

33-LS0172\Y
Dunmire
3/29/23

CS FOR SENATE BILL NO. 53(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR CLAMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to competency to stand trial; relating to involuntary civil
2 commitments; and relating to victims' rights during certain civil commitment
3 proceedings."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 12.47.070(a) is amended to read:

6 (a) If a defendant has filed a notice of intention to rely on the affirmative
7 defense of insanity under AS 12.47.010 or has filed notice under AS 12.47.020(a), or
8 there is reason to doubt the defendant's fitness to proceed, or there is reason to believe
9 that a mental disease or defect of the defendant will otherwise become an issue in the
10 case, the court shall appoint a qualified psychiatrist or psychologist [AT LEAST
11 TWO QUALIFIED PSYCHIATRISTS OR TWO FORENSIC PSYCHOLOGISTS
12 CERTIFIED BY THE AMERICAN BOARD OF FORENSIC PSYCHOLOGY] to
13 examine and report on [UPON] the mental condition of the defendant. If the court
14 appoints a psychiatrist [PSYCHIATRISTS], the psychiatrist [PSYCHIATRISTS]

may select psychologists to provide assistance. If the defendant has filed notice under AS 12.47.090(a), the report shall consider whether the defendant can still be committed under AS 12.47.090(c). The court may order the defendant to be committed to a secure facility for the purpose of the examination for not more than 60 days or **for a** [SUCH] longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

* **Sec. 2.** AS 12.47.100(b) is amended to read:

(b) If, before imposition of sentence, the prosecuting attorney or the attorney for the defendant has reasonable cause to believe that the defendant is presently suffering from a mental disease or defect that causes the defendant to be unable to understand the proceedings or to assist in the person's own defense, the attorney may file a motion for a judicial determination of the competency of the defendant. Upon that motion, or upon its own motion, the court, **after making findings of fact and conclusions of law that justify an examination,** shall have the defendant examined by at least one qualified psychiatrist or psychologist, who shall report to the court concerning the competency of the defendant. For the purpose of the examination, the court may order the defendant committed for a reasonable period to a suitable hospital or other facility designated by the court. If the report of the psychiatrist or psychologist indicates that the defendant is incompetent, the court shall hold a hearing, upon due notice, at which evidence as to the competency of the defendant may be submitted, including that of the reporting psychiatrist or psychologist, and make appropriate findings. Before the hearing, the court shall, upon request of the prosecuting attorney, order the defendant to submit to an additional evaluation by a psychiatrist or psychologist designated by the prosecuting attorney.

* **Sec. 3.** AS 12.47.100 is amended by adding new subsections to read:

(i) As provided in AS 12.30, the court may release a defendant on bail to be examined under this section at an outpatient clinic or other facility if the court orders participation in the examination as a condition of the defendant's bail. The court may set other conditions of release. Before releasing a defendant on bail under this subsection, the court shall, in addition to any applicable requirement under AS 12.30,

consider

(1) any medical information provided by the Department of Family and Community Services;

(2) the defendant's mental condition;

(3) the defendant's level of need for evaluation and treatment under this chapter;

(4) the defendant's ability to participate in outpatient treatment; and

(5) the defendant's history of evaluation and treatment under this chapter.

(j) If the defendant is charged with a felony offense against a person under AS 11.41 or felony arson, a qualified psychiatrist or psychologist conducting an examination under (b) of this section may, at the same time, evaluate the defendant to determine whether the defendant meets the standards for involuntary commitment under AS 47.30.700 - 47.30.915.

(k) In making findings of fact and conclusions of law under (b) of this section, a court may rely on a defense attorney's representation, including privileged information provided at an ex parte hearing.

* **Sec. 4.** AS 12.47.110(b) is amended to read:

(b) On or before the expiration of the initial 90-day period of commitment, the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If, at the expiration of the second 90-day period, the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice, and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a felony offense against a person under AS 11.41 or felony arson [CRIME INVOLVING FORCE AGAINST A PERSON] and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a

substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional **18** [SIX] months. If the defendant remains incompetent at the expiration of the additional **18-month** [SIX-MONTH] period, the charges shall be dismissed without prejudice, and continued commitment proceedings shall be governed by the provisions relating to civil commitment under AS 47.30.700 - 47.30.915. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is a class A felony or unclassified felony.

* **Sec. 5.** AS 12.47.110 is amended by adding new subsections to read:

(f) As provided in AS 12.30, the court may release a defendant for further evaluation and treatment at an outpatient clinic or other facility under (a) or (b) of this section if the court orders participation in the evaluation and treatment as a condition of the defendant's bail. The court may set other conditions of release. Before releasing a defendant under this subsection, the court shall, in addition to any applicable requirement under AS 12.30, consider

(1) any medical information provided by the Department of Family and Community Services;

(2) the defendant's mental condition;

(3) the defendant's level of need for evaluation and treatment under this chapter;

(4) the defendant's ability to participate in outpatient treatment; and

(5) the defendant's history of evaluation and treatment under this chapter.

(g) If, under (b) of this section, the court finds that a defendant charged with a felony offense against a person under AS 11.41 or felony arson remains incompetent at the expiration of a second 90-day period and the court does not extend the period of commitment for an additional 18 months, or if the court finds that the defendant remains incompetent at the expiration of the additional 18-month period, the prosecutor shall

(1) file a petition seeking involuntary commitment of the defendant under AS 47.30.706 before dismissal of the charges;

(2) notify the division of the Department of Law that has responsibility for civil cases of the petition within 24 hours after filing the petition; and

(3) provide the court's findings to the division of the Department of Law that has responsibility for civil cases within 24 hours after the court's ruling.

* **Sec. 6.** AS 47.30 is amended by adding a new section to read:

Sec. 47.30.706. Commitment after finding of incompetence. (a) If a person who has been charged with a felony offense against a person under AS 11.41 or felony arson has been found incompetent to proceed under AS 12.47, an attorney with the Department of Law shall petition a court to have the person delivered to the nearest evaluation facility for an evaluation under AS 47.30.710.

(b) Upon receiving a petition under (a) of this section, a court shall, unless the presumption in (d) of this section has been successfully rebutted, issue an ex parte order orally or in writing stating that there is probable cause to believe the respondent is mentally ill and that condition causes the respondent to present a likelihood of serious harm to self or others. The court shall appoint an attorney to represent the respondent and may direct that a peace officer take the respondent into custody and deliver the respondent to the nearest appropriate facility for evaluation. The ex parte order shall be provided to the respondent and made a part of the respondent's clinical record. The court shall set a date, time, and place for a 30-day commitment hearing, to be held within 72 hours. The court shall confirm an oral order in writing within 24 hours after it is issued.

(c) A person taken into custody for evaluation under this section may not be placed in a jail or other correctional facility except for protective custody purposes and only while awaiting transportation to an evaluation facility.

(d) A defendant charged with a felony offense against a person under AS 11.41 or felony arson and found to be incompetent to proceed under AS 12.47.100 is rebuttably presumed to be mentally ill and to present a likelihood of serious harm to self or others. In evaluating whether a defendant is likely to cause serious harm, the court may consider as recent behavior the conduct with which the defendant was

originally charged.

(e) After a respondent is committed under this section, the division of the Department of Law that has responsibility for civil cases shall provide records related to evaluation, examination, and treatment of the respondent to the division of the Department of Law that has responsibility for criminal cases.

* **Sec. 7.** AS 47.30.710(a) is amended to read:

(a) A respondent who is delivered under AS 47.30.700 - 47.30.706 [AS 47.30.700 - 47.30.705] to an evaluation facility for [EMERGENCY] examination and treatment shall be examined and evaluated as to mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.

* **Sec. 8.** AS 47.30.725 is amended by adding new subsections to read:

(g) If a criminal charge of a felony offense against a person under AS 11.41 or felony arson against a respondent has been dismissed under AS 12.47.110 and the respondent is detained for evaluation or committed under AS 47.30.700 - 47.30.915, the Department of Law shall notify a victim in the dismissed criminal case

(1) of the time and place of a hearing under AS 47.30.700 - 47.30.915;

(2) of the length of time for which the respondent is committed and findings of fact made by the court; and

(3) when the respondent is discharged from commitment.

(h) Subsection (g) of this section may not be construed to give a victim in a dismissed criminal case access to a record that is confidential under AS 47.30.845.

* **Sec. 9.** AS 47.30 is amended by adding a new section to read:

Sec. 47.30.771. Additional five-year commitment. (a) The respondent shall be released from involuntary treatment at the expiration of 180 days unless the professional person in charge or the attorney general's office files an additional 180-day petition or a petition for a commitment of up to five years conforming to the requirements of AS 47.30.740(a) except that all references to "30-day commitment" shall be read as "the previous 180-day commitment" and all references to "90-day commitment" shall be read as "five-year commitment."

(b) The procedures for service of the petition, notification of rights, and

judicial hearing shall be as set out in AS 47.30.740 - 47.30.750. Following a 180-day commitment of a respondent, the court may order the respondent committed for an additional treatment period not to exceed five years from the date on which the 180-day treatment period would have expired if the court or jury finds by clear and convincing evidence that

(1) the respondent is mentally ill and as a result is likely to cause serious harm to self or others;

(2) the respondent has a criminal history that includes a felony offense against a person under AS 11.41 or felony arson, including an offense for which the respondent was found incompetent to stand trial under AS 12.47.100 and 12.47.110;

(3) the respondent has been found incompetent to stand trial under AS 12.47.100 and 12.47.110 for a felony offense against a person under AS 11.41 or felony arson; and

(4) commitment of the respondent for greater than 180 days but not greater than five years is necessary to protect the public.

(c) Findings of fact relating to the respondent's behavior made at a 30-day commitment hearing under AS 47.30.735, a 90-day commitment hearing under AS 47.30.750, or a 180-day commitment hearing under AS 47.30.770 shall be admitted as evidence and may not be rebutted except that newly discovered evidence may be used for the purpose of rebutting the findings.

(d) Successive five-year commitments are permissible on the same ground and under the same procedures as the original five-year commitment. An order of commitment may not exceed five years.

(e) The department shall, by January 30 of each year, submit to the attorney general, public defender, public advocate, Alaska Court System, and the attorney of record for the respondent, if any, a report that details how many respondents are committed under this section and how much time remains on each order of commitment.

* **Sec. 10.** AS 47.30.780(a) is amended to read:

(a) Except as provided in (b) and (c) of this section, the professional person in charge shall at any time discharge a respondent on the ground that the respondent is no

longer gravely disabled or likely to cause serious harm as a result of mental illness. A certificate to this effect shall be sent to the court, which shall enter an order officially terminating the involuntary commitment.

* **Sec. 11.** AS 47.30.780 is amended by adding new subsections to read:

(c) If a respondent committed under AS 47.30.770 or 47.30.771 has a criminal history that includes a felony offense against a person under AS 11.41 or felony arson, including an offense for which the respondent was found incompetent to stand trial under AS 12.47.100 and 12.47.110, the professional person in charge may not discharge the respondent under (a) of this section unless the court enters an order officially terminating the involuntary commitment after a hearing. The respondent, the professional person in charge, the prosecuting authority, and the respondent's attorney, if applicable, shall appear at the hearing. If the prosecuting authority opposes discharge, the court shall treat the matter as a petition for early discharge under (d) of this section, notwithstanding a limitation imposed by (e) of this section.

(d) Except as provided in (e) of this section, a respondent committed under AS 47.30.771 may petition the court for early discharge at any time during the commitment. The court shall grant early discharge if the court finds by clear and convincing evidence that, based on the respondent's ongoing medication or other treatment, there is a factual and medical basis to believe the respondent is no longer likely to cause serious harm to self or others.

(e) A respondent may not file a petition for early discharge within one year after the date the court enters an initial commitment order or a final order ruling on a previous petition for early discharge.

* **Sec. 12.** AS 47.30.805(a) is amended to read:

(a) Except as provided in (b) of this section,

(1) computations of a 72-hour [EVALUATION] period under AS 47.30.706, 47.30.708, [AS 47.30.708] or 47.30.715 or a 48-hour [DETENTION] period under AS 47.30.685 do not include Saturdays, Sundays, legal holidays, or any period of time necessary to transport the respondent to the treatment facility, except that if the exclusion of Saturdays, Sundays, and legal holidays from the computation of a 72-hour evaluation period or 48-hour detention period would result in the

respondent being held for longer than 72 hours or 48 hours, as applicable, the period ends at 5:00 p.m. on the next day that is not a Saturday, Sunday, or legal holiday;

(2) a seven-day detention at a crisis residential center expires at the end of the seventh day following the respondent's arrival at the crisis stabilization center or the crisis residential center, whichever is earlier;

(3) a 30-day commitment period expires at the end of the 30th day after the 72 hours following initial acceptance;

(4) a 90-day commitment period expires at the end of the 90th day after the expiration of a 30-day period of treatment;

(5) a 180-day commitment period expires at the end of the 180th day, after the expiration of a 90-day period of treatment or previous 180-day period, whichever is applicable;

(6) a five-year commitment period expires not later than five years after the expiration of a 180-day period of treatment.