

CS FOR SENATE BILL NO. 53(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/8/23

Referred: Today's Calendar

Sponsor(s): SENATORS CLAMAN, Gray-Jackson

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]

1 may select psychologists to provide assistance. If the defendant has filed notice under
 2 AS 12.47.090(a), the report shall consider whether the defendant can still be
 3 committed under AS 12.47.090(c). The court may order the defendant to be committed
 4 to a secure facility for the purpose of the examination for not more than 60 days or **for**
 5 **a** [SUCH] longer period as the court determines to be necessary for the purpose and
 6 may direct that a qualified psychiatrist retained by the defendant be permitted to
 7 witness and participate in the examination.

8 * **Sec. 2.** AS 12.47.100(b) is amended to read:

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, **after making findings of fact and**
 15 **conclusions of law that justify an examination,** shall have the defendant examined
 16 by at least one qualified psychiatrist or psychologist, who shall report to the court
 17 concerning the competency of the defendant. For the purpose of the examination, the
 18 court may order the defendant committed for a reasonable period to a suitable hospital
 19 or other facility designated by the court. If the report of the psychiatrist or
 20 psychologist indicates that the defendant is incompetent, the court shall hold a hearing,
 21 upon due notice, at which evidence as to the competency of the defendant may be
 22 submitted, including that of the reporting psychiatrist or psychologist, and make
 23 appropriate findings. Before the hearing, the court shall, upon request of the
 24 prosecuting attorney, order the defendant to submit to an additional evaluation by a
 25 psychiatrist or psychologist designated by the prosecuting attorney.

26 * **Sec. 3.** AS 12.47.100 is amended by adding new subsections to read:

27 (i) The court may order a defendant to be examined under this section at an
 28 outpatient clinic or other facility as a condition of the defendant's release under
 29 AS 12.30. In considering the conditions of a defendant's release under this subsection,
 30 the court shall, in addition to any applicable requirement under AS 12.30, consider

31 (1) any medical information provided by the Department of Family

1 and Community Services;

2 (2) the defendant's mental condition;

3 (3) the defendant's level of need for evaluation and treatment under
4 this chapter;

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

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

8 (j) If the defendant is charged with a felony offense against a person under
9 AS 11.41 or felony arson, a qualified psychiatrist or psychologist conducting an
10 examination under (b) of this section may, at the same time, evaluate the defendant to
11 determine whether the defendant meets the standards for involuntary commitment
12 under AS 47.30.700 - 47.30.915.

13 (k) In making findings of fact and conclusions of law under (b) of this section,
14 a court may rely on a defense attorney's representation, including privileged
15 information provided at an ex parte hearing.

16 * **Sec. 4.** AS 12.47.110 is amended by adding new subsections to read:

17 (f) The court may order a defendant to receive further evaluation and
18 treatment under (a) or (b) of this section at an outpatient clinic or other facility as a
19 condition of the defendant's release under AS 12.30. In considering the conditions of a
20 defendant's release under this subsection, the court shall, in addition to any applicable
21 requirement under AS 12.30, consider

22 (1) any medical information provided by the Department of Family
23 and Community Services;

24 (2) the defendant's mental condition;

25 (3) the defendant's level of need for evaluation and treatment under
26 this chapter;

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

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

30 (g) Before criminal charges against a defendant charged with a felony offense
31 against a person under AS 11.41 or felony arson are dismissed under (b) of this

1 section, the prosecutor shall

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

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

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

8 * **Sec. 5.** AS 47.30 is amended by adding a new section to read:

9 **Sec. 47.30.706. Commitment after finding of incompetence.** (a) If a person
10 who has been charged with a felony offense against a person under AS 11.41 or felony
11 arson has been found incompetent to proceed under AS 12.47, before the charges are
12 dismissed, an attorney with the Department of Law shall petition a court to have the
13 person delivered to the nearest evaluation facility for an evaluation under
14 AS 47.30.710.

15 (b) Upon receiving a petition under (a) of this section, a court shall, unless the
16 presumption in (d) of this section has been successfully rebutted, issue an ex parte
17 order orally or in writing stating that there is probable cause to believe the respondent
18 is mentally ill and that condition causes the respondent to present a likelihood of
19 serious harm to self or others. The court shall appoint an attorney to represent the
20 respondent and may direct that a peace officer take the respondent into custody and
21 deliver the respondent to the nearest appropriate facility for evaluation. The ex parte
22 order shall be provided to the respondent and made a part of the respondent's clinical
23 record. The court shall set a date, time, and place for a 30-day commitment hearing, to
24 be held within 72 hours. The court shall confirm an oral order in writing within 24
25 hours after it is issued.

26 (c) A person taken into custody for evaluation under this section may not be
27 placed in a jail or other correctional facility except for protective custody purposes and
28 only while awaiting transportation to an evaluation facility.

29 (d) A defendant charged with a felony offense against a person under
30 AS 11.41 or felony arson and found to be incompetent to proceed under AS 12.47.100
31 is rebuttably presumed to be mentally ill and to present a likelihood of serious harm to

1 self or others. In evaluating whether a defendant is likely to cause serious harm, the
 2 court may consider as recent behavior the conduct with which the defendant was
 3 originally charged.

4 * **Sec. 6.** AS 47.30.710(a) is amended to read:

5 (a) A respondent who is delivered under AS 47.30.700 - 47.30.706
 6 [AS 47.30.700 - 47.30.705] to an evaluation facility for [EMERGENCY] examination
 7 and treatment shall be examined and evaluated as to mental and physical condition by
 8 a mental health professional and by a physician within 24 hours after arrival at the
 9 facility.

10 * **Sec. 7.** AS 47.30.725 is amended by adding new subsections to read:

11 (g) If a criminal charge of a felony offense against a person under AS 11.41 or
 12 felony arson against a respondent has been dismissed under AS 12.47.110 and the
 13 respondent is detained for evaluation or committed under AS 47.30.700 - 47.30.915,

14 (1) the Department of Law shall notify a victim in the dismissed
 15 criminal case

16 (A) of the time and place of a hearing under AS 47.30.700 -
 17 47.30.915;

18 (B) of the length of time for which the respondent is committed
 19 and findings of fact made by the court; and

20 (C) when the respondent is discharged from commitment; and

21 (2) a victim in the dismissed criminal case may attend a hearing under
 22 AS 47.30.700 - 47.30.915.

23 (h) Subsection (g) of this section may not be construed to give a victim in a
 24 dismissed criminal case the right to access a record that is confidential under
 25 AS 47.30.845.

26 * **Sec. 8.** AS 47.30 is amended by adding a new section to read:

27 **Sec. 47.30.727. Provision of records and notice following a finding of**
 28 **incompetency in a criminal case.** (a) Within 30 days after a respondent has been
 29 found incompetent to proceed under AS 12.47.110 and committed under AS 47.30.700
 30 - 47.30.915, and every 30 days thereafter until the civil commitment case has
 31 concluded, the division of the Department of Law that has responsibility for civil cases

1 shall provide all information and records obtained during the civil commitment to the
2 division of the Department of Law that has responsibility for criminal cases.

3 (b) Records disclosed to the division of the Department of Law that has
4 responsibility for criminal cases under (a) of this section are confidential and may not
5 be disclosed to anyone unless disclosure is required by a court order or the respondent
6 provides written consent to the disclosure. If the records are used in the criminal
7 proceeding, the moving party shall file the records as sealed documents.

8 (c) A facility housing a respondent found incompetent to proceed under
9 AS 12.47.110 and committed under AS 47.30.700 - 47.30.915 shall provide notice to
10 the prosecutor in the criminal case of all hearings scheduled by the court in the civil
11 commitment case. The prosecutor, or a staff member of the prosecutor's office, may
12 attend a hearing in the civil commitment case but may not participate in the hearing as
13 a party.

14 * **Sec. 9.** AS 47.30.735(b) is amended to read:

15 (b) The hearing shall be conducted in a physical setting least likely to have a
16 harmful effect on the mental or physical health of the respondent, within practical
17 limits. At the hearing, in addition to other rights specified in AS 47.30.660 -
18 47.30.915, the respondent has the right

19 (1) to be present at the hearing; this right may be waived only with the
20 respondent's informed consent; if the respondent is incapable of giving informed
21 consent, the respondent may be excluded from the hearing only if the court, after
22 hearing, finds that the incapacity exists and that there is a substantial likelihood that
23 the respondent's presence at the hearing would be severely injurious to the
24 respondent's mental or physical health;

25 (2) to view and copy all petitions and reports in the court file of the
26 respondent's case;

27 (3) to have the hearing open or closed to the public as the respondent
28 elects, **except that, if the respondent was charged with a felony offense against a**
29 **person under AS 11.41 or felony arson and the criminal case was dismissed under**
30 **AS 12.47.110, an alleged victim in the dismissed criminal case may attend the**
31 **hearing;**

1 (4) to have the rules of evidence and civil procedure applied so as to
2 provide for the informal but efficient presentation of evidence;

3 (5) to have an interpreter if the respondent does not understand
4 English;

5 (6) to present evidence on the respondent's behalf;

6 (7) to cross-examine witnesses who testify against the respondent;

7 (8) to remain silent;

8 (9) to call experts and other witnesses to testify on the respondent's
9 behalf.

10 * **Sec. 10.** AS 47.30 is amended by adding a new section to read:

11 **Sec. 47.30.771. Additional two-year commitment.** (a) The respondent shall
12 be released from involuntary treatment at the expiration of 180 days unless the
13 professional person in charge or the attorney general's office files an additional 180-
14 day petition or a petition for a commitment of up to two years conforming to the
15 requirements of AS 47.30.740(a) except that all references to "30-day commitment"
16 shall be read as "the previous 180-day commitment" and all references to "90-day
17 commitment" shall be read as "two-year commitment."

18 (b) The procedures for service of the petition, notification of rights, and
19 judicial hearing shall be as set out in AS 47.30.740 - 47.30.750. Following a 180-day
20 commitment of a respondent, the court may order the respondent committed for an
21 additional treatment period not to exceed two years from the date on which the 180-
22 day treatment period would have expired if the court or jury finds by clear and
23 convincing evidence that

24 (1) the respondent is mentally ill and as a result is likely to cause
25 serious harm to self or others;

26 (2) the respondent has a criminal history that includes a felony offense
27 against a person under AS 11.41 or felony arson, including an offense for which the
28 respondent was found incompetent to stand trial under AS 12.47.100 and 12.47.110;

29 (3) the respondent has been found incompetent to stand trial under
30 AS 12.47.100 and 12.47.110 for a felony offense against a person under AS 11.41 or
31 felony arson;

1 (4) commitment of the respondent for greater than 180 days but not
2 greater than two years is necessary to protect the public; and

3 (5) the period of commitment 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, a 180-day commitment hearing under AS 47.30.770, or a two-year
7 commitment hearing under this section shall be admitted as evidence and may not be
8 rebutted except that newly discovered evidence may be used for the purpose of
9 rebutting the findings.

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

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

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

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

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

25 (c) If a respondent committed under AS 47.30.770 or 47.30.771 has a criminal
26 history that includes a felony offense against a person under AS 11.41 or felony arson,
27 including an offense for which the respondent was found incompetent to stand trial
28 under AS 12.47.100 and 12.47.110, the professional person in charge may not
29 discharge the respondent under (a) of this section unless the court enters an order
30 officially terminating the involuntary commitment. The court shall give the
31 prosecuting authority 10 days' notice before the professional person in charge may

1 discharge a respondent under this subsection.

2 (d) Except as provided in (e) of this section, a respondent committed under
3 AS 47.30.771 may petition the court for early discharge at any time during the
4 commitment if the respondent presents some evidence demonstrating that the
5 respondent is no longer likely to cause serious harm to self or others. The court shall
6 grant early discharge unless the state proves by clear and convincing evidence that
7 there is a factual and medical basis to believe the respondent remains likely to cause
8 serious harm to self or others.

9 (e) A respondent may not file a petition for early discharge within 180 days
10 after the date the court enters an initial commitment order or a final order ruling on a
11 previous petition for early discharge.

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

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

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

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

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

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

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

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

3 * **Sec. 14.** AS 47.30.845 is amended to read:

4 **Sec. 47.30.845. Confidential records.** Information and records obtained in the
 5 course of a screening investigation, evaluation, examination, or treatment are
 6 confidential and are not public records, except as the requirements of a hearing under
 7 AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and
 8 records may be copied and disclosed under regulations established by the department
 9 only to

10 (1) a physician or a provider of health, mental health, or social and
 11 welfare services involved in caring for, treating, or rehabilitating the patient;

12 (2) the patient or an individual to whom the patient has given written
 13 consent to have information disclosed;

14 (3) a person authorized by a court order;

15 (4) a person doing research or maintaining health statistics if the
 16 anonymity of the patient is assured and the facility recognizes the project as a bona
 17 fide research or statistical undertaking;

18 (5) the Department of Corrections in a case in which a prisoner
 19 confined to the state prison is a patient in the state hospital on authorized transfer
 20 either by voluntary admission or by court order;

21 (6) a governmental or law enforcement agency when necessary to
 22 secure the return of a patient who is on unauthorized absence from a facility where the
 23 patient was undergoing evaluation or treatment;

24 (7) a law enforcement agency when there is substantiated concern over
 25 imminent danger to the community by a presumed mentally ill person;

26 (8) the department in a case in which services provided under
 27 AS 47.30.660 - 47.30.915 are paid for, in whole or in part, by the department or in
 28 which a person has applied for or has received assistance from the department for
 29 those services;

30 (9) the Department of Public Safety as provided in AS 47.30.907;
 31 information provided under this paragraph may not include diagnostic or clinical

1 information regarding a patient;

2 **(10) the division of the Department of Law that has responsibility**

3 **for criminal cases as provided in AS 47.30.727.**