

S B

8 0

Edin

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 80

Sponsor: Governor

Date referred to committee: 1/22/85

Synopsis completed: 1/28

Fiscal note:

Further referrals:

CONTACTS:

Dean Guaneli, Criminal Division, DOL, 3428

Dina Fake, Public Defender 279-7541

Karla Forsythe, Court System 264-0634

~~Rob Henry~~, DMS Director, Mental 3030 3370

James ~~Scott~~ Health, Developmental Disabilities  
SCOLE, Rep Dir

unlike  
see  
→

COMMITTEE REPORT  
SENATE

FURTHER: JUDICIARY  
FINANCE

1/22/85

Date 4-7-85

Mr. President

The Committee on HESS considered SB 80

number of psychiatrists or psychologist appointed to examine a criminal defendant; efd.

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 SB 80
- new title
- same title and recommends DO PASS
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

Joe No. 1111

Joe No. 1111

Joe No. 1111

Joe No. 1111

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Chairman

Chairman recommendation

POSITION PAPER

SENATE BILL 80

*Eddie*  
*Ed*

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

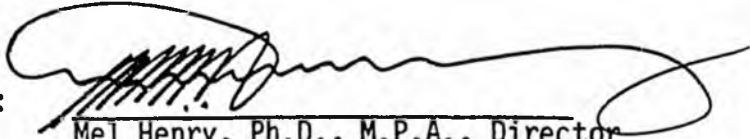
In October, 1982, Chapter 143, SLA 1982 became effective. That Act, among other things, revised Alaska's criminal laws relating to insanity and competency to stand trial. One revision that was contained in the Act requires that two psychiatrists or two forensic psychologists must be appointed to examine 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.

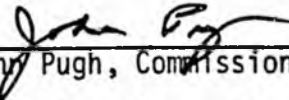
Recommended by:

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

Date:

1-28-85

Approved by:

  
John Pugh, Commissioner

Date:

1/30/85

  
Jim Auler, DHSB

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

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

See Attached

Prepared By: James L. Scoles  
 Division: Mental Health & Developmental Disabilities

Phone: 465-3370  
 Date: 1-28-85

Approved by Commissioner: [Signature]  
 Agency: Health & Social Services

Date: 1/30/85 jcc

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.



*Eddie FYI file*

Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTH :  
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:

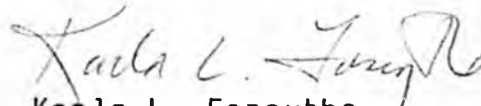
I am writing to bring to your attention a concern about SB 80, an act relating to the number of psychologists and psychiatrists appointed to examine a criminal defendant.

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 Guaneli  
David Mannheimer

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

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

February 20, 1985

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 procedures for conducting psychiatric examinations in insanity cases under AS 12.47.070 applicable to incompetency proceedings.

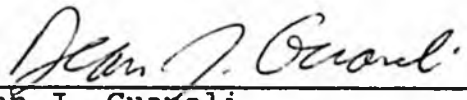
If I can be of further assistance, please contact me.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

By: \_\_\_\_\_

  
Dean J. Guaneli  
Assistant Attorney General

DJG/so-88

Attachment

SB 80

# 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) 465-3334  
(907) 465-3635

## Senate Committee on Health, Education and Social Services

### M E M O R A N D U M

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

FROM: Committee Staff

RE: Committee Meeting, April 9, 1985

DATE: April 8, 1985

---

On Tuesday, April 9, at 1:30 pm in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

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

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 defense or there is reason to believe that it will become an issue in the case. SB 80 amends AS 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 draft committee substitute has been prepared which would extend this procedure to incompetency proceedings. It would clarify 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 unless the defendant and prosecuting attorney agree to a single appointment.

FEB 13 1985

PAUL E. TURNER, PH.D.  
CLINICAL PSYCHOLOGIST  
694 POPLAR CIRCLE  
KENAI, ALASKA 99611  
(907) 283-7015

*Edie - draft  
response. Put  
in bill file.*

February 5, 1985

FEB 12 1985

Harry Treager  
Director  
Division of Occupational Licensing  
Pouch D  
Juneau, Ak. 99811

Re: SB 80

Dear Mr. Treager:

Thank you for forwarding information to me regarding this bill and offering me the opportunity to comment on it.

I am in support of the amendment to this bill. I feel this small change will result in a substantial savings of time and financial resources to the defendant or the state. It is not always necessary to have two opinions in proceeding with a case.

I would also urge consideration of the following.

"...the court shall appoint at least two qualified psychiatrists or two qualified [forensic] psychologists [certified by the American Board of Forensic Psychology] to examine and report upon the mental condition of the defendant."

Sincerely,

*Paul Turner, PhD*  
Paul E. Turner, Ph.D.  
Clinical Psychologist

DEAN GUANELI, AG'S OFFICE, POINTED OUT AN INCONSISTENCY BETWEEN 12.47.070(a) AND 12.47.100(b). HE WILL SEND PROPOSED WORDING TO BE CONSIDERED BY THE OFFICE BEFORE IT GOES BEFORE THE COMMITTEE.

12.47.100 deals strictly with incompetency to proceed with the trial. If the prosecutor or defense attorney has a reason to believe that the accused is unable to understand the proceedings or assist in his own defense, a motion can be filed for a judicial determination of the mental competency of the accused. The court can have at least one qualified psychiatrist examine the accused.

Section 12,47.070(a) says that if a defendant:

- 1) has filed a notice of intention to rely on the affirmative defense of insanity; or,
  - 2) has filed a notice under AS 12.47.020(a); or,
  - 3) there is reason to doubt the defendant's fitness to proceed...
- the court shall appoint at least either two psychiatrists or two forensic psychologists.

IN BOTH SECTIONS OF THE CHAPTER, DEFENDANTS FITNESS TO PROCEED IS SUFFICIENT REASON FOR THE COURT TO REQUEST AN EXAMINATION; HOWEVER, ONE SECTION REQUIRES AT LEAST TWO AND THE OTHER REQUIRES AT LEAST ONE.

→ incompetency to stand trial (1)  
vs. not guilty by reason of insanity (2)

**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

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

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

Services" in the first in subsection (b) and health and social secretary language of sub-

nts not limited. e court to recom- e, psychiatrically udged guilty but 5, § 5 (1984))

ited "Corrections" for Services."

on of mental firmative defense l disease or defect 2.47.020, and the prosecuting attor- ue of whether the t be held on this ng the court shall to be guilty but presented at the was presented at

it mentally ill, it d shall enter the .ment. ally ill under this

ie meaning given

a defendant has efense of insanity 7.020(a), or there or there is reason e defendant will l appoint at least ts certified by the and report upon ppoints psychia- rovide assistance. ), the report shall nitted 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).

**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.

Section	Section
10. Insanity excluding responsibility	50. Disposition of defendant found guilty but mentally ill
20. Mental disease or defect negating culpable mental state	55. Treatment for other defendants not limited
30. Guilty but mentally ill	60. Post conviction determination of mental illness
40. Form of verdict when evidence of mental disease or defect admissible	70. Psychiatric examination

stances. (a) complete copy of public Safety or agency is prima controlled sub- ning the anal- of the alleged e author shall and identity of

report provided The statement ment that the port and that r duties. The r's education, e author shall ed with due ence was han- lures while in

report on the the defendant g in which the a preliminary used without

the testimony and showing rom receipt of

tain notice of erson signing

o Stand

tant found guilty

defendants not

termination of

tion

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).

REQUEST

Bill/Resolution No.: SL 80  
 Title: "...the number of psychiatrists...to examine a crim. defendant."  
 Sponsor: Senate Rules/Governor  
 Requestor: Governor's Ofc./OMB  
 Date of Request: 12/18/84

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill would allow a criminal defendant and the prosecuting attorney to waive the requirement that the court appoint two qualified psychiatrists or forensic psychologists to examine certain defendants. If that requirement is waived, the court would only have to appoint one psychiatrist or psychologist, saving considerable expense on the part of the Division of Mental Health and Developmental Disabilities. This bill will not have a fiscal impact on the Department of Law's Operations.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: 12/19/84  
 Approved by Commissioner: Richard I. Pegues / FOR Date: 12/19/84  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

7/1/84

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

*HESS*

*4-9-85*

*1:36pm*



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

received Senate HESS approval

9/9/85

ALL DO PASS

Offered: 4/11/85  
Referred: Judiciary

Original sponsor: Rules/Governor

passed Senate 2/6/86 20-0

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE BILL NO. 80 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the number of psychiatrists or

7

psychologists appointed to examine a criminal defen-

8

dant; and providing for an effective date."

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

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

11

(a) If a defendant has filed a notice of intention to rely on

12

the affirmative defense of insanity under AS 12.47.010 or has filed

13

notice under AS 12.47.020(a), or there is reason to doubt the defen-

14

dant's fitness to proceed, or there is reason to believe that a mental

15

disease or defect of the defendant will otherwise become an issue in

16

the case, the court shall appoint at least two qualified psychiatrists

17

or two forensic psychologists certified by the American Board of

18

Forensic Psychology to examine and report upon the mental condition of

19

the defendant. However, if both the defendant and the prosecuting

20

attorney waive the requirement for the appointment of at least two

21

psychiatrists or psychologists, the court shall appoint one psychia-

22

trist or psychologist. If the court appoints a psychiatrist [PSYCHIA-

23

TRISTS], the psychiatrist [PSYCHIATRISTS] may select a psychologist

24

[PSYCHOLOGISTS] to provide assistance. If the defendant has filed

25

notice under AS 12.47.090(a), the report shall consider whether the

26

defendant can still be committed under AS 12.47.090(c). The court may

27

order the defendant to be committed to a secure facility for the

28

purpose of the examination for not more than 60 days or such longer

29

period as the court determines to be necessary for the purpose and may

Received  
22 AT 00 JJA  
28/11/11

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

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

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

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

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