

Introduced: 3/23/71  
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 341

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal responsibility; and chang-  
7 ing rules 12(b) and 23(a), Rules of Criminal Proceed-  
8 ure."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 12.45 is amended by adding new sections to read:

11 Sec. 12.45.083. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY.

12 (a) A person is not responsible for criminal conduct if at the time of  
13 the conduct, as a result of mental disease or defect, he lacks substan-  
14 tial capacity either to appreciate the wrongfulness of his conduct or to  
15 conform his conduct to the requirements of law.

16 (b) Reliance on mental disease or defect as excluding responsibil-  
17 ity is an affirmative defense. The burden of proof beyond a reasonable  
18 doubt does not require the prosecution to disprove an affirmative defense  
19 unless and until there is evidence supporting the defense. The require-  
20 ment of evidence supporting the affirmative defense is not satisfied  
21 solely by evidence of an abnormality which is manifested only by repeated  
22 criminal or otherwise anti-social conduct.

23 (c) If the defendant is acquitted on the ground of mental disease  
24 or defect excluding responsibility, the verdict and the judgment shall so  
25 state.

26 Sec. 12.45.085. EVIDENCE OF MENTAL DISEASE OR DEFECT. Evidence  
27 that the defendant suffered from a mental disease or defect is admissible  
28 whenever it is relevant to prove that the defendant did or did not have a  
29 state of mind which is an element of the offense. However, evidence of

1 mental disease or defect excluding responsibility is not admissible un-  
2 less the defendant, at the time of entering his plea of not guilty or  
3 within 10 days thereafter or at such later time as the court may for good  
4 cause permit, files a written notice of his intent to rely on that defense.

5 Sec. 12.45.087. PSYCHIATRIC EXAMINATION. (a) If a defendant has  
6 filed a notice of intention to rely on the defense of mental disease or  
7 defect excluding responsibility, or there is reason to doubt his fitness  
8 to proceed, or there is reason to believe that mental disease or defect  
9 of the defendant will otherwise become an issue in the cause, the court  
10 shall appoint at least one qualified psychiatrist or shall request the  
11 superintendent of the Alaska Psychiatric Institute to designate at least  
12 one qualified psychiatrist, which designation may be or include himself,  
13 to examine and report upon the mental condition of the defendant. The  
14 court may order the defendant to be committed to a hospital or other suit-  
15 able facility for the purpose of the examination for not more than 60  
16 days or such longer period as the court determines to be necessary for the  
17 purpose and may direct that a qualified psychiatrist retained by the de-  
18 fendant be permitted to witness and participate in the examination.

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

22 (c) The report of an examination under (a) of this section shall  
23 include the following:

- 24 (1) a description of the nature of the examination;
- 25 (2) a diagnosis of the mental condition of the defendant;
- 26 (3) if the defendant suffers from a mental disease or defect,  
27 an opinion as to his capacity to understand the proceedings against him  
28 and to assist in his own defense;
- 29 (4) if a notice of intention to rely on the defense of

1 irresponsibility has been filed, an opinion as to the extent, if any, to  
2 which the capacity of the defendant to appreciate the wrongfulness of  
3 his conduct or to conform his conduct to the requirements of law was im-  
4 paired at the time of the criminal conduct charged; and

5 (5) if directed by the court, an opinion as to the capacity of  
6 the defendant to have a particular state of mind which is an element of  
7 the offense charged.

8 (d) If the examination under (a) of this section cannot be conducted  
9 by reason of the unwillingness of the defendant to participate in it, the  
10 report shall so state and shall include, if possible, an opinion as to  
11 whether the unwillingness of the defendant was the result of mental  
12 disease or defect.

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

16 \* Sec. 2. AS 12.45.090 is amended to read:

17 Sec. 12.45.090. COMMITMENT AFTER JUDGEMENT OF NOT GUILTY [OF DE-  
18 FENDANT ON GROUND OF INSANITY]. If the jury finds the defendant not  
19 guilty on the ground of mental disease or defect [INSANITY] and the court  
20 considers his being at large dangerous to the public peace or safety, the  
21 court shall order him to be committed to an institution authorized by the  
22 commissioner of health and welfare to receive that person, and held in  
23 custody until the disease is cured or the defect corrected [HE BECOMES  
24 SANE] or he is otherwise discharged from the institution [THEREFROM] by  
25 authority of law.

26 \* Sec. 3. AS 12.45.100 is amended to read:

27 Sec. 12.45.100. DETERMINATION OF MENTAL DISEASE OR DEFECT [INSANITY]  
28 DURING TRIAL OR PROBATION. (a) No person who as a result of mental  
29 disease or defect lacks capacity to understand the proceedings against

1 him or to assist in his own defense may be tried, convicted or sentenced  
2 for the commission of an offense so long as the incapacity endures.

3 (b) When, after arrest and prior to the imposition of sentence or  
4 prior to the expiration of any period of probation, the attorney general  
5 the district attorney, or the attorney for the accused has reasonable  
6 cause to believe that a person charged with an offense may be presently  
7 suffering mental disease or defect [INSANE] or is otherwise so mentally  
8 incompetent that he is unable to understand the proceedings against him  
9 or properly to assist in his own defense, he may file a motion for a ju-  
10 dicial determination of the mental competency of the accused. Upon that  
11 motion or upon a similar motion in behalf of the accused, or upon its  
12 own motion, the court shall have the accused, whether or not previously  
13 admitted to bail, examined as to his mental condition by at least one  
14 qualified psychiatrist, who shall report to the court. For the purpose  
15 of the examination the court may order the accused committed for a rea-  
16 sonable period as the court may determine to a suitable hospital or other  
17 facility to be designated by the court. If the report of the psychia-  
18 trist indicates a state of present mental disease or defect [INSANITY]  
19 or of other mental incompetency in the accused, the court shall hold a  
20 hearing, upon due notice, at which evidence as to the mental condition  
21 of the accused may be submitted, including that of the reporting psychi-  
22 atrist, and make a finding with respect thereto. No statement made by  
23 the accused in the course of an examination into his [SANITY OR] mental  
24 competency provided for by this section, whether the examination is with  
25 or without the consent of the accused, may be admitted in evidence a-  
26 gainst the accused on the issue of guilt in a criminal proceeding. A  
27 finding by the judge that the accused is mentally competent to stand trial  
28 in no way prejudices the accused in a defense based on mental disease or  
29 defect excluding responsibility [PLEA OF INSANITY AS A DEFENSE TO THE

1 CRIME CHARGED]; the finding may not be introduced in evidence on that  
2 issue or otherwise be brought to the notice of the jury.

3 \* Sec. 4. AS 12.45.115(b) is amended to read:

4 (b) If at the hearing the court determines that the accused is  
5 presently [SANE OR] mentally competent to understand the nature of the  
6 proceedings against him or to assist in his own defense, appropriate  
7 criminal proceedings shall be commenced against the accused.

8 \* Sec. 5. AS 12.45.115(c) is amended to read:

9 (c) If at the hearing the court determines that the accused is  
10 still presently [INSANE OR] mentally incompetent, the court shall re-  
11 commit the accused as provided in sec. 110(a) of this chapter.

12 \* Sec. 6. AS 12.45.115(d) is amended to read:

13 (d) A finding by the court that the accused is mentally competent  
14 to stand trial in no way prejudices the accused in a defense based on  
15 mental disease or defect excluding responsibility [PLEA OF INSANITY AS A  
16 DEFENSE TO THE CRIME CHARGED]. This finding may not be introduced in  
17 evidence on that issue or otherwise be brought to the notice of the jury.

18 \* Sec. 7. AS 12.45 is amended by adding a new section to read:

19 Sec. 12.45.117. JURY TRIAL. When a person offers a defense based  
20 on mental disease or defect excluding responsibility for his criminal  
21 conduct, he may waive a jury trial without the consent of the state.

22 \* Sec. 8. In sec. 1 of this Act, AS 12.45.085 has the effect of changing  
23 Rule 12(b), Rules of Criminal Procedure, in that it adds to the defenses  
24 which must be raised before trial, and sec. 7 of this Act changes Rule 23(a)  
25 of the Rules of Criminal Procedure in that the defendant may, without the  
26 consent of the state, waive a jury trial if his defense is based on mental  
27 disease or defect excluding responsibility.

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