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Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: HB 423

Sponsor: Schultz, Marian

Date referred to committee: ~~5/1/86~~ 5/1/86

Synopsis completed:

Fiscal note:

Further referrals:

CONTACTS:

- ✓ Jim Scoles, Dept Corrections
- ✓ Shultz (Stancliff)
- ✓ Dick Branton, DHSS

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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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

Senate Health Education and Social Services Committee 5/9/86, 9:10 am
House " " " " " 2/19/86, 4:30 pm

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.

(b) If the AS 12.47.01 under (a) of defendant to the

(c) If the AS 12.47.01 (a) of this se of not guilty ment. The h the underlyi of proving by presently sui to be danger defendant ha the defendan and social se unanimous.

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(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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HB 423

§ 12.45.160

§ 12.47.010

CODE OF CRIMINAL PROCEDURE

§ 12.47.020

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Section

- 80. Procedure upon verdict of not guilty
- 90. Procedure after raising defense of insanity
- 100. Incompetency to proceed
- 110. Commitment on finding of incompetency

Section

- 120. Determination of sanity after commitment
- 130. Definitions

Sec. 12.47.010. Insanity excluding responsibility. (a) In a prosecution for a crime, it is an affirmative defense that when the defendant engaged in the criminal conduct, the defendant was unable, as a result of a mental disease or defect, to appreciate the nature and quality of that conduct.

(b) The affirmative defense defined in (a) of this section may not be raised at trial unless the defendant, within 10 days of entering a plea or such later time as the court may for good cause permit, files a written notice of intent to rely on the defense.

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

(d) The affirmative defense specified in (a) of this section is the affirmative defense of insanity. A defendant who successfully raises the affirmative defense of insanity shall be found not guilty by reason of insanity and the verdict shall so state. (§ 22 ch 143 SLA 1982)

NOTES TO DECISIONS

Former law construed. — See Smith v. State, Sup. Ct. Op. No. 2121 (File No. 4228), 614 P.2d 300 (1980); Walunga v. State, Sup. Ct. Op. No. 2142 (File No. 4746), 630 P.2d 527 (1980); Nielson v. State, Sup. Ct. Op. No. 2279 (File No. 4857), 623 P.2d 304 (1981); Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982) (these cases were decided under former AS 12.45.083).

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

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of mental disease or defect, there is a reasonable doubt as to the existence of a culpable mental state that is an element of the crime, it shall enter a verdict of not guilty by reason of insanity. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered to have established the affirmative defense of insanity

under AS 12.47.010. The defendant is then subject to the provisions of AS 12.47.090.

(c) If a verdict of not guilty by reason of insanity is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.47.030 and 12.47.050. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.47.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.47.090(c), the defendant is subject to the provisions of AS 12.47.090(d) — (j). (§ 22 ch 143 SLA 1982)

NOTES TO DECISIONS

Effect of section. — Former AS 12.45.085 merely made evidence of mental illness excluding responsibility inadmissible in evidence in the absence of written

notice of intent to rely on that defense. Christie v. State, Sup. Ct. Op. No. 644 (File No. 2841), 580 P.2d 310 (1978).

Collateral references. — 21 Am. Jur. 2d, Criminal Law, §§ 40-128, 154.

22 C.J.S., Criminal Law, §§ 55-64.

Modern status of M'Naghten test of criminal responsibility, 45 ALR2d 1447.

Modern status of rules as to burden and sufficiency of proof of mental irresponsibility in criminal case, 17 ALR3d 146.

Mental or emotional condition as dis-

minishing responsibility for crime, 22 ALR3d 1228.

XYY syndrome as affecting criminal responsibility, 42 ALR3d 1414.

Amnesia as affecting capacity to commit crime or stand trial, 46 ALR3d 544.

Admissibility on issue of sanity of expert opinion based partly on medical, psychological or hospital reports, 55 ALR3d 551.

Sec. 12.47.030. Guilty but mentally ill. (a) A defendant is guilty but mentally ill if, when the defendant engaged in the criminal conduct, the defendant lacked, as a result of a mental disease or defect, the substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law. A defendant found guilty but mentally ill is not relieved of criminal responsibility for criminal conduct and is subject to the provisions of AS 12.47.050.

(b) Evidence of a mental disease or defect that is manifested only by repeated criminal or antisocial conduct is not sufficient to establish that the defendant was guilty but mentally ill under (a) of this section. (§ 22 ch 143 SLA 1982; am § 43 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "that the defen-

dant was guilty but mentally ill" for "the defense" in subsection (b).

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Alaska State Legislature

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



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Sandra

Reconsidered

Senate Committee on Health, Education and Social Services

HB 423

MEMORANDUM

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, May 9, 1986

DATE: May 8, 1986

THERE IS NO SENATE C.S.

On Friday, May 9, 1986 from 9:00-10:30 a.m. in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

CSHB 423 (Jud) Relating to persons found not guilty by reason of insanity.

HB 423 allows the court to impose conditions on the release from Alaska Psychiatric Institute (API) of persons found "not guilty by reason of insanity" (NGI). The term of the conditional release, which would include supervision, could not exceed the maximum term of imprisonment for the crime for which the person was acquitted, and would extend only until the mental illness is cured as determined by the court. Failure to comply with the court-imposed conditions could result in the patient being returned to state custody.

The bill is intended to provide greater public protection by ensuring that NGI patients released prior to the expiration of their maximum term will be supervised by a responsible person who is required to periodically report the patient's progress to the court.

The draft letter of intent clarifies that a person whose illness is being controlled by medication should not be considered cured.

SHULTZ

NOT ADOPTED

Offered: 4/23/86
Referred: Rules

Original sponsors: Shultz and Marrou

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 423 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 (k) If the court finds that a defendant committed under (b) or
11 (c) of this section can be adequately controlled and treated in the
12 community with proper supervision, the court may order the defendant
13 conditionally released from confinement under AS 12.47.092 for a
14 period of time not to exceed the maximum term of imprisonment for the
15 crime for which the defendant was acquitted under AS 12.47.010 or
16 12.47.020(b) or until the mental illness is cured or corrected, which-
17 ever first occurs, as determined at a hearing under (c) of this sec-
18 tion.

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

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

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

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

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

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

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

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

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

Position Paper

CSHB 423 (HESS)

An act entitled: an act relating to certain mentally ill persons.

Effect of the Act:

The committee substitute for House Bill 423 provides for conditional release of persons who have been found ^{NOT} guilty of criminal acts by reason of insanity (NGI). The bill would allow the courts to release certain NGI patients from API to the community if it is found that they can be adequately controlled and treated with proper supervision and with the imposition of various court-ordered conditions.

Discussion:

In the past, it has been the practice for some courts to release certain NGI persons whose mental illnesses were neither cured nor corrected but who could be controlled in the community with conditions and under supervision. While some courts have ordered compliance with specific conditions, others have merely recommended compliance. Under the existing statutory authority of A.S. 12.47, neither of these past practices are seen as having the desired effect of being able to return those patients to custody who refuse or fail to comply with the court-ordered conditions. It is our belief that the courts will continue to seek ways to release NGI patients currently hospitalized at API prior to the expiration of their maximum terms.

This bill would offer the courts as well as the DHSS a statutorily constructed method of supervising these NGI patients, monitoring their progress, enforcing compliance with court-imposed conditions, and returning those NGI patients to custody who refuse or fail to comply with the terms of their conditional release. It will also offer greater public protection by insuring that patients released prior to the expiration of their maximum term will be supervised by a responsible person who is required to periodically report the patient's progress.

Supervision of these persons would be provided by field staff of the Department of Health and Social Services; staff of local government agencies, such as municipalities, who receive state grant funds to operate community mental health programs; private agencies, such as non-profit corporations, who receive state grant funds to operate community mental health programs; or adults who have an interest in the person and the ability to provide supervision.

The condition of release imposed by the courts may include requirements that these persons take psychotropic medications, participate in outpatient or residential mental health treatment, refrain from consuming alcohol, restrictions on their possession of firearms, or other conditions that are deemed necessary to insure that the released patient can be adequately

Position Paper

CSHB 423 (HESS)

Page 2

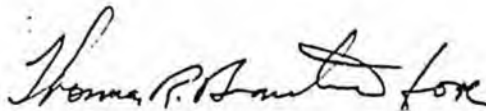
controlled and stabilized in the community. Failure to comply with the court-imposed conditions could result in the patient being returned to custody and re-hospitalized.

The term of this supervised, conditional release of NGI patients would extend to the maximum term of imprisonment for the crime for which the person was acquitted or until the mental illness is cured or corrected as determined at the court hearing. In our estimation, most NGI patients who were conditionally released would continue to be supervised or remain under the court's jurisdiction for the maximum term rather than be unconditionally released. This is because it is generally conceded that chronic mental illness cannot be "cured" in the same sense that many physical illnesses can be treated and successfully cured. Chronic major mental illnesses, however, can be successfully treated to the point of remission and most patients can be safely controlled and treated in the community with the aid of on-going support services and monitoring.

Recommendation

The Department of Health and Social Services supports the passage of CSHB 423.

Recommended by:

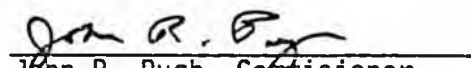


Mel Henry, Ph.D., M.P.A.
Director, Division of Mental
Health and Developmental
Disabilities

Date:

3/26/86

Approved by:



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

Date:

3/26/86

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 Affected : Health & Social Services
 BRU : Division of Mental Health
& Developmental Disabilities

 Components : _____

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 | 0 | 0 | 0 | 0 | 0 | 0 |

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

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

(See attached page)

Mel Henry

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

Approved by Commissioner : *John R. King* Date : 3/21/86
 Agency : Health & Social Services

Distribution (by Agency preparing fiscal note) :

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

ANALYSIS: CSHB 423 (HESS)

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.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Late : _____

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 | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

(See attached analysis)

Prepared by : John Salemi, Dep. Public Defender
 Division : Public Defender Agency

Phone : 279-7541
 Date : April 18, 1986

Approved by Commissioner : *Eileen Chutkan*
 Agency : _____

Date : 4/25/86

Distribution (by Agency preparing fiscal note) :

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

not
adopted

DRAFT

LETTER OF INTENT

CSHB 423 (JUD) RELATING TO PERSONS FOUND NOT GUILTY BY REASON OF INSANITY.

It is the intent of the Senate Committee on Health, Education and Social Services that a person found not guilty by reason of insanity under AS 12.47.010 or 12.47.020 (b), whose violent condition is being controlled by medication or other treatment, be considered as presently suffering from a mental illness. It is also intended that should a person who has a violent history related to a mental condition controllable only by medication or treatment be released from confinement, the person be conditionally released as provided for in CSHB 423 (Jud). Under the terms of the bill, the conditions of the release would extend for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted.

Position Paper

HB 423

Superseded

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 maintenance 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.

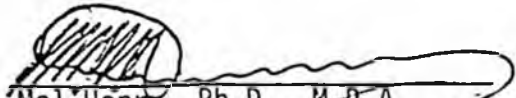
The right to refuse treatment has been established. Currently a court or Board of Parole is empowered to fix conditions under which a person may be granted freedom. As a condition of granting parole, fixing bail or... sentencing to probation there can be a requirement that the person take medications 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.

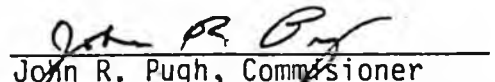
Recommended by:


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

HB 423

5/8/86

~~used to work for DIV MH~~

Jim Scoles; Dept Corrections

1982 criminal insanity laws revised (after Meach incident) made criminal insanity defense very difficult to reach only 1 found NGI since 22 people in API = NGI. Committed here once finding made - there until ct. decides to release you

↳ Term in API can't exceed sentence for crime. can be less - no minimum

Ct. may review at any time:

- state (API)
- attorney
- individual

} could initiate release

↳ Hold hearing. If find could be cared for in community, can release.

HB 423 allows ct. to ^{impose} ~~apply~~ conditions to the release. If fail to comply, ct. have option of revoking "conditional release".

subject
voliz
going
treatment

↓
cts. do for probationers
Dept. does administratively for parolees

Some other states have this conditional release. Oregon - have a review board, additional expense.

recommitment to API provided for in bill.

Now, if NGI goes to ct - discharged - no conditions or supervision - if any offense treat w/ new trial.

No add'l expense - 0 fiscal note

✓ Don't need amendment. concern of Public Defender

Dick Brantton, Div MH - testify

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.

(b) If the AS 12.47.0 under (a) of defendant to the

(c) If the AS 12.47.0 (a) of this s of not guilty mert. The l the underly of proving t presently st to be dange defendant h the defenda. and social s unanimous.

(d) A defe held in custe of imprisonr under AS 12 or corrected

(e) A defe: the need for c court sitting at intervals initial comm proof at a he under (c) of served on the served upon attorney gen time the defe

(f) Continu term of imp: acquitted unc dards pertain

(g) A perso during the te hearing in ac defendant has defendant to i at any time r defendant should b

(h) The con sioner's auth

COMMITTEE REPORT

HOUSE

(7)

FURTHER: JUDICIARY

5/3/85

Date:

1/17/86

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)

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

and recommends Do pass

AND attaches a "Letter of Intent"

New Fiscal Note

reports it back without recommendation

Zero Fiscal Note Attached

With analysis *Sup 101*

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Neil Kinnear
David W. Thompson
[Signature]
Clara Gardner
Adrian Taylor
Max Shubert

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Neil Kinnear
CHAIRMAN
Max Shubert
Co-Chair

STATE OF ALASKA
THE LEGISLATURE

Superseded

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 455 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 19, 1986

SUBJECT: Mentally ill persons
CSHB 423 (HESS)

TO: Representative Niilo Koponen, Co-Chair
House HESS Committee
Attn: Lisa McLaren

FROM: Joyce James *JJ*
Legislative Counsel

In CSHB 423 (HESS) I have tried to address Representative Shultz's concern for a person who committed a homicide, and was found not guilty by reason of insanity. After approximately five years in a mental institution, the person was adjudged sane and allowed back into the community with the recommendation that he live with a custodian, take drugs to control his behavior, and visit a mental health facility every week or two. The person lives alone with no supervision and the concern is that the person who fails to take his drugs regularly may again repeat a violent act.

The constitution protects a person's right to refuse treatment. However, a person who commits a crime and is found guilty but mentally ill comes under the police power of the state and can be confined for treatment and then incarcerated for the period of the sentence they would otherwise be required to serve. In contrast, a person found not guilty by reason of insanity must be released when cured. The decision that a person is cured is judged by whether the person is presently suffering from any mental illness that causes the person to be dangerous to the public (AS 12.47.090 (c)). Dick Branton at Health and Social Services explained to me that this test is strictly applied with an emphasis on "presently." Thus a person who has been in confinement and regularly taking drugs to control dangerous behavior would qualify as cured and be released.

Representative Miilo Koponen
Page 2
February 19, 1986

A similar situation exists in the civil commitment statutes, AS 47.30.700 et. seq.. There the test is even stricter and commitment requires a finding that as a result of mental illness the person is gravely disabled or presents a likelihood of serious harm to self or others (AS 47.30.700 (a)). Likely to cause serious harm is defined as posing a substantial risk of harm as manifested by recent behavior (AS 47.30.915 (10)). Here again, a person who is on medicine to control violent behavior will pass an examination administered within the 24 hour examination period (AS 47.30.710), and be free to go back into the community and perhaps discontinue taking the medicine.

The request from the Representative suggested attaching liability to those who petition for the release of the person if the person is released and later does commit a violent act. CSHB 423 (HESS) adopts this approach, and makes two other changes to existing legislation: 1) it amends the meaning of mental illness in an attempt to clarify that one whose illness is only controlled by medicine is indeed ill, and thus within the purview of the statutes addressing the mentally ill, and 2) directs the court to consider this type of mental illness when judging whether the person poses a likelihood of serious harm to self or others. The purpose is to give the system jurisdiction over these people when they appear dangerous without waiting for a violent act to occur.

These changes could mean more people are committed and engender charges of due process or equal protection violations. I believe the changes are constitutional if the Department of Health and Social Services makes use of the outpatient care procedures in AS 47.30.795, and releases these people with conditions of supervision and medication attached. Be advised that another effect of these changes might be to discourage private mental health professionals from testifying for release of patients, to avoid potential liability. This would increase the burden on state employed mental health professionals, and also affect the state's exposure to liability.

If I can be of further assistance, please advise.

JJ:mkr
M3:049

STATE OF ALASKA
THE LEGISLATURE

FOLIO 1 STATE CAPITOL
LEGISLATIVE AGENCY
907 465 1670


LEGISLATIVE AFFAIRS AGENCY

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.

Representative Max Gruenberg
Page 2
March 3, 1986

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

James
3/14/86

Original sponsors: Shultz and Marrou

Superseded
MB working draft

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 423 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain mentally ill persons."

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

8 * Section 1. AS 12.47.090 is amended by adding a new subsection to
9 read:

10 (k) If the court finds that a defendant committed under (b) or
11 (c) of this section can be adequately controlled and treated in the
12 community with proper supervision, the court may order the defendant
13 conditionally released from confinement under AS 12.47.092 for a
14 period of time not to exceed the maximum term of imprisonment for the
15 crime for which the defendant was acquitted under AS 12.47.010 or
16 12.47.020(b) or until the mental illness is cured or corrected as
17 determined at a hearing under (c) of this section. *whichever first occurs?*

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

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

27 (b) The commissioner of health and social services or the com-
28 missioner's authorized representative shall submit, at a minimum,
29 quarterly written reports to the court describing the defendant's

1 progress in treatment, compliance with conditions of release, and
 2 other information required by the court for defendants conditionally
 3 released under this section.

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

9 (d) If the court after petition or on its own motion reasonably
 10 believes that a conditionally released defendant is failing to adhere
 11 to the terms and conditions of the conditional release, the court may
 12 order that the conditionally released defendant be apprehended and
 13 held by the Department of Health and Social Services until a hearing
 14 can be scheduled with the court to determine the facts and whether or
 15 not the defendant's conditional release should be revoked or modified.
 16 Nothing in this subsection is intended to limit procedures available
 17 for emergency situations including emergency detention under AS 47.-
 18 30.705.

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

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

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

29 * *is this constitutional? CC (F) modification vs discharge*

Introduced: 4/26/78

Referred: Judiciary

*To C. J. ...
Jury, Clerk
File:*

HOUSE

BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 949

IN THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE - SECOND SESSION

A BILL

An Act entitled: "An Act relating to the treatment of persons found not guilty on the ground of mental disease or defect."

ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 12.45.090 is amended to read:

Sec. 12.45.090. COMMITMENT AFTER JUDGMENT OF NOT GUILTY. (a) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and [PUBLIC PEACE OR] safety of others, the court shall order him to be committed to an institution authorized by the commissioner of health and social services to receive that person, and held in custody until the disease is cured or the defect corrected or until he is judged to be no longer dangerous to others or he is otherwise discharged from the institution by authority of law. The commissioner of health and social services shall provide the court with reports detailing the status, progress, and prognosis of persons committed under this subsection at least once every six months.

* Sec. 2. AS 12.45.090 is amended by adding new subsections to read:

(b) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court does not consider his being at large dangerous to the health and safety of others, the court shall order his discharge.

(c) If the court or jury finds the defendant not guilty on the ground of mental disease or defect and the court considers his being at large dangerous to the health and safety of others but determines that

1 the defendant can be controlled in the community with proper super-
2 vision, the court may commit him to the custody of the commissioner of
3 health and social services and may order his conditional release under
4 supervision, subject to such conditions as the court may impose, for
5 period of no more than three years in accordance with sec. 92 of this
6 chapter.

7 * Sec. 3. AS 12.45 is amended by adding a new section to read:

8 Sec. 12.45.092. CONDITIONAL RELEASE AFTER JUDGMENT OF NOT GUILTY

9 (a) A defendant committed under sec. 90(a) of this chapter may be
10 released by court order and placed under supervision in a non-institu-
11 tional setting for a period of no more than three years, subject to s
12 conditions as the court may impose. The court may, upon application
13 the defendant, his attorney, the medical director of the institution,
14 other interested party, conduct a hearing to determine if conditional
15 release under supervision is appropriate.

16 (b) A defendant released under sec. 90(c) of this chapter or (a
17 of this section may be returned to custody if the court finds, after
18 hearing, that he is not in substantial compliance with the conditions
19 his release or that he is a danger to the health and safety of others
20 and can no longer be controlled in the community under supervision.

21 (c) A defendant released under sec. 90(c) of this chapter or un
22 (a) of this section may petition the court at any time for a discharge
23 hearing.

24 (d) The commissioner of health and social services shall provide
25 the court with progress reports detailing the mental status, treatment
26 plan, progress, and prognosis of persons released under sec. 90(c) of
27 this chapter or under (a) of this section at least every six months.

28 (e) A defendant released under sec. 90(c) of this chapter or (a
29 of this section shall be discharged from supervision at the expiration

of three years from the date of release unless the court finds, after a hearing, that the defendant continues to pose a danger to the health and safety of others and cannot be controlled in the community without continued supervision, in which case the defendant shall be continued under supervision subject to such conditions as the court may impose.

(f) When a defendant is not discharged from supervision after three years under (e) of this section, the court shall conduct a hearing at less frequently than once each year to determine whether the defendant should be discharged or continued under supervision.

(g) At any time during the period of supervision the court may revoke or modify the conditions of supervision or order of release.

(h) A defendant committed under sec. 90(a) of this chapter or released under sec. 90(c) of this chapter or (a) of this section is not liable for the expenses of hospitalization or transportation incurred as a result of his commitment or release.

Criminal Procedure
Title 12 - ~~Adoption~~ *Special Act*
Section 12.30.10 - *Bail b/f conviction is a matter of right.*
Section 12.30.020 - *Release b/f Trial*
Section 12.30.040 - *Release after conviction*

George Edward
original drafts
now ~~revised~~ Justice James responsible

Introduced: 5/3/85
Referred: Health, Education &
Social Services and Judiciary

1 IN THE HOUSE BY SHULTZ AND MARROU
2 HOUSE BILL NO. 423
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to the release of certain dangerous
7 persons and liability for their conduct following
8 release."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 12.30 is amended by adding a new section to read:
11 Sec. 12.30.045. RELEASE OF A PERSON WHO REQUIRES MEDICATION;
12 LIABILITY. (a) If a court finds that a person poses a danger of
13 violent behavior unless the person receives medication prescribed to
14 deter that behavior, the court may not release the person under
15 AS 12.30.010 - 12.30.040 unless
16 (1) the court places the person with a suitable custodian
17 who agrees to supervise the person and to require that the person
18 maintain the prescribed schedule of medication; and
19 (2) the designated custodian acknowledges in court the
20 custodian's potential liability under this section for damages that
21 result from the violent behavior of the person if the person fails to
22 maintain the prescribed schedule of medication during the period of
23 release to the custodian.
24 (b) An individual or organization that accepts custody of a
25 person under (a) of this section and negligently fails to require that
26 the person maintain a prescribed schedule of medication to deter
27 violent behavior may be held civilly liable for damages that result
28 from the violent behavior of the person during the period of release
29 to the custodian.

1 (c) For purposes of (b) of this section a person acts
2 "negligently" with respect to a result or to a circumstance described
3 in this section if the person fails to perceive a risk that the result
4 will occur or that the circumstance exists; the risk must be of such a
5 nature and degree that the failure to perceive it constitutes a
6 deviation from the standard of care that a reasonable person would
7 observe in the situation.

8 * Sec. 2. AS 12.55.015 is amended by adding new subsections to read:

9 (e) A court that sentences a defendant found to pose a danger of
10 violent behavior unless the defendant receives medication prescribed
11 to deter that behavior may prohibit the release of the defendant on
12 probation unless

13 (1) a suitable custodian agrees to supervise the defendant
14 and to require that the defendant maintain a prescribed schedule of
15 medication; and

16 (2) the designated custodian acknowledges in court the
17 custodian's potential liability under (f) of this section for damages
18 that result from the violent behavior of the defendant if the
19 defendant fails to maintain a prescribed schedule of medication during
20 the period of release to the custodian.

21 (f) An individual or organization that accepts custody of a
22 defendant under (e) of this section and negligently fails to require
23 that the defendant maintain a prescribed schedule of medication to
24 deter violent behavior may be held civilly liable for damages that
25 result from the violent behavior of the defendant during the period of
26 release to the custodian.

27 (g) For purposes of (f) of this section a person acts
28 "negligently" with respect to a result or to a circumstance described
29 in this section if the person fails to perceive a risk that the result

James
4/17/86 ✓

Original sponsors: Shultz and Marrou

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 423 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

10 (k) If the court finds that a defendant committed under (b) or
11 (c) of this section can be adequately controlled and treated in the
12 community with proper supervision, the court may order the defendant
13 conditionally released from confinement under AS 12.47.092 for a
14 period of time not to exceed the maximum term of imprisonment for the
15 crime for which the defendant was acquitted under AS 12.47.010 or
16 12.47.020(b) or until the mental illness is cured or corrected,
17 whichever first occurs, as determined at a hearing under (c) of this
18 section.

19 (l) For purposes of this section, a mental illness that is con-
20 trolled by medication or treatment is not corrected.

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

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

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

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

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

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

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

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

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

Representative Don Clocksin
Page 2
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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

A M E N D M E N T

Offered in the HOUSE
TO: CSHB 423(HESS)

By the Health, Education and
Social Services Committee

Page 1, following line 7, insert:

"* Section 1. AS 12.47.090(d) is amended to read:

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

Page 1, line 8, delete "Section 1" and insert "Sec. 2"

Renumber the following bill sections accordingly.

25 people at API
22-23

Alyce wants it to
say "controlled
w/ prescribed treatment"

- Behavior that needs to
be controlled - not so much
the mental illness

is the individual behavior

*draft
Special Ed Committee*

COMMITTEE REPORT
SENATE

FURTHER:

5/1/86

Date 5-9-86

Mr. President

The Committee on HESS considered CSHB 423(Jud)
relating to persons found not guilty by reason of insanity.

and (a majority of the committee) (the committee) reports it back with
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title _____
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

William Jungler
Joe Joseph
Edna De Vries

MEMBERS HAVING
OTHER RECOMMENDATIONS

William Jungler
 Chairman

Chairman recommendation _____

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.