

HB

949

Introduced: 4/26/78
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 949

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the treatment of persons found not
7 guilty on the ground of mental disease or defect."

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

9 * Section 1. AS 12.45.090 is amended to read:

10 Sec. 12.45.090. COMMITMENT AFTER JUDGMENT OF NOT GUILTY. (a) If
11 the court or jury finds the defendant not guilty on the ground of mental
12 disease or defect and the court considers his being at large dangerous
13 to the health and [PUBLIC PEACE OR] safety of others, the court shall
14 order him to be committed to an institution authorized by the commis-
15 sioner of health and social services to receive that person, and held in
16 custody until the disease is cured or the defect corrected or until he
17 is judged to be no longer dangerous to others or he is otherwise dis-
18 charged from the institution by authority of law. The commissioner of
19 health and social services shall provide the court with reports de-
20 tailing the status, progress, and prognosis of persons committed under
21 this subsection at least once every six months.

22 * Sec. 2. AS 12.45.090 is amended by adding new subsections to read:

23 (b) If the court or jury finds the defendant not guilty on the
24 ground of mental disease or defect and the court does not consider his
25 being at large dangerous to the health and safety of others, the court
26 shall order his discharge.

27 (c) If the court or jury finds the defendant not guilty on the
28 ground of mental disease or defect and the court considers his being at
29 large dangerous to the health and safety of others but determines that

- Burden of Proof
- Jury trial

1 the defendant can be controlled in the community with proper super-
2 vision, the court may commit him to the custody of the commissioner of
3 health and social services and may order his conditional release under
4 supervision, subject to such conditions as the court may impose, for a
5 period of no more than three years in accordance with sec. 92 of this
6 chapter.

7 * Sec. 3. AS 12.45 is amended by adding a new section to read:

8 Sec. 12.45.092. CONDITIONAL RELEASE AFTER JUDGMENT OF NOT GUILTY.

9 (a) A defendant committed under sec. 90(a) of this chapter may be
10 released by court order and placed under supervision in a non-institu-
11 tional setting for a period of no more than three years, subject to such
12 conditions as the court may impose. The court may, upon application by
13 the defendant, his attorney, the medical director of the institution, or
14 other interested party, conduct a hearing to determine if conditional
15 release under supervision is appropriate.

16 (b) A defendant released under sec. 90(c) of this chapter or (a)
17 of this section may be returned to custody if the court finds, after a
18 hearing, that he is not in substantial compliance with the conditions of
19 his release or that he is a danger to the health and safety of others
20 and can no longer be controlled in the community under supervision.

21 (c) A defendant released under sec. 90(c) of this chapter or under
22 (a) of this section may petition the court at any time for a discharge
23 hearing.

24 (d) The commissioner of health and social services shall provide
25 the court with progress reports detailing the mental status, treatment
26 plan, progress, and prognosis of persons released under sec. 90(c) of
27 this chapter or under (a) of this section at least every six months.

28 (e) A defendant released under sec. 90(c) of this chapter or (a)
29 of this section shall be discharged from supervision at the expiration
HB 949

1 of three years from the date of release unless the court finds, after a
2 hearing, that the defendant continues to pose a danger to the health and
3 safety of others and cannot be controlled in the community without
4 continued supervision, in which case the defendant shall be continued
5 under supervision subject to such conditions as the court may impose.

6 (f) When a defendant is not discharged from supervision after
7 three years under (e) of this section, the court shall conduct a hearing
8 not less frequently than once each year to determine whether the defen-
9 dant should be discharged or continued under supervision.

10 (g) At any time during the period of supervision the court may
11 revoke or modify the conditions of supervision or order of release.

12 (h) A defendant committed under sec. 90(a) of this chapter or
13 released under sec. 90(c) of this chapter or (a) of this section is not
14 liable for the expenses of hospitalization or transportation incurred as
15 a result of his commitment or release.

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HOUSE BILL 949

"An Act relating to the treatment of persons found not guilty on the ground of mental disease or defect."

The Department of Health and Social Services supports House Bill 949. It is our position that A.S. 12.45.090 is inadequate as written as it falls far short of providing the necessary statutory provisions and flexibility in the treatment and management of these persons.

Presently, treatment for persons committed under A.S. 12.45.090. Commitment After Judgment of Not Guilty is limited to inpatient psychiatric treatment in a secure facility until the disease is cured or the defect corrected. When released from the institution these persons are discharged unconditionally and without any form of supervision. This may result in persons remaining institutionalized for a longer period than may be necessary and/or being released as free citizens when court imposed conditions and supervision upon release would be desirable.

Typically, persons committed under A.S. 12.45.090 are those who have committed serious felony offenses such as murder, rape, assault with a dangerous weapon, or other violent crimes. Those persons declared innocent by reason of mental disease or defect of less serious misdemeanors are generally either committed under A.S. 47.30 (civil commitment) to the Alaska Psychiatric Institute or released by the court.

House Bill 949 would seem to remedy the either/or situation described above by offering an alternative of conditional release with the court retaining jurisdiction. In the event the person was unable to maintain himself in a less secure setting or to comply with the court ordered conditions of his release he could be returned to court for further proceedings and perhaps returned to the secure psychiatric institution if necessary. On the other hand, those persons that demonstrate to the courts satisfaction that they have made a satisfactory recovery and further supervision is not necessary could be discharged.

Examples of alternatives to the inpatient psychiatric treatment would include outpatient clinic services, partial hospitalization, nursing home care, half-way houses, chemotherapy, and alcoholism and drug abuse programs.

Persons conditionally released under this bill could be supervised by staff of the Department of Health & Social Services.

For persons committed to an institution under A.S. 12.45.090(a) it is requested that on line 14 the word "psychiatric" should be inserted prior to the word "institution". The addition of the word "psychiatric" to Section 12.45.090(a) will assure that the institution to which persons are committed under that section is clearly defined.

Recommended by:

Thomas R. Brantley 5/8/78
Jerry L. Schrader, M.D. Date
Director, Div. of Mental Health & Developmental Disabilities

Approved by:

Helen D. Beirne 5/9/78
Helen D. Beirne, Commissioner Date
Dept. of Health & Social Services

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 949
 Title Treatment of persons found not guilty on the ground of mental health or defect.
 Requested by Judiciary Committee Date 4/26/78

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Mental Health and Developmental Disabilities
 Budget Request Unit(s) Affected _____

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Based on present numbers of commitments under AS 12.45.090, an increased expenditure to implement House Bill 949 is not anticipated by the Department of Health & Social Services. As there are only 13 persons currently hospitalized under AS 12.45.090, and many of these are long term patients, the immediate impact on caseloads is expected to be minimal. However, it is possible that more defendants may rely on an insanity defense if House Bill 949 passes as it will allow a community treatment program as an alternative to inpatient treatment or possible incarceration if found guilty.

IV. DATE May 4, 1978 PREPARED BY James L. Scoles
 AGENCY Department of Health & Social Services
 PHONE 465-3370
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Clarify that judge has the authority to institutionalize dangerous defendant if found insane

reflects existing practices → statutory clarification

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26 shall order his discharge.

27 (c) If the court or jury finds the defendant not guilty on the
28 ground of mental disease or defect and the court considers his being at
29 large dangerous to the health and safety of others but determines that

① Should never exceed maximum for offense
② What is burden of proof

1 the defendant can be controlled in the community with proper super-
2 vision, the court may commit him to the custody of the commissioner of
3 health and social services and may order his conditional release under
4 supervision, subject to such conditions as the court may impose, for a
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Simplify Sec #3

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