

HOUSE
COMMITTEE REPORT

5/9

(7)

Date referred: 4/15/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered CSSB 80 (HESS)

"An Act relating to ~~relating to~~ the number of psychiatrists or psychologists appointed to examine a criminal defendant; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- replace with _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

HOUSE
COMMITTEE REPORT

JUDICIARY

4/15

(7)

Date referred: 2/7/86

FURTHER REFERRALS: FINANCE

DATE: April 14, 1986

HEALTH, EDUCATION AND
The SOCIAL SERVICES Committee has considered CSSB 80 (HESS)

to
A

"An Act relating to the number of psychiatrists or psychologists appointed to examine a criminal defendant; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

W. G. Gumbert

John L. Taylor

Kate Hurley

Stacy

Jared W. Thompson

Alvin H. Haskins

W. G. Gumbert

W. G. Gumbert Chairman

W. G. Gumbert co-chair

Offered: 4/11/85
Referred: Judiciary

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 80 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the number of psychiatrists or
7 psychologists appointed to examine a criminal defen-
8 dant; and providing for an effective date."

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

10 * Section 1. AS 12.47.070(a) is amended to read:

11 (a) If a defendant has filed a notice of intention to rely on
12 the affirmative defense of insanity under AS 12.47.010 or has filed
13 notice under AS 12.47.020(a), or there is reason to doubt the defen-
14 dant's fitness to proceed, or there is reason to believe that a mental
15 disease or defect of the defendant will otherwise become an issue in
16 the case, the court shall appoint at least two qualified psychiatrists
17 or two forensic psychologists certified by the American Board of
18 Forensic Psychology to examine and report upon the mental condition of
19 the defendant. However, if both the defendant and the prosecuting
20 attorney waive the requirement for the appointment of at least two
21 psychiatrists or psychologists, the court shall appoint one psychia-
22 trist or psychologist. If the court appoints a psychiatrist [PSYCHIA-
23 TRISTS], the psychiatrist [PSYCHIATRISTS] may select a psychologist
24 [PSYCHOLOGISTS] to provide assistance. If the defendant has filed
25 notice under AS 12.47.090(a), the report shall consider whether the
26 defendant can still be committed under AS 12.47.090(c). The court may
27 order the defendant to be committed to a secure facility for the
28 purpose of the examination for not more than 60 days or such longer
29 period as the court determines to be necessary for the purpose and may
S

COMMITTEE COPY

1 direct that a qualified psychiatrist retained by the defendant be
2 permitted to witness and participate in the examination.

3 * Sec. 2. AS 12.47.100(b) is amended to read:

4 (b) When, after arrest and before the imposition of sentence or
5 before the expiration of any period of probation, the attorney gener-
6 al, the prosecuting attorney, or the attorney for the accused has
7 reasonable cause to believe that a person charged with a crime may be
8 presently suffering from a mental disease or defect or is otherwise so
9 mentally incompetent that the accused is unable to understand the
10 proceedings or to properly assist in the accused's own defense, the
11 attorney general, prosecuting attorney, or the attorney for the
12 accused may file a motion for a judicial determination of the mental
13 competency of the accused. Upon that motion or upon a similar motion
14 on behalf of the accused, or upon its own motion, the court shall
15 appoint at least two qualified psychiatrists to examine and report
16 upon the mental condition of the defendant. However, if both the
17 defendant and the prosecuting attorney waive the requirement for the
18 appointment of at least two psychiatrists, the court shall appoint one
19 psychiatrist [HAVE THE ACCUSED, WHETHER OR NOT PREVIOUSLY ADMITTED TO
20 BAIL, EXAMINED BY AT LEAST ONE QUALIFIED PSYCHIATRIST, WHO SHALL
21 REPORT TO THE COURT CONCERNING THE MENTAL CONDITION OF THE ACCUSED].
22 For the purpose of the examination the court may order the accused
23 committed for a reasonable period as the court may determine to a
24 suitable hospital or other facility to be designated by the court. If
25 the report of the psychiatrist indicates a state of present mental
26 disease or defect or of other mental incompetency in the accused, the
27 court shall hold a hearing, upon due notice, at which evidence as to
28 the mental condition of the accused may be submitted, including that
29 of the reporting psychiatrist, and make a finding with respect to the

1 mental condition of the accused. No statement made by the accused in
2 the course of an examination into the mental competency of the accused
3 provided for by this section, whether the examination is with or
4 without the consent of the accused, may be admitted in evidence
5 against the accused on the issue of guilt in a criminal proceeding
6 unless the accused later relies on a defense under AS 12.47.010 or
7 12.47.020. A finding by the judge that the accused is mentally compe-
8 tent to stand trial in no way prejudices the accused in a defense
9 based on insanity; the finding may not be introduced in evidence on
10 that issue or otherwise be brought to the notice of the jury.

11 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
12 10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB 80 (HESS)
 Title: Number of psychiatrists
to examine a criminal defendant
 Sponsor: Senate Hess
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Dept. of Law
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: _____ Phone: 465-4523
 Division: Senator Jan Faiks, Co-chairman Date: 2/6/86
Senate Finance Committee
 Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

POSITION PAPER

CS for Senate Bill No. 80 (HESS)

"An Act relating to the number of psychiatrists or psychologists appointed to examine a criminal defendant; and providing for an effective date."

The Committee Substitute for Senate Bill 80 does not alter the language or intent of Section 1 in the original version of Senate Bill 80. Thus our earlier Position Paper, dated January 30, 1985 (copy attached), accurately reflects our analysis and position with regard to Section 1 of the Committee Substitute.

The CS for SB 80 adds a new Section 2. This section, which amends A.S. 12.47.100, would tend to make this statute consistent with A.S. 12.47.070 by requiring the court to appoint two psychiatrists to examine a criminal defendant for competency to stand trial unless the defendant and the prosecuting attorney waive this requirement. In our opinion, it is indeed appropriate that these two statutes be consistent with respect to the number and types of examiners that are required to perform examinations on defendants undergoing criminal proceedings when mental disease or defect may become an issue.

Accordingly, we recommend that the same language that is in Section 1, line 16 through line 24 regarding the number and types of examiners under A.S. 12.47.070 should be repeated in Section 2 which refers to examinations under A.S. 12.47.100 and replace the language currently on line 15 through line 19. The existing language in Section 2 only requires that two qualified psychiatrists be appointed. This change will permit the court the option of appointing two qualified psychiatrists or two forensic psychologists to perform these exams. It will also authorize the psychiatrists that are appointed the opportunity to select psychologists to provide assistance in completing the examinations under A.S. 12.47.100.

The Department of Health and Social Services supports passage of the Committee Substitute for Senate Bill 80 with the recommended change that is noted above.

Recommended by: PPD for Mel Henry
Mel Henry, Ph.D., M.P.A.

Date: 4/18/85

Approved by: John Pugh
John Pugh, Commissioner

Date: 4/23/85

The Division of Mental Health and Developmental Disabilities does not foresee any decrease in our personnel services expenditures as a result of the passage of Senate Bill 80. In those cases in which the defendant and the prosecuting attorney waive the requirement that two psychiatrists perform the examination, the second Alaska Psychiatric Institute psychiatrist will simply continue with his in-house treatment responsibilities for mentally ill patients at the hospital. It should, however, result in the addition of more direct treatment services being available inside Alaska Psychiatric Institute as a result of the reduction in staff time by the second psychiatrist that is currently necessary to perform these court-ordered exams in the correctional centers.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

80

January 22, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that allows a criminal defendant and prosecuting attorney to waive the requirement that the court appoint two qualified psychiatrists or forensic psychologists to examine certain criminal defendants. If that requirement is waived, the court would only have to appoint one such psychiatrist or psychologist.

Under present law (AS 12.47.070(a)), if a defendant has filed notice of intent to rely on the defense of insanity or notice of intent to rely on evidence tending to negate a culpable mental state; if there is reason to doubt the defendant's fitness to proceed; or if there is reason to believe that a mental disease or defect of the defendant will otherwise become an issue in the case, the court is required to appoint at least two psychiatrists or psychologists to examine the defendant. The waiver authorized by this bill would avoid unnecessary duplication in cases in which the prosecution is satisfied with the appointment of a single psychiatrist, and the defendant does not wish to undergo more than one court-ordered examination. This waiver will be especially helpful in cases in which two state psychiatrists from the Alaska Psychiatric Institute would be appointed to perform the examinations.

Experience has shown that the requirement to appoint two psychiatrists is not always necessary, either to assist the court or to protect the public or the defendant. Experience has also shown that simply reducing this requirement to only one psychiatrist or psychologist would tend to weaken protection of the public since appointment of a prosecution expert would not be assured. This bill, based on that experience, seeks to achieve the most equitable result.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

HESS
Jvd.
Pm

ALASKA STATE LEGISLATURE

14th Legislature FIRST Session

SENATE BILL..... NO. 80.....

By THE RULES COMMITTEE BY.....
REQUEST OF THE GOVERNOR

An Act relating to the number of psychiatrists or psychologists appointed to examine a criminal defendant; and providing for an effective date.

Introduced in the Senate ..1/22.., 19. 85

HISTORY IN THE SENATE

19 85	1	22	Read first time and referred to Committee on
	4 11		HESS, JUDICIARY & FINANCE
	19 86		Reported back with HESS recommendation that replace w/ps
	1 22		5 do pass to Judiciary
	2 4		CS - to Finance
	2 6		CS - to Finance
	2 6		to Rules
	2 6		Read second time and
			CS HESS adj and adj
	2 6		Read third time and
	2 6		PASS Effective Date
			Yeas 20 Yea summer
			Nays - 0 Nays
			Absent - Absent
			Excused - 0 Excused
			Reconsideration
			PASS Effective Date
			Yeas Yeas
			Nays Nays
			Absen: Absent
			Excused Excused
	2 6		Reported correctly engrossed
			Signed by President
			Sent to House
			<i>Reggie Mulligan</i> SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19 86	Feb 7	Read first time and referred to Committee on
		Hess, Judiciary Finance
		Reported back with recommendation that
		Read second time and
		Read third time and
		PASS Effective Date
		Yeas Yeas
		Nays Nays
		Absent Absent
		Excused Excused
		Reconsideration
		PASS Effective Date
		Yeas Yeas
		Nays Nays
		Absent Absent
		Excused Excused
		Reported correctly engrossed
		Signed by Speaker
		Returned to Senate
		CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19	Received from House
	To enrolling
	Reported correctly enrolled
	Sent to Governor
 by Governor
	Filed with Lt. Governor
	Chapter No.

Offered: 4/11/85
Referred: Judiciary

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 80 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the number of psychiatrists or
7 psychologists appointed to examine a criminal defen-
8 dant; and providing for an effective date."

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

10 * Section 1. AS 12.47.070(a) is amended to read:

11 (a) If a defendant has filed a notice of intention to rely on
12 the affirmative defense of insanity under AS 12.47.010 or has filed
13 notice under AS 12.47.020(a), or there is reason to doubt the defen-
14 dant's fitness to proceed, or there is reason to believe that a mental
15 disease or defect of the defendant will otherwise become an issue in
16 the case, the court shall appoint at least two qualified psychiatrists
17 or two forensic psychologists certified by the American Board of
18 Forensic Psychology to examine and report upon the mental condition of
19 the defendant. However, if both the defendant and the prosecuting
20 attorney waive the requirement for the appointment of at least two
21 psychiatrists or psychologists, the court shall appoint one psychia-
22 trist or psychologist. If the court appoints a psychiatrist [PSYCHIA-
23 TRISTS], the psychiatrist [PSYCHIATRISTS] may select a psychologist
24 [PSYCHOLOGISTS] to provide assistance. If the defendant has filed
25 notice under AS 12.47.090(a), the report shall consider whether the
26 defendant can still be committed under AS 12.47.090(c). The court may
27 order the defendant to be committed to a secure facility for the
28 purpose of the examination for not more than 60 days or such longer
29 period as the court determines to be necessary for the purpose and may

1 direct that a qualified psychiatrist retained by the defendant be
2 permitted to witness and participate in the examination.

3 * Sec. 2. AS 12.47.100(b) is amended to read:

4 (b) When, after arrest and before the imposition of sentence or
5 before the expiration of any period of probation, the attorney gener-
6 al, the prosecuting attorney, or the attorney for the accused has
7 reasonable cause to believe that a person charged with a crime may be
8 presently suffering from a mental disease or defect or is otherwise so
9 mentally incompetent that the accused is unable to understand the
10 proceedings or to properly assist in the accused's own defense, the
11 attorney general, prosecuting attorney, or the attorney for the
12 accused may file a motion for a judicial determination of the mental
13 competency of the accused. Upon that motion or upon a similar motion
14 on behalf of the accused, or upon its own motion, the court shall
15 appoint at least two qualified psychiatrists to examine and report
16 upon the mental condition of the defendant. However, if both the
17 defendant and the prosecuting attorney waive the requirement for the
18 appointment of at least two psychiatrists, the court shall appoint one
19 psychiatrist [HAVE THE ACCUSED, WHETHER OR NOT PREVIOUSLY ADMITTED TO
20 BAIL, EXAMINED BY AT LEAST ONE QUALIFIED PSYCHIATRIST, WHO SHALL
21 REPORT TO THE COURT CONCERNING THE MENTAL CONDITION OF THE ACCUSED].
22 For the purpose of the examination the court may order the accused
23 committed for a reasonable period as the court may determine to a
24 suitable hospital or other facility to be designated by the court. If
25 the report of the psychiatrist indicates a state of present mental
26 disease or defect or of other mental incompetency in the accused, the
27 court shall hold a hearing, upon due notice, at which evidence as to
28 the mental condition of the accused may be submitted, including that
29 of the reporting psychiatrist, and make a finding with respect to the

1 mental condition of the accused. No statement made by the accused in
2 the course of an examination into the mental competency of the accused
3 provided for by this section, whether the examination is with or
4 without the consent of the accused, may be admitted in evidence
5 against the accused on the issue of guilt in a criminal proceeding
6 unless the accused later relies on a defense under AS 12.47.010 or
7 12.47.020. A finding by the judge that the accused is mentally compe-
8 tent to stand trial in no way prejudices the accused in a defense
9 based on insanity; the finding may not be introduced in evidence on
10 that issue or otherwise be brought to the notice of the jury.

11 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
12 10.070(c).

Offered: 4/11/85
Referred: Judiciary

Original sponsor: Rules/Governor

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 80 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the number of psychiatrists or
7 psychologists appointed to examine a criminal defen-
8 dant; and providing for an effective date."

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

10 * Section 1. AS 12.47.C70(a) is amended to read:

11 (a) If a defendant has filed a notice of intention to rely on
12 the affirmative defense of insanity under AS 12.47.010 or has filed
13 notice under AS 12.47.020(a), or there is reason to doubt the defen-
14 dant's fitness to proceed, or there is reason to believe that a mental
15 disease or defect of the defendant will otherwise become an issue in
16 the case, the court shall appoint at least two qualified psychiatrists
17 or two forensic psychologists certified by the American Board of
18 Forensic Psychology to examine and report upon the mental condition of
19 the defendant. However, if both the defendant and the prosecuting
20 attorney waive the requirement for the appointment of at least two
21 psychiatrists or psychologists, the court shall appoint one psychia-
22 trist or psychologist. If the court appoints a psychiatrist [PSYCHIA-
23 TRISTS], the psychiatrist [PSYCHIATRISTS] may select a psychologist
24 [PSYCHOLOGISTS] to provide assistance. If the defendant has filed
25 notice under AS 12.47.090(a), the report shall consider whether the
26 defendant can still be committed under AS 12.47.090(c). The court may
27 order the defendant to be committed to a secure facility for the
28 purpose of the examination for not more than 60 days or such longer
29 period as the court determines to be necessary for the purpose and may

1 direct that a qualified psychiatrist retained by the defendant be
2 permitted to witness and participate in the examination.

3 * Sec. 2. AS 12.47.100(b) is amended to read:

4 (b) When, after arrest and before the imposition of sentence or
5 before the expiration of any period of probation, the attorney gener-
6 al, the prosecuting attorney, or the attorney for the accused has
7 reasonable cause to believe that a person charged with a crime may be
8 presently suffering from a mental disease or defect or is otherwise so
9 mentally incompetent that the accused is unable to understand the
10 proceedings or to properly assist in the accused's own defense, the
11 attorney general, prosecuting attorney, or the attorney for the
12 accused may file a motion for a judicial determination of the mental
13 competency of the accused. Upon that motion or upon a similar motion
14 on behalf of the accused, or upon its own motion, the court shall
15 appoint at least two qualified psychiatrists to examine and report
16 upon the mental condition of the defendant. However, if both the
17 defendant and the prosecuting attorney waive the requirement for the
18 appointment of at least two psychiatrists, the court shall appoint one
19 psychiatrist [HAVE THE ACCUSED, WHETHER OR NOT PREVIOUSLY ADMITTED TO
20 BAIL, EXAMINED BY AT LEAST ONE QUALIFIED PSYCHIATRIST, WHO SHALL
21 REPORT TO THE COURT CONCERNING THE MENTAL CONDITION OF THE ACCUSED].
22 For the purpose of the examination the court may order the accused
23 committed for a reasonable period as the court may determine to a
24 suitable hospital or other facility to be designated by the court. If
25 the report of the psychiatrist indicates a state of present mental
26 disease or defect or of other mental incompetency in the accused, the
27 court shall hold a hearing, upon due notice, at which evidence as to
28 the mental condition of the accused may be submitted, including that
29 of the reporting psychiatrist, and make a finding with respect to the

1 mental condition of the accused. No statement made by the accused in
2 the course of an examination into the mental competency of the accused
3 provided for by this section, whether the examination is with or
4 without the consent of the accused, may be admitted in evidence
5 against the accused on the issue of guilt in a criminal proceeding
6 unless the accused later relies on a defense under AS 12.47.010 or
7 12.47.020. A finding by the judge that the accused is mentally compe-
8 tent to stand trial in no way prejudices the accused in a defense
9 based on insanity; the finding may not be introduced in evidence on
10 that issue or otherwise be brought to the notice of the jury.

11 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
12 10.070(c).

Introduced: 1/22/85
Referred: Health, Education and Social Services,
Judiciary and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 80

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the number of psychiatrists or
7 psychologists appointed to examine a criminal defen-
8 dant; and providing for an effective date."

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

10 * Section 1. AS 12.47.070(a) is amended to read:

11 (a) If a defendant has filed a notice of intention to rely on
12 the affirmative defense of insanity under AS 12.47.010 or has filed
13 notice under AS 12.47.020(a), or there is reason to doubt the defen-
14 dant's fitness to proceed, or there is reason to believe that a mental
15 disease or defect of the defendant will otherwise become an issue in
16 the case, the court shall appoint at least two qualified psychiatrists
17 or two forensic psychologists certified by the American Board of
18 Forensic Psychology to examine and report upon the mental condition of
19 the defendant. However, if both the defendant and the prosecuting
20 attorney waive this requirement for the appointment of at least two
21 such psychiatrists or psychologists, the court shall appoint one such
22 psychiatrist or psychologist. If the court appoints a psychiatrist
23 [PSYCHIATRISTS], the psychiatrist [PSYCHIATRISTS] may select a
24 psychologist [PSYCHOLOGISTS] to provide assistance. If the defendant
25 has filed notice under AS 12.47.090(a), the report shall consider
26 whether the defendant can still be committed under AS 12.47.090(c).
27 The court may order the defendant to be committed to a secure facility
28 for the purpose of the examination for not more than 60 days or such
29 longer period as the court determines to be necessary for the purpose

1 and may direct that a qualified psychiatrist retained by the defendant
2 be permitted to witness and participate in the examination.

3 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).