Psych Rights | Law Project for Psychiatric Rights

March 23, 2022

Senator Roger Holland
Chair, Senate Judiciary
State Capitol Room 121
Juneau AK, 99801

Re: SB124

Dear Sen. Holland:

I have previously written two letters about SB124, and its companion in the House, HB172. In my February 22nd letter, I identified some programmatic and constitutional problems and then in my March 7th letter, I proposed narrow, targeted, amendments with which I didn't think there could be any legitimate objection. This seems to have been successful as the Administration and the Alaska Mental Health Trust Authority support them and it is my understanding the plan, to the extent there can ever be a plan with pending legislation, is they will be included in the final bill.

I am writing now about some obviously needed clean-up to the existing statutes, which should also be addressed in the proposed legislation. The problem is the word "serious" is omitted in some of the statutes allowing people to be confined for being mentally ill. It is correctly drafted in AS 47.30.700(a) as follows: "the respondent is mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to self or others." (emphasis added). AS 47.30.915(12) defines "likely to cause serious harm," but there is no definition of "likely to cause harm," i.e., without the word "serious."

The serious criteria is included in AS 47.30.700, .705, & .710, pertaining evaluations and *ex parté* 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).

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. It is very poor drafting.

This inconsistency makes it very confusing for the judges. For example, in a case I did in in which Assistant Attorney General Steven Bookman was on the other side, Judge Rindner expressed great frustration with this statutory problem.

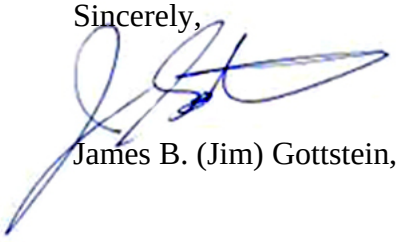
In addition to having the statutes make sense, in order to be constitutional it is obvious there needs to be a serious level of harm to justify locking someone up for being mentally ill. As I outlined in my February 22nd letter, the Alaska Supreme Court ruled the definition of "gravely disabled" unconstitutional in AS 47.30.915(7)(B) to the extent it didn't "require a level of incapacity so substantial that the respondent is incapable of surviving safely in freedom."[1] Conforming the statute to this requirement is one of the amendments I proposed that I understand is to be included in the final bill. There has to be a similar level of harm to self or others to justify locking someone up for being mentally ill. For example, someone couldn't constitutionally be committed for smoking cigarettes even though it is harmful to self (& others).[2]

The fix is simple. Just insert "serious" before "harm" in AS 47.30.730(a)(1), .735(c), & .745(b), and incorporate the same fix into SB124.

As mentioned at the outset, the approach in my March 7th letter, was to only propose amendments for which there could be no legitimate objections. I think what I am saying here is also clearly correct, but I can imagine there might be an objection from the Administration. There also might not.

Thank you for your consideration of this fix to existing statutes and SB124.

Sincerely,



James B. (Jim) Gottstein, Esq.

[1] *Wetherhorn v. Alaska Psychiatric Institute*, 156 P.3d 371, 384 (Alaska 2007).
[2] As an aside the reason why so many psychiatric patients smoke is it relieves side effects of the neuroleptics to a certain extent.