

SENATE BILL NO. 321 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 4/16/96

Introduced: 4/4/96

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to incompetency to stand trial."**

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

3 * **Section 1.** AS 12.47.100 is repealed and reenacted to read:

4 Sec. 12.47.100. INCOMPETENCY TO PROCEED. (a) A defendant who, as
5 a result of mental disease or defect, is incompetent because the defendant is unable to
6 understand the proceedings against the defendant or to assist in the defendant's own
7 defense may not be tried, convicted, or sentenced for the commission of a crime so
8 long as the incompetency exists.

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

1 concerning the competency of the defendant. For the purpose of the examination, the
2 court may order the defendant committed for a reasonable period to a suitable hospital
3 or other facility designated by the court. If the report of the psychiatrist or
4 psychologist indicates that the defendant is incompetent, the court shall hold a hearing,
5 upon due notice, at which evidence as to the competency of the defendant may be
6 submitted, including that of the reporting psychiatrist or psychologist, and make
7 appropriate findings. Before the hearing, the court shall, upon request of the
8 prosecuting attorney, order the defendant to submit to an additional evaluation by a
9 psychiatrist or psychologist designated by the prosecuting attorney.

10 (c) A defendant is presumed to be competent. The party raising the issue of
11 competency bears the burden of proving the defendant is incompetent by a
12 preponderance of evidence. When the court raises the issue of competency, the burden
13 of proving the defendant is incompetent shall be on the party who elects to advocate
14 for a finding of incompetency. The court shall then apply the preponderance of the
15 evidence standard to determine whether the defendant is competent.

16 (d) A statement made by the defendant in the course of an examination into
17 the person's competency under this section, whether the examination is with or without
18 the consent of the defendant, may not be admitted in evidence against the defendant
19 on the issue of guilt in a criminal proceeding unless the defendant later relies on a
20 defense under AS 12.47.010 or 12.47.020. A finding by the judge that the defendant
21 is competent to stand trial in no way prejudices the defendant in a defense based on
22 insanity; the finding may not be introduced in evidence on that issue or otherwise be
23 brought to the notice of the jury.

24 (e) In determining if the defendant is unable to understand the proceedings
25 against the defendant, the court shall consider, among other factors considered relevant
26 by the court, whether the defendant understands that the defendant has been charged
27 with a criminal offense and that penalties can be imposed; whether the defendant
28 understands what criminal conduct is being alleged; whether the defendant understands
29 the roles of the judge, jury, prosecutor, and defense counsel; whether the defendant
30 understands that the defendant will be expected to tell defense counsel the
31 circumstances, to the best of the defendant's ability, surrounding the defendant's

1 activities at the time of the alleged criminal conduct; and whether the defendant can
2 distinguish between a guilty and not guilty plea.

3 (f) In determining if the defendant is unable to assist in the defendant's own
4 defense, the court shall consider, among other factors considered relevant by the court,
5 whether the defendant's mental disease or defect affects the defendant's ability to
6 recall and relate facts pertaining to the defendant's actions at times relevant to the
7 charges and whether the defendant can respond coherently to counsel's questions. A
8 defendant is able to assist in the defense even though the defendant's memory may be
9 impaired, the defendant refuses to accept a course of action that counsel or the court
10 believes is the defendant's best interest, or the defendant is unable to suggest a
11 particular strategy or to choose among alternative defenses.

12 * **Sec. 2.** AS 12.47.110(a) is amended to read:

13 (a) When the trial court determines by a preponderance of the evidence, in
14 accordance with AS 12.47.100, that a defendant is so [MENTALLY] incompetent that
15 the defendant is unable to understand the proceedings against the defendant or
16 [PROPERLY] to assist in the defendant's own defense, the court shall order the
17 proceedings stayed, except as provided in (d) of this section, and may commit the
18 defendant to the custody of the commissioner of health and social services or the
19 commissioner's authorized representative for further evaluation and treatment until the
20 defendant is mentally competent to stand trial, or until the pending charges against the
21 defendant are disposed of according to law, but in no event longer than 90 days.

22 * **Sec. 3.** AS 12.47.130(3) is amended to read:

23 (3) "mental disease or defect" means a disorder of thought or mood that
24 substantially impairs judgment, behavior, capacity to recognize reality, or ability to
25 cope with the ordinary demands of life; "mental disease or defect" also includes mental
26 retardation, which means a significantly below average general intellectual functioning
27 that impairs a person's ability to adapt to or cope with the ordinary demands of life;
28 **a person who has obtained a driver's license, has voted in an election, is able to**
29 **maintain employment, or is competent to testify as a witness under the Alaska**
30 **Rules of Evidence is considered to have sufficient intellectual functioning to adapt**
31 **or cope with the ordinary demands of life.**

1 * **Sec. 4.** AS 12.47.130 is amended by adding new paragraphs to read:

2 (4) "assist in the defendant's own defense" means to consult with a
3 lawyer while exercising a reasonable degree of rational functioning;

4 (5) "incompetent" means a defendant is unable to understand the
5 proceedings against the defendant or to assist in the defendant's own defense;

6 (6) "understand the proceedings against the defendant" means that the
7 defendant's elementary mental process is such that the defendant has a reasonably
8 rational comprehension of the proceedings.