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Ford  
4/10/86 ✓

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 80 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND 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 a [AT LEAST TWO] qualified psychia-  
17 trist [PSYCHIATRISTS] or [TWO] forensic psychologist [PSYCHOLOGISTS]  
18 certified by the American Board of Forensic Psychology to examine and  
19 report upon the mental condition of the defendant. If the court  
20 appoints a psychiatrist [PSYCHIATRISTS], the psychiatrist [PSYCH-  
21 IATRISTS] may select a psychologist [PSYCHOLOGISTS] to provide assis-  
22 tance. If the defendant has filed notice under AS 12.47.090(a), the  
23 report shall consider whether the defendant can still be committed  
24 under AS 12.47.090(c). The court may order the defendant to be com-  
25 mitted to a secure facility for the purpose of the examination for not  
26 more than 60 days or such longer period as the court determines to be  
27 necessary for the purpose and may direct that a qualified psychiatrist  
28 retained by the defendant be permitted to witness and participate in  
29 the examination.

1 \* Sec. 2. AS 12.47.070 is amended by adding a new subsection to read:

2 (f) After receipt of a report of the examination conducted under:  
3 (a) of this section, the defendant or the prosecuting attorney may  
4 request that a second examination be conducted by a qualified psychia-  
5 trist or psychologist. If a second examination is requested the court  
6 shall order an examination in accordance with (a) - (e) of this  
7 section, except that the person who conducts the first examination may  
8 not be appointed to conduct the second examination.

9 \* Sec. 3. AS 12.47.100 is amended by adding a new subsection to read:

10 (c) After receipt of the report of the examination conducted  
11 under (b) of this section, the defendant or the prosecuting attorney  
12 may request that a second examination be conducted by a qualified  
13 psychiatrist in accordance with this section. If a second examination  
14 is requested the court shall order an examination in accordance with  
15 (b) of this section, except that the person who conducts the first  
16 examination may not be appointed to conduct the second examination.

17 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
18 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:

\* Section 1. AS 12.47.070(u) 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

COMMITTEE COPY

-1-

CSSB 80(HESS)

ENGROSSED

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

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mental condition of the accused. No statement made by the accused in the course of an examination into the mental competency of the accused 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 unless the accused later relies on a defense under AS 12.47.010 or 12.47.020. 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 insanity; the finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
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
<b>OPERATING</b>						
100 PERSONAL SERVICE						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

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

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

# STATE OF ALASKA 1986 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 Health and Social Services  
 BRU: Division of Mental Health & Developmental Disabilities API  
 Components: Mental Health Institutions and Administration

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

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

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

HOUSE  
COMMITTEE REPORT

JUDICIARY

(7)

Date referred: 2/ /86

FURTHER REFERRALS: FINANCE

DATE: April 14, 1986

HEALTH, EDUCATION AND  
The SOCIAL SERVICES

Committee has considered

CSSB 80 (HESS)

"An Act relating to the number of psychiatrists or psychologists appointed 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. J. Murphy*

*John L. Taylor*

*Laurie Hurley*

*John J. ...*

*David W. ...*

*Alexander ...*

*W. L. ...*

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*W. J. Murphy* Chairman

*W. L. ...* co-chair

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

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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.

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POSITION PAPER

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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:

*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 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
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

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

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS  
FROM: NANCY BENNETT, COMMITTEE STAFF  
RE: TODAY'S AGENDA  
DATE: APRIL 14, 1986

WE HAVE THREE BILLS ON TODAY'S CALENDAR

HB 418 - relating to liability for emergency medical services

this bill provides that a person who renders emergency medical services to a person in need of immediate treatment to avoid serious harm or loss of life is not liable for an act or omission.

SB 8 - relating to a personal safety curriculum in public schools

includes "personal safety" in the Department of Education health education curriculum section (SA 14.30.360). Personal safety is to include identification and prevention of child abuse, child abduction, neglect, sexual abuse and domestic violence. The state Board of Education is to develop curriculum guidelines in cooperation with the Council on Domestic Violence and Sexual Assault. The Departments of Education and Health and Social Services are to provide technical assistance on request.

SB 80 - the number of psychiatrists or psychologists appointed for a criminal defendant

This bill was heard in the HESS Committee last week.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

<u>REQUEST</u> Bill/Resolution No.: <u>CSSB 80 (HESS)</u> Title: <u>Number of psychiatrists</u> <u>to examine a criminal defendant</u> Sponsor: <u>Senate Hess</u> Requestor: _____ Date of Request: _____	<u>FISCAL DETAIL</u> Agency Affected: <u>Dept. of Law</u> Program Category Affected: <u>Administration of Justice</u> BRU, Program or Subprogram(s) Affected: <u>Prosecution</u>
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

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: \_\_\_\_\_

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