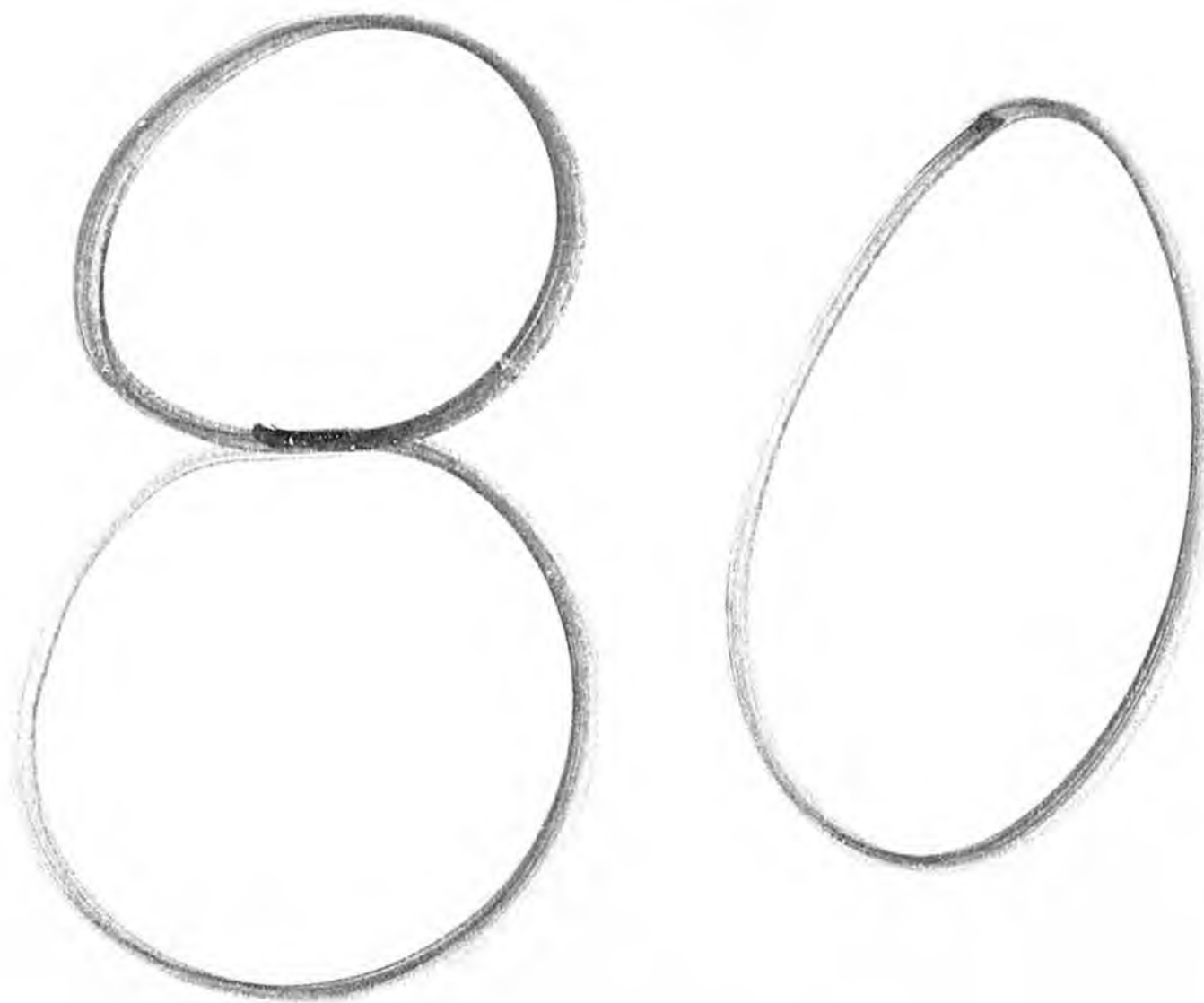


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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

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

House Judiciary
" "

5/9/86

" "

8:00 AM

1:30 PM

479

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 4/15/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered CSSB 80 (HESS)

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

and recommends:

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

and recommends _____

further referral to the _____ Committee

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

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

W. H. Miller
Chairman



Edie FYI file

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
General Counsel

303 K Street
Anchorage, AK 99501

February 19, 1985

Senator Bettye Fahrenkamp
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

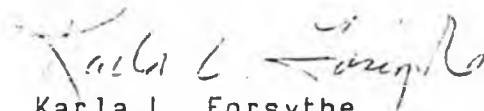
I am writing to bring to your attention a concern about SB 80, an act relating to the number of psychologists and psychiatrists appointed to examine a criminal defendant.

Under existing law there are two statutes which deal with appointment of a psychologist or psychiatrist when the defendant's competency is an issue: AS 12.47.070(a), which requires the appointment of at least two psychologists or psychiatrists, and AS 12.47.100, which requires the appointment of only one psychiatrist. I checked with David Mannheimer, assistant attorney general, office of special prosecutions and appeals, and with Dean Guaneli in the chief prosecutor's office. It was their informal opinion that these two statutes address the same situation, and therefore are in conflict.

Senate Bill 80 amends AS 12.47.070(a) to provide for appointment of only one psychiatrist or psychologist if the prosecution and defense consent. This amendment would not resolve the conflict between the two statutes. It is the view of the Alaska Court System that AS 12.47.070(a) should be amended to conform to the language of AS 12.47.100, providing for appointment of only one psychiatrist or psychologist, since there appears to be no reason why these statutes provide for a different number of psychiatrists or psychologists, and since appointment of one psychiatrist or psychologist will be less costly to the state.

Thank you for the opportunity to submit these comments.
Please let me know if I can provide additional information.

Sincerely,



Karla L. Forsythe
General Counsel

KLF:smh

cc: Arthur H. Snowden, II
Dean Guaneii
David Mannheimer

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 20, 1985

REPLY TO:

OFFICE OF THE CHIEF PROSECUTOR
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE (907) 279-7424

Ms. Edie Russell
Office of Senator Fahrenkamp
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Senate Bill 80

Dear Ms. Russell:

This letter is in response to your request for a "position paper" from the Department of Law on Senate Bill 80, relating to the number of psychiatrists appointed to examine criminal defendants.

As explained in the Governor's transmittal letter to the legislature, under AS 12.47.070(a) the court is required to appoint at least two psychiatrists or psychologists if a defendant has filed notice of intent to rely on the defense of insanity or notice of intent to rely on evidence tending to negate a culpable mental state, if there is reason to doubt the defendant's fitness to proceed, or if there is reason to believe that a mental disease or defect of the defendant will otherwise become an issue in the case. The waiver of the second psychiatrist, authorized by this bill, would avoid unnecessary duplication in cases in which both the prosecution and defense are satisfied with the appointment of a single psychiatrist. This waiver will be helpful in making efficient use of state resources, particularly where two state psychiatrists from the Alaska Psychiatric Institute would be appointed to perform the examinations.

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

At your request, I have also attached a proposed committee substitute for SB 80 to address concerns raised by

the court system about overlapping and inconsistent provisions for psychiatrist examinations in AS 12.47.070 and 100. The conforming amendment which I have proposed repeals and reenacts AS 12.47.100(b), and makes it clear that the court must appoint two psychiatrists, whether the issue is insanity under AS 12.47.010, diminished capacity under AS 12.47.020, or incompetency under AS 12.47.100. The amendment also makes the procedure for conducting psychiatric examinations in insanity cases under AS 12.47.070 applicable to incompetency proceedings.

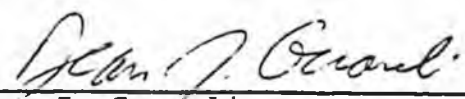
If I can be of further assistance, please contact me.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: _____


Dean J. Guaneli
Assistant Attorney General

DJG/so-88

Attachment

SP 80

AS 12.47.070(a) requires that the court appoint two psychiatrists or forensic psychologists to examine and report upon the mental condition of a defendant if insanity is going to be relied on as a defense or there is reason to believe that it will become an issue in the case.

SB 80 amends 12.47.070(a) by allowing the option of one psychiatrist or forensic psychologist to be appointed if the defendant and prosecuting attorney both agree to it. The revision is intended to save time and money without disenfranchising either the defendant or the public.

A CS has been prepared which would repeal and reenact AS 12.47.100(b) and make it clear that the court must appoint two psychiatrists to examine the defendant if there is reason to believe the person is incompetent to proceed with the trial. AS 12.47.100(b) requires that the court appoint at least one qualified psychologist for examinations. The amendment would establish consistency in procedures for conducting psychiatric examinations in insanity cases under 12.47.070 and in incompetency proceedings.

POSITION PAPER

SENATE BILL 80

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

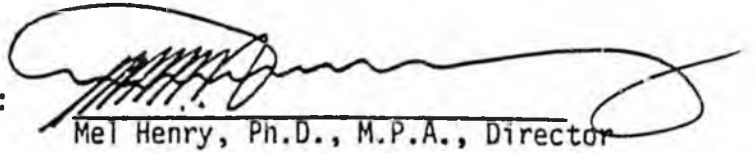
In October, 1982, Chapter 143, SLA 1982 became effective. That Act, among other things, revised Alaska's criminal laws relating to insanity and competency to stand trial. One revision that was contained in the Act requires that two psychiatrists or two forensic psychologists must be appointed to examine defendants under A.S. 12.47.070. Prior to the 1982 revision only one psychiatrist was required by statute to perform these examinations. The amendment proposed in Senate Bill 80 would give the court the option of appointing only one psychiatrist or forensic psychologist if the requirement under A.S. 12.47.070 that two psychiatrists or forensic psychologists examine the defendant is waived by both the defendant and the prosecuting attorney.

We believe that many, if not most, of these examinations can be adequately performed by utilizing only one psychiatrist or forensic psychologist. A large percentage of these exams are currently being done by the Forensic Services Team from Alaska Psychiatric Institute. The exams are performed in the Anchorage area correctional centers. If the court is required to routinely appoint two psychiatrists or forensic psychologists to examine these defendants, and Alaska Psychiatric Institute is ordered to perform the exam, a second psychiatrist that has in-hospital responsibilities must be detailed to the correctional center in order to perform the second psychiatric examination.

According to the staff at Alaska Psychiatric Institute, approximately 170 defendants per year are ordered by the courts to undergo psychiatric examinations by the Forensic Services Team. Of those that are referred to the Forensic Team, approximately 30 specifically require two psychiatrists to perform the same psychiatric examination. After completing the first psychiatric examination by the Forensic Team, if the second psychiatric examination is deemed to be unnecessary or would needlessly duplicate the findings of the first examination, the court is notified. In about half of these cases, the court agrees to limit the number of psychiatric examinations to one rather than two conducting the examinations as specified in A.S. 12.47.070. Basically, what is currently happening in practice is what is being proposed in Senate Bill 80. The amendment will simply codify the existing practice.

It is our position that this practice of routinely appointing two psychiatrists or forensic psychologists to examine criminal defendants oftentimes an unnecessary duplication of effort that can be avoided by passage of Senate Bill 80. Accordingly, the Department of Health and Social Services supports the passage of this bill.

Recommended by:



Mel Henry, Ph.D., M.P.A., Director

Date:

1-28-85

Approved by:



John Pugh, Commissioner

Date:

1/30/85

John Pugh CAS

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 80
 Title: An Act relating to the number of psychiatrists appointed
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: January 28, 1985

FISCAL DETAIL

Department of Health
 Agency Affected: and Social Services
 Program Category Affected: DIVISION OF Mental Health and Developmental Disabilities & API
 BRU, Program or Subprogram(s) Affected: Mental Health Institutions and Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

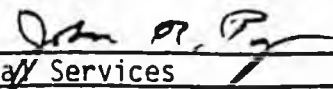
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: James L. Scoles  Phone: 465-3370
 Division: Mental Health & Developmental Disabilities Date: 1-28-85


Approved by Commissioner: John P. P.  Date: 1/30/85 *JCC*
 Agency: Health & Social Services

Distribution (by Agency preparing fiscal note):

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

7/1/84

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 22, 1985

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

Dear Senator Bennett:

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

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

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

Sincerely,

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

Bill Sheffield
Governor

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate Committee on Health, Education and Social Services

M I N U T E S

April 9, 1985
1:36 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Armstrong - De Vries
Senator Paul Fischer
Senator Josephson
Senator Sturgulewski

CALENDAR

SB 80, Relating to the number of psychologists appointed to examine a criminal defendant.

SB 219, Establishing a special unit for the investigation of criminally exploited and missing children.

SB 242, Relating to educational attendance area school boards.

SB 80

Jim Scoles, Division of Mental Health and Developmental Disabilities, Department of Health and Social Services, testified in support of the proposed committee substitute for SB 80, which would provide the court the option of appointing only one psychiatrist or forensic psychologist if the defendant and prosecuting attorney both agree.

Senator Josephson moved to adopt CS SB 80 (HESS) and move it from committee with individual recommendations. There was no objection.

SB 242

Senator Eliason testified in support of SB 242, which would allow for variance in the number of school board members per section upon a determination by the Department of Education that there have been substantial population shifts within an REAA. He cited the situation in the Southeast Island School District where mobile logging camps effect large population shifts.

SB 219

Senator DeVries spoke in support of the bill which would establish within the Department of Public Safety a special unit for investigating incidents of missing children and the criminal exploitation of children. She discussed the fiscal note submitted by the Department of Public Safety.

Senator Josephson moved SB 219 and its letter of intent from committee with individual recommendations. There was no objection.

The meeting adjourned at 2:02 pm.