

Theodore Mala  
Commissioner  
Dept of Health & Social Services

June 30, 1992

663-92-0599

465-3428

*Foucha v. Louisiana*

Margot O. Knuth  
Assistant Attorney General  
Criminal Division, Central Office

By memorandum dated June 3, 1992, you have inquired whether the recent United States Supreme Court decision in *Foucha v. Louisiana*, \_\_\_ U.S. \_\_\_, 51 Cr. L. Rptr. 2083 (May 20, 1992), will have any impact on our state's practices and statutes. The short answer is that it will not.

In *Foucha v. Louisiana*, \_\_\_ U.S. \_\_\_, 51 Cr. L. Rptr. 2083 (May 20, 1992), the Supreme Court struck down on due process grounds a Louisiana statute that permitted those found not guilty by reason of insanity to continue to be incarcerated indefinitely on the grounds that they were still dangerous, even though they were no longer mentally ill. Alaska's laws providing for the confinement of those found not guilty by reason of insanity contain the two conditions lacking in the Louisiana law that led to its being ruled unconstitutional: AS 12.47.090(d) specifies that a defendant who is found not guilty by reason of insanity can be committed only for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted . . . or until the mental illness is cured or corrected . . . .

Thus, a committed defendant cannot be held in this state for a longer period of time than that representing the maximum sentence that could have been imposed. At the end of that time, civil commitment proceedings must be initiated. AS 12.47.090(f). Furthermore, the committed defendant must be released once cured of his or her mental illness. AS 12.47.090. These differences from Louisiana's laws are dispositive.

If you have any further questions, please do not hesitate to contact me. Also, Dr. Knight-Richardson should feel free to call me at any time for further advice if he wishes.

MOK/sf