

S

B

5

3

5

#

2

APPROVED SEVENTH WORK DRAFT FOR  
INSANITY DEFENSE AMENDMENTS TO  
HCS CS SB 535 (Judiciary)

5-26-82  
1:15 p.m.

\*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.080, 'INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The affirmative defense defined in this subsection cannot be raised unless the defendant files a written notice of his intent to rely on the defense within 10 days of entering his plea, or at such later time as the court may for good cause permit. The defendant has the burden of establishing the defense by a preponderance of the evidence.

(b) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish an affirmative defense under (a) of this section,

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

(d) The affirmative defense established in subsection (a) shall be known as "insanity."

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

\*Section 2, AS 12.45. is amended by adding a new section to read as follows:

Sec. 12.45.081, GUILTY BUT MENTALLY ILL,

(a) In all cases in which the defendant raises the affirmative defense of "insanity" under AS 12.45.080, the defendant may be found "guilty but mentally ill" if the mental disease or defect which afflicted him does not rise to the level of "insanity" under AS 12.45.080. A defendant who, at the time of the commission of a criminal offense was not insane but lacked, as a result of a mental disease or defect the substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law shall be considered "mentally ill." A defendant found "mentally ill" shall not be relieved of criminal responsibility for his conduct.

(b) In this section, "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

\*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.080 the jury shall find and the verdict shall state whether the defendant is:

- (1) guilty;
- (2) not guilty;
- (3) not guilty by reason of insanity,
- (4) guilty but mentally ill; or

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

\*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.083, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

- (1) enter the finding of "guilty but mentally ill" as part of the judgment; and

- (2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue

until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. Subject to subsections (c) and (d), the department shall determine the course of treatment.

(c) If treatment terminates under subsection (b), the defendant shall be required to serve the remainder of his sentence.

(d) A defendant receiving treatment under subsection (b) shall not be released on furlough, work release, or parole.

(e) The Commissioner of Health and Social Services shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant under the civil commitment laws upon the completion of his sentence if:

- (1) less than 30 days remain before the end of the defendant's sentence;
- (2) the defendant is still receiving treatment under subsection (b); and
- (3) the Commissioner has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others.

(f) Nothing in this section limits the discretion of the court to order, or of the Department of Health and

Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(g) In this section, "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

(h) For the purposes of subsection (e), "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

\*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY.

(a) The District Attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of a defendant to determine the need for treatment of that individual under the civil commitment laws if:

(1) the defendant:

(i) has been found "not guilty" under AS 12.45.082; and

(ii) the verdict has not been based upon a finding that the defendant did not have a culpable mental state under AS 12.45.085;

and;

(2) the District Attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others

(b) In this section, "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

\*Section 6. AS 12.45.085 is repealed and re-enacted to read:

Sec. 12.45.085 POST-CONVICTION DETERMINATION OF MENTAL ILLNESS.

(a) In cases in which the defendant does not raise the affirmative defense of insanity under AS 12.45.080 and is convicted of a crime, the defendant, the prosecuting attorney, or the court on its own motion may raise the issue of whether the defendant is guilty but mentally ill. A hearing must be held on this issue at or before the sentencing hearing. At the hearing the court shall determine whether the defendant has been shown to be guilty but mentally ill by a preponderance of the evidence presented at the hearing and any evidence relevant to the issue that was presented at trial.

(b) If a court finds that a defendant is guilty but mentally ill as part of the judgment. The court shall sentence the defendant as provided by law.

(c) A defendant determined to be guilty but mentally ill under this section is subject to the provisions of AS 12.45.083(b)-(h).

(d) A defendant convicted of a crime is guilty but mentally ill if, when he engaged in the criminal conduct, he lacked, as a result of a mental disease or defect the

substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(e) In this section "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

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

Sec. 12.45.086 MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental disease or defect which tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of a mental disease or defect, there is a reasonable doubt as to the existence of a culpable mental state which is an element of the crime, it shall enter a verdict so specifying. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered as if he had been acquitted under AS 12.45.080. The defendant is then subject to the provisions of AS 12.45.090.

(c) If a verdict of not guilty is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.45.081. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.45.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)(j).

\*Section 8. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least [ONE] two qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE

HIMSELF,) to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a [HOSPITAL OR OTHER SUITABLE] secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

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

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

- (1) a description of the nature of the examination;
- (2) a diagnosis of the mental condition of the defendant;
- (3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;
- (4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant

to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

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

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

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

\*Section 9, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.080, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert

that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

\*Section 10, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT AS EXCLUDING REASON FOR COMMITMENT] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict [IS RETURNED] of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines

that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) or until [THE MENTAL DISEASE IS CURED OR THE DEFECT CORRECTED] the defendant is not presently suffering from any mental illness that causes him to be dangerous to the public as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued [HOSPITALIZATION] commitment under this section determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release

shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

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

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

\*Section 11, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

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

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

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

\*Section 12. This act takes effect immediately in accordance with AS 01.10.070(c)

Section 23

AS 12.45.025(E) IS AMENDED TO READ:

(E) EXCEPT AS PROVIDED IN SUBSECTION (G),

IF THE DEFENDANT IS CONVICTED OF TWO OR MORE CRIMES BEFORE THE JUDGMENT ON EITHER HAS BEEN ENTERED, ANY SENTENCES OF IMPRISONMENT (MAY) SHALL RUN (CONCURRENTLY OR) CONSECUTIVELY(,) (AS THE COURT PROVIDES. IF THE COURT DOES NOT SPECIFY, THE SENTENCES OF IMPRISONMENT SHALL RUN CONCURRENTLY. IF THE DEFENDANT IS IMPRISONED UPON A PREVIOUS JUDGMENT OF CONVICTION FOR A CRIME, THE JUDGMENT MAY PROVIDE THAT THE IMPRISONMENT COMMENCES AT THE EXPIRATION OF THE TERM-LIMITED BY THE PREVIOUS JUDGMENT OR ON THE DATE OF IMPOSITION OF SENTENCE.)

*AS 12.45.025 is amended by adding a new subsection to read:*

(G) IF THE DEFENDANT IS CONVICTED OF TWO OR MORE CRIMES BEFORE THE JUDGMENT ON EITHER HAS BEEN ENTERED, ANY SENTENCES OF IMPRISONMENT MAY RUN CONCURRENTLY IF:

- (1) THE CRIMES VIOLATE SIMILAR SOCIETAL INTERESTS;
- (2) THE CRIMES ARE PART OF A SINGLE, CONTINUOUS CRIMINAL EPISODE;
- (3) THERE WAS NOT A SUBSTANTIAL DIFFERENCE IN THE NATURE OF THE CRIMINAL OBJECTIVES<sup>n</sup> INCLUDING A CHANGE IN THE PARTIES TO THE CRIME, THE PROPERTY OR TYPE OF PROPERTY RIGHT OFFENDED, OR THE PERSONS OFFENDED;

- (4) THE CRIMES WERE NOT COMMITTED WHILE THE DEFENDANT ATTEMPTED TO ESCAPE OR AVOID DETECTION OR APPREHENSION AFTER THE COMMISSION OF ANOTHER CRIME;
- (5) THE SENTENCE IS FOR VIOLATION OF AS 11.41.100-11.41.140, AS 11.41.200-11.41.250, OR AS 11.41.300-11.41.350;
- (6) THE SENTENCE IS FOR A VIOLATION OF AS 11.41.500-11.41.530 THAT RESULTS IN PHYSICAL INJURY OR SERIOUS PHYSICAL INJURY AS THOSE TERMS ARE DEFINED IN AS 11.41.900; OR
- (7) THE SENTENCE IS FOR A VIOLATION OF AS 11.41.410-11.41.455.

---

Section 28 - should be modified  
to reflect this rewriting - as well -  
subsection (6)

\* Section 1. AS 12 is amended by adding a new chapter to read:

CHAPTER 47. INSANITY AND COMPETENCY TO STAND TRIAL.

Sec. 12.47.010. INSANITY EXCLUDING RESPONSIBILITY. (a) In a prosecution for a crime, it is an affirmative defense that when the defendant engaged in the criminal conduct, he was unable, as a result of a mental disease or defect, to appreciate the nature and quality of his conduct. <sup>(b)</sup> The affirmative defense defined in <sup>(a) of this</sup> ~~this~~ subsection may not be raised at trial unless the defendant, within 10 days of entering his plea or such later time as the court may for good cause permit, files a written <sup>notice</sup> ~~notice~~ of his intent to rely on the defense.

(c) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the affirmative defense under (a) of this section.

(d) The affirmative defense specified in (a) of this section is the affirmative defense of insanity.

~~(e)~~ A defendant who successfully raises the affirmative defense of insanity shall be found not guilty by reason of insanity and the verdict shall so state.

Sec. 12.47.020. MENTAL DISEASE OR DEFECT NEGATING CULPABLE MENTAL STATE. (a) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental disease or defect that tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of mental disease or defect,

1 there is a reasonable doubt as to the existence of a culpable mental  
2 state that is an element of the crime, it shall enter a verdict of not  
3 guilty by reason of insanity. A defendant acquitted under this sub-  
4 section, and not found guilty of a lesser included offense, shall auto-  
5 matically be considered as if he had established the affirmative defense  
6 of insanity under AS 12.47.010. The defendant is then subject to the  
7 provisions of AS 12.47.090.

8 (c) If a verdict of not guilty by reason of insanity is reached  
9 under (b) of this section, the trier of fact shall also consider whether  
10 the defendant is guilty of any lesser included offense. If the defendant  
11 is convicted of a lesser included offense, the defendant shall be sen-  
12 tenced for that offense and shall automatically be considered guilty but  
13 mentally ill under AS 12.47.030<sup>and AS 12.47.050</sup>. Upon completion of a sentence for a  
14 lesser included offense, a hearing shall be held under AS 12.47.090(c)  
15 to determine the necessity of further commitment of the defendant, based  
16 on the acquittal for the greater charge under (b) of this section. If  
17 the defendant is committed under AS 12.47.090(c), he is subject to the  
18 provisions of AS 12.47.090(d)-(j).

19 Sec. 12.47.030. GUILTY BUT MENTALLY ILL. A defendant is guilty  
20 but mentally ill if, when he engaged in the criminal conduct, he lacked,  
21 as a result of a mental disease or defect, the substantial capacity  
22 either to appreciate the wrongfulness of his conduct or to conform his  
23 conduct to the requirements of law. A defendant found guilty but men-  
24 tally ill is not relieved of criminal responsibility for his conduct.

25 Sec. 12.47.040. FORM OF VERDICT WHEN EVIDENCE MENTAL DISEASE OR  
26 DEFECT ADMISSIBLE. (a) In a prosecution for a crime when the affirma-  
27 tive defense of insanity is raised under AS 12.47.010, or when evidence  
28 of a mental disease or defect of the defendant is otherwise admissible  
29 at trial under AS 12.47.020, the trier of fact shall find, and the

and is subject  
to the provisions  
of AS 12.47.050

1 verdict shall state whether the defendant is

2 (1) guilty;

3 (2) not guilty;

4 (3) not guilty by reason of insanity; or

5 (4) guilty but mentally ill.

6 (c) When the jury is instructed as to the verdicts under (b) of  
7 this section, it shall also be instructed on the dispositions available  
8 under AS 12.47.050 and AS 12.47.090.

9 (d) To return a verdict under (b)(4) of this section, the jury  
10 must find beyond a reasonable doubt that the defendant committed the  
11 crime and find by a preponderance of the evidence that he was guilty  
12 but mentally ill as defined in AS 12.47.030. <sup>when he committed</sup>  
<sub>the crime</sub>

13 Sec. 12.47.050. DISPOSITION OF DEFENDANT FOUND GUILTY BUT MENTALLY  
14 ILL. (a) If the trier of fact finds that a defendant is guilty but  
15 mentally ill, the court shall sentence the defendant as provided by law  
16 and shall enter the finding <sup>of verdict</sup> of guilty but mentally ill as part of the  
17 judgment. ~~of guilty but mentally ill as part of the judgment.~~

18 (b) The Department of Health and Social Services shall provide  
19 mental health treatment to a defendant found guilty but mentally ill.  
20 The treatment must continue until the defendant no longer suffers from a  
21 mental disease or defect that causes him to be dangerous to the public  
22 peace or safety. ~~as defined in AS 12.47.030.~~ Subject to (c) and (d) of this section, the department  
23 shall determine the course of treatment.

24 (c) When treatment terminates under (b) of this section, the  
25 defendant shall be required to serve the remainder of his sentence.

26 (d) Notwithstanding any contrary provision of law, a defendant  
27 receiving treatment under (b) of this section may not be released on  
28 furlough or work release under AS 33.30.150, AS 33.30.150 or 33.33.260 or  
29 on parole.

~~Dispositive~~ 14-56

1 (e) Nothing in this section limits the discretion of the court to  
2 recommend, or of the Department of Health and Social Services to provide,  
3 psychiatrically indicated treatment for a defendant who is not adjudged  
4 guilty but mentally ill.

5 (f) Not less than 30 days before the expiration of the sentence  
6 of a defendant found guilty but mentally ill, the commissioner of health  
7 and social services shall file a petition under AS 47.30.700 for a  
8 screening investigation to determine the need for further treatment of  
9 the defendant if:

10 (1) the defendant is still receiving treatment under (b) of  
11 this section; and

12 (2) the commissioner has good cause to believe that the  
13 defendant is suffering from a mental illness that causes him to be  
14 dangerous to the public peace or safety. As used in this paragraph,  
15 "mental illness" has the meaning ascribed to it in AS 47.30.915

16 Sec. 12.47.060. POST CONVICTION DETERMINATION OF MENTAL ILLNESS.

17 (a) In a prosecution for a crime when the affirmative defense of insanity  
18 is not raised and when evidence of mental disease or defect of the  
19 defendant is not admitted at trial under AS 12.47.020, and the defendant  
20 is convicted of a crime, the defendant, the prosecuting attorney, or the  
21 court on its own motion may raise the issue of whether the defendant is  
22 guilty but mentally ill. A hearing must be held on this issue at or  
23 before the sentencing hearing. At the hearing the court shall determine  
24 whether the defendant has been shown to be guilty but mentally ill by a  
25 preponderance of the evidence presented at the hearing and any evidence  
26 relevant to the issue that was presented at trial.

27 (b) If <sup>the</sup> court finds that a defendant is guilty but mentally ill <sup>it</sup>  
28 as part of the judgment. ~~The court~~ shall sentence the defendant as  
29 provided by law <sup>and shall enter</sup>

*the finding of guilty but mentally ill,*

Law  
or has filed notice under AS 12.47.020(c),  
or to make the defense specified in

1 (c) A defendant determined to be guilty but mentally ill under  
2 this section is subject to the provisions of AS 12.47.050.

3 (d) As used in this section, guilty but mentally ill has the mean-  
4 ing ascribed to it in AS 12.47.030.

5 Sec. 12.47.070. PSYCHIATRIC EXAMINATION. (a) If a defendant has  
6 filed a notice of intention to rely on the affirmative defense of  
7 insanity under AS 12.47.010, or there is reason to doubt his fitness to  
8 proceed, or there is reason to believe that mental disease or defect of  
9 the defendant will otherwise become an issue in the case, the court  
10 shall appoint at least two qualified psychiatrists or two forensic  
11 psychologists certified by the American Board of Forensic Psychology  
12 to examine and report upon the mental condition of the defendant. If  
13 the court appoints psychiatrists, the psychiatrists may select psycholo-  
14 gists to provide assistance. If the defendant has filed notice under  
15 AS 12.47.090(a), the report shall consider whether the defendant can  
16 still be committed under AS 12.47.090(c). The court may order the defendant  
17 to be committed to a secure facility for the purpose of the examination  
18 for not more than 60 days or such longer period as the court determines  
19 to be necessary for the purpose and may direct that a qualified psychia-  
20 trist retained by the defendant be permitted to witness and participate  
21 in the examination.

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

25 (c) The report of an examination under (a) of this section, shall  
26 include the following:

- 27 (1) a description of the nature of the examination;  
28 (2) a diagnosis of the mental condition of the defendant;  
29 (3) if the defendant suffers from a mental disease or defect,

1 an opinion as to his capacity to understand the proceedings against him  
2 and to assist in his own defense;

3 (4) if a notice of intention to rely on the affirmative  
4 defense of insanity under AS 12.47.010 has been filed, an opinion as to  
5 the extent, if any, to which the capacity of the defendant to appreciate  
6 the nature and quality of his conduct was impaired at the time of the  
7 crime charged; and

8 (5) ~~if directed by the court,~~ <sup>if notice has been filed under AS 12.47.020 (a),</sup> an opinion as to the capacity  
9 of the defendant to have a culpable mental state which is an element of  
10 the crime charged.

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

16 (e) The report of the examination under (a) of this section shall  
17 be filed with the clerk of the court, who shall cause copies to be  
18 delivered to the <sup>prosecuting</sup> ~~district~~ attorney and to counsel for the defendant.

19 Sec. 12.47.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a)  
20 At the time the defendant files notice to raise the affirmative defense  
21 of insanity under AS 12.47.010 or files notice under AS 12.47.020(a), he  
22 shall also file notice as to whether, if found not guilty by reason of  
23 insanity under AS 12.47.010 or AS 12.47.020(b), he will assert that he  
24 is not presently suffering from any mental illness that causes him to be  
25 dangerous to the public peace or safety.

26 (b) If the defendant is found not guilty by reason of insanity  
27 under AS 12.47.010 or AS 12.47.020(b), and he has not filed the notice  
28 required under (a) of this section, the court shall immediately commit  
29 him to the custody of the commissioner of health and social services.



1 (c) If the defendant is found not guilty by reason of insanity  
2 under AS 12.47.010 or AS 12.47.020(b), and he has filed the notice  
3 required under (a) of this section, a hearing shall be held immediately  
4 after a verdict of not guilty by reason of insanity to determine the  
5 necessity of commitment. The hearing shall be held before the same  
6 trier of fact as the underlying charge. At the hearing, the defendant  
7 has the burden of proving by clear and convincing evidence that he is  
8 not presently suffering from any mental illness that causes him to be  
9 dangerous to the public. If the court or jury determines that the  
10 defendant has failed to meet his burden of proof, the court shall order  
11 the defendant committed to the custody of the commissioner of health and  
12 social services.

13 (d) A defendant committed under (b) or (c) of this section shall  
14 be held in custody for a period of time not to exceed the maximum term  
15 of imprisonment for the crime for which the defendant was acquitted  
16 under AS 12.47.010 or AS 12.47.020(b) or until the mental illness is  
17 cured or corrected as determined at a hearing under (e) of this section

18 (e) A defendant committed under (b) or (c) of this section may  
19 have the need for his continued commitment under this section reviewed  
20 by the court sitting without a jury under a petition filed in the  
21 superior court at intervals beginning no sooner than a year from his  
22 initial commitment, and yearly thereafter. The burden and standard of  
23 proof at a hearing under this subsection are the same as at a hearing  
24 under (c) of this section. A copy of all petitions for release shall be  
25 served on the attorney general at Juneau, Alaska. A copy shall also be  
26 served upon the attorney of record, if he is not the attorney general,  
27 who represented the state or a municipality at the time the defendant  
28 was first committed.

29 (f) Continued commitment following expiration of the maximum term

1 of imprisonment for the crime for which the defendant was acquitted  
2 under AS 12.47.010 or AS 12.47.020(b) is governed by the standards per-  
3 taining to civil commitments as set out in AS 47.30.735.

4 (g) A person committed under this section may not be released  
5 during the term of commitment except upon court order following a hear-  
6 ing in accordance with <sup>(e)</sup> of this section. On the grounds that the  
7 defendant has been cured of any mental illness that would cause him to  
8 be dangerous to the public peace or safety, the state may at any time  
9 request the court to hold a hearing to decide if the defendant should be  
10 released.

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

14 (i) An order entered under (c) or (e) of this section may be re-  
15 viewed by the court of appeals on appeal brought by either the defendant  
16 or the state within 40 days from the entry of the order.

17 (j) In this section,

18 (1) "mental illness" means any mental condition that increases  
19 the propensity of the defendant to be dangerous to the public peace or  
20 safety, however, it is not required that the mental illness be sufficient  
21 to exclude criminal responsibility under AS 12.47.010, or that the  
22 mental illness presently suffered by the defendant be the same one he  
23 suffered at the time of the criminal conduct;

24 (2) "dangerous" means a determination involving both the  
25 magnitude of the risk that the defendant will commit an act threatening  
26 the public peace or safety, as well as the magnitude of the harm that  
27 could be expected to result from this conduct; a finding that a defen-  
28 dant is "dangerous" may result from a great risk of relatively slight  
29 harm to persons or property, or may result from a relatively slight risk

1 of substantial harm to persons or property.

2 Sec. 12.47.100. INCOMPETENCY TO PROCEED. (a) <sup>A</sup>~~No~~ person who as  
3 a result of mental disease or defect lacks capacity to understand the  
4 proceedings against him or to assist in his own defense <sup>(not)</sup> maybe tried,  
5 convicted or sentenced for the commission of a crime so long as the  
6 incapacity exists.

7 (b) When, after arrest and before the imposition of sentence or  
8 before the expiration of any period of probation, the attorney general,  
9 the prosecuting attorney, or the attorney for the accused has reason-  
10 able cause to believe that a person charged with an ~~offense~~ <sup>crime</sup> may be  
11 presently suffering mental disease or defect or is otherwise so mentally  
12 incompetent that he is unable to understand the proceedings against him  
13 or properly to assist in his own defense, he may file a motion for  
14 a judicial determination of the mental competency of the accused. Upon  
15 that motion or upon a similar motion in behalf of the accused, or upon  
16 its own motion, the court shall have the accused, whether or not  
17 previously admitted to bail, examined as to his mental condition by at  
18 least one qualified psychiatrist, who shall report to the court. For  
19 the purpose of the examination the court may order the accused committed  
20 for a reasonable period as the court may determine to a suitable  
21 hospital or other facility to be designated by the court. If the report  
22 of the psychiatrist indicates a state of present mental disease or defect  
23 or of other mental incompetency in the accused, the court shall hold a  
24 hearing, upon due notice, at which evidence as to the mental condition  
25 of the accused may be submitted, including that of the reporting  
26 psychiatrist, and make a finding with respect to his mental condition.  
27 No statement made by the accused in the course of an examination into  
28 his mental competency provided for by this section, whether the examina-  
29 tion is with or without the consent of the accused, may be admitted in

1 evidence against the accused on the issue of guilt in a criminal pro-  
 2 \* ceeding unless the accused later relies on a defense based on mental  
 3 disease or defect at trial. A finding by the judge that the accused  
 4 is mentally competent to stand trial in no way prejudices the accused  
 5 in a defense based on insanity; the finding may not be introduced in  
 6 evidence on that issue or otherwise be brought to the notice of the jury.

7 Sec. 12.47.110. COMMITMENT ON FINDING OF INCOMPETENCY. (a) When  
 8 the trial court determines by a preponderance of the evidence, in  
 9 accordance with AS 12.47.100, that a defendant is so mentally incompe-  
 10 tent that he is unable to understand the proceedings against him or  
 11 properly to assist in his own defense, the court shall order the pro-  
 12 ceedings against him stayed, except as provided in (d) of this section,  
 13 any may commit the defendant to the custody of the commissioner of health  
 14 and social services or his authorized representative for further eva-  
 15 luation and treatment until the defendant is mentally competent to  
 16 stand trial, or until the pending charges against him are disposed of  
 17 according to law, but in no event longer than 90 days.

18 (b) On or before the expiration of the initial 90-day period of  
 19 commitment the court shall conduct a hearing to determine whether or  
 20 not the defendant remains incompetent. If the court finds by a pre-  
 21 ponderance of the evidence that the defendant remains incompetent, the  
 22 court may recommit the defendant for a second period of 90 days. The  
 23 court shall determine at the expiration of the second 90-day period  
 24 whether the defendant has become competent. If at the expiration of the  
 25 second 90-day period the court determines that the defendant continues  
 26 to be incompetent to stand trial, the charges against him shall be  
 27 dismissed without prejudice and continued commitment of the defendant  
 28 shall be governed by the provisions relating to civil commitments under  
 29 AS 47.30.700 -- 47.30.915 unless the defendant is charged with a crime

1 involving force against a person and the court finds that the defendant  
2 presents a substantial danger of physical injury to other persons and  
3 that there is a substantial probability that the defendant will regain  
4 competency within a reasonable period of time, in which case the court  
5 may extend the period of commitment for an additional six months. If  
6 the defendant remains incompetent at the expiration of the additional  
7 six-month period, the charges shall be dismissed without prejudice and  
8 either civil commitment proceedings shall be instituted or the court  
9 shall order the release of the defendant. If the defendant remains  
10 incompetent for five years after the charges have been dismissed under  
11 this subsection, the defendant may not be charged again for an offense  
12 arising out of the facts alleged in the original charges, except if the  
13 X original charge is a class A felony or unclassified felony.

14 (c) The defendant is not responsible for the expenses of hos-  
15 pitalization or transportation incurred as a result of his commitment  
16 under this section. Liability for payment under AS 47.30.910 does not  
17 apply to commitments under this section.

18 (d) A defendant receiving medication for either a physical or a  
19 mental condition may not be prohibited from standing trial, if the  
20 medication either enables him to understand the proceedings against him  
21 and to properly assist in his own defense or does not disable him from  
22 understanding the proceedings and assisting in his own defense.

23 Sec. 12.47.120. DETERMINATION OF SANITY AFTER COMMITMENT. (a)  
24 When, in the medical judgment of the custodian of an accused person  
25 committed under AS 12.47.110, the accused is considered to be mentally  
26 competent to stand trial, the committing court shall hold a hearing,  
27 after due notice, as soon as conveniently possible. At the hearing,  
28 evidence as to the mental condition of the accused may be submitted  
29 including reports by the custodian to whom the accused was committed for

1 case.

2 (b) If at the hearing the court determines that the accused is  
3 presently mentally competent to understand the nature of the proceedings  
4 against him and to assist in his own defense, appropriate criminal  
5 proceedings may be commenced against the accused.

6 (c) If at the hearing the court determines that the accused is  
7 still presently mentally incompetent, the court shall recommit the  
8 accused in accordance with AS 12.47.110.

9 (d) A finding by the court that the accused is mentally competent  
10 to stand trial in no way prejudices the accused in a defense based on  
11 mental disease or defect excluding responsibility. This finding may not  
12 be introduced in evidence on that issue or otherwise be brought to the  
13 notice of the jury.

14 ~~Sec.~~ 12.47.130. DEFINITIONS. As used in this chapter (1) "affirma-  
15 tive defense" has the meaning ascribed to it in AS 11.81.900(b)(1).  
16 (2) "mental disease or defect" means a disorder of thought or mood which  
17 substantially impairs judgment, behavior, capacity to recognize reality,  
18 or ability to cope with the ordinary demands of life. "Mental disease  
19 or defect" also includes mental retardation, which means a significantly  
20 below average general intellectual functioning which impairs a person's  
21 ability to adapt to or cope with the ordinary demands of life.  
22  
23  
24  
25  
26  
27  
28  
29

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 898  
 Title "An Act relating to the insanity defense"  
 Requested by House Judiciary Date May 15, 1982

II. FISCAL DETAIL

Agency Affected Health and Social Services  
 Program Category Affected Offender Confinement, Reformation & Supervision  
 BRU, Program, Or Subprogram(s) Affected Adult Corrections  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

|                          | FY 82 | FY 83 | FY 84   | FY 85   | FY 86   | FY 87   |
|--------------------------|-------|-------|---------|---------|---------|---------|
| 100 PERSONAL SERVICES    |       | 627.6 | 1,151.3 | 1,231.8 | 1,318.1 | 1,410.3 |
| 200 TRAVEL               |       | 11.7  | 21.8    | 23.8    | 25.9    | 28.2    |
| 300 CONTRACTUAL          |       | 248.1 | 463.7   | 505.4   | 550.9   | 600.5   |
| 400 COMMODITIES          |       | 49.6  | 92.7    | 101.0   | 110.1   | 120.0   |
| 500 EQUIPMENT            |       |       |         |         |         |         |
| 600 LAND & STRUCTURES    |       |       |         |         |         |         |
| 700 GRANTS, CLAIMS, ETC. |       |       |         |         |         |         |
| <b>TOTAL</b>             |       | 937.0 | 1,729.5 | 1,862.0 | 2,005.0 | 2,159.0 |

FUNDING (Thousands of Dollars)

|                        |  |       |         |         |         |         |
|------------------------|--|-------|---------|---------|---------|---------|
| GENERAL FUND           |  | 937.0 | 1,729.5 | 1,862.0 | 2,005.0 | 2,159.0 |
| FEDERAL FUNDS          |  |       |         |         |         |         |
| OTHER (Specify Source) |  |       |         |         |         |         |
|                        |  |       |         |         |         |         |

POSITIONS

|           |  |    |    |    |    |    |
|-----------|--|----|----|----|----|----|
| FULL TIME |  | 24 | 24 | 24 | 24 | 24 |
| PART TIME |  |    |    |    |    |    |
| TEMPORARY |  |    |    |    |    |    |

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

A. Assumptions

1. All persons with mental illnesses who also are charged with criminal offenses are being housed either at Alaska Psychiatric Institute or within one of the state's correctional centers. Therefore, no additional beds will be needed if this legislation is enacted.
2. Persons in pre-trial status requiring psychiatric evaluation and observation be placed at the Anchorage Pre-trial Facility. The anticipated opening date is January 1, 1983, therefore, seven month funding is identified for this program component, allowing for facility familiarization and training. This will be a 36 bed mental health unit as an integral program within this facility.

IV. DATE May 20, 1982 PREPARED BY Roger C. Lange  
 AGENCY Division of Adult Corrections  
 PHONE 465-3376

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

B. Expenditures

1. Personal Services

A total of 24 positions are required to implement this legislation.

The positions, are as follows:

| <u>Position Classification</u>                              | <u>Number Requested</u> |
|---|-------------------------|
| Forensic Psychiatrist R/28F + 5%                            | 1                       |
| Mental Health Clinician III<br>(Clinical Psychologist) R/21 | 1                       |
| Mental Health Clinician II<br>(Social Worker) R/19          | 1                       |
| Activity Therapist R/14B                                    | 1                       |
| Psychiatric Nurse Sup. R/17                                 | 1                       |
| Registered Nurses I-III R/14B                               | 5                       |
| Correctional Officer R/13B                                  | 12                      |
| Clerk/Typist II R/7B  | 1                       |
| Secretary I R/10B   | 1                       |
| Total   | <u>24</u>               |

Of the 24 positions, 7 are included in the FY 1983 budget request for Alaska Psychiatric Institute. These positions are:

| <u>Position Classification</u> | <u>Number Requested</u> |
|--------------------------------|-------------------------|
| Correctional Officer II        | 6                       |
| Activity Therapist             | 1                       |
| Total                          | <u>7</u>                |

These positions will be transferred to the Anchorage Pre-trial Facility.

2. Travel

Travel funds are necessary to transport inmates to the treatment unit and, subsequently, to other facilities when they are classified to be ready for a general prison environment.

3. Contractual

Contractual funds are requested to provide psychiatric services to inmates found guilty but mentally ill. This will permit an average of 36 hours of psychiatric medical treatment per month in each of the states correctional centers.

4. Commodities

The majority of these costs are for pharmaceutical products to be used in the treatment program. Some office supplies are also included.

5. Equipment

Specialized medical equipment will be required for both program components. Equipment will also be needed for the new positions.

6. Inflation was considered to be constant over the period covered by the fiscal note, as follows:

|                              |     |
|------------------------------|-----|
| Personal Services            | -7% |
| Other expenditure categories | -9% |

Sec. 12.45.083. Mental disease or defect excluding responsibility. (a) A person is not responsible for criminal conduct if at the time of the conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) Reliance on mental disease or defect as excluding responsibility is an affirmative defense. The burden of proof beyond a reasonable doubt does not require the prosecution to disprove an affirmative defense unless and until there is evidence supporting the defense. The requirement of evidence supporting the affirmative defense is not satisfied solely by evidence of an abnormality which is manifested only by repeated criminal or otherwise antisocial conduct.

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

(d) When a person offers a defense based on mental disease or defect excluding responsibility for his criminal conduct, he may waive a jury trial without the consent of the state. (§ 1 ch 119 SLA 1972)

Sec. 12.45.085. Evidence of mental disease or defect. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense. However, evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense. (§ 1 ch 119 SLA 1972)

Sec. 12.45.087. Psychiatric examination. (a) If a defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist, or a forensic psychologist certified by the American Board of Forensic Psychology, or shall request the superintendent of the Alaska Psychiatric Institute to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

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

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

- (1) a description of the nature of the examination;
- (2) a diagnosis of the mental condition of the defendant;
- (3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;
- (4) if a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged; and
- (5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

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

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant. (§ 1 ch 119 SLA 1972; am § 2 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, added "or a forensic psychologist certified by the American Board of Forensic Psy-

chology" following "one qualified psychiatrist" in the first sentence and added the second sentence of subsection (a).

Sec. 12.45.080. Procedure after raising defense of mental disease or defect. (a) At the time the defendant files notice to raise the affirmative defense of mental disease or defect as excluding responsibility he shall also file notice as to whether if found not guilty by reason of mental disease or defect as excluding responsibility he will assert that he is not presently suffering from a mental disease or defect that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not guilty by reason of mental disease or defect as excluding responsibility and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of health and social services.

(c) If the defendant is found not guilty by reason of mental disease or defect as excluding responsibility, and he has filed the notice required under (a) of this section, a hearing shall be held immediately after the verdict is returned to determine the necessity of further commitment. The hearing shall be held before the same trier of fact as the underlying charge, but if a jury was the trier of fact, the hearing shall be held before a jury of six drawn from the original jury in accordance with rules adopted by the supreme court. At the hearing, the defendant has the burden of proving by a preponderance of the evidence that he is not presently suffering from a mental disease or defect that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083 or until the mental disease is cured or the defect corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued hospitalization determined or redetermined under a petition filed in the superior court at intervals beginning no sooner than six months from his initial commitment and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section except that the defendant is not entitled to a jury unless he files a motion for a jury no later than 15 days before the date set for the hearing. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083 is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of the mental disease or defect and is no longer dangerous to public peace or safety the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section. (§ 6.10 ch 34 SLA 1962; am § 6 ch 104 SLA 1971; am § 2 ch 119 SLA 1972; am § 3 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, rewrote this section.

Revisor's notes. — In the first sentence

of subsection (e), the word "section" was substituted for "position" by the revisor of statutes pursuant to AS 01.05.031(b).

Sec. 12.45.100. Determination of mental disease or defect during trial or probation. (a) No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

(b) When, after arrest and before the imposition of sentence or before the expiration of any period of probation, the attorney general, the district attorney, or the attorney for the accused has reasonable cause to believe that a person charged with an offense may be presently suffering mental disease or defect or is otherwise so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, he may file a motion for a judicial determination of the mental competency of the accused. Upon that motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall have the accused, whether or not previously admitted to bail, examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for a reasonable period as the court may determine to a suitable

hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present mental disease or defect or of other mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect to his mental condition. No statement made by the accused in the course of an examination into his mental competency provided for by this section, whether the examination is with or without the consent of the accused, may be admitted in evidence against the accused on the issue of guilt in a criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility; the finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury. (§ 6.11 ch 34 SLA 1962; am § 3 ch 119 SLA 1972)

Sec. 12.45.110. Commitment on finding of incompetency. (a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.45.100, that a defendant is so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, the court shall order the proceedings against him stayed, except as provided in (d) of this section, and may commit the defendant to the custody of the commissioner of health and social services or his authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against him are disposed of according to law, but in no event longer than 90 days.

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against him shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 — 47.30.915 unless 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 within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is murder.

(c) The defendant is not responsible for the expenses of hospitalization or transportation incurred as a result of his commitment under this section. Liability for payment under AS 47.30.910 does not apply to commitments under this section.

(d) A defendant receiving medication for either a physical or a mental condition may not be prohibited from standing trial, if the medication either enables him to understand the proceedings against him and to properly assist in his own defense or does not disable him from understanding the proceedings and assisting in his own defense. (§ 6.12 ch 34 SLA 1962; am § 1 ch 43 SLA 1966; am § 6 ch 104 SLA 1971; am § 4 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, rewrote the section.

Sec. 12.49.115. Determination of sanity after commitment. (a) When, in the medical judgment of the custodian of an accused person committed under AS 12.45.110, the accused is considered to be mentally competent to stand trial, the committing court shall hold a hearing, after due notice, as soon as conveniently possible. At the hearing, evidence as to the mental condition of the accused may be submitted including reports by the custodian to whom the accused was committed for care.

(b) If at the hearing the court determines that the accused is presently mentally competent to understand the nature of the proceedings against him, and to assist in his own defense, appropriate criminal proceedings may be commenced against the accused.

(c) If at the hearing the court determines that the accused is still presently mentally incompetent, the court shall recommit the accused in accordance with AS 12.45.110.

(d) A finding by the court that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility. This finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury. (§ 2 ch 43 SLA 1966; am §§ 4 — 6 ch 119 SLA 1972; am § 5 ch 84 SLA 1981)

*Effect of amendments.* — The 1981 amendment, effective October 1, 1981, in subsection (a), substituted "AS 12.45.110" for "AS 12.45.110(a)" and deleted "after release of the accused from custody" following "conveniently possible" in the first sentence. The amendment, in subsec-

tion (b), substituted "and" for "or" preceding "to assist" and substituted "may" for "shall" preceding "be commenced." In subsection (c), the amendment substituted "in accordance with AS 12.45.110" for "as provided in AS 12.45.110(a)."