



Alaska State Legislature

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Senate Bill 53

Sectional Analysis — Version P

Section 1

AS 12.47.070. Psychiatric examination

Amends subsection (a) to reduce the number of qualified psychiatrists or psychologists from two to one for evaluation under the affirmative defense of insanity. Removes the requirement that the psychologist is certified by the American Board of Forensic Psychology.

Section 2

AS 12.47.100. Incompetency to proceed

Amends subsection (b) by adding the requirement that the court make findings of fact and conclusions of law that justify an examination when having the defendant examined for competency.

Section 3

AS 12.47.100. Incompetency to proceed

Adds a new subsection (i), which states that the court may order a defendant on bail to be examined at an outpatient clinic or other facility under AS 12.30. This section includes requirements that the court shall consider, in addition to applicable requirements under AS 12.30, for the conditions of a defendant's release under this section: (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.

Adds a new subsection (j) which states that when a qualified psychiatrist or psychologist is conducting an examination for competency under (b) of this section, they may, at the same time, evaluate the defendant to determine whether the defendant meets the standards for involuntary commitment.

Adds a new subsection (k) which states that a court may rely on a defense attorney's representation, including privileged information provided at an ex parte hearing, in making its findings of fact and conclusions of law when having the defendant examined for competency.

Section 4

AS 12.47.110. Commitment on finding of incompetency

Amends subsection (b) to increase the maximum total time for competency restoration hold from one year to two years when the defendant is charged with a felony offense against a person or felony arson 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. This change is reflected by amending “six” months to “18” months.

Section 5

AS 12.47.110. Commitment on finding of incompetency

Adds a new subsection (f), which states that the court may order a defendant on bail to receive further evaluation and treatment at an outpatient clinic or other facility under AS 12.30. This section includes requirements that the court shall consider, in addition to applicable requirements under AS 12.30, for the conditions of a defendant’s release under this section: (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.

Adds a new subsection (g), which states that, upon the court finding that the defendant charged with a felony offense against a person or felony arson remains incompetent at the expiration of the period for competency restoration, the prosecutor shall: (1) file a petition seeking involuntary commitment under the new AS 47.30.706 before dismissal of charges; (2) notify the civil division of the Department of Law within 24 hours after filing the petition; and (3) provide the court’s findings to the civil division of the Department of Law within 24 hours after the court’s ruling.

Section 6

AS 47.30.706. Commitment after finding of incompetence

Creates a new section AS 47.30.706: Commitment after finding of incompetence. Subsection (a) states that if a person who has been charged with a felony offense against a person or felony arson has been found incompetent to proceed with criminal charges, an attorney with the Department of Law shall petition the court to have the person delivered to the nearest evaluation facility for an evaluation.

Subsection (b) states that upon receiving the petition under (a) of this section, the court shall: unless the presumption is successfully rebutted, issue an ex parte order 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 or self to others; 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 court shall set a date, time, and place for a 30-day commitment hearing, to be held within 72 hours.

Subsection (c) states that 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.

Subsection (d) states that an individual charged with a felony offense against a person or felony arson who is found to be incompetent to stand trial is rebuttably presumed to be mentally ill and present a likelihood of serious harm to self or others. This creates the basis upon which the court can issue the ex parte order and initiate the 30-day commitment proceedings. This section states

that in its evaluation whether a defendant is likely to cause serious harm, the court may consider the conduct with which the defendant was charged.

The new subsection (e) states that after a respondent is committed under this section, the civil division of the Department of Law shall provide records related to evaluation, examination, and treatment of the respondent to the criminal division of the Department of Law.

Section 7

AS 47.30.710. Examination; hospitalization

Adds reference to the new section AS 47.30.706: Commitment after finding of incompetence to subsection (a) of AS 47.30.710.

Section 8

AS 47.30.725. Rights; notification

Adds new subsections (g) and (h), which create notification provisions for the victim of the dismissed criminal case. Subsection (g) states that the victim shall be notified of: the time and place of a civil commitment hearing; the length of time for which the respondent is committed and findings of fact made by the court; and when the respondent is discharged from commitment. Subsection (h) states that subsection (g) does not give the victim in a dismissed criminal case access to a record or information that is confidential under AS 47.30.845.

Section 9

AS 47.30.771. Additional five-year commitment

Adds a new section creating an additional involuntary commitment of up to five years. Five-year commitment petitions are filed at the expiration of 180-day commitments for individuals who meet the following criteria: the respondent is mentally ill and as a result is likely to cause harm to self or others; the respondent has a history of a felony offense against a person under AS 11.41 or felony arson; 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 arson; and commitment of the respondent for greater than 180 days but not greater than five years is necessary to protect the public.

Clarifies that findings of fact relating to the respondent's behavior made at 30-day, 90-day, and 180-day commitment hearings 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. Instructs the department to submit an annual report to the attorney general, public defender, public advocate, Alaska Court System, and the attorney of record of the respondent detailing how many respondents are committed under this section and how much time remains on each order of commitment.

Section 10

AS 47.30.780. Early discharge

Amends subsection (a) to include reference to new subsection (c) of AS 47.30.780.

Section 11*AS 47.30.780. Early discharge*

Adds new subsections that require that the professional person in charge may not discharge respondents from involuntary commitment unless the court enters an order officially terminating the involuntary commitment after a hearing. This section requires a court decision on discharge of a respondent from involuntary commitment.

Section 12*AS 47.30.805. Computation, extension, and expiration of periods of time*

Amends section (a) to include five-year commitments. States that a five-year commitment period expires at the end of five years after the 180-day period of treatment.