

FISCAL NOTE

No. 5

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: CSSB 2 (JUD)

(S) Publish Date: 1-28-99

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title An Act providing for civil commitment of BRU Criminal Division
sexually violent predators. Component OSPA
 Sponsor Senator Halford
 Requester Senate Judiciary Committee Component Serial No 2203

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	300.2	356.3	412.5	468.6	506.4	506.4
Travel	6.0	6.2	6.4	6.6	6.7	6.7
Contractual	145.5	110.3	123.1	132.0	135.9	135.9
Supplies	4.6	5.5	6.3	7.2	7.8	7.8
Equipment	26.0	6.5	0.0	13.0	6.5	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	482.3	484.9	548.4	627.4	663.3	656.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	482.3	484.9	548.4	627.4	663.3	656.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	482.3	484.9	548.4	627.4	663.3	656.8

Estimate of any current year (FY99) cost: _____

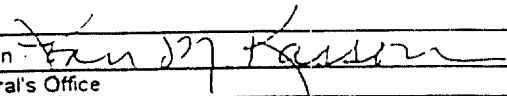
POSITIONS

Full-time	4	5	5	6	6	6
Part-time				1	2	2
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 2 provides a method for the civil commitment of sexually violent predators upon completion of their criminal sentence. The Department of Law would have the responsibility of seeking civil commitment through the courts.

The Department of Corrections estimates that approximately 160 sex offenders would likely be released each year. The Department of Law anticipates filing for civil commitment on approximately 2 to 3 percent in light of the narrow definition of "sexual predator" contained in this bill. For the purposes of this fiscal analysis, the department assumes that it would seek civil commitment for 4 to 5 offenders a year. Further, all cases would go to trial, and 4 individuals would actually be committed.

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The bill further provides each committed individual an opportunity to petition for release and the Department of Health and Social Services must conduct an examination of the person's mental condition annually. These petitions could result in a jury trial, if the court finds there is probable cause that the person's condition has so changed that they are safe to be released. The Department of Law assumes that in the first two years, all committed individuals would petition for release. Over time, the number of petitions requiring a hearing would decrease relative to the total population of committed sexually violent predators. The bill provides for denial of a petition without a hearing when it is a second or subsequent petition for release and a previous petition had been found to be frivolous or new facts are not presented showing the person's condition had so changed since the last petition so that the person was safe to be a large. The number of petitions is assumed to level off at 10 to 12 per year.

Offenders committed under this bill would have the right to appeal the court's decision. The department again assumes that initially, all individuals committed would appeal their commitments and orders denying release. But as case law is established, the number of appeals would diminish relative to the growing population of committed individuals, to approximately 8 appeals per year.

TRIAL UNIT

In order to obtain an order for civil commitment of a sexually violent predator, the Department of Law would file a petition with the Superior Court. Upon the determination by the court, after a hearing that probable cause exists to believe the person named in the petition is a sexually violent predator, the case would proceed to trial. The court, or a unanimous jury, must find, beyond a reasonable doubt, that the person is a sexually violent predator.

Prosecution of these cases would involve a similar level of work to prosecuting a complex felony criminal case.

First, the department must screen incoming cases. It is likely that Corrections and Health and Social Services will take a conservative approach on the cases they refer to the Attorney General, and refer more than the Department of Law can successfully pursue. Each case must be examined, and a decision made on whether civil commitment will be sought.

Once a petition is filed, the next step will be the probable cause hearing. Ordinarily, this hearing is used by the defense as a discovery mechanism to hear from the state's witnesses and see the state's evidence in order to later rebut. The department assumes the same will be true in the civil commitment proceedings. The hearing will likely last an average of two days, and involve a week of preparation. Discovery,

depositions, other pre-trial preparation and the trial itself are assumed to require an average of two and one-half weeks per case of attorney time.

From the probable cause hearing through trial, approximately one month of attorney time will be required. One attorney is assumed to take five cases to trial per year, a caseload of half-time litigation in civil commitment, and in addition, participate in the on-going screening process of many more cases.

Paraprofessional resources would also be necessary for witness coordination, investigation, and records coordination. To prove some elements of these cases, the department may have to find the investigating officers and victims of the offense the person was convicted for criminally. The original case may be several years old. As with the attorneys, each case is assumed to take approximately one month of a paraprofessional's time.

Typically, each case would require the services of at least one expert witness. To the extent it could, the department would rely on experts employed by the State of Alaska; however, they may not be viewed as sufficiently objective, and outside experts would be retained. The experts would need time to review the background of the offender, their institutional record, and psychological history. The cost per case for experts is assumed to be \$5.0, for all cases except the first one or two.

The first case in which civil commitment is sought will involve constitutional challenges. These cases are particularly expensive and experts will be needed to uphold the legislature's findings. The department assumes expert costs in the first case will reach \$50.0.

Other direct case costs include witness travel and per diem at \$1.0 per case, and deposition and court reporter costs at \$1.0 per case.

As discussed in the previous section, this fiscal analysis assumes 5 cases per year will go to trial. One attorney and one paraprofessional position will be able to handle all the cases the first year, FY00. The department's standard cost schedule for FY00 is \$133,900 per full-time equivalent attorney, and \$90,000 per FTE paraprofessional. The cost schedule includes all normal overheads including copies, telecommunication, leases, and clerical support at a rate of one clerical position for each three professional positions. One-time new equipment costs are not included in the schedule, and are added separately in this fiscal analysis for all positions, including clerical support positions.

In the second year, the first 4 committed individuals will be subject to annual review, and may petition for release. The annual review process will require less time than the original commitment process. The department assumes that one half-time attorney will

be able to handle 4 of these cases per year. Each year, one more half-time attorney will be needed as the number of civilly committed individuals grows, until year 5, when petitions are assumed to level off.

Paraprofessional resources are added at a rate of one for every two attorneys. And expert witness costs are assumed to be less than at trial, but still necessary, and are included at a rate of \$1.0 per case.

APPELLATE UNIT

In the first two years particularly, as discussed in the previous section, every civilly committed offender is assumed to appeal the commitment orders and denials of petitions for release. This will be 4 appeals in year 1 and 4 in year 2. After the first two years, the appellate caseload is assumed to decline relative to the total population of committed individuals. The department believes that between those newly committed each year, and those already committed, one attorney will have a half-time caseload. One attorney is added in FY00 with associated support costs.

There will be no expert fees in the appeals process, but transcript costs are included at a rate of \$1.0 per case.

Prisoners tend to be very litigious, and the department expects the same for those civilly committed. As the population of those civilly committed grows, the department would anticipate lawsuits over their right to treatment, failure to treat, conditions, etc. The appellate attorney will also handle these lawsuits.

The attached spreadsheet graphically illustrates the costs of both the Trial and Appellate units over the six-year fiscal note period, and the caseload assumptions.

All positions are assumed to be located in Anchorage, as that is where most of the offenders Corrections indicates are likely to be referred to the Attorney General for commitment are located. The Anchorage Criminal Division offices have no space available to put the new positions associated with this bill, and more space would need to be leased. As a practical matter, the space would need to be leased all at once and not incrementally over the six-year period of the fiscal note. To anticipate this need, the percentage of the attorney and paraprofessional rates that represent lease costs are moved into FY00 (\$3,917 per half-attorney position, \$2,633 per half-paraprofessional). To avoid double counting, the \$14,383, which would be included as a base cost subsequent years, is reduced each year by the amount of lease overhead included in each new position's rate, until lease costs are fully recovered through the rate in FY04.

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 2

#5

		FTE	COST	FY00	FY01	FY02	FY03	FY04	FY05
<u>Trial Unit</u>	# Cases to trial			5	5	5	5	5	5
	# Cases to petition				4	8	10	10	10
Yr 1	Attorney	1	133.9	133.9	133.9	133.9	133.9	133.9	133.9
	Paraprofessional	1	90.0	90.0	90.0	90.0	90.0	90.0	90.0
	Legal Secretary	1							
Yr 2	Attorney	0.5	133.9		67.0	67.0	67.0	67.0	67.0
Yr 3	Attorney	0.5	133.9			67.0	67.0	67.0	67.0
Yr 4	Attorney	0.5	133.9				67.0	67.0	67.0
	Legal Secretary	1					0.0	0.0	0.0
Yr 5	Paraprofessional	0.5	90.0					45.0	45.0
	One-time equipment purchases			19.5	6.5		13.0	6.5	0.0
	All lease costs to FY00; base adjusted for rate recovery			14.4	10.5	6.5	2.6	0.0	0.0
Per Case costs									
Yr 1	Expert fees first case to trial		50.0	50.0					
Yrs 1-6	Expert fees per trial		5.0	20.0	25.0	25.0	25.0	25.0	25.0
	Witness travel & subsistence		1.0	5.0	5.0	5.0	5.0	5.0	5.0
	Depositions/court reporter		1.0	5.0	5.0	5.0	5.0	5.0	5.0
2-6	Expert Fees per petition		1.0	0.0	4.0	8.0	10.0	10.0	10.0
<u>Appellate Unit</u>	# cases appealed			4	4	7	8	8	8
Yr 1	Attorney	1	133.9	133.9	133.9	133.9	133.9	133.9	133.9
	One-time equipment purchases			6.5					
Per Case costs									
Yrs 1-6	Transcriptions		1.0	4.0	4.0	7.0	8.0	8.0	8.0
TOTAL COSTS				482.3	484.9	548.4	627.4	663.3	656.8
<u>Trial Unit</u>	PFT attorney			1.0	1.5	2	2	2	2
	PPT attorney						1	1	1
	PFT paraprofessional			1	1	1	1	1	1
	PPT paraprofessional							1	1
	PFT legal secretary			1	1	1	2	2	2
<u>Appellate Unit</u>	PFT attorney			1	1	1	1	1	1
TOTAL PFT				4	5	5	6	6	6
TOTAL PPT							1	2	2