

33-LS0224/S
Marx/Dunmire
4/25/23

CS FOR HOUSE BILL NO. 80(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JOSEPHSON, Fields

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) The court may order a defendant to be examined under this section at an outpatient clinic or other facility as a condition of the defendant's release under AS 12.30. In considering the conditions of a defendant's release 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 an offense under AS 11.41, AS 11.46.400 - 11.46.427, AS 11.61.140, or 11.61.190 - 11.61.210, 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(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 (h) 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 the commissioner's authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against the defendant are disposed of according to law, but in no event longer than 90 days.

* **Sec. 5.** 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 a crime under AS 11.46.400 - 11.46.427, AS 11.61.140(h), or 11.61.190 - 11.61.200,** [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. 6.** AS 12.47.110 is amended by adding new subsections to read:

(f) The court may order a defendant to receive further evaluation and treatment under (a) or (b) of this section at an outpatient clinic or other facility as a condition of the defendant's release under AS 12.30. In considering the conditions of a defendant's release 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

1 this chapter;

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

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

5 (g) If, under (b) of this section, the court finds that a defendant charged with
6 an offense under AS 11.41, AS 11.46.400 - 11.46.427, AS 11.61.140, or 11.61.190 -
7 11.61.210 remains incompetent at the expiration of the first 90-day period or a second
8 90-day period and the charges against the defendant are dismissed without prejudice,
9 or if the court finds that the defendant remains incompetent at the expiration of the
10 additional 18-month period, the prosecutor shall

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

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

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

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

19 (1) AS 11.41;

20 (2) AS 11.46.400 - 11.46.427;

21 (3) AS 11.61.140; or

22 (4) AS 11.61.190 - 11.61.210.

23 * **Sec. 7.** AS 47.30 is amended by adding a new section to read:

24 **Sec. 47.30.706. Commitment after finding of incompetence.** (a) If a person
25 who has been charged with an offense under AS 11.41, AS 11.46.400 - 11.46.427,
26 AS 11.61.140, or 11.61.190 - 11.61.210 has been found incompetent to proceed under
27 AS 12.47, an attorney with the Department of Law shall petition a court to have the
28 person delivered to the nearest evaluation facility for an evaluation under
29 AS 47.30.710.

30 (b) Upon receiving a petition under (a) of this section, a court shall, unless the
31 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 an offense under AS 11.41, AS 11.46.400 - 11.46.427, AS 11.61.140, or 11.61.190 - 11.61.210 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. 8.** 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. 9.** AS 47.30.725 is amended by adding new subsections to read:

(g) If a criminal charge of an offense under AS 11.41, AS 11.46.400 - 11.46.427, or AS 11.61.190 - 11.61.210 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. 10.** 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 an offense under AS 11.41, AS 11.46.400 - 11.46.427, AS 11.61.140, or 11.61.190 - 11.61.210, 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 an offense under AS 11.41, AS 11.46.400 -

1 11.46.427, AS 11.61.140, or 11.61.190 - 11.61.210; and

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

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

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

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

17 * **Sec. 11.** AS 47.30.780(a) is amended to read:

18 (a) Except as provided in (b) and (c) of this section, the professional person in
19 charge shall at any time discharge a respondent on the ground that the respondent is no
20 longer gravely disabled or likely to cause serious harm as a result of mental illness. A
21 certificate to this effect shall be sent to the court, which shall enter an order officially
22 terminating the involuntary commitment.

23 * **Sec. 12.** AS 47.30.780 is amended by adding new subsections to read:

24 (c) If a respondent committed under AS 47.30.770 or 47.30.771 has a criminal
25 history that includes an offense under AS 11.41, AS 11.46.400 - 11.46.427,
26 AS 11.61.140, or 11.61.190 - 11.61.210, including an offense for which the
27 respondent was found incompetent to stand trial under AS 12.47.100 and 12.47.110,
28 the professional person in charge may not discharge the respondent under (a) of this
29 section unless the court enters an order officially terminating the involuntary
30 commitment after a hearing. The respondent, the professional person in charge, the
31 prosecuting authority, and the respondent's attorney, if applicable, shall appear at the

1 hearing. If the prosecuting authority opposes discharge, the court shall treat the matter
2 as a petition for early discharge under (d) of this section, notwithstanding a limitation
3 imposed by (e) of this section.

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

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

13 * **Sec. 13.** AS 47.30.805(a) is amended to read:

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

15 (1) computations of a 72-hour [EVALUATION] period under
16 AS 47.30.706, 47.30.708, [AS 47.30.708] or 47.30.715 or a 48-hour [DETENTION]
17 period under AS 47.30.685 do not include Saturdays, Sundays, legal holidays, or any
18 period of time necessary to transport the respondent to the treatment facility, except
19 that if the exclusion of Saturdays, Sundays, and legal holidays from the computation
20 of a 72-hour evaluation period or 48-hour detention period would result in the
21 respondent being held for longer than 72 hours or 48 hours, as applicable, the period
22 ends at 5:00 p.m. on the next day that is not a Saturday, Sunday, or legal holiday;

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

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

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

30 (5) a 180-day commitment period expires at the end of the 180th day,
31 after the expiration of a 90-day period of treatment or previous 180-day period,

1 whichever is applicable;

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