HB

4233

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907·465·3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

H. Judiciary	4/17/86	1:30 pm
" "	4/18/86	1:30 pm
" "	4/21/86	1:30 pm
" "	4/22/86	8Am

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB423 (#ESS)
Title : "An Act relating to certain mentally ill persons."

Sponsor : Rep. Shultz
Requestor House Finance
Date of Request : April 18, 1986

FISCAL DETAIL

Agency Affected : Dept. of Administration
BRU : Public Defender Agency

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
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TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
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OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

(See attached analysis)

Prepared by : John Salemi, Dep. Public Defender
Phone : 279-7541
Division : Public Defender Agency
Date : April 18, 1986

Approved by Commissioner : _____
Date : 4/25/86
Agency : _____

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

10/25/85

MEMORANDUM

TO: Representative Don Clocksin
Majority Leader

FROM: John B. Salemi
Deputy Public Defender

SUBJECT: CSHB 423 (HESS)
"An Act relating to certain mentally ill persons."

DATE: April 18, 1986

Per your request, this memorandum discusses briefly the above-referenced proposed legislation.

Proposed 12.47.090(k) appears to offer the court a middle ground in determining the appropriate disposition of a person found not guilty by reason of insanity. Termed "conditional release", the court is given authority to place a person who has been found not guilty by reason of insanity on the equivalent of supervised probation. Probation for convicted persons is limited to five years under AS 12.55.090(c), and in that regard is less punitive than the measure proposed through CSHB 423. Constitutional issues related to due process (fundamental fairness) and equal protection (treatment) may be triggered because of this anomaly.

Subsection (e) of the proposal may be construed as a departure from court rules governing petitions for modification (See Alaska Rules Criminal Procedure 35).

The offered amendment to AS 12.47.090(d) presents substantial constitutional questions. The existing statute (AS 12.47.090) already requires that a person found not guilty by reason of insanity is held "in custody" or otherwise committed unless he or she establishes by clear and convincing evidence "that the defendant is not presently suffering from any mental disease..." AS 12.47.090(c). The operative words are then defined in subsection (j) of the statute. The proposed amendment confuses the issue for review under subsection (c). A person could satisfy the requirements of subsection (c) and yet be denied relief because of the amendment. This contradiction in the statute will make it susceptible to challenge, both because of the arbitrary standards it suggests (due process) and the

vagueness it creates in an otherwise succinct statement of the factual issue to be reviewed. The amendment essentially asks the court or trier of fact to make fine distinctions between "curing" or "correcting" mental illness as compared with "controlling" same. Such a standard is meaningless in the context of mental illness and invites arbitrary decisions by a judge or jury.

Given the impact such an amendment would have on the overall statutory framework, I believe a complete analysis of the constitutional ramifications should be undertaken. Time did not permit such analysis in this memorandum. Also, health care professionals should be permitted to provide input as to whether the distinctions between "cure", "correct" and "control" are real or illusory.

Please contact me if there is additional information I am to provide.

JS:sh

HOUSE

COMMITTEE REPORT

(7)

Date referred: 3/24/86

FURTHER REFERRALS:

DATE: _____

The JUDICIARY Committee has considered HB 423

"An Act relating to the release of certain dangerous persons and liability for their conduct following release."

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:

Chairman

Original sponsors: Shultz and Harrou

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 423 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to persons found not guilty by reason of insanity."

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

* Section 1. AS 12.47.090 is amended by adding new subsections to read:

(k) If the court finds that a defendant committed under (b) or (c) of this section can be adequately controlled and treated in the community with proper supervision, the court may order the defendant conditionally released from confinement under AS 12.47.092 for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.47.010 or 12.47.020(b) or until the mental illness is cured or corrected, whichever first occurs, as determined at a hearing under (c) of this section.

* Sec. 2. AS 12.47 is amended by adding a new section to read:

Sec. 12.47.092. PROCEDURE FOR CONDITIONAL RELEASE. (a) A defendant committed to the custody of the commissioner of health and social services under AS 12.47.090(b) or (c) may be conditionally released from confinement subject to the conditions and requirements for treatment that the court may impose, and placed under the supervision of the Department of Health and Social Services, a local government agency, a private agency, or an adult, who agrees to assume supervision of the defendant.

(b) The commissioner of health and social services or the commissioner's authorized representative shall submit, at a minimum,

quarterly written reports to the court describing the defendant's progress in treatment, compliance with conditions of release, and other information required by the court for defendants conditionally released under this section.

(c) A person or agency responsible for supervision or treatment under an order for conditional release shall immediately notify the commissioner of health and social services upon the defendant's failure to appear for required medication or treatment, or for failure to comply with other conditions imposed by the court.

(d) If the court, after petition or on its own motion, reasonably believes that a conditionally released defendant is failing to adhere to the terms and conditions of the conditional release, the court may order that the conditionally released defendant be apprehended and held until a hearing can be scheduled with the court to determine the facts and whether or not the defendant's conditional release should be revoked or modified. Nothing in this subsection is intended to limit procedures available for emergency situations, including emergency detention under AS 47.30.705.

(e) The commissioner of health and social services or the conditionally released defendant may petition the court for modification of an order of conditional release. A petition by the defendant for modification of conditional release may not be filed more often than once every six months.

(f) A defendant conditionally released under AS 12.47.090(k) may petition the court for discharge in accordance with AS 12.47.090(e).

* Sec. 3. This Act applies to a defendant committed under former AS 12.45.090 or AS 12.47.090 who is under the custody of the Department of Health and Social Services on the effective date of this Act.

MEMORANDUM

TO: Representative Don Clocksin
Majority Leader

FROM: John B. Salemi
Deputy Public Defender

SUBJECT: CSHB 423 (HESS)
"An Act relating to certain mentally ill persons."

DATE: April 18, 1986

Per your request, this memorandum discusses briefly the above-referenced proposed legislation.

Proposed 12.47.090(k) appears to offer the court a middle ground in determining the appropriate disposition of a person found not guilty by reason of insanity. Termed "conditional release", the court is given authority to place a person who has been found not guilty by reason of insanity on the equivalent of supervised probation. Probation for convicted persons is limited to five years under AS 12.55.090(c), and in that regard is less punitive than the measure proposed through CSHB 423. Constitutional issues related to due process (fundamental fairness) and equal protection (treatment) may be triggered because of this anomaly.

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FISCAL NOTE

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Sponsor: Rep. Shultz
Requestor: House Finance
Date of Request: April 18, 1986

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Agency Affected: Dept. of Administration
BRU: Public Defender Agency

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FEDERAL FUNDS						
OTHER						
TOTAL						

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PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

(See attached analysis)

Prepared by: John Salemi, Dep. Public Defender
Division: Public Defender Agency
Phone: 279-7541
Date: April 18, 1986

Approved by Commissioner: _____
Agency: _____
Date: _____

Distribution (by Agency preparing fiscal note):
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- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS

FROM: LISA MCLAREN, COMMITTEE STAFF

DATE: FEB. 19, 1986

RE: HB 423

You have before you today House Bill 423, sponsored by Rep. Shultz. Rep. Shultz requested this legislation because of a problem with a specific person in his district. This situation could occur anywhere in Alaska upon the release of a person found "not guilty by reason of insanity" for whom medication is still necessary for management of their mental condition.

It is my understanding that the plea of "not guilty by reason of insanity" is rarely used now in Alaska due to a tightening of definition and the addition of the "guilty but insane" plea. Under the latter plea a person serves out their sentence in a mental institution until such time as they are judged sane, and the rest of their time is served correctional facility.

The draft CS which you have before you is for discussion. It is one approach to this problem. Page 3, Section 5 was added at the sponsor's request. The original bill represents another approach somewhat similar to Oregon statute. However, Oregon statute outlines comprehensive and specific conditional release requirements.

In your file you will find copies of the referenced Alaska Statutes for both the original bill and the draft CS and a copy of the pertinent portion of Oregon statute.

Both the Department of Corrections and the Department of Health, Education and Social Services should be represented here today, and the drafter of the CS (the drafter of the original bill is no longer with LAA) should also be present.

Alaska State Legislature

COMMITTEES

Co-Chairman — House Resources Committee
Member — House Transportation Committee

While in Session:
P O Box V
State Capital
Juneau, Alaska 99811
Phone (907) 465-4951
465-4940

Home - SR 790
Tok, Alaska 99780

House of Representatives

Dick Shultz

April 1, 1986

Rep. Mike Miller / Chairman Judiciary
Room 122, Capitol Bldg.
Juneau, Alaska 99811

Dear Representative Miller:

House Bill 423 has been heard in the House Hess Committee and is now in House Judiciary.

The Department of Health and Social Services is in support of the legislation and members of the Hess Committee worked very closely with that Department to achieve an acceptable Committee Substitute.

The legislation addresses the lack of supervision that certain previously violent persons released from mental facilities may experience and would require that a judge consider the need for such supervision before the release of such persons.

Please consider a timely scheduling of this legislation for Judiciary members ~~revue.~~ review.

Respectfully Submitted,

Dick Shultz

POSITION PAPER/Department of Health & Social Services

Position Paper

HB 423

An Act Entitled: "an act relating to the release of certain dangerous persons and liability for their conduct following release."

Effect of the Act:

A person found to pose a danger of violent behavior unless the person receives medication prescribed to deter that behavior will not be released on bail, probation, or parole under this act until a suitable custodian agrees to supervise the person and to require the person to maintain a prescribed schedule of medication. Under this act the custodian may be held civilly liable for damages that result from the violent behavior of a person during the period of release if the custodian negligently fails to require that a person in their custody maintain a prescribed schedule of medication to deter violent behavior.

Discussion

This act is a mandate to the court and the Board of Parole to restrict the freedom of certain persons unless the person is supervised in the maintainance of the medication schedule prescribed to control violent behavior. Section 1 of the act requires the court to place a person with a custodian as a condition of bail. Section 2 allows the court to withhold release on probation unless a custodian is located. Section 3 requires the Board of Parole to deny parole unless a custodian agrees to supervise the parolee and his prescribed schedule of medication. In each case it is the Board of Parole or the court who must find that a prisoner or a person poses a danger of violent behavior unless the person receives medication prescribed to deter the behavior.

The right to refuse treatment has been established. Currently a court or Board of Parole is empowered to fix conditions under which a person may be granted freedom. As a condition of granting parole, fixing bail or sentencing to probation there can be a requirement that the person take medications or obtain treatment. A person under this release system who exercises their right to refuse treatment forfeits their freedom as a trade off.

Because this act is limited in its scope to action of the court and Board of Parole it is seen as having no impact on the Division of Mental Health and Developmental Disabilities.

POSITION PAPER/Department of Health & Social Services

Recommendation: This act is outside the scope of responsibility of the Department therefore we make no recommendation at this time.

Recommended by:

Mel Henry, Ph.D., M.P.A.
Director, Division of Mental Health and Developmental Disabilities

Date: 2/19/86

Approved by:

John R. Pugh, Commissioner
Department of Health & Social Services

Date: 2/19/86

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM March 3, 1986

SUBJECT: Concerning the situation of persons found not guilty by reason of insanity who have been released from custody but remain a potential danger to the public peace and safety. CSHB 423 (HESS)

TO: Representative Gruenberg
House HESS
Attn: Lisa McLaren

FROM: Joyce James
Legislative Counsel

On Friday, February 28, 1986, I spoke by telephone with Mr. Ingo Keilitz, Director of the Institute on Mental Disability and the Law, the National Center of State Courts, in Williamsburg, Virginia. I sought his advice concerning the situation of persons found not guilty by reason of insanity who have been released from custody by the courts with no conditions requiring continued treatment or medication and who may thereby pose a potential of repeating past criminal acts. His advice was as follows.

Regarding persons already released, if they cannot be civilly committed there is technically no authority for the court, no jurisdiction, to impose any conditions. Mr. Keilitz indicated three possibilities of formal mechanisms that could be interpreted to allow jurisdiction over these persons in the future. One involves broadening the involuntary commitment statutes but this involves the danger of unforeseen consequences and was not recommended. The second involves taking a serious look at the protective services statutes, areas like guardianship. The third involves a hard look at the criminal statutes, maybe a nuisance crime, or "mercy booking." This could however be complicated by a lack of competency to stand trial.

Mr. Keilitz preferred an informal mechanism which he called an education program, to sensitize the community, mental health officials, and law enforcement agencies to the problem. He reported a situation in Washington where in response to a problem new laws were enacted to broaden the net but the result was felt a full year before the laws went into effect as a result of heightened awareness and the gap that exists between the law and the practice.

Mr. Keilitz recommended looking at the situation as individual problems rather than a systemic one. Possibilities include more aggressive case management, perhaps involving a volunteer program, or an interdisciplinary co-ordinating council at the local level comprised of mental health professionals, the prosecutor, and a judge. This group could identify problems and look for patchwork solutions to address individuals in need of help.

I also asked about making a prior determination of not guilty by reason of insanity part of the consideration in any later civil commitment proceeding. Besides the obvious problems with privacy and confidentiality, Mr. Keilitz felt there were practical problems of sharing information between agencies. Mr. Keilitz suggested some sort of screening mechanism in a mental health facility for persons suspected as candidates for involuntary commitment. Hopefully through the screening process that information would become available.

Mr. Keilitz offered to send some literature which I will deliver to the committee when it arrives. If I can be of any further assistance, please advise.

JJ:mkr
m3/107

Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH V
JUNEAU, AK 99811
465-3759

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS

FROM: LISA MCLAREN, COMMITTEE STAFF

RE: CS HOUSE BILL 423 (HESS)

DATE; MARCH 16, 1986

Since the House HESS Committee's decision at their February 19 meeting to place this bill in subcommittee, one subcommittee meeting has been held. At that time staff was directed to work with Dave Stancliff (for Rep. Shultz) Jim Scoles at Division of Corrections, Division of Mental Health and Joyce James (the bill's drafter).

At the subsequent work sessions it was decided this issue involved two groups of people. One group of people are those who are currently in institutions after being found "not guilty by reason of insanity" (N.G.I.) and those who will in the future be placed in institutions because of this finding. The second group of people consists of those who have already been released from an institution after being placed there because they were N.G.I.s

After lengthy discussion it was decided there was no remedy for this second group of people until they commit another crime other than the other temporary civil committment remedies.

In response to the gap existing for the first group of people several CSs were drafted with the 3/14/86 version (in your folder) being the most recent and the most refined.

This new CS was completed on Friday, March 14. The subcommittee has not yet reviewed it. Rep. Shultz' office was given a copy of this CS this morning.

MEMORANDUM

TO: Representative Don Clocksin
Majority Leader

FROM: John B. Salemi
Deputy Public Defender

SUBJECT: CSHB 423 (HESS)
"An Act relating to certain mentally ill persons."

DATE: April 18, 1986

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Please contact me if there is additional information I am to provide.

JS:sh

James
4/17/86

Original sponsors: Shultz and Marrou

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 423 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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(k) If the court finds that a defendant committed under (b) or (c) of this section can be adequately controlled and treated in the community with proper supervision, the court may order the defendant conditionally released from confinement under AS 12.47.092 for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.47.010 or 12.47.020(b) or until the mental illness is cured or corrected, whichever first occurs, as determined at a hearing under (c) of this section.

(l) For purposes of this section, a mental illness that is controlled by medication or treatment is not corrected.

* Sec. 2. AS 12.47 is amended by adding a new section to read:

Sec. 12.47.092. PROCEDURE FOR CONDITIONAL RELEASE. (a) A defendant committed to the custody of the commissioner of health and social services under AS 12.47.090(b) or (c) may be conditionally released from confinement subject to the conditions and requirements for treatment that the court may impose, and placed under the supervision of the Department of Health and Social Services, a local government agency, a private agency, or an adult, who agrees to assume supervision of the defendant.

(b) The commissioner of health and social services or the commissioner's authorized representative shall submit, at a minimum quarterly written reports to the court describing the defendant's progress in treatment, compliance with conditions of release, and other information required by the court for defendants conditionally released under this section.

(c) A person or agency responsible for supervision or treatment under an order for conditional release shall immediately notify the commissioner of health and social services upon the defendant's failure to appear for required medication or treatment, or for failure to comply with other conditions imposed by the court.

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(f) A defendant conditionally released under AS 12.47.090(k) may petition the court for discharge in accordance with AS 12.47.090(e).

* Sec. 3. This Act applies to a defendant committed under former AS 12.45.090 or AS 12.47.090 who is under the custody of the Department o

Health and Social Services on the effective date of this Act.

James
3/14/86

Original sponsors: Shultz and Marrou

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

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James
2/19/86

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AND SOCIAL SERVICES COMMITTEE

E BILL NO. 423 (HESS)

URE OF THE STATE OF ALASKA

ISLATURE - SECOND SESSION

A BILL

lating to certain mentally ill persons and
for their conduct following release."

OF THE STATE OF ALASKA:

is amended to read:

tted under (b) or (c) of this section shall
riod of time not to exceed the maximum term
ime for which the defendant was acquitted
7.020(b) or until the mental illness is
termined at a hearing under (e) of this

amended to read:

means a determination involving both the
the defendant will commit an act threaten-
ety, as well as the magnitude of the harm
esult from this conduct; a finding that a
y result from a great risk of relatively
property, or may result from a relatively
arm to persons or property;

ess" means any mental condition that in-
ne defendant to be dangerous to the public
s a dangerous or violent mental condition
ation prescribed to deter the dangerous or
owever, it is not required that the mental

illness be sufficient to exclude criminal responsibility under AS 12.47.010, or that the mental illness presently suffered by the defendant be the same one the defendant suffered at the time of the criminal conduct.

* Sec. 3. AS 12.47.130 is amended to read:

Sec. 12.47.130. DEFINITIONS. In this chapter

(1) "affirmative defense" has the meaning given in AS 11.81.900(b);

(2) "culpable mental state" has the meaning given in AS 11.81.900(b);

(3) "mental disease or defect" means a disorder of thought or mood that substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life and includes a dangerous or violent mental condition that is controlled by medication prescribed to deter the dangerous or violent mental condition; "mental disease or defect" also includes mental retardation, which means a significantly below average general intellectual functioning that impairs a person's ability to adapt to or cope with the ordinary demands of life.

* Sec. 4. AS 47.30.700(a) is amended to read:

(a) Upon petition of any adult, a judge shall immediately conduct a screening investigation or direct a local mental health professional employed by the department or by a local mental health program that receives money from the department under AS 47.30.520 - 47.30.620 or another mental health professional designated by the judge, to conduct a screening investigation of the person alleged to be mentally ill and, as a result of that condition, alleged to be gravely disabled or to present a likelihood of serious harm to self or others. Within 48 hours after the completion of the screening investigation, a judge

may issue an ex parte order orally or in writing, stating that there is probable cause to believe the respondent is mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to self or others. In making this determination the judge shall consider the likelihood of serious harm to self or others if the person has a dangerous or violent mental condition that is only controlled by medication prescribed to deter that dangerous or violent mental condition and the person does not take the prescribed medication. The court shall provide findings on which the conclusion is based, appoint an attorney to represent the respondent, and may direct that a peace officer take the respondent into custody and deliver the respondent to the nearest appropriate facility for emergency examination or treatment. The ex parte order shall be provided to the respondent and made a part of the respondent's clinical record. The court shall confirm an oral order in writing within 24 hours after it is issued.

* Sec. 5. AS 47.30.815(b) is amended to read:

(b) The following persons may not be held civilly or criminally liable for detaining a person under AS 47.30.700 - 47.30.915 [OR FOR RELEASING A PERSON UNDER AS 47.30.700 - 47.30.915 AT OR BEFORE THE END OF THE PERIOD FOR WHICH THE PERSON WAS ADMITTED OR COMMITTED FOR EVALUATION OR TREATMENT] if the persons have performed their duties in good faith and without gross negligence, but may be held civilly or criminally liable for releasing a person under AS 47.30.700 - 47.30.915 at or before the end of the period for which the person was admitted or committed for evaluation or treatment if the person requires medication prescribed to deter a dangerous or violent mental condition and does commit a dangerous or violent act:

(1) an officer of a public or private agency;

(2) the superintendent, the professional person in charge, the professional designee of the professional person in charge, and the attending staff of a public or private agency;

(3) a public official performing functions necessary to the administration of AS 47.30.700 - 47.30.915;

(4) a peace officer or mental health professional responsible for detaining or transporting a person under AS 47.30.700 - 47.30.915.

* Sec. 6. AS 47.30.915(12) is amended to read:

(12) "mental illness" means an organic, mental, or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to reason or understand, and includes a dangerous or violent mental condition that is controlled by medication prescribed to deter that dangerous or violent behavior; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness;

NOTES TO DECISIONS

Applied in Ahmaogak v. State, Sup. Ct. Op. No. 1857 (File No. 4171), 595 P.2d 985 (1979).

Chapter 30. Bail.

Revisor's notes. — Chapter 20, SLA 1966, which repealed and reenacted this chapter, was based largely on SB 1357, 89th Congress, First Session.

Cross references. — For court rules on bail, see Cr. R. 41; for constitutional provisions, see art. I, sec. 11, Alaska Constitution.

Collateral references. — 8 Am. Jur. 2d, Bail and Recognizance, § 1 et seq.

8 C.J.S., Bail, § 29 et seq.

Sec. 12.30.010. Bail before conviction is matter of right.

The defendant in a criminal proceeding is entitled to be admitted to bail before conviction as a matter of right. (§ 1 ch 20 SLA 1966)

NOTES TO DECISIONS

This section was part of the original Alaska Bail Reform Act and has remained unchanged. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

AS 12.30.020 implements right of bail afforded by this section. — Since both this section and AS 12.30.020, were part of the Alaska Bail Reform Act, AS 12.30.020 must be taken to recognize and to implement the right to bail afforded by this section. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

The 1967 amendments to AS 12.30.020 do not permit detention of persons without bail. — See Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

The right to bail under this section is guaranteed prior to conviction. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

Denial of bail prior to conviction is unconstitutional. — An order denying bail to one accused of a crime, but not yet convicted, is in violation of Alaska Const., art. I, § 11, and the provisions of the Alaska Bail Reform Act. Gilbert v. State, Sup. Ct. Op. No. 1190 (File No. 2656), 540 P.2d 485 (1975).

But trial judge may consider danger to community in assessing amount of bail. — Although he may not deny bail to an accused, prior to conviction, the trial judge can consider danger to the community as a factor in assessing the amount of bail or fixing the terms of a conditional release. He is in a far better position than an appellate court to assess the evidence and to determine, in the first instance, what alternatives are available, and the amount of bail that should be required. Gilbert v. State, Sup. Ct. Op. No. 1190 (File No. 2656), 540 P.2d 485 (1975).

The purpose of bail in the admininistration of criminal justice is to insure the defendant's appearance at trial. Reeves v. State, Sup. Ct. Op. No. 329 (File No. 683), 411 P.2d 212 (1966).

An indigent defendant does not have an absolute right to be released on his own recognizance prior to trial. Reeves v. State, Sup. Ct. Op. No. 329 (File No. 683), 411 P.2d 212 (1966); Gilbert v. State, Sup. Ct. Op. No. 1190 (File No. 2656), 540 P.2d 485 (1975).

Pr/ trial release for all indigent defendan' s is not required by any provisions of the Criminal Code or under the federal co stitution or the Alaska Constitution. Reeves v. State, Sup. Ct. Op. No. 329 (File No. 683), 411 P.2d 212 (1966).

Probationer not entitled to bail under this section. — When a defendant reaches the status of a probationer, he can no longer claim the right to bail protected by this section. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

The denial of bail may constitute a needless disruption of the probation process negating the program's objectives of rehabilitation and eventual integration into society. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

But bail should be withheld pending probation revocation proceedings only in unusual cases. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

The ability of an arrestee to obtain a prompt release by posting bail for a petty offense should not depend on the fortuitous circumstance of one having sufficient money on his person to post the bail at the time he arrives at the jail. Many people do not carry much cash on their person. These persons should be permitted access to a telephone in order to get in touch with a relative, an employer, a friend, or an attorney, who could come to the stationhouse within a reasonable time and put up the necessary bail. Whether circumstances justify a variance will depend on the particular facts involved. Zehrung v. State, Sup. Ct. Op. No. 1501 (File No. 2823), 569 P.2d 189 (1977), modified on rehearing, 573 P.2d 858 (1978), wherein the supreme court held that its rule set forth in 569 P.2d 189 (1977), that one who is arrested and brought to jail for a minor offense for which bail has already been set in a bail schedule should be given a reasonable opportunity to post bail before being booked and searched, should normally be followed unless exigencies demand a different course of action, and that whether circumstances justify a variance will depend on the particular facts involved and must be determined in an adversary proceeding on a case-by-case basis.

Such released arrestee should not be subjected to booking procedures. — Where a jail had been provided with a bail schedule for petty offenses, the purpose of which was to afford an arrestee the opportunity to avoid incarceration by posting the established bail without need to appear before a magistrate, if one is arrested for a petty offense and has sufficient funds on his person to post the established bail when brought to the jail facility, he should be released immediately. There is no reason to subject su :h an arrestee to booking procedures with the resultant inventory search of his person since he is not to be incarcerated. Zehrung v. State, Sup. Ct. Op No. 1501 (File No. 2823), 569 P.2d 189 (1977), modified on rehearing, 573 P.2d 858 (1978), wherein the supreme court held that its rule set forth in 569 P.2d 189 (1977), that one who is arrested and brought to jail for a minor offense for which bail has already been set in a bail schedule should be given a reasonable opportunity to post bail before being booked and searched, should normally be followed unless exigencies demand a different course of action, and that whether circumstances justify a variance will depend on the particular facts involved and must be determined in an adversary proceeding on a case-by-case basis.

As to lack of authority of trial courts to conduct in camera bail hearings, see note to AS 12.30.020. Carman v. State, Sup. Ct. Op. No. 1428 (File No. 3255), 564 P.2d 361 (1977).

Collateral references. — Insanity of accused as affecting right to bail in criminal case, 11 ALR3d 1385.

Right of bail in proceedings in juvenile courts, 53 ALR3d 848.

Sec. 12.30.020. Release before trial. (a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is an unclassified felony or class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person, or will pose a danger to other persons and the community.

(b) If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to other persons and the community, the judicial officer may

(1) place the person in the custody of a designated person or organization agreeing to supervise the person;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the person to return to custody after daylight hours on designated conditions;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 per cent of the amount of the bond; the deposit to be returned upon the performance of the condition of release;

(5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(6) impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of other persons and the community.

(c) In determining the conditions of release under (b) of this section, the judicial officer shall take into account

(1) the nature and circumstances of the offense charged,

(2) the weight of the evidence against the person,

(3) the person's family ties,

(4) the person's employment,

(5) the person's financial resources,

(6) the person's character and mental condition,

(7) the length of the person's residence in the community,

(8) the person's record of convictions,

(9) the person's record of appearance at court proceedings,

(10) the flight of the accused to avoid prosecution or the person's failure to appear at court proceedings.

(d) A judicial officer authorizing the release of a person under this section shall issue an order containing a statement of the conditions imposed.

(e) The judicial officer shall inform the person of the penalties which may be imposed for a violation of the conditions of release and advise the person that a warrant for the person's arrest will be issued immediately upon a violation.

(f) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any other judicial officer in the district may review the conditions. If the conditions are not amended and the person remains in custody, the judicial officer shall set out in writing the reasons for requiring the conditions imposed.

(g) A judicial officer who orders the release of a person on a condition specified in (b) of this section may at any time amend the order to impose additional or different conditions of release, or to release the person under (a) of this section.

(h) Information offered or introduced at a hearing before a judicial officer to determine the conditions of release need not conform to the rules governing the admissibility of evidence in a court of law. (§ 1 ch 20 SLA 1966; am §§ 1, 2 ch 112 SLA 1967; am §§ 1, 2 ch 39 SLA 1974; am § 16 ch 143 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "the offense is an unclassified felony or class A felony or unless" in the first sentence of subsection (a).

NOTES TO DECISIONS

Section implements right to bail afforded by AS 12.30.010. — Since both this section and AS 12.30.010 were part of the Alaska Bail Reform Act, this section must be taken to recognize and to implement the right to bail afforded by AS 12.30.010. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

The intent of the 1967 amendment of this section seemingly was to permit a judicial officer to consider "danger to the community" as a factor in setting bail. The legislature could not infringe upon the constitutional right of bail. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

The 1967 amendments do not permit the detention of persons without bail. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

The "unless" clause in subsection (a) relates only to denial of personal recognizance or an unsecured appearance bond and not to the right of bail. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

Trial judges have wide latitude in imposing suitable conditions for prehearing release, other than the denial of bail. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

Although the trial court may not deny bail to an accused, the trial judge can consider danger to the community as a factor in assessing the amount of bail or fixing the terms of a conditional release. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

Evidence relevant in determining amount of bail or conditions of release. — Evidence in bail proceedings to the effect that an accused is a danger to the community has been decreed relevant by the legislature for the purpose of determining either the amount of bail or conditions of release. Carman v. State, Sup. Ct. Op. No. 1428 (File No. 3255), 564 P.2d 361 (1977).

Alaska's Bail Reform Act contemplates a hearing at which bail matters are to be determined. Carman v. State, Sup. Ct. Op. No. 1428 (File No. 3255), 564 P.2d 361 (1977).

Rights of accused at hearing. — At hearings to determine bail matters the accused is entitled to confront all witnesses who have given testimony regarding the amount of bail, or the terms and conditions of bail, as well as to refute such testimony and to present rebuttal evidence. Carman v. State, Sup. Ct. Op. No. 1428 (File No. 3255), 564 P.2d 361 (1977).

In camera bail hearings not authorized. — Neither Alaska's Bail Reform Act nor the rules of criminal procedure authorize the trial courts of Alaska to conduct in camera bail hearings. Carman v. State, Sup. Ct. Op. No. 1428 (File No. 3255), 564 P.2d 361 (1977).

Acceptance of ex parte in camera evidence in conjunction with bail hearings is antithetical to well established concepts of a fair adversarial hearing. Carman v. State, Sup. Ct. Op. No. 1428 (File No. 3255), 564 P.2d 361 (1977).

Applied in Padgett v. State, Sup. Ct. Op. No. 1801 (File No. 3317), 590 P.2d 432 (1979); Short v. State, Sup. Ct. Op. No. 1938 (File No. 4578), 600 P.2d 20 (1979); A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Collateral references. — Burden of proof, where bail is sought before judgment but after indictment in capital case, as to whether proof is evident or the presumption great, 89 ALR2d 355.

Application of state statutes establishing pretrial release of accused on personal recognizance as presumptive form of release, 78 ALR3d 780.

Sec. 12.30.025. Release before trial in cases involving domestic violence. (a) In determining the conditions of release under AS 12.30.020 in cases involving domestic violence, the court shall consider the following conditions and impose one or more conditions it considers reasonably necessary to protect the alleged victim of the domestic violence, including ordering the defendant

(1) not to subject the victim to further domestic violence;

(2) to vacate the home of the victim;

(3) not to contact the victim other than through counsel;

(4) to engage in personal or family counseling;

(5) to refrain from the consumption of alcohol or the use of drugs.

(b) As used in this section, "domestic violence" means a crime specified in AS 11.41 when the victim is a spouse or a former spouse of the defendant, a member of the social unit comprised of those living together in the same dwelling as the defendant, or a person who is not a spouse or former spouse of the defendant but who previously lived in a spousal relationship with the defendant. (§ 35 ch 102 SLA 1980; am § 12 ch 61 SLA 1982)

Cross references. — For injunctive relief in domestic violence cases, see AS 25.35.

Effect of amendments. — The 1982 amendment substituted "when the victim is a spouse or a former spouse of the defen-

dant" for "committed against a spouse, a former spouse, or" in subsection (b), and added the language beginning "or a person who is not a spouse or former spouse" to the end of that subsection.

Sec. 12.30.030. Appeal from conditions of release. (a) A person who remains in custody after a review provided for in AS 12.30.020(f) may move the court having original jurisdiction over the offense to amend the order. The motion shall be determined promptly.

(b) When a court denies a motion under (a) of this section or conditions of release have been imposed by the court having original jurisdiction over the offense, an appeal may be taken to the court having appellate jurisdiction over the court denying the motion or imposing the conditions subject to the rules of the Supreme Court of Alaska, and the District Court Rules of Criminal Procedure. The order of the lower court shall be affirmed unless it is found that the lower court abused its discretion. If it is held that the lower court did abuse its discretion, the appellate court may modify, vacate, set aside, reverse, remand the action for further proceeding, or remand the action directing entry of the appropriate order, which may include ordering the person to be released under AS 12.30.020(a). The appeal shall be determined promptly. (§ 1 ch 20 SLA 1966; am § 12 ch 69 SLA 1970)

NOTES TO DECISIONS

Alaska's Bail Reform Act provides for expeditious review of bail determinations. Carman v. State, Sup. Ct. Op. No. 1428 (File No. 3255), 564 P.2d 361 (1977).

The need for rapid review of bail orders is reflected in this section. Martin v. State, Sup. Ct. Op. No. 983 (File No. 1785), 517 P.2d 1389 (1974).

The supreme court has implemented this section by the adoption of Appellate Rule 206(b) and Appellate Rule 207. Griffith v. State, Ct. App. Op. No. 71 (File No. 5914), 641 P.2d 228 (1982).

Applied in Gilbert v. State, Sup. Ct. Op. No. 1190 (File No. 2656), 540 P.2d 485 (1975); A.M. v. State, Ct. App. Op. No. 150 (File No. 6105), 653 P.2d 346 (1982).

Quoted in Stiegele v. State, Ct. App. Op. No. 382 (File No. A-399), P.2d (1984).

Sec. 12.30.040. Release after conviction. (a) A person who has been convicted of an offense and is awaiting sentence, or who has filed an appeal shall be treated in accordance with the provisions of AS 12.30.020 unless the court has reason to believe that no one or more conditions of release will reasonably assure the appearance of the person as required or prevent the person from posing a danger to other persons and the community. If that determination is made, the person may be remanded to custody. This section does not affect the right of a person appealing from a judgment of conviction from a district court to the superior court to be released on bail pending appeal under Rule 603(b) of the Rules of Appellate Procedure.

(b) Notwithstanding the provisions of (a) of this section, if a person has been convicted of an offense which is an unclassified felony or a

Sec. 12.45.155. Laboratory report of controlled substances. (a) In a prosecution under AS 11.71.010 — 11.71.070, a complete copy of an official laboratory report from the Department of Public Safety or a laboratory operated by another law enforcement agency is prima facie evidence of the content, identity, and weight of a controlled substance. The report must be signed by the person performing the analysis and must state that the substance which is the basis of the alleged offense has been weighed and analyzed. In the report, the author shall state with specificity findings as to the content, weight, and identity of the substance.

(b) A sworn statement prepared by the author of the report provided for in (a) of this section must be attached to the report. The statement must set out the identity of the author and include a statement that the author is an employee of the laboratory issuing the report and that performing the analysis is a part of the author's regular duties. The statement must also include an outline of the author's education, training, and experience for performing an analysis. The author shall state that scientifically accepted tests were performed with due caution, and whether to the author's knowledge the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(c) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the defendant if the defendant has no attorney, not later than 20 days before a proceeding in which the report is to be used against the accused. However, at a preliminary hearing or grand jury proceeding, the report may be used without having previously been served upon the accused.

(d) The accused or the accused's attorney may demand the testimony of the person signing the report, by serving a written demand showing cause upon the prosecuting attorney within seven days from receipt of the report.

(e) A report issued for use under this section must contain notice of the right of the accused to demand the testimony of the person signing the report. (§ 16 ch 45 SLA 1982)

Sec. 12.45.160. [Renumbered as AS 12.45.082.]

Chapter 47. Insanity and Competency to Stand Trial.

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Sec. 12.47.040. Form of verdict when evidence of mental disease or defect admissible. (a) In a prosecution for a crime when the affirmative defense of insanity is raised under AS 12.47.010, or when evidence of a mental disease or defect of the defendant is otherwise admissible at trial under AS 12.47.020, the trier of fact shall find, and the verdict shall state, whether the defendant is

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity; or

(4) guilty but mentally ill.

(b) To return a verdict under (a)(4) of this section, the jury must find beyond a reasonable doubt that the defendant committed the crime and find by a preponderance of the evidence that when the defendant committed the crime the defendant was guilty but mentally ill as defined in AS 12.47.030.

(c) When the jury is instructed as to the verdicts under (a) of this section, it shall also be instructed on the dispositions available under AS 12.47.050 and 12.47.090. (§ 22 ch 143 SLA 1982)

Sec. 12.47.050. Disposition of defendant found guilty but mentally ill. (a) If the trier of fact finds that a defendant is guilty but mentally ill, the court shall sentence the defendant as provided by law and shall enter the verdict of guilty but mentally ill as part of the judgment.

(b) The Department of Corrections 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 the defendant to be dangerous to the public peace or safety. Subject to (c) and (d) of this section, the Department of Corrections shall determine the course of treatment.

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

(d) Notwithstanding any contrary provision of law, a defendant receiving treatment under (b) of this section may not be released on furlough or work release under AS 33.30.150, 33.30.250, or 33.30.260 or on parole.

(e) Not less than 30 days before the expiration of the sentence of a defendant found guilty but mentally ill, the commissioner of corrections shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant if

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

(2) the commissioner has good cause to believe that the defendant is suffering from a mental illness that causes the defendant to be dangerous to the public peace or safety; in this paragraph, "mental illness" has the meaning given in AS 47.30.915. (§ 22 ch 143 SLA 1982; am E.O. No. 55, §§ 3, 4 (1984))

Revisor's notes. — Subsection (e) was enacted as (f). Renumbered in 1982 when the original (e) was renumbered as AS 12.47.055.

Effect of amendments. — The 1984 amendment substituted "Corrections" for "Health and Social Services" in the first and last sentences in subsection (b) and "corrections" for "health and social services" in the introductory language of subsection (e).

Sec. 12.47.055. Treatment for other defendants not limited. Nothing in AS 12.47.050 limits the discretion of the court to recommend, or of the Department of Corrections to provide, psychiatrically indicated treatment for a defendant who is not adjudged guilty but mentally ill. (§ 22 ch 143 SLA 1982; am E.O. No. 55, § 5 (1984))

Revisor's notes. — Enacted as AS 12.47.050(e). Renumbered in 1982.

Effect of amendments. — The 1984 amendment substituted "Corrections" for "Health and Social Services."

Sec. 12.47.060. Post conviction determination of mental illness. (a) In a prosecution for a crime when the affirmative defense of insanity is not raised and when evidence of mental disease or defect of the defendant is not admitted at trial under AS 12.47.020, and the defendant 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 the court finds that a defendant is guilty but mentally ill, it shall sentence the defendant as provided by law and shall enter the finding of guilty but mentally ill as part of the judgment.

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

(d) In this section, "guilty but mentally ill" has the meaning given in AS 12.47.030. (§ 22 ch 143 SLA 1982)

Sec. 12.47.070. Psychiatric examination. (a) If a defendant has filed a notice of intention to rely on the affirmative defense of insanity under AS 12.47.010 or has filed notice under AS 12.47.020(a), or there is reason to doubt the defendant's fitness to proceed, or there is reason to believe that a mental disease or defect of the defendant will otherwise become an issue in the case, the court shall appoint at least two qualified psychiatrists or two forensic psychologists certified by the American Board of Forensic Psychology to examine and report upon the mental condition of the defendant. If the court appoints psychiatrists, the psychiatrists may select psychologists to provide assistance. If the defendant has filed notice under AS 12.47.090(a), the report shall consider whether the defendant can still be committed under AS

12.47.090(c). The court may order the defendant to be committed to a 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 the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's defense;

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

(5) if notice has been filed under AS 12.47.020(a), an opinion as to the capacity of the defendant to have a culpable mental state which is an element of the crime 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 prosecuting attorney and to counsel for the defendant. (§ 22 ch 143 SLA 1982)

NOTES TO DECISIONS

Editor's notes. — The cases annotated under Notes to Decisions were decided under former AS 12.45.087.

The conviction of a person who is incompetent to stand trial violates due process of law. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

One of the primary reasons for requiring that a defendant be competent before standing trial is to safeguard the accuracy of the guilt finding process. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

The defendant must have some minimum ability to provide his counsel with information necessary or relevant to his defense. He must also be able to understand the nature of the proceedings sufficiently to participate in certain decisions about the conduct of the defense. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Some strategic choices must be the product of meaningful communication between the defendant and his counsel. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

But this does not mean that a defendant must possess any high degree of legal sophistication or intellectual prowess. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Numerous persons are subjected to criminal prosecution, and properly so, even though they are of relatively low intelligence or are suffering from some significant emotional or physical impairment. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Not every emotional flaw renders one incompetent to stand trial. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

The presence of some degree of mental illness is not an invariable barrier to prosecution. There may be an impaired functioning of some aspects of the defendant's personality and yet he may still be minimally able to aid in his defense and to understand the nature of the proceedings against him. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Standard for determining competency is relative. — See Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Where the psychiatric examination of the defendant yields professional findings that he is competent to stand trial, the question of whether to hold any further or evidentiary hearings is addressed to the sound discretion of the trial court. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Physical examination did not violate predecessor section. — A physical examination between a clinical psychologist and defendant shortly after defendant was arrested and taken into custody, because the police feared defendant was suicidal, was properly authorized under AS 33.30.130(a), which specifies the duty of the commissioner of public safety to provide for persons pending arraignment or commitment, and did not violate subsection (a) of former AS 12.45.087, and the evidence resulting from it was therefore legally obtained. Loveless v. State, Sup. Ct. Op. No. 1819 (File No. 3320), 592 P.2d 1206 (1979).

Duty to order examination. — Once motion for competency evaluation was made under former AS 12.45.100 that was neither frivolous nor lacking in good faith and that set forth reasonable cause to believe accused might be incompetent, trial court had mandatory duty to order examination. Leonard v. State, Ct. App. Op. No. 223 (File No. 6261), 658 P.2d 798 (1983).

Where trial judge erroneously denied defendant's motion for competency evaluation under former AS 12.45.100, proper remedy was new trial preceded by competency determination. Leonard v. State, Ct. App. Op. No. 223 (File No. 6261), 658 P.2d 798 (1983).

Sec. 12.47.080. Procedure upon verdict of not guilty. (a) If a defendant is found not guilty under AS 12.47.040(a)(2), the prosecuting attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation to determine the need for treatment if the prosecuting 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 self or others.

(b) In this section, "mental illness" has the meaning given in AS 47.30.915(12). (§ 22 ch 143 SLA 1982)

Sec. 12.47.090. Procedure after raising defense of insanity. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.47.010 or files notice under AS 12.47.020(a), the defendant shall also file notice as to whether, if found not guilty by reason of insanity under AS 12.47.010 or 12.47.020(b), the defendant will assert that the defendant is not presently suffering from any mental illness that causes the defendant to be dangerous to the public peace or safety.

47.090

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

(c) If the defendant is found not guilty by reason of insanity under AS 12.47.010 or 12.47.020(b), and has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict of not guilty by reason of insanity to determine the necessity of commitment. The hearing shall be held before the same trier of fact as heard the underlying charge. At the hearing, the defendant has the burden of proving by clear and convincing evidence that the defendant is not presently suffering from any mental illness that causes the defendant to be dangerous to the public. If the court or jury determines that the defendant has failed to meet the burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. If the hearing is before a jury, the verdict must 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 12.47.010 or 12.47.020(b) or until the mental illness is cured or 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 continuing commitment under this section reviewed by the court sitting without a jury under a petition filed in the superior court at intervals beginning no sooner than a year from the defendant's initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection are the same as at a hearing under (c) of this section. 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 the attorney of record 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 12.47.010 or 12.47.020(b) 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 (e) of this section. On the grounds that the defendant has been cured of any mental illness that would cause the defendant to be 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 the commissioner's authorized representative shall submit periodic written

reports to the court on the mental condition of a person committed under this section.

(i) An 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) "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;

(2) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public peace or safety; however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.47.010, or that the mental illness presently suffered by the defendant be the same one the defendant suffered at the time of the criminal conduct. (§ 22 ch 143 SLA 1982)

NOTES TO DECISIONS

Prior statute construed. — See Clark v. State, Ct. App. Op. No. 96 (File No. 5658), 645 P.2d 1236 (1982), decided under former AS 12.45.090.

Cited in Blackburn v. State, Ct. App. Op. No. 243 (File No. 7224), 661 P.2d 1100 (1983).

Sec. 12.47.100. Incompetency to proceed. (a) A defendant who as a result of mental disease or defect lacks capacity to understand the proceedings against the defendant or to assist in the defendant's own defense may not be tried, convicted, or sentenced for the commission of a crime so long as the incapacity exists.

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

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o a suitable hospital or other facility to be designated by the
If the report of the psychiatrist indicates a state of present
l disease or defect or of other mental incompetency in the
d, the court shall hold a hearing, upon due notice, at which
ce as to the mental condition of the accused may be submitted,
ng that of the reporting psychiatrist, and make a finding with
to the mental condition of the accused. No statement made by
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f the accused provided for by this section, whether the examina-
with or without the consent of the accused, may be admitted in
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g unless the accused later relies on a defense under AS 12.47.010
7.020. A finding by the judge that the accused is mentally com-
to stand trial in no way prejudices the accused in a defense based
nity; the finding may not be introduced in evidence on that issue
erwise be brought to the notice of the jury. (§ 22 ch 143 SLA

NOTES TO DECISIONS

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Notes to Decisions were decided
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v. State, Sup. Ct. Op. No. 1021
1761), 520 P.2d 795 (1974).

This is true whether or not the defendant presented the issue of incompetency at trial. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

But incompetency to stand trial is a concept of restricted application. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

One of the primary reasons for requiring that a defendant be competent before standing trial is to safeguard the accuracy of the guilt finding process. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Former AS 12.45.100 appeared to codify the common law rule. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Common law. — It was the rule at common law that an accused should not be subjected to a criminal trial if he is in such a mental condition that he is unable to understand the proceedings against him or to properly assist in his own defense. Bosel v. State, Sup. Ct. Op. No. 280 (File No. 32), 398 P.2d 651 (1965); Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Subsection (b) of former AS 12.45.100 was patterned after 18 U.S.C. § 4244. Bosel v. State, Sup. Ct. Op. No. 280 (File No. 32), 398 P.2d 651 (1965); Smiloff v.

State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

The test in former AS 12.45.100 was substantially identical to the federal statutory standard of incompetency. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

Subsection (b) of former AS 12.45.100 was clear enough. Thessen v. State, Sup. Ct. Op. No. 555 (File No. 898), 454 P.2d 341 (1969), cert. denied, 396 U.S. 1029, 90 S. Ct. 588, 24 L. Ed. 2d 525 (1970).

A defendant need not be proved certifiably incompetent to stand trial before the court is required to order a psychiatric examination. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

Subsection (b) of former AS 12.45.100 directed only that "reasonable cause" to believe that the defendant might be incompetent to stand trial be shown. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

The defendant must have some minimum ability to provide his counsel with information necessary or relevant to his defense. He must also be able to understand the nature of the proceedings sufficiently to participate in certain decisions about the conduct of the defense. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

Some strategic choices must be the product of meaningful communication between the defendant and his counsel. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

But this does not mean that a defendant must possess any high degree of legal sophistication or intellectual prowess. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Numerous persons are subjected to criminal prosecution, and properly so, even though they are of relatively low intelligence or are suffering from some significant emotional or physical impairment. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Not every emotional flaw renders one incompetent to stand trial. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

The presence of some degree of mental illness is not an invariable barrier to prosecution. There may be an impaired functioning of some aspects of the defendant's personality and yet he may still be minimally able to aid in his defense and to understand the nature of the proceedings against him. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973); McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653, remanded on rehearing on other grounds, 570 P.2d 733 (1977), overruled on other grounds, Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

The presence of some degree of mental illness is not an invariable barrier to prosecution. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

That there may be something mentally wrong with a defendant or that he may be emotionally unstable does not necessarily render him mentally incompetent to understand the proceedings against him. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

Not every mental illness necessarily disables a defendant from functioning adequately in a criminal proceeding. McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653, remanded on rehearing on other grounds, 570 P.2d 733 (1977), overruled on other grounds, Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

The possibility that a defendant might suffer episodes of vertigo or momentary unconsciousness during trial is not enough to render a defendant mentally incompetent. It could with equal justification be argued that a chronically drowsy defendant could not be tried because he might doze off during proceedings. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

Amnesia, be it partial or total, is not an adequate ground for a declaration of incompetency to stand trial. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

Policy coins with precedent to oppose an expansion of the doctrine of incompetency to include amnesia. The potential for fraudulent allegations of memory loss is so great that the supreme court would for this reason alone be reluctant to allow amnesia as a ground for a finding of incompetency even if it were otherwise inclined to do so. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974).

Memory loss, whether partial or total, is not an adequate ground for a declaration of incompetency. Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

A temporary psychosis, though serious, may not necessarily preclude competency, even where it involves loss of memory. McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653, remanded on rehearing on other grounds, 570 P.2d 733 (1977), overruled on other grounds, Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

The duty to determine competency is not one that can be once determined and then ignored. Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Competency demonstrated by preponderance of evidence. — Competency to stand trial need be demonstrated only by a preponderance of the evidence; the court rejected the contention that the state prove competency beyond a reasonable doubt. McCarlo v. State, Ct. App. Op. No. 335 (File No. 7112), P.2d (1984).

In determining competency, the standard of judgment must be a relative one. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Some comparison must be made between the apparent competency of the accused and the ability level of the average criminal defendant. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

To a large extent each case must be considered on its particular facts, and must call for the application of judicial discretion. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973).

The determination is a relative one, and each case must be determined on its own facts. McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653, remanded on rehearing on other grounds, 570 P.2d 733 (1977), overruled on other grounds, Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

Great deference is to be accorded defense counsel's assessment in matters of defendant's competence to stand trial, insofar as he is better able than the trial judge or the prosecutor to assess the defendant's ability to participate in his defense and to understand the nature of the proceedings against him. Fajeriak v. State, Sup. Ct. Op. No. 1021 (File No. 1761), 520 P.2d 795 (1974); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

But his opinion is not determinative. — A defense attorney's duty as an advocate will often require him to present arguments of incompetence on behalf of his client, and while his opinion is still relevant, it is not determinative. McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653, remanded on rehearing on other grounds, 570 P.2d 733 (1977), overruled on other grounds, Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

The evaluation by defense counsel of the defendant's competency is only of evidentiary value and is not dispositive of the issue. Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Commitment not mandatory. — Subsection (b) of this section states that the court "may order the accused committed for a reasonable period," and such commitment is not mandatory. Vail v. State, Sup. Ct. Op. No. 1922 (File Nos. 3309, 3382), 599 P.2d 1371 (1979).

Reasonable cause for commitment. — This section assumes that the person making the motion to commit the accused to a mental hospital to determine his competency has "reasonable cause" to believe that the accused is laboring under a mental disease or defect. Vail v. State, Sup. Ct. Op. No. 1922 (File Nos. 3309, 3382), 599 P.2d 1371 (1979).

Where the psychiatric examination of the defendant yields professional findings that he is competent to stand trial, the question of whether to hold any further or evidentiary hearings is addressed to the sound discretion of the trial court. Schade v. State, Sup. Ct. Op. No. 912 (File No. 1620), 512 P.2d 907 (1973); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

This section is silent on the procedures to be employed if the psychiatrist's reports indicate that the accused is competent. Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Where defendant chooses not to assist in defense. — Although a defendant's decisions may reflect an unwise choice not to aid in his defense, the fact that he chooses not to assist in his defense does not mean he is incapable of doing so. McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653, remanded on rehearing on other grounds, 570 P.2d 733 (1977), overruled on other grounds, Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

Disagreements with defendant. — Where the main thrust of the trial counsel's showing was the fact that he had encountered difficulties and disagreements with defendant over whether to accept a plea bargain and whether to have a jury trial and defense counsel did not refer to any bizarre behavior on defendant's part or any specific facts indicating defendant's incompetency, the superior court did not err in ruling that a fresh competency hearing was not required. Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Limited appellate role on review. — See McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653, remanded on rehearing on other grounds, 570 P.2d 733 (1977), overruled on other grounds, Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

Viewing the evidence in the light most favorable to the state, the supreme court will examine whether or not there was substantial evidence in the record to uphold the ruling below. If there is substantial evidence, it will not substitute its opinion for that of the trial court. McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653, remanded on rehearing on other grounds, 570 P.2d 733 (1977), overruled on other grounds, Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

Substantial evidence supporting the ruling that defendant was competent. — See McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653, remanded on rehearing on other grounds, 570 P.2d 733 (1977), overruled on other grounds, Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

Sec. 12.47.110. Commitment on finding of incompetency. (a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.47.100, that a defendant is so mentally incompetent that the defendant is unable to understand the proceedings against the defendant or properly to assist in the defendant's own defense, the court shall order the proceedings 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 the commissioner's authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against the defendant 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 the defendant 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

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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 a class A felony or unclassified felony.

(c) The defendant is not responsible for the expenses of hospitalization or transportation incurred as a result of the defendant's 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 the defendant to understand the proceedings and to properly assist in the defendant's defense or does not disable the defendant from understanding the proceedings and assisting in the defendant's own defense. (§ 22 ch 143 SLA 1982)

Sec. 12.47.120. Determination of sanity after commitment. (a) When, in the medical judgment of the custodian of an accused person committed under AS 12.47.110, 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 the accused and to assist in the accused's 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 12.47.110.

(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 brought to the notice of the jury. (§ 22 ch 143 SLA 1982)

Sec. 12.47.130. Definitions. In this chapter

(1) "affirmative defense" has the meaning given in AS 11.81.900(b);

(2) "culpable mental state" has the meaning given in AS 11.81.900(b);

(3) "mental disease or defect" means a disorder of thought or mood that 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 that impairs a person's ability to adapt to or cope with the ordinary demands of life. (§ 22 ch 143 SLA 1982)

Chapter 50. Witnesses.

Article

Collateral references. — 81 Am. Jur. 2d, Witnesses, § 1 et seq.
97 C.J.S., Witnesses, § 1 et seq.

Article 1. Uniform Act to Secure Attendance in Criminal Proceedings.

Section

NOTES TO DECISIONS

Effect of article. — For witnesses not in prison, this article provides a means by which prosecuting authorities from one state can obtain an order from a court in the state where the witness is found, directing the witness to appear in court in the first state to testify. The state seeking his appearance must pay the witness a specified sum as a travel allowance and compensation for his time. Stores v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980).

Sec. 12.50.010. Witness subpoenaed in this state to testify in another state. (a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within the state to attend and testify in this state certifies under the seal of the court that there is a criminal prosecution pending in the court, or that a grand jury investigation has commenced or is about to commence, that a person within this state is a material witness in that prosecution or grand jury investigation, and that the presence of that person will be required for a specified number of days, then, upon presentation of the

(3) *[Repealed, § 42 ch 143 SLA 1982.]*

(b) Upon conviction a person shall be fined not more than $1,000 or imprisoned for not more than one year, or both. (§ 1 ch 113 SLA 1965; am § 6 ch 116 SLA 1975; am § 42 ch 143 SLA 1982)

Effect of amendments. — The 1982 amendment, in subsection (a), repealed paragraph (3), which read "gives false or incorrect information, knowing it to be false or incorrect, as part of the procedure to obtain a food coupon, even if he does not actually obtain or use the food coupon."

Sec. 47.25.990. Definitions. In AS 47.25.975 — 47.25.985

(1) "department" means Department of Health and Social Services;

(2) "food" means any food or food product for human consumption except alcoholic beverages and tobacco and shall include seeds and plants for use in gardens to produce food for the personal consumption of the eligible household;

(3) "food coupons" means any coupon, stamp or type of certificate issued under 7 U.S.C. 2011-2025 (Food Stamp Act);

(4) "food stamp program" means the federal food stamp program authorized by 7 U.S.C. 2011-2025;

(5) *[Repealed, § 1 ch 91 SLA 1971.]* (§ 1 ch 113 SLA 1965; am § 1 ch 91 SLA 1971; am § 6 ch 104 SLA 1971; am § 52 ch 127 SLA 1974)

Chapter 30. Mentally Ill and Insane Persons.

Article

Collateral references. — 40 Am. Jur. 2d, Hospitals and Asylums, § 1 et seq.; 41 Am. Jur. 2d, Incompetent Persons, § 1 et seq.

41 C.J.S., Hospitals, § 1 et seq.; 44 C.J.S., Insane Persons, § 1 et seq.

Secs. 47.30.010 — 47.30.170. Mental Health Program. [Repealed, § 7 ch 84 SLA 1981. For current provisions, see AS 47.30.660 — 47.30.875.]

Article 5. State Mental Health Policy.

Section
655. Purpose
660. Powers and duties of department

Sec. 47.30.655. Purpose. The purpose of this major revision of Alaska civil commitment statutes (AS 47.30.660 — 47.30.915) is to more adequately protect the legal rights of persons suffering from mental illness. The legislature has attempted to balance the individual's constitutional right to physical liberty and the state's interest in protecting society from persons who are dangerous to others and protecting persons who are dangerous to themselves by providing due process safeguards at all stages of commitment proceedings. In addition, the following principles of modern mental health care have guided this revision:

(1) that persons be given every reasonable opportunity to accept voluntary treatment before involvement with the judicial system;

(2) that persons be treated in the least restrictive alternative environment consistent with their treatment needs;

(3) that treatment occur as promptly as possible and as close to the individual's home as possible;

(4) that a system of mental health community facilities and supports be available;

(5) that patients be informed of their rights and be informed of and allowed to participate in their treatment program as much as possible;

(6) that persons who are mentally ill but not dangerous to others be committed only if there is a reasonable expectation of improving their mental condition. (§ 1 ch 84 SLA 1981; am § 1 ch 142 SLA 1984)

Revisor's notes. — The parenthetical expression in the first sentence was added by the revisor of statutes in 1981 pursuant to AS 01.05.031.

Effect of amendments. — The 1984 amendment made several minor stylistic changes in the second sentence and inserted "reasonable" in paragraph (1).

Sec. 47.30.660. Powers and duties of department. The department is the mental health authority of the state and shall

(1) administer a comprehensive program for the prevention of mental illness and the care and treatment of the mentally ill, including inpatient and outpatient care and treatment and the procurement of services of specialists or other persons on a contractual or other basis;

(2) take the actions and undertake the obligations which are necessary to participate in federal grants-in-aid programs and accept federal or other financial aid from whatever sources for the study, examination, care, and treatment of the mentally ill;

(3) administer AS 47.30.660 — 47.30.915;

(4) designate, operate, and maintain treatment facilities equipped and qualified to provide inpatient and outpatient care and treatment for the mentally ill;

Effect of amendments. — The 1984 amendment substituted "18 years" for "14 years" and reworded the section to remove personal pronouns.

Sec. 47.30.675. Notice of rights. (a) Upon the application of a person for voluntary admission, or at the time a person admitted under AS 47.30.690 reaches the age of 18, the person shall be given a copy of the following documents which shall be explained as necessary:

(1) notice of rights as set out in AS 47.30.825 — 47.30.865 and an explanation of any document served upon the person; and

(2) notice that should the person desire to leave at a time when the treatment facility determines that the person is mentally ill and as a result is likely to cause serious harm to self or others or is gravely disabled, the facility could initiate commitment proceedings against the person.

(b) If an applicant for voluntary admission does not understand English, the explanation shall be given in a language the applicant understands. (§ 1 ch 84 SLA 1981; am § 3 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "age of 18" for "age of 14" in the introductory paragraph of subsection (a) and reworded the section to remove personal pronouns throughout.

Sec. 47.30.680. Discharge of voluntary patients. A patient who no longer meets the standards established in AS 47.30.670 shall be discharged from the treatment facility. (§ 1 ch 84 SLA 1981)

Sec. 47.30.685. Notice of intent to leave facility; commitment. A voluntary patient who is 18 years of age or older and who desires to leave a treatment facility must submit to the facility a request to leave on a form provided by the facility. When the investigation is completed, the patient shall be evaluated immediately in writing and discharged immediately or given written notice that involuntary commitment proceedings will be initiated against the patient. The treatment facility may detain the patient for no more than 48 hours after receipt of the patient's request to leave in order to initiate involuntary commitment proceedings. (§ 1 ch 84 SLA 1981; am § 4 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "18 years" for "14 years" and "request" for "written notice of intent" in the first sentence; reworded the section to remove personal pronouns in the first and second sentences; substituted "When the investigation is completed" for "Upon immediate investigation" at the beginning of the second sentence; inserted "immediately" preceding "in writing" in the second sentence; and substituted "request" for "notice of intent" in the last sentence.

Sec. 47.30.690. Admission of minors under 18 years of age. (a) A minor under the age of 18 may be admitted for 30 days of evaluation, diagnosis, and treatment at a designated treatment facility if the minor's parent or guardian signs the admission papers and if, in the opinion of the professional person in charge,

(1) the minor is gravely disabled or is suffering from mental illness and as a result is likely to cause serious harm to the minor or others;

(2) there is no less restrictive alternative available for the minor's treatment; and

(3) there is reason to believe that the minor's mental condition could be improved by the course of treatment or would deteriorate further if untreated.

(b) A guardian ad litem for a minor admitted under this section shall be appointed under AS 25.24.310 to monitor the best interests of the minor as soon as possible after the minor's admission. If the guardian ad litem finds that placement is not appropriate, the guardian ad litem may request that an attorney be appointed under AS 25.24.310 to represent the minor. The attorney may request a hearing on behalf of the minor during the 30-day admittance.

(c) The minor may be released by the treatment facility at any time if the professional person in charge or the minor's designated mental health professional determines the minor would no longer benefit from continued treatment and the minor is not dangerous. The minor's parents or guardian must be notified by the facility of the contemplated release. (§ 1 ch 84 SLA 1981; am § 5 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment redesignated former subsection (b) as present subsection (c); added present subsection (b); substituted "age of 18" for "age of 14" and "30 days" for "21 days" in the introductory paragraph of subsection (a); reworded the section to remove personal pronouns throughout subsection (a) and present subsection (c); added "or would deteriorate further if untreated" to the end of paragraph (a)(3); deleted "during the 21-day period" preceding "if the professional person" and substituted "treatment" for "hospitalization" in the first sentence of present subsection (c); and deleted "and that, unless they initiate involuntary commitment proceedings, the minor will be released" from the end of present subsection (c).

Sec. 47.30.693. Notice to parent or guardian or minor. When a minor under 18 years of age is detained at or admitted or committed to a treatment facility, the facility shall inform the parent or guardian of the location of the minor as soon as possible after the arrival of the minor at the facility. (§ 6 ch 142 SLA 1984)

Sec. 47.30.695. Notice of request for release of minors under 18 years of age from detention and commitment. The parent or guardian of a minor who is less than 18 years of age may file a notice to withdraw the minor from the facility. On receipt of the notice, the facility may

(1) discharge the minor to the custody of the parent or guardian; or

(2) if, in the opinion of the treating physician, release of the minor would be seriously detrimental to the minor's health, the treating physician may

(A) discharge the minor to the custody of the parent or guardian after advising the parent or guardian that this action is against medi-

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cal advice and after receiving a written acknowledgement of the advice; or

(B) refuse to discharge the minor, initiate involuntary commitment proceedings, and continue to hold the minor until a court order under AS 47.30.700 has been issued; or

(3) if, in the opinion of the treating physician, the minor is likely to cause serious harm to self or others and there is reason to believe the release could place the minor in imminent danger, the treating physician shall refuse to discharge the minor, and shall initiate involuntary commitment proceedings and continue to hold the minor until a court order under AS 47.30.700 has been issued. (§ 1 ch 84 SLA 1981; am § 7 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment rewrote this section.

Article 7. Involuntary Admission for Treatment.

Sec. 47.30.700. Initiation of involuntary commitment procedures. (a) Upon petition of any adult, a judge shall immediately conduct a screening investigation or direct a local mental health professional employed by the department or by a local mental health program that receives money from the department under AS 47.30.520 — 47.30.620 or another mental health professional designated by the judge, to conduct a screening investigation of the person alleged to be mentally ill and, as a result of that condition, alleged to be gravely disabled or to present a likelihood of serious harm to self or others. Within 48 hours after the completion of the screening investigation, a judge may issue an ex parte order orally or in writing, stating that there is probable cause to believe the respondent is mentally ill and that condition causes the respondent to be gravely disabled or to

present a likelihood of serious harm to self or others. The court shall provide findings on which the conclusion is based, appoint an attorney to represent the respondent, and may direct that a peace officer take the respondent into custody and deliver the respondent to the nearest appropriate facility for emergency examination or treatment. The ex parte order shall be provided to the respondent and made a part of the respondent's clinical record. The court shall confirm an oral order in writing within 24 hours after it is issued.

(b) The petition required in (a) of this section shall allege that the respondent is reasonably believed to present a likelihood of serious harm to self or others or is gravely disabled as a result of mental illness and shall specify the factual information on which that belief is based including the names and addresses of all persons known to the petitioner who have knowledge of those facts through personal observation. (§ 1 ch 84 SLA 1981)

Sec. 47.30.705. Emergency detention for evaluation. A peace officer, a psychiatrist or physician who is licensed to practice in this state or employed by the federal government, or a clinical psychologist licensed by the state Board of Psychologists and Psychological Examiners who has probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to self or others of such immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures set out in AS 47.30.700, may cause the person to be taken into custody and delivered to the nearest evaluation facility. A person taken into custody for emergency evaluation may not be placed in a jail or other correctional facility except for protective custody purposes and only while awaiting transportation to a treatment facility. The peace officer or mental health professional shall complete an application for examination of the person in custody and be interviewed by a mental health professional at the facility. (§ 1 ch 84 SLA 1981; am § 8 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment inserted the language beginning "a psychiatrist or physician" and ending "Board of Psychologists and Psychological Examiners" and substituted "self" for "himself" in the first sentence; rewrote the second sentence, which formerly read "A correctional facility may be used as an emergency evaluation facility if an evaluation facility is not available"; and substituted "The peace officer or mental health professional" for "Upon arrival at the evaluation facility, the peace officer" at the beginning of the last sentence.

Sec. 47.30.710. Examination. (a) A respondent who is delivered under AS 47.30.700 — 47.30.705 to an evaluation facility for emergency examination and treatment shall be examined and evaluated as to mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.

(b) If the mental health professional who performs the emergency examination has reason to believe that the respondent is (1) mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to self or others, and (2) is in need of care or treatment, the mental health professional may hospitalize the respondent, or arrange for hospitalization, on an emergency basis. If a judicial order has not been obtained under AS 47.30.700, the mental health professional shall apply for an ex parte order authorizing hospitalization for evaluation. (§ 1 ch 84 SLA 1981)

Revisor's notes. — The word "respondent" was substituted for the word "person" in the first sentence of subsection (b) by the revisor of statutes in 1981 pursuant to AS 01.05.031

Sec. 47.30.715. Acceptance of order. When a facility receives a proper order for evaluation, it must accept the order and the respondent for an evaluation period not to exceed 72 hours. The facility shall promptly notify the court of the date and time of the respondent's arrival. The court shall set a date, time and place for a 30-day commitment hearing, to be held if needed within 72 hours after the respondent's arrival, and the court shall notify the facility, the respondent, the respondent's attorney, and the prosecuting attorney of the hearing arrangements. Evaluation personnel, when used, shall similarly notify the court of the date and time when they first met with the respondent. (§ 1 ch 84 SLA 1981; am § 9 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "30-day" for "21-day" preceding "commitment hearing" and "the respondent's" for "his" preceding "attorney," both in the third sentence.

Sec. 47.30.720. Release before expiration of 72-hour period. If at any time in the course of the 72-hour period the mental health professionals conducting the evaluation determine that the respondent does not meet the standards for commitment specified in AS 47.30.700, the respondent shall be discharged from the facility or the place of evaluation by evaluation personnel and the petitioner and the court so notified. (§ 1 ch 84 SLA 1981)

Sec. 47.30.725. Commitment proceeding rights; notification. (a) When a respondent is detained for evaluation under AS 47.30.660 — 47.30.915, the respondent shall be immediately notified orally and in writing of the rights under this section. Notification shall be in a language understood by the respondent. The respondent's guardian, if any, and if the respondent requests, an adult designated by the respondent, shall also be notified of the respondent's rights under this section.

(b) Unless a respondent is released or voluntarily admitted for treatment within 72 hours of arrival at the facility or, if the respondent

is evaluated by evaluation personnel, within 72 hours from the beginning of the respondent's meeting with evaluation personnel, the respondent is entitled to a court hearing to be set for not later than the end of that 72-hour period to determine whether there is cause for detention after the 72 hours have expired for up to an additional 30 days on the grounds that the respondent is mentally ill, and as a result presents a likelihood of serious harm to the respondent or others, or is gravely disabled. The facility or evaluation personnel shall give notice to the court of the releases and voluntary admissions under AS 47.30.700 — 47.30.820.

(c) The respondent has a right to communicate immediatley, at the department's expense, with the respondent's guardian, if any, or an adult designated by the respondent and the attorney designated in the ex parte order, or an attorney of the respondent's choice.

(d) The respondent has the right to be represented by an attorney, to present evidence, and to cross-examine witnesses who testify against the respondent at the hearing.

(e) The respondent has the right to be free of the effects of medication and other forms of treatment to the maximum extent possible before the 30-day commitment hearing; however, the facility or evaluation personnel may treat the respondent with medication under prescription by a licensed physician or by a less restrictive alternative of the respondent's preference if, in the opinion of a licensed physician in the case of medication, or of a mental health professional in the case of alternative treatment, the treatment is necesary to

(1) prevent bodily harm to the respondent or others;

(2) prevent such deterioration of the respondent's mental condition that subsequent treatment might not enable the respondent to recover; or

(3) allow the respondent to prepare for and participate in the proceedings.

(f) A respondent, if represented by counsel, may waive, orally or in writing, the 72-hour time limit on the 30-day commitment hearing and have the hearing set for a date no more than seven calendar days after arrival at the facility. The respondent's counsel shall immediately notify the court of the waiver. (§ 1 ch 84 SLA 1981; am § 10 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment reworded this section to remove personal pronouns; substituted "30 days" for "21 days" and deleted "gravely disabled or" preceding "mentally ill" near the end of the first sentence of subsection (b); added "or is gravely disabled" to the end of the first sentence of subsection (b); and substituted "30-day" for "21-day" preceding "commitment hearing" in the introductory paragraph of subsection (e) and in subsection (f).

Editor's notes. — The reference to AS 47.30.820 in subsection (b) is apparently incorrect. AS 47.30.815 would appear to be the intended reference.

(2) the conversion is made in good faith. (§ 18 ch 142 SLA 1984)

Sec. 47.30.805. Computing periods of time. (a) Except as provided in (b) of this section,

(1) computations of a 72-hour evaluation period under AS 47.30.715 or a 48-hour detention period under AS 47.30.685 do not include Saturdays, Sundays, legal holidays, or any period of time necessary to transport the respondent to the treatment facility;

(2) a 30-day commitment period expires at the end of the 30th day after the 72 hours following initial acceptance;

(3) a 90-day commitment period expires at the end of the 90th day after the expiration of a 30-day period of treatment;

(4) a 180-day commitment period expires at the end of the 180th day, after the expiration of a 90-day period of treatment or previous 180-day period, whichever is applicable.

(b) When a respondent has failed to appear or been absent through the respondent's own actions contrary to any order properly made or entered under AS 47.30.660 — 47.30.915, the relevant commitment period shall be extended for a period of time equal to the respondent's absence if written notice of absence is promptly provided to the respondent's attorney and guardian, if there is one, and if, within 24 hours after the respondent has returned to the evaluation or treatment facility, written notice of the corresponding extension and the reason for it is given to the respondent and the respondent's attorney and guardian, if any, and to the court. (§ 1 ch 84 SLA 1981; am § 19 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (a), inserted "under AS 47.30.715 or a 48-hour detention period under AS 47.30.685" in paragraph (1); substituted "30-day" for "21-day" and "30th day" for "21st day" in paragraph (2); substituted "30-day" for "21-day" in paragraph (3); and substituted "180-day" for "120-day" in two places and "180th day" for "120th day" in one place in paragraph (4).

Sec. 47.30.810. Habeas corpus. Nothing in AS 47.30.660 — 47.30.915 may be construed as limiting a person's right to a writ of habeas corpus. (§ 1 ch 84 SLA 1981)

Sec. 47.30.815. Limitation of liability; penalty for false application. (a) A person acting in good faith upon either actual knowledge or reliable information who makes application for evaluation or treatment of another person under AS 47.30.700 — 47.30.915 is not subject to civil or criminal liability.

(b) The following persons may not be held civilly or criminally liable for detaining a person under AS 47.30.700 — 47.30.915 or for releasing a person under AS 47.30.700 — 47.30.915 at or before the end of the period for which the person was admitted or committed for evaluation or treatment if the persons have performed their duties in good faith and without gross negligence:

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(1) an officer of a public or private agency;

(2) the superintendent, the professional person in charge, the professional designee of the professional person in charge, and the attending staff of a public or private agency;

(3) a public official performing functions necessary to the administration of AS 47.30.700 — 47.30.915;

(4) a peace officer or mental health professional responsible for detaining or transporting a person under AS 47.30.700 — 47.30.915.

(c) A person who wilfully initiates an involuntary commitment procedure under AS 47.30.700 without having good cause to believe that the other person is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to self or others, is guilty of a felony. (§ 1 ch 84 SLA 1981; am § 20 ch 142 SLA 1984)

Effect of amendments. — The 1984 amendment inserted "or mental health professional" and "or transporting" in paragraph (b)(4).

Article 8. Patient Rights.

Sec. 47.30.825. Patient medical rights. (a) A patient who is receiving services under AS 47.30.660 — 47.30.915 has the rights described in this section.

(b) A patient, or the patient's counsel, guardian, or the adult designated in accordance with AS 47.30.725 if the patient is mentally incapable of participation, is entitled to participate in formulating the patient's individualized treatment plan and to participate in the evaluation process as much as possible, at minimum to the extent of requesting specific forms of therapy, inquiring why specific therapies are or are not included in the treatment program, and being informed as to the patient's present medical and psychological condition and prognosis. The treating physician may not withhold any of this information from the patient.

(c) A patient has the right to know the name of medication that the patient is asked to take, what its purpose is, and what side effects may occur with this medication. If the patient is incapable of understanding the purpose and side effects of the medication, the treating physician or mental health professional shall explain it to the patient's counsel or guardian or, if there is no guardian, the adult designated in accordance with AS 47.30.725.

(d) A locked quiet room, or other form of physical restraint, may not be used, except as provided in this subsection, unless a patient is likely to physically harm self or others unless restrained. The form of restraint used shall be that which is in the patient's best interest and which constitutes the least restrictive alternative available. When practicable, the patient shall be consulted as to the patient's preference among forms of adequate, medically advisable restraints including medication, and that preference shall be considered. Nothing in this section is intended to limit the right of staff to use a quiet room at the patient's request or with the patient's knowing concurrence when considered in the best interests of the patient. Patients placed in a quiet room or other physical restraint shall be checked at least every 15 minutes or more often if good medical practice so indicates. Patients in a quiet room must be visited by a staff member at least once every hour and must be given adequate food and drink and access to bathroom facilities. At no time may a patient be kept in a quiet room or other form of physical restraint against the patient's will longer than necessary to accomplish the purposes set out in this subsection. All uses of a quiet room or other restraint shall be recorded in the patient's medical record, the information including but not limited to the reasons for its use, the duration of use, and the name of the authorizing staff member.

(e) A patient has the right to be free from unnecessary or excessive medication. Psychotropic medication shall be administered only on the order of a licensed physician when the physician determines that this medication is in the best interest of the patient or will prevent serious harm to others.

(f) A patient capable of giving informed consent has the absolute right to accept or refuse electro-convulsive therapy or aversive conditioning. A patient who lacks substantial capacity to make this decision may not be given this therapy or conditioning without a court order.

(g) In no event may treatment include psychosurgery, lobotomy, or other comparable form of treatment without specific informed consent of the patient, including a minor unless the minor is clearly too young or disabled to give an informed consent in which case the consent of the minor's legal guardian is required. In addition, this treatment may not be given without a court order after hearing compatible with full due process.

(h) When, in the written opinion of a patient's attending physician, a true medical emergency exists and a surgical operation is necessary to save the life, physical health, eyesight, hearing or member of the patient, the professional person in charge, or that person's professional designee, may give consent to the surgical operation if time will not permit obtaining the consent of the proper relatives or guardian or appropriate judicial authority. However, an operation may not be authorized if the patient is not a minor and knowingly withholds consent on religious grounds.

resentative capacity, or the patient's spouse or parent. In the exercise of the commissioner's discretion, the commissioner may impose full liability for the patient's actual cost of care and treatment on the patient, the patient's legal representative, the patient's spouse, or parent for refusal to supply a sworn statement of income. An order for payment shall be issued by the department within six months after the date on which the charge was incurred. The order shall remain in full force and effect unless modified by subsequent court or department order. Liability under this subsection shall be determined as follows: A patient hospitalized under AS 47.30.660 — 47.30.915, or the person responsible for payment of charges for the patient, may be required to pay according to ability to provide for payment, and in the manner and proportion which the department finds is not detrimental to the patient's rehabilitation. The department shall, at any time that it determines the action will serve the best interests of the state and the patient or the person responsible for payment, relieve the patient or the person responsible for payment from liability for charges for the care, transportation, and treatment of the patient.

(b) As used in (a) of this section, the term "actual cost of the care and treatment" means either the rate provided for by a contract entered into under AS 47.30.660 — 47.30.915, or, in the absence of a contract, a daily rate approved by the department.

(c) The department may charge, or accept from a person money or property, for the care or treatment of an inpatient or outpatient or for other purposes, even if the payment is not required by an order of the department, so long as the total payments received do not exceed the actual cost of care or treatment.

(d) All money paid by the patient or on the patient's behalf to the department under this section shall be deposited in the state treasury.

(e) If an order for payment is entered by the department under this section, and delinquency in the payment of any amount due the state under the order continues for a period of more than 30 days after the notification to the patient or the legal representative, spouse, or parent of the patient by the department, the state may proceed to collect the amounts due by appropriate proceedings. An action to enforce the collection of payments may only be brought within three years after the date of notification of a delinquent payment.

(f) The orders of the department issued under this section may relate only to charges incurred after October 1, 1981. (§ 1 ch 84 SLA 1981)

Collateral references. — Constitutionality of statute imposing liability upon estate of relative of insane person for his support in asylum. 20 ALR3d 363.

Sec. 47.30.915. Definitions. In AS 47.30.660 — 47.30.915

(1) "commissioner" means the commissioner of health and social services;

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(2) "court" means a superior court of the state;

(3) "department" means the Department of Health and Social Services;

(4) "designated treatment facility" means a hospital, clinic, institution, center, or other health care facility that has been designated by the department for the treatment or rehabilitation of mentally ill persons and for the receipt of these persons by court-ordered commitment, but does not include correctional institutions;

(5) "evaluation facility" means a health care facility that has been designated or is operated by the department to perform the evaluations described in AS 47.30.660 — 47.30.915, or a medical facility licensed under AS 18.20.020 or operated by the federal government;

(6) "evaluation personnel" means mental health professionals designated by the department to conduct evaluations as prescribed in AS 47.30.660 — 47.30.915 who conduct evaluations in places in which no staffed evaluation facility exists;

(7) "gravely disabled" means a condition in which a person as a result of mental illness

(A) is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness or death highly probable if care by another is not taken; or

(B) will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional or physical distress, and this distress is associated with significant impairment of judgment, reason or behavior causing a substantial deterioration of the person's previous ability to function independently;

(8) "inpatient treatment" means care and treatment rendered inside or on the premises of a treatment facility, or a part or unit of a treatment facility, for a continual period of 24 hours or longer;

(9) "least restrictive alternative" means mental health treatment facilities and conditions of treatment which are

(A) no more harsh, hazardous, or intrusive than necessary to achieve the treatment objectives of the patient; and

(B) involve no restrictions on physical movement nor supervised residence or inpatient care except as reasonably necessary for the administration of treatment or the protection of the patient or others from physical injury;

(10) "likely to cause serious harm" means a person who

(A) poses a substantial risk of bodily harm to that person's self, as manifested by recent behavior causing, attempting or threatening that harm;

(B) poses a substantial risk of harm to others as manifested by recent behavior causing, attempting, or threatening harm, and is likely in the near future to cause physical injury, physical abuse or substantial property damage to another person; or

y out plans of serious harm to

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Examiners; a psychological
and licensed by the Board of
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do not per se constitute mental
these conditions may also be

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her local health officer, public
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designee; in the absence of a
chief of staff or a physician

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A 1981; am §§ 26-30 ch 142

Effect of amendments. — The 1984 amendment inserted "or operated by the federal government" in paragraph (5); added the subparagraph (A) designation in paragraph (7), added "or" to the end of that subparagraph, and added subparagraph (B); reworded subparagraphs (10)(A) and (C) and paragraph (12) to remove personal pronouns; deleted "imminent and substantial" preceding "bodily harm" and substituted "behavior causing, attempting or threatening that harm" for "attempts at suicide or bodily harm" in paragraph (10)(A); substituted "harm to others" for "imminent and substantial bodily harm to one or more other persons" and the language beginning "recent behavior causing, attempting" or "behavior causing or attempting harm, including, in regard to evaluations, at least one incident within 30 days before the filing of a petition for emergency hospitalization" in paragraph (10)(B); substituted "manifests" for "demonstrates" in paragraph (10)(C); substituted "trained in clinical psychology and licensed" for "with a clinical psychology or counseling specialty licensed" near the middle of paragraph (11); and inserted "substantial" preceding "experience" near the end of paragraph (11).

Chapter 35. Private Institutions.

Sec. 47.35.010. Powers of department. (a) The department may

(1) license and supervise boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults;

(2) investigate and supervise licensees;

(3) enforce the standards established by it;

(4) contract with private or municipal agencies to investigate and make recommendations to the department for the licensing and supervision of boarding homes, foster homes, group homes, nurseries, institutions caring for children and foster homes, group homes and institutions caring for dependent adults under procedures and standards of operation established by the department.

(b) The department shall, within 90 days after receiving a written request that it do so, delegate its powers relating to nurseries under this section and under AS 47.35.040 — 47.35.060 to a municipality which has adopted an ordinance providing for day care licensing under home rule powers or as authorized under AS 29.48.035(a)(20). A municipality to which these powers have been delegated may waive or modify any regulation or standard established by the department under the authority of AS 47.35.010 — 47.35.080 as it applies to nurseries or the application of any such regulation or standard as it applies to a particular day care licensee but must notify the department of any waiver. (§ 2 ch 17 SLA 1951; am §§ 1, 2 ch 42 SLA 1973; am §§ 1, 2 ch 253 SLA 1976; am § 1 ch 45 SLA 1977; am § 1 ch 98 SLA 1977; am § 135 ch 6 SLA 1984)

TITLE 16

CRIMES AND PUNISHMENTS

Chapter 161

1983 REPLACEMENT PART

General Provisions

CROSS REFERENCES

Construction of statutes and general definitions, Ch. 174
Correctional institutions, Chs. 169, 179, 419, 420, 421
Evidence in criminal actions generally, 136.415 to 136.440
Political rights, effect of felony conviction, 137.230 and 137.260
Post-conviction relief, 138.510 to 138.680
Program for persons convicted of driving under influence of alcohol; crimes committed while intoxicated, 430.850 to 430.880
Violation of county ordinances, penalties, 203.065

161.045

Conviction does not cause forfeiture of estate, Const. Art. I, §25
Forfeiture of vehicles in certain cases, 133.460

161.085 to 161.125

Ex-post facto law prohibited, Const. Art. I, §21
Militiamen on active duty, criminal liability, 399.225

161.125

Definitions, 430.405, 475.005

161.205

Use of reasonable force on students, 339.250

so by a law enforcement official, or by a person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence to be used against the actor in a criminal prosecution.

(2) As used in this section, "induced" means that the actor did not contemplate and would not otherwise have engaged in the proscribed conduct. Merely affording the actor an opportunity to commit an offense does not constitute entrapment. [1971 c.743 §35]

RESPONSIBILITY

161.290 Incapacity due to immaturity. (1) A person who is tried as an adult in a court of criminal jurisdiction is not criminally responsible for any conduct which occurred when the person was under 14 years of age.

(2) Incapacity due to immaturity, as defined in subsection (1) of this section, is a defense. [Formerly 161.380]

161.295 Effect of mental disease or defect; guilty except for insanity. (1) A person is guilty except for insanity if, as a result of mental disease or defect at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law.

(2) As used in chapter 743, Oregon Laws 1971, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor do they include any abnormality constituting solely a personality disorder. [1971 c.743 §36; 1983 c.800 §1]

Note: Section 17, chapter 800, Oregon Laws 1983, provides:

Sec. 17. Section 16 of this Act and the amendments to ORS 161.295, 161.305, 161.309, 161.319, 161.325, 161.327, 161.336, 161.341, 161.365 and 162.155 by this Act shall apply only to offenses committed on or after January 1, 1984. In the case of offenses committed before January 1, 1984, those sections shall apply in the same manner as if this Act had not been enacted.

161.300 Evidence of disease or defect admissible as to intent. Evidence that the actor suffered from a mental disease or defect is admissible whenever it is relevant to the issue of whether he did or did not have the intent which is an element of the crime. [1971 c.743 §37]

161.305 Disease or defect as affirmative defense. Mental disease or defect constituting insanity under ORS 161.295 is an affirmative defense. [1971 c.743 §38; 1983 c.800 §2]

Note: See note under 161.295.

161.309 Notice prerequisite to defense; content. (1) No evidence may be introduced by the defendant on the issue of insanity under ORS 161.295, unless the defendant gives notice of intent to do so in the manner provided in subsection (3) of this section.

(2) The defendant may not introduce in the case in chief expert testimony regarding partial responsibility under ORS 161.300 unless the defendant gives notice of intent to do so in the manner provided in subsection (3) of this section.

(3) A defendant who is required under subsection (1) or (2) of this section to give notice shall file a written notice of purpose at the time the defendant pleads not guilty. The defendant may file such notice at any time after the plea but before trial when just cause for failure to file the notice at the time of making the plea is made to appear to the satisfaction of the court. If the defendant fails to file notice, the defendant shall not be entitled to introduce evidence for the establishment of a defense under ORS 161.295 or 161.300 unless the court, in its discretion, permits such evidence to be introduced where just cause for failure to file the notice is made to appear. [1971 c.743 §§39, 40, 41; 1983 c.800 §3]

Note: See note under 161.295.

161.310 [Repealed by 1971 c.743 §432]

161.313 Jury instructions; insanity. When the issue of insanity under ORS 161.295 is submitted to be determined by a jury in the trial court, the court shall instruct the jury in accordance with ORS 161.327. [1983 c.800 §16]

Note: See note under 161.295.

161.315 Right of state to obtain mental examination of defendant; limitations. Upon filing of notice or the introduction of evidence by the defendant as provided in ORS 161.309 (3), the state shall have the right to have at least one psychiatrist or licensed psychologist of its selection examine the defendant. The state shall file notice with the court of its intention to have the defendant examined. Upon filing of the notice, the court, in its discretion, may order the defendant committed to a state institution or any other suitable facility for observation and examination as it may designate for a period not to exceed 30 days. If the defendant objects to the examiner chosen by the state, the court for good cause shown may direct the state to select a different examiner. [1971 c.743 §42; 1977 c.380 §3]

161.319 Form of verdict on guilty except for insanity. When the defendant is found guilty except for insanity under ORS 161.295, the verdict and judgment shall so state. [1971 c.743 §43; 1977 c.380 §4; 1983 c.800 §4]

Note: See note under 161.295.

161.320 [Repealed by 1971 c.743 §432]

161.325 Entry of order guilty except for insanity; order to include whether victim wants notice of hearings or release of defendant. (1) After entry of judgment of guilty except for insanity, the court shall, on the basis of the evidence given at the trial or at a separate hearing, if requested by either party, make an order as provided in ORS 161.327 or 161.329, whichever is appropriate.

(2) If the court makes an order as provided in ORS 161.327, it shall also:

(a) Determine on the record the offense of which the person otherwise would have been convicted; and

(b) Make specific findings on whether there is a victim of the crime for which the defendant has been found guilty except for insanity and, if so, whether the victim wishes to be notified, under ORS 161.326 (2), of any Psychiatric Security Review Board hearings concerning the defendant and of any conditional release, discharge or escape of the defendant.

(3) The court shall include any such findings in its order. [1971 c.743 §44; 1977 c.380 §5; 1979 c.885 §1; 1981 c.711 §1; 1983 c.800 §5]

Note: See note under 161.295.

161.326 Commission of crime by person under board jurisdiction; notice to victim. (1) Whenever a person already under the board's jurisdiction commits a new crime, the court or the board shall make the findings described in ORS 161.325 (2).

(2) If the trial court or the board determines that a victim desires notification as described in ORS 161.325 (2), the board shall make a reasonable effort to notify the victim of board hearings, conditional release, discharge or escape. [1981 c.711 §9]

Note: 161.326, 161.387 and 161.400 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 161 but not to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

161.327 Order giving jurisdiction to Psychiatric Security Review Board; court to commit or conditionally release defendant; notice to board; appeal. (1) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional determination under ORS 161.325, if the court finds that the person would have been guilty of a felony, or of a misdemeanor during a criminal episode in the course of which the person caused physical injury or risk of physical injury to another, and if the court finds by a preponderance of the evidence that the person is affected by mental disease or defect and presents a substantial danger to others requiring commitment to a state mental hospital designated by the Mental Health Division or conditional release, the court shall order the person placed under the jurisdiction of the Psychiatric Security Review Board for care and treatment. The period of jurisdiction of the board shall be equal to the maximum sentence the court finds the person could have received had the person been found guilty not subject to exception for insanity.

(2) The court shall determine whether the person should be committed to a state hospital designated by the Mental Health Division or conditionally released pending any hearing before the board as follows:

(a) If the court finds that the person presents a substantial danger to others and is not a proper subject for conditional release, the court shall order the person committed to a state hospital designated by the Mental Health Division for custody, care and treatment pending hearing before the board in accordance with ORS 161.341 to 161.351.

(b) If the court finds that the person presents a substantial danger to others but that the person can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the court may order the person conditionally released, subject to those supervisory orders of the court as are in the best interests of justice, the protection of society and the welfare of the person. The court shall designate a person or state, county or local agency to supervise the person upon release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the court. After receiving an order entered under this paragraph, the person or agency designated shall assume supervision of the person pursuant to the direction of the Psychiatric Security Review Board. The person or agency designated as supervisor shall be required to report in writing no less than once per month

to the board concerning the supervised person's compliance with the conditions of release.

(3) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the person a danger to others.

(4) In determining whether a person should be conditionally released the court may order evaluations, examinations and compliance as provided in ORS 161.336 (4) and 161.346 (2).

(5) In determining whether a person should be committed to a state hospital or conditionally released the court shall have as its primary concern the protection of society.

(6) Upon placing a person on conditional release the court shall notify the board in writing of the court's conditional release order, the supervisor appointed, and all other conditions of release, and the person shall be on conditional release pending hearing before the board in accordance with ORS 161.336 to 161.351. Upon compliance with this subsection and subsections (1) and (2) of this section the court's jurisdiction over the person is terminated and the board assumes jurisdiction over the person.

(7) An order of the court under this section is a final order appealable by the person found guilty except for insanity in accordance with ORS 19.010 (4). The person shall be entitled on appeal to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is indigent, suitable counsel shall be appointed in the manner provided in ORS 138.500 (1), and the compensation for counsel and costs and expenses of the person necessary to the appeal shall be determined, allowed and paid as provided in ORS 138.500.

(8) Upon placing a person under the jurisdiction of the board the court shall notify the person of the right to appeal and the right to a hearing before the board in accordance with ORS 161.336 (7) and 161.341 (4). [1979 c.867 §5; 1979 c.885 §2; 1981 c.711 §2; 1981 s.s. c.3 §129; 1983 c.800 §6]

Note: See note under 161.295.

Note: 161.327 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 161 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

161.328 Commitment to state mental hospital; standard of proof; duration of commitment. (1) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional determination under ORS 161.325, if the court finds that the person would have been guilty of a misdemeanor during a criminal episode in the course of which the person did not cause physical injury or risk of physical injury to another, and if the court finds by a preponderance of the evidence that the person is affected by mental disease or defect and presents a substantial danger to others requiring commitment to a state mental hospital designated by the Mental Health Division or conditional release, the court shall make disposition of the person as provided in ORS 426.130 (2) and (3) and pursuant to procedures set forth in ORS 426.135 to 426.150, 426.170, 426.223 to 426.297 and 426.301 to 426.395, except as provided in subsections (2) and (3) of this section.

(2) The standard of proof in all proceedings pursuant to this section shall be based upon a preponderance of the evidence.

(3) The period of jurisdiction of the court and any commitment pursuant to this section shall be no longer than the maximum sentence the court finds the person could have received had the person been found guilty not subject to exception for insanity. [1981 c.711 §3; 1983 c.800 §7]

161.329 Order of discharge. Following the entry of a judgment pursuant to ORS 161.319 and the dispositional determination under ORS 161.325, if the court finds that the person is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others and is not in need of care, supervision or treatment, the court shall order the person discharged from custody. [1971 c.743 §45; 1977 c.380 §6; 1981 c.711 §4]

161.330 [Repealed by 1971 c.743 §432]

161.332 "Conditional release" defined. As used in ORS 161.315 to 161.351 and 161.385 to 161.395, "conditional release" includes, but is not limited to, the monitoring of mental and physical health treatment. [1977 c.380 §1; 1983 c.800 §8]

161.335 [1971 c.743 §46; 1973 c.137 §1; 1975 c.389 §1; repealed by 1977 c.380 §10 (161.336 enacted in lieu of 161.335)]

161.336 Conditional release by Psychiatric Security Review Board; supervision by board; termination or modification of conditional release; hearing. (1) If the board determines that the person presents a substantial danger to others but can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the

board may order the person conditionally released, subject to those supervisory orders of the board as are in the best interests of justice, the protection of society and the welfare of the person. The board may designate any person or state, county or local agency the board considers capable of supervising the person upon release, subject to those conditions as the board directs in the order for conditional release. Prior to the designation, the board shall notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the board. After receiving an order entered under this section, the person or agency designated shall assume supervision of the person pursuant to the direction of the board.

(2) Conditions of release contained in orders entered under this section may be modified from time to time and conditional releases may be terminated by order of the board as provided in ORS 161.351.

(3) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the person a danger to others. The person may be continued on conditional release by the board as provided in this section.

(4)(a) As a condition of release, the board may require the person to report to any state or local mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is recommended, the board may order the person, as a condition of release, to cooperate with and accept the treatment from the facility.

(b) The facility to which the person has been referred for evaluation shall perform the evaluation and submit a written report of its findings to the board. If the facility finds that treatment of the person is appropriate, it shall include its recommendations for treatment in the report to the board.

(c) Whenever treatment is provided by the facility, it shall furnish reports to the board on a regular basis concerning the progress of the person.

(d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the person and the person's counsel. The confidentiality of these reports shall be determined pursuant to ORS 192.500.

(e) The facility shall comply with any other conditions of release prescribed by order of the board.

(5) If at any time while the person is under the jurisdiction of the board it appears to the board or its chairman that the person has violated the terms of the conditional release or that the mental health of the individual has changed, the board or its chairman may order the person returned to a state hospital designated by the Mental Health Division for evaluation or treatment. A written order of the board, or its chairman on behalf of the board, is sufficient warrant for any law enforcement officer to take into custody such person and transport the person accordingly. A sheriff, municipal police officer, constable, parole or probation officer, prison official or other peace officer shall execute the order. Within 20 days of a revocation of a conditional release, the board shall conduct a hearing. Notice of the time and place of the hearing shall be given to the person, the attorney representing the person and the Attorney General. The board may continue the person on conditional release or, if it finds by a preponderance of the evidence that the person is affected by mental disease or defect and presents a substantial danger to others and cannot be adequately controlled if conditional release is continued, it may order the person committed to a state hospital designated by the Mental Health Division. The state must prove by a preponderance of the evidence the person's unfitness for conditional release. A person in custody pursuant to this subsection shall have the same rights as any person appearing before the board pursuant to ORS 161.346.

(6) The community mental health program director, the director of the facility providing treatment to a person on conditional release, any peace officer or any person responsible for the supervision of a person on conditional release may take a person on conditional release into custody or request that the person be taken into custody if there is reasonable cause to believe the person is a substantial danger to others because of mental disease or defect and that the person is in need of immediate care, custody or treatment. Any person taken into custody pursuant to this subsection shall immediately be transported to a state hospital designated by the Mental Health Division. A person taken into custody under this subsection shall have the same rights as any person appearing before the board pursuant to ORS 161.346.

(7)(a) Any person conditionally released under this section may apply to the board for discharge from or modification of an order of conditional release on the ground that the person is no longer affected by mental disease or defect or, if still so affected, no longer presents a substantial danger to others and no longer requires

supervision, medication, care or treatment. Notice of the hearing on an application for discharge or modification of an order of conditional release shall be made to the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a preponderance of the evidence the applicant's fitness for discharge or modification of the order of conditional release. Applications by the person for discharge or modification of conditional release shall not be filed more often than once every six months.

(b) Upon application by any person or agency responsible for supervision or treatment pursuant to an order of conditional release, the board shall conduct a hearing to determine if the conditions of release shall be continued, modified or terminated. The application shall be accompanied by a report setting forth the facts supporting the application.

(8) The total period of commitment and conditional release ordered pursuant to this section shall not exceed the maximum sentence the person could have received had the person been found guilty not subject to exception for insanity.

(9) The board shall maintain and keep current the medical, social and criminal history of all persons committed to its jurisdiction. The confidentiality of records maintained by the board shall be determined pursuant to ORS 192.500.

(10) In determining whether a person should be committed to a state hospital, conditionally released or discharged, the board shall have as its primary concern the protection of society. [1977 c.380 §11 (enacted in lieu of 161.335); 1979 c.885 §3; 1981 c.711 §5; 1983 c.800 §9]

Note: See note under 161.295.

Note: Section 17, chapter 711, Oregon Laws 1981, as amended by section 2, chapter 430, Oregon Laws 1983, provides:

Sec. 17. Notwithstanding ORS 161.336, 161.341 and 161.346, until July 1, 1985, representation of the state at hearings before the board is at the option of and by the district attorney of the county from which the person was committed rather than by the Attorney General. Notices, reports and related documents shall be sent by the board to that district attorney and to the court from which the person was committed rather than to the Attorney General.

161.340 [1971 c.743 §47; 1975 c.380 §2; repealed by 1977 c.380 §12 (161.341 enacted in lieu of 161.340)]

161.341 Order of commitment; application for discharge or conditional release; release plan. (1) If the board finds, upon its initial hearing, that the person presents a substantial danger to others and is not a proper subject for conditional release, the board shall order the person committed to, or retained in, a state hospital designated by the Mental Health Division for custody, care and treatment. The period of commitment ordered by the board shall not exceed the maximum sentence the person could have received had the person been found guilty not subject to exception for insanity.

(2) If at any time after the commitment of a person to a state hospital designated by the Mental Health Division under this section, the superintendent of the hospital is of the opinion that the person is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others or that the person continues to be affected by mental disease or defect and continues to be a danger to others, but that the person can be controlled with proper care, medication, supervision and treatment if conditionally released, the superintendent shall apply to the board for an order of discharge or conditional release. The application shall be accompanied by a report setting forth the facts supporting the opinion of the superintendent. If the application is for conditional release, the application must also be accompanied by a verified conditional release plan. The board shall hold a hearing on the application within 60 days of its receipt. Not less than 30 days prior to the hearing before the board, copies of the report shall be sent to the Attorney General.

(3) The attorney representing the state may choose a psychiatrist or licensed psychologist to examine the person prior to the initial or any later decision by the board on discharge or conditional release. The results of the examination shall be in writing and filed with the board, and shall include, but need not be limited to, an opinion as to the mental condition of the person, whether the person presents a substantial danger to others and whether the person could be adequately controlled with treatment as a condition of release.

(4) Any person who has been committed to a state hospital designated by the Mental Health Division for custody, care and treatment or another person acting on the person's behalf may apply to the board for an order of discharge or conditional release upon the grounds:

(a) That the person is no longer affected by mental disease or defect;

(b) If so affected, that the person no longer presents a substantial danger to others; or

(c) That the person continues to be affected by a mental disease or defect and would continue to be a danger to others without treatment, but that the person can be adequately controlled and

given proper care and treatment if placed on conditional release.

(5) When application is made under subsection (4) of this section, the board shall require a report from the superintendent of the hospital which shall be prepared and transmitted as provided in subsection (2) of this section. The applicant must prove by a preponderance of the evidence the applicant's fitness for discharge under the standards of subsection (4) of this section. Applications for discharge or conditional release under subsection (4) of this section shall not be filed more often than once every six months commencing with the date of the initial board hearing.

(6) The board is not required to hold a hearing on a first application under subsection (4) of this section any sooner than 90 days after the initial hearing. However, hearings resulting from any subsequent requests shall be held within 60 days of the filing of the application.

(7)(a) In no case shall any person committed by the court under ORS 161.327 to a state hospital designated by the Mental Health Division be held in the hospital for more than 90 days from the date of the court's commitment order without an initial hearing before the board to determine whether the person should be conditionally released or discharged.

(b) In no case shall a person be held pursuant to this section for a period of time exceeding two years without a hearing before the board to determine whether the person should be conditionally released or discharged. [1977 c.380 §13 (enacted in lieu of 161.340); 1979 c.885 §4; 1981 c.711 §6; 1983 c.800 §10]

Note: See note under 161.336.

161.345 [1971 c.743 §48; repealed by 1977 c.380 §14 (161.346 enacted in lieu of 161.345)]

161.346 Hearings on discharge, conditional release, commitment or modification; psychiatric reports; notice of hearing. (1) The board shall conduct hearings upon any application for discharge, conditional release, commitment or modification filed pursuant to ORS 161.336, 161.341 or 161.351 and as otherwise required by ORS 161.336 to 161.351 and shall make findings on the issues before it which may include:

(a) If the board finds that the person is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others, the board shall order the person discharged from commitment or from conditional release.

(b) If the board finds that the person is still affected by a mental disease or defect and is a substantial danger to others, but can be controlled adequately if conditionally released with treatment as a condition of release, the board shall order the person conditionally released as provided in ORS 161.336.

(c) If the board finds that the person has not recovered from the mental disease or defect and is a substantial danger to others and cannot adequately be controlled if conditionally released on supervision, the board shall order the person committed to, or retained in, a state hospital designated by the Mental Health Division for care, custody and treatment.

(2) At any time, the board may appoint a psychiatrist or licensed psychologist to examine the person and to submit a report to the board. Reports filed with the board pursuant to the examination shall include, but need not be limited to, an opinion as to the mental condition of the person and whether the person presents a substantial danger to others, and whether the person could be adequately controlled with treatment as a condition of release. To facilitate the examination of the person, the board may order the person placed in the temporary custody of any state hospital or other suitable facility.

(3) The board may make the determination regarding discharge or conditional release based upon the written reports submitted pursuant to this section. If any member of the board desires further information from the examining psychiatrist or licensed psychologist who submitted the report, these persons shall be summoned by the board to give testimony. The board shall consider all evidence available to it which is material, relevant and reliable regarding the issues before the board. Such evidence may include but is not limited to the record of trial, the information supplied by the attorney representing the state or by any other interested party, including the person, and information concerning the person's mental condition and the entire psychiatric and criminal history of the person. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible at hearings. Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(4) The board shall furnish to the person about whom the hearing is being conducted, the attorney representing the person, the Attorney General, the district attorney and the court or department of the county from which the person

was committed written notice of any hearing pending under this section within a reasonable time prior to the hearing. The notice shall include:

(a) The time, place and location of the hearing.

(b) The nature of the hearing and the specific action for which a hearing has been requested, the issues to be considered at the hearing and a reference to the particular sections of the statutes and rules involved.

(c) A statement of the authority and jurisdiction under which the hearing is to be held.

(d) A statement of all rights under subsection (6) of this section.

(5) Prior to the commencement of a hearing, the board or presiding officer shall inform each party as provided in ORS 183.413 (2).

(6) At the hearing, the person about whom the hearing is being held shall have the right:

(a) To appear at all proceedings held pursuant to this section, except board deliberations.

(b) To cross-examine all witnesses appearing to testify at the hearing.

(c) To subpena witnesses and documents as provided in ORS 161.395.

(d) To be represented by suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case, to consult with counsel prior to the hearing and, if indigent, to have suitable counsel provided without cost.

(e) To examine all information, documents and reports which the board considers. If then available to the board, the information, documents and reports shall be disclosed to the person so as to allow examination prior to the hearing.

(7) A record shall be kept of all hearings before the board, except board deliberations.

(8) Upon request of any party before the board, or on its own motion, the board may continue a hearing for a reasonable period not to exceed 60 days to obtain additional information or testimony or for other good cause shown.

(9) Within 15 days following the conclusion of the hearing, the board shall provide to the person, the attorney representing the person, the Attorney General or other attorney representing the state, if any, written notice of the board's decision.

(10) The burden of proof on all issues at hearings of the board shall be by a preponderance of the evidence.

(11) If the board determines that the person about whom the hearing is being held is indigent, the board shall appoint suitable counsel to represent the person. The board shall determine and allow, as provided in ORS 135.055, the compensation for counsel appointed by it and the reasonable expenses of the person in respect to the hearing. The compensation and expenses so allowed shall be paid, upon order by the board, by the state from funds available for the purpose.

(12) The Attorney General may represent the state at contested hearings before the board unless the district attorney of the county from which the person was committed elects to represent the state. The district attorney of the county from which the person was committed shall cooperate with the Attorney General in securing the material necessary for presenting a contested hearing before the board. If the district attorney elects to represent the state, the district attorney shall give timely written notice of such election to the Attorney General, the board and the attorney representing the person. [1977 c.380 §15 (enacted in lieu of 161.345); 1979 c.867 §6; 1979 c.885 §5; 1981 c.711 §7; 1981 s.s c.3 §130; 1983 c.430 §1]

Note: See note under 161.336.

161.350 [1971 c.743 §19; 1975 c.380 §3; repealed by 1977 c.380 §16 (161.351 enacted in lieu of 161.350)]

161.351 Discharge of person under jurisdiction of board; burden of proof; periodic review of status. (1) Any person placed under the jurisdiction of the Psychiatric Security Review Board pursuant to ORS 161.336 or 161.341 shall be discharged at such time as the board, upon a hearing, shall find by a preponderance of the evidence that the person is no longer affected by mental disease or defect or, if so affected, no longer presents a substantial danger to others which requires regular medical care, medication, supervision or treatment.

(2) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect. A person whose mental disease or defect may, with reasonable medical probability, occasionally become active and when it becomes active will render the person a danger to others, shall not be discharged. The state has the burden of proving by a preponderance of the evidence that the person continues to be affected by mental disease or defect and continues to be a substantial danger to others. The person shall continue under such supervision and treatment as the board deems necessary to protect the person and others.

(3) Any person who has been placed under the jurisdiction of the board and who has spent

five years on conditional release or a total of five years in the hospital and on conditional release shall be brought before the board for hearing within 30 days of the expiration of the five-year period. The board shall review the person's status and determine whether the person should be discharged from the jurisdiction of the board. [1977 c.380 §17 (enacted in lieu of 161.350); 1981 c.711 §13]

161.360 Mental disease or defect excluding fitness to proceed. (1) If, before or during the trial in any criminal case, the court has reason to doubt the defendant's fitness to proceed by reason of incompetence, the court may order an examination in the manner provided in ORS 161.365.

(2) A defendant may be found incompetent if, as a result of mental disease or defect, he is unable:

(a) To understand the nature of the proceedings against him; or

(b) To assist and cooperate with his counsel; or

(c) To participate in his defense. [1971 c.743 §50]

161.365 Procedure for determining issue of fitness to proceed. (1) Whenever the court has reason to doubt the defendant's fitness to proceed by reason of incompetence as defined in ORS 161.360, the court may call to its assistance in reaching its decision any witness and may appoint a psychiatrist to examine the defendant and advise the court.

(2) If the court determines the assistance of a psychiatrist would be helpful, the court may order the defendant to be committed to a state mental hospital designated by the Mental Health Division for the purpose of an examination for a period not exceeding 30 days. The report of each examination shall include, but is not necessarily limited to, the following:

(a) A description of the nature of the examination;

(b) A statement of the mental condition of the defendant; and

(c) If the defendant suffers from a mental disease or defect, an opinion as to whether the defendant is incompetent within the definition set out in ORS 161.360.

(3) Except where the defendant and the court both request to the contrary, the report shall not contain any findings or conclusions as to whether the defendant as a result of mental disease or defect was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act charged.

(4) If the examination by the psychiatrist cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect affecting competency to proceed.

(5) The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for defendant.

(6) When the court has ordered a psychiatric examination, a justice's court shall order the county to pay, and a circuit or district court shall order the state to pay from funds available for the purpose:

(a) A reasonable fee if the examination of the defendant is conducted by a psychiatrist in private practice; and

(b) All costs including transportation of the defendant if the examination is conducted by a psychiatrist in the employ of the Mental Health Division or a community mental health program established under ORS 430.610 to 430.670. [1971 c.743 §51; 1975 c.380 §4; 1981 s.s. c.3 §131; 1983 c.800 §11]

Note: See note under 161.295

161.370 Determination of fitness; effect of finding of unfitness; proceedings if fitness regained; pretrial objections by defense counsel. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed by a psychiatrist under ORS 161.365, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the psychiatrist or psychiatrists who submitted the report and to offer evidence upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either party.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (5) of this section, and the court shall commit him to the custody of the superintendent of a state mental hospital designated by the Mental Health Division or shall release him on supervision for so long as such unfitness shall endure. The court may release the defendant on supervision if it determines that care other than commitment for incompetency to stand trial

would better serve the defendant and the community. It may place conditions which it deems appropriate on the release, including the requirement that the defendant regularly report to the Mental Health Division or a community mental health program for examination to determine if the defendant has regained his competency to stand trial. When the court, on its own motion or upon the application of the superintendent of the hospital in which the defendant is committed, a person examining the defendant as a condition of his release on supervision, or either party, determines, after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release of the defendant on supervision that it would be unjust to resume the criminal proceeding, the court on motion of either party may dismiss the charge and may order the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170.

(3) Notwithstanding subsection (2) of this section, a defendant who remains committed under this section to the custody of a state mental hospital designated by the Mental Health Division for a period of time equal to the maximum term of the sentence which could be imposed if the defendant were convicted of the offense with which he is charged or for five years, whichever is less, shall be discharged at the end of the period. The superintendent of the hospital in which the defendant is committed shall notify the committing court of the expiration of the period at least 30 days prior to the date of expiration. The notice shall include an opinion as to whether the defendant is still incompetent within the definition set forth in ORS 161.360. Upon receipt of the notice, the court shall dismiss the charge and shall order the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170.

(4) If the defendant regains fitness to proceed, the term of any sentence received by the defendant for conviction of the crime charged shall be reduced by the amount of time the defendant was committed under this section to the custody of a state mental hospital designated by the Mental Health Division.

(5) The fact that the defendant is unfit to proceed does not preclude any objection through counsel and without the personal participation of the defendant on the grounds that the indictment is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon any other ground at the discretion of the court which the court deems susceptible of fair determination prior to trial. [1971 c.743 §52; 1975 c.380 §5]

161.380 [1971 c.743 §53; renumbered 161.290]

161.385 Psychiatric Security Review Board; composition, term, qualifications, compensation, appointment, confirmation and meetings; judicial review of orders. (1) There is hereby created a Psychiatric Security Review Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under section 4, Article III of the Oregon Constitution.

(2) The membership of the board shall not include any district attorney, deputy district attorney or public defender, but, the membership shall be composed of:

(a) A psychiatrist experienced in the criminal justice system and not otherwise employed on a full-time basis by the Mental Health Division or a community mental health program;

(b) A licensed psychologist experienced in the criminal justice system and not otherwise employed on a full-time basis by the Mental Health Division or a community mental health program;

(c) A member with substantial experience in the processes of parole and probation;

(d) A member of the general public; and

(e) A lawyer with substantial experience in criminal trial practice.

(3) The term of office of each member is four years. The Governor at any time may remove any member for inefficiency, neglect of duty or malfeasance in office. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the board not otherwise employed full time by the state, shall be paid on a per diem basis an amount equal to four percent of the gross monthly salary of a member of the State Board of Parole for each day during which the member is engaged in the performance of official duties, including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and other expenses of state officers and employes, the member shall be reimbursed for actual and necessary travel and

other expenses incurred in the performance of official duties.

(5) Subject to any applicable provision of the State Personnel Relations Law, the board may hire employes to aid it in performing its duties.

(6)(a) The board shall select one of its members as chairperson to serve for a one-year term with such duties and powers as the board determines.

(b) A majority of the voting members of the board constitutes a quorum for the transaction of business.

(7) The board shall meet at least twice every month, unless the chairperson determines that there is not sufficient business before the board to warrant a meeting at the scheduled time. The board shall also meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

(8)(a) When a person over whom the board exercises its jurisdiction is adversely affected or aggrieved by a final order of the board, the person is entitled to judicial review of the final order. The person shall be entitled on judicial review to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is indigent, suitable counsel shall be appointed by the reviewing court in the manner provided in ORS 138.500 (1). If the person is indigent, the reviewing court shall determine and allow, as provided in ORS 138.500, the cost of briefs, any other expenses of the person necessary to the review and compensation for counsel appointed for the person. The costs, expenses and compensation so allowed shall be paid as provided in ORS 138.500.

(b) The order and the proceedings underlying the order are subject to review by the Court of Appeals upon petition to that court filed within 60 days of the order for which review is sought. The board shall submit to the court the record of the proceeding or, if the person agrees, a shortened record. The record may include a certified true copy of a tape recording of the proceedings at a hearing in accordance with ORS 161.346. A copy of the record transmitted shall be delivered to the person by the board.

(c) The court may affirm, reverse or remand the order on the same basis as provided in ORS 183.482 (8).

(d) The filing of the petition shall not stay the board's order, but the board or the Court of Appeals may order a stay upon application on such terms as are deemed proper. [1977 c.380 §8; 1979 c.867 §7; 1979 c.885 §6; 1981 c.711 §15; 1981 s.s. c.3 §132; 1983 c.740 §26; 1983 c.800 §12]

161.387 Board to implement policies; rulemaking; meetings not deliberative under public meeting requirements. (1) The Psychiatric Security Review Board, by rule pursuant to ORS 183.325 to 183.410 and not inconsistent with law, may implement its policies and set out its procedure and practice requirements and may promulgate such interpretive rules as the board deems necessary or appropriate to carry out its statutory responsibilities.

(2) Administrative meetings of the board and the evidentiary phase of board hearings are not deliberations for the purposes of ORS 192.690. [1981 c.711 §§10, 11]

Note: See note under 161.326.

161.390 Rules for assignment of persons to state mental hospitals; release plan prepared by division. (1) The Mental Health Division shall promulgate rules for the assignment of persons to state mental hospitals under ORS 161.341, 161.365 and 161.370 and for establishing standards for evaluation and treatment of persons committed to a state hospital designated by the division or ordered to a community mental health program under ORS 137.540, 161.315 to 161.351, 192.690 and 428.210.

(2) Whenever the Psychiatric Security Review Board requires the preparation of a pre-discharge or preconditional release plan before a hearing or as a condition of granting discharge or conditional release for a person committed under ORS 161.327 or 161.341 to a state hospital for custody, care and treatment, the Mental Health Division is responsible for and shall prepare the plan.

(3) In carrying out a conditional release plan prepared under subsection (2) of this section, the Mental Health Division may contract with a community mental health program, other public agency or private corporation or an individual to provide supervision and treatment for the conditionally released person. [1975 c.380 §7; 1977 c.380 §18; 1981 c.711 §14]

161.395 Subpena power of Psychiatric Security Review Board. (1) Upon request of any party to a hearing before the board, the board or its designated representatives shall issue, or the board on its own motion may issue, subpenas requiring the attendance and testimony of witnesses.

(2) Upon request of any party to the hearing before the board and upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought, the

board or its designated representative shall issue, or the board on its own motion may issue, subpenas duces tecum.

(3) Witnesses appearing under subpenas, other than the parties or state officers or employes, shall receive fees and mileage as prescribed by law for witnesses in civil actions. If the board or its designated representative certifies that the testimony of a witness was relevant and material, any person who has paid fees and mileage to that witness shall be reimbursed by the board.

(4) If any person fails to comply with a subpena issued under subsections (1) or (2) of this section or any party or witness refuses to testify regarding any matter on which he may be lawfully interrogated, the judge of the circuit court of any county, on the application of the board or its designated representative or of the party requesting the issuance of the subpena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued by the court.

(5) If any person, agency or facility fails to comply with an order of the board issued pursuant to subsection (2) of this section, the judge of a circuit court of any county, on application of the board or its designated representative, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of an order issued by the court. Contempt for disobedience of an order of the board shall be punishable by a fine of $100. [1977 c.380 §9]

Note: 161.395 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 161 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

161.400 Leave of absence; notice to board. If, at any time after the commitment of a person to a state hospital under ORS 161.341 (1), the superintendent of the hospital is of the opinion that a leave of absence from the hospital would be therapeutic for the person and that such leave would pose no substantial danger to others, the superintendent may authorize such leave for up to 48 hours in accordance with rules adopted by the Psychiatric Security Review Board. However, the superintendent, before authorizing the leave of absence, shall first notify the board for the purposes of ORS 161.326 (2). [1981 c.711 §12]

Note: See note under 161.326.

161.403 Statistical records relating to mental disease and defect defenses. The district attorney in each county of the state shall submit to the State Court Administrator, in such manner as the State Court Administrator shall prescribe, statistical records containing such information as the State Court Administrator may require relating to the assertion and trial of mental disease and defect defenses under ORS 161.295 and 161.305. [1983 c.800 §14]

Note: 161.403 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 161 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

INCHOATE CRIMES

161.405 "Attempt" described. (1) A person is guilty of an attempt to commit a crime when he intentionally engages in conduct which constitutes a substantial step toward commission of the crime.

(2) An attempt is a:

(a) Class A felony if the offense attempted is murder or treason.

(b) Class B felony if the offense attempted is a Class A felony.

(c) Class C felony if the offense attempted is a Class B felony.

(d) Class A misdemeanor if the offense attempted is a Class C felony or an unclassified felony.

(e) Class B misdemeanor if the offense attempted is a Class A misdemeanor.

(f) Class C misdemeanor if the offense attempted is a Class B misdemeanor.

(g) Violation if the offense attempted is a Class C misdemeanor or an unclassified misdemeanor. [1971 c.743 §54]

161.425 Impossibility not a defense. In a prosecution for an attempt, it is no defense that it was impossible to commit the crime which was the object of the attempt where the conduct engaged in by the actor would be a crime if the circumstances were as the actor believed them to be. [1971 c.743 §55]

161.430 Renunciation as a defense to attempt. (1) A person is not liable under ORS 161.405 if, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, he avoids the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment is insufficient to accomplish this avoidance, doing everything necessary to prevent the commission of the attempted crime.

(2) The defense of renunciation is an affirmative defense. [1971 c.743 §56]

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 423 (HESS)
Title: An Act relating to certain mentally ill persons.

Sponsor: Shultz and Marrou
Requestor:
Date of Request: 3/20/86

FISCAL DETAIL

Agency: Health & Social Services
Division of Mental Health & Developmental Disabilities

Contact:

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						
TOTAL OPERATING	Ø	Ø	Ø	Ø	Ø	Ø
CAPITAL	Ø	Ø	Ø	Ø	Ø	Ø
REVENUE	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	Ø	Ø	Ø	Ø	Ø	Ø

ANALYSIS: Attach a separate page if necessary

(See attached page)

Prepared by: Mel Henry, Ph.D., M.P.A. Phone: 465-3370
Division: Mental Health & Developmental Disabilities Date: _____

Approved by Commissioner: _____ Date: 3/20/86
Agency: Health & Social Services

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

10/25/85

The Department of Health and Social Services is currently responsible for patients covered under this bill. It is estimated that less than thirty patients are affected by this bill. The administrative procedures of the department now provide the reports to the court as required by this bill. It is our projection that there will not be any additional costs incurred by the department as a result of the passage of this bill.

3/24

COMMITTEE REPORT

HOUSE

(7)

5/3/85

FURTHER: JUDICIARY

Date: 1/~~23~~ 17/86

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 423

"An Act relating to the release of certain dangerous persons and liability for their conduct following release."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 423 (HESS) [ ] same title [X] new title

and recommends Do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[✓] Zero Fiscal Note Attached With analysis Sup 101

[ ] reports it back without recommendation

[ ] referred to the ~~First~~ Committee

MEMBERS SIGNING DO PASS

Nilo Koponen

David W. Thompson

[signature]

George Hanley

Kevin L. Taylor

Max F. Gruenberg

MEMBERS HAVING OTHER RECOMMENDATIONS:

Co-chair Nilo Koponen

CHAIRMAN

Co-chair Max F. Gruenberg