th as I understand it.

However, AS 47.30.745(b), applicable to both 90 and 180 day commitments, only requires the court to find "harm," not "serious harm." It also makes absolutely no sense to require the petition to allege serious harm, but the judge not to have to find it in order to order someone be confined.

The fix is simple; just **insert "serious" before "harm" in AS 47.30.730(a)(1), .735(c), & .745(b) in both versions of the legislation.**

With respect to the pending legislation, the inconsistency was fixed in SB 124, but not in HB 172. To fix HB 172, I think inserting "serious" after "cause" in the following places will do it:

- Page 5, line 20
- Page 6, line 17
- Page 7, line 18
- Page 8, line 12

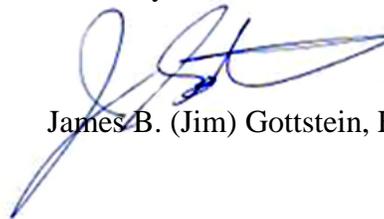
I do not know of any objection to these proposed amendments, whether to the existing statutes, or the provisions of HB 172.

I frankly haven't had a chance to review the current version of either legislation in depth, but I know time is of the essence if this important piece of legislation is to be enacted, so I wanted to get this to you quickly. I do think these corrections are important, but as I stated in my [March 29th letter](#), the legislation should be passed even if these are not made.

I don't expect to find anything else to draw your attention to when I have reviewed both versions more thoroughly, but if I do will let you know as soon as possible.

I will be pleased to answer any questions and work with your staff as desired.

Sincerely,



James B. (Jim) Gottstein, Esq.

cc: Sen. Bert Steadman
Sen. Click Bishop
Sen. Lyman Hoffman
Sen. Natasha von Imhof
Sen. Donald Olson
Sen. Bill Wielechowski
Steve Williams
Heather Carpenter
Mark Regan
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