

SENATE BILL NO. 239

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/28/20

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to psychiatric examination under criminal law and procedure; relating**
2 **to notice of reasonable cause to believe the defendant has become competent; relating to**
3 **defendants who are civilly committed; and providing for an effective date."**

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

5 * **Section 1.** AS 12.47.070 is amended to read:

6 **Sec. 12.47.070. Psychiatric examination.** (a) If a defendant has filed a notice
7 of intention to rely on the affirmative defense of insanity under AS 12.47.010 or has
8 filed notice under AS 12.47.020(a), [OR THERE IS REASON TO DOUBT THE
9 DEFENDANT'S FITNESS TO PROCEED, OR THERE IS REASON TO BELIEVE
10 THAT A MENTAL DISEASE OR DEFECT OF THE DEFENDANT WILL
11 OTHERWISE BECOME AN ISSUE IN THE CASE,] the court shall appoint at least
12 two qualified psychiatrists or two qualified [FORENSIC] psychologists or one of
13 each [CERTIFIED BY THE AMERICAN BOARD OF FORENSIC PSYCHOLOGY]
14 to examine and report on [UPON] the mental condition of the defendant. If the court

1 appoints **two qualified** psychiatrists, the **qualified** psychiatrists may select **qualified**
 2 psychologists to provide assistance. If the defendant has filed notice under
 3 AS 12.47.090(a), the report shall consider whether the defendant can still be
 4 committed under AS 12.47.090(c) [. THE COURT MAY ORDER THE
 5 DEFENDANT TO BE COMMITTED TO A SECURE FACILITY FOR THE
 6 PURPOSE OF THE EXAMINATION FOR NOT MORE THAN 60 DAYS OR
 7 SUCH LONGER PERIOD AS THE COURT DETERMINES TO BE NECESSARY
 8 FOR THE PURPOSE AND MAY DIRECT THAT A QUALIFIED PSYCHIATRIST
 9 RETAINED BY THE DEFENDANT BE PERMITTED TO WITNESS AND
 10 PARTICIPATE IN THE EXAMINATION].

11 (b) In an examination under (a) **or (f)** of this section, any method may be
 12 employed which is accepted by the medical profession for the examination of those
 13 alleged to be suffering from mental disease or defect.

14 (c) The report of an examination under (a) **or (f)** of this section shall include
 15 the following:

16 (1) a description of the nature of the examination;
 17 (2) a diagnosis of the mental condition of the defendant;
 18 (3) if the defendant suffers from a mental disease or defect, an opinion
 19 as to the defendant's capacity to understand the proceedings against the defendant and
 20 to assist in the defendant's defense;

21 (4) if a notice of intention to rely on the affirmative defense of insanity
 22 under AS 12.47.010(b) has been filed, an opinion as to the extent, if any, to which the
 23 capacity of the defendant to appreciate the nature and quality of the defendant's
 24 conduct was impaired at the time of the crime charged; and

25 (5) if notice has been filed under AS 12.47.020(a), an opinion as to the
 26 capacity of the defendant to have a culpable mental state which is an element of the
 27 crime charged.

28 (d) If the examination under (a) **or (f)** of this section cannot be conducted by
 29 reason of the unwillingness of the defendant to participate in it, the report shall so state
 30 and shall include, if possible, an opinion as to whether the unwillingness of the
 31 defendant was the result of mental disease or defect.

(e) The report of the examination under (a) or (f) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

* **Sec. 2.** AS 12.47.070 is amended by adding new subsections to read:

(f) If there is reason to doubt the defendant's fitness to proceed, or there is reason to believe that a mental disease or defect of the defendant will otherwise become an issue in the case, the court shall appoint at least one qualified psychiatrist or one qualified psychologist to examine and report on the mental condition of the defendant. If the court appoints one qualified psychiatrist, the qualified psychiatrist may select a qualified psychologist to provide assistance.

(g) In an examination under (a) or (f) of this section, the court may order the defendant committed to a secure facility for the purpose of the examination for not more than 60 days or a longer period that the court determines is necessary for the examination and may direct that a qualified psychiatrist or qualified psychologist retained by the defendant be permitted to witness and participate in the examination.

* **Sec. 3.** 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 shall have the defendant examined by at least one qualified psychiatrist or qualified 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 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

1 evaluation by a qualified psychiatrist or qualified psychologist designated by the
2 prosecuting attorney.

3 * **Sec. 4.** AS 12.47.100(h) is amended to read:

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

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

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

18 * **Sec. 5.** AS 12.47.110(b) is amended to read:

19 (b) On or before the expiration of the initial 90-day period of commitment, the
20 court shall conduct a hearing to determine whether or not the defendant remains
21 incompetent. If the court finds by a preponderance of the evidence that the defendant
22 remains incompetent, the court may recommit the defendant for a second period of 90
23 days. The court shall determine at the expiration of the second 90-day period whether
24 the defendant has become competent. If, at the expiration of the second 90-day period,
25 the court determines that the defendant continues to be incompetent to stand trial, the
26 charges against the defendant shall be dismissed without prejudice, and continued
27 commitment of the defendant shall be governed by the provisions relating to civil
28 commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a
29 crime involving force against a person and the court finds that the defendant presents a
30 substantial danger of physical injury to other persons and that there is a substantial
31 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 six months. If the defendant remains incompetent at the expiration of the additional 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) If commitment proceedings under AS 47.30.700 - 47.30.915 are instituted against a defendant in addition to the proceedings under this section, the proceedings under this section shall have no effect on the proceedings under AS 47.30.700 - 47.30.915.

(g) Nothing in this section is intended to limit or prohibit an evaluation facility or designated treatment facility from administering medication or treatment authorized under AS 47.30.772.

* **Sec. 7.** AS 12.47 is amended by adding a new section to read:

Sec. 12.47.125. Determination of sanity after dismissal of charges. (a) If charges are dismissed under AS 12.47.110(b) against a defendant admitted to a designated treatment facility, and a psychiatrist or psychologist has reasonable cause to believe that the defendant has become competent, the psychiatrist or psychologist shall notify the prosecuting authority and the court.

(b) The defendant may be charged again for an offense arising out of the facts alleged in the original charges if the notice in this section is provided

(1) any time after the dismissal under AS 12.47.110(b) if the original charge was a class A felony or unclassified felony; or

(2) within five years of the dismissal under AS 12.47.110(b) for any other offense.

(c) Upon the filing of charges for an offense arising out of facts alleged in the

original charges, the court shall appoint at least one qualified psychiatrist or qualified psychologist to examine and report on the mental condition of the defendant. If the court appoints a qualified psychiatrist, the qualified psychiatrist may select a qualified psychologist to provide assistance. The court may order the defendant committed for a reasonable period to an evaluation facility or order continued admission to a designated treatment facility. The qualified psychiatrist or qualified psychologist shall file a report with the court under AS 12.47.070(c).

(d) Upon the filing of the report described in (c) of this section, the court shall hold a hearing, after due notice, as soon as conveniently possible. At the hearing, evidence as to the mental condition of the defendant may be submitted, including reports by the qualified psychiatrist or qualified psychologist and the licensed psychiatrist or licensed psychologist who had reasonable cause to believe that the defendant had become competent. For any charges filed for an offense arising out of facts alleged in the original charges, the prosecuting authority bears the burden of proving the defendant is competent to understand the nature of the proceedings against the defendant and to assist in the defendant's own defense.

(e) If at the hearing described in (d) of this section the court determines that the defendant is presently mentally competent to understand the nature of the proceedings and to assist in the defendant's own defense, appropriate criminal proceedings may proceed against the defendant.

(f) If at the hearing described in (d) of this section the court determines that the defendant is still presently mentally incompetent, the court shall recommit the defendant under AS 12.47.110.

(g) A finding by the court that the defendant is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility. This finding may not be introduced in evidence on that issue or otherwise brought to the notice of the jury.

* **Sec. 8.** AS 12.47.130 is amended by adding new paragraphs to read:

(7) "designated treatment facility" has the meaning given in AS 47.30.915;

(8) "evaluation facility" has the meaning given in AS 47.30.915;

1 (9) "qualified psychiatrist" means a licensed physician who is a
2 psychiatrist trained in forensic competency assessment, or a psychiatrist receiving
3 forensic training and is practicing under the supervision of a psychiatrist with
4 expertise in forensic psychiatry;

5 (10) "qualified psychologist" means a licensed psychologist trained in
6 forensic competency assessment, or a psychologist receiving forensic training and is
7 practicing under the supervision of a psychologist with expertise in forensic
8 psychology.

9 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 APPLICABILITY. This Act applies to procedures occurring and notices filed on or
12 after the effective date of those sections, for offenses occurring before, on, or after the
13 effective date of this Act.

14 * **Sec. 10.** This Act takes effect July 1, 2020.