



# LAWS OF ALASKA

1996

**Source**

HCS SB 321(JUD)

**Chapter No.**

62

## AN ACT

Relating to incompetency to stand trial.

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

THE ACT FOLLOWS ON PAGE 1

**Approved by the Governor:** June 12, 1996

**Actual Effective Date:** September 10, 1996

AN ACT

1 Relating to incompetency to stand trial.

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3 \* Section 1. AS 12.47.100 is repealed and reenacted to read:

4 Sec. 12.47.100. INCOMPETENCY TO PROCEED. (a) A defendant who, as  
5 a result of mental disease or defect, is incompetent because the defendant is unable to  
6 understand the proceedings against the defendant or to assist in the defendant's own  
7 defense may not be tried, convicted, or sentenced for the commission of a crime so  
8 long as the incompetency exists.

9 (b) If, before imposition of sentence, the prosecuting attorney or the attorney  
10 for the defendant has reasonable cause to believe that the defendant is presently  
11 suffering from a mental disease or defect that causes the defendant to be unable to  
12 understand the proceedings or to assist in the person's own defense, the attorney may  
13 file a motion for a judicial determination of the competency of the defendant. Upon  
14 that motion, or upon its own motion, the court shall have the defendant examined by  
15 at least one qualified psychiatrist or psychologist, who shall report to the court

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1 concerning the competency of the defendant. For the purpose of the examination, the  
2 court may order the defendant committed for a reasonable period to a suitable hospital  
3 or other facility designated by the court. If the report of the psychiatrist or  
4 psychologist indicates that the defendant is incompetent, the court shall hold a hearing,  
5 upon due notice, at which evidence as to the competency of the defendant may be  
6 submitted, including that of the reporting psychiatrist or psychologist, and make  
7 appropriate findings. Before the hearing, the court shall, upon request of the  
8 prosecuting attorney, order the defendant to submit to an additional evaluation by a  
9 psychiatrist or psychologist designated by the prosecuting attorney.

10 (c) A defendant is presumed to be competent. The party raising the issue of  
11 competency bears the burden of proving the defendant is incompetent by a  
12 preponderance of evidence. When the court raises the issue of competency, the burden  
13 of proving the defendant is incompetent shall be on the party who elects to advocate  
14 for a finding of incompetency. The court shall then apply the preponderance of the  
15 evidence standard to determine whether the defendant is competent.

16 (d) A statement made by the defendant in the course of an examination into  
17 the person's competency under this section, whether the examination is with or without  
18 the consent of the defendant, may not be admitted in evidence against the defendant  
19 on the issue of guilt in a criminal proceeding unless the defendant later relies on a  
20 defense under AS 12.47.010 or 12.47.020. A finding by the judge that the defendant  
21 is competent to stand trial in no way prejudices the defendant in a defense based on  
22 insanity; the finding may not be introduced in evidence on that issue or otherwise be  
23 brought to the notice of the jury.

24 (e) In determining whether a person has sufficient intellectual functioning to  
25 adapt or cope with the ordinary demands of life, the court shall consider whether the  
26 person has obtained a driver's license, is able to maintain employment, or is competent  
27 to testify as a witness under the Alaska Rules of Evidence.

28 (f) In determining if the defendant is unable to understand the proceedings  
29 against the defendant, the court shall consider, among other factors considered relevant  
30 by the court, whether the defendant understands that the defendant has been charged  
31 with a criminal offense and that penalties can be imposed; whether the defendant

1 understands what criminal conduct is being alleged; whether the defendant understands  
2 the roles of the judge, jury, prosecutor, and defense counsel; whether the defendant  
3 understands that the defendant will be expected to tell defense counsel the  
4 circumstances, to the best of the defendant's ability, surrounding the defendant's  
5 activities at the time of the alleged criminal conduct; and whether the defendant can  
6 distinguish between a guilty and not guilty plea.

7 (g) In determining if the defendant is unable to assist in the defendant's own  
8 defense, the court shall consider, among other factors considered relevant by the court,  
9 whether the defendant's mental disease or defect affects the defendant's ability to  
10 recall and relate facts pertaining to the defendant's actions at times relevant to the  
11 charges and whether the defendant can respond coherently to counsel's questions. A  
12 defendant is able to assist in the defense even though the defendant's memory may be  
13 impaired, the defendant refuses to accept a course of action that counsel or the court  
14 believes is in the defendant's best interest, or the defendant is unable to suggest a  
15 particular strategy or to choose among alternative defenses.

16 \* Sec. 2. AS 12.47.110(a) is amended to read:

17 (a) When the trial court determines by a preponderance of the evidence, in  
18 accordance with AS 12.47.100, that a defendant is so [MENTALLY] incompetent that  
19 the defendant is unable to understand the proceedings against the defendant or  
20 [PROPERLY] to assist in the defendant's own defense, the court shall order the  
21 proceedings stayed, except as provided in (d) of this section, and may commit the  
22 defendant to the custody of the commissioner of health and social services or the  
23 commissioner's authorized representative for further evaluation and treatment until the  
24 defendant is mentally competent to stand trial, or until the pending charges against the  
25 defendant are disposed of according to law, but in no event longer than 90 days.

26 \* Sec. 3. AS 12.47.130 is amended by adding new paragraphs to read:

27 (4) "assist in the defendant's own defense" means to consult with a  
28 lawyer while exercising a reasonable degree of rational functioning;

29 (5) "incompetent" means a defendant is unable to understand the  
30 proceedings against the defendant or to assist in the defendant's own defense;

31 (6) "understand the proceedings against the defendant" means that the

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- 1 defendant's elementary mental process is such that the defendant has a reasonably
- 2 rational comprehension of the proceedings.