

SENATE BILL NO. 216

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATORS HALFORD, Green, Donley, Taylor, Wilken, Leman

Introduced: 1/12/98

Referred: 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 9A. 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.** (a) When it
 11 appears that a person may meet the criteria for a sexually violent predator, the agency
 12 with jurisdiction shall give written notice to the attorney general three months before
 13 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; judicial**
 31 **determination; evaluation.** (a) The attorney general may file a petition in the

1 superior court alleging that a person is a sexually violent predator and stating sufficient
 2 facts to support the allegation when it appears that the person may be a sexually
 3 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; commitment**
 27 **procedures.** (a) Within 60 days following a judicial determination of probable cause
 28 under AS 47.30.818, the court shall conduct a trial to determine whether the person
 29 is a sexually violent predator. The trial may be continued upon the request of either
 30 party and a showing of good cause or by the court on its own motion in the interests
 31 of justice and when the person will not be substantially prejudiced. At all stages of

1 the proceedings under AS 47.30.816 - 47.30.824, a person who is the subject of a
2 petition filed under AS 47.30.818 is entitled to the assistance of counsel, and, if the
3 person is indigent, the court shall appoint the office of public advocacy to assist the
4 person. When a person is subjected to an examination under AS 47.30.818(b), the
5 person may retain experts or professionals to perform an examination on the person's
6 behalf. When the person wishes to be examined by a qualified expert or professional
7 of the person's choice, the expert or professional shall be permitted reasonable access
8 to the person for the purpose of an examination, as well as to all relevant medical and
9 psychological records and reports. If the person is indigent, the court, upon the
10 person's request, shall determine if the services are necessary and the compensation for
11 those services is reasonable. If the court determines that the services are necessary and
12 the compensation for the services is reasonable, the court and the office of public
13 advocacy shall assist the person in obtaining an expert or professional to perform an
14 examination or participate in the trial on the person's behalf. Upon motion of the
15 person or the attorney general, or on the court's own motion, the trial shall be before
16 a jury. If no motion is made, the trial shall be before the court.

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

1 person's mental abnormality or personality disorder has so changed that the person is
2 safe to be at large. If the court or jury is not satisfied beyond a reasonable doubt that
3 the person is a sexually violent predator, the court shall direct the person's release
4 from the custody of the department.

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

24 (d) The department shall confine a person who is ordered committed under
25 AS 47.30.818(b) in a secure mental health facility operated by the department.
26 Persons committed to the department shall be segregated at all times from other
27 persons under the supervision of the department. The department may not confine a
28 person committed under AS 47.30.816 - 47.30.824 in a correctional facility or
29 institution operated by the Department of Corrections. This subsection does not
30 prohibit the department from confining a person committed under AS 47.30.816 -
31 47.30.824 in a mental health facility operated by the department and located within or

1 on the grounds of a correctional facility. Persons confined in a mental health facility
2 within or on the grounds of a correctional facility shall be segregated at all times from
3 the inmates of the correctional facility. Following confinement of the committed
4 person, the department shall inform the person of the person's rights under
5 AS 47.30.821. The involuntary detention or commitment of a person under
6 AS 47.30.816 - 47.30.824 shall conform to the constitutional requirements for care and
7 treatment.

8 **Sec. 47.30.820. Annual examination.** The department shall provide an
9 examination of the current mental condition of a person committed under
10 AS 47.30.816 - 47.30.824 at least once each year. In addition to the annual
11 examination provided by the department, the person may retain or, if the person is
12 indigent and so requests, the office of public advocacy may retain a qualified expert
13 or a professional to examine the person, and the expert or professional shall have
14 access to all records concerning the person. The results of the examinations shall be
15 provided to the court that committed the person.

16 **Sec. 47.30.821. Petition for release.** (a) If the commissioner determines that
17 the person's mental abnormality or personality disorder has so changed that the person
18 is safe to be at large and is not likely to commit a sexually violent predatory offense
19 if released, the commissioner shall authorize the person to petition the court for
20 release. The petition shall be served upon the attorney general as the attorney for the
21 state. The court, upon receipt of the petition for release, shall order a hearing within
22 45 days. The state has the right to have the petitioner examined by an expert or
23 professional person of their choice. The hearing shall be before a jury if demanded
24 by either the petitioner or the state. The burden of proof is upon the state to show
25 beyond a reasonable doubt that the petitioner's mental abnormality or personality
26 disorder remains such that the petitioner is not safe to be at large and that, if
27 discharged, is likely to commit a sexually violent predatory offense. If the hearing is
28 before a jury, the jury must make this determination unanimously.

29 (b) This section does not prohibit the person from otherwise petitioning the
30 court for discharge without the commissioner's approval. The commissioner shall
31 provide the committed person with an annual written notice of the person's right to

1 petition the court for release over the commissioner's objection. The notice must
2 contain a waiver of rights. The commissioner shall forward the notice and waiver
3 form to the court with the annual examination. If the person does not affirmatively
4 waive the right to petition, the court shall hold a show cause hearing to determine
5 whether facts exist that warrant a hearing on whether the person's condition has so
6 changed that the person is safe to be at large and is not likely to commit a sexually
7 violent predatory offense if discharged. The committed person has the right to have
8 an attorney represent the person at the show cause hearing and, if the person is
9 indigent, the court shall appoint the office of public advocacy to represent the person.
10 The committed person is not entitled to be present at the show cause hearing. If the
11 court at the show cause hearing determines that probable cause exists to believe that
12 the person's mental abnormality or personality disorder has so changed that the person
13 is safe to be at large and is not likely to commit a sexually violent predatory offense
14 if discharged, the court shall set a hearing on the issue. At the hearing, the committed
15 person is entitled to be present and to the benefit of all constitutional protections that
16 were afforded to the person at the initial commitment proceeding. The attorney
17 general shall represent the state and has the right to a jury trial and to have the
18 committed person evaluated by experts chosen by the state. The committed person
19 may also have experts evaluate the person on the person's behalf, and the office of
20 public advocacy shall retain an expert if the person is indigent and requests an
21 appointment. The burden of proof at the hearing is upon the state to prove beyond a
22 reasonable doubt that the committed person's mental abnormality or personality
23 disorder remains such that the person is not safe to be at large and, if released, is
24 likely to commit a sexually violent predatory offense.

25 (c) If a person has previously filed a petition for discharge without the
26 commissioner's approval and the court determined, either upon review of the petition
27 or following a hearing, that the petitioner's petition was frivolous or that the
28 petitioner's condition had not so changed that the person was safe to be at large and
29 was not likely to commit a sexually violent predatory offense if discharged, the court
30 shall deny the subsequent petition unless the petition contains facts upon which a court
31 could find that the condition of the petitioner has so changed that a hearing is

1 warranted. Upon receipt of a second or subsequent petition from a committed person
 2 without the commissioner's approval, the court shall review the petition and determine
 3 if the petition is based upon frivolous grounds and, if so, shall deny the petition
 4 without a hearing.

5 **Sec. 47.30.822. Duties of department; immunity.** (a) The department is
 6 responsible for costs relating to the evaluation and treatment of persons committed to
 7 its custody under the provisions of AS 47.30.816 - 47.30.824. Reimbursement may
 8 be obtained by the department for the cost of care and treatment of persons committed
 9 to its custody under AS 47.30.819.

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

14 **Sec. 47.30.823. Release of information authorized.** Notwithstanding any
 15 other provision of law and in addition to any other information required to be released
 16 under AS 47.30.816 - 47.30.824, the department may release relevant information that
 17 is necessary to protect the public concerning a specific sexually violent predator
 18 committed under AS 47.30.816 - 47.30.824.

19 **Sec. 47.30.824. Definitions.** In AS 47.30.816 - 47.30.824,

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

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

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

28 (A) a violation of AS 11.41.410, 11.41.420(a)(1), 11.41.434 -
 29 11.41.438, or 11.41.450 or a felony offense in this or another jurisdiction
 30 formerly, or currently, having elements similar to AS 11.41.410,
 31 11.41.420(a)(1), 11.41.434 - 11.41.438, or 11.41.450;

1 (B) a violation of AS 11.41.100, 11.41.110, 11.41.200,
2 11.41.210, 11.41.300, or AS 11.46.300 or a felony offense in this or another
3 jurisdiction formerly, or currently, having elements similar to AS 11.41.100,
4 11.41.110, 11.41.200, 11.41.210, 11.41.300, or AS 11.46.300, if the state
5 proves beyond a reasonable doubt, in civil commitment proceedings under
6 AS 47.30.816 - 47.30.824, that, during the course of the offense, the person
7 engaged in or intended to engage in sexual penetration, sexual contact, or
8 sexually gratifying conduct; or

9 (C) a violation of AS 11.31.100 - 11.31.120, or a felony offense
10 in this or another jurisdiction formerly, or currently, having elements similar
11 to AS 11.31.100 - 11.31.120, that is an attempt, criminal solicitation, or
12 conspiracy to commit one of the felonies designated in (A) or (B) of this
13 paragraph;

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

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