

ALASKA LEGISLATIVE COMMITTEE FILES 1983-1988 8072

3996 SHES HB 418 - HB 423

872



RECORDS CERTIFICATION



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Signature of Camera Operator

11/7/89
Date

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Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: **HB 918**

Sponsor: **MATTON**

Date referred to committee:

Synopsis completed:

Fiscal note: **200**

Further referrals: **none**

CONTACTS:

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COMMITTEE REPORT
SENATE

FURTHER:

4/25/86

Date 5-6-86

Mr. President

The Committee on HESS considered HB 418
relating to liability for providing emergency medical care.

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

MEMBERS HAVING
OTHER RECOMMENDATIONS

~~Joe Stephan~~

Joe Stephan - No Rec.

Debbie Fabrikant
 Chairman

Chairman recommendation _____

MEMORANDUM

State of Alaska

Honorable John R. Pugh
Commissioner
Department of Health
and Social Services

DATE: March 7, 1986

FILE NO: 66-3-86-0197 C

TELEPHONE NO: 465-3603

FROM: Harold M. Brown
Attorney General

SUBJECT: Review of proposed
regulations
7 AAC 26.410 --
7 AAC 26.490,
7 AAC 26.510 --
7 AAC 26.590

By: George W. Edwards *GWE*
Assistant Attorney General
Human Services-Juneau

You have provided the above referenced proposed regulations pertaining to emergency trauma technicians and defibrillator technicians for our review. These are being returned with recommended changes as an attachment to this memorandum of advice.

With reference to the proposed regulations, you have asked for our advice on three questions. The first of these questions is -- if an emergency trauma technician (ETT) is affiliated with a service which provides or advertises to provide emergency medical care, does he or she have a duty to act?

The answer to your question is no except under circumstances outlined below.

At common law there exists no general duty to rescue. Lee v. State, 490 P.2d 1206 (Alaska 1971). The duty to rescue ordinarily arises out of statute or contract or results from an act that places a second party in danger. In Alaska, a customary duty to rescue has been imputed to police officers even in the absence of a specific statutory duty. Id.

An emergency medical service (EMS) that provides emergency care and transportation under the authority of AS 18.08.080 probably has both a contractual duty to act and a similar duty predicated upon its customary role in the eyes of the public. An emergency medical technician (EMT) employed by an EMS to provide emergency care to the public has a similar duty while on the job. This duty, however, does not result from the technician's status as an EMT.

The duty to provide emergency care derives from designated employment responsibilities rather than from mere certification. Two California cases concerning licensed physicians draw this distinction.

Honorable John R. Pugh, Commissioner
Department of Health and Social Services
66-3-86-0197

March 7, 1986
Page 2

In Colby v. Schwartz, 144 Cal. Rptr. 624 (1978), a physician was not immunized from liability by the California good samaritan statute when the physician's emergency room aid, negligently given, was part of his normal course of practice.

In McKenna v. Cedars of Lebanon Hospital, 155 Cal. Rptr. 631 (1979), the good samaritan statute did immunize a physician who negligently performed emergency room aid where the physician had no legal duty to render aid in the emergency room.

Thus if an ETT, an EMT, or even a physician, were hired by an EMS strictly to drive an ambulance, the driver probably would have no duty to render emergency aid. If the driver chose to do so under appropriate circumstances, he could be considered a volunteer subject to the protection of Alaska's good samaritan statute, AS 09.65.090. Our reservation within this analysis results from the possibility that under the doctrine established in Lee v. State, 490 P.2d 1206 (Alaska 1971), an ambulance driver might be determined to have a duty based upon a customary public perception that ambulance drivers have an emergency care role.

Clearly, if the ETT referred to above accepted the ambulance driver position with the understanding that the job responsibilities would include emergency patient care, the ETT would then assume the same duty to act that a fellow employee hired as an EMT would assume.

Your second question is -- if the person (ETT) has a duty to act, is he or she covered by AS 09.65.090, dealing with civil liability for emergency aid?

The answer to this question is no. Consistent with the general rule, Alaska's good samaritan statute, AS 09.65.090, is intended to induce voluntary rescue by persons without a pre-existing duty to act. Id.

Your third question is -- in order to provide immunity from liability under AS 18.08.086, should we certify ETT's as well as ETT instructors?

The answer to this question is yes. This answer is based upon our understanding that it is your intent to regulate the use of ETT's as emergency care providers within EMS organizations. Without immunity from liability an ETT hired to provide emergency care would be faced with the alternative risks of breaching his own and the EMS's duty to the patient if he failed to perform and of subjecting both himself and the EMS to liability for ordinary negligence if he did perform. Thus the

use of ETT's as EMS technicians will be viable only if they come under the immunity provision of AS 18.08.086.

The establishment of such immunity will require a statutory change. AS 18.08.086 provides immunity to persons certified under AS 18.08.082. The latter statute currently provides for certification of EMT's and EMS's. It would require minimal amending to include ETT's within the certified class.

It has been suggested that AS 18.08.082(a)(3) could be interpreted in its present form to apply to ETT's as persons who provide an emergency medical service. AS 18.08.082(a)(3) states:

(a) The department shall prescribe by regulation a course of training or other requirements prerequisite to the issuance of certificates which provide for the following:

. . . .

(3) certifies that a person, organization, or government agency which provides an emergency medical service meets the minimum operating standards prescribed by the department

We believe such an interpretation goes beyond legislative intent. The subsection applies on its face to EMS operations rather than to individuals within those operations.

Equally significant is the fact that AS 18.08.082 specifically limits technician certification to EMT's. The legislature was entitled to rely on the department to certify only persons who met the high training standards traditionally associated with EMT's. Since ETT's are required to meet significantly less stringent training standards, they are not necessarily within the class intended to be certified under the statute. Therefore legislative approval of the extension of the certified class is called for.

Following amendment of AS 18.08.082, the modification of your proposed regulations providing for certification of ETT's will complete the steps required to provide the necessary immunity under AS 18.08.086.

GWE:nb
Attachment

edited copy sent to AS

Register , , 1986

HEALTH AND SOCIAL SERVICES

7 AAC 26.410

7 AAC 26.430

7 AAC 26 is amended by adding new sections to read:

ARTICLE 4.
EMERGENCY TRAUMA TECHNICIAN INSTRUCTORS AND
APPROVED EMERGENCY TRAUMA TECHNICIAN TRAINING COURSES

Section

- 410. Purpose
- 420. Application for certification
- 430. Qualifications for certification
- 440. Scope of certified activities
- 450. Approved training courses
- 460. Administration of examinations
- 470. Term of certification
- 475. Recertification
- 480. Lapse of certification
- 485. Persons practicing as emergency trauma technician instructors before December 31, 1986
- 490. Definitions

7 AAC 26.410. PURPOSE. Sections 7 AAC 26.410 — 7 AAC 26.490 establish uniform minimum standards for emergency trauma technician instructors, [and] emergency trauma technician instructor training programs, and emergency trauma technician training courses. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.420. APPLICATION FOR CERTIFICATION. (a) A person applying for a certificate as an emergency trauma technician instructor shall apply in writing to the department on a form approved by the department; and

(b) The Department will issue a certificate when the person has met the requirements of 7 AAC 26.430. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.430. QUALIFICATIONS FOR CERTIFICATION. (a) To apply for a certificate as an emergency trauma technician instructor, a person must:

- (1) be 18 years of age or older;
- (2) be of acceptable moral character;

(3) have current certification in Alaska as an Emergency Medical Technician I, II, III, licensure in Alaska as a Mobile Intensive Care Paramedic, or certification as a paramedic by the National Registry of Emergency Medical Technicians; or, ^{licensure} licensure in Alaska as a registered nurse, midlevel practitioner, or physician ~~(who has)~~ successfully passed the written and practical certification examination for Emergency Medical Technician-I; and

(4) have current certification in Alaska as an Emergency Medical Technician-I Instructor under 7 AAC 26.010 — 7 AAC 26.170; OR

(5) fulfill the requirements outlined in ^{(a)(1-3) of this subsection,} ~~a(1), a(2) and a(3)~~ of ~~this section,~~ and provide evidence of successful completion of department approved objectives for the ETT-Instructor Training Program.

(b) ^{a person is} Upon receiving a certificate as an emergency trauma technician instructor, ~~the candidate shall be~~ authorized to teach the department approved 40 hour emergency trauma technician course. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.440. SCOPE OF CERTIFIED ACTIVITIES. A certified emergency trauma technician instructor may teach emergency trauma technicians to perform those basic life support emergency care skills outlined in the goals and objectives of the Emergency Trauma Technician Instructor's Guide ^{which may be obtained from the department} (Eff. __/__/__, Register __)

Authority: AS 18.08.080

Editor's Note: The publications mentioned in 7 AAC 26.440 are available from the EMS Section, Department of Health and Social Services, P.O. Box H-06, Juneau, Alaska 99811-0600.

7 AAC 26.450. APPROVED TRAINING COURSES. (a) An organization applying for approval of a course leading to ETT Instructor certification must:

- (1) 60 days, or more, prior to the first day of the course, notify the department of the course dates and proposed schedule;
- (2) ^{purpose} use a curriculum approved by the department;
- (3) ^{purpose} [plan] a minimum of 40 hours of instruction;
- (4) ^{purpose to} use an instructor approved by the department;

~~(5) use a curriculum~~ which is designed to adequately familiarize students with the instruction of those basic life support emergency care skills outlined in the goals and objectives of the Emergency Trauma Technician Instructor's Guide.

^{within its purpose} (5) ~~[(6)]~~ include objective criteria for determining whether or not a student has successfully completed the course and those criteria must be adequate to ensure that students are familiar with both teaching methodology and the course content of the emergency trauma technicians training program; and

^{purpose} (6) ~~[(7)]~~ ^{limit} limit enrollment in the instructor training program to persons who obtain a 90 percent or more on the emergency medical technician examination within two attempts and within the 12 months preceding the first day of the class.

(b) An instructor applying for approval of an Emergency Trauma Technician Training Course must:

(1) 14 days or more prior to the first day of the course, notify the department or its designee of the course dates and proposed schedule;

(2) ~~use~~^{plan} a curriculum approved by the department;

(3) be approved by the department as an emergency trauma technician instructor;

(4) ~~plan~~^{use} a minimum of 40 hours of instruction; and

(5) within 14 days following ~~completion~~ of the emergency trauma technician examinations ~~for certification~~, submit, to the department or its designee, a class roster which includes student grades for both the written and practical examinations.

Do you want to certify ETT's just instructors?

(c) Approved emergency trauma technician instructors are encouraged to use physicians, mid-level practitioners, nurses, and other subject matter experts as instructors in a department approved emergency trauma technician training course. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.460. ADMINISTRATION OF EXAMINATIONS. The department is the official testing agency for emergency trauma technician instructor training programs and will develop a security system for administering the necessary examinations. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.470. TERM OF CERTIFICATION. (a) An initial certification for an ETT instructor issued before July 1 expires on December 31 of the following year; and

(b) An initial certification for an ETT instructor issued after June 30 expires on December 31 of the second year following the year of issuance. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.475. RECERTIFICATION. An emergency trauma technician instructor ~~for not more than~~ 12 months following expiration of his or her current certification ~~must~~:

applying for recertification must not more than 30 days before

(1) apply for recertification on a form provided by the department;

(2) provide evidence of current state certification as an emergency medical technician I, II, or III, current state licensure as a Mobile Intensive Care Paramedic, current certification as a paramedic by the National Registry of Emergency Medical Technicians, or licensure in Alaska as a registered nurse, midlevel practitioner, or physician;

(3) provide evidence that he or she has been the primary instructor for ~~one or more~~ emergency trauma technician courses, or department approved EMT-I courses, within the preceding two years;

(4) submit a letter of recommendation from the applicant's supervisor. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.480. LAPSE OF CERTIFICATION. ~~An individual~~ ^{Applicant} who fails to recertify within the twelve months following expiration of his or her certification must retake the emergency trauma technician instructor training program. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

7 AAC 26.485. PERSONS PRACTICING AS EMERGENCY TRAUMA TECHNICIAN INSTRUCTORS BEFORE DECEMBER 31, 1986. (a) The department will issue an emergency trauma technician instructor certificate to a person who applies for certification before December 31, 1986 and who has taught at least one emergency trauma technician course approved by the Alaska Public Safety Academy or by a state approved EMS training agency or who has passed a department approved emergency trauma technician instructor course or EMT Instructor course within the past two years.

(b) The initial term of certification for ~~grandfathered~~ emergency trauma technician instructors will expire December 31, 1987. (Eff. __/__/__, Register __)

certified under (a) of the section

Authority: AS 18.08.080

7 AAC 26.490. DEFINITIONS. (a) In 7 AAC 26.410 — 7 AAC 26.490, the following definitions are used:

(1) "acceptable moral character" means that the individual has not been convicted of a ~~violent or morally reprehensible~~ felony crime ^{involving violence} during the five years immediately preceding application;

in dishonesty

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

(3) "EMT" means emergency medical technician;

(4) "ETI" means emergency trauma technician;

better yet, "... has not been convicted of a felony crime during the five years..." - it will eliminate arguments later

Math, I really don't understand how to type this. Jan

(5) "emergency medical technician" means a person trained in emergency medical care and certified in accordance with 7 AAC 26.010 — 7 AAC 26.170.;

(6) "emergency trauma technician" means a person who has successfully completed a department approved 40-hour emergency trauma technician course in accordance with this chapter.

(7) "mid-level practitioner" means a person certified or licensed by the state as a nurse practitioner or as a physician assistant.

(8) "state approved EMS training agency" means an agency, approved by the department, which provides emergency medical services training courses in accordance with applicable state laws, regulations and policies. (Eff. __/__/__, Register __)

Authority: AS 18.08.080

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Register , , 1986 HEALTH AND SOCIAL SERVICES 7 AAC 26.510
7 AAC 26.520

7 AAC 26 is amended by adding new sections to read:

ARTICLE 5.
DEFIBRILLATOR TECHNICIANS AND
APPROVED TRAINING COURSES

Section

- 510. Purpose
- 520. Application for certification
- 530. Qualifications for certification
- 540. Scope of certified activities
- 550. Approved training courses
- 555. Sponsoring physician responsibilities
- 560. Examinations for initial certification
- 565. Term of certification
- 570. Recertification
- 575. Examinations for recertification
- 580. Recertification examination failure; Lapse of certification
- 590. Definitions

7 AAC 26.510 PURPOSE. The purpose of 7 AAC 26.510 -- 7 AAC 26.590 is to promote the health and safety of the people of Alaska by establishing uniform minimum standards for Emergency Trauma Technician-Defibrillator Technicians, Emergency Medical Technician-Defibrillator Technicians, and Defibrillator Technician-Instructors. (Eff. __/__/__, Register __)

Jan. last
disputing
ET-C
EM-D
from Instructor?

Authority 18.08.080

7 AAC 26.520 APPLICATION FOR CERTIFICATION. (a) A person applying for certification as an Emergency Trauma Technician-Defibrillator Technician or Emergency Medical Technician-Defibrillator Technician shall apply in writing to the department.

(ETT-D)

(ETT-D)

(b) The application ~~will be provided by~~ ^{which may be obtained from} the department ^{3 month} and will contain the person's name, age, and mailing and geographical addresses (if different), evidence that the person meets the requirements of 7 AAC 26.530, and any other information the department considers necessary.

(c) A certificate for the ^{applicant} appropriate level will be issued by the department when the ~~person~~ has met the requirements of the level applied for in 7 AAC 26.030. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.530 QUALIFICATIONS FOR CERTIFICATION. A person applying for certification as an ETT ~~Defibrillator Technician~~ or EMT-D ~~Defibrillator Technician~~ must

(1) provide evidence of current certification as an EMT ~~I or EMT-II,~~ or evidence of successful completion of a department approved ETT training program;

(2) provide evidence of current ^{my resuscitation} (CPR) certification from the American Heart Association or American Red Cross;

(3) have six months experience as a state certified EMT ~~I or state certified EMT-II,~~ or as an ETT following completion of a department approved ETT training program; ^{who has completed}

(4) be a member of an organized ambulance or rescue service which is capable of transporting ^{the} patient to, or obtaining backup from, persons able to administer advanced life support, including lidocaine, within 20 minutes following the arrival of the initial rescuer;

(5) successfully complete a department approved defibrillator technician training program;

(6) pass within twelve months after completing the training program, a written and practical examination for defibrillator technician ^{approved} by the department; and

(7) have written approval from a sponsoring physician, as outlined in section ~~.555~~ of this chapter, 7 AAC 26.555. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.540. SCOPE OF CERTIFIED ACTIVITIES. ^{ETC} (a) A ^{person} ~~certified EMT-Defibrillator,~~ who is currently ^{certified} ~~[at the] as an EMT-D~~ ~~EMT I or EMT II level~~ may, under the direct or indirect supervision of a physician, use a manual or automatic defibrillator to defibrillate a patient in ventricular fibrillation.

^{state} (b) ^{as an ETT-D} ~~[A certified] Emergency Trauma Technician-Defibrillator,~~ ^{A person} who is currently ^{certified} ~~at the ETT level~~ may, under the direct or indirect supervision of a physician, use an automatic defibrillator to defibrillate a patient in ventricular fibrillation. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.550. APPROVED TRAINING COURSES. (a) An organization applying for course approval for training persons certified at the ETT, ~~EMT-I~~ or EMT-~~II~~ level, to use a manual or automatic defibrillator, must show that it has

- (1) appropriate training equipment; ~~and~~
- (2) ^{an} ~~department certified~~ EMT-III instructor, certified under 7 AAC 26.010 - 7 AAC 26.170, as the primary instructor of the course; and
- (3) ^a ~~have the~~ physician medical sponsor available throughout the program to evaluate the performance of the students, except that the department will, in its discretion, grant a waiver for a training program at which assistance from the physician medical sponsor can be provided only by radio or telephone.

(b) An organization applying for course approval for training persons certified at the ETT, ~~EMT-I~~ or EMT-~~II~~ level to use an automatic defibrillator must:

(1) ^{use} ~~use~~ a curriculum which incorporates behavioral objectives related to the safe and proper use of the defibrillator, including placement of electrodes/defibrillator pads, use of the voice recorder, principles of defibrillation, and include ^S

(A) an overview of cardiac anatomy and physiology;

(B) teaching the student to properly attach self adhesive monitor/defibrillator pads and monitor cables to the patient;

(C) an overview of the principles of defibrillation;

(D) information related to defibrillator safety precautions to enable the student to administer a countershock without jeopardizing the safety of the patient and rescuers;

(E) teaching the student to perform basic maintenance such as battery care and replacement of ERG paper and audio tapes;

(F) teaching the student to recognize that an electrical countershock has been delivered to the patient;

(G) teaching the student to quickly and effectively assess the patient's post countershock status;

(H) an overview of system medical control requirements;

(I) an overview relevant to state and local statutes, regulations, and/or administrative codes;

(J) teaching the student the importance of adequate airway care, advanced life support, and rapid transport as they relate to defibrillation; and

(K) teaching the student how to react appropriately should the defibrillator become inoperable.

(2) ~~plan for~~^{purpose} a minimum of eight hours of instruction.

(c) An organization applying for course approval for training persons certified at the EMT ~~I or EMT II~~ level to use a manual defibrillator must

(1) ~~use~~^{purpose} a curriculum which incorporates objectives outlined in 7 AAC 26.550 (b) and behavioral objectives related to:

(A) dysrhythmia recognition, ^{with} ~~while~~ recognition of nonarrest dysrhythmias ~~is~~ optional, ~~this section should include~~ the basics of rhythm analysis; and

^{and including} (B) recognition and appropriate response to electrical artifact.

(2) ~~plan for~~^{purpose} a minimum of ten hours of instruction. (Eff. __/__/__, Register __)

Authority 18.02.080

7 AAC 26.555. SPONSORING PHYSICIAN RESPONSIBILITIES. The sponsoring physician for an emergency medical service using ~~ETT-D~~ ~~Emergency Trauma Technician-Defibrillator~~ Technicians or ~~EMT-D~~ ~~Emergency Medical Technician-Defibrillator~~ Technicians must:

(1) submit written plans for training and evaluation of the EMT's or ETT's under his, or her, supervision;

(2) provide supervision of medical care provided by the ETT-D or EMT-D;

(3) approve medical standing orders which clearly delineate the emergency care procedures which may be performed by the ETT-D or EMT-D and the circumstances under which these activities may occur. These standing orders must address, at a minimum, the following:

*August 1986
Division of
Uniform
E.M.T.-D
E.M.T.-D*

(A) the sequence of interventions to be performed during a resuscitation attempt;

(B) guidelines for speed of shock delivery and total time spent at the scene;

(C) the method of cardiac monitoring and defibrillation to be used, ^{or} ~~over~~ chest leads paddles, or self-adhesive monitor/defibrillator pads;

(D) the appropriate management of all potential cardiac arrest rhythms: ventricular fibrillation, asystole, ventricular tachycardia, and other pulseless organized rhythms;

(E) the selection of energy levels for initial and subsequent defibrillation attempts;

(F) defibrillation safety, both at the scene and during transport;

(G) the maximum number of defibrillations which ETT-D's or EMT-D's may deliver on each patient outside of the hospital;

(H) the assessment and management of the post-arrest patient;

(I) the management of patients who rebrillate prior to arrival at the hospital;

(J) patient age and/or weight criteria for performance of defibrillation;

(K) the minimum information which must be communicated into the voice recorder during the course of a resuscitation attempt; and

(L) the need to maintain adequate cardiopulmonary resuscitation throughout the cardiac arrest episode.

(4) review ^{of} each run in which a countershock was delivered to the patient to determine whether

(A) the voice recorder was activated appropriately;

(B) the personnel quickly and effectively set up the necessary equipment;

(C) the patient's pulse was checked appropriately throughout the emergency response;

(D) defibrillation was performed as rapidly as possible for the patient in ventricular fibrillation;

(E) the amount of time spent at the scene was appropriate;

(F) adequate Basic Life Support was maintained;

(G) the personnel obtained a clear tracing of the electrocardiographic rhythm immediately prior to each defibrillation attempt;

(H) the assessment of the need to deliver a countershock was correct;

(I) the portable defibrillator was operated safely and correctly; and

(J) the care provided was in compliance with applicable protocols and standing orders.

(5) ^{provide} instruction in periodic training sessions, at least quarterly, which include practice sessions and assessment of each individual's ability to perform in compliance with local protocol. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.560 EXAMINATIONS FOR INITIAL CERTIFICATION. (a)

The examination administered to ~~ETT Defibrillator~~ and ~~EMT-Defibrillator~~ Technicians who will be using an automatic defibrillator ~~will~~ be a department approved examination that tests the knowledge and skills necessary to apply defibrillator pads/electrodes, safely and properly deliver an electric shock, and document pertinent events during a cardiac arrest situation.

EMT-D

ETT-D

must

(b) The examination administered to ~~EMT-Defibrillator~~ Technicians who will be using a manual defibrillator ~~will~~ be a department approved examination that tests the knowledge and skills necessary to apply defibrillator pads/electrodes, identify artifact, identify ventricular fibrillation, safely and properly defibrillate ventricular fibrillation and document pertinent events during a cardiac arrest situation.

must

(c) Administration of the examination can be performed by the course instructor. (Eff. __/__/__, Register __)

does may! fit better here

Authority 18.08.080

7 AAC 26.565 TERM OF CERTIFICATION. A certification is valid for two years except

issued under 7A.C. 26.520(c)

(1) an initial certification issued before July 1 expires on December 31 of the following year;

(2) an initial certification issued after June 30 expires on December 31 of the second year following issuance; and

(3) all recertifications expire on the second December 31 following the expiration of the most recent certification regardless of the date of issuance of the recertification. (Eff. __/__/__, Register __)

of the second year

should it this need "certification"?

Authority 08.08.080

applying for recertification must, not

30 days before or 7 AAC 26.570. RECERTIFICATION. An ETT-D or EMT-D ~~more than~~ six months after expiration of his or her current certification,

(1) provide evidence of current certification as an ETT, ~~EMT I,~~ or EMT ~~II~~;

(2) provide evidence of current CPR certification from the American Heart Association or American Red Cross;

(3) be a member of an organized ambulance or rescue service which is capable of transporting the patient to, or obtaining backup from, persons able to administer advanced life support, including lidocaine, within 20 minutes following the arrival of the initial rescuer;

(4) have written approval from a sponsoring physician, as outlined in ~~section 555 of this chapter~~; and

7 AAC 26.555

(5) pass the appropriate recertification written and practical examination administered by the department. (Eff. __/__/__, Register __)

Authority 18.08.080

7AAC 26.575. EXAMINATIONS FOR RECERTIFICATION. The defibrillator technician recertification examination consists of the defibrillator examination used for initial certification in use at the time of recertification testing. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.580. RECERTIFICATION EXAMINATION FAILURE; LAPSE OF CERTIFICATION. If a person fails to pass the ETT-D or EMT-D recertification examination on the first attempt, or fails to take the examination within six months after the expiration of his or her certification, he or she, must apply as for initial certification. (Eff. __/__/__, Register __)

Authority 18.08.080

7 AAC 26.590. DEFINITIONS. In 7 AAC 26.510 -- 7 AAC 26.590

(1) "advanced life support" means emergency care techniques provided under the written or oral orders of a physician which include, but are not limited to, electric cardiac defibrillation, administration of anti-arrhythmic agents, intravenous therapy, intramuscular therapy, or use of endotracheal intubation devices.

(2) "automatic defibrillator" means a defibrillator capable of automatic rhythm analysis which will charge and deliver a countershock after electronically detecting the presence of ventricular fibrillation or rapid ventricular tachycardia;

(3) "basic life support" means those emergency care skills outlined in the goals and objectives of the U.S. Department of Transportation, Basic Training Course/Emergency Medical Technician, third edition, 1983, including administration of over-the-counter medicines, such as syrup of ipecac, which are necessary to carry out the objectives outlined in the course;

(4) "defibrillator/monitor with dual-channel tape recording capabilities" means a defibrillator/monitor capable of continuous recording of the electrocardiogram and simultaneous recording of the voice communications at the scene;

(5) "manual defibrillator" means a defibrillator which has no capability for rhythm analysis and will charge and deliver a countershock only at the command of the operator;

(6) "protocol" means general standards for Emergency Medical Service practice in a variety of situations within the EMS System;

(7) "semi-automatic defibrillator" means a defibrillator which is capable of electronically detecting ventricular fibrillation and rapid ventricular tachycardia, but requires user interaction in order to deliver a countershock; and

Register , , 1986 HEALTH AND SOCIAL SERVICES 7 AAC 26.590

(8) "standing orders" means rigidly defined written orders for actions and techniques when verbal communication has not been made with the on-line medical director;
(Eff. __/__/__, Register__)

Authority 18.08.080

Alaska State Legislature

COMMITTEES:

Committee on Community and Regional Affairs
Committee on Transportation
Special Committee on Oil and Gas
Special Committee on Fisheries
Finance Sub-committee on Fish and Game

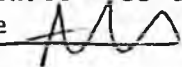


Andre Marrou
Representative

District 5

Kenai	Sterling
Seldotna	Anchor Point
Homer	Port Graham
Seldovia	English Bay
Kachemak	Nikolaevsk
Kasilof	Halibut Cove
Ninilehik	Clam Gulch

April 25, 1986

To: Bettye Fahrenkamp, Chairman Senate Hess Committee
From: Andre Marrou, Representative 

Subject: HB 418, No Liability for EMTs

HB 418 would exempt emergency medical technicians from liability while performing emergency services. This liability exemption is currently available only in lifesaving situations. The current "Good Samaritan" law does not apply in non-lifesaving situations according to two different A.G. opinions.

EMTs are trained to help and should not be hindered by the threat of being sued. As you can readily surmise, quickly and accurately determining if a given emergency situation is a matter of life and death is a judgement call. It is an unnecessary burden upon those who help us in emergency situations.

The Department of Health and Social Services supports this bill. In fact, just about everyone we've contacted supports this bill, including the Health Association of Alaska, the Alaska Firefighters Association, the Southern Region Emergency Medical Services Council, and various fire departments.

Your favorable consideration would be appreciated.

Attachments:

Opinion of Harold Brown, A.G. March 7, 1986
Opinion of Wilson Condon, A.G. April 20, 1981
Health & Social Services Position Paper
Fiscal Note

Alaska State Legislature

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

P O BOX V
STATE OF ALASKA
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3762

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, May 6, 1986

DATE: May 2, 1986

On Tuesday, May 6, 1986 from 1:30-3:30 p.m. in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

HB 418 An Act relating to liability for providing emergency medical care.

Current statute shields an Emergency Medical Technician (EMT) and a paramedic from liability for ordinary negligence in life saving situations only. HB 418 would expand this protection to include rendering emergency care to any person "who is in need of immediate aid in order to avoid serious harm." EMTs and paramedics would still be liable in cases of gross negligence or intentional misconduct. The State of Alaska currently licenses both EMTs and paramedics.

CSHB 497 (Jud) am Relating to custody, support, visitation, and birth certificates of children

HB 497 amends Alaska's divorce and dissolution statutes to:
1) require the court to examine child custody agreements between parents, whether the case is disputed or undisputed, to ensure the agreement is in the best interest of the child and that

FEB 7 1986

Position Paper

House Bill No. 418

For An Act entitled: "An Act relating to liability for providing emergency medical care."

This act amends AS 08.64.366. (Liability for Services Rendered by a Physician Trained Mobile Intensive Care Paramedic), and AS 18.08.086 (a) (immunity from liability for state certified emergency medical technicians) to expand the immunity from liability provisions, from covering only care given to persons in life threatening situations, to include rendering emergency care to any person "who is in need of immediate aid in order to avoid serious harm or loss of life."

The Department of Health and Social Services supports passage of this bill because currently state licensed Mobile Intensive Care Paramedics and State certified Emergency Medical Technicians (EMT's) are only immune from liability (except in cases of gross negligence or intentional misconduct) when rendering care to persons in serious, life threatening situations. In actual fact, these cases constitute only a small percentage of the total cases treated by emergency medical responders. By broadening this immunity from liability, the paramedics and EMT's will have some immunity from liability when rendering care to nearly all cases, whether or not they are judged to be life threatening.

POSITION

The Department of Health and Social Services supports passage of this bill.

Recommended by: Elizabeth A. Ward
Elizabeth Ward, M.N.
Director
Division of Public Health

Date: 2/5/86

Approved by: John R. Pugh
John R. Pugh, Commissioner
Department of Health and
Social Services

Date: 2/7/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: Jan. 31, 1986

REQUEST

Bill/Resolution No.: House Bill No. 418
 Title: "An act relating to liability for providing emergency medical care."
 Sponsor: Representative Marrou
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Health & Social Services
 BRU: Public Health
 Components: Public Health,
Health Services Administration BRU

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	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by: Elizabeth Ward, M.N., Director *E. Ward* Phone: 465-3090
 Division: Division of Public Health Date: Jan. 31, 1986 *JCC*
 Approved by Commissioner: *J.R. P.* Date: 2/7/86
 Agency: Health & Social Services

Distribution (by Agency preparing fiscal note):

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

Southern Region
EMERGENCY
Medical Services Council, Inc.

April 29, 1986

Senator Bettye Fahrenkamp, Chairman
Health, Education, & Social
Services Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

This letter is to request that the HESS Committee pass out HB 418, "An Act relating to liability for providing emergency medical care." This bill slightly broadens the immunity from liability currently conferred upon certified emergency medical technicians and licensed mobile intensive care paramedics. This legislation is essentially a housekeeping bill which more clearly reflects the intent of the original language.

The language contained AS 08.64.366 was passed by the Legislature in 1974 when the paramedic licensing law was passed. I drafted the language contained in AS 18.08.086 in 1978 when the Legislature established the emergency medical technician certification requirements. The intent of these sections is to try to remove the fear of litigation from the shoulders of these providers at the times when they need to be most aggressive in the manner in which they do their jobs. This is the period when they are dealing with the very seriously injured or ill person. I'm sure Representative Koponen, EMT-I, would be able to verify this.

The reason why these changes are needed is that several attorneys have reviewed the present language and interpreted it to be very restrictive. If the plaintiff could show that they were not in immediate danger of the loss of their life (the fact that they lived might be prima facie evidence of that fact), then the defendant emergency medical technician, most of whom in this state are volunteers, would not be able to use this as a defense. The intent of the legislature was that the EMTs should be covered in any serious case, not just imminently life threatening cases.

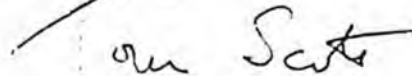
April 29, 1986

I recognize that it is getting late in the session. I am also aware of other factors that influence a bill's progress through the system. However, the fact that the House passed this bill in spite of the fact that the prime sponsor is who he is indicates that it does have some merit.

In these times of the malpractice crisis our volunteer EMTs and the cities and nonprofit organizations which operate emergency medical services are becoming more and more fearful. This legislation will help ease that concern somewhat. At the same time the State's EMT certification and paramedic licensing programs do a good job of assuring that the consumer will receive quality emergency care when they are in need. These are the reasons that the House of Representatives passed this bill out.

If you have any questions, please give me a call.

Sincerely,



Thomas D. Scott II
President/Executive Director

cc: Senator Sturgelewski
Senator Fischer
Senator DeVries
Senator Josephson
Senator Kelly

MEMORANDUM

State of Alaska

TO: Helen D. Beirne
Commissioner
Department of Health and
Social Services

DATE: April 20, 1981


FILE NO: J-66-642-81

JUL 2 1981

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Immunity/Liability -
Emergency Medical
Technicians and Para-
medics

By: Elizabeth Shaw 
Assistant Attorney General

You have asked this office to review statutes dealing with the liability to be imposed on emergency medical technicians (EMT's) and paramedics when they perform their services in a negligent manner. Although the statutes do provide a shield to liability in certain circumstances, there is no total immunity from liability.

Neither the EMT nor the paramedic may be held liable for negligently performing life-saving emergency service to a person who is in immediate danger of loss of life. The standard is objective . . . the person actually must be in a life threatening emergency. 1/

1/

Sec. 08.64.366. LIABILITY FOR SERVICES RENDERED BY A PHYSICIAN-TRAINED MOBILE INTENSIVE CARE PARAMEDIC. No act or omission of a physician-trained mobile intensive care paramedic done or omitted in good faith while rendering emergency life-saving service to a person who is in immediate danger of loss of life shall impose any liability upon the physician-trained mobile intensive care paramedic, the supervising physician, a hospital, the officers, members of the staff, nurses, or other employees of a hospital or upon a federal, state, borough, city or other local government unit or upon other employees of a governmental unit; however, this section does not relieve a physician or a hospital of a duty otherwise imposed by law upon the physician or hospital for the designation or training of a physician-trained mobile intensive care paramedic or for the provision or maintenance of equipment to be used by the physician-trained mobile intensive care paramedic.

There may, however, be liability for negligent training or negligently maintained equipment.

Footnote continued on page 2.

The Good Samaritan statute 2/ does not require that the person receiving emergency care be in danger of losing his

next page

1/ Continued

SEC. 18.08.086. IMMUNITY FROM LIABILITY.

(a) No person certified under AS 18.08.082, or person or public agency which employs, sponsors, or controls the activities of persons certified under AS 18.08.082, who administers emergency medical services to an injured or sick person, may be liable for civil damages as a result of an act or omission in administering those services, if done in good faith and if the life of the injured or sick person is in danger. This subsection does not preclude liability for civil damages which is the proximate result of gross negligence or intentional misconduct, nor preclude imposition of liability on a person or public agency which employs, sponsors, or controls the activities of persons certified under AS 18.08.082 if the act or omission is a proximate result of a breach of duty to act created under this chapter. For the purposes of this subsection, "gross negligence" means reckless, wilful, or wanton misconduct.

Sec. 18.08.090(9) "emergency medical care" means the services utilized in responding to the perceived individual needs for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury;

The definition of "emergency medical care" includes non-life saving services. The immunity from liability provision limits the definition by adding the 'life-saving' condition.

2/ Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

or her life. 'The standard is subjective . . . the person offering service must reasonably believe that the person is in need of emergency aid. The intent of such statutes is to encourage passersby to assist at scenes of accidents. 3/

It appears that the statutory scheme addresses three situations. The Good Samaritan statute shields those persons who have no duty to come to the aid of the injured or ill person in need of emergency medical care. The paramedic and the EMT, however, does not fall within the category of persons who have no duty to aid. 4/ They are shielded from liability for ordinary negligence in life threatening situations but even in life saving situations the EMT will be held liable for gross negligence or intentional misconduct.

2/ Continued

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

3/ Interestingly our statute provides that a Good Samaritan may be located at a hospital - presumably not the scene of an accident. It is unlikely, however, that a helping person located at a hospital will not have a pre-existing duty to perform emergency service.

4/ In *Lee v. State*, 490 P.2d 1206 (Alaska 1971) the court held that a State Trooper defendant who had shot the plaintiff while trying to extricate the plaintiff's arm from the jaws of a lioness, was not shielded from liability for ordinary negligence. The court stated that "A rescuer under a pre-existing duty to rescue would not need the added inducement of immunity from civil liability for his ordinary negligence." *Id.* at 1209, footnote 7. The court held that the Trooper had a pre-existing duty to come to the aid of the endangered plaintiff therefore the Good Samaritan shield did not apply. Although AS 09.65.-090 was amended in 1976, it does not appear to change general tort principles regarding duty.

Rather than attempting to include EMT and paramedics under a Good Samaritan statute which would distort the purpose of that statute, legislative amendment of the statutes which specifically deal with EMT's and paramedics would be the more appropriate action. It would be for the legislature to decide whether there is a need to shield EMT's and paramedics more extensively than is now provided. 5/

5/ AS 08.64.366 shields an EMT or paramedic from liability for ordinary negligence in a life saving situation. In non-life saving situations they may be held liable for ordinary negligence.

ES/jf

Southern Region
EMERGENCY
Medical Services Council, Inc.

April 29, 1986

Senator Bettye Fahrenkamp, Chairman
Health, Education & Social
Services Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

This letter is to request that the HESS Committee pass out HB 418, "An Act relating to liability for providing emergency medical care." This bill slightly broadens the immunity from liability currently conferred upon certified emergency medical technicians and licensed mobile intensive care paramedics. This legislation is essentially a housekeeping bill which more clearly reflects the intent of the original language.

The language contained in AS 08.64.356 was passed by the Legislature in 1974 when the paramedic licensing law was passed. I drafted the language contained in AS 18.08.086 in 1978 when the Legislature established the emergency medical technician certification requirements. The intent of these sections is to try to remove the fear of litigation from the shoulders of these providers at the times when they need to be most aggressive in the manner in which they do their jobs. This is the period when they are dealing with the very seriously injured or ill person. I'm sure Representative Koponen, EMT-I, would be able to verify this.

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April 29, 1986

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If you have any questions, please give me a call.

Sincerely,



Thomas D. Scott II
President/Executive Director

cc: Senator Sturgelewski
Senator Fischer
Senator DeVries
Senator Josephson
Senator Kelly

called 5/6 after committee approval.

STATE OF ALASKA
THE LEGISLATURE

FOUCH 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 5-6-86 2:56 PM



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/7/89
Date

H B

4 2 3

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

LEGISLATIVE REFERENCE LIBRARY

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3866

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

Bethye -

22 NG-Is in API.
only 1 person found NG-I since
criminal insanity laws were
revised in 1982 (after Meach)

HB 423 is not intended to encourage
release of NG-Is, but to ensure that if an
NG-I is released, some conditions (including
supervision) will be applied to that release.

<sup>under
current
law</sup>

Term in API can be less than
the sentence for the crime, for
which the person was tried. There is

^{AS per 41109(a)}

no minimum term for NG-Is. ~~There is~~

The court may review the
NG-I's disposition at any time —
the state (ie. API), the patient's
attorney, or the patient himself can
initiate the court review.

If the court finds at a hearing
that the prisoner can be cared for
in the community, the court can
release him unconditionally.

HB 423 allows the court to
impose conditions to the release, and
if the patient fails to comply with
the conditions he can be returned to
API.

^(under current statute)

Now ~~if~~ if a patient is released &
"misbehaves", there is no ability to
return the patient to API. Rather, a
new trial must ~~be held~~ ^{take place}.

(Statutes attached)

Sandra

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.

(d) A defen held in custo of imprisonn under AS 12 or corrected

(e) A defen the need for co court sitting at intervals l initial commi proof at a hea under (c) of t served on the served upon t attorney gene time the defe

(f) Continu term of impr acquitted und dards pertain

(g) A perso during the te hearing in acc defendant has defendant to b at any time re dant should be

(h) The com sioner's auth

State, Sup. Ct. Op. 620), 512 P.2d 907

ion did not violate n. — A physical a clinical psychol- shortly after defen- taken into custody, red defendant was v authorized under h specifies the duty public safety to pro- ing arraignment or not violate subsec- 12.45.087, and the m it was therefore less v. State, Sup. No. 3320), 592 P.2d

mination. — Once y evaluation was 12.45.100 that was eking in good faith asonable cause to t be incompetent, tory duty to order v. State, Ct. App. 261), 658 P.2d 798

lge erroneously otion for compe- nder former AS edy was new trial cy determination. App. Op. No. 223 2d 798 (1983).

guilty. (a) If a he prosecuting S 47.30.700 for eatment if the ie defendant is ely disabled or

g given in AS

f insanity. (a) native defense § 12.47.020(a), d not guilty by the defendant ing from any s to the public

attached

(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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court. If
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Editor's no
under Notes
under former

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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



P. O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3762

Sandra

Reconsidered

Senate Committee on Health, Education and Social Services

HB 423

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, 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

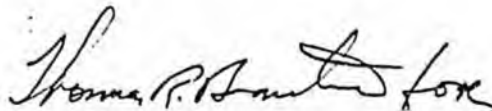
controlled and stabilized in the community. Failure to comply with the court-imposed conditions could result in the patient being returned to custody and re-hospitalized.

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:

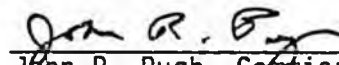


Mel Henry, Ph.D., M.P.A.
Director, Division of Mental
Health and Developmental
Disabilities

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

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)

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

POSITIONS :

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						
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REVENUE						
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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: [Signature]
 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.

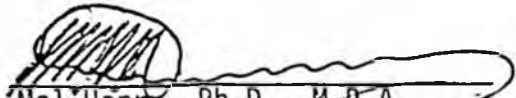
The right to refuse treatment has been established. Currently a court or Board of Parole is empowered to fix conditions under which a person may be granted freedom. As a condition of granting parole, fixing bail or... sentencing to probation there can be a requirement that the person take medications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

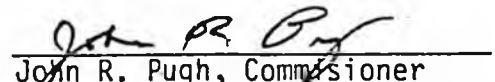
Recommended by:


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 ~~apply~~ ^{impose} 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 dant 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 dant 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 Thompson
David W. Thompson
Bill [unclear]
Clara [unclear]
Adrian Taylor
Max [unclear]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Neil Thompson
CHAIRMAN
Max [unclear]

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
April 18, 1986

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 J. Stangor
Joe Joseph
Edmund W. Wier

MEMBERS HAVING

OTHER RECOMMENDATIONS

William J. Stangor
 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.