

# Senate Bill 53: Frequently Asked Questions

## What is competency?

The determination of whether an individual is competent to stand trial, in addition to restoration to competency if found to be incompetent, is a process set out in the Code of Criminal Procedure in Title 12. The standard for determining an individual's competency to stand trial is found both in statute in AS 12.47.100 and in a long history of case law. A simplified explanation of competency is whether the individual understands the charges against them, can assist their lawyer, and is able to plead guilty or not guilty to the charges.

Competency is not a defense and is unrelated to the mental state of the individual at the time of the crime. In order to protect the constitutional due process rights of individuals in our legal system, a person who is incompetent to stand trial cannot be convicted of a crime. A person has the right to understand the crime with which they are charged and the consequences of the crime they've been charged with.

When the prosecuting attorney or attorney for the defendant has reasonable cause to believe that the defendant is mentally incompetent, they may file a motion for judicial determination of competency. This prompts the court to have the individual examined by at least one qualified psychologist or psychiatrist. The individual may be committed to a suitable hospital for facility for the examination.

## What is competency restoration?

Competency restoration is a term used to describe the process after an individual is found incompetent to stand trial. The court may order the defendant to be held for further evaluation and treatment until the defendant is mentally competent to stand trial, or the pending charges are dropped, with a maximum hold time of 90 days. At the expiration of the initial 90-day period, the court is required to hold a hearing to determine the individual's competency. If the court finds that the defendant remains incompetent, the court may recommit the individual for competency restoration for a second 90-day period. At the expiration of the second 90-day period, if the court finds the individual remains incompetent to stand trial, the court may dismiss the charges without prejudice and the individual may be held for civil commitments under 47.30.700-47.30.915. The process is set out in the Code of Criminal Procedure in AS 12.47.110.

## What happens when the court determines a person is competent?

If the court finds that the individual is competent to stand trial, the criminal proceedings may proceed against the accused individual. The finding that an individual is competent to stand trial does not limit the defendant from raising a defense based on mental illness, disease, or defect.

## What is involuntary commitment?

Involuntary commitment is a process set out in Title 47: Welfare, Social Services, and Institutions in AS 47.30.700. The standard for involuntary commitment is whether an individual, as a result of their mental illness, is a danger to themselves or others. At any time, a person can consent to voluntary treatment and the involuntary hold is canceled. A person may be discharged to the community when they are determined to no longer present a danger to themselves or others.

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## How is involuntary commitment different from competency restoration?

Punishment is exclusive to criminal proceedings. When a person is being held for competency restoration, they are receiving treatment to regain competency so the criminal proceedings may continue. Involuntary commitment is a civil process that is separate from criminal proceedings. An individual is held for involuntary commitment based on the finding that they are a danger to themselves or others.

## Why two years?

The two year hold for individuals who meet the standards (incompetency finding on a felony offense against the person or arson, previously subject to 30, 90, 180-day holds, and present a danger to themselves or others) reflects the reality that there are a small number of individuals who, as a result of their mental illness, present a danger and are not suitable for community-based treatment options. Senate Bill 53 proposes a two year option for the limited number of individuals who need long term treatment. The longer commitment period will have fewer disruptions for mandatory court proceedings and is a shorter period than the indefinite period of involuntary commitment that applies when a person is found not guilty by reason of insanity under AS 12.47.090.

## Is two years mandatory?

No. The legislation gives the court discretion in the period of involuntary commitment. If the state seeks to hold an individual who meets the standards set forth in Senate Bill 53, the court may enter an order within the two year time period. This structure maintains judicial independence and requires the court to make appropriate decisions for each individual based on the evidence.

## How is a person's condition reviewed over time while in state commitment under an involuntary commitment order?

An individual who is under state care as a result of an involuntary commitment order is under regular evaluation. Individuals who no longer meet the standard for involuntary commitment are released by the professional person in charge at the Alaska Psychiatric Institute (API). Note: the "professional person in charge" is the senior mental health provider at the facility and as defined in AS 47.30.915. Within the same context, it is within API's statutory authority to move patients from inpatient to outpatient settings while keeping the individual under their care, see AS 47.30.795. Individuals who are moved to involuntary outpatient treatment are not considered "discharged" from the Department of Family and Community Services.

Senate Bill 53 version T includes provisions that maintain the providers' ability to discharge patients when they no longer meet the standards for involuntary commitment while also engaging the court in the discharge process, which includes notice to the victim in the dismissed criminal case.