



LAWS OF ALASKA

1972

Source

HB 341 am S

Chapter No.

119

AN ACT

Relating to criminal responsibility; and changing Rules 12(b) and 23(a), Rules of Criminal Procedure.

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

* Section 1. AS 12.45 is amended by adding new sections to read:

Sec. 12.45.083. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY. (a) A person is not responsible for criminal conduct if at the time of the conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) Reliance on mental disease or defect as excluding responsibility is an affirmative defense. The burden of proof beyond a reasonable doubt does not require the prosecution to disprove an affirmative defense unless and until there is evidence supporting the defense. The requirement of evidence supporting the affirmative defense is not satisfied solely by evidence of an abnormality which is manifested only by repeated criminal or otherwise antisocial conduct.

(c) If the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

(d) When a person offers a defense based on mental disease or defect excluding responsibility for his criminal conduct, he may waive a jury trial without the consent of the state.

Sec. 12.45.085. EVIDENCE OF MENTAL DISEASE OR DEFECT. 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 state of mind which is an element of the offense. However, evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense.

Sec. 12.45.087. PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist or shall request the superintendent of the Alaska Psychiatric Institute to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section shall include the following:

- (1) a description of the nature of the examination;
- (2) a diagnosis of the mental condition of the defendant;
- (3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;
- (4) if a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged; and
- (5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

* Sec. 2. AS 12.45.090 is amended to read:

Sec. 12.45.090. COMMITMENT AFTER JUDGMENT OF NOT GUILTY. If the 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 public peace or safety, 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 he is otherwise discharged from the institution by authority of law.

* Sec. 3. AS 12.45.100 is amended to read:

Sec. 12.45.100. DETERMINATION OF MENTAL DISEASE OR DEFECT DURING TRIAL OR PROBATION. (a) No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

(b) When, after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation, the attorney general, the district attorney, or the attorney for the accused has reasonable cause to believe that a person charged with an offense may be presently suffering mental disease or defect or is otherwise so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, he may file a motion for a judicial determination of the mental competency of the accused. Upon that motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall have the accused, whether or not previously admitted to bail, examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for a reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present mental disease or defect or of other mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. No statement made by the accused in the course of an examination into his mental competency provided for by this section, whether the examination is with or without the consent of the accused, may be admitted in evidence against the accused on the issue of guilt in a criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility; the finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury.

* Sec. 4. AS 12.45.115(b) is amended to read:

(b) If at the hearing the court determines that the accused is presently mentally competent to understand the nature of the proceedings against him or to assist in his own defense, appropriate criminal proceedings shall be commenced against the accused.

* Sec. 5. AS 12.45.115(c) is amended to read:

(c) If at the hearing the court determines that the accused is still presently mentally incompetent, the court shall recommit the accused as provided in sec. 110(a) of this chapter.

* Sec. 6. AS 12.45.115(d) is amended to read:

(d) A finding by the court that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility. This finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury.

* Sec. 7. In sec. 1 of this Act, AS 12.45.085 has the effect of changing Rule 12(b), Rules of Criminal Procedure, in that it adds to the defenses which must be raised before trial, and AS 12.45.083(d) changes Rule 23(a) of the Rules of Criminal Procedure in that the defendant may, without the consent of the state, waive a jury trial if his defense is based on mental disease or defect excluding responsibility.