

CS FOR SENATE BILL NO. 216(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/22/98
Referred: Finance

Sponsor(s): SENATORS HALFORD, Green, Donley, Taylor, Wilken, Leman, Duncan, Lincoln, Ward, Mackie

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. Screening and notice to attorney general before release.**

11 (a) When it appears that a person may meet the criteria for a sexually violent
12 predator, the agency with custody shall request a referral examination by the
13 department, and give written notice to the attorney general, three months before the
14 anticipated release from confinement of the person. The criteria to be used by the
15 agency with custody to evaluate a person for referral under this subsection shall be
16 developed by the department in cooperation with the Department of Law and the
17 Department of Corrections.

18 (b) When a referral has been made to the department under (a) of this section,
19 the department shall assemble the person's criminal records, juvenile records, and any
20 other information that is relevant to evaluate the person according to standards adopted
21 by the department for screening a person who may be a sexually violent predator.
22 The standards for screening persons referred under (a) of this section shall be adopted
23 by the department in consultation with the Department of Law and the Department of
24 Corrections. Notwithstanding any other provision of law, all records in the custody
25 of a state agency requested by the department for the referral examination shall be
26 provided to the department. The department shall complete the referral examination
27 within 30 days and shall forward the results of the examination to the agency with
28 custody and to the attorney general. If the department determines that the person may
29 be a sexually violent predator or upon the request of the attorney general, the agency
30 with custody shall provide the following information to the attorney general:

31 (1) information concerning an anticipated plan for employment,

1 residence, conditions of release, and supervision if the person is released as scheduled;

2 (2) a summary of the person's institutional adjustment and any
3 treatment received;

4 (3) the results of the referral evaluation under this section, including
5 the documents obtained by the department for use in the evaluation;

6 (4) reports of any previous mental health examination of the person.

7 (c) In this section, "agency with custody" means the department with the
8 authority to direct the release of a person serving a sentence or term or period of
9 confinement.

10 **Sec. 47.30.818. Sexually violent predator petition; filing; judicial**
11 **determination; evaluation.** (a) The attorney general may file a petition in the
12 superior court alleging that a person is a sexually violent predator and stating sufficient
13 facts to support the allegation when it appears that the person may be a sexually
14 violent predator and it appears that

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

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

19 (3) a person who has been charged with a sexually violent offense and
20 who was determined to be incompetent to stand trial is about to be released or has
21 been released; or

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

24 (b) Upon the filing of a petition, notice shall be provided to the person and the
25 court shall schedule a hearing within 72 hours at which the person has a right to
26 appear. At the hearing, the judge shall determine whether probable cause exists to
27 believe that the person named in the petition is a sexually violent predator. If probable
28 cause is found, the judge shall direct that the person be taken into custody, and the
29 person shall be transferred to an appropriate facility for an evaluation as to whether
30 the person is a sexually violent predator. The evaluation shall be conducted by a
31 person professionally qualified to conduct the examination assigned or retained by the

1 department. The results of the examination conducted under this section are
2 admissible in all further proceedings conducted under AS 47.30.816 - 47.30.824.

3 **Sec. 47.30.819. Trial; rights of parties; determination; commitment**
4 **procedures.** (a) Within 60 days following a judicial determination of probable cause
5 under AS 47.30.818, the court shall conduct a trial to determine whether the person
6 is a sexually violent predator. The trial may be continued upon the request of either
7 party and a showing of good cause or by the court on its own motion in the interests
8 of justice and when the person will not be substantially prejudiced. At all stages of
9 the proceedings under AS 47.30.816 - 47.30.824, a person who is the subject of a
10 petition filed under AS 47.30.818 is entitled to the assistance of counsel, and, if the
11 person is indigent, the court shall appoint counsel to assist the person. A person
12 examined under AS 47.30.818(b) may retain experts or professionals to perform an
13 examination on the person's behalf; the expert or professional shall be permitted
14 reasonable access to the person for the purpose of an examination, and to all relevant
15 medical and psychological records and reports. If the person is indigent, the court,
16 upon the person's request, shall determine if the services are necessary and the
17 compensation for those services is reasonable. If the court determines that the services
18 are necessary and the compensation for the services is reasonable, the court and the
19 person's counsel shall assist the person in obtaining an expert or professional to
20 perform an examination or participate in the trial on the person's behalf. Upon motion
21 of the person or the attorney general, or on the court's own motion, the trial shall be
22 before a jury. If no motion is made, the trial shall be before the court.

23 (b) The court or jury shall determine, beyond a reasonable doubt, whether the
24 person is a sexually violent predator. If trial is to a jury, the jury must make the
25 determination unanimously. Upon a determination that the person is a sexually violent
26 predator, the court shall consider less restrictive alternatives to confinement and
27 whether these alternatives, if any, will adequately protect the public so it is safe for
28 the person not to be confined and will prevent the person from committing a sexually
29 violent predatory offense. If the court determines that the less restrictive alternatives
30 will not (1) adequately protect the public so it would be safe for the person to be at
31 large, or (2) prevent the person from committing a sexually violent predatory offense,

1 the court shall order the person committed to the custody of the department for control,
2 care, and treatment until the person's mental illness has so changed that the person is
3 safe to be at large. If the court or jury is not satisfied beyond a reasonable doubt that
4 the person is a sexually violent predator, the court shall direct the person's release
5 from the custody of the department.

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

25 (d) The department shall confine a person who is ordered committed under this
26 section in a secure mental health facility. The department may contract with a public
27 or private entity inside or outside the state for the confinement of persons committed
28 under AS 47.30.816 - 47.30.824. Persons committed to the department shall be
29 segregated at all times from other persons under the supervision of the department.
30 The department may not confine a person committed under AS 47.30.816 - 47.30.824
31 in a correctional facility or institution operated by the Department of Corrections. This

1 subsection does not prohibit the department from confining a person committed under
2 AS 47.30.816 - 47.30.824 in a mental health facility operated by the department and
3 located within or on the grounds of a correctional facility. Persons confined in a
4 mental health facility within or on the grounds of a correctional facility shall be
5 segregated at all times from the inmates of the correctional facility. Following
6 confinement of the committed person, the department shall inform the person of the
7 person's rights under AS 47.30.821. The involuntary detention or commitment of a
8 person under AS 47.30.816 - 47.30.824 shall conform to the constitutional
9 requirements for care and treatment.

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

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

30 (b) This section does not prohibit the person from otherwise petitioning the
31 court for discharge without the commissioner's approval. The commissioner shall

1 provide the committed person with an annual written notice of the person's right to
2 petition the court for release over the commissioner's objection. The notice must
3 contain a waiver of rights. The commissioner shall forward the notice and waiver
4 form to the court with the annual examination. If the person does not affirmatively
5 waive the right to petition, the court shall hold a show cause hearing to determine
6 whether facts exist that warrant a hearing on whether the person's condition has so
7 changed that the person is safe to be at large and is not likely to commit a sexually
8 violent predatory offense if discharged. The committed person has the right to have
9 an attorney represent the person at the show cause hearing and, if the person is
10 indigent, the court shall appoint counsel to represent the person. The committed
11 person is not entitled to be present at the show cause hearing. If the court at the show
12 cause hearing determines that probable cause exists to believe that the person's mental
13 illness has so changed that the person is safe to be at large and is not likely to commit
14 a sexually violent predatory offense if discharged, the court shall set a hearing on the
15 issue. At the hearing, the committed person is entitled to be present and to the benefit
16 of all constitutional protections that were afforded to the person at the initial
17 commitment proceeding. The attorney general shall represent the state and has the
18 right to a jury trial and to have the committed person evaluated by experts chosen by
19 the state. The committed person may also have experts evaluate the person on the
20 person's behalf, and the court shall assist the person in obtaining an expert if the
21 person is indigent and requests the assistance. The burden of proof at the hearing is
22 upon the state to prove beyond a reasonable doubt that the committed person's mental
23 illness remains such that the person is not safe to be at large and, if released, is likely
24 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; regulations; immunity.** (a) The
 6 department is responsible for costs relating to the evaluation and treatment of persons
 7 committed to its custody under the provisions of AS 47.30.816 - 47.30.824.
 8 Reimbursement may be obtained by the department for the cost of care and treatment
 9 of persons committed to its custody under AS 47.30.819.

10 (b) The department may adopt regulations to implement the provisions of
 11 AS 47.30.816 - 47.30.824. The department shall consult with the Department of Law
 12 and the Department of Corrections when adopting regulations.

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

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

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

23 (1) "mental illness" has the meaning given in AS 12.47.090;

24 (2) "predatory" means that acts are directed towards

25 (A) strangers;

26 (B) individuals with whom a relationship has been established
 27 or promoted for the primary purpose of victimization; or

28 (C) family members if the familial relationship has been
 29 exploited for the purpose of victimization; in this subparagraph "family
 30 member" means a person who

31 (i) is related up to the fourth degree of consanguinity,

1 whether of the whole or half blood or by adoption computed under the
2 rules of civil law; or

3 (ii) lives in the same household;

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

5 (A) a violation of AS 11.41.410, 11.41.420(a)(1), or 11.41.434 -
6 11.41.438, or a felony offense in this or another jurisdiction formerly, or
7 currently, having elements similar to AS 11.41.410, 11.41.420(a)(1), or
8 11.41.434 - 11.41.438;

9 (B) a violation of AS 11.41.100, 11.41.110, 11.41.200, or
10 11.41.300, or a felony offense in this or another jurisdiction formerly, or
11 currently, having elements similar to AS 11.41.100, 11.41.110, 11.41.200, or
12 11.41.300 if the state proves beyond a reasonable doubt, in civil commitment
13 proceedings under AS 47.30.816 - 47.30.824, that, during the course of the
14 offense, the person engaged in or intended to engage in sexual penetration,
15 sexual contact, or sexually gratifying conduct; or

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

21 (4) "sexually violent predator" means a person who

22 (A) has been

23 (i) convicted of a sexually violent offense;

24 (ii) found to have committed a sexually violent offense
25 as a juvenile;

26 (iii) charged with a sexually violent offense and who
27 was determined to be incompetent to stand trial under AS 12.47.100; or

28 (iv) found not guilty by reason of insanity of a sexually
29 violent offense under AS 12.47.040; and

30 (B) suffers from a mental illness that makes the person
31 substantially likely to commit a sexually violent predatory offense.

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