



# Alaska State Legislature

## Senator Matt Claman

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### Senate Bill 53

#### Sectional Analysis — Version T.A

##### 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 ordering 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*

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 5**

### *AS 47.30.705. Emergency detention for evaluation*

Adds new subsection (e), which states that the department shall promptly deliver a person who is detained awaiting transport for evaluation for commitment to a crisis residential center or evaluation facility. The person may not be detained for more than 10 days while awaiting transportation unless a court extends under (f) of this section.

Subsection (f) states that the department or facility detaining a person under (a) or (e) of this section may file a request to extend the detention based on the on the person meeting the standards for commitment and continued need for hold. The request must include a verified or certified statement of a mental health professional and be served on related parties including the respondent. When the court decides to request to extend the detention pending transportation, the court shall consider the following factors: (1) the length of time the person has been detained; (2) the reason the person has not yet been transported; (3) the person's current medical and psychiatric condition; (4) whether the person is gravely disabled or is likely to cause serious harm to self or others; and (5) whether the person is receiving treatment at their current placement.

Subsection (g) states that the court shall schedule hearings if requested by the respondent under (f) of this section, which shall be held no later than 72 hours after the expiration of the 10-day detention period.

Subsection (h) states that at any time during the detention period, the mental health professional at the detaining facility may release the respondent based on their finding that the person does not meet the standards for commitment. The facility shall notify related parties if the respondent is released.

## **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, and before the charges are

dismissed, 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.

## **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. Additionally, (g) states that a victim in a dismissed criminal case may attend the civil commitment hearing of the respondent. Subsection (h) states that this section does not give a victim in a dismissed criminal case the right to access confidential records under AS 47.30.845.

## **Section 9**

### *AS 47.30.727. Provision of records and notice following a finding of incompetency in a criminal case*

Creates a new section addressing the release of records to the criminal division of the Department of Law by the civil division during the involuntary commitment of an individual who was found incompetent to stand trial. Subsection (a) states that every 30 days after a respondent is found incompetent to proceed and committed involuntarily, the civil division of the Department of Law shall provide all information and records obtained during the civil commitment to the criminal division of the Department of Law.

Subsection (b) states that records disclosed to the criminal division are confidential and may not be disclosed to anyone unless disclosure is required by a court order or the respondent provides written consent to the disclosure. The records are to be filed as sealed documents by the moving party if they are used in a criminal proceeding. Subsection (c) states that the facility housing a respondent found incompetent to proceed and involuntarily committed shall provide notice to the prosecutor in the criminal case of all hearings scheduled by the court in the civil commitment case. This subsection states that the prosecutor or their staff member may attend civil commitment hearings but may not participate as a party.

### **Section 10**

#### *AS 47.30.735. 30-day commitment; hearing*

Amends subsection (b) to allow victims in dismissed cases where the respondent was charged with a felony offense against a person or felony arson to attend civil commitment proceedings of the respondent.

### **Section 11**

#### *AS 47.30.771. Additional two-year commitment*

Adds a new section creating an additional involuntary commitment of up to two years. Two-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; commitment of the respondent for greater than 180 days but not greater than two years is necessary to protect the public; and the period of commitment 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 in subsequent hearings. States that successive commitments are permissible on the same ground and under the same procedures as the original commitment. 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 12**

#### *AS 47.30.780. Early discharge*

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

### **Section 13**

#### *AS 47.30.780. Early discharge*

Adds new subsections (c), (d) and (e). Subsection (c) states that the professional person in charge may not discharge respondents, who meet the standard of dangerousness set forth in the legislation, from 180-day or up to two year involuntary commitment orders unless: the court enters an order officially terminating the involuntary commitment and the court gives the prosecuting authority 10 days' notice of the discharge. Subsections (d) and (e) state that a

respondent who is committed under an up to two-year commitment order may petition the court for early discharge at any time, with a 180-day limit on frequency, during the commitment if they present some evidence demonstrating that the respondent is no longer likely to cause serious harm to self or others. The court is required to grant early discharge unless the state proves by clear and convincing evidence that there is a factual and medical basis to believe the respondent remains likely to cause serious harm to self or others.

#### **Section 14**

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

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

#### **Section 15**

*AS 47.30.845. Confidential records*

Amends section (a) to include the criminal division of the Department of Law under section 8 of this legislation.