

HOUSE BILL NO. 33

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PARNELL, Robinson, Bunde, Toohey

Introduced: 1/16/95

Referred: Health, Education and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for the civil commitment of sexually violent predators."

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

3 * **Section 1.** AS 47.30 is amended by adding new sections to read:

4 ARTICLE 8A. COMMITMENT OF SEXUALLY VIOLENT PREDATORS.

5 Sec. 47.30.816. FINDINGS. The legislature finds that a small but extremely
6 dangerous group of sexually violent predators exist who do not have a mental disease
7 or defect that renders them appropriate for the existing involuntary treatment
8 procedure, AS 47.30.700 - 47.30.815, which is intended to be a short-term civil
9 commitment system primarily designed to provide short-term treatment to individuals
10 with serious mental disorders and then return them to the community. In contrast to
11 persons appropriate for civil commitment under AS 47.30.700 - 47.30.815, sexually
12 violent predators generally have antisocial personality features that are not amenable
13 to existing mental illness treatment methods, and those features render them likely to
14 engage in sexually violent behavior. The legislature further finds that the likelihood
15 of engaging in repeat acts of predatory sexual violence is high among this group. The

1 existing involuntary treatment procedure, AS 47.30.700 - 47.30.815, is inadequate to
2 address the risk to reoffend because during confinement these offenders do not have
3 access to potential victims and, therefore, will not engage in specific overt acts
4 evidencing their risk of harm to others during confinement as required by the
5 involuntary treatment procedure for continued confinement. The legislature further
6 finds that the prognosis for curing this group of sexually violent offenders is poor, the
7 treatment needs of this population are very long term, and the treatment methods for
8 this population are very different than the traditional treatment methods for people
9 appropriate for commitment under the involuntary treatment procedures.

10 Sec. 47.30.817. NOTICE TO ATTORNEY GENERAL PRIOR TO RELEASE.

11 (a) When it appears that a person may meet the criteria for a sexually violent predator,
12 the agency with jurisdiction shall give written notice to the attorney general three
13 months before the

14 (1) anticipated release from total confinement of a person who has been
15 convicted of a sexually violent offense;

16 (2) anticipated release from total confinement of a person found to have
17 committed a sexually violent offense as a juvenile;

18 (3) release of a person who has been charged with a sexually violent
19 offense and who has been determined to be incompetent to stand trial under
20 AS 12.47.100; or

21 (4) release of a person who has been found not guilty by reason of
22 insanity of a sexually violent offense under AS 12.47.040.

23 (b) The written notice must contain the following:

24 (1) the person's name, identifying factors, anticipated future residence,
25 and offense history; and

26 (2) documentation of institutional adjustment and treatment received.

27 (c) In this section, "agency with jurisdiction" means the department with the
28 authority to direct the release of a person serving a sentence or term or period of
29 confinement.

30 Sec. 47.30.818. SEXUALLY VIOLENT PREDATOR PETITION; FILING;
31 JUDICIAL DETERMINATION; EVALUATION. (a) The attorney general may file

1 a petition in the superior court alleging that a person is a sexually violent predator and
2 stating sufficient facts to support the allegation when it appears that the person may
3 be a sexually violent predator and it appears that

4 (1) the term of total confinement of a person who has been convicted
5 of a sexually violent offense is about to expire or has expired;

6 (2) the term of total confinement of a person found to have committed
7 a sexually violent offense as a juvenile is about to expire or has expired;

8 (3) a person who has been charged with a sexually violent offense and
9 who has been determined to be incompetent to stand trial is about to be released or has
10 been released; or

11 (4) a person who has been found not guilty by reason of insanity of a
12 sexually violent offense is about to be released or has been released.

13 (b) Upon the filing of a petition, notice shall be provided to the person and the
14 court shall schedule a hearing within 72 hours at which the person has a right to
15 appear. At the hearing, the judge shall determine whether probable cause exists to
16 believe that the person named in the petition is a sexually violent predator. If probable
17 cause is found, the judge shall direct that the person be taken into custody and the
18 person shall be transferred to an appropriate facility for an evaluation as to whether
19 the person is a sexually violent predator. The evaluation shall be conducted by a
20 person professionally qualified to conduct the examination under regulations adopted
21 by the department. In adopting the regulations under this subsection, the department
22 shall consult with the Department of Corrections and the Council on Domestic
23 Violence and Sexual Assault. The results of the examination conducted under this
24 section are admissible in all further proceedings conducted under AS 47.30.816 -
25 47.30.824.

26 Sec. 47.30.819. TRIAL; RIGHTS OF PARTIES; DETERMINATION;
27 COMMITMENT PROCEDURES. (a) Within 45 days after the filing of a petition
28 under AS 47.30.818 and following a judicial determination of probable cause, the court
29 shall conduct a trial to determine whether the person is a sexually violent predator.
30 At all stages of the proceedings under AS 47.30.816 - 47.30.824, a person who is the
31 subject of a petition filed under AS 47.30.818 is entitled to the assistance of counsel

1 and, if the person is indigent, the court shall appoint the office of public advocacy to
2 assist the person. When a person is subjected to an examination under
3 AS 47.30.818(b), the person may retain experts or professionals to perform an
4 examination on the person's behalf. When the person wishes to be examined by a
5 qualified expert or professional of the person's choice, the expert or professional shall
6 be permitted reasonable access to the person for the purpose of an examination, as well
7 as to all relevant medical and psychological records and reports. If the person is
8 indigent, the office of public advocacy shall, upon the person's request, assist the
9 person in obtaining an expert or professional to perform an examination or participate
10 in the trial on the person's behalf. Upon motion of the person or the attorney general,
11 or on the court's own motion, the trial shall be before a jury. If no motion is made,
12 the trial shall be before the court.

13 (b) The court or jury shall determine, beyond a reasonable doubt, whether the
14 person is a sexually violent predator. If the state alleges in the petition that the term
15 of total confinement has expired for a person who has been convicted of a sexually
16 violent offense or who has been found to have committed a sexually violent offense
17 as a juvenile, the state shall prove beyond a reasonable doubt that the person has
18 engaged in a recent act demonstrating dangerousness. If trial is to a jury, the jury
19 must make the determination required by this subsection unanimously. Upon a
20 determination that the person is a sexually violent predator, the court shall consider
21 less restrictive alternatives to confinement and whether these alternatives, if any, will
22 adequately protect the public so it is safe for the person not to be confined and will
23 prevent the person from committing a sexually violent predatory offense. If the court
24 determines that the less restrictive alternatives will not (1) adequately protect the
25 public so it would be safe for the person to be at large, or (2) prevent the person from
26 committing a sexually violent predatory offense, the court shall order the person
27 committed to the custody of the department for control, care, and treatment until the
28 person's mental abnormality or personality disorder has so changed that the person is
29 safe to be at large. If the court or jury is not satisfied beyond a reasonable doubt that
30 the person is a sexually violent predator, the court shall direct the person's release
31 from the custody of the department.

1 (c) If the person charged with a sexually violent offense has been found
2 incompetent to stand trial, is about to or has been released, and the person's
3 commitment is sought under this section, the court shall first hear evidence and
4 determine whether the person committed the act or acts charged. The hearing on this
5 issue must comply with the procedures specified in this section. In addition, the rules
6 of evidence applicable in criminal trials and all constitutional rights available to
7 defendants at criminal trials, other than the right to a jury trial and right not to be tried
8 while incompetent, shall apply. After hearing evidence under this subsection, the court
9 shall make specific findings on whether the person committed the act or acts charged,
10 the extent to which the person's incompetence affected the outcome of the hearing,
11 including its effect on the person's ability to consult with and assist counsel and to
12 testify on the person's own behalf, the extent to which the evidence could be
13 reconstructed without the assistance of the person, and the strength of the state's case.
14 If, after the conclusion of the hearing on this issue, the court finds, beyond a reason-
15 able doubt, that the person committed the act or acts charged, it shall enter an order,
16 appealable by the person, on that issue and may proceed to consider whether the
17 person should be committed under this section. A finding under this subsection that
18 the person committed the act or acts charged is not a conviction or a finding of guilt
19 for any purpose other than for consideration of commitment.

20 (d) The department shall confine a person who is ordered committed under
21 AS 47.30.818(b) in a secure mental health facility operated by the department. The
22 department may not confine a person committed under AS 47.30.816 - 47.30.824 in
23 a correctional facility or institution operated by the Department of Corrections. This
24 subsection does not prohibit the department from confining a person committed under
25 AS 47.30.816 - 47.30.824 in a mental health facility operated by the department and
26 located within or on the grounds of a correctional facility. Following confinement of
27 the committed person, the department shall inform the person of the person's rights
28 under AS 47.30.821. The involuntary detention or commitment of a person under
29 AS 47.30.816 - 47.30.824 shall conform to the constitutional requirements for care and
30 treatment.

31 Sec. 47.30.820. ANNUAL EXAMINATION. The department shall provide

1 an examination of the current mental condition of a person committed under
2 AS 47.30.816 - 47.30.824 at least once each year. In addition to the annual
3 examination provided by the department, the person may retain or, if the person is
4 indigent and so requests, the office of public advocacy may retain a qualified expert
5 or a professional to examine the person, and the expert or professional shall have
6 access to all records concerning the person. The results of the examinations shall be
7 provided to the court that committed the person.

8 Sec. 47.30.821. PETITION FOR RELEASE. (a) If the commissioner
9 determines that the person's mental abnormality or personality disorder has so changed
10 that the person is safe to be at large and is not likely to commit a sexually violent
11 predatory offense if released, the commissioner shall authorize the person to petition
12 the court for release. The petition shall be served upon the attorney general as the
13 attorney for the state. The court, upon receipt of the petition for release, shall order
14 a hearing within 45 days. The state has the right to have the petitioner examined by
15 an expert or professional person of their choice. The hearing shall be before a jury if
16 demanded by either the petitioner or the state. The burden of proof is upon the state
17 to show beyond a reasonable doubt that the petitioner's mental abnormality or
18 personality disorder remains such that the petitioner is not safe to be at large and that,
19 if discharged, is likely to commit a sexually violent predatory offense. If the hearing
20 is before a jury, the jury must make this determination unanimously.

21 (b) This section does not prohibit the person from otherwise petitioning the
22 court for discharge without the commissioner's approval. The commissioner shall
23 provide the committed person with an annual written notice of the person's right to
24 petition the court for release over the commissioner's objection. The notice must
25 contain a waiver of rights. The commissioner shall forward the notice and waiver form
26 to the court with the annual examination. If the person does not affirmatively waive
27 the right to petition, the court shall hold a show cause hearing to determine whether
28 facts exist that warrant a hearing on whether the person's condition has so changed
29 that the person is safe to be at large and is not likely to commit a sexually violent
30 predatory offense if discharged. The committed person has the right to have an
31 attorney represent the person at the show cause hearing and, if the person is indigent,

1 the court shall appoint the office of public advocacy to represent the person. The
2 committed person is not entitled to be present at the show cause hearing. If the court
3 at the show cause hearing determines that probable cause exists to believe that the
4 person's mental abnormality or personality disorder has so changed that the person is
5 safe to be at large and is not likely to commit a sexually violent predatory offense if
6 discharged, the court shall set a hearing on the issue. At the hearing, the committed
7 person is entitled to be present and to the benefit of all constitutional protections that
8 were afforded to the person at the initial commitment proceeding. The attorney
9 general shall represent the state and has the right to a jury trial and to have the
10 committed person evaluated by experts chosen by the state. The committed person
11 may also have experts evaluate the person on the person's behalf, and the office of
12 public advocacy shall retain an expert if the person is indigent and requests an
13 appointment. The burden of proof at the hearing is upon the state to prove beyond a
14 reasonable doubt that the committed person's mental abnormality or personality
15 disorder remains such that the person is not safe to be at large and, if released, is
16 likely to commit a sexually violent predatory offense.

17 (c) If a person has previously filed a petition for discharge without the
18 commissioner's approval and the court determined, either upon review of the petition
19 or following a hearing, that the petitioner's petition was frivolous or that the
20 petitioner's condition had not so changed that the person was safe to be at large and
21 was not likely to commit a sexually violent predatory offense if discharged, the court
22 shall deny the subsequent petition unless the petition contains facts upon which a court
23 could find that the condition of the petitioner has so changed that a hearing is
24 warranted. Upon receipt of a second or subsequent petition from a committed person
25 without the commissioner's approval, the court shall review the petition and determine
26 if the petition is based upon frivolous grounds and if so shall deny the petition without
27 a hearing.

28 Sec. 47.30.822. DUTIES OF DEPARTMENT; IMMUNITY. (a) The
29 department is responsible for costs relating to the evaluation and treatment of persons
30 committed to its custody under the provisions of AS 47.30.816 - 47.30.824.
31 Reimbursement may be obtained by the department for the cost of care and treatment

1 of persons committed to its custody under AS 47.30.819.

2 (b) The state, agencies of the state, employees of agencies of the state, and
3 officials are immune from liability for conduct under AS 47.30.816 - 47.30.824 except
4 that this subsection does not preclude liability for civil damages as a result of gross
5 negligence or reckless or intentional misconduct.

6 Sec. 47.30.823. RELEASE OF INFORMATION AUTHORIZED.
7 Notwithstanding any other provision of law and in addition to any other information
8 required to be released under AS 47.30.816 - 47.30.824, the department may release
9 relevant information that is necessary to protect the public concerning a specific
10 sexually violent predator committed under AS 47.30.816 - 47.30.824.

11 Sec. 47.30.824. DEFINITIONS. In AS 47.30.816 - 47.30.824,

12 (1) "mental abnormality" means a congenital or acquired condition
13 affecting the emotional or volitional capacity that predisposes the person to the
14 commission of criminal sexual acts in a degree that makes the person a menace to the
15 health and safety of others;

16 (2) "predatory" means that acts are directed towards strangers or
17 towards individuals with whom a relationship has been established or promoted for the
18 primary purpose of victimization;

19 (3) "sexually violent offense" means an act that is:

20 (A) a violation of AS 11.41.410 - 11.41.420(a)(1), 11.41.434 -
21 11.41.438, or 11.41.450 or a felony offense in this or another jurisdiction
22 formerly, or currently, having elements similar to AS 11.41.410 -
23 11.41.420(a)(1), 11.41.434 - 11.41.438, or 11.41.450;

24 (B) a violation of AS 11.41.100 - 11.41.110, 11.41.200 -
25 11.41.210, 11.41.300, or AS 11.46.300 or a felony offense in this or another
26 jurisdiction formerly, or currently, having elements similar to AS 11.41.100 -
27 11.41.110, 11.41.200 - 11.41.210, 11.41.300, or AS 11.46.300, if the state
28 proves beyond a reasonable doubt, in civil commitment proceedings under
29 AS 47.30.816 - 47.30.824, that during the course of the offense the person
30 engaged in or intended to engage in sexual penetration, sexual contact, or
31 sexually gratifying conduct; or

1 (C) a violation of AS 11.31.100 - 11.31.110, or a felony offense
2 in this or another jurisdiction formerly, or currently, having elements similar
3 to AS 11.31.100 - 11.31.110, that is an attempt or criminal solicitation to
4 commit one of the felonies designated in (A) or (B) of this paragraph;

5 (4) "sexually violent predator" means a person who has been convicted
6 of or charged with a sexually violent offense, or has otherwise been found to have
7 committed a sexually violent offense as a juvenile, and who suffers from a mental
8 abnormality or personality disorder that makes the person likely to commit a sexually
9 violent predatory offense.

10 * **Sec. 2. APPLICABILITY.** This Act applies to all acts committed before, on, or after the
11 effective date of this Act.