

CS FOR HOUSE BILL NO. 349(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/18/94
Referred: 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 the likelihood**

1 of engaging in repeat acts of predatory sexual violence is high among this group. The
2 existing involuntary treatment procedure, AS 47.30.700 - 47.30.815, is inadequate to
3 address the risk to reoffend because during confinement these offenders do not have
4 access to potential victims and, therefore, will not engage in specific overt acts
5 evidencing their risk of harm to others during confinement as required by the
6 involuntary treatment procedure for continued confinement. The legislature further
7 finds that the prognosis for curing this group of sexually violent offenders is poor, the
8 treatment needs of this population are very long term, and the treatment methods for
9 this population are very different than the traditional treatment methods for people
10 appropriate for commitment under the 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, notice shall be provided to the person and the
15 court shall schedule a hearing within 72 hours, at which the person has a right to
16 appear. At the hearing, the judge shall determine whether probable cause exists to
17 believe that the person named in the petition is a sexually violent predator. If probable
18 cause is found, the judge shall direct that the person be taken into custody and the
19 person shall be transferred to an appropriate facility for an evaluation as to whether
20 the person is a sexually violent predator. The evaluation shall be conducted by a
21 person professionally qualified to conduct the examination under regulations adopted
22 by the department. In adopting the regulations under this subsection, the department
23 shall consult with the Department of Corrections and the Council on Domestic
24 Violence and Sexual Assault. The results of the examination conducted under this
25 section are admissible in all further proceedings conducted under AS 47.30.816 -
26 47.30.824.

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

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

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

1 from the custody of the department.

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

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

1 **Sec. 47.30.820. ANNUAL EXAMINATIONS.** The department shall provide
2 an examination of the current mental condition of a person committed under
3 AS 47.30.816 - 47.30.824 at least once each year. In addition to the annual
4 examination provided by the department, the person may retain or, if the person is
5 indigent and so requests, the office of public advocacy may retain a qualified expert
6 or a professional to examine the person, and the expert or professional shall have
7 access to all records concerning the person. The results of the examinations shall be
8 provided to the court that committed the person.

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

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

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

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

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

1 Reimbursement may be obtained by the department for the cost of care and treatment
2 of persons committed to its custody under AS 47.30.819.

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

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

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

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

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

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

21 (A) a violation of AS 11.41.410 - 11.41.420(a)(1), 11.41.434 -
22 11.41.438, or 11.41.450 or a felony offense in this or another jurisdiction
23 formerly, or currently, having elements similar to AS 11.41.410 -
24 11.41.420(a)(1), 11.41.434 - 11.41.438, or 11.41.450;

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

1 **sexually gratifying conduct; or**

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

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

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