

**CS FOR HOUSE BILL NO. 349(HES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

**Offered: 2/9/94**

**Referred: Judiciary, Finance**

**Sponsor(s): REPRESENTATIVES PARNELL, Toohey, Olberg, Sanders, Bunde**

**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 sex offenders'**

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

11 **Sec. 47.30.817. NOTICE TO ATTORNEY GENERAL PRIOR TO RELEASE.**

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

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

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

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

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

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

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

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

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

31 **Sec. 47.30.818. SEXUALLY VIOLENT PREDATOR PETITION; FILING;**

1 **JUDICIAL DETERMINATION; EVALUATION.** (a) The attorney general may file  
2 a petition in the superior court alleging that a person is a sexually violent predator and  
3 stating sufficient facts to support the allegation when it appears that the person may  
4 be a sexually violent predator and it appears that

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

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

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

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

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

25 **Sec. 47.30.819. TRIAL; RIGHTS OF PARTIES; DETERMINATION;**  
26 **COMMITMENT PROCEDURES.** (a) Within 45 days after the filing of a petition  
27 under AS 47.30.818, the court shall conduct a trial to determine whether the person  
28 is a sexually violent predator. At all stages of the proceedings under AS 47.30.816 -  
29 47.30.824, a person who is the subject of a petition filed under AS 47.30.818 is  
30 entitled to the assistance of counsel and, if the person is indigent, the court shall  
31 appoint the office of public advocacy to assist the person. When a person is subjected

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

11 (b) The court or jury shall determine, beyond a reasonable doubt, whether the  
12 person is a sexually violent predator. If the state alleges in the petition a prior  
13 sexually violent offense for which a finding of sexual motivation is necessary to  
14 classify the offense as a sexually violent offense, the state shall prove beyond a  
15 reasonable doubt that the alleged sexually violent act was sexually motivated. Upon  
16 a determination that the person is a sexually violent predator, the person shall be  
17 committed to the custody of the department for control, care, and treatment until the  
18 person's mental abnormality or personality disorder has so changed that the person is  
19 safe to be at large. If the court or jury is not satisfied beyond a reasonable doubt that  
20 the person is a sexually violent predator, the court shall direct the person's release  
21 from the custody of the department.

22 (c) If the person charged with a sexually violent offense has been found  
23 incompetent to stand trial, is about to or has been released, and the person's  
24 commitment is sought under this section, the court shall first hear evidence and  
25 determine whether the person committed the act or acts charged. The hearing on this  
26 issue must comply with the procedures specified in this section. In addition, the rules  
27 of evidence applicable in criminal trials and all constitutional rights available to  
28 defendants at criminal trials, other than the right to a jury trial and right not to be tried  
29 while incompetent, shall apply. After hearing evidence under this subsection, the court  
30 shall make specific findings on whether the person committed the act or acts charged,  
31 the extent to which the person's incompetence affected the outcome of the hearing,

1 including its effect on the person's ability to consult with and assist counsel and to  
2 testify on the person's own behalf, the extent to which the evidence could be  
3 reconstructed without the assistance of the person, and the strength of the state's case.  
4 If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable  
5 doubt, that the person committed the act or acts charged, it shall enter an order,  
6 appealable by the person, on that issue and may proceed to consider whether the  
7 person should be committed under this section. A finding under this subsection that  
8 the person committed the act or acts charged is not a conviction or a finding of guilt  
9 for any purpose other than for consideration of commitment.

10 (d) The department shall confine a person committed under AS 47.30.816 -  
11 47.30.824 in a secure mental health facility operated by the department. The  
12 department may not confine a person committed under AS 47.30.816 - 47.30.824 in  
13 a correctional facility or institution operated by the Department of Corrections. This  
14 subsection does not prohibit the department from confining a person committed under  
15 AS 47.30.816 - 47.30.824 in a mental health facility operated by the department and  
16 located within or on the grounds of a correctional facility. The involuntary detention  
17 or commitment of a person under AS 47.30.816 - 47.30.824 shall conform to the  
18 constitutional requirements for care and treatment.

19 Sec. 47.30.820. ANNUAL EXAMINATIONS. The department shall provide  
20 an examination of the current mental condition of a person committed under  
21 AS 47.30.816 - 47.30.824 at least once each year. In addition to the annual  
22 examination provided by the department, the person may retain or, if the person is  
23 indigent and so requests, the court may appoint a qualified expert or a professional to  
24 examine the person, and the expert or professional shall have access to all records  
25 concerning the person. The results of the examinations shall be provided to the court  
26 that committed the person.

27 Sec. 47.30.821. PETITION FOR RELEASE. (a) If the commissioner  
28 determines that the person's mental abnormality or personality disorder 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 released, the commissioner shall authorize the person to petition  
31 the court for release. The petition shall be served upon the attorney general as the

1 attorney for the state. The court, upon receipt of the petition for release, shall order  
2 a hearing within 45 days. The state has the right to have the petitioner examined by  
3 an expert or professional person of their choice. The hearing shall be before a jury if  
4 demanded by either the petitioner or the state. The burden of proof is upon the state  
5 to show beyond a reasonable doubt that the petitioner's mental abnormality or  
6 personality disorder remains such that the petitioner is not safe to be at large and that,  
7 if discharged, is likely to commit a sexually violent predatory offense.

8 (b) This section does not prohibit the person from otherwise petitioning the  
9 court for discharge without the commissioner's approval. The commissioner shall  
10 provide the committed person with an annual written notice of the person's right to  
11 petition the court for release over the commissioner's objection. The notice must  
12 contain a waiver of rights. The commissioner shall forward the notice and waiver form  
13 to the court with the annual examination. If the person does not affirmatively waive  
14 the right to petition, the court shall hold a show cause hearing to determine whether  
15 facts exist that warrant a hearing on whether the person's condition has so changed  
16 that the person is safe to be at large and is not likely to commit a sexually violent  
17 predatory offense if discharged. The committed person has the right to have an  
18 attorney represent the person at the show cause hearing and if the person is indigent,  
19 the court shall appoint the office of public advocacy to represent the person. The  
20 committed person is not entitled to be present at the show cause hearing. If the court  
21 at the show cause hearing determines that probable cause exists to believe that the  
22 person's mental abnormality or personality disorder has so changed that the person is  
23 safe to be at large and is not likely to commit a sexually violent predatory offense if  
24 discharged, the court shall set a hearing on the issue. At the hearing, the committed  
25 person is entitled to be present and to the benefit of all constitutional protections that  
26 were afforded to the person at the initial commitment proceeding. The attorney  
27 general shall represent the state and has the right to a jury trial and to have the  
28 committed person evaluated by experts chosen by the state. The committed person  
29 may also have experts evaluate the person on the person's behalf, and the court shall  
30 appoint an expert if the person is indigent and requests an appointment. The burden  
31 of proof at the hearing is upon the state to prove beyond a reasonable doubt that the

1 committed person's mental abnormality or personality disorder remains such that the  
2 person is not safe to be at large and, if released, is likely to commit a sexually violent  
3 predatory offense.

4 (c) If a person has previously filed a petition for discharge without the  
5 commissioner's approval and the court determined, either upon review of the petition  
6 or following a hearing, that the petitioner's petition was frivolous or that the  
7 petitioner's condition had not so changed that the person was safe to be at large and  
8 was not likely to commit a sexually violent predatory offense if discharged, the court  
9 shall deny the subsequent petition unless the petition contains facts upon which a court  
10 could find that the condition of the petitioner has so changed that a hearing is  
11 warranted. Upon receipt of a second or subsequent petition from a committed person  
12 without the commissioner's approval, the court shall review the petition and determine  
13 if the petition is based upon frivolous grounds and if so shall deny the petition without  
14 a hearing.

15 Sec. 47.30.822. DUTIES OF DEPARTMENT; IMMUNITY. (a) The  
16 department is responsible for costs relating to the evaluation and treatment of persons  
17 committed to its custody under the provisions of AS 47.30.816 - 47.30.824.  
18 Reimbursement may be obtained by the department for the cost of care and treatment  
19 of persons committed to its custody under AS 47.30.819.

20 (b) The state, agency, employees of the agency, and officials are immune from  
21 liability for any good faith conduct under AS 47.30.816 - 47.30.824.

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

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

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

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

4                   (3) "sexually motivated" means that one of the purposes for which the  
5 person committed the crime was for the purpose of the person's sexual gratification;

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

7                                 (A) a violation of AS 11.41.410 - 11.41.420(a)(1), 11.41.434 -  
8 11.41.438, or 11.41.450 or a felony offense in this or another jurisdiction  
9 formerly, or currently, having elements similar to AS 11.41.410 -  
10 11.41.420(a)(1), 11.41.434 - 11.41.438, or 11.41.450;

11                                (B) a violation of AS 11.41.100 - 11.41.110, 11.41.200 -  
12 11.41.210, 11.41.300, or AS 11.46.300 or a felony offense in this or another  
13 jurisdiction formerly, or currently, having elements similar to AS 11.41.100 -  
14 11.41.110, 11.41.200 - 11.41.210, 11.41.300, or AS 11.46.300, that has been  
15 determined beyond a reasonable doubt, during civil commitment proceedings  
16 under AS 47.30.816 - 47.30.824, to have been sexually motivated; or

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

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

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