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Victim Access to Defendants' Civil Commitment Proceedings

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***You asked if there is any case law or federal law that prohibits a victim from gaining access to a defendant's civil commitment proceedings in the event the defendant is found incompetent to stand trial and is subsequently committed.*¹**

In short, we were unable to identify a specific federal law or court case that explicitly prohibits a victim from gaining access to information about the defendant's civil commitment proceedings, post-criminal case. However, we have included statutory references and relevant case law, as well as comparisons to other states, which may be of interest to you.

Based on our review of current applicable law detailed below, at the least, Alaska Statute (AS) 47.30.845 would require amendments to explicitly provide for mandatory release of a defendant's commitment status to a victim. You may wish to contact Legal Services regarding the details of codifying mandatory notification to victims in civil commitment scenarios to avoid further conflicts with current law, as we cannot provide legal opinions.

Background

As you know, defendants who are unable to understand court proceedings or to assist in their own defense may not be "tried, convicted, or sentenced for the commission of the crime so long as the incompetency exists."² If a court finds that the defendant is incompetent, it may order the defendant committed for treatment to attempt restoration to competency.³ The court's authority to commit a defendant is, however, time-limited and cannot be indefinite.⁴ If, at the expiration of the court's authority to commit, it finds that the "defendant continues to be incompetent to stand trial, the charges against the defendant must be dismissed without prejudice, and continued commitment of the defendant governed by the provisions relating to civil commitments under AS 47.30.700–47.30.915."⁵

Alaska Statute 47.30.845 provides that "information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records." The statute also identifies limited exceptions where records "may" be disclosed under certain circumstances,

¹ We use the term "defendant" throughout this report for ease of reference. However, if an alleged perpetrator is found incompetent to stand trial their criminal charges are dismissed.

² AS 12.47.100(a)

³ AS 12.47.110

⁴ See *Jackson v. Indiana*, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435, 1972 U.S. LEXIS 50

⁵ AS 12.47.110(b)

including to “a person authorized by a court order.”⁶ Please note that the language of the statute allows permissive, and not mandatory, disclosure.

Federal Law

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides broad protections against disclosure of individuals’ protected health information.⁷ The Act’s protections preempt state law unless the state law is more restrictive than HIPAA’s provisions. These protections only apply, however, to “covered entities,” such as a health plan, health care clearinghouse, or health care provider.⁸

This Act does allow for permissive disclosure of protected health information under certain circumstances, even if the individual does not consent to the disclosure. One such exception allows for disclosure “in response to an order of a court or administrative tribunal.”⁹

Alaska Law

Article 1, §22 of Alaska’s Constitution provides that “the right of the people to privacy is recognized and shall not be infringed.” The Alaska Supreme Court has held that the right to privacy under Alaska law is broader than that of federal law, although neither is absolute.¹⁰

As we noted above, civil commitment records are confidential by statute (AS 47.30.845). Further, AS 47.30.850 provides that an individual who has been civilly committed may move the court to have commitment records sealed. Alaska Administrative Rule 37.5(c)(5) defines “sealed” as restricting access to the record to “the judge and persons authorized by written order of the court.” Allowing individuals the opportunity to have their civil commitment records sealed indicates a heightened protection for the privacy of those records, possibly due to the social stigma related to mental health disorders.

Additionally, the Alaska Public Records act specifies that some types of records are exempt from public access, including:

- medical and related public health records; and¹¹
- records required to be kept confidential by a federal law or regulation or by state law.¹²

Given the constitutional right to privacy and the statutory protections granted to civil commitment records and medical records maintained by the state, a statute abrogating those protections would likely face heightened judicial scrutiny.

However, the Alaska Constitution also protects the rights of crime victims at Article 1, §24, as follows:

⁶ AS 47.30.845(3)

⁷ Pub. No. 104-191, 110 Stat. 1936; and 45 C.F.R § 160.103

⁸ 45 C.F.R. § 160.103

⁹ 45 C.F.R § 164.512(e)(1)(i). This subsection also allows disclosure in response to “subpoena, discovery request, or other lawful process” provided that certain criteria are met.

¹⁰ *Falcon v. Alaska Pub. Offices Comm’n*, 570 P.2d 469 at 476 (1977)

¹¹ AS 40.25.120(a)(3)

¹² AS 40.25.120(a)(4)

Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and *the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication*. [Emphasis added]

The rights of crime victims are codified at AS 12.61.010, which includes several provisions related to notice:

- (11) the right to notice under AS 12.47.095 concerning the status of the defendant found not guilty by reason of insanity;
- (12) the right to notice under AS 33.16.087 of a hearing concerning special medical parole of the defendant;
- (13) the right to notice under AS 33.16.120 of a hearing to consider or review discretionary parole of the defendant;
- (14) the right to notice under AS 33.30.013 of the release or escape of the defendant . . .

Note that, except for defendants incarcerated while awaiting disposition of criminal charges, notice rights are only available after a defendant has been convicted or has been found not guilty by reason of insanity and subsequently committed.

2008 Statutory Amendments

The Alaska Legislature amended several statutes in this area of the law in 2008. Specifically, the Legislature added subsection (b) to AS 47.30.780, which addresses early discharge of individuals who have been civilly committed and states:

The professional person in charge shall give the prosecuting authority 10 days' notice before discharging a respondent who was committed after having been found incompetent to proceed under AS 12.47.110.

We reviewed the legislative history of this provision and found that, in giving a sectional analysis of the bill, Assistant Attorney General Rick Svobodny stated that it would require:

that the district attorney be notified that the person's going to be released back into the community; *hopefully this will provide the [Department of Law] with an opportunity to contact the victims of the crime and inform them that the perpetrator is being released.*¹³ [Emphasis added]

¹³ House Bill 323, House Judiciary Committee minutes, January 30, 2008, beginning at 1:18:28 P.M. Note: HB 323 was later incorporated into CSSB 265 (Ch. 75 SLA 2008), however the language of the provision at hand remained the same throughout the legislative process so one can presume that the intent remained the same, as well.

It appears that the Department of Law anticipated that victims would receive notice of an incompetent defendant's release from civil commitment directly from the district attorney who handled the underlying criminal case.

We contacted the Department of Law for information about whether this statutory change has been implemented as intended. Kaci Schroeder, the department's criminal division legislative liaison, advised us that district attorneys have not been receiving notice from the Alaska Psychiatric Institute when individuals who have been committed after a finding of incompetency are due to be released.

While not directly related to your query about the confidentiality of civil commitment proceedings, the Legislature's 2008 amendments also attempted to close the gap between incompetency and commitment, where a defendant may not be competent to proceed to trial but does not meet the heightened standard for civil commitment, by adding subsection (e) to AS 12.47.110, which outlines the process once a defendant has been found incompetent, and states:

(e) A defendant charged with a felony and found to be incompetent to proceed under this section is rebuttably presumed to be mentally ill and to present a likelihood of serious harm to self or others in proceedings under AS 47.30.700 – AS 47.30.915. 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.

Legislative history indicates that this change was prompted by instances where defendants were found incompetent, released, and then went on to commit additional crimes. District Attorney Steven West testified about a defendant, deemed incompetent, who kept committing crimes of arson and stated:

The proposed change would address situations in which currently an individual found incompetent to proceed with a criminal trial is simply turned loose in the community because he/she is deemed to not be committable; currently such a person faces no consequences for his/her actions, and there is no way to protect the public from such a person.¹⁴

However, a 2014 study funded by the Alaska Mental Health Trust Authority, found that subsection (e) is rarely used and recommended removing the rebuttable presumption and amending the statute to direct the Department of Health and Social Services to initiate civil commitment proceedings for both felony and misdemeanor defendants found incompetent to proceed to trial.¹⁵ It appears that the recommendation was never acted upon at the legislative level, however.

Thus, it appears that the Legislature has attempted to close the gap between incompetency and commitment, but the actual impacts of that effort are unclear.

Notice Provisions in Other States

While there are nuances in how states handle incompetency, most victim notice requirements in other states appear similar to Alaska's, in that they generally apply to cases where a defendant has been committed after a finding of not guilty by reason of insanity, or when the criminal charges are still pending

¹⁴ *Id.* at 2:45P.M.

¹⁵ University of Nevada Las Vegas Schools of Law and Medicine, "Review of Alaska Mental Health Statutes," at pages 12-13, available at <https://alaskamentalhealthtrust.org/wp-content/uploads/2018/05/FINAL-UNLVUNSOM-Report.pdf>

against the defendant. However, we were able to locate several states that appear to have implemented statutory notice provisions. We include a sampling of these statutes below:

Arizona

[A.R.S. § 13-4416](#). Notice of release, discharge or escape from a mental health treatment agency.

A. If the victim has made a request for notice, a mental health treatment agency shall mail to the victim at least ten days before the release or discharge of the person accused or convicted of committing a criminal offense against the victim, notice of the release or discharge of the person who is placed by court order in a mental health treatment agency pursuant to section 13-3992, 31-226, 31-226.01, 36-540.01, 36-541.01 or 36-3707.

B. A mental health treatment agency shall mail to the victim immediately after the escape or subsequent readmission of the person accused or convicted of committing a criminal offense against the victim, notice of the escape or subsequent readmission of the person who is placed by court order in a mental health treatment agency pursuant to section 13-3992, 31-226, 31-226.01, 36-540.01, 36-541.01 or 36-3707.

Georgia

[O.C.G.A. § 17-17-5.1](#). Victim Notification from Department of Behavioral Health and Developmental Disabilities.

(a) If the accused is committed to the Department of Behavioral Health and Developmental Disabilities pursuant to the provisions of Part 2 of Article 6 of Chapter 7 [Insanity and Mental Incompetency proceedings] of this title, the department shall, upon the written request of the victim, mail to the victim at least ten days before the release or discharge of the accused notice of the release or discharge of the accused.

(b) The Department of Behavioral Health and Developmental Disabilities shall mail to the victim immediately after the escape or subsequent readmission of the accused notice of such escape or subsequent readmission of the person who is placed by court order in the custody of the department pursuant to the provisions of Part 2 of Article 6 of Chapter 7 [Insanity and Mental Incompetency proceedings] of this title.

Indiana

[Burns Ind. Code Ann. § 35-40-5-2](#). Right to be informed of release or escape of accused.

(b) Whenever a person accused or convicted of committing a crime is released or escapes from the custody of a mental health treatment agency or a hospital that is not operated by a county sheriff or the department of correction, the court committing the accused or convicted person to the mental health treatment agency or hospital shall carry out this section to inform the victim of the release or escape. The mental health treatment agency or hospital shall provide the court with sufficient information about the release or escape to allow the court to carry out this section.

Maryland

[Md. Criminal Procedure Code Ann. § 3-123](#). Notification of victim.

(a)

(1) In this section the following terms have the meanings indicated.

(2) “Defendant” means:

(i) a committed individual;

(ii) *an individual found incompetent to stand trial*; or

(iii) an individual charged with a crime and the issue of whether the individual is incompetent to stand trial has been raised or where a plea of not criminally responsible has been entered.

...

(l)

(1) This subsection applies only to a defendant as defined in subsection (a)(2)(ii) or (iii) of this section *after the criminal charges against the defendant have been dismissed* under § 3-107 or § 3-108 of this title.

(2) If a victim or victim’s representative has requested notification in the manner provided under subsection (c) of this section, the Health Department shall promptly notify the victim or the victim’s representative in writing if the defendant:

(i) escapes;

(ii) is recaptured;

(iii) is transferred to another facility;

(iv) is released; or

(v) has died.

Minnesota

[Minn. Stat. § 611A.06](#) provides in part:

(b) The commissioner of human services shall make a good faith effort to notify the victim in writing that the offender is to be released from confinement in a facility due to incompetency, mental illness, or mental deficiency, or commitment under section 253B.18 or chapter 253D if the victim has submitted a written request for notification to the executive director of the facility in which the individual is confined.

New Hampshire

[RSA 135:17-b](#). Notification Authorized.

I. Notwithstanding any provision of law to the contrary, the first instance a person has been charged with a violent crime and found incompetent to stand trial pursuant to RSA 135:17-a, and civilly committed pursuant to RSA 135-C or RSA 171-B, found incompetent to stand trial pursuant to RSA 135:17 and committed pursuant to RSA 651:9-a, is transferred to another facility or discharged

to the community, either conditionally or absolutely, the department of health and human services shall immediately notify the attorney general, who shall notify the victim as defined in RSA 21-M:8-k, I(a) and, in the event of a discharge, the law enforcement agency in the community to which the person is being discharged. For purposes of this section, discharge means the initial authorization by the administrative review committee of New Hampshire hospital to allow a person to leave the grounds of the hospital unaccompanied by a hospital staff member.

II. For purposes of this section, the term “violent crime” includes those crimes listed in RSA 651:5, XIII and the following:

- (a) RSA 173-B:9, violation of protective order.
- (b) RSA 631:2, second degree assault.
- (c) RSA 631:3, felony reckless conduct.
- (d) RSA 631:4, criminal threatening involving the use of a deadly weapon.
- (e) RSA 633:3-a, stalking.
- (f) RSA 635:1, burglary.
- (g) RSA 641:5, tampering with witnesses and informants.
- (h) RSA 650-A:1, felonious use of firearms.

Note that New Hampshire’s notice provision only applies to defendants charged with violent crimes.

Virginia

[Va. Code Ann. § 19.2-11.01](#) provides in part:

A.3.g. Upon the victim’s request, the victim shall be notified by the Commissioner of Behavioral Health and Developmental Services or his designee of the release of a defendant (i) who was found to be unrestorably incompetent and was committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 or (ii) who was acquitted by reason of insanity and committed pursuant to § 19.2-182.3.

Please note that we did not research any case law that may have interpreted, or restricted, the scope of the statutes identified above.

We hope this information is helpful. While we believe our research to be thorough, relevant laws may have eluded our search. If you have further questions, or need additional research assistance with this topic, please let us know.