

APPENDIX

RECOMMENDATION TO THE ALASKA LEGISLATURE FROM THE ALASKA CRIMINAL JUSTICE COMMISSION

Recommendation 4-2018, adopted April 23, 2018:

Amend provisions in AS 12.47.050 regarding the release of guilty but mentally ill prisoners

A defendant found guilty but mentally ill (GBMI) is sentenced as a regular criminal defendant. The statute governing disposition of GBMI defendants, AS 12.47.050, requires the Department of Corrections (DOC) to provide treatment to such prisoners so long as they are dangerous. In addition, the statute imposes restrictions on GBMI prisoners, precluding them from being released on parole or furlough so long as they are receiving treatment for the mental disease or defect that causes them to be dangerous.

DOC interprets this statute to mean that a GBMI prisoner who is receiving treatment—even if the treatment is simply the regular administration of medication and the prisoner is otherwise stable—may not be released on parole or furlough. There is no formal review process for determining whether a GBMI prisoner may be released. Since the statute was enacted, no GBMI prisoner has been released. DOC has begun assessing these cases on an ad-hoc basis, but DOC staff report that they would appreciate some legislative guidance.

Accordingly, the Commission recommends the following:

Amend AS 12.47.050(d): *Notwithstanding any contrary provision of law, if the Commissioner of Corrections determines, by clear and convincing evidence, that the defendant suffers from a mental disease or defect that causes the defendant to be dangerous to the public peace or safety a defendant found guilty but mentally ill ~~receiving treatment under (b) of this section~~ may not be released*

- (1) on furlough under AS 33.30.10-33.30.131, except for treatment in a secure setting; or
- (2) on parole.
- (3) *Not less than 180 days before a defendant found guilty but mentally ill is eligible for parole under AS 33.16.089, AS 33.16.090 or AS 33.20.040 or furlough under AS 33.30.101, the commissioner of corrections shall determine, following a hearing, whether the defendant is ineligible for release under this subsection.*
- (4) *If the commissioner determines that the defendant is ineligible for release under this subsection, the commissioner shall conduct subsequent hearings under (3) of this subsection annually until such time as the defendant is found to be eligible for release under this subsection.*

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Amend AS 12.47.050(e): Not less than 30 days before the expiration of the sentence of a defendant found guilty but mentally ill, the commissioner of corrections shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant if

- ~~(1) the defendant is still receiving treatment under (b) of this section;~~
and
- (2) the commissioner has good cause to believe that the defendant is suffering from a mental illness *and is likely to cause serious harm to self or others*; ~~that causes the defendant to be dangerous to the public peace or safety;~~ in this paragraph, “mental illness” *and “likely to cause serious harm to self or others”* have the meaning given in AS 47.30.915.

These amendments would shift the focus from whether the prisoner is receiving treatment to whether the prisoner is currently dangerous. It would require DOC to hold a dangerousness hearing 180 days before parole release eligibility. The Commission recommends this timeframe because the parole board must hold a parole release hearing within 90 days of parole eligibility. The Commission recommends subsection (4) because of the fluidity of mental illness.

Note that even if a GBMI prisoner were found to be eligible for release under this section, the prisoner would still have to qualify for release under the various furlough and parole statutes. Under AS 33.30.091 and AS 33.30.101, DOC may not release someone on furlough unless DOC determines with reasonable probability that the prisoner will not break the law. Under AS 33.16.100, the parole board may not release someone on discretionary parole unless the board finds a reasonable probability that the person will live without violating the law. In other words, if a GBMI prisoner is found eligible under AS 12.47.050(d), it does not necessarily mean that the prisoner will be released; it just means the prisoner will be granted consideration for release under the regular parole and furlough procedures.

The amendment to AS 12.47.050(e) would change the standard for referral for civil commitment to mirror the language of the civil commitment statutes. This recommendation is intended as a clean-up to the statutory language. In order for the court to order a Title 47 screening investigation (the beginning of the civil commitment process), a petitioner must allege that the respondent is “gravely disabled or to present a likelihood of serious harm to self or others.”¹ The recommended change to 12.47.050(e) would align the two standards.

¹ AS 47.30.700(a).