ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
March 10, 2023
1:32 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator Jesse Kiehl, Vice Chair
Senator James Kaufman
Senator Cathy Giessel
Senator Löki Tobin

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 53
"An Act relating to involuntary civil commitments."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 53
SHORT TITLE: FIVE-YEAR INVOLUNTARY COMMITMENTS
SPONSOR(s): SENATOR(s) CLAMAN

02/01/23	(S)	READ THE FIRST TIME - REFERRALS
02/01/23	(S)	HSS, JUD
02/21/23	(S)	HSS AT 3:30 PM BUTROVICH 205
02/21/23	(S)	Heard & Held
02/21/23	(S)	MINUTE(HSS)
02/28/23	(S)	HSS AT 3:30 PM BUTROVICH 205
02/28/23	(S)	Heard & Held
02/28/23	(S)	MINUTE(HSS)
03/09/23	(S)	HSS AT 3:30 PM BUTROVICH 205
03/09/23	(S)	Moved CSSB 53(HSS) Out of Committee
03/09/23	(S)	MINUTE(HSS)
03/10/23	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

EMMA POTTER, Staff

Senator Matt Claman
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Provided the sectional analysis for SB 53 on behalf of the sponsor.

ANGELA HARRIS, representing self
Anchorage, Alaska
POSITION STATEMENT: Provided invited testimony in support of SB 53.

KATHLEEN WEDEMEYER, Deputy Director
Citizens Commission on Human Rights
Seattle, Alaska
POSITION STATEMENT: Testified in opposition to SB 53.

ACTION NARRATIVE

1:32:27 PM
CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kiehl, Kaufman, Tobin, Giessel, and Chair Claman.

SB 53-FIVE-YEAR INVOLUNTARY COMMITMENTS

[CSSB 53(HSS), work order 33-LS0172/S, was before the committee.]

1:33:07 PM
CHAIR CLAMAN announced the consideration of SENATE BILL NO. 53 "An Act relating to involuntary civil commitments."

CHAIR CLAMAN stated that he was the sponsor of SB 53 and he was turning the gavel over to Vice-Chair Kiehl for the duration of the bill presentation.

1:33:25 PM
VICE-CHAIR KIEHL asked the sponsor to begin his remarks.

1:33:43 PM
SENATOR MATT CLAMAN, District H, speaking as sponsor of SB 53, introduced the legislation speaking to the following prepared testimony.

> Our office began working on Senate Bill 53 at the request of other legislators in response to the tragic experience of a constituent in our district. Angela

Harris is here today to share her story with the committee at the conclusion of our presentation and sectional analysis.

Angela was returning books to the Loussac Library in Anchorage when a man stabbed her in the back. The perpetrator had attacked two other women less than two months earlier and was released by the court after he was found incompetent to stand trial. We believe this individual should not have been released to the community. A petition for an involuntary commitment should have been filed based on his prior attacks and his psychiatric condition that made him a danger to the community.

Senate Bill 53 deals with Title 12, which is related to criminal charges, and Title 47, which is related to civil proceedings.

The determination of whether an individual is competent or incompetent to stand trial, in addition to restoration to competency if deemed 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 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 therefore 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 constitutional due process rights of individuals in our legal system, a person who is incompetent to stand trial cannot be convicted of a crime. This rule is because 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.

A separate process is used for involuntary commitment in Title 47 Welfare, Social Services, and Institutions. The standard for involuntary commitment is whether an individual, as a result of their mental illness, is a danger to themselves or others.

Senate Bill 53 creates a duty for the Department of Law to file a petition seeking involuntary commitment when: a defendant is found incompetent to stand trial at the expiration of the final period for competency restoration, the defendant is charged with a felony offense against the person or arson, and they present a danger to themselves or others.

1:36:33 PM

In our conversations with Angela, we grew to understand the direct impact current statute has had on her ability to find the assurance she needs moving forward. The legislation before you creates an involuntary hold of up to five years for individuals who meet the following qualifications:

They have been found incompetent to stand trial on a felony offense against the person or arson

They have been previously subject to involuntary commitment orders for 30, 90, and 180-day holds

They have a history of felony offenses against the person or arson

And they present a danger to themselves or others

The five 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 hold of up to five years 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.

As a matter of protecting the due process rights of individuals in the State of Alaska's care, Senate Bill 53 includes language that the respondent may petition

for early discharge. The court must find, in order to grant a petition for early discharge, that the respondent is no longer a risk to themselves or others.

1:38:25 PM

The legislation adds notification for victims of: the time and place of the civil commitment hearing; the length of time for which the respondent is committed; and when the respondent is discharged from commitment. SB 53 creates a five-year commitment option. Persistent court hearings are stressful for individuals suffering from severe psychiatric illnesses. A commitment option of up to five years will allow for longer term treatment plans and better coordination of care.

Senate Bill 53 also reduces the number of psychiatrists and psychologists required for evaluation under the insanity defense from two to one; adds a requirement that attorneys must file a written motion for a competency evaluation; increases the time for competency restoration from one to two years in serious cases; and provides that the court can release defendants on bail for competency examination, evaluation, and treatment.

1:39:39 PM

EMMA POTTER, Staff, Senator Claman, Alaska State Legislature, Juneau, Alaska, presented the sectional analysis for SB 53 on behalf of the sponsor.

Section 1

AS 12.47.070. Psychiatric examination

Amends subsection (a) of AS 12.47.070 to reduce the number of qualified psychiatrists or psychologists from two to one for evaluation under the affirmative defense of insanity. And removes the requirement that the forensic psychologist is certified by the American Board of Forensic Psychology.

Section 2

AS 12.47.100. Incompetency to proceed

Amends subsection (b) of AS 12.47.100 by adding the requirement that the motion for judicial determination of competency must be a written motion.

Section 3
AS 12.47.100. Incompetency to proceed
Adds new subsections (i), and (j) to AS 12.47.100. Subsection (i) states that the court may release a defendant on bail to be examined at an outpatient clinic or other facility under AS 12.30. Subsection (j) 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.

Section 4
AS 12.47.110. Commitment on finding of incompetency
Amends subsection (b) of AS 12.47.110 to increase the maximum total time for competency restoration hold from one year to two years when the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency. This change is reflected by amending "six" months to "18" months.

Section 5
AS 12.47.110. Commitment on finding of incompetency
Adds new subsections (f), (g), and (h) to AS 12.47.110. Subsection (f) states that the court may release a defendant on bail for further evaluation and treatment at an outpatient clinic or other facility under AS 12.30. Subsection (g) requires that the prosecutor shall provide the court's findings to the division of the Department of Law that has responsibility for civil cases within 24 hours of the court's ruling and adds the requirement that the Department of Law must file the petition for involuntary commitment within 72 hours of the dismissal of charges. And subsection (h) states that when the court dismisses the charges, the defendant may not be discharged until 72 hours after the court dismisses the charges.

Section 6
AS 47.30.725. Rights; notification
Adds new subsections (g) and (h) to AS 47.30.725, 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; of 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. Subsection (h) states that subsection (g) does not give the victim in a dismissed criminal case access to a record or information that is confidential under AS 47.30.845.

1:42:22 PM

Section 7

AS 47.30.771. Additional five-year commitment

Adds a new section creating an additional involuntary commitment of up to five years to AS 47.30.771. Five-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 felony offenses against a person under AS 11.41 or 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; and commitment of the respondent for greater than 180 days but not greater than five years 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 and may not be rebutted except that newly discovered evidence may be used for the purpose of rebutting the findings. It 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 8

AS 47.30.780. Early discharge

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

Section 9

AS 47.30.780. Early discharge
Adds new subsections (c), (d), and (e) to AS 47.30.780 which add the requirement that the professional person in charge may not discharge respondents from involuntary commitment unless the court enters an order officially terminating the involuntary commitment after a hearing. This section requires a court decision on discharge of a respondent from involuntary commitment.

Section 10
AS 47.30.805. Computation, extension, and expiration of periods of time
Amends section (a) of AS 47.30.805 to include five-year commitments. It states that the five-year commitment period expires at the end of five years after the 180-day period of treatment.

Section 11
Indirect Court Rule Amendments
Conforms court rule with Section 2 of the legislation, which requires attorneys to file a motion that is written in their requests for competency evaluation.

Section 12
Conditional Effect
Adds conditional effect language based on the indirect court rule change.

1:44:40 PM
VICE-CHAIR KIEHL asked committee members whether they had questions or concerns.

SENATOR KAUFMAN noted the concerns expressed in the previous committee were about the legislation inadvertently creating a trap for individuals unable to access due process. He wondered if the legislation offered the optimal solution. He asked if the bill provides mechanisms for individuals who find themselves inappropriately incarcerated under the new statute.

SENATOR CLAMAN spoke to the Title 47 aspects, which involve an individual whose criminal charges were dismissed, leaving them held with a civil commitment. He affirmed that the legislation contains substantial and adequate due process protections. One such protection involves a mandatory hearing before enacting any length of hold. The hearing must display satisfactory evidence that the individual is a danger to themselves or others and

should be committed involuntarily to the department's custody. The same standard applies to each subsequent hearing. Hearings occur at intervals of 60 days, 90 days, 180 days, and potentially 5 years. The standard will be applied each time, and if a respondent disagreed with the finding, they could appeal the decision at each interval to the Alaska Supreme Court.

CHAIR CLAMAN continued to explain that a person appealing the decision has the right to file an annual petition to be released. The petition requires the court to examine the standards existing for the initial commitment. He added that care providers must reach a conclusion that the person is eligible for community treatment; that decision is made on an ongoing basis.

1:48:18 PM
SENATOR KAUFMAN said he appreciated the information about the process. He spoke about the reduction in the required number of opinions needed and the removal of certification requirement. He wondered if the bill lowered the bar to remove certifications and lessen the number of professional opinions.

SENATOR CLAMAN responded that changing the number of experts is a portion in Title 12, the code of criminal procedure. The code is specific to a situation where an individual raises the defense of insanity. He highlighted Title 47 provisions relating to involuntary commitment. The bill retains the number and qualifications of the experts involved in the evaluation. He explained that the change occurs in Title 12 when a defendant raises the defense of insanity. When the defense of insanity is raised, the criminal code requires the court to appoint two different credentialed professionals to independently evaluate the insanity defense. He noted that a defendant who raises the defense of insanity does not rely on the court appointed expert. The defendant typically hires their own expert. The two-expert scenario is redundant because the opinions are unlikely to be substantially different and the parties are more likely to retain their own experts.

1:51:56 PM
SENATOR CLAMAN remarked that the changes in the number and credentials of experts are not applicable to involuntary commitment. The provisions changing the number of expert opinions required from two to one are narrowly focused on the rare occasions when a person raises the insanity defense. He shared a personal story about a case where the insanity defense was raised. In that case, the judge appointed one doctor to

evaluate the defendant, but the requirement specified two doctors. He requested that the judge appoint a second doctor, but in trial he relied on the expert he retained versus the court appointed physicians.

SENATOR CLAMAN discussed the change of qualifications, which Mr. John Skidmore in the prosecutor's office suggested. Alaska does not have properly certified psychologists, which forces the court to seek an out-of-state opinion. He held the perspective that the change in necessary qualifications encourages the state to retain a psychiatrist or psychologist with sufficient expertise to qualify under the court standards. He expressed confidence that Alaskan judges will seek qualified and experienced professionals.

1:53:11 PM
SENATOR TOBIN asked about the requirement for a written motion in Section 2.

SENATOR CLAMAN replied that Mr. Skidmore suggested that a written motion requires additional intention when pleading insanity. The written requirement also creates a clearer record. He viewed the change as a small procedural requirement.

1:54:18 PM
VICE-CHAIR KIEHL asked the sponsor to provide additional context for the committee. He saw three opportunities for a judge to ascertain mental ability. The three opportunities are competency to stand trial, guilt by reason of insanity, and civil commitment for mental status.

SENATOR CLAMAN responded with an example cited in the Senate Health and Social Services Standing Committee involving the historical case of John Hinckley. He reminded the committee that John Hinckley attempted to assassinate President Ronald Reagan and shot one of the cabinet secretaries, James Brady. John Hinkley was charged criminally, and the legal counsel raised the defense of insanity. He expounded that the difference between an insanity and incompetency defense is whether the defendant understands the charges against them and can assist their lawyer in making an informed decision about the plea.

SENATOR CLAMAN explained that when an attorney is confronted with an individual who is unable to understand communication, the lawyer could raise incompetency. Raising incompetency means that the defendant's mental status is such that they cannot provide meaningful assistance or be held responsible for their

behavior in the context of the criminal law. John Hinkley did not raise incompetence because he was articulate enough to communicate with the lawyers about his defense. Raising insanity indicates that the person was insane at the time of the crime, meaning that the case would go to trial with a competent defendant. He furthered that there were two sides to a defense of insanity, one portion where a person is guilty and mentally ill and another portion where a person is not guilty by reason of insanity.

SENATOR CLAMAN furthered that Alaska made changes in 1980 after a case in Anchorage where an individual on release from the Alaska Psychiatric Institute (API) killed two people in Russian Jack Springs Park and was found not guilty by reason of insanity. The case prompted the Alaska State Legislature to revise criminal statutes. Insanity is a defense at trial for a person who is competent. If a successful insanity defense is raised, the charges are over because they are not guilty. The case is sent to API for an indefinite hold. He clarified that today's statute states that an individual can be held indefinitely versus the proposed five-year hold in SB 53. He noted that the involuntary commitment is applicable when a person who is incompetent to stand trial following efforts to restore the person to competency is subject to involuntary commitment under Title 47.

VICE-CHAIR KIEHL said he appreciated the additional context. He posed the quandary of civil liberties and public protection. He examined the idea of a person who is not guilty by reason of insanity as compared to a person incompetent to stand trial. He understood that SB 53 addresses a person incompetent to stand trial and the legislature must determine the element of protection of the public.

2:00:20 PM
SENATOR CLAMAN agreed that the bill makes some changes to the competency restoration process. He noted that currently the maximum period a person could be held for competency restoration is one year. For people that meet a higher standard of danger, SB 53 would have the court hold the person for up to two years in an effort to restore them to competency. The involuntary commitment proceedings would apply to an individual found incompetent and the efforts to restore them to competency have been unsuccessful.

2:01:08 PM

VICE-CHAIR KIEHL asked about the five-year hold proposed in the bill. The five-year hold is currently unavailable in civil commitments but is applicable to a person with a prior history of harming others at a felony level. He stated that Senator Claman nodded in response to his question. He noted that the potential to hold an individual for an extended period is available in situations where risk of harm to self or others is determined. He asked why the five-year hold was applicable for risk of harm to self. He wondered why the language did not specify risk of harm to others.

SENATOR CLAMAN responded that the analysis is structured in two parts. He noted that Alaska statutes lacked criminal offenses for attempting suicide. The five-year commitment range applies to people with a history of felony offenses against a person for arson. He furthered that a person with a history of efforts to harm themselves would never meet the qualifications to be subject to the five-year hold. He explained that the bill refers to harm to self or others because of the standard applied by doctors when evaluating an individual for involuntary commitment. The legislation attempts to help the court understand the standard applied.

2:04:43 PM
ANGELA HARRIS, representing self, Anchorage, Alaska, provided invited testimony in favor of SB 53. She shared the story that prompted the drafting of the legislation.

> For the record, my name is Angela Harris. I was stabbed while returning borrowed items at the Loussac Library on Sunday afternoon, February 13, 2022.
>
> I have met with most of you and provided testimony to you in the previous committee. I want to provide the details of my experience for the record and respond to some parts of the conversations I have been having with you in the Capitol this week.
>
> • My assailant, Corey Leif Ahkivgak, drove a dirty Leatherman knife into my spine between L2 and L3, penetrating my spinal cord.
>
> • Mr. Ahkivgak was located and arrested by APD later that afternoon, while I was awaiting emergency surgery to remove the knife and blood clots that damaged a nerve bundle in my spinal cord.

• The stabbing left me paralyzed from the waist down and with decreased strength and sensation in my upper extremities.

• I was unable to live in my home until we made modifications in our house to become handicapped-accessible and safe for me to navigate.

• My parents flew in from the Lower 48 to live in our home with my two youngest children for 8 months. My significant other had to quit his slope job to be my primary caretaker.

• I am now on a long road to recovery. I attended physical therapy and occupational therapy 5 days a week for approximately 9 months. I see a counselor no less than twice a week to help work through the PTSD of my assault.

• Mr. Ahkivgak has a history of assaulting women. In 2018, he violently attacked his mother with a frying pan.

• He attacked two other women on December 10, 2021.

• He was declared incompetent and not restorable, and he was released back to the public on January 6th, 2022.

• On February 10th, 2022, he was arrested for trespassing at Captain Cook Hotel.

• He then stabbed me on February 13th, 2022, was declared incompetent, and may be released back into the public after his next competency hearing in a few months.

• We need improvements to the State's mental health system, particularly regarding violent offenders, and we need to close the loophole in current laws that allow people to commit violent crimes only to be released back into our community. It should not be left up to the victims to pursue a civil commitment if their assailant is being released due to incompetence. Senate Bill 53 closes this loophole for dangerous individuals like Mr. Ahkivgak.

Senate Bill 53 is written to target the narrow group of individuals like the man who assaulted me. It is my belief that jail is an inappropriate placement for Mr. Ahkivgak, given his serious mental illness. But as the survivor of his assault, I also believe that community placement is an inappropriate option.

I have heard the concerns about protecting civil liberties in this legislation, and I share your concerns. We must prioritize the rights of victims to live safely in our communities while allowing individuals who need long term care to receive it.

And we need to give victims more peace. As I work toward healing, it is difficult for me to live with the reality that my assailant could be released at the next 180-day hearing.

I attended several block hearings and was appalled at how often individuals were released from custody simply because the "wait list" for restitution was too long and violated the offender's civil liberties.

- I am a firm believer that everything happens for a reason, and I know Jesus would not have put me in this position if I could not handle it.

- With that being said, I intend to share my story while I continue to attend occupational and physical therapy appointments to physically heal with hopes of reducing the amount of senseless, violent assaults.

- If I were not on active duty with the US Coast Guard at the time of my assault, I would have very limited resources and cannot imagine the ruins other victims have experienced. As the perpetrator, Mr. Ahkivgak has more rights, options, and resources at his disposal than I do as his victim.

- My assault is an example of why we need to build out mental health facilities and our state laws to get violent offenders the help they need and keep communities safe.

- API serves our entire state, yet they are operating on a very limited capacity with a maximum of 80 beds with only 10 designated for restoration. I've learned that the number of beds actually available have been far less than that at times, and API has had periods operating at a very decreased capacity.

- We must address the common element of inadequate mental health services for violent offenders and their victims.

- I just shared with you my experience and navigation through this process; I share this with you and all fellow Alaskans to emphasize that we must close the loopholes that allow violent offenders to victimize more innocent Alaskans.

The moment an offender commits a violent act against a fellow citizen then their rights should be weighed against the victim's rights to safety.

I understand raising concerns, but I ask that you please answer your concerns with a solution to the problem, rather than empty words.

The bill presented here today is the opportunity for you, in your elected positions, make changes that are beneficial for all Alaskans, whether victim or offender. This bill is a good starting point, and I encourage each of you to learn more about the issues and find solutions to prevent what happened to me from happening to others.

2:10:40 PM
VICE-CHAIR KIEHL returned the gavel to Chair Claman.

2:11:31 PM
CHAIR CLAMAN opened public testimony on SB 53.

2:11:56 PM
KATHLEEN WEDEMEYER, Deputy Director, Citizens Commission on Human Rights, Seattle, Washington, testified in opposition to SB 53. She stressed that the crime Ms. Harris endured was horrendous and she understood the legal response attempting to protect people in similar situations. She questioned the reason

that the legislation included individuals who had committed no crime but were determined to be mentally ill and a danger to themselves and others. She asked why a person was included in the five-year commitment period if they had not committed a felony. She stated that people who attempted suicide would be subject to this. She encouraged further clarification of the intention.

MS. WEDEMEYER stated that the national standard for long-term commitment is six months, which provides individuals with the opportunity to plead their case before a judge. Under SB 53, a person can request early release once per year. She stated that the balance of power for mental patients was uneven. She stressed additional research and fact finding before swelling overfilled facilities. She spoke to the idea of medical appropriateness based on diagnosis where a six month period is better suited than the proposed five years. She opined that legal challenges would follow if the bill were to become law.

2:14:29 PM
CHAIR CLAMAN closed public testimony on SB 53 and held the bill in committee.

2:15:13 PM
There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:15 p.m.