



DISABILITY LAW CENTER

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by scan and e-mail to House.Health.and.Social.Services@akleg.gov

The Honorable Mike Prax
Chair, House Health and Social Services Committee
State Capitol
120 Fourth St., M/S 3100
Juneau, Alaska 99801-1182

Re: HB 80

Dear Chair Prax and Members of the Committee:

Thank you very much for the opportunity to present public testimony on the proposed committee substitute for HB 80. Unfortunately, the proposed committee substitute represents a step backward from the original bill. It adds an unnecessary up-to-five-years civil commitment period for people who have been found incompetent to stand trial on certain kinds of charges and deletes an important and probably constitutionally required limit on the length of competency restoration for people whose dismissed charges are for misdemeanors or low-level felonies. For those reasons, we urge you not to adopt the proposed committee substitute and to mark up the original bill.

Both versions need to be assessed in terms of their pushing more defendants into a competency restoration system that is now quite inadequate to treat the number of people already subject to it.

Disability Law Center of Alaska is the State-designated Protection and Advocacy organization for Alaska. We have litigated over civil commitment procedures for many years, perhaps most notably in the *Disability Law Center v. State ex parte* holds case, and have also represented guilty-but-mentally-ill inmates seeking release.

Competency restoration as a general matter. To begin with the general competency restoration problem. API, which handles most competency restoration, has traditionally limited its services to 10 persons held in one API unit. A 2019 study observed, among other things, that our state needs another 25 slots for competency restoration. (Copy appended.) At present, as was true in 2019, defendants are being held in jail awaiting restoration for many months, often in jail. There are large numbers of people on the API waiting list. The Alaska Court of Appeals decided in 2020 that a defendant who was awaiting competency restoration on a misdemeanor charge, and who had been waiting for this in jail for about 10 months, was being denied substantive due process. *J.K. v State*, 469 P.3d 434 (Alaska App. 2020) (copy appended).

One of the things HB 80 would accomplish, by means of a fiscal note, is spending \$300,000 on updating the 2019 forensic study. That would be a good thing to do if, but only if, the updated study will get us to funding the additional beds and making them available. Substantially increasing the number of people to go through competency restoration needs to happen only after – perhaps as – the system makes it possible to provide them with treatment. It must not happen before the additional capacity is available. Perhaps the bill could delay the effective date of the new competency restoration requirements in order to make them correspond with the additional capacity.

Up to five years' civil commitment (proposed committee substitute). The reason an up-to-five-years civil commitment period is not necessary to protect the public is that the public is well protected by the existing system of repeated 180-day civil commitments – assuming that someone starts the process, which did not happen in the Ahkivgak/Harris case. Singling out people who have been found incompetent and non-restorable and reducing their rights to challenge their extended confinement is not the least restrictive alternative for protecting the public, and so discriminates against incompetent respondents, probably violating the Americans with Disabilities Act and the Alaska Constitution. Another problem with the language the proposed committee substitute borrows from the Senate bill is that the Senate bill does not provide a judge with standards to use for how long someone should be held – 180 days, one year, three years, or five years.

Extended competency restoration (proposed committee substitute). There is also a constitutional problem with keeping people in competency restoration beyond the period they might have had to serve if they had been convicted of the crime charged. That is an especially serious problem when you consider how many more people are being brought into the system after being found incompetent to stand trial for misdemeanors, which by definition do not subject a defendant to a sentence of over one year. HB 80 as introduced addressed this problem and it is disappointing to see that this passage has been deleted from the proposed committee substitute.

For these reasons, Disability Law Center urges you to mark up the original bill and to ensure that more people are not thrown into the competency restoration system before that system has the capacity to treat them.

Sincerely,

s/

Mark Regan
Legal Director