

Introduced: 5/14/82
Referred: Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 898

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the insanity defense; and providing
7 for an effective date."

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

9 * Section 1. AS 11.81 is amended by adding a new section to read:

10 Sec. 11.81.635. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY.

11 (a) In a prosecution for a crime, it is an affirmative defense that
12 when the defendant engaged in the criminal conduct, he was unable, as a
13 result of a mental disease or defect, to appreciate the nature and
14 quality of his conduct.

15 (b) If the defendant is acquitted on the ground of the affirmative
16 defense of mental disease or defect excluding responsibility, as defined
17 in (a) of this section, the verdict and the judgment shall so state.

18 (c) In this section, "mental disease or defect" means a disorder
19 of thought or mood which substantially impairs judgment, behavior,
20 capacity to recognize reality, or ability to cope with the ordinary
21 demands of life. "Mental disease or defect" also includes mental
22 retardation, which means a significantly below average general
23 intellectual functioning which impairs a person's ability to adapt to or
24 cope with the ordinary demands of life.

25 * Sec. 2. AS 12.45 is amended by adding a new section to read:

26 Sec. 12.45.082. GUILTY BUT MENTALLY ILL. (a) A defendant con-
27 victed of a crime is guilty but mentally ill if, when he engaged in the
28 criminal conduct, he lacked, as a result of a mental disease or defect,
29 the substantial capacity either to appreciate the wrongfulness of his

1 conduct or to conform his conduct to the requirements of law.

2 (b) If a defendant is convicted of a crime, the defendant, the
3 prosecuting attorney, or the court on its own motion may raise the issue
4 of whether the defendant is guilty but mentally ill. A hearing must be
5 held on this issue at or before the sentencing hearing. At the hearing
6 the court shall determine whether the defendant has been shown to be
7 guilty but mentally ill by a preponderance of the evidence presented at
8 the hearing and any evidence relevant to the issue that was presented at
9 trial.

10 (c) If a defendant pleads guilty but mentally ill, the court may
11 not accept that plea until it holds the hearing and makes the
12 determination required by (b) of this section.

13 (d) If a court finds that a defendant is guilty but mentally ill,
14 the court shall sentence the defendant as provided by law and shall
15 enter the finding of guilty but mentally ill as part of the judgment.

16 (e) The Department of Health and Social Services shall provide
17 mental health treatment to a defendant found guilty but mentally ill.
18 The treatment must continue until the defendant no longer suffers from a
19 mental disease or defect that causes him to be dangerous to the public
20 peace or safety, or until his sentence is completed, whichever occurs
21 first. The department shall determine the course of treatment. When
22 treatment terminates under this subsection the defendant shall be
23 required to serve the remainder of his sentence. This subsection does
24 not authorize the department to hold a defendant in custody except as
25 provided by the sentence imposed.

26 (f) Nothing in this section limits the discretion of the court to
27 recommend, or of the Department of Health and Social Services to provide
28 psychiatrically indicated treatment for a defendant who is not adjudged
29 guilty but mentally ill.

1 (g) In this section, "mental disease or defect" means a disorder
2 of thought or mood which substantially impairs judgment, behavior,
3 capacity to recognize reality, or ability to cope with the ordinary
4 demands of life. "Mental disease or defect" also includes mental
5 retardation, which means a significantly below average general
6 intellectual functioning which impairs a person's ability to adapt to or
7 cope with the ordinary demands of life.

8 * Sec. 3. AS 12.45.087(c)(4) is amended to read:

9 (4) if a notice of intention to rely on the defense of mental
10 disease or defect excluding responsibility [IRRESPONSIBILITY] has been
11 filed, an opinion as to the extent, if any, to which the capacity of the
12 defendant to appreciate the nature and quality [WRONGFULNESS] of his
13 conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was
14 impaired at the time of the criminal conduct charged; and

15 * Sec. 4. AS 12.45.087(c) is amended by adding a new subsection to read:

16 (6) if directed by the court, an opinion as to the extent, if
17 any, to which the capacity of the defendant to appreciate the wrong-
18 fulness of his conduct or to conform his conduct to the requirements of
19 the law was impaired at the time of the criminal conduct charged.

20 * Sec. 5. AS 12.45.090 is amended to read:

21 Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF MENTAL DISEASE
22 OR DEFECT. (a) At the time the defendant files notice to raise the
23 affirmative defense of mental disease or defect [AS] excluding respon-
24 sibility, he shall also file notice as to whether, if found not guilty
25 by reason of mental disease or defect [AS] excluding responsibility, he
26 will assert that he is not presently suffering from any [A] mental
27 illness [DISEASE OR DEFECT] that causes him to be dangerous to the
28 public peace or safety.

29 (b) If the defendant is found not guilty by reason of mental

1 disease or defect [AS] excluding responsibility and he has not filed the
2 notice required under (a) of this section, the court shall immediately
3 commit him to the custody of the commissioner of health and social
4 services.

5 (c) If the defendant is found not guilty by reason of mental
6 disease or defect [AS] excluding responsibility, and he has filed the
7 notice required under (a) of this section, a hearing shall be held
8 immediately after the verdict is returned to determine the necessity of
9 further commitment. The hearing shall be held before the court sitting
10 without a jury [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF
11 A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF
12 SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE
13 SUPREME COURT]. At the hearing, the defendant has the burden of proving
14 by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not
15 presently suffering from any [A] mental illness [DISEASE OR DEFECT] that
16 causes him to be dangerous to the public. If the court [OR JURY] deter-
17 mines that the defendant has failed to meet his burden of proof, the
18 court shall order the defendant committed to the custody of the commis-
19 sioner of health and social services.

20 (d) A defendant committed under (b) or (c) of this section shall
21 be held in custody for a period of time not to exceed the maximum term
22 of imprisonment for the crime for which the defendant was acquitted
23 under AS 11.81.635 [AS 12.45.083] or until the mental illness [DISEASE]
24 is cured or [THE DEFECT IS] corrected as determined at a hearing under
25 (e) of this section.

26 (e) A defendant committed under (b) or (c) of this section may
27 have the need for his continued hospitalization determined or redeter-
28 mined by the court sitting without a jury under a petition filed in the
29 superior court at intervals beginning no sooner than a year [SIX MONTHS]

1 from his initial commitment, and yearly thereafter. The burden and
2 standard of proof at a hearing under this subsection is the same as at a
3 hearing under (c) of this section [EXCEPT THAT THE DEFENDANT IS NOT
4 ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15
5 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for
6 release shall be served on the attorney general at Juneau, Alaska. A
7 copy shall also be served upon the attorney of record, if he is not the
8 attorney general, who represented the state or a municipality at the
9 time the defendant was first committed.

10 (f) Continued commitment following expiration of the maximum term
11 of imprisonment for the crime for which the defendant was acquitted
12 under AS 11.81.635 [AS 12.45.083] is governed by the standards pertain-
13 ing to civil commitments as set out in AS 47.30.735.

14 (g) A person committed under this section may not be released
15 during the term of commitment except upon court order following a hear-
16 ing in accordance with (c) of this section. On the grounds that the
17 defendant has been cured of any [THE] mental illness [DISEASE OR DEFECT]
18 that would cause him to be [AND IS NO LONGER] dangerous to the public
19 peace or safety, the state may at any time request the court to hold a
20 hearing to decide if the defendant should be released.

21 (h) The commissioner of health and social services or his author-
22 ized representative shall submit periodic written reports to the court
23 on the mental condition of a person committed under this section.

24 (i) An order entered under (c) or (e) of this section may
25 be reviewed by the court of appeals on appeal brought by either the
26 defendant or the state within 40 days from the entry of the order.

27 (j) In this section,

28 (1) "mental illness" means any mental condition that in-
29 creases the propensity of the defendant to be dangerous to the public

1 peace or safety, however, it is not required that the mental illness
2 be sufficient to exclude criminal responsibility under AS 11.81.635,
3 or that the mental illness presently suffered by the defendant be the
4 same one he suffered at the time of the criminal conduct;

5 (2) "dangerous" means a determination involving both the
6 magnitude of the risk that the defendant will commit an act threatening
7 the public peace or safety, as well as the magnitude of the harm that
8 could be expected to result from this conduct; a finding that a defen-
9 dant is "dangerous" may result from a great risk of relatively slight
10 harm to persons or property, or may result from a relatively slight risk
11 of substantial harm to persons or property.

12 * Sec. 6. AS 12.45.083 is repealed.

13 * Sec. 7. This Act takes effect immediately in accordance with
14 AS 01.10.070(c).