

**HOUSE BILL NO. 80**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES JOSEPHSON, Fields

Introduced: 2/22/23

Referred: Health and Social Services, State Affairs, Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to competency to stand trial; relating to commitment based on a**  
2   **finding of incompetency; relating to administration of psychotropic medication; and**  
3   **relating to victims' rights during certain civil commitment proceedings."**

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

5    \* **Section 1.** AS 12.47.100(b) is amended to read:

6           (b) If, before imposition of sentence, the prosecuting attorney or the attorney  
7           for the defendant has reasonable cause to believe that the defendant is presently  
8           suffering from a mental disease or defect that causes the defendant to be unable to  
9           understand the proceedings or to assist in the person's own defense, the attorney may  
10          file a motion for a judicial determination of the competency of the defendant. Upon  
11          that motion, or upon its own motion, the court shall have the defendant examined by at  
12          least one qualified psychiatrist or qualified psychologist, who shall report to the court  
13          concerning the competency of the defendant. For the purpose of the examination, the  
14          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 qualified psychiatrist or qualified 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 qualified psychiatrist or qualified 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 qualified psychiatrist or qualified psychologist designated by the prosecuting attorney.

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

(h) In a hearing to determine competency under this section, the court may, at the court's discretion, allow a witness, including a qualified psychiatrist or qualified psychologist who examined the defendant, to testify concerning the competency of the defendant by contemporaneous two-way video conference if the witness is in a place from which people customarily travel by air to the court, and the procedure allows the parties a fair opportunity to examine the witness. The video conference technician shall be the only person in the presence of the witness unless the court, at the court's discretion, determines that another person may be present. Any person present with the witness must be identified on the record. In this subsection, "contemporaneous two-way video conference"

(1) means a conference among people at different places by means of transmitted audio and video signals;

(2) includes all communication technologies that allow people at two or more places to interact by two-way video and audio transmissions simultaneously.

\* **Sec. 3.** AS 12.47.110(a) is amended to read:

(a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.47.100, that a defendant is so incompetent that the defendant is unable to understand the proceedings against the defendant or to assist in the defendant's own defense, the court shall order the proceedings stayed, except as provided in (d) of this section, and shall commit a defendant charged with a crime listed in (f) of this section [FELONY], and may commit a defendant charged with any other crime, to the custody of the commissioner of family and community services or

1 the commissioner's authorized representative for further evaluation and treatment until  
 2 the defendant is mentally competent to stand trial, or until the pending charges against  
 3 the defendant are disposed of according to law, but in no event longer than 90 days.

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

5 (b) On or before the expiration of the initial 90-day period of commitment, the  
 6 court shall conduct a hearing to determine whether or not the defendant remains  
 7 incompetent. **If the defendant is not charged with a felony offense, the court may**  
 8 **rely on a previously conducted examination or other evaluation to determine**  
 9 **whether further evaluation and treatment is required under this section.** If the  
 10 court finds by a preponderance of the evidence that the defendant remains  
 11 incompetent, the court may recommit a [THE] defendant for a second period of 90  
 12 days. The court shall determine at the expiration of the second 90-day period whether  
 13 the defendant has become competent. If, at the expiration of the second 90-day period,  
 14 the court determines that the defendant continues to be incompetent to stand trial [,  
 15 THE CHARGES AGAINST THE DEFENDANT SHALL BE DISMISSED  
 16 WITHOUT PREJUDICE, AND CONTINUED COMMITMENT OF THE  
 17 DEFENDANT SHALL BE GOVERNED BY THE PROVISIONS RELATING TO  
 18 CIVIL COMMITMENTS UNDER AS 47.30.700 - 47.30.915 UNLESS THE  
 19 DEFENDANT IS CHARGED WITH A CRIME INVOLVING FORCE AGAINST A  
 20 PERSON AND THE COURT FINDS THAT THE DEFENDANT PRESENTS A  
 21 SUBSTANTIAL DANGER OF PHYSICAL INJURY TO OTHER PERSONS] and  
 22 that there is a substantial probability that the defendant will regain competency within  
 23 a reasonable period of time, [IN WHICH CASE] the court may extend the period of  
 24 commitment for an additional **180 days** [SIX MONTHS]. If the defendant remains  
 25 incompetent at the expiration of the additional **180-day** [SIX-MONTH] period, **the**  
 26 **court may extend the period of commitment for two successive 180-day periods**  
 27 **under the same procedures as the original 180-day period. If the defendant**  
 28 **remains incompetent at the expiration of the third 180-day period,** the charges  
 29 shall be dismissed without prejudice, and continued commitment proceedings shall be  
 30 governed by the provisions relating to civil commitment under AS 47.30.700 -  
 31 47.30.915. **The time that a defendant may be committed under this section may**

1 not exceed the maximum amount of time served if convicted of the most serious  
 2 offense charged. If the court does not extend the period of commitment under  
 3 this section, the charges against the defendant shall be dismissed without  
 4 prejudice, and continued commitment of the defendant shall be governed by the  
 5 provisions relating to civil commitments under AS 47.30.700 - 47.30.915 [IF THE  
 6 DEFENDANT REMAINS INCOMPETENT FOR FIVE YEARS AFTER THE  
 7 CHARGES HAVE BEEN DISMISSED UNDER THIS SUBSECTION, THE  
 8 DEFENDANT MAY NOT BE CHARGED AGAIN FOR AN OFFENSE ARISING  
 9 OUT OF THE FACTS ALLEGED IN THE ORIGINAL CHARGES, EXCEPT IF  
 10 THE ORIGINAL CHARGE IS A CLASS A FELONY OR UNCLASSIFIED  
 11 FELONY].

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

13 (f) The court shall order a defendant to be committed as provided under (a)  
 14 and (b) of this section if the defendant is charged with an offense under

- 15 (1) AS 11.41;
- 16 (2) AS 11.46.400 - 11.46.430;
- 17 (3) AS 11.51.100;
- 18 (4) AS 11.61.118;
- 19 (5) AS 11.61.140; or
- 20 (6) AS 11.61.190 - 11.61.220.

21 (g) If the court dismisses the charges against a defendant under (b) of this  
 22 section, the defendant may not be discharged until three business days after the court  
 23 dismisses the charges. The commissioner of family and community services shall,  
 24 within 24 hours after dismissal of the charges, file a petition under AS 47.30.700 for a  
 25 screening investigation to determine the defendant's need for treatment or create a  
 26 discharge plan for the defendant under AS 47.30.825(i).

27 (h) An examination or other evaluation conducted by a qualified psychiatrist  
 28 or qualified psychologist to determine whether a defendant is mentally competent to  
 29 stand trial under (a) of this section may be conducted telephonically.

30 (i) If commitment proceedings under AS 47.30.700 - 47.30.915 are instituted  
 31 against a defendant in addition to the proceedings under this section, the proceedings

under this section have no effect on the proceedings under AS 47.30.700 - 47.30.915.

(j) Nothing in this section is intended to limit or prohibit a designated treatment facility or an evaluation facility from administering medication or treatment authorized under AS 47.30.772. In this subsection, "designated treatment facility" and "evaluation facility" have the meanings given in AS 47.30.915.

\* **Sec. 6.** AS 12.47 is amended by adding a new section to read:

**Sec. 12.47.115. Psychotropic medication.** The court may order the administration of psychotropic medication to a defendant who is committed under AS 12.47.110 without the defendant's informed consent if the court finds that

(1) the defendant presents a substantial danger of physical injury to self or to other persons and treatment is in the defendant's medical interest; or

(2) the administration of psychotropic medication

(A) serves an important governmental interest that is significantly furthered by the administration of psychotropic medication;

(B) is necessary to further the important governmental interest;

and

(C) is medically appropriate for the defendant.

\* **Sec. 7.** AS 12.47.130 is amended by adding new paragraphs to read:

(7) "qualified psychiatrist" means a licensed physician who is a psychiatrist

(A) trained in forensic competency assessment; or

(B) receiving forensic training and who is practicing under the supervision of a psychiatrist with expertise in forensic psychiatry;

(8) "qualified psychologist" means a licensed psychologist

(A) trained in forensic competency assessment; or

(B) receiving forensic training and who is practicing under the supervision of a psychologist with expertise in forensic psychology.

\* **Sec. 8.** AS 47.30.735 is amended by adding a new subsection to read:

(f) If criminal charges against a respondent have been dismissed under AS 12.47.110 and the respondent is detained for evaluation or committed under AS 47.30.700 - 47.30.915, a victim in the dismissed criminal case has the right to

- 1 (1) be notified by the commissioner of a hearing under this section;  
 2 (2) notwithstanding (b)(3) of this section, be present at a hearing under  
 3 this section;  
 4 (3) be notified by the commissioner of the location of the designated  
 5 treatment facility where the respondent is placed;  
 6 (4) be notified by the commissioner of the length of time for which the  
 7 respondent is committed; and  
 8 (5) be notified when the respondent is discharged from commitment.

9 \* **Sec. 9.** AS 47.30.750 is amended to read:

10 **Sec. 47.30.750. Conduct of hearing.** The hearing under AS 47.30.745 shall be  
 11 conducted in the same manner, and with the same rights for the respondent **and a**  
 12 **victim of a crime**, as set out in AS 47.30.735(b) **and (f)**.

13 \* **Sec. 10.** AS 47.30.770(b) is amended to read:

14 (b) The procedures for service of the petition, notification of rights, **rights of a**  
 15 **victim**, and judicial hearing shall be as set out in AS 47.30.740 - 47.30.750. If the  
 16 court or jury finds by clear and convincing evidence that the grounds for 90-day  
 17 commitment as set out in AS 47.30.755 are present, the court may order the  
 18 respondent committed for an additional treatment period not to exceed 180 days from  
 19 the date on which the first 90-day treatment period would have expired.

20 \* **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to  
 21 read:

22 **APPLICABILITY.** This Act applies to proceedings occurring on or after the effective  
 23 date of this Act for offenses occurring before, on, or after the effective date of this Act.